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Thursday
February 28, 1985

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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.

Selected Subjects

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Separate Parts in this Issue

Reader Aids
Additional information, including a list of public laws, telephone numbers, and findings aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 870, 871, 872, 873, and 874

Basic Life Insurance, Standard Optional Life Insurance, Additional Optional Life Insurance, Family Optional Life Insurance, and Assignment of Life Insurance

AGENCY: Office of Personnel Management.

ACTION: Interim rulemaking.

SUMMARY: These regulations implement section 208 of Public Law 98–353, the Bankruptcy Amendments and Federal Judgeship Act of 1984. Section 208 permits Federal judges to assign ownership of their Federal Employees' Group Life Insurance (FEGLI) to another person. The regulations describe judges' and assignees' rights and responsibilities with respect to assignments.

DATES: Interim rule effective February 28, 1985 to allow judges to make assignments subject to our regulations as soon as possible. Comments must be received on or before April 29, 1985.

ADDRESS: Send comments to Jean M. Barber, Assistant Director for Pay and Benefits Policy, Compensation Group, P.O. Box 57, Office of Personnel Management, Washington, D.C. 20044; or deliver to Room 4351, 1900 E Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mary Angel (202) 632–4634.

SUPPLEMENTARY INFORMATION: Effective July 10, 1984, section 208 of Public Law 98–353, the Bankruptcy Amendments and Federal Judgeship Act of 1984, amended the Federal Employees' Group Life Insurance (FEGLI) law (title 5, United States Code, chapter 87) to permit Federal judges to assign ownership of their FEGLI coverage to another individual. Judges who assign their FEGLI ownership continue to be insured under the FEGLI Program. However, they irrevocably transfer to the assignee many of the attendant rights, benefits, and responsibilities for their basic, standard optional, and additional optional insurance. (Family optional insurance cannot be assigned, because the coverage provides a benefit payable to the insured judge upon the death of a family member and the judge could reasonably expect to retain that benefit.)

Assignments of insurance are generally made for personal financial planning purposes. If an assignment is made at least 3 years before an individual's death, the insurance is considered a gift to the assignee, rather than a part of the insured's estate. Current Federal estate tax law allows an unlimited marital deduction for that portion of the gross estate passed to a surviving spouse. Thus, there is no apparent immediate tax advantage to assigning ownership of a life insurance policy to a spouse. However, State tax laws vary and tax savings under Federal or State law can be considerable if the estate is large and ownership of a life insurance policy is assigned to children or to a trust.

Once insurance is assigned, the assignee to whom the judge transfers FEGLI ownership may, for the insurance assigned to him or her: (1) Designate beneficiaries, (2) convert the insurance to an individual policy if the judge's eligibility for group insurance ceases, and (3) cancel the insurance or reduce the amount of coverage. When insurance is assigned to more than one person, these people must agree when exercising the right to cancel or reduce coverage.

Judges retain the right to elect new insurance coverage, though all new insurance (excluding family optional insurance) is subject to an existing assignment. They also retain the right to decide, at time of retirement or receipt of workers' compensation, to maintain more than the minimum percentage of their basic life insurance. Judges also continue to be responsible for premium payments under the group policy. Premium payments will continue to be withheld from the judges' pay, annuity, or compensation.

In these interim rules, we make the following amendments to the FEGLI regulations to reflect the assignment right that is now available to Federal judges under title 5, United States Code, chapter 87:

(1) We amend Parts 870, 871, and 872 to show that judges may irrevocably assign incidents of ownership in their insurance described in those Parts.

(2) We amend Part 873 to show that an assignment of basic life insurance has no effect on the general rules for payment of family optional insurance in cases in which the insured judge survives an insured family member but dies before family optional insurance has been paid. In such cases, family insurance will be paid to the person(s) who would be entitled to the basic insurance if no assignment existed.

(3) We add a new Part 874 to describe judges' and assignees' rights and responsibilities with respect to assignments. This part discusses the types of insurance judges may assign; how to make assignments; and the effect of assignment on the insured judges and on assignees, including assignee rights to waive the insurance and to convert to a private policy when the insurance terminates. It also discusses who must pay for the assigned insurance; the assignees' right to name a beneficiary and right to change that beneficiary; and a number of technical issues related to assignment.

The interim regulations also amend Part 871 to clearly state that the maximum reduction in an annuitant's or compensationer's standard optional life insurance is 75 percent. We inadvertently omitted this provision from the final FEGLI regulations published January 25, 1984 (49 FR 3033–3048).

Under section 553(b)(3)(B) of title 5 of the United States Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because an assignment of insurance ownership must be in effect for 3 years prior to the insured person's death before insurance proceeds can be considered a gift to the assignee, rather than part of the insured's estate. Publishing interim rules, rather than proposed rules, will allow judges to make assignment of life insurance ownership subject to regulations at the earliest possible date and thereby achieve the maximum benefit.

E.O. 12291, Federal Regulations

We have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 5 CFR 870, 871, 872, 873, and 874

Administrative practice and procedures, Government employees, Life insurance, Retirement, Workers' compensation.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

For the reasons set forth in the preamble, we amend 5 CFR Parts 870, 871, 872, and 873 and add a new Part 874, as follows:

1. The authority citation for Parts 870, 871, 872, and 873 reads as follows:

Authority: 5 U.S.C. 8716, unless otherwise noted.

PART 870—[AMENDED]

2. Section 870.103 is amended by inserting the following definitions:

§ 870.103 Definitions.

* * * * *

"Assign" and "assignment" refer to a judge's irrevocable transfer to another person of all incidents of ownership of FEGLI coverage (except family optional insurance).

"Assignee" means the person or persons to whom a judge irrevocably transfers ownership of basic life insurance and, if applicable, standard optional life insurance and additional optional life insurance.

* * * * *

"Judge" means an individual appointed as a Federal justice or judge under Article I or Article III of the Constitution. Administrative law judges, bankruptcy judges, and magistrates are not judges for purposes of assignment of FEGLI coverage.

* * * * *

3. A new Subpart H consisting of § 870.801 is added to Part 870 as follows:

Subpart H—Assignments

§ 870.801 Assignments.

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

PART 871—[AMENDED]

4. A new Subpart G consisting of § 871.701 is added to Part 871 as follows:

Subpart G—Assignments

§ 871.701 Assignment.

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

5. Section 871.104 is revised as follows:

§ 871.104 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

6. Section 871.601 is revised to read as follows:

§ 871.601 Amount of insurance.

The amount of standard optional life insurance continued during receipt of annuity or compensation reduces by 2 percent a month, effective at the beginning of the second calendar month after the date the insurance would otherwise have stopped or the insured's 65th birthday, whichever is later, until a maximum reduction of 75 percent is achieved.

PART 872—[AMENDED]

7. A new Subpart G consisting of § 872.701 is added to Part 872 as follows:

Subpart G—Assignments

§ 872.701 Assignments.

Part 874 of this chapter, Assignment of Life Insurance, describes the right of a judge to assign all incidents of ownership in insurance coverage under this chapter (except family optional insurance under Part 873) to another person, the effects of such assignment, procedures for making an assignment, and related matters.

PART 873—[AMENDED]

8. Section 873.102 is revised to read as follows:

§ 873.102 Payment of benefits.

(a) Upon the death of an insured family member, family optional insurance benefits will be paid to the employee, annuitant, or compensationer responsible for withholdings under § 873.401, except as provided in paragraph (b) of this section.

(b) If the employee, annuitant, or compensationer dies after the insured family member's death and before benefits are paid under this part, optional insurance will be paid as follows:

(1) Unless insurance under this chapter has been assigned in accordance with Part 874, family insurance benefits are paid to the person(s) eligible for basic insurance benefits under 5 U.S.C. 8705(a).

(2) When a judge has assigned insurance under this chapter, the family optional benefits are paid to the person who would have received the basic insurance benefits under 5 U.S.C. 8705(a) had an assignment not been made.

9. Part 874 is added as follows:

PART 874—ASSIGNMENT OF LIFE INSURANCE

Subpart A—Definitions

Sec.
874.101 Definitions.

Subpart B—Coverage

874.201 Assignments permitted.

Subpart C—Assignment procedures

874.301 Making an assignment.
874.302 Effective date of assignment.
874.303 Waiver of insurance.
874.304 Notification of current addresses.
874.305 Reconsideration.

Subpart D—Annuitants and Compensationers

874.401 Annuitants and compensationers.

Subpart E—Amount of Insurance and withholdings and contributions

874.501 Amount of insurance.
874.502 Withholdings and contributions.

Subpart F—Termination and conversion

874.601 Termination.
874.602 Eligibility to convert.
874.603 Rates for converted insurance.
874.604 Notification of conversion rights.

Subpart G—Designations of beneficiary

874.701 Designations of beneficiary.

Authority: 5 U.S.C. 8716, unless otherwise noted.

Subpart A—Definitions

§ 874.101 Definitions.

The terms defined under § 870.103 of this chapter have the same meanings in this part.

Subpart B—Coverage

§ 874.201 Assignments permitted.

(a) A judge may irrevocably relinquish ownership of basic life insurance, standard optional life insurance, and additional optional life insurance coverage under this chapter by assigning it to one or more individuals. If a judge owns more than one of these types of coverage—both basic and standard optional, for example—he or she must assign all the insurance. A judge may not assign only a portion of such coverage. Family optional insurance may not be assigned.

(b) If the assignment of the insurance is to two or more individuals, the judge must specify percentage shares, rather than dollar amounts or types of insurance, to go to each assignee.

(c) If a judge who has made an assignment later elects increased insurance coverage under §§ 871.205 and 872.205 of this chapter, the increased coverage will be considered covered by the already-existing assignment.

(d) A judge who assigns ownership of insurance continues to be the insured individual, but the assignee assumes those rights of an insured employee that are specified in this part.

(e) Once assigned, the value of the insurance increases or decreases according to any automatic increase or decrease in the value of the coverage as provided for by Parts 870, 871, and 872 of this chapter.

Subpart C—Assignment procedures

§ 874.301 Making an assignment.

To assign basic insurance and, if applicable, standard optional insurance and additional optional insurance, judges must make a written request for an approved assignment form. To effect an assignment they must then complete and submit the signed and witnessed form indicating their intent to irrevocably assign all incidents of ownership in the insurance. Judges who are employees send the form to their employing office. Judges who are annuitants send the form to their retirement system. Judges who are compensationers send the form to OPM.

§ 874.302 Effective date of assignment.

An assignment under this part is effective on the date an approved and properly completed assignment form is received by the employing office, the retirement system, or OPM.

§ 874.303 Waiver of insurance.

The assignee assumes all rights to waive insurance under this chapter according to the provisions of §§ 870.204, 871.204, and 872.204 of this chapter. When the insurance is assigned to two or more people, these assignees must all agree to the waiver. A waiver or cancellation of basic insurance in accordance with the provisions of § 870.204 of this chapter terminates all insurance under this chapter.

§ 874.304 Notification of current addresses.

Each assignee and each beneficiary of an assignee is responsible for keeping the office where the assignment is filed advised of his or her current address.

§ 874.305 Reconsideration.

A judge or an assignee may ask OPM to reconsider any determination that he or she believes denies an entitlement related to assignments under section 8706(f), title 5, U.S. Code, or Part 874 of this chapter. The process and time limits for requesting reconsideration are specified in § 870.205 of this chapter.

Subpart D—Annuitants and Compensationers

§ 874.401 Annuitants and compensationers.

If a judge assigns basic insurance coverage under this chapter and later becomes eligible to continue such insurance coverage while receiving annuity or workers' compensation, as provided in §§ 870.601(a) and 870.701(a) of this chapter:

(a) The judge may, at the time he or she retires or becomes eligible to receive workers' compensation, elect increased lifetime insurance coverage as provided in §§ 870.601(c)(3) and (4) and 870.701(c)(3) and (4) of this part.

(b) After the judge has made the election described in paragraph (a) of this section, the assignee (or, in cases of multiple assignees, all of the assignees acting together) may, at any time, elect to terminate all or a part of the basic insurance coverage as provided in §§ 870.601(c)(1) and (4) and 870.701(c)(1) and (4) of this part.

Subpart E—Amount of Insurance and Withholdings and Contributions

§ 874.501 Amount of insurance.

The amount of insurance is based on the judges' basic pay as specified in Subpart C in Parts 870, 871, and 872 of this chapter.

§ 874.502 Withholdings and contributions.

Subject to the provisions of Subpart D in Parts 870, 871, and 872 of this chapter, premium payments for assigned insurance are withheld from the salary, annuity, or compensation of the judge.

Subpart F—Termination and conversion

§ 874.601 Termination.

Assigned insurance terminates under the conditions stated in Subpart E of Parts 870, 871, and 872 of this chapter.

§ 874.602 Eligibility to convert.

(a) When a judge's insurance terminates under the conditions described in Subpart E of Parts 870, 871, or 872 of this chapter an assignee has the right to convert all or a portion of his or her group insurance to an individual policy on the judge. The conditions specified in those subparts apply to assignees who elect to convert.

(b) When insurance is assigned to more than one assignee, each assignee has the right to convert all or part of his or her share of the insurance. Any assignee who does not convert loses all interest in the insurance.

(c) When multiple assignees have been named and they wish to convert the assigned insurance to individual policies on the judge in accordance with this subpart, the maximum amount of insurance each assignee will be able to convert will be determined by the dollar amount corresponding to the assignee's share of total insurance under this chapter. If such amount is not a multiple of $1,000, it will be rounded up to the next thousand dollar amount.

§ 874.603 Rates for converted insurance.

Rates for converted life insurance are based on the insured judge's attained age and class of risk at the time the conversion policy is issued.

§ 874.604 Notification of conversion rights.

The employing office, retirement system, or OPM will notify each assignee of his or her conversion right at the time the assigned group insurance terminates.

Subpart G—Designations of beneficiary

§ 874.701 Designations of beneficiary.

(a) Each assignee or the legally appointed guardian of an assignee may, as part of the assignment process, designate a beneficiary or beneficiaries to receive insurance proceeds upon death of the insured judge and may also subsequently change the beneficiaries. A surviving beneficiary will receive the designated amount of assigned insurance upon death of the insured judge. Assignees may designate themselves the primary beneficiaries and name some other person(s) as contingent beneficiaries to receive

insurance benefits only in the event that the assignees predecease the insured judge.

(b) Assigned insurance will be paid to an assignee's estate if the assignee predeceases the insured judge and:

(1) An assignee does not designate a beneficiary, or

(2) An assignee's designated beneficiary predeceases the insured judge.

(c) An assignment automatically cancels a judge's prior designation of beneficiary.

(d) The provisions of § 870.901 (a) through (e) of this chapter apply to designations of beneficiary filed by assignees.

[FR Doc. 85-4924 Filed 2-27-85; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

Special Supplemental Food Program for Women, Infants and Children

Correction

In the document beginning on page 6108 in the issue of Wednesday, February 13, 1985, make the following corrections:

1. On page 6108, second column, first complete paragraph, third line, "Regulation" should read "Regulatory".

2. On page 6108, second column, third complete paragraph, ninth line, "evaluation" should read "evaluated".

3. One page 6108, third column, first complete paragraph, sixth line, "issued–|" should read "issue–".

4. On page 6109, second column, fourth complete paragraph, thirteenth line, "not" should read "now".

5. On page 6110, third column, third complete paragraph, eighteenth line, remove "to".

6. On page 6115, second column, last line, insert "12" before the word "months,".

7. On page 6117, second column, in the ninth line below "Subpart D", "246.1" should read "246.11".

§ 246.2 [Corrected]

8. On page 6122, third column, in § 246.2, seventh line, "Program" should read "Programs".

§ 246.3 [Corrected]

9. On page 6123, second column, in § 246.3(d)(3)(iii), first line, "or" should read "of".

§ 246.5 [Corrected]

10. On page 6124, third column, in § 246.5(b), eighth line, insert "agency shall" after the word "State".

§ 246.10 [Corrected]

11. On page 6132, third column, in § 246.10(c)(1)(ii), in the table, under the heading of "Quantity", second line, "1" should read "8". Also, in the sixth line, ".1" should read ".8".

12. On page 6133, first column, in § 246.10(c)(2)(iii), second line, "form" should read "from".

13. On page 6134, second column, in § 246.10(c)(6)(i), fourteenth line from the bottom, "Units or" should read "Units of".

§ 246.11 [Corrected]

14. On page 6135, third column, in § 246.11 (e)(2), second line, "contracts" should read "contacts".

§ 246.13 [Corrected]

15. On page 6139, second column, in § 246.13(a), seventh line, insert the word "all" between "for" and "property".

§ 246.27 [Corrected]

16. On page 6146, third column, in § 246.27(g), last line, insert "94108" after "California".

17. On the same page, third column, in the file line at the end of the document, "FR Doc. 85-3881" should read "FR Doc. 85-3581".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 24495; Amdt. No. 1289]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

EFFECTIVE DATE: An effective date for each SIAP is specified in the amendatory provisions.

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

For Examination—

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

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

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

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

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

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-8277.

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

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further,

airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

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

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Aviation safety.

Adoption of the Amendment

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

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPs identified as follows:

** * * Effective April 11, 1985*

Bentonville, AR—Bentonville Muni, VOR-A, Amdt. 8
Bentonville, AR—Bentonville Muni, VOR/DME-B Amdt. 1
Santa Rosa, CA—Sonoma County, VOR RWY 32, Amdt. 17
Valdosta, GA—Valdosta Muni, VOR RWY 17, Orig.
Valdosta, GA—Valdosta Muni, VOR RWY 17, Orig., Cancelled
Valdosta, GA—Valdosta Muni, VOR RWY 35, Orig.
Valdosta, GA—Valdosta Muni, VOR RWY 35, Amdt. 24, Cancelled
Warsaw, IN—Warsaw Muni, VOR RWY 27, Amdt. 1
Topeka, KS—Phillip Billard Muni, VOR RWY 22, Amdt. 18
Alexandria, LA—Esler Regional, VOR RWY 14, Amdt. 11, Cancelled
Alexandria, LA—Esler Regional, VOR RWY 32, Amdt. 13
Columbus, MS—Columbus-Lowndes County, VOR-A, Amdt. 11
Okolona, MS—Okolona Muni-Richard Stovall Field, VOR/DME RWY 18, Amdt. 1
Tupelo, MS—Industrial Airpark, VOR RWY 11, Amdt. 1
Asheboro, NC—Asheboro Muni, VOR-A, Amdt. 2
Clinton, OK—Clinton-Sherman, VOR 1 RWY 35L, Amdt. 9
Pittsburgh, PA—Greater Pittsburgh Intl, VOR or TACAN RWY 28L/C, Amdt. 2
Orangeburg, SC—Orangeburg, VOR RWY 4, Amdt. 1
Pulaski, TN—Abernathy Field, VOR/DME RWY 33, Amdt. 2, Cancelled
Beaumont, TX—Beaumont Muni, VOR/DME RWY 30, Amdt. 2
Marfa, TX—Marfa Muni, VOR RWY 30, Amdt. 3
Portage, WI—Portage Muni, VOR/DME-A, Amdt. 3

** * * Effective February 14, 1985*

Ainsworth, NE—Ainsworth Muni, VOR RWY 35, Amdt. 1

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPs identified as follows:

** * * Effective April 11, 1985*

St. Petersburg-Clearwater, FL—St. Petersburg-Clearwater Intl, LOC (BC) RWY 35R, Amdt. 13
Topeka, KS—Philip Billard Muni, LOC BC RWY 31, Amdt. 17
Alexandria, LA—Esler Regional, LOC BC RWY 8, Amdt. 8
Charlotte, NC—Charlotte/Douglas Intl, LOC RWY 36R, Amdt. 1, Cancelled
Mosinee, WI—Central Wisconsin, LOC BC RWY 26, Amdt. 8

** * * Effective March 14, 1985*

Ft. Lauderdale, FL—Ft. Lauderdale-Hollywood Intl, LOC (BC) RWY 27R, Amdt. 5, Cancelled

** * * Effective February 19, 1985*

Homer, AK—Homer, LOC/DME RWY 3, Amdt. 8
Sitka, AK—Sitka, LDA/DME RWY 11, Amdt. 8

3. By amending § 97.27 NDB and NDB/DME SIAPs identified as follows:

** * * Effective April 11, 1985*

Hope, AR—Hope Muni, NDB RWY 16, Amdt. 3 Redding, CA—Redding Muni, NDB RWY 34, Amdt. 4
Titusville, FL—NASA Shuttle Landing Facility, NDB-A, Orig.
Boone, IA—Boone Muni, NDB RWY 14, Amdt. 7
Boone, IA—Boone Muni, NDB RWY 32, Amdt. 3
Eagle Grove, IA—Eagle Grove Muni, NDB RWY 31, Amdt. 1
Milford, IA—Fuller, NDB RWY 18, Amdt. 2
Topeka, KS—Philip Billard Muni, NDB RWY 13, Amdt. 27
Alexandria, LA—Esler Regional, NDB RWY 26, Amdt. 7
Tupelo, MS—C. D. Lemons Muni, NDB RWY 36, Amdt. 2
Kennett, MO—Kennett Memorial, NDB RWY 17, Orig.
Grand Island, NE—Hall County Regional, NDB RWY 35, Amdt. 5
Asheboro, NC—Asheboro Muni, NDB RWY 21, Amdt. 1
Greenville, SC—Donaldson Center, NDB RWY 4, Amdt. 2
Orangeburg, SC—Orangeburg, NDB-A, Amdt. 8
Pulaski, TN—Abernathy Field, NDB RWY 15, Amdt. 2
Orange, TX—Orange County, NDB-A, Orig.
Neillsville, WI—Neillsville Muni, NDB RWY 27, Amdt. 2

** * * Effective February 19, 1985*

Homer, AK—Homer, NDB RWY 3, Amdt. 2
Ketchikan, AK—Ketchikan Intl, NDB/DME-A, Amdt. 6

4. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPs identified as follows:

** * * Effective April 11, 1985*

Montgomery, AL—Dannelly Field, ILS RWY 27, Amdt. 4
Redding, CA—Redding Muni, ILS RWY 34, Amdt. 9
Santa Rosa, CA—Sonoma County, ILS RWY 32, Amdt. 13
Valdosta, GA—Valdosta Muni, ILS RWY 35, Amdt. 4
Topeka, KS—Philip Billard Muni, ILS RWY 13, Amdt. 28
Alexandria, LA—Esler Regional, ILS RWY 26, Amdt. 11
Tupelo, MS—C. D. Lemons Muni, ILS RWY 36, Amdt. 3
Charlotte, NC—Charlotte/Douglas Intl, ILS RWY 36R, Orig.

** * * Effective March 14, 1985*

Fort Lauderdale, FL—Ft. Lauderdale-Hollywood Intl, ILS RWY 27R, Orig.
Houston, TX—West Houston-Lakeside, MLS STOL RWY 15, Orig.

** * * Effective February 19, 1985*

Ketchikan, AK—Ketchikan Intl, ILS/DME-1 RWY 11, Amdt. 5

5. By amending § 97.31 RADAR SIAPS identified as follows:

** * * Effective April 11, 1985*

Dallas, TX—Dallas Love Field, RADAR-1, Amdt. 24

6. By amending § 97.33 RNAV SIAPs identified as follows:

** * * Effective April 11, 1985*

Topeka, KS—Philip Billard Muni, RNAV RWY 17, Amdt. 5

7. By amending § 97.35 COPTER SIAPS identified as follows:

** * * Effective April 11, 1985*

Boone, IA—Boone Muni, COPTER NDB 225°, Amdt. 1

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note. The incorporation by reference in the preceding document was approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on February 22, 1985.

John S. Kern,

Acting Director of Flight Operations.

[FR Doc. 85-4835 Filed 2-27-85; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-21782; File No. S7-23-84]

Short Tendering

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting an amendment to Rule 10b-4 under the Securities Exchange Act of 1934, the short tendering rule. The amendment requires tendering persons to exclude from their "net long position" those shares underlying certain standardized call options that they have written after the announcement of the tender offer. The amendment is intended to prohibit hedged tendering through the use of call options.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: M. Blair Corkran, Jr. (202-272-2853), Office of Legal Policy and Trading Practices, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is adopting an amendment to Rule 10b-4[1] under the Securities Exchange Act of 1934 (the "Act"). Rule 10b-4 (the "Rule") was adopted by the Commission in 1968 for the purpose of prohibiting "short tendering", *i.e.*, tendering more shares than a person owns in order to avoid or reduce the risk of *pro rata* acceptance in tender offers for fewer than all the outstanding securities of a class or series.[2] Recently, the Rule was amended to prohibit hedged tendering, *i.e.*, tendering and then selling a portion of the tendered shares in the market, a practice that is closely analogous to short tendering.[3]

The amendment that is being adopted today is intended to make the prohibition of hedged tendering more complete and is responsive to a recommendation made by the Advisory Committee on Tender Offers (the "Advisory Committee").

The Commission has determined not to adopt a proposed amendment to the Rule that would have required persons tendering shares by guarantee to deliver all guaranteed shares to the person making the offer (the "offeror" or "bidder").

I. Background

Tender offers for fewer than all of the outstanding shares of a target corporation involve a risk to the target shareholder that not all of the shares that the shareholder tenders will be accepted.[4] Before the adoption of Rule 10b-4, market professionals were able to tender more shares than they owned and thereby achieve acceptance of a disproportionately larger number of securities owned by them than could be secured by other persons who tendered only securities that they owned.[5]

Recently, the Commission adopted amendments to Rule 10b-4 (the "1984 amendments")[6] to prohibit hedged tendering, a practice that had the same purpose and effect as short tendering. The 1984 amendments required tendering persons to own the shares being tendered or an equivalent security not only when the shares are tendered but also at the end of the proration period of the tender offer. Before the 1984 amendments, market professionals were able to reduce proration risk by tendering shares that they owned and then selling in the market the number of shares that they estimated would not be accepted by the bidder. Those shares were generally bought by arbitrageurs at prices reflecting the tender offer and were in turn tendered. The percentage of shares accepted from those who tendered without hedging was thereby diluted.

The Advisory Committee supported the 1984 amendments and recommended two additional changes to Rule 10b-4. The first of these recommendations concerned guarantees of delivery; the second recommendation related to the treatment under the Rule of certain short call options positions.[7] These recommendations formed the basis of the further amendments to Rule 10b-4 that were proposed for comment by the Commission in June 1984.[8] Eight commentators submitted letters on these proposals.[9]

II. Discussion

A. Guarantees of Delivery

In a tender offer, a shareholder may tender his securities without actually delivering them at the time of tendering if that shareholder or someone else on

[1] 17 CFR 240.10b-4.

[2] Securities Exchanges Act Release No. 8321 (May 28, 1968), 33 FR 8269.

[3] Securities Exchange Act Release No. 20799 (March 29, 1984), 49 FR 13867.

[4] When tendered securities are acccepted on a *pro rata* basis, the offeror accepts only a percentage of the securities tendered by each securityholder. The percentage is calculated from a fraction whose numerator represents the total number of securities accepted and whose denominator represents the total number of securities tendered.

[5] For example, assume there is a tender offer for fewer than all the outstanding securities of the target and that A and B each owns 200 shares of the subject security and expects that the offeror will accept on a *pro rata* basis 50% of the securities tendered. If A tenders 400 shares he will (assuming the 50% expectation proves correct) have 200 shares, or 100% of his securities, accepted by the offeror. In contrast, if B simply tenders his 200 shares, he will have only 100 of his shares accepted and 100 shares will be returned to him.

[6] *See* note 3, *supra.*

[7] *See* Report of Recommendations of the Advisory Committee on Tender Offers ("Advisory Committee Report"), Recommendations 45 and 47, at 48, 50.

[8] Securities Exchange Act Release No. 21049 (June 15, 1984), 49 FR 25244 ("Proposing Release").

[9] *See* File No. S7-23-84.

the shareholder's behalf, generally a broker-dealer or a bank, guarantees the delivery of those securities. In this way, shareholders who are unable to physically deposit their certificates before the termination of the tender offer, either because the shares have been purchased but not yet received or because it may not be convenient, can still participate in the tender offer.[10]

The Advisory Committee recommended, and the Commission proposed, an amendment to Rule 10b–4 that would have required that all shares tendered pursuant to a guarantee be delivered to the offeror. The Advisory Committee believed that the delivery requirement would make short and hedged tendering less attractive. When a bidder does not require delivery of all guaranteed shares pursuant to the terms of its offer, tendering persons may opt to deliver only that portion of the shares they have tendered by guarantee that the bidder has indicated it will accept. A full delivery requirement would force a short or hedged tenderor to borrow or buy additional shares to deliver to the bidder.

A majority of the commentators opposed the amendment in the form proposed because they felt it would unnecessarily impose the antifraud concepts of the Act upon an area that has been regulated satisfactorily by business practice and contract law,[11] and would create a number of uncertainties with respect to the obligations of the various parties involved in the tender offer process. Particular concern was expressed about a guarantor's responsibility if it were unable to deliver, through no fault of its own, such as a fail to receive or a customer's failure to deliver, all the shares for which it had guaranteed delivery. The commentators suggested various exemptive provisions or alternative approaches that would have at least partially addressed their concerns.[12]

The Commission has decided, however, to withdraw the proposed amendment. The Commission does not believe that the requirement would be a significant deterrent to short or hedged tendering, since the shares to be delivered to the bidder pursuant to the guarantee could be borrowed or bought in the post-tender offer market. Moreover, it appears that many bidders require full delivery of guaranteed shares as a condition of their offers. Finally, the Commission believes, after considering the commentators' views and suggestions, that the complexity and uncertainty inherent in any delivery requirement under the antifraud provisions of the Act would not be justified, particularly when weighed against an existing guarantee process that has worked well in facilitating tenders.

B. Hedged Tendering by Means of Standardized Call Options [13]

The 1984 amendments were designed to prevent hedged tendering, a practice by which market professionals were able to minimize the risk of proration by selling some of the shares they had tendered into the market that reflected the tender offer. In tender offers involving common stocks on which standardized options are traded, this same result can be accomplished through writing standardized call options. For example, a person who owns 200 shares and who estimates a 50 per cent proration factor is able to hedge the tender by writing an in-the-money [14] call option. The premium received for writing the call option plus the exercise price received when the option is exercised [15] will normally approximate the amount that could be realized if 100 of the tendered shares were sold in the market. Tendering persons who can borrow shares to deliver when the option is exercised can hedge their tenders as effectively by writing call options as they can by selling the stock.[16]

The Advisory Committee recognized this problem and suggested that it be dealt with by excluding from the net long position of a tendering person those shares on which call options have been written that the tendering person knows are highly likely to be exercised before the expiration of an offer.[17] While it agreed in principle with the Advisory Committee's recommendation, the Commission, in the Proposing Release, proposed an objective test rather than the subjective standard recommended by the Advisory Committee because the Commission believed that a subjective test would be difficult to administer and to enforce. The Commission proposed to require that a tendering person deduct from his net long position the number of shares deliverable upon exercise of any exchange-traded call option contracts that the person had written with an exercise price that was less than the tender offer price or the stated value of the consideration offered.[18]

The commentators generally favored the concept of prohibiting hedged tendering through the writing of standardized call options and the substitution of an objective standard for the subjective standard recommended by the Advisory Committee.[19]

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[10] Rule 10b–4(b)(2) provides that a guarantor can guarantee a tender for the account of another if the guarantor (i) possesses the subject security or an equivalent security, or (ii) has reasonable belief that, upon information furnished by the person on whose behalf the tender is made, such person owns the subject security or an equivalent security and will promptly deliver the subject security or such equivalent security for the purpose of tender to the person making the tender.

[11] The proposal would have made it a "manipulative or deceptive device or contrivance" and a "fraudulent, deceptive or manipulative act or practice" to tender by guarantee unless all shares tendered pursuant to that guarantee are delivered to the offeror or the offeror's agent.

[12] For example, several commentators suggested a five-business-day period during which guarantees could be modified in specified circumstances beyond the control of the guarantor or the person on whose behalf the shares were tendered.

[13] In the Proposing Release, these options were referred to as exchange-traded options. The Commission has adopted a commentators' suggestion that they be described as standardized options in recognition of the NASD's proposal to trade options through NASDAQ. References in the Amendment and throughout the Rule have been changed accordingly, and "standardized call option" has been defined in new paragraph (a)(6) of the Rule.

[14] An in-the-money option is one that has an exercise price lower than the market price of the underlying security.

[15] An in-the-money option will generally be exercised before the end of a tender offer for fewer than all of the target's securities, because the holder of the option will otherwise experience a loss in the option's value because of the drop in the market price of the underlying security when the tender offer expires.

[16] A result of tendering persons hedging their tenders in this fashion could be that more shares will be tendered to the offeror than are actually outstanding ("over-tendering"). The options will often be exercised just before the expiration of the tender offer, the exercise notices will not be allocated to the writers until after the offer has expired. Thus, the same shares may be tendered both by the owner of the underlying shares and by the person who exercises the option because the exercising party is an owner of the underlying stock within the meaning of the Rule. *See* Rule 10b–4(a)(1)(iii). The by-laws of the Options Clearing Corporation ("OCC") provide for cash settlement of call option exercises if it determines that the supply of deliverable stock is inadequate. *See* Section 17 of Article VI of the OCC by-laws.

[17] Advisory Committee Report, Recommendation No. 47 at 50. Rule 10b-4 requires that a tendering person have a net long position of at least the number of shares tendered.

[18] The tender offer price rather than the market price is the benchmark for determining whether an option is in-the-money in order to avoid rapid fluctuations in a person's net long position and to eliminate the need for a tenderor to respond at the close of the proration period to changes in the price of the target security.

[19] Two commentators reiterated their objection to any prohibition on hedged tendering, which they had expressed in connection with the adoption of the 1984 amendments. Each agreed, however, that call option writing should be addressed if the Commission's decision to prohibit hedged tendering were to be effective.

Three commentators argued that call options are written as part of a variety of legitimate strategies, such as covered writing, and that it would be "disruptive" to require market participants to close out their options positions before tendering. They pointed out that call options written before the announcement of a tender offer could not be written for the purpose of hedging a tender and that not requiring a deduction from a tendering person's net long position for such options would not increase substantially the possibility of overtendering.

The Commission is accepting the suggestion of these commentators. Paragraph (a)(5) of the Rule as adopted provides that a tendering person's net long position shall be reduced by the shares deliverable upon exercise of any standardized call options *written on or after the date that the tender offer is publicly announced or otherwise made known by the bidder to holders of the security to be acquired,*[20] if the exercise price of such options is less than the tender offer price or stated value of the consideration offered. Tendering persons who have written call options before the announcement date will be unaffected by the amendment.[21]

In view of this change, a proviso in the proposed rule has been eliminated. The proviso was designed to avoid a reduction in the net long position of a person who had tendered when an increase in the tender offer consideration changed previously written out-of-the-money options into in-the-money options. Under paragraph (a)(5), the benchmark for determining whether an option is in-the-money is the highest tender offer price or stated amount of the consideration offered. Therefore, an out-of-the-money option written after a tender offer is announced could become in-the-money (and thus subject to the net long reduction) if the tender offer consideration is raised or if a higher competing tender offer is announced.[22]

An additional change has been made to prevent an ongoing competing tender offer from providing an opportunity to write calls to hedge a tender to an anticipated second offer before the second offer is announced. Paragraph (a)(5) provides that the controlling announcement date shall be that of the earlier offer.

The Commission believes that this less restrictive approach will effectively prohibit hedged tendering through call options in most circumstances.[23] The Commission also believes that the 1984 Amendments and the amendment being adopted today greatly reduce the potential for overtendering.

Two commentators suggested that options should be in-the-money by at least one exercise price interval before being considered in-the-money for purposes of the Rule. In the Proposing Release, the Commission acknowledged that, by using the stated value of the tender offer consideration as the benchmark for determining whether an option is in-the-money, there would be situations in which the option would be deemed in-the-money by the Rule even though it was unlikely to be exercised.[24] The suggestion of a one-exercise-price interval would eliminate many of the situations where the Rule would subject an in-the-money option writer to an arguably "unnecessary" net long position deduction.

The Commission has not adopted this alternative, however, because it believes that, in most tender offers, options that are in-the-money by less than one exercise price interval will be exercised and thereby afford writers of such options an opportunity to hedge tender.[25] In addition, the revisions made in the amendment directly address the concern that the rule as proposed was unduly restrictive in some situations. In general, the persons affected by amendment, *i.e.*, those tendering persons who would write call options on or after the announcement date of an offer, will be able to assess the impact of the Rule before effecting their options transactions.

III. Regulatory Flexibility Act Status

The Chairman of the Commission certified that the amendment to Rule 10b–4 will not have a significant impact on a substantial number of small entities. One commentator questioned the certification because he believed that the proposed amendment would adversely affect individual investors who hold Individual Retirement Accounts. The amendment as adopted fully addresses this concern. In any event, individuals are not small entities as defined by the Regulatory Flexibility Act.[26]

IV. Competition

Section 23(a)(2) of the Act [27] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effect of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amended Rule in light of the standard cited in section 23(a)(2) and believes that the adoption of the amended Rule will not impose any burden on competition that is not necessary or appropriate in furtherance of the Act.

List of Subjects in 17 CFR Part 240

Securities.

IV. Statutory Basis and Text of Rule Amendments

The amendment to Rule 10b–4 is promulgated under the Act, 15 U.S.C. 78a *et seq.*, and particularly sections 3(b), 10(a), 10(b), 14(e), 15(b) and 23(a) of the Act [15 U.S.C. 78c(b), 78j(a), 78j(b), 73n(e), 78o(b) and 78w(a)].

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

On the basis of the above discussion, the Commission is amending Part 240 of Chapter II of Title 17 of the Code of Federal Regulations by revising paragraphs (a)(1) and (a)(2) of § 240.10b–4 and adding new paragraphs (a)(5) and (a)(6) to § 240.10b–4 to read as follows:

§ 240.10b–4 Short tendering of securities.

(a) * * *

(1) A person shall be deemed to own a subject security or an equivalent security if neither he nor his agent has entered into an arrangement or agreement (other than one for the

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[20] The "date that the tender offer is publicly announced or otherwise made known * * *" will be interpreted as the earliest date of commencement of a tender offer as set forth in Rule 14d–2(a) [17 CFR 240.14d–2(a)], Rule 13e–4 (a)(4) [17 CFR 240.13e–4(a)(4)], or public announcement by a bidder of an intention to make a tender offer, even if such announcement is not deemed to constitute commencement. *See* Rule 14d–2(d) [17 CFR 240.14d–2(d)].

[21] In-the-money options written on the "date that the tender offer is publicly announced or otherwise made known * * *", but before the time of the announcement, will be subject to the deduction. This will eliminate the compliance and enforcement burden of ascertaining the precise times of the announcement and the options transaction.

[22] This provision prevents the accomplishment of hedged tendering by writing call options that are slightly out-of-the-money after a tender offer is announced in anticipation of a higher offer.

[23] If rumors of a partial tender offer cause the market price of a target security to rise well above its expected post-tender offer value, call options written before the announcement of the offer could be effectively used to hedge a tender. The Commission believes that, in view of the risks involved, such "anticipatory" hedging will not occur frequently, but may revisit this area if events prove otherwise.

[24] *See* Proposing Release at 49 FR 25246.

[25] *See* n. 15 *Supra*. The Commission believes that even a slightly in-the-money option will generally be exercised if the price of the option during the tender offer exceeds the value of the option due to its remaining life.

[26] *See* 5 U.S.C. 601(6).

[27] 15 U.S.C. 78w(a)(2).

lending of securities or the writing of a standardized call option) whereby any other person may tender that security or be deemed to own it and (i) he or his agent has title to it, or (ii) he has purchased, or has entered into an unconditional contract, binding on both parties thereto, to purchase it but has not yet received it, or (iii) he has a standardized call option and has exercised that option, or (iv) in the case of a subject security he has converted, exchanged, or exercised an equivalent security that he owned (within the meaning of paragraphs (a)(1) (i) or (ii) of this section).

For the purpose of determining ownership as of the end of the proration period, securities that have been tendered and not withdrawn are deemed to be owned as of the end of the proration period. *Provided, however,* that a person shall be deemed to own a security for purposes of this rule only to the extent that he has a net long position in such security.

(2) The term "equivalent security" means (i) any security (including any option, warrant, or other right to purchase the subject security), issued by the person whose securities are the subject of the offer, that is immediately convertible into, or exchangeable or exercisable for, a subject security, or (ii) any other right or option (other than a standardized call option) that entitles the holder thereof to acquire a subject security, but only if the holder thereof reasonably believes that the maker or writer of the right or option has title to and possession of the subject security and upon exercise will promptly deliver the subject security.

* * * * *

(5) A person's net long position, as that term is used in paragraph (a)(1) of this section, shall be reduced by the number of shares of the subject securities deliverable upon exercise of any standardized call option that the person has written on or after the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired, if the exercise price of such option is lower than the highest tender offer price or stated amount of the consideration offered for the subject security. If one or more other tender offers for the same security are ongoing on such date, the announcement date for the purposes of this paragarph shall be that of the first announced offer.

(6) The term "standardized call option" means any call option that is traded on an exchange, or for which quotation information is disseminated in an electronic interdealer quotation system of a registered national securities association.

* * * * *

By the Commission.

John Wheeler,

Secretary.

February 22, 1985.

Separate Statement of Commissioner Cox

I concur in the Commission's decision to withdraw the proposed amendment to Rule 10b–4 under the Securities Exchange Act of 1934 that would have required delivery of all shares tendered pursuant to a guarantee.

For the reasons stated in my dissent from the adoption of the 1984 amendments to Rule 10b–4,[1] I oppose the prohibition of hedged tendering. Consequently, I dissent from the adoption today of a further amendment to Rule 10b–4 to prohibit hedged tendering through the use of standardized call options.

[FR Doc. 85–4922 Filed 2–27–85; 8:45 am]

BILLING CODE 8010–01–M

[1] Securities Exchange Act Release No. 20799 (March 29, 1984), 49 FR 13867, 13871 (dissent of Commissioner Cox).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 282

[Docket No. RM79–14]

Incremental Pricing Regulations Implementing the Incremental Pricing Provision of the Natural Gas Policy Act of 1978; OPPR of Publication of Incremental Pricing Acquisition Cost Thresholds Under Title II of the NGPA

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply. Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: March 1, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, (202) 357–8500.

SUPPLEMENTARY INFORMATION:

Order of the Director, OPPR

Issued: February 22, 1985.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Title II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of March 1985 is issued by the publication of a price table for the applicable month. The incremental pricing acquisition cost threshold prices for months prior to March 1985 are found in the tables in § 282.304.

List of Subjects in 18 CFR Part 282

Natural gas.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

TABLE I—INCREMENTAL PRICING ACQUISITION COST THRESHOLD PRICES

	January	February	March	April	May	June	July	August	September	October	November	December
Calendar Year 1984												
Incremental pricing threshold	$2.283	$2.291	$2.299	$2.307	$2.315	$2.323	$2.331	$2.338	$2.345	$2.352	$2.359	$2.366
NGPA Sec. 102 threshold	3.586	3.609	3.632	3.656	3.680	3.705	3.730	3.752	3.774	3.797	3.821	3.845
NGPA Sec. 109 threshold	2.359	2.367	2.375	2.383	2.391	2.399	2.407	2.414	2.421	2.428	2.436	2.444
130 pct. of No. 2 fuel oil in New York City threshold	7.730	7.570	7.570	8.550	8.590	7.670	7.930	7.740	7.650	7.230	7.040	7.290
Calendar Year 1985												
Incremental pricing threshold	$2.373	$2.378	$2.383									
NGPA Sec. 102 threshold	3.869	3.890	3.911									
NGPA Sec. 109 threshold	2.452	2.457	2.462									
130 pct. of No. 2 fuel oil in New York City threshold	7.170	7.310	7.090									

[FR Doc. 85-4841 Filed 2-27-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. 83-10]

Schedules of Controlled Substances; Rescheduling of Buprenorphine From Schedule II to Schedule V of the Controlled Substances Act

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This is a final rule removing the drug buprenorphine from Schedule II and placing it in Schedule V of the Controlled Substances Act (CSA). Buprenorphine will continue to be classified as a narcotic controlled substance. This action was initiated after receipt by the Drug Enforcement Administration (DEA) of a letter from the Assistant Secretary for Health, Department of Health and Human Services (DHHS) recommending that buprenorphine be rescheduled to Schedule V concurrent with the approval by the Food and Drug Administration of a New Drug Application for buprenorphine. An approved New Drug Application is a prerequisite to the marketing of buprenorphine or any new drug in the United States. The effect of this rule is to retain Schedule V registration, recordkeeping and security requirements on those who import, export, manufacture, distribute, dispense, or conduct any activity with respect to buprenorphine. These requirements are the same as those required of any firm or individual handling any Schedule V narcotic controlled substance.

DATE: The effective date of this order is April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gene R. Haislip, Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration, Washington, D.C. 20537. Phone: (202) 633-1172.

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

On September 20, 1982, the then-Acting Administrator of the Drug Enforcement Administration issued a Notice of Proposed Rulemaking to amend § 1308.15 of Title 21 of the Code of Federal Regulations by placing buprenorphine in Schedule V as a narcotic controlled substance. 47 FR 41401. Buprenorphine was at that time a Schedule II narcotic controlled substance by virtue of being a derivative of opium or an opiate. The scheduling action was initiated following receipt of a letter dated May 12, 1982 from the Assistant Secretary of Health on behalf of the Secretary, Department of Health and Human Services to the then-Acting Administrator of DEA. The letter notified DEA that the Food and Drug Administration had approved a New Drug Application for buprenorphine, an analgesic drug with a potential for abuse. The DHHS recommended that buprenorphine be rescheduled into Schedule V and that the drug continue to be classified as a narcotic because it is a derivative of the opiate thebaine. The DHHS reported in its findings that buprenorphine has a low potential for abuse relative to the drugs in Schedule IV, that it has a currently accepted medical use in treatment in the United States, and that abuse of buprenorphine may lead to limited physical dependence or psychological dependence relative to other drugs in Schedule IV. The Notice of Proposed Rulemaking allowed sixty days for interested parties to submit comments, objections, or requests for a hearing. On November 11, 1982, Reckitt and Colman Ltd., the patent holder for buprenorphine, filed a request for a hearing objecting to both continued control of buprenorphine under any CSA schedule and to classification of the drug as a narcotic. McNeil Pharmaceuticals, a major manufacturer of analgesics, also requested a hearing. In response to the requests for hearing, and having found that issues had been raised which warranted a hearing, the Acting Deputy Administrator of the Drug Enforcement Administration requested that the Agency's Administrative Law Judge convene a hearing for the purpose of receiving evidence and reporting his findings, conclusions, and other recommendations to the Administrator of DEA. The proceeding was conducted "on the record after opportunity for a hearing" as required by 21 U.S.C. 811(a) and in accordance with the Administrative Procedure Act, 5 U.S.C. 556 and 557.

The authority and criteria for classifying substances into schedules under the Controlled Substances Act is found in 21 U.S.C. 811. This section of the Act sets forth the standards by which the Attorney General and the Secretary of the Department of Health and Human Services are to evaluate substances for control or decontrol. The Secretary of DHHS is charged with making scientific and medical evaluations, including scientific evidence of a substance's pharmacological effects, the state of current scientific knowledge regarding the drug or other substance, what risk there is to the public health, the psychic or physiological dependence liability of the drug, and whether the substance is an immediate precursor of a substance already controlled under the Act. The Attorney General must consider those items presented by the Secretary, and in addition must consider the actual or relative potential for abuse of the substance, the history and current pattern of abuse, and the scope,

duration and significance of abuse. Buprenorphine was in Schedule II of the CSA by virtue of its derivation from thebaine. The substance had not been approved for marketing in the United States by the Food and Drug Administration until 1982. It was however, marketed in 28 countries in Europe and Australasia prior to 1982.

Four hearing sessions, comprising 13 hearing days, were conducted before the Administrative Law Judge. On October 24, 1984, the judge issued his Opinion and Recommendations regarding the rescheduling of buprenorphine. The judge recommended that buprenorphine not be controlled under the CSA, and that the drug not be defined as a narcotic. The judge presented two main reasons for the decontrolling of buprenorphine under the CSA. With respect to evidence of abuse of buprenorphine in Australia, New Zealand and West Germany, the judge characterized activities in those countries, including evidence of theft, prescription forgery, and a black market for buprenorphine, as misuse rather than abuse, and pointed out that there was no evidence presented of abuse or misuse in more than a few of the countries where the drug is marketed. As a second basis for not scheduling buprenorphine under the CSA, the judge concluded that control of buprenorphine would inhibit availability of the drug for legitimate medical purposes. The judge indicated that buprenorphine is a drug for the treatment of moderate to severe pain and that physicians might be hesitant to prescribe the drug and patients may suffer thereby. He also noted that two similar drugs, nalbuphine and butorphanol are not controlled and he also distinguished buprenorphine from pentazocine, another similar drug which is controlled in Schedule IV of the CSA. All four of these substances, buprenorphine, nalbuphine, butorphanol, and pentazocine, are considered analgesics and opiate agonist-antagonist substances. The judge also concluded and recommended to the Administrator that buprenorphine should not be classified as a narcotic drug. The judge then recommended that the Administrator adopt a rather narrow definition of derivative, and that using such definition, buprenorphine would not be a derivative of thebaine. He found that buprenorphine was not a derivative of thebaine because there are six or possibly seven steps required in the chemical transportation from thebaine to buprenorphine and some of these steps are relatively complex. He also noted that using the general definition of derivative, aspirin can be considered a derivative of thebaine since it can be produced from thebaine. The judge concluded that buprenorphine is too chemically remote from thebaine to be termed a derivative, and therefore that buprenorphine is not a narcotic.

On November 13, 1984, counsel for DEA and McNeil Pharmaceuticals filed exceptions to the Opinion and Recommendations of the Administrative Law Judge. In reply, Reckitt and Colman filed a Response to the exceptions on December 7, 1984. On December 13, 1984, the Administrative Law Judge certified and transmitted the record to the Administrator of DEA. The record included the Opinion and Recommendations of the Administrative Law Judge, the findings of fact and conclusions of law proposed by all parties, the exceptions filed by counsel for DEA and McNeil Pharmaceuticals, the response to those exceptions filed by Reckitt and Colman, all of the exhibits and affidavits, and all of the transcripts of the hearing sessions.

The Administrator has carefully reviewed the entire record in this matter and hereby issues this final rule as prescribed by 21 CFR 1316.67. The Administrator declines to accept the recommendations of the Administrative Law Judge and finds that there is substantial evidence in the record to support the decision that buprenorphine be placed in Schedule V as a narcotic drug. The Administrator finds, consistent with his decision that:

1. Buprenorphine has a low potential for abuse relative to the drugs or other substances in Schedule IV.

2. Buprenorphine has a currently accepted medical use in treatment in the United States.

3. Abuse of buprenorphine may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.

In support of the above listed findings, the Administrator makes the following specific factual findings:

1. Buprenorphine is an analgesic, agonist-antagonist drug.

2. Buprenorphine is a morphine-like drug that is 25 to 50 times more potent than morphine and is longer acting.

3. Buprenorphine, in human testing, has been found to have a "mood elevating" effect, and to produce other morphine-like effects, including "euphoria."

4. Buprenorphine has been approved by the Food and Drug Administration for treatment of moderate to severe pain.

5. Animal studies with buprenorphine indicate that rats will spontaneously initiate self-administration of buprenorphine, although at a lower rate than they will self-administer codeine, a Schedule III narcotic controlled substance.

6. Buprenorphine was recognized as an opiate in animal studies in which rats were trained to discriminate fentanyl, a Schedule II opiate from saline.

7. In human tests utilizing buprenorphine, morphine and a placebo, buprenorphine was identified as an opiate by both subjects and observers.

8. In the scheduling recommendation the Assistant Secretary of Health, Department of Health and Human Services recommended narcotic classification for buprenorphine "based on the chemical derivation of buprenorphine from thebaine, an opium constituent."

9. The thebaine ring skeleton and structure are contained within the structure of buprenorphine.

10. Thebaine is converted to buprenorphine through the Diels-Alder adduct of thebaine. The conversion of the Diels-Alder adduct of thebaine to buprenorphine is by way of standard chemical reactions.

11. The developer of buprenorphine described buprenorphine as a thebaine derivative.

12. *Van Nostrand's Scientific Encyclopedia*, 5th Ed. defines derivative as:

> A term used in organic chemistry to express the relation between certain known or hypothetical substances and the compound formed from them by simple chemical processes in which the nucleus or skeleton of the parent substance exists. Usually the term applies to those compounds where the resulting compound is formed in one step, although a chain of steps may be involved in some cases depending essentially upon how easy it is to identify the "derivative" within the parent substance. Where a chain of steps is involved, the intervening compounds often are called "intermediates" rather than "derivatives."

13. There are four agonist-antagonist analgesics approved for marketing in the United States; buprenorphine, butorphanol, nalbuphine, and pentazocine.

14. Pentazocine and buprenorphine are both centrally acting analgesics having antagonistic properties and act at the mu and kappa receptors of the brain.

15. Pentazocine was controlled under the CSA in Schedule IV in 1978 after evidence of its widespread abuse in the United States was documented.

16. Buprenorphine is currently marketed in 28 countries in Europe and

Australasia under the trade name Temgesic.

17. Buprenorphine was initially marketed in Australia in its injectable form in November, 1982.

18. Buprenorphine was not approved in Australia for treatment of opiate addiction.

19. By October, 1983, 97 registered addicts in Australia received prescriptions for buprenorphine in Western Australia.

20. In early 1984, an illicit market for buprenorphine developed in Western Australia where ampules of buprenorphine were selling for $20 to $50 Austrialian each. (U.S. equivalent $ .90 per Australian dollar at that time)

21. Buprenorphine, in its injectable form, was approved for marketing in New Zealand in May, 1979. The oral formulation was approved for use in New Zealand in April, 1981.

22. From August, 1982 to December, 1982 the Auckland Hospital Outpatient Pharmacy in New Zealand filled 667 prescriptions for oral buprenorphine, 27% were for known or suspected drug abusers.

23. The New Zealand Department of Health received information that through July 31, 1983, there had been at least 280 instances of known drug abusers visiting doctors and specifically seeking buprenorphine.

24. Many prescription alterations and forgeries of buprenorphine prescriptions were reported in New Zealand for the period up to July, 1983.

25. On September 5, 1983, buprenorphine became a controlled drug in New Zealand.

26. In Christchurch, New Zealand buprenorphine tablets were selling for between NZ $10 and NZ $15 per tablet. (U.S. equivalent $.64 per New Zealand dollar at that time)

27. Buprenorphine was approved for marketing in the Federal Republic of Germany (West Germany) in injectable form in February, 1981, and in oral, sublingual form in May, 1983.

28. By June 24, 1983, the Federal German Office of Criminal Investigation had received reports of 142 known instances of illegal obtaining of buprenorphine, from a total of 168 buprenorphine-related offenses. Of the 168 reported offenses, 131 involved prescription falsification and 24 involved theft and/or criminal conversion.

29. For the year 1983, the total number of buprenorphine-related criminal incidents reported to the Federal German Office of Criminal Investigation was 336.

30. In February, 1983 there was an armed robbery of a pharmacy in West Germany where the robber demanded only Temgesic, the brand name for buprenorphine. In all of 1982 there were only 35 armed robberies of pharmacies in all of West Germany.

31. In Munich, West Germany, an individual diverted 300 packages of buprenorphine from a wholesaler. This individual was himself subsequently robbed by force of the buprenorphine.

32. A black market for buprenorphine has developed in southern West Germany.

33. As of March, 1984 there have been 130 documented cases of buprenorphine abusers in West Germany. Seventy percent of these abusers were street drug abusers and 27% were those who abused medical drugs.

34. On March 7, 1984, the West German Narcotic Advisory Council recommended to the West German government that buprenorphine be controlled.

35. As of March, 1984 buprenorphine had not been approved for marketing in Italy.

36. In December, 1982 a physician in northwestern Italy who treats drug dependent patients reported many patients taking buprenorphine. The physician reported the drug was being obtained in Switzerland via prescription.

37. Heroin addicts in Genoa, Italy were using buprenorphine obtained by prescriptions filled in Swiss pharmacies as a heroin substitute. These individuals were using 10 to 30 vials of buprenorphine a day.

38. At the insistence of an Italian National Police authority in Genoa, a Swiss official circulated an order to Swiss pharmacists along the Italian border directing them not to fill prescriptions written by Italian doctors.

39. On August 21, 1983, the Italian Ministry of Health placed buprenorphine in Table IV of the Narcotic Act. Illegal distribution of a Table IV drug is subject to substantial criminal penalties including fines and imprisonment.

Evidence of abuse of buprenorphine is well documented in Australia, New Zealand, West Germany and Italy. Although characterized by the Administrative Law Judge in his Opinion as primarily "misuse" as opposed to "abuse", the Administrator finds the activity described in the record was most assuredly "abuse." The Administrative Law Judge described "misuse" as use of a drug in a manner not approved by medical authorities. Evidence adduced in the course of these proceedings showed that individuals were seeking buprenorphine as a morphine or heroin substitute. They were seeking the drug for its euphorogenic effects. They were seeking it not to ameliorate the pain from surgery, injury or illness, but to forestall the onset of narcotic withdrawal symptoms.

Addicts and drug abusers of all descriptions commonly attempt to obtain prescriptions for controlled substances by "duping" physicians with seemingly legitimate complaints. In the United States, this method is often used to obtain narcotics, depressants and stimulants. In West Germany and New Zealand, it was also used to obtain buprenorphine. Addicts in New Zealand sought buprenorphine tablets which they then dissolved in water and injected intravenously. This is not misuse. This activity is precisely what the Administrator has come to know as diversion of legitimately produced drugs for purposes of their subsequent abuse. The evidence in this case described burglaries and armed robberies in which buprenorphine was the targeted drug. The forgery and alteration of buprenorphine prescriptions was reported as was a black market for buprenorphine tablets. These activities provide substantial evidence that buprenorphine not only has a potential for abuse, but that it is actually being abused and has developed a following among addicts and abusers. The pattern of abuse of buprenorphine in Europe and Australasia is identical to the pattern of abuse for other legitimately produced pharmaceuticals in the United States. As a result of this abuse of buprenorphine the drug has become controlled in New Zealand and Italy and has been proposed for control by West German authorities. The Administrator finds that the rapid onset of significant abuse of buprenorphine in these Western countries is of particular importance with respect to his decision to retain some controls on buprenorphine in the United States. The potential for abuse of buprenorphine is evident from its pharmacological properties and the fact that it does produce physical and psychological dependence. Buprenophine's morphine-like effects are mentioned throughout the record in this proceeding. The drug seeking behavior of documented drug abusers in the countries where the drug is marketed reinforces this statement.

The Administrative Law Judge placed great weight on the fact that two drugs with properties similar to buprenorphine are not currently controlled under the CSA. The Administrator finds that the fact that butorphanol and nalbuphine are not currently classified as controlled substances carries little if any weight in

this proceeding. The scheduling of these two substances is not at issue in this matter. At such time as evidence of abuse of butorphanol and nalbuphine are presented to DEA, they will be specifically evaluated for control under the CSA.

Control of a legitimately marketed pharmaceutical drug may have some effect on the decision of a physician to prescribe that drug. There may be some physicians who are reluctant to prescribe any controlled substance. However, the Administrator notes that oral codeine analgesics are among the most widely prescribed drugs in this country. These drugs are classified as Schedules II and III narcotics. If such classification has not deterred physicians from prescribing those drugs, the Administrator finds it difficult to understand how one can seriously contend that Schedule V controls will somehow deter legitimate prescribing of buprenorphine. The proper prescribing of drugs is a question of medical practice. The placing of a drug in Schedule V will alert a physician that the drug does cause limited physical and psychological dependence. This is valuable information for a physician to possess before prescribing any drug. The Administrative Law Judge in his Opinion and Recommendations refers to the "real world" where physicians may be unwilling to prescribe a controlled substance. The Administrator notes that the "real world" includes the fact of drug abuse, and the recognition that a large population of individuals in the United States abuse all types of drugs. The Administrator also recognizes that the drug abuse problem is related to crime and other societal problems. The Administrator has a duty to protect the public health and safety. He concludes that the potential for abuse of buprenorphine far outweighs any potential reluctance on the part of a physician to prescribe a drug as pain medication. In conclusion, the Administrator finds that buprenorphine has a potential for abuse sufficient to warrant its control in Schedule V of the Controlled Substances Act. There is substantial evidence of actual abuse of buprenorphine in foreign countries, as well as potential for abuse in the United States. The public health and safety demands that control of this drug be retained.

The Administrator recognizes that designating a drug as a narcotic does have regulatory and possible international drug control ramifications. As the judge noted in his Opinion, a narcotic controlled substance requires an import permit and special findings with respect to medical need and adequacy of domestic supply for each importation. Prescriptions may not be issued for a narcotic for purposes of maintenance or detoxification treatment. However, there are many pharmaceuticals controlled as Schedule V narcotics in the United States which are regularly prescribed and dispensed for medical purposes and such controls do not deter their legitimate use.

Prior to the initiation of this control action DEA considered buprenorphine a narcotic drug because of its derivation from opium through the alkaloid thebaine. Buprenorphine is produced from thebaine in seven common and well-documented chemical steps which result in a structure with a ring skeleton much like that of morphine and heroin, which in turn resembles that of thebaine. Even though there are seven chemical steps in the reaction sequence, it is the first step which establishes the ring skeleton system of buprenorphine. To attribute great significance to the actual number of chemical steps is misleading. The subsequent chemical reactions involve minor additions and substitutions to this first "derivative."

The Administrator acknowledges that the term "derivative" is not defined in the CSA or implementing regulations. DEA and the Food and Drug Administration have consistently treated substances produced from thebaine as narcotics. FDA recommended narcotic classification for buprenorphine based on the fact that buprenorphine is derived from the opium constituent thebaine. Although authorities disagree, the reactions which produce buprenorphine from thebaine conform to the definition of derivative in recognized chemical literature. The Administrative Law Judge noted in his Opinion that aspirin can also be produced from thebaine. This is an absurd and impractical extension of the concept of derivative. There is a middle ground between a narrow precise definition and such an all-encompassing definition. Not only can buprenorphine be characterized as a derivative of thebaine and therefore a narcotic by chemical definition, the evidence in the record of this proceeding clearly shows that the narcotic drug abuser, and even the heroin addict, recognizes buprenorphine as a narcotic. Such evidence was presented from countries where the drug has only been marketed for a few years.

The Administrator finds that there is substantial evidence in the record to support his conclusion that buprenorphine is a narcotic drug. It is quite clear that addicts recognize buprenorphine as a narcotic and utilize it as a heroin substitute. They clearly understand that buprenorphine is not aspirin or acetaminophen. Buprenorphine possesses sufficient opiate-like actions and does so resemble the structure of its parent, thebaine, that it must be considered to be a derivative thereof, and therefore classified as a narcotic within the meaning of the Controlled Substances Act.

Placement of a substance into Schedule V and designating it as a narcotic imposes certain regulatory requirements on those handling the substance. These requirements are less stringent than those currently imposed on buprenorphine by virtue of its classification as a Schedule II narcotic. Regulatory requirements imposed by the CSA and implementing regulations are effective on April 1, 1985. The regulatory requirements imposed on those handling buprenorphine on the effective date are as follows:

1. *Registration.* Any person who manufactures, distributes, dispenses, imports or exports buprenorphine or who proposes to engage in such activities, if not already registered, shall submit any application for registration to conduct such activities in accordance with Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations on or before April 1, 1985.

2. *Security.* Buprenorphine must be manufactured, distributed, and stored in accordance with §§ 1301.71, 1301.72(b)–(d), 1301.73, 1301.74(a)–(f), 1301.75(b)–(c), and 1301.76 of Title 21 Code of Federal Regulations.

3. *Labeling and packaging.* All labels on commercial containers of, and all labeling of buprenorphine packaged after April 1, 1985, shall comply with the requirements of §§ 1302.03–1302.05 and 1302.08 of Title 21 of the Code of Federal Regulations.

4. *Inventory.* Every registrant who is required to keep records and who possesses any quantity of buprenorphine is required to take inventories pursuant to § 1304.04 and §§ 1304.11–1304.19 of Title 21 of the Code of Federal Regulations.

5. *Records.* All registrants must keep records of buprenorphine pursuant to §§ 1304.21–1304.27 of Title 21 of the Code of Federal Regulations.

6. *Prescriptions.* The Food and Drug Administration has approved buprenorphine as a prescription drug. Accordingly, all prescriptions for buprenorphine shall comply with §§ 1306.01–1306.07 and §§ 1306.26–1306.31 of Title 21 of the Code of Federal Regulations.

7. *Importation and Exportation.* All importation and exportation of buprenorphine shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. *Criminal liability.* Any activity with buprenorphine not authorized by or in violation of the Controlled Substances Act or the Controlled Substances Import and Export Act continues to be unlawful. The applicable penalties before April 1, 1985, shall be those of a Schedule II narcotic controlled substance. After that date the criminal penalties shall be those of a Schedule V narcotic.

9. *Other.* In all other respects, this Order is effective April 1, 1985.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the rescheduling of buprenorphine, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). The vast majority of pharmaceutical firms, hospitals, pharmacies, and physicians are already registered by DEA to handle Schedule V controlled substances.

In accordance with the provisions of section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)), this scheduling action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to provisions of the Administrative Procedure Act, 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

Under the authority vested in the Attorney General by section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcement Administration by regulations of the Department of Justice, 28 CFR 0.100(b), the Administrator hereby orders that Part 1308, Title 21, Code of Federal Regulations be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

The authority citation for Part 1308 reads as follows:

Authority: Secs. 201, 202, 501(b), 84 Stat. 1245, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1271, 21 U.S.C. 811, 812, 871(b).

1. Paragraph (b) of 21 CFR 1308.15 is redesignated as paragraph (c).

2. New paragraph (b) entitled Narcotic drugs is added to 21 CFR 1308.15 to read as follows:

§ 1308.15 Schedule V

* * * * *

(b) *Narcotic drugs.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below:

(1) Buprenorphine.....9064

* * * * *

Dated: February 26, 1985.

Francis M. Mullen, Jr.,

Administrator.

[FR Doc. 85-4989 Filed 2-27-85; 8:45 am]

BILLING CODE 4410-09-M

INTERNATIONAL DEVELOPMENT AND COOPERATION AGENCY

Agency for International Development

22 CFR Part 218

Non-Discrimination on the Basis of Age in Programs Receiving Federal Financial Assistance

AGENCY: Agency for International Development.

ACTION: Final rule; correction.

SUMMARY: This document corrects a legal citation contained in the final regulations implementing provisions of the Age Discrimination Act of 1975.

FOR FURTHER INFORMATION CONTACT: Nancy D. Frame, Assistant General Counsel for Employee and Public Affairs, Agency for International Development, Washington, D.C. 20523 (202) 632-8218.

Accordingly, in FR Doc. 80-2301, appearing at page 62979 in the issue of September 23, 1980, the authority citation which appears just after the table of contents for Part 218 on page 62980 is corrected to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 et seq.; 45 CFR Part 90; 22 U.S.C. 2658.

Nancy D. Frame,

Assistant General Counsel, Employee and Public Affairs.

[FR Doc. 85-4750 Filed 2-27-85; 8:45 am]

BILLING CODE 6116-01-M

22 CFR Part 221

Employment

AGENCY: Agency for International Development.

ACTION: Final rule; revocation.

SUMMARY: Part 221 of this title was issued to proscribe regulations relating to employment and tours of assignment of AID Foreign Service Employees. The enactment of the Foreign Service Act of 1980 renders part 221 of Title 22 CFR obsolete and it is therefore being revoked.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Nancy D. Frame, Assistant General Counsel for Employee and Public Affairs, Agency for International Development, Washington, D.C. 20523 (202) 632-8218.

List of Subjects in 22 CFR Part 221

Foreign Service.

PART 221—[REMOVED]

Accordingly, 22 CFR Part 221 is removed.

(Sec. 401, International Development and Food Assistance Act of 1978, Pub. L. 95-424, 92 Stat. 956, as amended by sec. 503, International Development Cooperation Act of 1979, Pub. L. 96-53, 93 Stat. 378)

Nancy D. Frame,

Assistant General Counsel, Employee and Public Affairs.

[FR Doc. 85-4756 Filed 2-27-85; 8:45 am]

BILLING CODE 6116-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Approval of Permanent Program Amendment From the State of Wyoming Under the Surface Mining Control and Reclamation Act of 1977

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval of a program amendment submitted by Wyoming as an amendment to the State's permanent regulatory program (hereinafter referred to as the Wyoming program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment establishes procedures and requirements governing operator responsibility when requesting a variance from program standards and the State's responsibility in processing such requests, provisions for self-bonding and provisions addressing inspection, enforcement and civil penalties for surface coal mining operations. Wyoming submitted the proposed program amendment on June 25, 1984. OSM published a notice in the July 25, 1984 **Federal Register,**

announcing receipt of the amendment and inviting public comment on the adequacy of the proposed amendment (49 FR 29807). The public comment period closed August 23, 1984. After review of the proposed material, OSM on October 2, 1984, notified Wyoming of several identified concerns. On November 1, 1984, Wyoming submitted additional clarifying material addressing OSM's concerns. OSM announced receipt of the material in the January 14, 1985 **Federal Register** (50 FR 1869) and reopened the comment period until January 29, 1985.

After providing opportunity for public comment and conducting a thorough review of the program amendment, the Director has determined that the amendment meets the requirements of SMCRA and the Federal regulations, and is approving it. The Federal rules at 30 CFR Part 950 codifying decisions concerning the Wyoming program are being amended to implement this action.

This final rule is being made effective immediately in order to expedite the State program amendment process and encourage States to conform their programs to the Federal standards without delay; consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William R. Thomas, Director, Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644; Telephone: (307) 261-5776.

SUPPLEMENTARY INFORMATION:

I. Background

The Wyoming program was conditionally approved by the Secretary of the Interior on November 26, 1980 (45 FR 78637-78634). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Wyoming program can be found in the November 26, 1980 **Federal Register** (45 FR 78637), the February 18, 1982 **Federal Register** (47 FR 7218), the September 27, 1982 **Federal Register** (47 FR 42351) and the November 9, 1983 **Federal Register** (48 FR 51465).

II. Submission of Revisions

On June 25, 1984, Wyoming submitted to OSM a program amendment that addresses procedures to be followed by operators when requesting approval by the State to conduct experimental practices on surface coal mining operations, provisions for self-bonding and provisions for inspection, enforcement and civil penalty assessments for surface coal mining opeerations. The July 25, 1984 **Federal Register** (49 FR 1869) announced receipt of the materials and opened the initial comment period. In the same notice, OSM announced that a public hearing would be held only if requested. No requests were received and no hearing was held. A review by OSM identified minor deficiencies in the Wyoming submission. The State was notified October 2, 1984, of OSM's concerns and subsequently provided clarifying material on November 1, 1984. OSM announced receipt of the new material in the January 14, 1985 **Federal Register** (50 FR 1864) and reopened the public comment period until January 29, 1985. No additional comments were received.

III. Director's Findings

In accordance with SMCRA and 30 CFR 732.15 and 732.17, the Director finds that the revised program amendment to the Wyoming Land Quality Division Rules as submitted by Wyoming on June 25, 1985, and clarified on November 1, 1984, meets the requirements of SMCRA and 30 CFR Chapter VII, as discussed below.

A. Chapter IX Variances for Surface Coal Mining Operations

Wyoming has revised this section so that it implements the revised provisions of 30 CFR 785.13 which address both operator responsibility when requesting approval of variances from program standards and the State regulatory authorities' responsibility in processing such requests. The amendment consists of revised regulations addressing the required contents of an operator's request for a variance and procedures to be followed by both the applicant and the Wyoming Land Quality Division in processing requests for variances. In its October 2, 1984 letter to Wyoming, OSM identified the following concern:

> Wyoming did not provide evidence that the Administrator, Land Quality Division had authority to require modifications of experimental practices, as necessary, to ensure full protection of the environment and public health and safety. Wyoming, in its November 1, 1984 correspondence, responded to OSM's concern by pointing out that applicants must conduct special monitoring with respect to experimental practices as required at Section 1s(2)(b)(iii), Chapter IX, so as to assure protection of the environment and public health and safety. Wyoming also stated that the Administrator, Land Quality Division is required to review annually all experimental practices and has authorized to require an operator to abandon an experimental practice if protection of the environment and public safety can not be assured. Wyoming stated that if the Administrator has such authority, it is assumed he has authority to require less drastic measures such as requiring modifications of experimental practices. The Director agrees with Wyoming's explanation and finds that these changes are no less effective than Federal regulations at 30 CFR 785.13.

B. Chapter XII Self-Bonding Program

Wyoming has revised this section so that it implements the revised provisions of 30 CFR Part 800 which address self-bonding. This amendment consists of proposed regulations containing new and revised definitions relative to bonding application requirements for operators interested in self-bonding, methods for renewing bonds filed under the self-bonding program, procedures to be followed by the regulatory authority for processing and acting upon an operator's application to self-bond, provisions for the regulatory authority to require the substitution of a self-bond if it finds the operator's self-bond does not provide adequate protection, procedures for both the release and forfeiture of an operator's self-bond, and procedures for self-bonding existing operators. The Director finds that these changes are no less effective than the Federal regulations at 30 CFR Part 800 and do not render this section less stringent than section 509 fo SMCRA.

C. Chapter XVII Inspection, Enforcement and Penalties for Surface Coal Mining Operations

Wyoming has revised this section so that it implements the revised provisions of 30 CFR Parts 840 and 845 which address inspection, enforcement and civil penalty assessment for surface coal mining operations. This amendment consists of regulations addressing both the frequency and extent of inspections on active and inactive surface coal mining operations, minimum content requirements for the following enforcement documents: cessation orders, notice of abatement and order to show cause, administrative procedures for handling enforcement actions and procedures for assessing and processing civil penalties.

In its October 2, 1984, letter to Wyoming, OSM identified the following concerns:

> (1) Wyoming did not provide language consistent with 30 CFR 842.11(b)(1)(i) which provides complainants an opportunity to allege to the State that certain conditions or practices exist which create a danger to public health and safety or cause imminent environmental harm. Wyoming responded in

its November 1, 1984 correspondence that Section 1a (1) and (2), Chapter XVII not only provides complainants an opportunity to allege that the State has failed to comply with inspection frequency requirements but also allows complainants to allege that the State has failed to inspect a site immediately to enforce the act, regulations or any permit condition.

(2) Wyoming failed at Chapter XVII to address the right of persons supplying information to the regulatory authority relating to possible violations to remain confidential if so desired. In its November 1, 1984 response, Wyoming indicated that confidentiality would be provided to a complainant, if requested, under section 16-4-203(a)(ii) of the Wyoming Public Records Law, a copy of which was provided to OSM.

(3) While Wyoming provides for notification of a pending mine inspection to a complainant whose allegation or information is the basis for the inspection at Section 1e, Chapter XVII, it failed to provide that such notification would be provided as far in advance as practicable. Wyoming stated in the November 1, 1984, response that, while the proposed rule does not contain language which specifically states that such notification will occur as far in advance as practicable, it is reasonable to assume that the Director will do so in the discharge of his normal duties.

(4) Wyoming's standard for issuance of a show cause order at Section 2e(1)(a), Chapter XVII is narrower than the Federal standard at 30 CFR 843.5. The Federal standard for a willful violation is that it be committed by a person who intends the result that actually occurs. The Wyoming standard for willful violation is that the violation be committed by a person who knows, or has reason to know, the act is unlawful. The Federal standard requires intent but does not require knowledge. Wyoming indicated that this particular provision was not revised from that which was approved by the Secretary of the Interior in his Finding 20.F published in the November 26, 1980 Federal Register notice (45 FR 78672). The Director is reserving the right to reevaluate this provision as part of OSM's regulatory reform effort.

The Director concurs with Wyoming's November 1, 1984 explanations and response to OSM's concerns and finds that those changes are consistent with Federal regulations at 30 CFR Parts 840 and 845 and do not render this section less stringent than sections 517, 518 and 521 of SMCRA.

IV. Public Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i), of those Federal agencies invited to comment, none chose to do so. No additional public comments were received.

The disclosure of Federal agency comments is made pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(10)(i).

V. Director's Decision

The Director, based on the above findings, is approving the amendment to the Wyoming program submitted on June 25, 1984, and as clarified by the State on November 1, 1984. The Director is amending Part 950 of 30 CFR Chapter VII to reflect approval of the above State program modification.

VI. Procedural Requirements

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempted from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 950

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: February 22, 1985.

John D. Ward,

Director, Office of Surface Mining.

PART 950—WYOMING

30 CFR 950.15 is amended by adding a new paragraph (d) as follows.

§ 950.15 Approval of regulatory program amendments.

* * * * *

(d) The following amendment submitted to OSM on June 25, 1984, and clarified by the State on November 1, 1984, is approved effective February 28, 1985: Wyoming's regulations governing operator responsibility when requesting a variance from program standards and the State's responsibility in processing such a request at Sections 1 and 2 respectively, Chapter IV of the Wyoming Land Quality Division (LQD) Rules and Regulations; definitions relating to self-bonding at Section 1, Chapter XII of the LQD rules, procedures to be followed by an applicant when applying for self-bonding provisions at Section 2, Chapter XII of the LQD rules, procedures to be followed by an operator in the process of renewing an existing bond with a self-bond at Section 3, Chapter XII of the LQD rules; procedures to be followed by the State regulatory authority in approving or denying an operators request to self-bond at Section 4, Chapter XII of the LQD rules; procedures to be followed by the State regulatory authority when requiring an operator to replace a questionable self-bond with a substitute form of bond at Section 5, Chapter XII of the LQD rules; requirements addressing the release or forfeiture of self-bonds at Section 6, Chapter XII of the LQD rules; requirements for operators of existing operations to follow in substituting self-bonds for other forms of bond at Section 7, Chapter XII of the LQD rules; frequency and extent of mine inspections at Section 1, Chapter XVII of the LQD rules; procedures to be followed in handling enforcement actions at Section 2, Chapter XVII of the LQD rules, and procedures to be followed by the State regulatory authority in assessing civil penalties at Section 3 Chapter XVII of the LQD rules.

[FR Doc. 85-4890 Filed 2-27-85; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Paducah, KY; Regulation 85-01]

Safety Zone Regulations; Ohio River Mile 960-965

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a safety zone between Mile 960 and 965, Ohio River.

The zone is needed to protect divers and rescue personnel from a safety hazard associated with a towboat sunk in the channel. Entry into this zone is

prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation became effective on 11 February 1985. It terminates on 11 March 1985, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: CDR T. H. Robinson (502) 442-1621.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent further damage to the vessel involved, or to passing traffic during salvage operations.

Drafting Information

The drafters of this regulation are CWO Barry M. Goddard, project officer for the Captain of the Port, and LT R. E. Kilroy, project attorney, Second Coast Guard District Legal Office.

Discussion of Regulation

The incident requiring this regulation resulted from the sinking of the Motor Vessel CITY OF GREENVILLE at 0230S, 11 February 1985, at Mile 962.6, Ohio River.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended by adding a new § 165.T0202 to read as follows:

§ 165.T0202 Safety zone: Ohio River.

(a) *Location.* The following area is a safety zone: above Lock and Dam 53, Mile 960, Ohio River, to below Lock and Dam 53, Mile 965, Ohio River.

(b) *Regulations:* (1) In accordance with the general regulations in Section 165.23 of this Part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

(33 U.S.C. 1225 and 1231; 49 CFR 1.46; 33 CFR 165.3)

Dated: February 12, 1985.

Thomas H. Robinson,

Commander, U.S. Coast Guard, Captain of the Port, USCG MSO Paducah, KY.

[FR Doc. 85-4879 Filed 2-27-85; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2785-8]

Standards of Performance for New Stationary Sources; Appendix A Reference Methods; Revisions to Method 5 to Add Certain Calibration Procedures Contained in APTD-0576 and APTD-0581; Correction Notice

AGENCY: Environmental Protection Agency.

ACTION: Correction notice.

SUMMARY: The purpose of this notice is to inform the public that on December 24, 1984 at 49 FR 49964 an EPA document as published incorrectly. Two different documents were published together which was misleading and caused confusion to the regulated community. Elsewhere in Part III of today's issue EPA has published the entire document which was intended to be published on December 24, 1984.

FOR FURTHER INFORMATION CONTACT: William Grimley at (919) 541-2237.

SUPPLEMENTARY INFORMATION: For the reasons set forth in the preamble the amendments to 40 CFR Part 60, Appendix A, which appeared at 49 FR 49964 are removed.

Dated: February 12, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-4863 Filed 2-27-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 60

[Docket No. AM704 PA]

Standards of Performance for New Stationary Sources, Delegation of Authority to the Commonwealth of Pennsylvania, Department of Environmental Resources

AGENCY: Environmental Protection Agency.

ACTION: Rule related notice.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS). On May 30, 1984, the Commonwealth of Pennsylvania Department of Environmental Resources requested EPA to delegate to it the authority for additional NSPS source categories. EPA granted the request on October 4, 1984. The Commonwealth now has authority to implement and enforce NSPS regulations for Metallic Mineral Processing Plants and Synthetic Fiber Production Facilities.

EFFECTIVE DATE: October 4, 1984.

ADDRESSES: Applications and reports required under all NSPS source categories for which EPA has delegated authority to the Pennsylvania Department of Environmental Resources (DER) to implement and enforce should be addressed to the Commonwealth of Pennsylvania, Department of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120, in addition to EPA Region III.

Copies of the delegation and accompanying documents are available for inspection during normal business hours at the Pennsylvania DER address given above or at the following offices:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: Michael Giuranna (3AM11), Telephone: (215) 597-9189

Public Information Reference Unit, Room 2922—EPA Library, U.S. Enviromental Protection Agency, 401 M Street, SW (Waterside Mall), Washington, DC 20460

The Office of the Federal Register, 1100 L Street, NW, Room 8401, Washington, DC 20408

FOR FURTHER INFORMATION CONTACT: Michael Giuarana of EPA Region III's Air Programs Branch, (215) 597-9189.

SUPPLEMENTARY INFORMATION: The Commonwealth of Pennsylvania Department of Environmental Resources was delegated the authority to enforce the New Source Performance Standards promulgated by EPA after January 1, 1981. In response to a DER request dated October 1, 1979, EPA, Region III delegated authority to enforce Standards of Performance for New Stationary Sources promulgated prior to July 1, 1978 (45 FR 3109), but stipulated that authority to enforce subsequent standards would be delegated only if specifically requested. In accordance with this stipulation, a request for delegation of seven (7) categories promulgated between July 1, 1978 and January 1, 1981 was submitted February 26, 1981 and granted on July 6, 1981. On June 30, 1983, EPA delegated seven (7) additional categories to DER. On May 30, 1984, the DER requested EPA to delegate to it authority to implement and enforce an additional two categories.

Delegation of the additional standards was made by the following letter on October 4, 1984:

U.S. Environmental Protection Agency

Region III

6th and Walnut Streets, Philadelphia, Pennsylvania 19106

Honorable Nicholas DeBenedictis, Secretary, Department of Environmental Resources, P.O. Box 2063, Harrisburg, Pennsylvania 17120

Dear Mr. DeBenedictis: This is in response to your letter of May 30, 1984, requesting delegation of authority for the Pennsylvania Department of Environmental Resources to enforce New Source Performance Standards for Metallic Mineral Processing Plants and Synthetic Fiber Production Facilities.

We have reviewed the pertinent laws, rules and regulations of the Commonwealth of Pennsylvania and have determined that they continue to provide an adequate and effective procedure for implementing and enforcing the NSPS. Therefore, we hereby delegate the authority for the implementation and enforcement of the NSPS regulations to the Commonwealth of Pennsylvania as follows:

Authority for all sources located or to be located in the Commonwealth of Pennsylvania subject to the Standards of Performance for New Stationary Sources for Metallic Mineral Processing Plants (LL) and Synthetic Fiber Production Facilities (HHH).

This delegation is based upon the conditions given in our June 30, 1983 letter to you which delegated 7 additional NSPS source categories to the Commonwealth of Pennsylvania.

If you need any further information, feel free to contact me.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

Effective immediately, all applications, reports, and other correspondence required under the NSPS for Metallic Mineral Processing Plants (LL) AND Synthetic Fiber Production Facilities (HHH), should be sent to the Pennsylvania Department of Environmental Resources (address above) in addition to the EPA Region III Office in Philadelphia.

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

Authority: Sec. 111(c), Clean Air Act (42 U.S.C. 7411(c)).

Dated: February 14, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 85-4900 Filed 2-27-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 3E2833/R741; FRL-2779-5]

Part 180—Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Oxamyl

Correction

In FR Doc. 85-3847 appearing on page 7061 in the issue of Wednesday, February 20, 1985, make the following correction: In the second column, under "**Supplementary Information**" in the eleventh line, "-oxyl]-1-" should read "-oxy]-1-"

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 11

Settlement and Payment of Claims to Employees for Damage or Loss, Personal Property

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This regulation amends FEMA claims regulation by adding a new Subpart D which specifies the procedures for which the Director of FEMA will settle and pay claims of employees of FEMA amounting to not more than $25,000 for damage to or loss of personal property incident to their service in FEMA.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Robert S. Brock, Office of General Counsel at (202) 646-4095.

SUPPLEMENTARY INFORMATION: These regulations concerning personnel claims are similar to those of other Federal agencies. A proposed rule was published on September 17, 1984 at 49 FR 36411 with comments due November 16, 1984. No comments were received. There is no change in this regulation from that published in the notice of proposed rulemaking.

This regulation is not a major rule within the term of Executive Order 12291, nor does it have a significant economic impact on a substantial number of small entities. Hence, no regulatory analyses have been prepared. It deals with administrative matters and has no impact on the environment, and is within categorical exemptions to the preparation of environmental documents required under 44 CFR Part 10.

The regulation contains informative collection requirements which have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 11

Administrative practices and procedures, Claims.

Accordingly, Chapter I, Subchapter A, Part 11 of Title 44, Code of Federal Regulations is amended:

1. By adding new Subpart D as follows:

PART 11—CLAIMS

Subpart D—Personnel Claims Regulations

Sec.

Authority: 31 U.S.C. 3721.

Subpart D—Personnel Claims Regulations

§ 11.70 Scope and purpose.

(a) The Director, Federal Emergency Management Agency (FEMA), is authorized by 31 U.S.C. 3721 to settle and pay (including replacement in kind) claims of officers and employees of FEMA, amounting to not more than $25,000 for damage to or loss of personal property incident to their service. Property may be replaced in-kind at the option of the Government. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities

of items, or expensive items, they should have such property privately insured. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

§ 11.71 Claimants.

(a) A claim pursuant to this subpart may only be made by: (1) An employee of FEMA; (2) a former employee of FEMA whose claim arises out of an incident occurring before his/her separation from FEMA; (3) survivors of a person named in paragraph (a) (1) or (2) of this section, in the following order of precedence: (i) Spouse; (ii) children; (iii) father or mother, or both or (iv) brothers or sisters, or both; (4) the authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 11.72 Time limitations.

(a) A claim under this part may be allowed only if it is in writing, specifies a sum certain and is received in the Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472: (1) Within 2 years after it accrues; (2) or if it cannot be filed within the time limits of paragraph (a)(1) of this section because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after the claim accrues, when the claimant shows good cause, the claim may be filed within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict.

(b) For purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

§ 11.73 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his/her agent, the members of his/her family, or his/her private employee (the standard to be applied is that of reasonable care under the circumstances); and (2) the possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and (3) the claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with FEMA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, unless excluded by § 11.74.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 states or the District of Columbia that were assigned to the claimant or otherwise provided in-kind by the United States; or

(ii) Any warehouse, office, working area, or other place (except quarters) authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Motor vehicles.* Claims may be allowed for automobiles and other motor vehicles damaged or lost by overseas shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and offloading incident thereto. Other claims for damage to or loss of automobiles and other major vehicles may be allowed when use of the vehicles on a nonreimbursable basis was required by the claimant's supervisor, but these claims shall be limited to a maximum of $1,000.00.

(4) *Mobile homes.* Claims may be allowed for damage to or loss of mobile homes and their content under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) *Money.* Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping, deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, their agent, or their employee. The adjudicating authority should use the test of whether the claimant did their best under the circumstances to protect the property; or

(v) When taken by force from the claimant's person.

(6) *Clothing.* Claims may be allowed for clothing and accessories customarily worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such as fire, flood, hurricane, or by enemy or other belligerent action;

(iii) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant required by the job situation; or

(iv) When using a motor vehicle.

(7) *Property used for benefit of the Government.* Claims may be allowed for damage to or loss of property (except motor vehicles, see §§ 11.73(c)(3) and 11.74(b)(13)) used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority or by reason of necessity.

(8) *Enemy action or public service.* Claims may be allowed for damage to or loss of property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nation;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(9) *Marine or aircraft disaster.* Claims may be allowed for personal property damaged or lost as a result of marine or aircraft disaster or accident.

(10) *Government property.* Claims may be allowed for property owned by the United States only when the claimant is financially responsible to an agency of the Government other than FEMA.

(11) *Borrowed property.* Claims may be allowed for borrowed property that has been damaged or lost.

(12)(i) A claim against the Government may be made for not more than $40,000 by an officer or employee of the agency for damage to, or loss of, personal property in a foreign country that was incurred incident to service, and—

(A) The officer, or employee was evacuated from the country on a recommendation or order of the Secretary of State or other competent authority that was made in responding to an incident of political unrest or hostile act by people in that country; and the damage or loss resulted from the evacuation, incident, or hostile act; or

(B) The damage or loss resulted from a hostile act directed against the Government or its officers, or employees.

(ii) On paying the claim under this subsection, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against the foreign country for the damage or loss for which the Government made the payment.

(iii) Amounts may be obligated or expended for claims under this subsection only to the extent provided in advance in appropriation laws.

§ 11.74 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, claimant's employee, or a member of claimant's family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 states and the District of Columbia that were not assigned to the claimant or otherwise provided in-kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of paragraph (a) of this section, the following are examples of claims which are not payable:

(1) *Claims not incident to service.* Claims which arose during the conduct of personal business are not payable.

(2) *Subrogation claims.* Claims based upon payment or other consideration to a proper claimant are not payable.

(3) *Assigned claims.* Claims based upon assignment of a claim by a proper claimant are not payable.

(4) *Conditional vendor claims.* Claims asserted by or on behalf of a conditional vendor are not payable.

(5) *Claims by improper claimants.* Claims by persons not designated in § 11.71 are not payable.

(6) *Articles of extraordinary value.* Claims are not payable for valuable or expensive articles, such as cameras, watches, jewelry, furs, or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken, by the claimant.

(7) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimants' immediate household. This prohibition includes articles acquired at the request of others and articles for sale.

(8) *Property used for business.* Claims are not payable for property normally used for business or profit.

(9) *Unserviceable property.* Claims are not payable for wornout or unserviceable property.

(10) *Violation of law or directive.* Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitation imposed on the weight of shipments of household goods.

(11) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(12) *Government property.* Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than FEMA.

(13) *Motor vehicles.* Claims for motor vehicles, except as provided for by § 11.73(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorious claims for damage to or loss of motor vehicles, limited to a maximum of $1,000.00, may be recommended to the Office of General Counsel for consideration and approval for payment.

(14) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(15) *Losses recoverable from carrier, insurer or contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, insurer or under contract except as permitted under § 11.75.

(16) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this subpart. However, where, in the opinion of the adjudicating authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value for the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(17) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant's agent, claimant's employee, or member of claimant's family has intentionally misrepresented an item claimed as to cost, condition, costs to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper, it may be paid. This does not preclude appropriate disciplinary action if warranted.

(18) *Minimum amount.* Loss or damage amounting to less than $10.

§ 11.75 Claims involving carriers and insurers.

In the event the property which is the subject of a claim was lost or damaged while in the possession of a carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have

handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(1) If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document.

(2) The demand should be made within the time limit provided in the policy and prior to the filing of a claim against the Government.

(3) If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under terms and conditions of the insurance coverage, prior to the filing of the concurrent claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer, had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit a claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submission of a claim to the Government, the claimant must certify in the claim that no recovery (or the amount of recovery) has been gained from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If the carrier or insurer has not taken final action on the claim against them, by the time the claimant submits a claim to the Government, the claimant will immediately notify them to address all correspondence in regard to the claim to him/her, in care of the General Counsel of FEMA.

(3) The claimant shall timely advise the General Counsel in writing, of any action which is taken by the carrier or insurer on the claim. On request, the claimant also will furnish such evidence as may be required to enable the United States to enforce the claim.

(e) When a claim is paid by FEMA, the claimant will assign to the United States, to the extent of any payment on the claim accepted by claimant, all rights, title, and interest in any claim against the carrier, insurer, or other party arising out of the incident on which the claim against the Government is based. After payment of the claim by the Government, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by the claimant from the United States.

(f) When a claimant recovers for the loss from the carrier or insurer before the claim against the Government under this subpart is settled, the amount or recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss;

(3) For the purpose of this paragraph (f) the claimant's total loss is to be determined without regard to the $25,000 maximum set forth above. However, if the resulting amount, after making this deduction, exceeds $25,000, the claimant will be allowed only $25,000.

§ 11.76 Claims procedures.

(a) *Filing a claim.* Applicants shall file claims in writing with the General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472. Each written claim shall contain, as a minimum:

(1) Name, address, and place of employment of the claimant;

(2) Place and date of the damage or loss;

(3) A brief statement of the facts and circumstances surrounding the damage or loss;

(4) Cost, date, and place of acquisition of each price of property damaged or lost;

(5) Two itemized repair estimates, or value estimates, whichever is applicable;

(6) Copies of police reports, if applicable;

(7) A statement from the claimant's supervisor that the loss was incident to service;

(8) A statement that the property was or was not insured;

(9) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;

(10) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant's supervisor that the claimant was required to provide such property or that the claimant's providing it was in the interest of the Government; and

(11) Other evidence as may be required.

(b) *Single claim.* A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the adjudicating authority determines that a genuine hardship exists.

(c) *Loss in quarters.* Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;

(2) Whether the quarters were assigned or provided in-kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Names of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(d) *Loss by theft or robbery.* Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care

normally exercised in the locale of the loss due to any unusual risks involved.

(e) *Transportation losses.* Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer indicating;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statement of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his/her employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and new weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(f) *Marine or aircraft disaster.* Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant's right to be, or to have property on board.

(g) *Enemy action, public disaster, or public service.* Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant's required presence in the area involved; and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in § 11.73(c)(8).

(h) *Money.* Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition should be accompanied by:

(1) Name, grade, and address of the person or persons who received money and any others involved;

(2) Name and designation of the authority who authorized such person or persons to accept personal funds and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(i) *Motor vehicles or mobile homes in transit.* Claims for damage to motor vehicles or mobile homes in transit should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

§ 11.77 Settlement of claims.

(a) The General Counsel, FEMA, is authorized to settle (consider, ascertain, adjust, determine, and dispose of, whether by full or partial allowance or disallowance) any claim under this subpart.

(b) The General Counsel may formulate such procedures and make such redelegations as may be required to fulfill the objectives of this subpart.

(c) The General Counsel shall conduct or request the Office of Inspector General to conduct such investigation as may be appropriate in order to determine the validity of a claim.

(d) The General Counsel shall notify a claimant in writing of action taken on their claim, and if partial or full disallowance is made, the reasons therefor.

(e) In the event a claim submitted against a carrier under § 11.75 has not been settled, before settlement of the claim against the Government pursuant to this subpart, the General Counsel shall notify such carrier or insurer to pay the proceeds of the claim to FEMA to the extent FEMA has paid such to claimant in settlement.

(f) The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

§ 11.78 Computation of amount of award.

(a) The amount allowed for damage to or loss of any items of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange), and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage, of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost or repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its costs, its conditions when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in-kind whenever appropriate.

§ 11.79 Attorney's fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. A person violating this section shall be fined not more than $1,000.

(Information collection approved by Office of Management and Budget under Control No. 3067-0167)

Dated: February 21, 1985.

Louis O. Giuffrida,

Director.

[FR Doc. 85-4843 Filed 2-27-85; 8:45 am]

BILLING CODE 6718-01-M

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44 CFR Part 64

[Docket No. FEMA 6647]

Suspension of Community Eligibility Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this

rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, (202) 287-0876, 500 C Street, Southwest, FEMA—Room 509, Washington, D.C. 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP), enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001–4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligiblity for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be published in the **Federal Register.**

In addition, the Director of Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in noncompliance of the Federal standards required for community participation. In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

PART 64—[AMENDED]

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Region II					
New York:					
Orange	Greenville, town of	360615B	Nov. 2, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	Jan. 8, 1977	Mar. 4, 1985.
Do	Wawayanda, town of	360639B	Apr. 11, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	May 10, 1974 and Sept. 24, 1976.	Do.
Region III					
West Virginia:					
Raleigh	Mabscott, town of	540286B	May 16, 1983, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	Nov. 20, 1981	Do.
Wood	Unincorporated areas	540213A	Feb. 16, 1977, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	Jan. 17, 1975	Do.
Region IV					
North Carolina:					
Cateret	Indian Beach, town of	370433A	Jan. 13, 1983, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.		Mar. 4, 1986.
Region V					
Ohio:					
Defiance	Defiance, city of	390144D	June 9, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	May 17, 1974, July 23, 1976, June 1, 1979 and Apr. 17, 1984.	Mar. 4, 1985.
Delaware	Powell, village of	390626B	July 8, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	Oct. 18, 1974 and June 4, 1976	Do.

State and county	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazard areas
Logan	West Liberty, village of	390343D	Feb. 28, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	Apr. 12, 1974, July 30, 1976, Dec. 24, 1976 and Dec. 5, 1980.	Do.
Wisconsin: Sauk	Reedsburg, city of	550402C	May 21, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	Dec. 17, 1973, May 28, 1976 and Oct. 26, 1979.	Do.
Region VI					
Texas:					
Calhoun	Port Lavaca, city of	480099B	Aug. 27, 1971, Emerg.; Aug. 27, 1971, Reg.; Mar. 4, 1985, Susp.	July 27, 1971, Aug. 27, 1971, July 1, 1974 and Sept. 5 1975.	Do.
Aransas	Rockport, city of	485504D	June 19, 1970, Emerg.; July 2, 1971, 1985, Reg.; Mar. 4, 1985, Susp.	July 2, 1971, July 1, 1974, Sept. 9, 1977 and Jan. 16, 1979.	Do.
Region VII					
Missouri:					
Wright	Hartville, city of	290454B	Sept. 30, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	June 28, 1974 and Oct. 10, 1975.	Do.
Jasper	Oronogo, city of	290185B	May 6, 1975, Emerg.; Mar. 4, 1985, Reg.; Mar. 4, 1985, Susp.	June 28, 1974 and Jan. 2, 1976.	Do.

Code for reading 4th column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator, Federal Insurance Administration)

Issued: February 25, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85–4844 Filed 2–27–85; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

Final Flood Elevation Determinations; Arkansas et al.

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

The base (100-year) flood elevations are the basis for the flood plain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below:

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0700.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
ARKANSAS	
Jacksonville, City, Pulaski County (FEMA Docket No. 6630)	
Jack Bayou Main Stem: Downstream side of U.S. Highway 67 & 167	*258
Bayou Meto Main Stem:	
Upstream side of Missouri Pacific Railroad	*247
Approximately 1.3 miles upstream of U.S. Highway 67 & 167	*251
Rocky Branch: Confluence with Meto Bayou Main Stem	*249
Maps available for inspection at the Office of the City Engineer, City Hall, Jacksonville, Arkansas.	
CALIFORNIA	
Ontario (City of) San Bernardino County, FEMA–6630	
Ponding Area: 50 feet north of the San Bernardino Freeway Crossing Ontario Motor Speedway Drain	*983
Maps available at Building Department, 303 East B Street, Ontario, California 91764.	
CONNECTICUT	
North Haven, Town, New Haven County (FEMA Docket No. 6581)	
Quinnipiac River	
Upstream of Broadway	*13
Defco Park Road (extended)	*17
Confluence of Pine Brook	*18

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Approximately 300' downstream of confluence of Wharton Brook	*21
Maps available for inspection at the Town Hall, 18 Church Street, North Haven, Connecticut.	
DELAWARE	
Fenwick Island, Town, Sussex County (FEMA Docket No. 6630)	
Atlantic Ocean and Little Assawoman Bay	
Intersection of King Street and Bunting Avenue	*10
Intersection of Bay Street and James Street	*5
East side of intersection of Cannon Street and Ocean Highway	*9
Intersection of Madison Avenue and Glen Avenue	*4
Maps available for inspection at the Fenwick Island Town Hall, Fenwick Island, Delaware.	
South Bethany, Town, Sussex County, (FEMA Docket No. 6630)	
Atlantic Ocean & Assawoman Canal:	
West side of intersection of New Castle Drive and Ocean Highway	*7
West side of intersection of Bayshore Drive and Ocean Highway	*7
Victoria Canal	*4
6th Canal	*4
Maps available for inspection at the Town Hall, South Bethany, Delaware.	
GEORGIA	
City of Atlanta, Fulton and DeKalb Counties (FEMA Docket No. 6592)	
Chattahoochee River:	
About 0.63 mile downstream of Bankhead Highway	*766
About 0.40 mile upstream of Interstate Route 75	*778
Lanes Road Tributary:	
At mouth	*822
About 0.64 mile upstream of the mouth	*829
Proctor Creek:	
At mouth	*768
About 0.4 mile upstream of Bolton Road	*768
Whetstone Creek:	
At Mouth	*773
Just downstream of Marietta Road	*773
East Fork Whetstone Creek:	
At mouth	*773
Just downstream at Adams Drive	*773
Peachtree Creek:	
At mouth	*774
Just downstream of Ridgewood Road	*774
Maps available for inspection at the Bureau of Highways and Streets, City Hall, 3rd Floor, 68 Mitchell Street SW., Atlanta, Georgia 30335.	
Unincorporated Areas of Columbia County (Docket No. FEMA-6605)	
Savannah River:	
At county line	*184
Just upstream of Stevens Creek Dam	*195
Just upstream of State Highway 28	*202
About 0.33 miles upstream of confluence of Uchee Creek	*206
Watery Branch:	
Mouth at Savannah River	*196
About 1,650 feet upstream of Point Comfort Road	*201
Watery Branch Tributary:	
At confluence with Watery Branch	*197
About 140 feet upstream of confluence with Watery Branch	*201
Jones Creek:	
Mouth at Savannah River	*198
About 4,950 feet upstream of mouth at Savanna River	*201
Bettys Branch:	
Mouth at Savannah River	*204
About 3,200 feet upstream of Bettys Branch Road	*205
Uchee Creek:	
Mouth at Savannah River	*205
About 8,400 feet upstream of Washington Road	*209
About 9,700 feet upstream of Washington Road	*213
Maps available for inspection at the Planning Department, P.O. Box 11024, Matinez, Georgia.	
City of Warner Robins, Houston County (Docket No. FEMA-6592)	
Bay Gall Creek:	
About 500 feet upstream of mouth	*283
About 1,300 feet upstream of mouth	*286
Just downstream of Richard Russell Parkway	*293
Just upstream of Moody Road	*298
About 1,500 feet upstream of Moody Road	*303
Howard Branch:	
At mouth	*301
At confluence with Robins Run	*316
About 5,750 feet above the mouth	*None
Robins Run:	
At confluence with Howard Branch	*316
About 1,700 feet upstream of Angus Boulevard	*337
Maps available for inspection at the Engineering Department, City Hall Building, 700 Watson Boulevard, Warner Robins, Georgia.	
IDAHO	
Garden City (City), Ada County, FEMA-6619	
Boise River:	
Intersection of Reed Street and East 40th Street	*2,651
Intersection of Adams Street and East 47th Street	*2,638
Maps available at City Hall, 201 E. 50th Street, Garden City, Idaho.	
ILLINOIS	
City of Joliet, Will County (Docket No. FEMA-6592)	
Rock Run North:	
Approximately 0.5 mile downstream of Essington Road	*576
Approximately 0.3 miles upstream of Theodore Street	*584
Sunnyland Drain:	
Approximately 1.9 miles above confluence with DuPage River	*602
Approximately 950 feet upstream of confluence of Sunnyland Drain Tributary	*606
Sunnyland Drain Tributary:	
At confluence with Sunnyland Drain	*602
Just upstream of Hennepin Drive	*603
Just upstream of U.S. Route 30	*606
St. Francis Academy Creek:	
Just upstream of Theodore Street	*622
Approximately 1,150 Feet upstream of Theodore Street	*634
St. Anne School Tributary:	
Just upstream of Theodore Street	*627
Approximately 800 feet upstream of Catherine Street	*634
Rock Run Tributary No. 2:	
At confluence with Rock Run North	*575
Approximately 860 feet upstream of West Ridge Lane	*585
Maps available for inspection at the Office of the Director of Community and Economic Development, City Hall, 150 West Jefferson Street, Joliet, Illinois 60431.	
Unincorporated Areas of St. Clair County (Docket No. FEMA-6630)	
Little Canteen Creek:	
About 5,700 feet downstream of Circle Drive	*456
About 800 feet upstream of Circle Drive	*473
Ash Creek:	
At mouth	*425
Just upstream of State Route 117	*427
About 2,300 feet upstream of Keck Road	*427
Just upstream of State Road 161	*431
Just downstream of State Route 158	*438
Engle Creek:	
About 3,000 feet upstream of County Road 43	*509
About 4,400 feet upstream of County Road 43	*514
Maps available for inspection at the Intergovernmental Grants Department, Community Development Division, St. Clair County Courthouse, Belleville, Illinois 62220.	
INDIANA	
Town of Bristol Elkhart County (Docket No. FEMA-6630)	
St. Joseph River:	
About 1.29 miles downstream of Division Street	*752
About 0.77 mile upstream of Division Street	*756
Little Elkhart River:	
At mouth	*755
About 0.59 mile upstream of State Route 15	*757
Maps available for inspection at the Bristol Town Hall, P.O. Box 122, Bristol, Indiana.	
City of Elkhart, Elkhart County (Docket No. FEMA-6630)	
St. Joseph River:	
About 0.63 mile downstream of Nappanee Street	*721
Just downstream of Indiana & Michigan Electric Co. Dam	*730
Just upstream of Indiana & Michigan Electric Co. Dam	*742
About 1.55 miles upstream of the confluence of Puterbaugh Creek	*743
Elkhart River:	
At mouth	*729
Just downstream of Elkhart Avenue	*729
Puterbaugh Creek:	
At mouth	*742
Just downstream of Greenleaf Boulevard	*742
Maps available for inspection at the Planning Office, Municipal Building, Elkhart, Indiana 46516.	
IOWA	
City of Des Moines, Polk County (Docket No. FEMA-6619)	
Fourmile Creek:	
About 3,750 feet downstream of Scott Avenue	*785
About 1,400 feet upstream of Dean Avenue	*797
About 400 feet downstream of University Avenue	*800
About 3,800 feet upstream of East Douglas Avenue	*824
Seventh Ward Ditch:	
Just upstream of Easton Boulevard	*815
Just Upstream of Chicago and North Western Railroad	*830
Maps available for inspection at the Engineering Department, City Hall, East First and Locus Street, Des Moines, Iowa.	
City of Iowa City, Johnson County (Docket No. FEMA-6619)	
Iowa River:	
About 0.6 mile downstream of the confluence of Willow Creek	*640
Just downstream of Burlington Street and Dam	*645
Ralston Creek:	
At mouth	*643
Just downstream of Dam	*679
Just upstream of Dam	*698
Just downstream of Scott Boulevard	*728
South Branch Ralston Creek:	
At confluence with Ralston Creek	*669
About 1,975 feet upstream of Brookside Drive	*712
Willow Creek:	
At mouth	*641
About 600 feet downstream of South Riverside Drive	*541
Rapid Creek:	
About 2.5 miles above mouth	*674
About 4.3 miles above mouth	*685
Maps available for inspection at the Engineering Department, 410 E. Washington Street, Iowa City, Iowa.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
LOUISIANA	
Lafayette, City, Lafayette Parish (FEMA Docket No. 6630)	
Lateral F: Approximately 500 feet upstream of upstream corporate limits	*32
Lateral No. 1 West Channel: Upstream of U.S. Route 90	*36
Maps available for inspection at the Lafayette City Hall, P.O. Box 4017-C, Lafayette Louisiana.	
Lafayette Parish (FEMA Docket No. 6630)	
Beau Basin:	
At downstream side of U.S Route 167	*40
Approximately 1,050 feet upstream of corporate limits at limit of flooding affecting parish	*41
West Coulee Mine: Aproximately 200 feet upstream of Interstate 10	*38
Lateral F2: At downstream side of Old Spanish Trail	*33
Lateral F:	
At downstream corporate limits with Town of Scott	*36
Approximately 3,750 feet downstream of U.S. Highway 90	*32
Maps available for inspection at the Lafayette Parish Court, P.O. Box 2009, Lafayette, Louisiana.	
St. Mary Parish (FEMA Docket No. 6619)	
Gulf of Mexico:	
Englewood area, north of U.S. Route 90, south of Southern Pacific Railroad, east of Bayou Boeuf	*6
Maps available for inspection at the St. Mary Parish Courthouse, Franklin Louisiana.	
MARYLAND	
Anne Arundel County (FEMA Docket No. 6630)	
Hall Creek:	
Downstream corporate limits	*44
Most upstream corporate limits	*53
Approximately 1600' upstream of most upstream corporate limits	*55
Maps available for inspection at the Office of Planning and Zoning, Arundel Center, Room 202, Calvert and Clay Streets, Annapolis, Maryland	
Washington County (FEMA Docket No. 6619)	
Antietam Creek:	
Approximately 1,000' upstream Mount Aetna Road	*475
Corporate limits located approximately 800' upstream of U.S. Route 40	*477
Upstream side State Route 64	*483
Tributary No. 74:	
Approximately 350' upstream of the confluence with West Branch	Zone C
Downstream of Chessie System	Zone C
Map available for inspection at the Courthouse Annex, Summit Avenue, Hagerstown Maryland.	
MASSACHUSETTS	
Boylston, Town, Worcester County (FEMA Docket No. 6630)	
Approximately 1,400 feet downstream of Sewall Pond Outlet	*402
Sewall Pond Outlet	*402
Approximately 400 feet downstream of Access Road at YMCA culvert	*402
Maps available for inspection at the Municipal Office Building, 84 Main Street, Boylston, Massachusetts.	
MICHIGAN	
City of Ann Arbor, Washtenaw County (Docket No. FEMA-6630)	
Huron River:	
Just upstream of Broadway Street	*767
Just downstream of Argo Dam	*768
Just upstream of Argo Dam	*774
Allen Creek Overland Flow:	
At mouth	*768
Just downstream of Conrail (downstream crossing)	*768
Just upstream of Conrail (downstream crossing)	*777
Just downstream of Hoover Avenue	*825
Just downstream of South Main Street	*874
Eberwhite Drain Overland Flow:	
At confluence with Allen Creek Overland Flow	*811
Just downstream of Lutz Avenue	*866
Murray-Washington Drain Overland Flow:	
At confluence with Allen Creek Overland Flow	*802
Just downstream of 7th Street	*820
About 150 feet upstream of 7th Street	*830
About 1,000 feet upstream of 8th Street	*832
West Park-Miller Drain Overland Flow:	
At confluence with Allen Creek Overland Flow	*800
At confluence of West Park-Miller Drain South Branch Overland Flow	*801
West Park-Miller Drain North Branch Overland Flow:	
At confluence with West Park-Miller Drain Overland Flow	*801
Just downstream of Wesley Street	*850
West Park-Miller Drain South Branch Overland Flow:	
At confluence with West Park-Miller Drain Overland Flow	*801
Just downstream of North Revena Boulevard	*850
Maps available for inspection at the City Hall, 100 North Fifth Street, Ann Arbor, Michigan 48107.	
City of Trenton, Wayne County (Docket No. FEMA-6630)	
Frank and Poet Drain:	
Just upstream of Vreeland Road	*582
Just upstream of Conrail	*584
Just downstream of King Road	*587
Marsh Creek:	
About 800 feet upstream of West Road	*591
Just downstream of King Road	*592
Maps available for inspection at the Engineering Department, 2800 Third Street, Trenton, Michigan.	
MONTANA	
Missoula County (Unincorporated areas) FEMA-6611	
Clark Fork:	
Upstream edge of Schwartz Creek Road crossing	*3,474
Approximately 100 feet upstream of Rock Creek Road crossing	*3,539
Rock Creek: Upstream edge of first County Road crossing	*3,530
Maps available for inspection at Planning and Zoning Department, 201 West Spruce, Missoula, Montana 59802.	
NEBRASKA	
City of Beatrice, Gage County (Docket No. FEMA-6592)	
Indian Creek:	
At confluence with Big Blue River	*1,259
About 1,600 feet upstream of Highway 77	*1,263
Big Blue River:	
Approximately 3,600 feet above confluence with Bear Creek (at downstream limit of detailed study	*1,253
At confluence with Indian Creek	*1,259
Approximately 11,600 feet above confluence with Indian Creek (at upstream limit of detailed study	*1,261
Maps available for inspection at the City Clerk's Office, 205 North Fourth Street, Beatrice, Nebraska.	
NEW HAMPSHIRE	
Keene, City, Cheshire County (FEMA Docket No. 6619)	
Ash Swamp Brook:	
Approximately 1,330' downstream of State Route 9	*473
Approximately 535' downstream of State Route 9	*474
Downstream State Route 9	*475
Approximately 125' upstream of State Route 9	*479
Approximately 1,200' upstream of State Route 9	*481
Approximately 1,900' upstream of State Route 9	*483
Maps available for inspection at 3 Washington Street, Keene, New Hampshire.	
NEW JERSEY	
Lawrence, Township, Mercer County (FEMA Docket No. 6630)	
Shabakunk Creek:	
Upstream side of U.S. Route 1	*55
Upstream side of U.S. Route 206	*63
At confluence of West Branch-Shabakunk Creek	*64
At upstream corporate limits	*73
West Branch-Shabakunk Creek:	
At confluence of Shabakunk Creek	*64
At upstream corporate limits	*68
Little Shabakunk Creek:	
Upstream side of U.S. Route 1	*56
Upstream side of Princeton Pike	*65
Upstream side of US 206	*82
At abandoned railroad bridge (Trenton-Lawrenceville)	*99
Approximately 475' upstream of abandoned railroad bridge (Trenton-Lawrenceville)	*101
Tributary A:	
At confluence with Little Shabakunk Creek	*88
Approximately 350' upstream of confluence with Little Shabakunk Creek	*88
Maps available for inspection at the Township Manager's Office, 2207 Lawrenceville Road, Lawrenceville, New Jersey.	
Stone Harbor, Borough, Cape May County (FEMA Docket No. 6630)	
Atlantic Ocean: Intersection of Third Avenue and 122nd Street	*10
Maps available for inspection at the Stone Harbor Borough Hall, New Jersey.	
Waldwick, Borough, Bergen County (FEMA Docket No. 6538)	
Hohokus Brook:	
Downstream corporate limits	*187
Approximately 800' downstream of Dam No. 2	*198
Approximately 600' upstream of Dam No. 2	*209
Approximately 800' upstream of Dam No. 2	*209
Maps available for inspection at the Borough Clerk's Office, 15 East Prospect Street, Waldrick, New Jersey.	
NEW YORK	
Fayetteville, Village, Onondaga County (FEMA Docket No. 6630)	
Limestone Creek Main Channel (before levee overtopping):	
Upstream of dam	*436
Approximately 90' downstream of Limestone Plaza	*437
Upstream of East Genesee Street	*441
Approximately 1,400' downstream of corporate limits	*445
At upstream corporate limits	*452
Limestone Creek Overbank:	
Upstream side of Kennedy Street (extended)	*433
Upstream of East Genesee Street	*437

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Approximately 265' upstream of Sweet Road Part 2	*441
Maps available for inspection at the Municipal Building, Fayetteville, New York.	
Manlius, Town, Onondaga County (FEMA Docket No. 6630)	
Chittenango Creek:	
Downstream corporate limits	*392
Approximately 200' upstream of Interstate 90 eastbound lane	*401
Upstream of Kirkville Road	*404
Approximately 760' upstream of upstream corporate limits	*408
Limestone Creek:	
Approximately 200' upstream of confluence with Chittenango Creek	*398
Upstream State Route 115/North	*396
At downstream corporate limits of Village of Fayetteville	*432
At upstream corporate limits of Village of Fayetteville	*452
Approximately 2,290' downstream of Dam	*467
Limestone Creek overbank:	
At downstream corporate limits of Village of Fayetteville	*432
Approximately 275' upstream of East Genesee Street	*438
Maps available for inspection at the Town Hall, 301 Brooklea Drive, Fayetteville, New York.	
OHIO	
Unincorporated Areas, Clermont County (Docket No. FEMA-6630)	
O'Bannon Creek:	
At County Boundary	*604
About 0.8 mile upstream of State Route 132	*812
Right Bank Tributary to O'Bannon Creek:	
At mouth	*774
Just upstream of County Road	*806
East Fork Little Miami River:	
About 400 feet downstream of Round Bottom Road	*527
About 2.27 miles upstream of State Route 222	*605
About 250 feet downstream of State Route 133	*804
About 2.84 miles upstream of State Route 32	*839
Stonelick Creek:	
At confluence with East Fork Little Miami River	*538
About 1.9 miles upstream of State Route 132	*714
Maps available for inspection at the County Planning Commission, 76 S. Riverside, Batavia, Ohio.	
RHODE ISLAND	
Newport, City, Newport County (FEMA Docket No. 6630)	
Narragansett Bay:	
Newport Harbor shoreline	*14
Bridge Street	*12
Lucas Avenue	*12
Maps available for inspection at the Newport City Hall, 43 Broadway, Newport, Rhode Island.	
SOUTH CAROLINA	
Unincorporated Areas of Richland County (Docket No. FEMA-6611)	
Crane Creek:	
Just upstream of Interstate 20	*177
Just upstream of U.S. Route 215	*179
Approximately 1.7 miles upstream of U.S. Route 215	*190
Maps available for inspection at the Richland County Judicial Center, County Administrator's Office, 1701 Main Street, Columbia, South Carolina 29202.	
TENNESSEE	
City of Knoxville, Knox County (Docket No. FEMA-6605)	
First Creek:	
Just upstream of Interstate Highway 640	*957
Just downstream of Knox Road	*963
Maps available for inspection at the Graphics Department, P.O. Box 1631, Knoxville, Tennessee 37901.	
TEXAS	
Point Comfort, City, Calhoun County (FEMA Docket No. 6630)	
Lavaca Bay:	
Shoreline at Austin Street (extended)	*12
Shoreline at most southern corporate limits	*15
Maps available for inspection at the City Hall, 106 Jones, Point Comfort, Texas.	
VIRGINIA	
Accomack County (FEMA Docket No. 6630)	
Chesapeake Bay:	
Northend of Pintail and Canvasback Lanes	*7
Intersection of Canvasback Lane and Black Mallard Way	*7
Maps available for inspection at the Department of Public Works, County Administration Building, Route 764, Accomack, Virginia.	
WEST VIRGINIA	
Ripley, City, Jackson County (FEMA Docket No. 6592)	
Mill Creek:	
Approximately 400' downstream of Interstate Route 77	*597
Confluence of Sycamore Creek	*601
Downstream of U.S. Route 21 (limit of flooding affecting community)	*605
Maps available for inspection at the City Hall, 113 South Church Street, Ripley, West Virginia.	
WISCONSIN	
Village of Deforest Dane County (Docket No. FEMA-6630)	
Yahara River:	
Just downstream of South Road	*925
Just upstream of Chicago, Milwaukee, St. Paul, and Pacific Railroad	*933
Just upstream of North Street	*934
About 4,100' upstream of North Street	*935
Maps available for inspection at 113 South Durkee Street, P.O. Box 515, DeForest, Wisconsin.	

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001–4128); Executive Order 12127, 44 FR 19367; and delegation of authority to the Administrator)

Issued: January 24, 1985.

Jeffrey S. Bragg,

Administrator, Federal Insurance Administration.

[FR Doc. 85-4787 Filed 2-27-85; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF DEFENSE

48 CFR Part 209

Defense Acquisition Regulatory System; Debarment, Suspension and Ineligibility; Interim Changes to the DoD FAR Supplement

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Deputy Secretary of Defense on 27 August 1984 issued interim changes to the DoD FAR Supplement (DFARS) Subpart 209.4, Debarment, Suspension, and Ineligibility, to the Secretaries and the Military Departments and Directors of Defense Agencies. The changes concern the debarment of contractors when debarment is based on a felony criminal conviction.

DATES: Effective August 27, 1984. Any comments on the changes to DFARS 209.4 are to be submitted to the DAR Council no later than April 1, 1985.

ADDRESS: Interested parties may submit comments to: Defense Acquisition Regulatory Council, ATTN: Executive Secretary, OUSDRE(AM)DARS, c/o 3D139, Pentagon, Washington, D.C. 20301–3062.

FOR FURTHER INFORMATION CONTACT: Charles W. Lloyd, Executive Secretary DAR Council, (202) 697–7267.

SUPPLEMENTARY INFORMATION:

Background

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1984 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1984 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 84–1 through 84–3.

Interim Changes to 48 CFR Part 209

The Department of Defense has issued interim changes to the DoD FAR Supplement concerning the debarment of contractors when the debarment is based on a felony criminal conviction. The changes provide that: (1) Contractors will generally be debarred for more than one year when the cause of debarment is based on a felony criminal conviction; and (2) a decision by the debarring official not to debar or to debar for a period of one year or less must be approved by the Secretary concerned or, in the case of the Defense Agencies, the Under Secretary of Defense for Research and Engineering.

List of Subjects in 48 CFR Ch.2

Government procurement.

Adoption of Amendments

Therefore, the DoD FAR Supplement contained in 48 CFR Chapter 2 is amended as set forth below.

1. The authority citation for Chapter 2 reads as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, DoD FAR Supplement 201.301.

PART 209—CONTRACTOR QUALIFICATIONS

2. Section 209.405 is amended by adding a sentence at the end of paragraph (a)(1) to read as follows:

209.405 Effect of Listing.

(a)(1) * * * Notwithstanding the above, if the debarment is based on a felony criminal conviction, exceptions from this section based on compelling reasons shall not be effective without the prior written concurrence of the Secretary concerned or, in the case of the Defense Agencies the Under Secretary of Defense for Research and Engineering.

* * * * *

3. Section 209.405–2 is added to read as follows:

209.405–2 Restrictions on Subcontracting.

If a debarment is based on a felony criminal conviction, Government consent or approval of a subcontract with a debarred contractor shall not be given unless the Secretary concerned or, in the case of the Defense Agencies the Under Secretary of Defense for Research and Engineering, concurs in writing with such consent or approval.

4. Section 209.406–1 is amended by adding paragraph (d) to read as follows:

209.406–1 General.

(d) If the cause for debarment as listed in FAR 9.406–2 is based on a felony criminal conviction, the contractor's acts or omissions and any mitigating factors may only be considered in determining the period of debarment (see FAR 9.406–4).

* * * * *

5. Section 209.406–4 is added to read as follows:

209.406–4 Period of Debarment.

(a) If debarment is based on a felony criminal conviction, the period shall be commensurate with the seriousness of the crime and will generally be for more than one year but not to exceed 3 years. A decision by the debarring official not to debar or to debar for one year or less than one year must be approved in writing by the Secretary concerned or, in the case of the Defense Agencies the Under Secretary of Defense for Research and Engineering. A decision to debar for more than one year is subject to review by the Secretary concerned or, in the case of the Defense Agencies the Under Secretary of Defense for Research and Engineering. If suspension precedes debarment, the suspension period shall be considered in determining the debarment period.

(c) If the debarment is based on a felony criminal conviction, the period or extent of debarment may only be reduced if the conviction upon which the debarment was based is reversed.

February 22, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85–4716 Filed 2–27–85; 8:45 am]

BILLING CODE 3810–01–M

ENDANGERED SPECIES COMMITTEE

50 CFR Parts 450, 451, 452, and 453

Rules for Applying for Endangered Species Act Exemptions and for Endangered Species Committee Consideration of Such Applications

AGENCIES: Endangered Species Committee, Department of the Interior, and Department of Commerce.

ACTION: Final rules.

SUMMARY: These rules implement the changes in the exemption process made by the Endangered Species Act Amendments of 1982 (Pub. L. 97–304), enacted on October 13, 1982. Existing rules for the Endangered Species Committee (the Committee) under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.* (the Act) were published April 4, 1980 (45 FR 23354). These rules cover the process from the time of application to the final determination by the Committee. Because initial action on an application involves action by the Secretary of the Interior or Commerce, these rules are issued by the Committee, as well as by both Secretaries.

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Jon H. Goldstein, Office of Policy Analysis, Room 4423, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240; 202–343–7258.

SUPPLEMENTARY INFORMATION:

The Exemption Process

The Endangered Species Act Amendments of 1978 (Pub. L. 95–632), enacted on November 10, 1978, established a procedure for obtaining exemptions from section 7 of the Endangered Species Act. This procedure was amended by the 1979 Amendments to the Act (Pub. L. 96–159) enacted on December 28, 1979 and was further amended by the 1982 Amendments to the Act (Pub. L. 97–304).

Exemption Application

Section 7(a)(2) requires Federal agencies to insure, in consultation with the Secretary of the Interior or Commerce, that their actions are not likely to jeopardize the continued existence of endangered or threatened species or destroy or adversely modify critical habitats. Applications for exemption from this requirement may be made by a Federal agency, by the Governor of a State in which a proposed action would occur, or by a person whose permit or license application has been denied primarily because of section 7(a)(2) considerations. An application by a license or permit applicant may be made following such an administrative denial, even if that denial may be appealed within the permitting or licensing agency. However, applicants may not pursue both an exemption and a further administrative review simultaneously. An application is to be directed to the appropriate Secretary, who evaluates it to determine if certain criteria are met. If they are, the Secretary prepares a report to the Endangered Species Committee, which must then decide on whether the exemption should be granted.

These regulations implement sections 7(e) through (*l*) of the Act.

Threshold Review: Upon receipt of an application, the Secretary has 10 days to determine if the applicant is qualified, the application is timely, and certain minimum information has been provided. The Secretary has 20 days from the date of receipt of an application (or a longer time agreed upon with the applicant) to conclude his threshold review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and the exemption applicant have refrained from making any irreversible or irretrievable commitment of resources prohibited by section 7(d); and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith, and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

Under the 1978 Amendments, these determinations were made by a specially appointed review board. The 1982 Amendments modified the process by eliminating the review boards and

substituting the Secretary as the authority responsible for the threshold determinations. The Amendments modified the criteria by adding the words "to the extent determinable" in criterion (2) and by eliminating a fourth criterion (whether an irresolvable conflict exists). The time period for making the determinations was shortened from 60 to 20 days. If the Secretary makes affirmative determinations on all three questions, he must prepare a report for the Endangered Species Committee. If the Secretary determines that the application fails to meet these requirements, the Secretary shall notify the applicant in writing and the process shall terminate. Any determination by the Secretary that the exemption applicant has not met one of the threshold requirements is final agency action and may be appealed to a Federal court.

Report to Committee: If the Secretary determines that all three requirements are met, he must submit a report to the Committee within 140 days after making the determination (or a longer time agreed upon with the applicant), discussing:

(1) The availability of reasonable and prudent alternatives to the proposed action, and the nature and extent of the benefits of the agency action and of alternative courses of action consistent with conserving the species or the critical habitat;

(2) A summary of the evidence concerning whether or not the proposed action is in the public interest and is of national or regional significance;

(3) Appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(4) Whether the Federal agency concerned and the exemption applicant refrained from making any irreversible or irretrievable commitment of resources prohibited by section 7(d).

The nature of the Secretary's report to the Committee is the same as that formerly required to be prepared by the review board. However, the 1982 Amendments specify that the Secretary's report must be based on the record of a hearing conducted by an Administrative Law Judge. The Administrative Law Judge is responsible for assuring that all concerned parties have the opportunity to contribute to the record.

Endangered Species Committee: Sections 7(e) and 7(h) require the Endangered Species Committee to review all applications submitted to it by the Secretary and to determine whether or not to grant exemptions. The Endangered Species Committee is composed of:

(1) The Secretary of the Interior, who is the Chairman;

(2) The Secretary of Agriculture;

(3) The Secretary of the Army;

(4) The Chairman of the Council of Economic Advisors;

(5) The Administrator of the Environmental Protection Agency;

(6) The Administrator of the National Oceanic and Atmospheric Administration; and

(7) A person from each affected State, as determined by the Secretary, or if no State is affected, an otherwise qualified individual, appointed by the President for each exemption application.

The Committee must determine whether or not to grant an exemption within 30 days after receiving the Secretary's report. An exemption requires an affirmative vote of five or more Committee members voting in person. To grant an exemption, the Committee must:

A. Determine that—

(1) There are no reasonable and prudent alternatives to the proposed action;

(2) The benefits of the action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat and the action is in the public interest;

(3) The action is of regional or national significance; and

(4) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and

B. Establish reasonable mitigation and enhancement measures that are necessary and appropriate to minimize the adverse effects of the agency action upon the species or critical habitat concerned.

Any final determination by the Committee on A. and B. is final agency action and subject to judicial review under Chapter 7 of Title 5 of the United States Code.

If an exemption is granted by the Committee, the exemption applicant must carry out and pay for the mitigation and enhancement measures ordered by the Committee. The exemption applicant also must report to the Council on Environmental Quality annually until the mitigation and enhancement measures are completed.

Sections 7(e) and 7(h) authorize the Committee to hold hearings, take testimony, receive evidence, request information, use the United States mails as a Federal agency, detail Federal agency personnel, obtain administrative support services from the General Service Administration, promulgate and amend rules, regulations and procedures, issue and amend orders, and issue subpoenas. All meetings and records of the Committee shall be open to the public.

The 1982 Amendments reduced the time for the Committee to act from 90 days to 30 days after receiving the Secretary's report. The Amendments also added the fourth determination (commitment of resources) to those the Committee must make.

Description of Rulemaking

These regulations cover the procedures for the period between the submission of an application for exemption to the appropriate Secretary and the Committee's determination of whether or not to grant an exemption. The regulations establish procedures for filing exemption applications, initial review and handling of applications, and information gathering by the Secretary and the Endangered Species Committee, including procedures for conducting hearings. These regulations implement section 7(e) through (l) of the Act.

Executive Order 12291 and the Regulatory Flexibility Act

It has been determined that these revisions do not constitute a "major" rule under the criteria established by Executive Order 12291. Sponsor costs will vary with each application and are dependent on the applicant's level of effort. Based on experience to date, only 1–2 applications are expected per year. Thus, the cost per application would have to approach $50 million for the $100 million threshold to be met. Given expected Federal costs of less than $150,000 per application, the likelihood of applicant costs over 300 times as great is remote. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. Although small entities could face proportionately higher administrative costs, those costs are not expected to be significantly higher. The number of small entities applying for exemptions is expected to be few or none.

Paperwork Reduction Act

The information collection requirements contained in Parts 451 and Parts 452 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*, because it is

anticipated there will be fewer than ten respondents annually.

Environmental Effects

An environmental assessment (EA) analyzing the potential impacts of the proposed rules upon the human environment was prepared by the staff of the Committee. Based on this EA a finding of no significant impact (FONSI) has been made. The EA and FONSI are available for review at the Office of Policy Analysis, Room 4423, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20240. On the basis of the EA and the FONSI an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4332 (2)(C) is not required.

Comments and Modifications in Proposed Rules

Ten comments were received on the proposed rules (48 FR 52099, November 16, 1983). These comments have been carefully considered and many of the suggestions made by the commenters have been adopted. In addition, a few minor technical changes were made in order that the regulations conform to the Act. The comments received and the reasons for accepting or rejecting them are as follows:

1. Although the 1982 Amendments expedited the exemption process, one commenter was of the opinion that the process remained lengthy and potentially costly, and recommended that adequate review and appeal procedures be provided during formal consultation, so as to reduce the need for exemption applications. These rules do not address the consultation process. The Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) issued proposed rules for conducting consultation on June 29, 1983 (48 FR 29990).

2. Two respondents recommended modifying the time periods alloted for conducting a number of tasks. One commenter suggested extending the time period for submitting an exemption application following termination of the consultation process. Another recommended shortening the time period for the Secretary to submit his report to the Committee, while lengthening the period for the Committee to reach its final determination. These deadlines are statutorily established, and neither the Committee nor the Secretaries have the authority to alter them.

3. Three commenters recommended that §451.02(d)(2) be revised so as to comport more closely with the statutory language. Congress amended section 7(g)(2)(A) of the Act in order to provide more expeditious access to the exemption process primarily at the option of project sponsors. The intention of the amendment was to allow an exemption application to be submitted, following a permit or license denial, without requiring exhaustion of the opportunities for administrative review within the permitting or licensing agency. However, in changing the statute, Congress did not directly address the situation in which an agency action is not subject to adminstrative review. This is the case in certain regulatory functions performed by the Department of the Army. In such a situation, requiring administrative reviewability of a permit denial effectively bars appeal to the Endangered Species Committee, since administrative review is unavailable. It seems clear that in revising the statute, it was not the intent of Congress to exclude a permit applicant from access to the exemption process simply because his permit was denied by an agency whose procedures do not provide for adminstrative review.

The legislative history behind section 7(g)(2)(A) of the Act indicates that the Conference Committee which crafted the statute's language was seeking a compromise between conflicting House and Senate versions concerning how final an agency decision must be before appeal to the Endangered Species Committee is appropriate. While the House version would have allowed appeal in some cases as soon as the agency informed the applicant it was likely to be denied a permit for endangered species reasons, the Senate version required exhaustion of available administrative review procedures before an exemption application could be filed. Under either version, a denial in an agency where administrative review was unavailable would have been sufficient. In reaching its compromise, the Conference Committee required more than the House bill but less that than the Senate. The compromise called for a formal agency denial (more than a notice that the application was likely to be denied, but less than an exhaustion of administrative appeals).

Because the statue does not directly address situations in which adminstrative review is not available, section 7(g)(2)(A) of the Act is ambiguous as to when permit applicants may appeal an agency denial in such situations. After a review of the legislative history and policy purposes which Congress sought to further in enacting the statute, the Committee has selected the language of § 451.02(d)(2) as the best implementation of Congressional intent.

4. One respondent argued that § 451.02(e) should require a discussion of the interrelationship between the jeopardizing project and other projects, existing or proposed, in order to be certain that opportunities to avoid jeopardy are not overlooked. Given the scrutiny attendant to instances of conflict between proposed projects and listed species, the interrelationships between projects are not likely to go unaddressed. They are very likely to be the subject of consultation, the biological assessment, or an environmental impact statement. An action agency always has the option of approaching the sponsors of an interrelated project regarding a possible modification which would avoid jeopardy to a species by the proposed action. However, the Committee is not empowered to order modifications in interrelated projects which are not within its jurisdiction. The Committee does have the authority to grant an exemption, conditioned upon the consummation of a cooperative agreement between the project sponsors and the sponsors of an interrelated project, and an exemption applicant is free to submit such an alternative for the Committee's consideration during the course of the exemption process. In light of the Committee's inability to order changes in interrelated projects, however, the additional requirement proposed by the commenter would impose an unnecessary burden on the applicant. Therefore, the commenter's suggestion is not adopted.

5. One commenter argued that in §§ 451.02(e)(2)(ix), 451.02(e)(3)(x), and 451.02(e)(4)(ix) the word "description" should be used rather than the word "list" in reference to any resources committed to the proposed action. The word "description" is accepted as a preferable statement of what is needed by the Secretary and the Committee to evaluate the merits of the application. The commenter also proposed that, "a description of their [the committed resources'] utility, if any, in the event that the proposed action is not completed" be required of the applicants. The description provided should be sufficiently complete so the usefulness of the resources under alternative scenarios can be easily evaluated. Insufficient descriptions will constitute an incomplete application. Thus, the additional language suggested by the commenter is unnecessary.

6. One commenter noted that some of the required contents listed in §§ 451.02(e)(3) and 451.02(e)(6) overlap with information contained in other record documents. The commenter

believes that reference to those other record documents would relieve applicants of the burden of amassing detailed information a second time. Whenever excessive burdens can be avoided they should be, including the appropriate cross-referencing of already prepared materials. However, such cross referencing must include citations to specific portions of existing materials. Since those materials were prepared for other purposes, they may not address the Committee's needs exactly and additional explanation of the cross referenced materials may be necessary. The exemption applicant has a responsibility to present its case in the clearest and most persuasive manner possible.

7. One commenter recommended that § 451.02(e)(3) be revised in order to make it clear that this section applies only to non-Federal permit and license applicants. Appropriate clarifying language has been added.

8. One commenter suggested revising § 451.02(e)(4)(iii) to require a Governor who is an exemption applicant to provide a description of any permits, licenses, or other legal requirements which must still be satisfied or obtained. The commenter also suggested revising the text to make the meaning clearer. This suggestion has been adopted.

9. One commenter felt that the use of the word "full" in each of the subsections of § 451.02(e)(5) created a potential for misunderstanding. At their suggestion the word "complete" has been substituted.

10. One commenter felt that the 10 days allotted to determine whether an application is complete is inadequate [§ 451.02(f)(2)]. However, the Act only allows the Secretary 20 days to make the substantive threshold decisions. Thus, allowing 10 days to review the application for completeness prior to making those decisions seems sufficient.

11. One commenter expressed concern that the consequences of exceeding the time limits spelled out in §§ 451.02(f)(2), 452.03(a), and 453.03(a) are not specified. In each of these cases the Secretary or the Committee is required to act within a given time. The times given in each section are required by the statute. In each instance, the requirements set by the Congress will be followed. Thus, there is no need to set forth specific consequences for exceeding the limits.

12. One commenter suggested that the notification procedure in § 451.02(h) (mailing **Federal Register** notices to Committee members) could mean a significant delay in informing Committee members of pending applications, especially given the short deadlines. The section has been revised to require prompt notification upon receipt of an application.

13. One commenter noted that neither the Act nor the proposed rules specifies how the votes from each affected state in a multi-state project are to be counted. The legislative history of the Act, however, states the intent of Congress that the States shall have one vote among them. Consequently, a new § 453.05(d) has been added and other sections renumbered appropriately.

14. One commenter found the language in §§ 451.03(b)(1) and 451.03(b)(2) to be ambiguous, though the statute is clear, on the timing of the appointment of state members to the Committee. In both cases, editorial changes have been made to make the timing clear and consistent with the statute.

Another commenter suggested that the Act provides no authority for the President to appoint an individual under § 451.03(b)(2) to serve on the Committee when no State is affected by the agency action. The commenter is correct that the statute does not explicitly provide for the appointment of such a member. Nevertheless, it is clear that Congress did intend that there be seven votes on the Committee. The questioned provision is a repetition of a section of the exemption process rules promulgated in 1980 to effectuate this intent in the event that an agency action would affect no State. Congress has amended the Act twice since the promulgation of the 1980 rules (Pub. L. 96–246, May 23, 1980 and Pub. L. 97–304 October 13, 1982) and has expressed no dissatisfaction with this provision of the rules. Consequently, the provision has been retained.

15. One commenter found it reasonable and responsible for an applicant to be given an opportunity to rebut a negative finding under § 452.03 prior to the termination of the exemption process. However, under the Act the Secretary has only 20 days to make his findings. It is impractical to provide administrative rebuttals. Further, the Secretary's determination is subject to judicial review.

16. One commenter suggested changes to § 452.04(a)(7), arguing that the Secretary must make either an affirmative or negative finding on every threshold determination, including whether resource commitments prohibited by section 7(d) of the Act have been made. This commenter argued that the phrase "to the extent determinable" in section 7(g)(3)(A)(iii) of the Act requires the Secretary to act on the commitment of resources question. The commenter also pointed out that the Committee must make a determination about commitment of resources, regardless of whether the Secretary acted on that question (section 7(h)(1)). The Committee accepts this point and, therefore, has revised § 452.04(a)(7) to say that the Secretary's report must include a discussion of commitment of resources in every case. However, the Committee does not accept the argument that the Secretary must make a determination on the issue. The Committee bases its interpretation on the legislative history of the 1982 Amendments. The Conference Report on the 1982 Amendments states that "because of the often complex nature of the finding regarding the commitment of resources and the short time frame allocated to making the initial findings, the [Conference] Committee agreed to language requiring the Secretary to make this finding *only if it is determinable in the period provided* for making the decision (emphasis added)."

17. One commenter suggested two changes to § 452.05(a)(2). One change provides for assigning technical staff to the Administrative Law Judge only if the Judge requests it. The second change provides that the technical staff cannot be employed by the agency or subsidiary agency whose action is the subject of the application. Because of the highly technical issues that the Secretary's report must address, including biological, economic, engineering and legal issues, and because of the short time frame for the preparation of the report, the Committee believes that it is necessary for the Administrative Law Judge to have the benefit of technical assistance. The Committee appreciates the commenter's concern that conflicts of interest be avoided. Section 452.07 addresses the question of separation of functions and will prevent the problems anticipated by the commenter.

18. One commenter found § 452.06(b) troublesome, because it could result in late intervention by parties unfamiliar with the proposed action. The Committee appreciates the commenter's concern that intervenors could unreasonably delay the exemption process. However, the Committee recognizes both the need to allow intervenors to participate and the ability of the presiding Administrative Law Judge to conduct the proceedings efficiently. Exemption applications have serious potential consequences which are of concern to parties who may not have been involved in earlier stages. If these parties show that their participation would assist in the determination of the issues in question, the Committee believes they should be

allowed to intervene. However, the Committee expects that the Judge will act to assure that the intervenors do not unnecessarily slow or disrupt the proceedings.

19. One commenter suggested addition of a new paragraph to § 452.07(a) providing that no person who assists the Administrative Law Judge in conducting hearings may advise the Committee in its determinations under § 453.03. This suggestion has not been adopted because the provisions included in proposed § 452.07(a) incorporate the required separation of functions provisions of the Administrative Procedure Act. It should be noted, however, that it is envisioned that each member of the Committee will be advised by his or her own regular, personal staff.

20. One commenter, concerned about the limited time allotted for performing tasks required during the exemption process, argued that additional flexibility be introduced. Noting that the regulations already allowed the deadline for the threshold determinations to be extended, upon mutual agreement of the Secretary and the exemption applicant, the commenter suggested that similar language be added to extend the 140 day deadline for submission of the Secretary's report. The Committee accepted this suggestion, because extension of the deadline by mutual agreement is permitted by the Act. This flexibility was inadvertently omitted from § 452.08(b) of the proposed rules.

21. One commenter noted that licensing and permitting agencies have procedures which may not mesh well with the procedures for an exemption. Thus an applicant may receive an exemption, but then be forced to reapply to the permitting or licensing agency and pursue the entire process again. The commenter further raised concerns that while the Committee can impose mitigation and enhancement measures on the license, only regulatory agencies can actually condition the permits or licenses. The Committee recognizes the fact that various administrative processes sometimes are not well coordinated, but it is bound by the provisions of the Act. In the case of the second concern, the Committee expects that licensing or permitting agencies will make the provisions of any exemption part of the license or permit.

22. One commenter observed that section 7(h)(1)(B) of the Act does not constrain transplantation as a mitigation or enhancement measure to historical range, and recommended that § 453.03(a)(2) be revised to delete the parenthetical reference restricting transplantation to the historical range. This recommendation has been accepted. The proposed language failed to distinguish between the consultation and exemption processes under section 7. The Services have determined that transplantation of a listed species outside of its historical range is contrary to the purpose of the Act and is not to be authorized as a means of avoiding conflicts under section 7(a)(2). However, at the exemption stage, different legal and policy considerations apply. An exemption application will come before the Committee only if there has been a jeopardy finding. If an exemption is granted to the applicant, the Committee is required to establish such reasonable mitigation and enhancement measures as are necessary and appropriate to minimize the effects of the proposed action. In some cases, such as the case of species with a limited historical range, transplantation outside of the historical range (although not a favored course of action from a biological point of view) may be the only available mitigation or enhancement measure. Accordingly, the Committee is of the opinion that transplantation outside of the historical range is legally authorized in the exemption context.

23. One commenter noted that the regulation did not specify that the exemption applicant is responsible for implementing and paying for any mitigation and enhancement measures ordered by the Committee in granting an exemption. The Committee accepts the comment and has added appropriate language to § 453.03(a)(2).

24. Noting that the Act requires an exemption recipient to submit an annual report to the Council on Environmental Quality (CEQ) describing the recipient's compliance with any required mitigation and enhancement measures, one respondent recommended that implementing language should be added to § 453.03(b). This recommendation was rejected, because it is the CEQ's responsibility to ensure that the exemption recipient complies with this provision of the Act.

25. One commenter recommended that the term "national security" be defined in order to establish parameters within which the Secretary of Defense may invoke § 453.03(d). Under the Act this is a matter for determination by the Secretary of Defense. The recommendation was rejected.

26. One commenter argued that since the Secretary will have submitted a report based on full public hearings, any hearings held by the Committee to enable it to make its final determinations should be restricted to permit only final oral statements by parties already admitted to the proceedings under § 452.06(a). Although the Committee is sympathetic with ensuring a focussed presentation, the statute provides for broad authority in the conduct of Committee hearings. Further, there is no danger that such authority will result in lengthy hearings that will delay the final determinations by the Committee, because the statute does not provide for any flexibility in the deadline for the final determinations.

27. One respondent argued that in order to reflect the statute accurately, the phrase "on any matter before the Committee" should be substituted for "on the Committee's final determinations" in § 453.05(b). The Committee interprets the phrase "any matter before the Committee" in this context to mean the final determinations of the Committee. Section 7(e)(5)(A) of the Act requires distinguishing between functions which involve a matter before the Committee and those which do not. The language in the statute providing for representatives in the constitution of a quorum is permissive; the clear intent is that representatives may participate in the conduct of routine business. Accordingly, the recommendation was rejected.

Drafting Information

List of Subjects in 50 CFR Parts 450, 451, 452, and 453

Administrative practice and procedure, Endangered and threatened wildlife, Fish, Plants (agriculture).

The primary authors of these regulations are Robert Moll and John Trezise, Office of the Solicitor, Department of the Interior, and James Douglas and Jon H. Goldstein, Office of Policy Analysis, in consultation with staff of the Secretary of Commerce and the Federal members of the Endangered Species Committee.

These regulations are issued under the authority of the Endangered Species Act, as amended, 16 U.S.C. 1531 *et seq.* Accordingly, Chapter IV of Title 50 is amended to revise Subchapter C, Parts 450, 451, 452, and 453 as set forth below:

SUBCHAPTER C—ENDANGERED SPECIES EXEMPTION PROCESS

PART 450—GENERAL PROVISIONS

Sec.
450.01 Definitions.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 450.01 Definitions

The following definitions apply to terms used in this subchapter.

"Act" means the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, et seq.

"Agency action" means all actions of any kind authorized, funded or carried out, in whole or in part by Federal agencies, including, in the instance of an application for a permit or license, the underlying activity for which the permit or license is sought.

"Alternative courses of action" means all reasonable and prudent alternatives, including both no action and alternatives extending beyond original project objectives and acting agency jurisidiction.

"Benefits" means all benefits of an agency action, both tangible and intangible, including but not limited to economic, environmental and cultural benefits.

"Biological assessment" means the report prepared pursuant to section 7(c) of the Act, 16 U.S.C. 1536(c).

"Biological opinion" means the written statement prepared pursuant to section 7(b) of the Act, 16 U.S.C. 1536(b).

"Chairman" means the Chairman of the Endangered Species Committee, who is the Secretary of the Interior.

"Committee" means the Endangered Species Committee established pursuant to section 7(e) of the Act, 16 U.S.C. 1536(e).

"Critical Habitat" refers to those areas listed as Critical Habitat in 50 CFR Parts 17 and 226.

"Destruction or adverse modification" is defined at 50 CFR 402.02.

"Federal agency" means any department, agency or instrumentality of the United States.

"Irreversible or irretrievable commitment of resources" means any commitment of resources which has the effect of foreclosing the formulation or implementation of any reasonable or prudent alternatives which would not violate section 7(a)(2) of the Act.

"Jeopardize the continued existence of" is defined at 50 CFR 402.02.

"Mitigation and enhancement measures" means measures, including live propagation, tranplantation, and habitat acquisition and improvement, necessary and appropriate (a) to minimize the adverse effects of a proposed action on listed species or their critical habitats and/or (b) to improve the conservation status of the species beyond that which would occur without the action. The measures must be likely to protect the listed species or the critical habitat, and be reasonable in their cost, the availability of the technology required to make them effective, and other considerations deemed relevant by the Committee.

"Permit or license applicant" means any person whose application to an agency for a permit or license has been denied primarily because of the application of section 7(a)(2) of the Act, 16 U.S.C. 1536(a)(2).

"Person" means an individual, corporation, partnership, trust, association, or any other private entity, or any public body or officer, employee, agent, department, or instrumentality of the Federal government, of any State or political subdivision thereof, or of any foreign government.

"Proposed action" means the action proposed by the Federal agency or by a permit or license applicant, for which exemption is sought.

"Secretary" means the Secretary of the Interior or the Secretary of Commerce, or his or her delegate, depending upon which Secretary has responsibility for the affected species as determined pursuant to 50 CFR 402.01.

"Service" means the United States Fish and Wildlife Service or the National Marine Fisheries Service, as appropriate.

"To the extent that such information is available to the applicant" means all pertinent information the applicant has on the subject matter at the time the application is submitted, and all other pertinent information obtainable from the appropriate Federal agency pursuant to a Freedom of Information Act request.

PART 451—APPLICATION PROCEDURE

Sec.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, as amended.

§ 451.01 Definitions.

All definitions contained in 50 CFR 450.01 are applicable to this part.

§ 451.02 Applications for exemptions.

(a) *Scope.* This section prescribes the application procedures for applying for an exemption from the requirements of section 7(a)(2) of the Endangered Species Act, as amended.

(b) *Where to apply.* Applications should be made to the appropriate Secretary(ies) by writing:

(1) The Secretary, Attention: Endangered Species Committee, Department of the Interior, 18th and C Street, NW., Washington, D.C. 20240.

(2) The Secretary, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20030.

(c) *Who may apply.* (1) A Federal agency, (2) the Governor of the State in which an agency action will occur, if any, or (3) a permit or license applicant may apply to the Secretary for an exemption for an agency action if, after consultation under section 7(a)(2) of the Act, the Secretary's opinion indicates that the agency action would violate section 7(a)(2) of the Act.

(d) *When to apply.* (1) Except in the case of agency action involving a permit or license application, an application for an exemption must be submitted to the Secretary within 90 days following the termination of the consultation process.

(2) In the case of agency action involving a permit or license application, an application for an exemption may be submitted after the Federal agency concerned formally denies the permit or license. An applicant denied a permit or license may not simultaneously seek administrative review within the permitting or licensing agency and apply for an exemption. If administrative review is sought, an application for an exemption may be submitted if that review results in a formal denial of the permit or license. For an exemption application to be considered, it must be submitted within 90 days after the date of a formal denial of a permit or license.

(e) *Contents of the application when submitted.* Exemption applicants must provide the following information at the time the application is submitted.

(1) Name, mailing address, and phone number, including the name and telephone number of an individual to be contacted regarding the application.

(2) If the applicant is a Federal agency:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) In the case of a denial of a license or permit, a description of the permit or license sought, including a statement of who in the Federal agency denied the permit or license, the grounds for the denial, and a copy of the permit or license denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before the proposed action can proceed.

(iv) A description of the consultation process carried out pursuant to section 7(a) of the Act.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of each alternative to the proposed action considered by the Federal agency, by the licensing or

permitting agency, and by the permit or license applicant, to the extent known.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed by the Federal agency, or the permit or license applicant, if any, to the proposed action subsequent to the initiation of consultation.

(3) If the applicant is a permit or license applicant other than a Federal agency:

(i) A comprehensive description of the applicant's proposed action.

(ii) A description of the permit or license sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained, before it can proceed with the proposed action.

(iv) A copy of the permit or license denial.

(v) A copy of the biological assessment, if one was prepared.

(vi) A copy of the biological opinion.

(vii) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the applicant.

(viii) A description of each alternative to the proposed action considered by the applicant, and to the extent that such information is available to the applicant, a description of each alternative to the proposed action considered by the Federal agency.

(ix) A statement describing why the applicant's proposed action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(x) A description of resources committed to the proposed action by the permit or license applicant subsequent to the initiation of consultation.

(4) If the applicant is the Governor of a State in which the proposed agency action may occur:

(i) A comprehensive description of the proposed agency action and if a license or permit denial is involved, a comprehensive description of the license or permit applicant's proposed action.

(ii) A description of the permit or license, if any, sought from the Federal agency, including a statement of who in that agency denied the permit or license and the grounds for the denial, to the extent that such information is available to the Governor.

(iii) A description of all permit(s), license(s) or other legal requirements which have been satisfied or obtained, or which must still be satisfied or obtained before the agency can proceed with the proposed action, to the extent that such information is available to the Governor.

(iv) A copy of the biological assessment, if one was prepared.

(v) A copy of the biological opinion.

(vi) A description of the consultation process carried out pursuant to section 7(a) of the Act, to the extent that such information is available to the Governor.

(vii) A description of all alternatives considered by the Federal agency, by the licensing or permitting agency, and by the permit or license applicant, to the extent that such information is available to the Governor.

(viii) A statement describing why the proposed agency action cannot be altered or modified to avoid violating section 7(a)(2) of the Act.

(ix) A description of resources committed to the proposed action subsequent to the initiation of consultation, to the extent that such information is available to the Governor.

(5) Each applicant, whether a Federal agency, a permit or license applicant, or a Governor, must also submit the following:

(i) A complete statement of the nature and the extent of the benefits of the proposed action.

(ii) A complete discussion of why the benefits of the proposed action clearly outweigh the benefits of each considered alternative course of action.

(iii) A complete discussion of why none of the considered alternatives are reasonable and prudent.

(iv) A complete statement explaining why the proposed action is in the public interest.

(v) A complete explanation of why the action is of regional or national significance.

(vi) A complete discussion of mitigation and enhancement measures proposed to be undertaken if an exemption is granted

(6) When the exemption applicant is a license or permit applicant or a Governor, a copy of the application shall be provided by the exemption applicant at the time the application is filed, to the Federal agency which denied the license or permit.

(f) *Review of the application by the Secretary.* (1) Upon receiving the application, the Secretary shall review the contents thereof and consider whether the application complies with the requirements set forth in paragraphs (c), (d) and (e) of this section.

(2) The Secretary shall reject an application within 10 days of receiving it if he determines that it does not comply with paragraphs (c), (d) and (e) of this section. If the Secretary rejects an application because it does not contain the information required by paragraph (e) of this section, the applicant may resubmit a revised application so long as the applicant does so during the 90 day period specified in paragraph (d) of this section.

(3) If the Secretary finds that the application meets the requirements of paragraphs (c), (d), and (e) of this section, he will consider the application in accordance with Part 452.

(g) *Notification of the Secretary of State.* The Secretary will promptly transmit to the Secretary of State a copy of all applications submitted in accordance with § 451.02.

(h) *Public notification.* Upon receipt of an application for exemption, the Secretary shall promptly publish a notice in the **Federal Register** (1) announcing that an application has been filed, (2) stating the applicant's name, (3) briefly describing the proposed agency action and the result of the consultation process, (4) summarizing the information contained in the application, (5) designating the place where copies of the application can be obtained and (6) specifying the name of the person to contact for further information. The Secretary will promptly notify each member of the Committee upon receipt of an application for exemption.

(i) The information collection requirements contained in Part 451 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 451.03 Endangered Species Committee.

(a) *Scope.* This section contains provisions governing the relationship between the Secretary and the Endangered Species Committee.

(b) *Appointment of State member.* (1) Upon receipt of an application for exemption, the Secretary shall promptly notify the Governors of each affected State, if any, as determined by the Secretary, and request the Governors to recommend individuals to be appointed to the Endangered Species Committee for consideration of the application. Written recommendations of these Governors must be received by the Secretary within 10 days of receipt of notification. The Secretary will transmit the Governors' recommendations to the President and will request that the President appoint a State resident to the Endangered Species Committee from each affected State within 30 days after the application for exemption was submitted.

(2) When no State is affected, the Secretary will submit to the President a list of individuals with expertise relevant to the application and will request the President to appoint, within 30 days after the application for exemption was submitted, an individual to the Endangered Species Committee.

PART 452—CONSIDERATION OF APPLICATION BY THE SECRETARY

Sec.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 452.01 Purpose and scope.

This part prescribes the procedures to be used by the Secretary when examining applications for exemption from section 7(a)(2) of the Endangered Species Act.

§ 452.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 452.03 Threshold review and determinations.

(a) *Threshold determinations.* Within 20 days after receiving an exemption application, or a longer time agreed upon between the exemption applicant and the Secretary, the Secretary shall conclude his review and determine:

(1) Whether any required biological assessment was conducted;

(2) To the extent determinable within the time period provided, whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources, and

(3) Whether the Federal agency and permit or license applicant, if any, have carried out consultation responsibilities in good faith and have made a reasonable and responsible effort to develop and fairly consider modifications or reasonable and prudent alternatives to the proposed action which would not violate section 7(a)(2) of the Act.

(b) *Burden of proof.* The exemption applicant has the burden of proving that the requirements of § 452.03(a) have been met.

(c) *Negative finding.* If the Secretary makes a negative finding on any threshold determination, the Secretary shall deny the application and notify the exemption applicant in writing of his finding and grounds therefor. The exemption process shall terminate when the applicant receives such written notice. The Secretary's denial shall constitute final agency action for purposes of judicial review under Chapter 7 of Title 5 of the United States Code.

(d) *Positive finding.* If the Secretary makes a positive finding on each of the threshold determinations, he shall notify the exemption applicant in writing that the application qualifies for consideration by the Endangered Species Committee.

(e) *Secretary of State opinion.* The Secretary shall terminate the exemption process immediately if the Secretary of State, pursuant to his obligations under section 7(i) of the Act, certifies in writing to the Committee that granting an exemption and carrying out the proposed action would violate an international treaty obligation or other international obligation of the United States.

§ 452.04 Secretary's report.

(a) *Contents of the report.* If the Secretary has made a positive finding on each of the threshold determinations, he shall proceed to gather information and prepare a report for the Endangered Species Committee:

(1) Discussing the availability of reasonable and prudent alternatives to the proposed action;

(2) Discussing the nature and extent of the benefits of the proposed action;

(3) Discussing the nature and extent of the benefits of alternative courses of action consistent with conserving the species or the critical habitat;

(4) Summarizing the evidence concerning whether the proposed action is of national or regional significance;

(5) Summarizing the evidence concerning whether the proposed action is in the public interest;

(6) Discussing appropriate and reasonable mitigation and enhancement measures which should be considered by the Committee in granting an exemption; and

(7) Discussing whether the Federal agency and permit or license applicant, if any, have refrained from making any irreversible or irretrievable commitment of resources.

(b) *Preparation of the report.* The report shall be prepared in accordance with procedures set out in § 452.05 and § 452.09.

§ 452.05 Hearings.

(a) *Hearings.* (1) To develop the record for the report under § 452.04, the Secretary, in consultation with the members of the Committee, shall hold a hearing in accordance with 5 U.S.C. 554, 555, and 556.

(2) The Secretary shall designate an Administrative Law Judge to conduct the hearing. The Secretary shall assign technical staff to assist the Administrative Law Judge.

(3) When the Secretary designates the Administrative Law Judge, the Secretary may establish time periods for conducting the hearing and closing the record.

(4) The Secretary may require the applicant to submit further discussions of the information required by § 451.02(e)(5). This information will be made part of the record.

(b) *Prehearing conferences.* (1) The Administrative Law Judge may, on his own motion or the motion of a party or intervenor, hold a prehearing conference to consider: (i) The possibility of obtaining stipulations, admissions of fact or law and agreement to the introduction of documents; (ii) the limitation of the number of witnesses; (iii) questions of law which may bear upon the course of the hearings; (iv) prehearing motions, including motions for discovery; and (v) any other matter which may aid in the disposition of the proceedings.

(2) If time permits and if necessary to materially clarify the issues raised at the prehearing conference, the Administrative Law Judge shall issue a statement of the actions taken at the conference and the agreements made. Such statement shall control the subsequent course of the hearing unless modified for good cause by a subsequent statement.

(c) *Notice of hearings.* Hearings and prehearing conferences will be announced by a notice in the Federal Register stating: (1) The time, place and nature of the hearing or prehearing conference; and (2) the matters of fact and law to be considered. Such notices will ordinarily be published at least 15 days before the scheduled hearings.

(d) *Conduct of hearings.*—(1) *Admissibility of evidence.* Relevant, material, and reliable evidence shall be admitted. Immaterial, irrelevant, unreliable, or unduly repetitious parts of an admissible document may be segregated and excluded so far as practicable.

(2) *Motions, objections, rebuttal and cross-examination.* Motions and objections may be filed with the Administrative Law Judge, rebuttal evidence may be submitted, and cross-examination may be conducted, as required for a full and true disclosure of

the facts, by parties, witnesses under subpoena, and their respective counsel.

(i) *Objections.* Objections to evidence shall be timely, and the party making them may be required to state briefly the grounds relied upon.

(ii) *Offers of proof.* When an objection is sustained, the examining party may make a specific offer of proof and the Administrative Law Judge may receive the evidence in full. Such evidence, adequately marked for identification, shall be retained in the record for consideration by any reviewing authority.

(iii) *Motions.* Motions and petitions shall state the relief sought, the basis for relief and the authority relied upon. If made before or after the hearing itself, these matters shall be in writing and shall be filed and served on all parties. If made at the hearing, they may be stated and responded to orally, but the Administrative Law Judge may require that they be reduced to writing. Oral argument on motions and deadlines by which to file responses to written motions will be at the discretion of the Administrative Law Judge.

(e) *Applicant responsibility.* In proceedings conducted pursuant to this section, the exemption applicant has the burden of going forward with evidence concerning the criteria for exemption.

(f) *Open meetings and record.* All hearings and all hearing records shall be open to the public.

(g) *Requests for information, subpoenas.* (1) The Administrative Law Judge is authorized to exercise the authority of the Committee to request, subject to the Privacy Act of 1974, that any person provide information necessary to enable the Committee to carry out its duties. Any Federal agency or the exemption applicant shall furnish such information to the Administrative Law Judge. (2) The Administrative Law Judge may exercise the authority of the Committee to issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(h) *Information Collection.* The information collection requirements contained in § 452.05 do not require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, because it is anticipated there will be fewer than ten respondents annually.

§ 452.06 Parties and intervenors.

(a) *Parties.* The parties shall consist of the exemption applicant, the Federal agency responsible for the agency action in question, the Service, and intervenors whose motions to intervene have been granted.

(b) *Intervenors.* (1) The Administrative Law Judge shall provide an opportunity for intervention in the hearing. A motion to intervene must state the petitioner's name and address, identify its representative, if any, set forth the interest of the petitioner in the proceeding and show that the petitioner's participation would assist in the determination of the issues in question.

(2) The Administrative Law Judge shall grant leave to intervene if he determines that an intervenor's participation would contribute to the fair determination of issues. In making this determination, the Administrative Law Judge may consider whether an intervenor represents a point of view not adequately represented by a party or another intervenor.

§ 452.07 Separation of functions and ex parte communications.

(a) *Separation of functions.* (1) The Administrative Law Judge and the technical staff shall not be responsible for or subject to the supervision or direction of any person who participated in the endangered species consultation at issue;

(2) The Secretary shall not allow an agency employee or agent who participated in the endangered species consultation at issue or a factually related matter to participate or advise in a determination under this part except as a witness or counsel in public proceedings.

(b) *Ex parte communications.* The provisions of 5 U.S.C. 557(d) apply to the hearing and the preparation of the report.

§ 452.08 Submission of Secretary's report.

(a) Upon closing of the record, the Administrative Law Judge shall certify the record and transmit it to the Secretary for preparation of the Secretary's report which shall be based on the record. The Secretary may direct the Administrative Law Judge to reopen the record and obtain additional information if he determines that such action is necessary.

(b) The Secretary shall submit his report and the record of the hearing to the Committee within 140 days after making his threshold determinations under § 452.03(a) or within such other period of time as is mutually agreeable to the applicant and the Secretary.

§ 452.09 Consolidated and joint proceedings.

(a) When the Secretary is considering two or more related exemption applications, the Secretary may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

(b) When the Secretaries of the Interior and Commerce are considering two or more related exemption applications, they may consider them jointly and prepare a joint report if doing so would expedite or simplify consideration of the issues.

PART 453—ENDANGERED SPECIES COMMITTEE

Sec.

Authority: Endangered Species Act of 1973, 16 U.S.C. 1531, *et seq.*, as amended.

§ 453.01 Purpose.

This part prescribes the procedures to be used by the Endangered Species Committee when examining applications for exemption from section 7(a)(2) of the Endangered Species Act of 1973, as amended.

§ 453.02 Definitions.

Definitions applicable to this part are contained in 50 CFR 450.01.

§ 453.03 Committee review and final determinations.

(a) *Final determinations.* Within 30 days of receiving the Secretary's report and record, the Committee shall grant an exemption from the requirements of section 7(a)(2) of the Act for an agency action if, by a vote in which at least five of its members concur:

(1) It determines that based on the report to the Secretary, the record of the hearing held under § 452.05, and on such other testimony or evidence as it may receive:

(i) There are no reasonable and prudent alternatives to the proposed action;

(ii) The benefits of such action clearly outweigh the benefits of alternative courses of action consistent with conserving the species or its critical habitat, and such action is in the public interest;

(iii) The action is of regional or national significance; and

(iv) Neither the Federal agency concerned nor the exemption applicant made any irreversible or irretrievable commitment of resources prohibited by section 7(d) of the Act; and,

(2) It establishes such reasonable mitigation and enhancement measures, including, but not limited to, live propagation, transplantation, and

habitat acquisition and improvement, as are necessary and appropriate to minimize the adverse effects of the proposed action upon the endangered species, threatened species, or critical habitat concerned. Any required mitigation and enhancement measures shall be carried out and paid for by the exemption applicant.

(b) *Decision and order.* The Committee's final determinations shall be documented in a written decision. If the Committee determines that an exemption should be granted, the Committee shall issue an order granting the exemption and specifying required mitigation and enhancement measures. The Committee shall publish its decision and order in the **Federal Register** as soon as practicable.

(c) *Permanent exemptions.* Under section 7(h)(2) of the Act, an exemption granted by the Committee shall constitute a permanent exemption with respect to all endangered or threatened species for the purposes of completing such agency action (1) regardless of whether the species was identified in the biological assessment, and (2) only if a biological assessment has been conducted under section 7(c) of the Act with respect to such agency action. Notwithstanding the foregoing, an exemption shall not be permanent if (i) the Secretary finds, based on the best scientific and commercial data available, that such exemption would result in the extinction of a species that was not the subject of consultation under section 7(a)(2) of the Act or was not identified in any biological assessment conducted under section 7(c) of the Act, and (ii) the Committee determines within 60 days after the date of the Secretary's finding that the exemption should not be permanent. If the Secretary makes a finding that the exemption would result in the extinction of a species, as specified above, the Committee shall meet with respect to the matter within 30 days after the date of the finding. During the 60 day period following the Secretary's determination, the holder of the exemption shall refrain from any action which would result in extinction of the species.

(d) *Finding by the Secretary of Defense.* If the Secretary of Defense finds in writing that an exemption for the agency action is necessary for reasons of national security, the Committee shall grant the exemption notwithstanding any other provision in this part.

§ 453.04 Committee information gathering.

(a) *Written submissions.* When the Chairman or four Committee members decide that written submissions are necessary to enable the Committee to make its final determinations, the Chairman shall publish a notice in the **Federal Register** inviting written submissions from interested persons. The notice shall include: (1) The address to which such submissions are to be sent; (2) the deadline for such submissions; and (3) a statement of the type of information needed.

(b) *Public hearing.* (1) When the Chairman or four Committee members decide that oral presentations are necessary to enable the Committee to make its final determinations, a public hearing shall be held.

(2) The public hearing shall be conducted by (i) the Committee or (ii) a member of the Committee or other person, designated by the Chairman or by four members of the Committee.

(3) *Notice.* The Chairman shall publish in the **Federal Register** a general notice of a public hearing, stating the time, place and nature of the public hearing.

(4) *Procedure.* The public hearing shall be open to the public and conducted in an informal manner. All information relevant to the Committee's final determinations shall be admissible, subject to the imposition of reasonable time limitations on oral testimony.

(5) *Transcript.* Public hearings will be recorded verbatim and a transcript thereof will be available for public inspection.

§ 453.05 Committee meetings.

(a) The committee shall meet at the call of the Chairman or five of its members.

(b) Five members of the Committee or their representatives shall constitute a quorum for the transaction of any function of the Committee, except that in no case shall any representative be considered in determining the existence of a quorum for the transaction of a Committee function which involves a vote by the Committee on the Committee's final determinations.

(c) Only members of the Committee may cast votes. In no case shall any representative cast a vote on behalf of a member.

(d) Committee members appointed from the affected States shall collectively have one vote. They shall determine among themselves how it will be cast.

(e) All meetings and records of the Committee shall be open to the public.

(f) The Chairman shall publish a notice of all Committee meetings in the **Federal Register**. The notice will ordinarily be published at least 15 days prior to the meeting.

§ 453.06 Additional committee powers.

(a) *Secure information.* Subject to the Privacy Act, the Committee may secure information directly from any Federal agency when necessary to enable it to carry out its duties.

(b) *Subpoenas.* For the purpose of obtaining information necessary for the consideration of an application for an exemption, the Committee may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents.

(c) *Rules and orders.* The Committee may issue and amend such rules and orders as are necessary to carry out its duties.

(d) *Delegate authority.* The Committee may delegate its authority under paragraphs (a) and (b) of this section to any member.

Dated: February 21, 1985.

William Clark,

Chairman, Endangered Species Committee and Secretary of the Interior.

Malcolm Baldrige,

Secretary of Commerce.

[FR Doc. 85-4758 Filed 2-27-85; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration.

50 CFR Part 611

[Docket No. 41265-4165]

Foreign Fishing

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

ACTION: Final rule.

SUMMARY: NOAA intends to implement a supplementary foreign fishing vessel observer program during fiscal year 1985. The supplemental observer program along with the annual appropriation of fees collected is expected to be sufficient to provide full observer coverage. This action provides for certification of qualified supplementary observers, establishes a method of payment for supplementary observers' services, and provides for monitoring the performance of supplementary observers. The intended effect is to provide for the orderly implementation of a supplementary observer program in accordance with Section 201 of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

EFFECTIVE DATE: April 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gary A. Wood, Special Agent, 202–634–7285.

SUPPLEMENTARY INFORMATION: Section 201(i)(1) of the Magnuson Act required that a U.S. observer be stationed aboard each foreign fishing vessel while it is engaged in fishing in the fishery conservation zone, with certain exceptions. Section 201(i)(6) of the Magnuson Act requires the Secretary of Commerce to implement a supplementary observer program when necessary to provide for full observer coverage as required by section 201(i)(1).

The supplemental observer program and the annual appropriations are expected to be sufficient to provide for observer coverage in fiscal year 1985. In implementing a supplementary observer program, section 201(i)(6) of the Magnuson Act requires that NOAA do the following:

1. Certify as supplementary observers only those individuals who are citizens or nationals of the United States, and who have the requisite education or experience to carry out the duties of an observer;

2. Establish standards of conduct for supplementary observers equivalent to those applicable to Federal personnel;

3. Establish a reasonable schedule of fees that certified observers or their agents must be paid by the owners and operators of foreign fishing vessels for observer services; and

4. Monitor the performance of supplementary observers to ensure that it meets the purposes of the Magnuson Act.

This rule provides procedures to meet the requirements of section 201(i)(6) of the Magnuson Act, including the requirement to monitor the performance of supplementary observers. This rule also provides for two technical changes as follows:

1. All paragraphs of § 611.8 have been redesignated to conform with a revision of the foreign fishing regulations expected to be published in early 1985; and,

2. Section 611.22(c) has been amended to provide for annual rather than quarterly reconciliation of observer fees. This change reflects the current practice with respect to observer fees necessitated by lengthening observer deployments. The proposed rule was published at 48 FR 41789.

Comments

NOAA received comments from six individuals and organizations. The following summarizes the comments received and NOAA's responses to these comments.

1. *Comment.* Persons or firms wishing to act as agents for supplementary observers should be certified by NOAA as qualified based on experience, financial integrity, and an understanding of the program's goals and mission. Certification of persons or firms to act as agents or representatives for supplementary observers would improve the efficiency of the program by insuring only qualified persons or firms act as agents, to the benefit of NOAA, supplementary observers, and foreign fishing nations. Also, it would enhance NOAA's ability to monitor the program as required by the Magnuson Act because the agents representing supplementary observers would be subject to certification and decertification procedures as are supplementary observers.

Response. Persons or firms representing or providing supplementary observer services to foreign fishermen will be selected using established NOAA procurement procedures. These procedures are designed to select the most qualified vendor at the lowest cost.

2. *Comment.* Foreign nations should be given 3 to 6 months advance notice of the implementation date of the supplementary observer program and given some estimate of the expenses implementation will entail.

Reponse. NOAA intends to work closely with foreign fishing nations to implement the supplementary observer program. NOAA expects implementation to be necessary after December 31, 1984.

3. *Comment.* Supplementary observers should be judged physically capable of carrying out their duties before they are certified.

Response. Contractors who hire persons to serve as supplementary observers require applicants to obtain a doctor's certificate that they are physically capable of carrying out the duties of an observer. NOAA sees no need to require such an examination in the regulations.

4. *Comment.* Persons with a second language capability should be recruited for the position of supplementary observer and assigned to vessels where they can communicate with vessel personal in their native language.

Response. NOAA has and will continue to seek persons with a second language capability, but believes a second language capability as a condition of certification would eliminate a large number of qualified applicants to the detriment of the program.

5. *Comment.* The language of § 611.8(e)(7)(iii) of the proposed regulations should be amended to limit the costs to foreign fishing vessel owners and operators for data managment and analysis to those relating to the monitoring of the supplementary observer program.

Response. The regulations have been amended to limit the costs charged to foreign fishing vessel owners and operators for data management and analysis to only those costs associated with monitoring the supplementary observer program and all costs of data editing and entry as provided for by section 201(c)(2)(D) of the Magnuson Act.

6. *Comment.* Section 611.8(e)(13) of the proposed regulations should cite the specific sections of the Magnuson Act that provide for exemptions to observer coverage.

Response. The regulations have been amended to cite that portion of the Magnuson Act that provides for exemptions to observer coverage.

7. *Comment.* The owners and operators of foreign fishing vessels should have a mechanism to register complaints against supplementary observers. If the compliants are found to be valid, some form of disciplinary action up to and including decertification should be provided for in the regulations.

Response. The owners and operators of foreign fishing vessels can and have submitted complaints about the conduct of current observers, and the Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has taken disciplinary action where appropriate. The Assistant Administrator also will be available to hear complaints against supplementary observers, and disciplinary action will ensue where appropriate. NOAA sees no need to formalize this procedure in the regulations.

8. *Comment.* Section 611.8(e)(8) of the proposed regulations should be amended to delete the requirement that foreign fishing vessel owners and operators pay overhead and administrative costs for supplementary observer services.

Response. Overhead and administrative costs are generally accepted costs of doing business. Those costs must be recovered if contractors supplying supplementary observers are to continue in business and provide needed supplementary observers to perform the services required by the Magnuson Act. To delete these costs would only force supplementary observer contractors to include them as

part of some other cost element. As such, they would be more difficult for NOAA to monitor and so provide greater potential for abuse. NOAA, therefore, has not adopted the suggestion contained in this comment.

9. *Comment.* The owners and operators of foreign fishing vessels should be required to maintain letters of credit or post bonds to insure that supplementary observers or their representative are paid.

Response. The regulations contain the requirement that the owners and operators of foreign fishing vessels pay supplementary observer fees by certified check or letter of credit.

10. *Comment.* Foreign fishing vessel owners and operators should be required to pay for travel, transportation, and per diem costs for supplementary observers required to testify in court concerning alleged violations of the foreign fishing regulations by foreign vessel crews.

Response. NOAA does not believe that the costs associated with supplementary observers testifying in court is properly recoverable under section 201(i)(4) of the Magnuson Act. Therefore, the suggestion in this comment was not adopted; these costs will be counted, however, in the estimate of total costs of the Magnuson Act and used as necessary in developing the foreign fishing fee schedule.

11. *Comment.* The regulations should include provisions to assure that the owners and operators of foreign fishing vessels provide for supplementary observers' conditions that are safe and permit supplementary observers to carry out their duties as specified.

Response. The regulations have been amended to include these requirements.

12. *Comment.* The regulations should provide procedures whereby the owners and operators of foreign fishing vessels can make claims against supplementary observers who, by mistake or negligence, cause unjustified damages to foreign fishing vessels, or economic loss or other disadvantages to the owners and operators.

Response. Observers stationed aboard foreign fishing vessels have limited prerogatives. They cannot require the master or crew of a foreign fishing vessel to undertake any activity or engage in any practice or procedure that is also required by the foreign fishing regulations. Also, the master of a foreign fishing vessel forfeits none of his rights, privileges, or responsibilities due to the presence of an observer. It is, therefore, difficult to imagine any circumstances where an observer could, through mistake or negligence, cause unjustified damage to a foreign fishing vessel or economic loss or other disadvantage to the owners and operators of that vessel.

13. *Comment.* NOAA should take steps to insure that an adequate number of certified supplementary observers are available by encouraging direct contact between supplementary observers and foreign fishing vessel owners and operators. The use of agents for supplementary observers should be discouraged because agents could unduly increase the economic burden to foreign fishing vessel owners and operators.

Response. NOAA believes that the best way to insure an adequate supply of qualified supplementary observers at the most reasonable cost is through the use of contractors selected by competitive bids. The costs of these services to the owners and operators of foreign fishing vessels will be equal to the cost paid by NOAA, plus any additional costs the contractors incur to administer the supplementary observer program.

14. *Comment.* Because of the potential for conflict of interest charges, supplementary observers should not be permitted to negotiate directly with the owners and operators of foreign fishing vessels for employment or their wages and benefits, but should be required to act through an agent certified as qualified by NOAA. Procedures for certification of agents should be specified in the regulations, and agents should be required to submit operation plans for approval by NOAA. Operation plans should be developed in accordance with guidelines provided by NOAA, and include such items as payment of wages and benefits, compensation for medical services, disability or death benefits, etc.

Response. The regulations require that the contractor selected by NOAA through competitive bids provide supplementary observer services to the owners and operators of foreign fishing vessels at the same costs those services are provided to NOAA. NOAA believes this approach will result in a program that has the highest efficiency, the least potential for conflicts of interest to develop, and the lowest cost.

Classification

The NOAA Assistant Administrator for fisheries has determined that this rule is consistent with the Magnuson Act and other applicable laws.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02-10.

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291, because it will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices to consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it applies only to the owners or operators of foreign fishing vessels. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information requirement subject to the Paperwork Reduction Act. The collection portions of this information has been approved by the Office of Management and Budget, OMB Control Number 0648-0075.

List of Subjects in 50 CFR Part 611

Fish, Fisheries, Foreign relations, Reporting and recordkeeping requirements.

Dated: February 22, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

1. The authority citation for 50 CFR Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

2. Redesignate § 611.2(ff) and (gg) as § 611.2(gg) and § 611.2(hh) respectively and add a new § 611.2(ff) to read as follows:

§ 611.2 [Amended]

(ff) *U.S. observer* or *observer* means any person serving in the capacity of an observer employed by NMFS, either directly or under contract, or certified as a supplementary observer by NMFS.

3. Section 611.8 is revised to read as follows:

§ 611.8 Observers.

(a) *General.* To carry out such scientific, compliance monitoring, and other functions as may be necessary or appropriate to carry out the purposes of the Magnuson Act, the appropriate Regional or Center Director (see paragraph A of Appendix IV to § 611.9)

may assign U.S. observers to foreign fishing vessels. Except as provided for in section 201(i)(2) of the Magnuson Act, no foreign fishing vessel may conduct fishing operations within the FCZ unless a U.S. observer is aboard.

(b) *Effort plan.* To insure the availability of an observer as required by this section, the owners and operators of foreign fishing vessels wishing to fish within the FCZ will submit to the appropriate Regional Director or Center Director, and also to the Chief, Enforcement Division, National Marine Fisheries Service, Washington, D.C., 20235, ATTN: F/M×1, a schedule of fishing effort 30 days prior to the beginning of each quarter. A quarter is a time period of three consecutive months beginning January 1, April 1, July 1, and October 1 of each year. The schedule will contain the name and International Radio Call Sign of each foreign fishing vessel intending to fish within the FCZ during the upcoming quarter, and each foreign fishing vessel's expected date of arrival and expected date of departure.

(1) The appropriate Regional or Center Director must be notified immediately of any substitution of vessels or any cancellation of plans to fish in the FCZ for foreign fishing vessels listed in the effort plan required by this section.

(2) If an arrival date of a foreign fishing vessel will vary more than 5 days from the date listed in the quarterly schedule, the appropriate Regional or Center Director must be notified at least 10 days in advance of the rescheduled date of arrival. If the notice required by this paragraph is not given, the foreign fishing vessel may not engage in fishing until an observer is available and has been placed aboard the vessel or the requirement has been waived by the appropriate Regional or Center Director.

(c) *Assistance to observers.* The owner and operator of a foreign fishing vessel to which an observer is assigned must do the following—

(1) Provide, at no cost to the observer or the United States, accommodations for the observer aboard the foreign fishing vessel which are equivalent to those provided to the officers of that vessel;

(2) Cause the foreign fishing vessel to proceed to such places and at such times as may be designated by the appropriate Regional Director or Center Director for the purpose of embarking and debarking the observer;

(3) Allow the observer to use the foreign fishing vessel's communications equipment and personnel as necessary for the transmission and receipt of messages;

(4) Allow the observer access to and use of the foreign fishing vessel's navigation equipment and personnel as necessary to determine the vessel's position; and

(5) Provide all other reasonable assistance to enable the observer to carry out his or her duties.

(d) It is unlawful for any person to forcibly assault, resist, oppose, impede, intimidate, or interfere with an observer placed aboard a vessel under this section.

(e) The procedures of § 611.6(c) must be followed when boarding or disembarking observers.

(f) *Supplementary observers.* In the event funds are not available from Congressional appropriations of fees collected to assign an observer to a foreign fishing vessel, the appropriate Regional or Center Director will assign a supplementary observer to that vessel. The costs of supplementary observers will be paid for by the owners and operators of foreign fishing vessels as provided for in paragraph (h) of this section.

(g) *Supplementary observer authority and duties.* (1) A supplementary observer aboard a foreign fishing vessel has the same authority and must be treated in all respects as an observer who is employed by NMFS either directly or under contract.

(2) The duties of supplementary observers and their deployment and work schedules will be specified by the appropriate Regional or Center Director.

(3) All data collected by supplementary observers will be under the exclusive control of the Assistant Administrator.

(h) *Supplementary observer payment.* (1) *Method of payment.* The owners and operators of foreign fishing vessels must pay directly to the contractor the costs of supplementary observer coverage. Payment must be made to the contractor supplying supplementary observer coverage either by letter of credit or certified check drawn on a Federally chartered bank in U.S. dollars, or other financial institution acceptable to the contractor. The letter of credit used to pay supplementary observer fees to contractors must be separate and distinct from the letter of credit required by § 611.22(a)(2)(ii) of these regulations. Billing schedules will be specified by the terms of the contract between NOAA and the contractors beginning in FY 1986. During FY 1985, the billing schedule will be determined by the Assistant Administrator to ensure sufficient funding for the program. Billings for supplementary observer coverage will be approved by the appropriate Regional or Center Director and then transmitted to the owners and operators of foreign fishing vessels by the appropriate designated representative. Each country will have only one designated representative to receive observer bills for all vessels of that country except as provided for by the Assistant Administrator. All bills must be paid within ten working days of the billing date. Failure to pay an observer bill will constitute grounds to revoke fishing permits. All fees collected under this section will be considered interim in nature and subject to reconciliation at the end of the fiscal year in accordances with paragraph (h)(4) of this section and § 611.22(c) of these regulations.

(2) *Contractor costs.* The costs charged for supplementary observer coverage to the owners and operators of foreign fishing vessels may not exceed the costs charged to NOAA for the same or similar services, except that contractors may charge to the owners and operators of foreign fishing vessels an additional fee to cover the administrative costs of the program not ordinarily part of contract costs charged to NOAA. The costs charged foreign fishermen for supplementary observers may include, but are not limited to the following—

(A) Salary and benefits, including overtime, for supplementary observers;

(B) The costs of post-certification training required by paragraph (j)(2) of this section;

(C) The costs of travel, transportation, and per diem associated with deploying supplementary observers to foreign fishing vessels including the cost of travel, transportation, and per diem from the supplementary observer's post of duty to the point of embarkation to the foreign fishing vessel, and then from the point of disembarkation to the post of duty from whence the trip began. For the purposes of these regulations, the appropriate Regional or Center Director will designate posts of duty for supplementary observers;

(D) The costs of travel, transportation, and per diem associated with the debriefing following deployment of a supplementary observer by officials of the National Marine Fisheries Service; and

(E) The administrative and overhead costs incurred by the contractor and, if appropriate, a reasonable profit.

(3) *National Marine Fisheries Service costs.* The owners and operators of foreign fishing vessels must also pay to the National Marine Fisheries Service as part of the surcharge required by section 201(i)(4) of the Magnuson Fishery

Conservation and Management Act, the following costs—

(A) The costs of certifying applicants for the position of supplementary observer;

(B) The costs of any equipment, including safety equipment, sampling equipment, operations manuals, or other texts necessary to perform the duties of a supplementary observer. The equipment will be specified by the appropriate Regional or Center Director according to the requirements of the fishery to which the supplementary observer will be deployed;

(C) The costs associated with communications with supplementary observers for transmission of data and routine messages;

(D) For the purposes of monitoring the supplementary observer program, the costs for the management and analysis of data;

(E) The costs for data editing and entry;

(F) Any costs incurred by the National Marine Fisheries Service to train, deploy or debrief a supplementary observer; and

(G) The cost for U.S. Customs inspection for supplementary observers disembarking after deployment.

(4) *Reconciliation.* Fees collected by the contractor in excess of the actual costs of supplementary observer coverage will be refunded to the owners and operators of foreign fishing vessels, or kept on deposit to defray the costs of future supplementary observer coverage. Refunds will be made within 60 days after final costs are determined and approved by NOAA.

(i) *Supplementary observer contractors.* (1) *Contractor eligibility.* Supplementary observers will be obtained by NOAA from persons or firms having established contracts to provide NOAA with observers. In the event no such contract is in place, NOAA will use established, competitive contracting procedures to select persons or firms to provide supplementary observers. The services supplied by the supplementary observer contractors will be as described within the contract and as specified below.

(2) Supplementary observer contractors must submit for the approval of the Assistant Administrator the following—

(A) A copy of any contract, including all attachments, amendments, and enclosures thereto, between the contractor and the owners and operators of foreign fishing vessels for whom the contractor will provide supplementary observer services;

(B) All application information for persons which the contractor desires to employ as certified supplementary observers;

(C) Billing schedules and billings to the owners and operators of foreign fishing vessels for further transmission to the designated representative of the appropriate foreign nation; and

(D) All data on costs.

(j) *Supplementary observers—certification, training.* (1) *Certification.* The appropriate Regional or Center Director will certify persons as qualified for the position of supplementary observer once the following conditions are met:

(A) The candidate is a citizen or national of the United States.

(B) The candidate has education or experience equivalent to the education or experience required of persons used as observers by the National Marine Fisheries Service as either Federal personnel or contract employees. The education and experience required for certification may vary according to the requirements of managing the foreign fishery in which the supplementary observer is to be deployed. Documentation of United States citizenship or nationality, the education or experience will be provided from personal qualification statements on file with NOAA contractors who provide supplementary observer services, and will not require the submission of additional information to NOAA.

(2) *Training.* Prior to deployment to foreign fishing vessels, certified supplementary observers must also meet the following conditions:

(A) Each certified supplementary observer must satisfactorily complete a course of training approved by the appropriate Regional or Center Director as equivalent to that received by persons used as observers by the National Marine Fisheries Service as either Federal personnel or contract employees. The course of training may vary according to the foreign fishery in which the supplementary observer is to be deployed.

(B) Each certified supplementary observer must agree in writing to abide by standards of conduct as set forth in Department of Commerce Administrative Order 202-735 (as provided by the contractor).

(k) *Supplementary observer certification suspension or revocation.* (1) Certification of a supplementary observer may be suspended or revoked by the Assistant Administrator under the following conditions:

(A) A supplementary observer fails to perform the duties specified as provided for by paragraph (g)(2) of this section.

(B) A supplementary observer fails to abide by the standards of conduct described by Department of Commerce Administrative Order 202-735.

(2) The suspension or revocation of the certification of a supplementary observer by the Assistant Administrator may be based on the following—

(A) Boarding inspection reports by authorized officers of the U.S. Coast Guard or the National Marine Fisheries Service, or other credible information, that indicate a supplementary observer has failed to abide by the established standards of conduct; or

(B) An analysis by the National Marine Fisheries Service of the data collected by a supplementary observer indicating improper or incorrect data collection or recording. The failure to properly collect or record data is sufficient to justify decertification of supplementary observers; no intent to defraud need be demonstrated.

(3) The Assistant Administrator will notify the supplementary observer in writing of the Assistant Administrator's intent to suspend or revoke certification, and the reasons therefore, and provide the supplementary observer a reasonable opportunity to respond. If the Assistant Administrator determines that there are disputed questions of material fact, then the Assistant Administrator may in this respect appoint an examiner to make an informal fact-finding inquiry and prepare a report and recommendations.

(Approved by the Office of Management and Budget under control number 0648-0075).

§ 611.21 [Amended]

4. Section 611.21 is amended by removing paragraph (b).

5. Section 611.22 is amended by redesignating § 611.22(c) as § 611.22(d) and adding § 611.22(c) to read as follows:

§ 611.22 Fee schedule for foreign fishing.

* * * * *

(c) *Observer fees.* The Assistant Administrator will notify the owners or operators of foreign fishing vessels of the estimated annual costs of placing observers aboard their vessels. The owners or operators of any such vessel must provide for prepayment of those costs by including one-fourth of the estimated annual observer fee as determined by the Assistant Administrator in a revolving letter of credit as prescribed in § 611.22(a)(2)(ii). During the fiscal year, payment will be withdrawn from the letter of credit as required to cover the cost of anticipated observer coverage for the upcoming fishery. The Assistant Administrator will reconcile costs within 90 days after the end of the fiscal year.

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[FR Doc. 85-4823 Filed 2-27-85; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 40
Thursday, February 28, 1985

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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

[Docket No. PRM-35-5]

Nuclear Radiation Consultants; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission is denying a petition for rulemaking submitted by Nuclear Radiation Consultants. The petition requested that NRC regulations be amended to permit any health professional to obtain a license to use the dual photon spine scanner, also known as a bone mineral analyzer, which utilizes radioactive gadolinium-153. Current NRC regulations require that a person must be a physician in order to obtain a license for human use of sources and devices containing byproduct material.

FOR FURTHER INFORMATION CONTACT: Judith Foulke, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 427-4563.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is denying a petition for rulemaking dated January 19, 1984, submitted by Nuclear Radiation Consultants. A notice of filing of the petition was published in the **Federal Register** on March 8, 1984 (49 FR 8621), and public comment was invited.

Twenty-seven comment letters were received and all of the commenters opposed adoption of the petition. Copies of the petition and public comments are available for inspection and may be copied for a fee at the NRC Public Document Room, 1717 H Street, NW, Washington, DC 20555.

Background

The petitioner, Nuclear Radiation Consultants, requested the NRC to amend its regulations governing the human use of byproduct material to permit any health professional with appropriate training and experience to obtain a license to use a specific medical diagnostic device containing the radioactive isotope Gd-153. This device is the dual photon spine scanner, which is also known as a bone mineral analyzer. By measuring the transmission of radiation through the spinal bones, the condition of the skeleton can be assessed.

As described in the Commission's February 9, 1979 policy statement, "Regulation of the Medical Uses of Radioisotopes" (44 FR 8242):

The NRC and its predecessor the Atomic Energy Commission have regulated the medical uses of radioisotopes since 1946. AEC recognized that physicians have the primary responsibility for the protection of their patients and designed its regulations accordingly. The physicians were required to be licensed by the State, and their applicable training and experience were evaluated in consultation with the Advisory Committee on the Medical Use of Isotopes.

An NRC license for the medical use of radioisotopes is not a license to practice medicine. It has a different purpose, namely, assuring the safe handling and use of radioisotopes. To the extent that it affects the practice of medicine, it does so no more than necessary to protect public health and safety. However, under the Commission's regulations in 10 CFR Part 35, a physician must be licensed by a State to practice medicine prior to receiving an NRC license. NRC's license involving irradiation of humans is restricted to State-licensed physicians because of the need for the requisite competence to practice medicine that is demonstrated by a license from a State.

As is the case with X-ray machines and other diagnostic equipment, the actual measurements may be made on the patient by paramedical personnel. These technicians and technologists are trained in the use of the specific devices by their physician-supervisor in addition to their formal schooling and are supervised by the physician who is responsible for care of the patients. NRC has recognized this situation from the beginning and discusses the permissible scope of activities for a technician in section 4 of Regulatory Guide 10.8, "Guide for the Preparation of Applications for Medical Programs."

NRC has provided an exemption from its requirements that only physicians can obtain a license for human use of byproduct material by allowing podiatrists and dentists to be licensed to use the lixiscope, a device similar to an X-ray machine. The rationale for this exemption was based on the fact that these professionals must also be licensed by a State to treat specific portions of the human body.

Issues Raised by Commenters

Among the concerns expressed by the commenters was the potential for erroneous interpretation of the results. These commenters pointed out that complications due to coexistent osteoarthritic or post-surgical changes in the spine may lead to failure to diagnose the serious medical condition of osteoporosis or to initiation of therapy with possibly harmful agents such as estrogens for patients not in need of it. As is true for all areas of clinical medicine, diagnostic results must be interpreted only by individuals who understand the primary and coexistent medical problems of the patient. In addition, allowing non-physicians to be licensed to use the bone mineral analyzer could lead to unnecessary radiation exposure since tests would be more likely to be performed on individuals not needing them. This would be contrary to the Commission's policy that all radiation exposures should be balanced by a concomitant benefit.

Commenters also noted that, while under optimal conditions the doses to the patient and the operator resulting from the use of a bone mineral analyzers are acceptably small, situations can arise which present significant radiation safety hazards. Improper positioning of the patient or failure of the device to move as programmed can result in overexposure of the patient. Instances were cited where the gadolinium source was found to contain another radionuclide, which produced a much higher dose rate, or was leaking, which produced transferable contamination. While these occurrences are rare, they do demonstrate that the bone mineral

analyzer is not as innocuous as the petitioner claimed.

NRC Responses to Issues Raised in Petition

Issue 1: The petitioner claims "The use of this device cannot reasonably be considered the practice of medicine because it is solely a diagnostic tool."

Response 1: As pointed out in several comment letters received from professional medical societies, diagnosing disease has always been an integral part of the practice of medicine. Consequently, use of diagnostic tools on humans definitely falls within the definition of the practice of medicine.

Issue 2: The petitioner claims "It is unreasonable to believe only physicians are capable of using bone mineral analyzers without risk to public health and safety. NRC is aware that nuclear medicine technologists with one year training past secondary school routinely administer intravenously substantial doses of radiopharmaceuticals. NRC is aware these materials deliver far greater radiation doses than the 10–20 mrem dose to a limited anatomical area resulting from use of the bone analyzer."

Response 2: We agree that other individuals such as medical technologists can operate this device safely. However, NRC does not license technologists because responsibility for patient care is vested in a named individual licensed to practice medicine by a State. In this regard, the magnitude of the radiation dose is not the issue of concern. As noted above, the delegation of operation of devices to paramedical personnel with the proper training and under the supervision of a licensed physician is acceptable.

Issue 3: The petitioner claims ". . . there are individuals trained in radiation physics and health physics who are often the very instructors in the subjects required by NRC in the directive noted above."

Response 3: We agree that there are other individuals who meet the training criteria as far as radiation physics and health physics are concerned. However, these individuals are not licensed by a State to practice medicine.

Issue 4: The petitioner claims that NRC's licensing policy is "de facto antitrust in that it blocks entry of individuals with pertinent and equal training and experience from becoming licensed users."

Response 4: We assume from the latter part of the sentence that the petitioner meant to say that NRC was contributing to establishment of a monopoly (not "antitrust"). If this were the case, it would be an indirect consequence of NRC's carrying out its charter from Congress to protect the public health and safety.

Issue 5: The petitioner claims that NRC's licensing policy for the human use of byproduct materials is contrary to the Regulatory Flexibility Act.

Response 5: NRC Policy Directive FC–83–24, "Licensing the Lixiscope and Bone Mineral Analyzer for Human Use," contary to what the petitioner asserts, is not in conflict with the intent of Congress as spelled out in the Regulatory Flexibility Act. First of all, the Regulatory Flexibility Act, 5 U.S.C. 601–612, is only applicable to agency rulemakings on which public comment is required by section 533(b) of the Administrative Procedure Act or any other law. Second, the Regulatory Flexibility Act establishes a *procedure* for evaluating the effect of agency regulations on small entities. All agencies, as part of the rulemaking process, must prepare a regulatory flexibility analysis for any rule that has a significant economic impact on a substantial number of small entities. The analysis must, among other things, discuss how a rule will affect small entities, describe significant alternatives that would minimize any significant economic impact of the rule on small entities, and explain why each one of such alternatives was rejected. The intent of the Act is to require government agencies to review proposed rules to ensure that, while accomplishing their intended purpose, they do not unduly affect the ability of small entities to carry out their activities. Contrary to the implications of the petitioner's letter, the Act does not require the agency to make the accommodation of any and all small business interests its paramount concern at the expense of the agency's other satutory resonsibilities. To the countrary, Section 606 of the Regulatory Flexibility Act states that the requirement to analyze the economic impact of agency regulations to determine their impact upon small entities does not alter in any manner the standards otherwise applicable by law to agency action.

Issue 6: The petitioner claims that NRC's policy is ". . . inconsistent with the mandate of NRC to encourage safe uses of radioactivity."

Response 6: NRC's mandate is to assure the safety of workers and the public. NRC has never had any mandate to encourage the use of radioactive materials. In fact, one of the reasons why the Atomic Energy Commission was divided into two agencies (NRC and ERDA, now DOE) was to separate the regulatory and promotional activities that related to the use of radioactive materials.

Conclusion

A bone mineral analyzer is used only as a means of obtaining information on a patient's skeletal status in order to diagnose diseases such as osteoporosis. Diagnosing diseases has always been construed by all levels of government as an integral part of the practice of medicine. Consequently, NRC has always issued licenses involving human use of byproduct material only to licensed physicians (or to podiatrists or dentists for limited use of the Lixiscope) because only they are authorized to practice medicine and possess the demonstrated competence to practice medicine, as evidenced by their State license. The petitioner's statements do not provide adequate justification for changing this policy.

Dated at Bethesda, Maryland, this 1st day of February, 1985.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 85–4910 Filed 2–27–85; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85–CE–5–AD]

Airworthiness Directives; Cessna 206, P206, U206, 207 and 210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This Notice proposes to adopt a new Airworthiness Directive (AD) applicable to Cessna 206, P206, U206, 207 and 210 Series Airplanes, which would require inspection, repair and/or modification of the engine induction airbox installation. Loss of engine power has resulted from pieces of the lower forward induction airbox separating from the botton of the duct and being ingested by the engine. This action will preclude engine power loss caused by induction airbox failures.

DATES: Comments must be received on or before April 5, 1985.

ADDRESS: Send comments on the proposal in duplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 85–CE–5–

AD, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. Cessna Single Engine Customer Care Service Information Letter, SE84–20 dated November 2, 1984, applicable to this AD may be obtained from Cessna Aircraft Company, Piston Aircraft Marketing Division, Post Office Box 1521, Wichita, Kansas 67201.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, Aircraft Certification Office, ACE–140W, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4427.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submiting such written data, views or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Director before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. Comments are specifically invited on the overall regulatory, economic, environmental and energy aspects of the proposed rule. All comments submitted will be available both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of the proposed AD will be filed in the Rules Docket.

Discussion

Reports have been received of engine power losses on non-turbocharged Cessna Model 200 Series airplanes equipped with Continental Model IO–520 engines. Investigations established these occurrences were caused by engine ingestion of small pieces of the outboard induction airbox lower skin which separate and block the throttle valve and restrict induction air at this point. These incidents and others service reports indicate that these cracked conditions are not being detected during normal inspection and/or maintenance of the engine installation.

In 1981 Cessna Aircraft Company made a production design change on the induction airbox outboard duct by increasing the lower skin thickness from .032 to .040 inches.

To improve in-service airplane airbox integrity and prevent further failures of the airbox, which may result in engine power loss, Cessna Aircraft Company has issued Single Engine Customer Care Service Information Letter SE84–20 dated November 2, 1984, making available for in-service airplanes the improved induction airbox outboard duct having the increased thickness bottom skin.

Since the condition described herein, is likely to exist or develop in other airplanes of the same type design, the proposed AD would require visual inspection of the outboard induction air duct for cracks and if found replacement with a new part per the Service Letter or repair of the existing part on certain Cessna 206, P206, U206, 207 and 210 Series Airplanes.

There are approximately 8,000 airplanes affected by the proposed AD at an initial inspection cost of $15 per airplane. Eventually all airplanes are expected to be modified at an approximate cost of $300 per airplane. However, only the initial inspection is considered to constitute unscheduled expenses as the repetitive inspection and eventual repair or replacement expenses are considered to be absorbed in the normal cost of airplane operation. Accordingly, the estimated total cost to the private sector of compliance with the proposed AD is $120,000. This cost of compliance with the proposal is so small that the expense of compliance will not have a significant financial impact on any small entities operating these airplanes. Therefore, I certify that (1) this action is not a major rule under the provisions of Executive Order 12291, (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and (3) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A draft regulatory evaluation has been prepared and has been placed in the public docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **"ADDRESSES"**.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) by adding the following new AD:

Cessna: Applies to Models 206, U206, U206A, U206B, U206C, U206D, U206E, U206F and U206G, (S/Ns 206–0001 thru U20606065); P206, P206A, P206B, P206C, P206D, and P206E, (S/Ns P206–0001 thru P20600647); 207 and 207A, (S/Ns 20700001 thru 20700681); 210D, 210E, 210F, 210G, 210H, 210J, 210K, 210L, 210M and 210N (S/Ns 21058221 thru 21064226) airplanes equipped with Continental Model IO–520 engines certified in any category.

Compliance: Within 100 hours time-in-service after the effective date of this AD and each 100 hours time-in-service thereafter, until modified in accordance with paragraph (b) of the AD.

To eliminate the possibility of the engine power reduction due to ingestion of pieces of a failed engine induction airbox outboard duct, accomplish the following:

(a) Visually inspect the engine induction airbox outboard duct lower skin for cracks.

(b) If cracks are found, prior to further flight, either replace the induction airbox outboard duct with a Cessna Part Number 1250725–8 duct or repair the skin of the existing duct in accordance with the repair procedures of FAA Advisory Circulars AC 43.13–1A and AC 43.13–2A.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209.

Cessna Single Engine Customer Care Service Information Letter SE84–20 dated November 2, 1984, covers the subject matter of this AD.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and § 11.85 of the Federal Aviation Regulations (14 CFR 11.85))

Issued in Kansas City, Missouri, on February 19, 1985.

Murray E. Smith,

Director, Central Region.

[FR Doc. 85–4836 Filed 2–27–85; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 2

[Docket No. RM83–8–000]

Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies

February 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its rules to modify the ratemaking treatment of investment tax credits for natural gas pipeline companies. Under the proposal, the Commission would revoke its Statement of Policy set forth in Order No. 448 (that determined a supply shortage of natural gas exists); and change its regulations to allow gas ratepayers, as electric utility ratepayers, to share in the benefits of investment tax credits.

DATE: Written comments are due on April 1, 1985.

ADDRESS: Written comments must be filed with the Office of the Secretary, Room 3110, 825 North Capitol Street,

NE., Washington, D.C. 20426. An original and fourteen copies must be filed.

FOR FURTHER INFORMATION CONTACT: Penelope S. Ludwig, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8572.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend its policies concerning the proper accounting and ratemaking treatment of investment tax credits [1] for natural gas pipeline companies.[2] The proposed rule would constitute a change from the current Commission practice that allows natural gas pipeline companies to retain as income all benefits of the investment tax credits.

The Commission proposes to revoke its determination that there is a shortage of natural gas for purposes of investment tax credits and to repeal § 2.67a of its regulations as enunciated in Order No. 448.[3]

II. Background

A. Investment Tax Credits—Overview

The Revenue Act of 1971 reinstated investment tax credits. The Congressional intent in enacting the investment tax credits program was to assist companies in raising the capital necessary to modernize and to expand. Section 46(f) of the Internal Revenue Code (Code) [4] provides four ratemaking options for companies to follow when accounting for investment tax credits. The regulated company, not the regulatory commission, chooses among these options.

Options 1 [5] and 2,[6] provide a means whereby the company and ratepayers share the benefits of the investment tax credit.

Option 3 [7] is only available for certain post-1969 utility property eligible for flow-through treatment of accelerated depreciation tax benefits, whether or not such treatment is used.[8]

The fourth choice, Option 1a, permits companies to keep all of the benefits of the investment tax credit. This option is available only to designated "short supply" companies. Natural gas and steam pipelines could elect this option if the regulatory body having jurisdiction over these entities made a determination that "the natural domestic supply of the product . . . is insufficient to meet the present and future requirements of the domestic economy." [9] Once the short supply determination is made, the short supply company is no longer allowed to adjust rate base or cost of service for ratemaking purposes to reflect the investment tax credit.

B. Commission Ratemaking Treatment of Investment Tax Credits Under the Revenue Act of 1971

In response to the Revenue Act of 1971, the Federal Power Commission (FPC), this Commission's predecessor, issued a Statement of Policy in Order No. 448 as incorporated in § 2.67a of its regulations.[10] The FPC specifically found that the natural domestic supply of natural gas was "insufficient at [that] time to meet the present and future requirements of the domestic economy" for purposes of section 46(f)(1) of the Code governing investment tax credits.[11] This determination allowed natural gas companies to retain the full benefits of the investment tax credits. In § 2.67a, the FPC recited the procedures for natural gas companies to elect a ratemaking and accounting treatment consistent with section 46(f) of the Code.[12] The FPC also ordered that once adopted a utility company may not change its accounting method without prior Commission approval.[13]

In contrast to the specific Commission policy statement regarding investment tax credits for natural gas companies, Commission decisions concerning electric utilities have consistently stated that the investment tax credit benefit should be shared between investors and ratepayers.[14] In addition, the IRS, in the preamble to its regulations implementing investment tax credits also presumed that Congress intended that there be a sharing of benefits.[15] The Senate and House Reports also indicate that the benefits of the investment tax credits should be shared.[16]

C. Petition for Rulemaking

On November 8, 1982, the Iowa State Commerce Commission (ISCC) petitioned the Commission to amend § 2.67a of its regulations to eliminate the specific treatment of investment tax credits accorded natural gas pipeline companies.[17] Specifically, ISCC requests

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[1] In general, an investment tax credit is a credit against tax for investment in certain depreciable property.

[2] Any reference to natural gas pipeline companies includes all pipelines whether operated as a partnership, corporation or sole proprietorship.

[3] 37 FR 2502 (February 2, 1972); 47 F.P.C. 141 (1972).

[4] I.R.C. section 46(f).

[5] Under Option 1, the company adopts a rate base method in which it subtracts the actual amount of credit retained by the company from rate base and then adds the amortized investment tax credit amount back into rate base annually over the life of the asset.

[6] Under Option 2, the company employs a cost of service normalization process. The tax expense reflected in the cost of service is reduced by a proportional amount of the investment tax credit and no reduction is made to rate base.

[7] Economic Recovery and Tax Act of 1981 (ERTA) governs the tax treatment of post-1980 property. ERTA eliminated the ability of utilities to elect Option 3.

[8] This option allows an immediate reduction in tax expense for ratemaking purpose to reflect the full amount of the current year's investment tax credit.

[9] I.R.C. section 46(f)(1).

[10] 47 F.P.C. 141 (1972).

[11] *Id.*

[12] *Id.* at 142.

[13] *Id.* at 143.

[14] NEPCO Municipal Rate Comm'n v. FERC, 668 F.2d 1327, 1334–37 (D.C. Cir. 1981); Public Service Co. of New Mexico v. FERC, 653 F.2d 681, 684–66 (D.C. Cir. 1981); Union Elec. Co. v. FERC, 668 F.2d 389–94 (D.C. Cir. 1981); Carolina Power & Light Co., 4 FERC ¶ 61,107 (1978).

[15] Investment Credit; Public Utility Property, 44 FR 17666, 17667 (March 23, 1979).

[16] The Senate Report indicates that Congress intended to give regulatory agencies the discretion to require a sharing:

> In restoring the investment credit for public utility property of regulated companies, the committee has given careful consideration to the impact of this credit on ratemaking decisions. Although there are many different ways of treating the credit for ratemaking purposes, the committee, in general, believes that it is *appropriate to permit the regulatory agencies*, where they conclude that it is necessary, *to devide the benefits of the credit between the customers of the regulated industry and the investors* in the regulated industries.

S. Rep. No. 437, 92d Cong., 1st Sess. 36 (1971). (Emphasis added.) The House Report indicates that Congress believed that a sharing of the benefits is "appropriate":

> In restoring the investment credit for public utility property of regulated companies, the committee has given careful consideration of the impact of this credit on ratemaking decisions. Although there are many different ways of treating the credit for ratemaking purposes, your committee, in general, believes that it is *appropriate to divide the benefits of the credit between the customers of the regulated industries and the investors* in the regulated industries.

H.R. Rep. No. 533, 92d Cong., 1st Sess. (1971). (Emphasis added.)

[17] The following parties have filed in support of ISCC's proposal: Alabama Public Service Commission; Arizona Corporation Commission; Board of Public Utilities, State of New Jersey; Georgia Public Service Commission; Illinois Commerce Commission; Idaho Public Utilities Commission; Kansas State Corporation Commission; Kentucky Public Service Commission; Maine Public Utilities Commission; Michigan Consolidated Gas Company; Minnesota Public Utilities Commission; Montana Public Service Commission; National Association of Regulatory Utility Commissioners; New Mexico Attorney General's Office; North Carolina Utilities Commission; North Dakota Public Service Commission; Pennsylvania Public Utility Commission; Public Service Commission of Delaware; Public Service Commission of Maryland;

Continued

that the Commission immediately repeal § 2.67a of its regulations and establish a rule providing for the recognition of investment tax credits generated by natural gas companies in pending and future rate cases as follows:

(a) *For investment tax credits generated after the new proposal becomes effective:*[18]

1. Natural gas pipeline companies, characterized as Option 1 companies, shall reduce their rate base by the amount of the investment tax credits and shall reflect a ratable restoration of rate base via a below-the-line credit to other income.

2. Natural gas pipeline companies which elected Option 2 [19] shall reduce the income tax allowance reflected in the cost of service for ratemaking purposes by an amount reflecting a ratable amortization of the investment tax credits.

(b) *For investment tax credits generated before the new proposal becomes effective:*[20]

1. Natural gas companies, characterized as Option 1 companies, (a) shall reduce their rate base by the entire amount of the investment tax credits that would have been deducted from rate base in the absence of the supply shortage determination in Order No. 448, and (b) shall reflect a ratable restoration of rate base via a below-the-line credit to other income.

2. Natural gas companies that elected Option 2 would reduce the income tax allowance reflected in the cost of service for ratemaking purposes by an amount reflecting a ratable amortization of the entire amount of the investment tax credits.

Finally, ISCC states that it would have gas pipeline companies retain all of the cash flow benefits conferred on them by virtue of the Commission's past ratemaking treatment during the designated supply shortage period and the appropriate sections of the Internal Revenue Code.[21]

The Commission believes that it should review its previous statement of policy as enunciated in Order No. 448 and its determination that the natural gas supply is insufficient to meet present and future requirements.

III. The Proposed Rule

A. The Commission's Proposal

The Commission believes that a change in the ratemaking treatment of investment tax credits for natural gas companies may now be appropriate. The Commission proposes to revoke its determination that a gas supply shortage exists as articulated in its Statement of Policy in Order No. 448. This proposed action would disqualify natural gas pipelines from special treatment allowed under section 46(f)(1) of the Code. Once the supply shortage determination is revoked, the appropriate, existing sections of the Commission's regulations would govern the accounting and ratemaking treatment of investment tax credits for natural gas companies.[22] The proposal, to revoke the determination, if implemented, would not bar natural gas companies from sharing with ratepayers the benefits of investment tax credits generated after the effective date of the proposed Commission action.

The Commission intends that the prospective regulatory treatment of investment tax credits for natural gas pipelines be essentially consistent with the arrangement currently implemented for electric utilities.[23] While the Commission proposes for this action to have prospective effect only, it is possible that, absent modification of its current ratemaking policies, the revocation of the 1972 supply shortage determination could move natural gas pipelines from a favored tax position relative to other regulated companies to a less favored position. This would occur because, most if not all, non-natural gas companies elected Option 2 which currently provides a more favorable regulatory treatment than Option 1 in the absence of a finding of a shortage.

Accordingly, the Commission invites comment on whether the gas supply shortage determination, as to the present and future supply requirements, should be revoked with the concomitant result that a sharing between stockholders and ratepayers of the benefits of future investment tax credits generated after the effective date of the proposed action will not be barred. In addition, the Commission is seeking comment on the accounting procedure best suited to, in effect, make treatment under Option 1 procedures comparable in value to treatment under Option 2 procedures. This might be accomplished in different fashions. For instance, amortization of the deferred investment tax credits may be accelerated over a period shorter than the service life of the assets to which the investment tax credits relate. Alternatively, the Commission might require that a natural gas company's rate base be reduced by a specific portion of the amount of future credits in the accumulated deferred investment tax credit account, rather than by the full amount.

B. The Supply Situation of the Natural Gas Industry

During the 1970's interstate pipelines found themselves confronted with gas shortages of such magnitude that they did not have enough gas to meet the needs of their customers. At that time the Commission was concerned with helping the gas companies develop curtailment plans which would get the limited supplies of available gas to their customers.[24] In this context, in 1972, the FPC found that the supply situation of the natural gas industry was no longer sufficient to meet the then current and future requirements of the domestic economy.[25] The FPC based its conclusion on the evidentiary record and hearings previously held regarding the natural gas shortage.[26] The FPC also concluded that the gas supply shortage would continue into the future.[27]

The gas supply situation has changed since the 1970's. Today, in sharp contrast to a decade ago, there is a gas surplus.[28] Congress' enactment of the Natural Gas Policy Act of 1978 [29]

Public Utilities Commission and the Attorney General of the State of Rhode Island; Public Utilities Commissioner of Oregon; Public Service Commission of West Virginia; Public Service Commission of Wisconsin; Public Utilities Commission of the State of Colorado; People of the State of California and the California Public Utilities Commission; South Dakota Public Utilities Commission; State of Michigan and the Michigan Public Service Commission; Tennessee Public Service Commission; and Washington Utilities and Transportation Commission.

[18] ISCC Petition at 5.

[19] To the Commission's knowledge, all gas companies elected Option 1, so that they could qualify for the unique treatment under the designated supply shortage provision.

[20] ISCC Petition at 6.

[21] ISCC Petition at 6–7.

[22] The accounting instructions in § 2.67a of our regulations are no longer necessary in view of the accounting treatment set forth in the Uniform System of Accounts to accommodate any ratemaking action forthcoming as a result of the Commission's repealing this policy statement.

[23] 18 CFR Parts 35 and 101 (1984).

[24] FPC v. Transcontinental Gas Pipe Line Corp., 423 U.S. 326, 331 (1976); FPC v. Louisiana Power & Light Co., 406 U.S. 621 (1972).

[25] 47 F.P.C. 141 (1972).

[26] *Id.* (citing Area Rate Proceedings (Southern Louisiana), Op. Nos. 598 and 598–A, respectively, 46 F.P.C. 86, and 46 F.P.C. 633 (1971)).

[27] *Id.* (citing to other area rate proceedings and orders in pipeline curtailment proceedings, including Op. Nos. 586, 44 F.P.C. 761 (1970); 595, 45 F.P.C. 674 (1971); 595–A, 46 F.P.C. 827 (1971); 597, 45 F.P.C. 1170 (1971); 597–A, 46 F.P.C. 379 (1971); 606, 46 F.P.C. 786 (1971); 606–A, 46 F.P.C. 1290 (1971); and 607, 46 F.P.C. 900 (1971)).

[28] *See, e.g.*, U.S. Energy Information Administration, *Natural Gas Monthly*, Table 25 (Nov. 1984).

[29] 15 U.S.C. 3301, *et seq.* (1981).

(NGPA) was a major factor influencing the increase in gas supply. This legislation brought new gas supplies into the interstate market by raising prices and eliminating distinctions between the interstate and intrastate gas markets for new gas supplies. Higher prices reduced demand for gas as stronger overall conservation efforts were made by residential customers and greater fuel switching capability efforts were made by industrial customers to take advantage of lower cost alternative energy sources.

Since the significant gas surplus developed in the 1980's, the Commission has attempted to be responsive to the related problems faced by gas companies. Specifically, in the context of the off-system sales program, the Commission noted that virtually all interstate pipelines had a supply surplus.[30] In addition, special marketing programs [31] have been designed to allow the pipelines to develop spot markets for surplus gas previously contracted for by the pipelines, which these pipelines now do not need. The Commission has also encouraged individual pipeline marketing initiatives more specifically tailored to a particular pipeline supply and market situation.[32] Pipelines have also sought Commission approval of programs that developed special discount rates for sales.[33]

It cannot be known how long the present surplus condition will last. However, in adoption of the phased decontrol of well-head prices under the NGPA, the Congress determined, in effect, that a competitive wellhead market would keep supply and demand in better equilibrium than would the system of cost-based price regulation which resulted from the Supreme Court's 1954 *Phillips* [34] decision. Thus, the NGPA, with its provision for the elimination of price controls on most new gas which took effect January 1, 1985, appears to reflect, in part, a Congressional anticipation that deregulated wellhead prices would elicit supplies adequate to meet natural gas demand at those prices. Consequently, the Commission proposes to repeal its 1972 determination that a shortage of domestic natural gas supply exists now and in the future. In addition, as a housekeeping matter, the Commission proposes to repeal § 2.67a of its regulations to conform with this proposal.

Accordingly, the Commission invites comment on two specific areas:

(1) Whether the natural domestic supply of natural gas is sufficient to meet the present and future requirements of the domestic economy; and

(2) If present and future supply is determined to be sufficient, what changes, if any, need to be made in the Commission's accounting or ratemaking practices to make regulatory treatment of investment tax credits for natural gas pipelines, on a prospective basis, comparable to the current regulatory treatment of electric utilities.

V. Summary of the Proposed Rule

The proposed rule, if adopted, would revoke the Commission's determination that, for purposes of section 46(f)(1) of the Code, the natural domestic supply of natural gas is insufficient at this time to meet the present and future requirements of the domestic economy. Accordingly, once the determination is revoked, investment tax credits of natural gas pipeline companies shall be governed by the applicable tax laws, tax regulations and Commission regulations without the benefit of the unique treatment received under the designated supply shortage provision. This change would eliminate the current bar against natural gas companies sharing the benefits of investment tax credits with their ratepayers in a comparable manner as is done with electric utilities.

VI. Certification of no Significant Impact

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, to prepare and make available for public comment an initial regulatory flexibility analysis unless the Commission certifies pursuant to section 605(b) of the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities. The analysis must describe the impact the proposed rule will have on small entities. The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

Pursuant to section 605(b) of the RFA, the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. All of the jurisdictional natural gas companies that must comply with the rule proposed here are too large to be considered "small entities."[35] Small Business Administration's (SBA) regulations do not establish specific size standards for these gas pipelines.[36] Consequently, this rulemaking has no significant impact on a substantial number of small entities.

VII. Comment Procedures

The Commission invites interested persons to submit written comments, data, views and other information concerning the matter set out in this notice. An original and 14 copies of such comments should be filed with the Commission April 1, 1985. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, and should reference Docket No. RM83–8–000.

All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

List of Subjects in 18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines.

In consideration of the foregoing, the Commission proposes to amend Chapter 1, Title 18, Code of Federal Regulations, as set forth below.

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[30] 23 FERC ¶ 61,140 (1983).

[31] Cities Service Oil and Gas Corp., 27 FERC ¶ 61,493 (1984); PanMark Gas Co., 26 FERC ¶ 61,341 (1964) and 27 FERC ¶ 61,490 (1984); Texas Eastern Trans. Corp., 27 FERC ¶ 61,491 (1984); Columbia Gas Trans. Corp., 25 FERC ¶ 61,220 (1983); Tenneco Oil Co., 25 FERC ¶ 61,234 (1983); Transcontinental Gas Pipeline Corp., 25 FERC ¶ 61,219 (1983).

[32] Natural Gas Pipeline Co., 27 FERC ¶ 61,235 (1984).

[33] Northern Natural Gas Co., 27 FERC ¶ 61,299 (1984); Northwest Pipeline Corp., 27 FERC ¶ 61,167 (1984); United Gas Pipeline Co., 27 FERC ¶ 61,349 (1984).

[34] *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954).

[35] Currently, 132 natural gas entities have rate schedules on file with the Commission. Of these, 46 are major gas pipelines (having at least 50 million Mcf at 14.73 psi (60° F) of sales for resale, transportation or storage for a fee in each of the three previous calendar years). The remaining 86 entities are not classified as major companies, but has total gas sales of volume transactions exceeding 200,000 Mcf at 14.73 psi [60° F] in each of the three previous calendar years (nonmajor). 18 CFR Part 201, General Instruction 1 (Classification of utilities) (1984).

[36] 5 U.S.C. 601(3) (1982), *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. See *also* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) 13 CFR Part 121.

By the direction of the Commission. Commissioner Sousa dissented.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for Part 2 is added to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive order 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717z (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

§ 2.67a [Removed]

2. Section 2.67a is removed.

[FR Doc. 85–4842 Filed 2–27–85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 559]

Proposed Establishment of Cumberland Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms proposes to establish in portions of the States of Maryland and Pennsylvania an American viticultural area to be known by the appellation "Cumberland Valley." This proposal is based on a petition filed jointly by Charles M. Webster, a grower of wine grapes in Sharpsburg, Maryland, and Robert W. Ziem, the proprietor of a vineyard and bonded winery in Downsville, Maryland.

The use of the name of an approved viticultural area as an appellation of origin in the labeling and advertising of wine allows the proprietor of a winery to designate the area as the locale in which grapes used in the production of a wine are grown and enables the consumer to identify and to differentiate between that wine and other wines offered at retail.

DATE: Written comments must be received by April 29, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385 (Ref: Notice No. 559) Washington, DC 20044–0385.

Copies of the petition, of the proposed regulations, of the appropriate maps, and of the written comments are available for public inspection during normal business hours at: ATF Reading Room, New Post Office Building, Room 4407, 1200 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, FAA, Wine and Beer Branch, Room 6237, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Telephone: (202) 566–7626.

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in Title 27, Code of Federal Regulations, Part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added to Title 27 a new Part 9 providing for the listing of approved American viticultural areas.

Section 4.25a(e)(1) defines an American viticultural area as a delimited grape growing region distinguishable by geographical features. Section 4.25a(e)(2), outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition shall include—

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish features of the proposed area from surrounding areas;

(d) A description of the specific boundary of the proposed viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and,

(e) A copy (or copies) of the appropriate U.S.G.S. map(s) with the proposed boundary prominently marked.

Petition

In December 1982, ATF received the petition submitted by Mr. Webster and Mr. Ziem for the establishment of a viticultural area in Washington County, Maryland, to be known as "Cumberland Valley, Maryland." ATF's initial examination of the U.S.G.S. maps and the Washington County, Maryland, soil survey submitted with the petition indicated that the area for which the petition was submitted is more commonly known as the Hagerstown Valley, a portion of the larger Cumberland Valley which extends north above the Mason-Dixon Line, the geopolitical boundary between the States of Maryland and Pennsylvania. In light of this determination, the petitioners agreed to amend the petition to include the portions of the Cumberland Valley which are located in Franklin and Cumberland counties in Pennsylvania and to petition for the name "Cumberland Valley."

The Cumberland Valley is an 80-mile long valley which bends in a northeasterly direction from the Potomac River in Washington County, Maryland, to the Susquehanna River in Cumberland County, Pennsylvania. The valley is bordered on the southeast by South Mountain, which is the northernmost extension of the Blue Ridge Mountains, and on the northwest by the Allegheny Mountain complex. The principal streams that drain the valley are Conococheague Creek and Antietam Creek, tributaries of the Potomac River, and Conodoguinet Creek and Yellow Breeches Creek, tributaries of the Susquehanna River. The land drained by these streams shares similar geological history, topographical features, soils, and climatic conditions.

The boundary of the proposed viticultural area encompasses approximately 1,200 sequare miles of 765,000 acres. The petitioners state that within the Cumberland Valley there are approximately 60 acres devoted to the cultivation of wine grapes and there are three bonded wineries. Due to the effects of soil, drainage, rainfall, frost and winter kill, the areas of this valley which are devoted to viticulture consist primarily of high terraces along the north bank of the Potomac River, hills and ridges in the basin of the valley, and upland areas along the slopes of South Mountain.

Name

The petitioners state that the proposed viticultural area is known locally and nationally by the name "Cumberland Valley" and that the use

of this name is well documented. The name was given to the valley in 1736 by the earliest settlers who came from Cumberland County, England. In 1751 the name was formally adopted when the northeast part of the valley was named Cumberland County and the City of Carlisle (PA) was named for its counterpart in Cumberland County, England. Today, numerous references to the name of the valley are made in industrial, business and organizational names.

Geography

The proposed Cumberland Valley viticultural area consists of a large elongated intermountain valley and the immediately surrounding upland areas. Mountains of the Allegheny Mountain complex form the western and northern portions of the boundary of the proposed viticultural area and South Mountain, the northernmost extension of the Blue Ridge Mountain complex, forms the southern and eastern portions of the boundary. The southwestern and northeastern portions of the boundary are, respectively, the northeast bank of the Potomac River in Maryland and the southwest bank of the Susquehanna River in Pennsylvania. The valley is approximately 80 miles long from river to river. Its width is approximately 20 miles along the Potomac River (MD), approximately 24 miles at the Mercersburg–Waynesboro (PA) corridor, approximately 12 miles near Shippensburg (PA), and narrows to approximately 8 miles at Harrisburg (PA) along the Susquehanna River.

Distinguishing Characteristics

The petitioners claim that the proposed viticultural area is distinguished geographically from surrounding areas by its topography, geology and soils, and to a lesser extent by climatological characteristics.

Topography

The topography of the basin of the Cumberland Valley is nearly level. The basin of the valley is a gently rolling plain which at its western edge along the Potomac River is approximately 300 feet above sea level and which over a distance of approximately 80 miles gradually ascends to an average elevation of 600 feet above sea level and then descends to an altitude of 300 feet above sea level along the Susquehanna River. The valley floor has some areas of higher elevation, i.e., lowlying hills and ridges.

While the elevation of the arable land averages 600 feet above sea level, the portions of the boundary to the northwest, north and southeast are higher due to the slopes of the mountains. The ridges and peaks of these mountains range from 1000 feet to 2100 feet above sea level. The areas of higher elevation range from 700 feet to 1600 feet above the valley floor and include South Mountain (2145 feet) to the south and east of the valley floor, the Bear Pond Mountains (2062 feet), Cove Mountain (1582 feet), and Kittatinny Mountain (2056 feet) to the west and Blue Mountain to the north (2000 feet). Most of the land above 1,000 feet in elevation is stoney and unsuitable for agriculture, and consequently, remains forested.

Geology

The Cumberland Valley is an example of a mountain landscape that has been formed by erosion during a long interval of geologic time and that has reached a condition of dynamic equilibrium in which the adjustment between the landforms and the rocks beneath is nearly complete.

The Cumberland Valley is a segment of the Great (Limestone) Valley, a long and fertile lowland trough, underlain by Cambrian and Ordovician limestone and shale, that extends along the axis of the Appalachian Highlands from the State of Alabama north into Canada. It is geologically well defined by South Mountain to the south and east and by the Allegheny Mountains to the west and north. The segment of the Great Valley lying to the northeast of the Cumberland Valley is known as the Lebanon Valley and the segment lying to the southwest is known as the Shenandoah Valley.

Soil Characteristics

The topography and soils of the Cumberland Valley result from the geology of the area. The valley is a limestone bed that has been weathered to a gently rolling plain. The valley lies at approximately 600 feet above sea level between low mountains that rise to an elevation of about 2,000 feet above sea level and belong to the easternmost fringes of the Appalachian Mountains. The mountains to the west, north and south of the valley are formed of sedimentary, metamorphic sedimentary, and igneous rocks while the valley is composed almost entirely of limestone.

The soils found in the Cumberland Valley are typical of those derived from limestone. The Shenandoah and Lebanon valleys, respectively to the southwest and northeast, are contiguous segments of the Great (Limestone) Valley and bear soil characteristics similar to those of the Cumberland Valley. The soils in these valleys are deep, well drained, generally alkaline, and highly productive with a high moisture holding capacity whereas the mountains which border the Cumberland Valley to the west, north and south, have soils generally of associations which are not a productive, deep, or well drained and which are acidic.

The General Soil Map of Pennsylvania, prepared by the Pennsylvania State University in collaboration with the Soil Conservation Service of the U.S. Department of Agriculture, and General Soil Map of Maryland, prepared by the University of Maryland in collaboration with the Soil Conservation Service of the U.S. Department of Agriculture, show that the soils suitable for agriculture in the valley can, in fact, be used to delineate the basin of the valley from the surrounding highlands.

Data from the soil surveys for Washington County in Maryland and the counties of Franklin and Cumberland in Pennsylvania strongly support carrying the Cumberland Valley appellation all the way from the Potomac River to the Susquehanna River.

The major soil association found in the three counties which make up the Cumberland Valley and Berks, Hagerstown and Murrill and are distributed within the total land area of each county as follows:

Name of county	Soil associations (in acres)			Total acres
	Berks	Hagerstown	Murrill	
Washington (MD)	15,000	136,000	19,000	295,680
Franklin (PA)	15,000	154,000	43,500	482,680
Cumberland (PA)	61,000	58,000	12,700	335,000
Totals	226,000	348,000	75,200	1,113,360

Washington County, Maryland. Soils of the Waynesboro association are found almost entirely on the high terraces along the Potomac River. The Waynesboro soils consist of very old, acid alluvium, mostly gravelly, which has been eroded from highland areas and deposited in rather thick beds above the Potomac River. These soils are well-drained, deep and medium-textured, but require liming in order to be productive for grapegrowing.

Soils of the Berks association have differences in capability depending upon underlying rock formations which can be either limestone (alkaline) or other than limestone (acidic). Berks soils require periodic liming in order to be productive. Berks soils found on slopes hold less moisture than Berks soils

found along the beds of creeks which drain the basin of the valley. However, the Berks soil along creek beds is not used for the cultivation of fruit.

Soils of the Murrill association are underlain by limestone and are influenced by limestone materials. These soils are used generally for farming with emphasis on dairying and other livestock enterprises. There are orchards and vineyards on the somewhat higher intermediate slopes where air drainage is better. These soils occur on the lowest western slopes of South Mountain, from the Pennsylvania line southward almost to Rohrersville, Maryland. These soils are also on the lowest western slopes of Elk Ridge from near Porterstown southward to the Potomac River; in a small isolated area just north of Antietam; and in a large area on the lowest eastern slopes of Fairview Mountain, from the Pennsylvania line southward beyond Clear Spring and southeastward to the Potomac in the vicinity of Two Locks.

Soils of the Hagerstown-Duffield-Frankstown association occupy most of the main basis of the Great (Limestone) Valley that crosses Washington County between South Mountain and Fairview Mountain. These are the dominant soils which make up more than 90 percent of soils in the valley in Washington County and are the most important in its agricultural economy which lies chiefly in corn, small grains, hay crops, dairying, breeding of livestock, and fruit crops.

Franklin County, Pennsylvania. Like Washington County, Maryland, Franklin County, Pennsylvania, is located primarily in the Great Limestone Valley.

The principal soil associations in Franklin County are: Hagerstown-Duffield, Murrill-Laidig and Weikert-Berks-Bedington.

The deep and well drained Hagerstown-Duffield soils make up about 32 percent of the land in the county and are found in the limestone valleys which are dedicated to crops, fruit, hay, and pasture.

The Murrill-Laidig association consists of deep, well-drained, gently sloping to moderately steep soils formed in colluvium on the foot slopes and benchlike areas on mountainsides. Nearly all of the soils of this association have been cleared and are used for crops, hay, pasture and fruit. They are among the best in Franklin County for farming.

The Weikert-Berks-Bedington association soils are shallow to deep, well-drained, soils formed in materials weathered from shale and interbedded shale, siltstone and sandstone and are found in the falleys where crops are planted.

Cumberland County, Pennsylvania. Although the soils in Cumberland County have been surveyed, the report of the survey is presently being drafted and will not be published for at least another year. Mr. Charles Pannebaker of the Soil Conservation Service in Carlisle, Pennsylvania, furnished field data and a preliminary map which shows continuation into Cumberland County of the major soil types found in Washington and Franklin counties. The Hagerstown type soil (limestone) continues all the way to the floodplain of the Susquehanna River and the Murrill colluvial fans (sandstone over limestone) continue along the slopes of South Mountain.

Climatological Characteristics

With exceptions of the Shenandoah Valley and the Lebanon Valley, which lie respectively to the southwest and northeast and which have similar climatological characteristics, climate is a feature which differentiates the Cumberland Valley from other surrounding areas. Because of the location of the Allegheny Mountain complex to the west and north and the Blue Ridge Mountain complex to the south, as well as the movement of warm, moist air northward from the Gulf of Mexico within the basin of the Great (Limestone) Valley, the climate, including average temperature and precipitation, is relatively uniform throughout the Cumberland Valley.

The valley lies in an area of prevailing westerly winds which originate in the interior of North America. Warm, moist air from the Gulf of Mexico flows northward along the basin of the Great (Limestone) Valley into and beyond the Cumberland Valley. In addition, the Atlantic Ocean to the east is a modifying factor and an occasional source of warmth and moisture. These conditions give a "Humid Continental" type of climate, typical of the Middle Atlantic States. Most weather systems that affect this area originate in Canada or on the Central Plains of the United States, are caught up in the prevailing westerly flow aloft, gradually acquire some of the characteristics of the underlying land as their air masses move eastward over the Appalachian Mountains, and lose their moisture in the form of precipitation over the basin of the valley.

By the time an air mass has passed over the Appalachian chain, it is considerably modified in both temperature and moisture. After cooling and losing moisture while traversing the mountains, an air mass tends to warm and at least partly replenish its moisture supply over the valley. Orographic uplift along the windward side of South Mountain, which forms the eastern portion of the border of the proposed viticultural area, results in increased cloudiness and the greatest precipitation along this eastern ridge. Annual temperatures generally average near 53 °F over the Cumberland Valley but at higher elevations along the western and eastern borders they average two to three degrees colder. Precipitation also follows topographical features; the annual average is 40 inches in the western mountain and valley region and approximately 45 inches in the South Mountain region. The Lower totals along the western border are due to the drying of the air mass over the mountains farther west and the lack of a moisture source.

Average temperature and precipitation are relatively consistent throughout the valley. In addition to the data obtained by the petitioners from weather stations within and outside the proposed boundary of the petitioned area, ATF has found evidence presented in the notices and Treasury decisions for the Catoctin, Lancaster Valley, and Shenandoah Valley viticultural areas that documents the climatological differences between the Cumberland Valley and surrounding areas.

The climate of the Catoctin viticultural area (see Notice No. 455 and T.D. ATF–154) which lies to the south of the Cumberland Valley has an average annual rainfall of 36–42 inches, temperatures of 50–55 degrees F., and a frost-free season of 160–170 days. The Lancaster Valley viticultural area (see Notice No. 381 and T.D. ATF–102) to the southeast of the Cumberland viticultural area has an average annual rainfall of 40–42 inches, temperatures of 55–60 degrees F., and a frost-free season of 170–180 days. The Shenandoah Valley viticultural area (see Notice No. 419 and T.D. ATF–120) to the southwest of the Cumberland Valley has an average annual rainfall of 34–38 inches, temperatures of 54–56 degrees F., and a frost-free season of 150–160 days.

The petitioner cites data from three weather stations of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, specifically the stations at Chewsville (elev. 640 feet) located near Hagerstown (MD) at the southern end of the valley, Chambersburg (PA) located centrally (elev. 570 feet), and Carlisle (PA) located in the northeastern end of the valley (elev. 465 feet). These stations show average temperatures ranging from 51.6 °F to 53.4 °F, total precipitation

from 34.9° to 39.8°, and degree growing days of 3050 at Chewsville, 2890 at Chambersburg, and 3150 at Carlisle. The average annual temperature is 52 °Fahrenheit with the coldest month being january (32 °Fahrenheit) and the warmest month being July (75 °Fahrenheit). Based upon data recorded at Chambersburg, annual precipitation averaging 38.25 inches occurred fairly evenly throughout the 30 years, from 1931 to 1960.

In summer, several periods of hot and humid weather are observed, however, and valley temperatures reach into the nineties about 30 times during summer. On the average, daytime highs reach the mid to upper eighties and nighttime lows are near 60°. Temperatures in the mountains are somewhat cooler.

Freezing temperatures have not been experienced during summer in the valley. Clud cover is at a minimum in summer; the valley receives more than 60 percent of the available sunshine, and nights are generally clear.

The prevailing wind is southwest and averages 8 miles per hour. Rainfall is generally adequate, but dry periods of 2 to 3 weeks are sometimes experienced. Summer rainfall is usually in the form of afternoon and evening thundershowers, which occur on an average of 24 days during the period June through August.

The length of the growing season is fairly consistent over the valley and averages 160 to 170 days. Frost occurs as late as mid-May and as early as mid-September. A somewhat shorter growing season exists in the mountains. About 57 percent of the annual precipitation falls during spring and summer.

The climatological characteristics of the Cumberland Valley and surrounding areas may be summarized by the following averages:

Name of area	Temperature	Rainfall	Frost-free days
Mountains (west)	48° to 50 °F	40"	Less than 160.
Mountains (north)	48° to 50 °F	40"	Less than 160.
South Mountain	49° to 52 °F	45"	Less than 160.
Catoctin	50° to 55 °F	36" to 42"	160 to 170.
Cumberland Valley	51° to 54 °F	34" to 40"	160 to 170.
Shenandoah Valley	54° to 56 °F	34" to 38"	150 to 160.
Lancaster Valley	55° to 60 °F	40" to 42"	170 to 180

Proposed Boundary

The petitioners claim that the boundary of the proposed viticultural area is as specified in the amended petition.

The boundary of the proposed Cumberland Valley viticultural area may be found on 32 United States Geological Survey Maps of the 7.5 minute series, scale 1:24,000. The boundary, as amended by ATF with the consent of the petitioners, is described in proposed § 9.105.

Viticulture in Proposed Area

The following statistics were developed from information (not necessarily in the petition) available to ATF:

(1) Total acreage in the proposed area—approximately 765,000 acres.

(2) Commercial vineyards (winegrapes)—approximately 20 acres in Maryland and approximately 40 acres in Pennsylvania.

(3) Commercial wineries—oen in the Maryland portion of the proposed area and two in the Pennsylvania portion.

Grapes grown commercially for winemaking are mainly Labrusca and Labrusca/vinifera crosses (French hybrids). Only a few vinifera grapes are grown commercially in the proposed area.

Compliance With Executive Order 12291

It has been determined that this proposed regulation is not a "major rule" within the meaning of Executive order 12291 of February 17, 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 costs 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Public Participation

ATF requests comments from all interested parties. Comments received before the closing date will be carefully considered. Comments received after the closing date and too late for consideration will be treated as possible suggestions for future ATF action.

ATF is specifically interested in whether all portions of the area as proposed in this notice are known by the name "Cumberland Valley" and whether the name "Cumberland Valley" has national recognition.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be necessary.

Drafting Information

The principal author of this document is Michael J. Breen, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority

Accordingly, under the authority contained in 27 U.S.C. 205 (49 Stat. 981, as amended), ATF proposes to amend Title 27, Code of Federal Regulations, Part 9, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The table of Sections in 27 CFR Part 9, Subpart C, is amended to add the title of § 9.105 as follows:

Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.105 Cumberland Valley.

Par. 2. Subpart C is amended by adding § 9.105 as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.105 Cumberland Valley.

(a) *Name.* The name of the viticultural area described in this section is "Cumberland Valley."

(b) *Approved maps.* The appropriate maps for determining the boundary of the Cumberland Valley viticultural area are the following 32 U.S.G.S. topographical maps of the 7.5 minute series:

(1) "Williamsport Quadrangle", edition of 1969.

(2) "Shepherdstown Quadrangle", edition of 1978.

(3) "Keedysville Quadrangle", edition of 1978.

(4) "Middletown Quadrangle", edition of 1953, photo-revised 1979.

(5) "Myersville Quadrangle", edition of 1953, photo-revised 1971.

(6) "Smithsburg Quadrangle", edition of 1953, photo-revised 1971.

(7) "Waynesboro Quadrangle", edition of 1944, photo-revised 1968 and 1973.

(8) "Iron Springs Quadrangle", edition of 1953, photo-revised 1968 and 1973.

(9) "Scotland Quadrangle", edition of 1944, photo-revised 1968 and 1973.

(10) "Caledonia Park Quadrangle", edition of 1944, photo-revised 1968 and 1973.

(11) "Walnut Bottom Quadrangle", edition of 1952, photo-revised 1969 and 1977.

(12) "Dickinson Quadrangle", edition of 1952, photo-revised 1969 and 1977.

(13) "Mount Holly Springs Quadrangle", edition of 1952, photo-revised 1968 and 1973.

(14) "Carlisle Quadrangle", edition of 1952, photo-revised 1968 and 1973.

(15) "Mechanicsburg Quadrangle", edition of 1952, photo-revised 1968 and 1973.

(16) "LeMoyne Quadrangle", edition of 1963, photo-revised 1972.

(17) "Steelton Quadrangle", edition of 1963, photo-revised 1972.

(18) "Harrisburg West Quadrangle", edition of 1969, photo-revised 1974.

(19) "Wertzville Quadrangle", edition of 1952, photo-revised 1968 and 1973.

(20) "Sherman's Dale Quadrangle", edition of 1952, photo-revised 1968 and 1973.

(21) "Landisburg Quadrangle", edition of 1952, photo-revised 1969 and 1977.

(22) "Andersonburg Quadrangle", edition of 1952, photo-revised 1969 and 1977.

(23) "Newville Quadrangle", edition of 1952, photo-revised 1969 and 1975.

(24) "Newburg Quadrangle", edition of 1966, photo-revised 1973.

(25) "Doylesburg Quadrangle", edition of 1966, photo-revised 1973.

(26) "Roxbury Quadrangle", edition of 1966, photo-revised 1973.

(27) "Fannettsburg Quadrangle", edition of 1966, photo-revised 1973.

(28) "St. Thomas Quadrangle", edition of 1944, photo-revised 1968 and 1973.

(29) "McConnellsburg Quadrangle", edition of 1944, photo-revised 1968 and 1973.

(30) "Mercersburg Quadrangle", edition of 1943, photo-revised 1968 and 1973.

(31) "Clear Spring Quadrangle", edition of 1955, photo-revised 1971.

(32) "Hedgesville Quadrangle", edition of 1979.

(c) *Boundary.* The Cumberland Valley viticultural area is located in Washington County in west-central Maryland and in Franklin and Cumberland counties in south-central Pennsylvania. The boundary is as follows:

Starting immediately west of the Town of Williamsport in Washington County, Maryland, at Lock 45 of the Chesapeake & Ohio (C&O) Canal National Historical Park and confluence of the Potomac River and Conococheague Creek (see Williamsport Quadrangle), the boundary proceeds in a southeasterly direction along the perimeter of the park on the northeastern bank of the Potomac River to the confluence of Antietam Creek and the Potomac River;

Then southeast on Limekiln Road which runs along the perimeter of the park from Antietam Creek to the intersection of Limekiln Road and Harpers Ferry Road;

Then northeasterly in a straight line approximately two miles to the 952-foot summit of Hawk's Hill;

Then northerly on a straight line approximately 2.5 miles to the intersection of Red Hill Road and Porterstown Road;

Then southeasterly along Porterstown Road to its intersection with Mount Briar—Trego Road;

Then southerly along Mount Brian—Trego Road to its intersection with Millbrook Road;

Then east along Millbrook Road to its intersection with State Route 67, approximately 0.5 mile north of Rohersville, Maryland;

Then directly east approximately 1.25 miles in a straight line to the 1,000-foot contour line of South Mountain;

Then in a north northeastly direction along the 1,000-foot contour line of South Mountain in Washington County, Maryland, and Franklin and Cumberland counties in Pennsylvania to the point on South Mountain where the 1,000-foot contour line crosses State Hollow Road (Rt. 233);

Then north along Rt. 233 to the point where it crosses the 750-foot contour of South Mountain;

Then east along the 750-foot contour line of South Mountain to the point southwest of the Mount Holly Springs Reservoir where Cold Spring Run, a tributary of Yellow Breeches Creek, crosses the 750-foot contour line, approximately 3 miles southwest of the town of Mount Holly Springs, Pennsylvania;

Then east northeast in a straight line approximately seven miles to Center Point Knob, elev. 1050 feet, approximately two miles southeast of Boiling Springs, Pennsylvania (see Mechanicsburg Quadrangle);

Then continuing east northeast in a straight line approximately six miles to the point where U.S. Rt. 15 crosses Yellow Breeches Creek, approximately one mile east of Williams Grove, Pennsylvania;

Then east and northeast in a meandering line along the north bank of Yellow Breeches Creek to its confluence with the Susquehanna River;

Then north along the west bank of the Susquehanna River, which forms the western portion of the corporate boundary line of the City of Harrisburg, Pennsylvania, to the point where the 300-foot contour line and the west bank of the Susquehanna River meet;

Then directly west to the 700-foot contour line of Blue Mountain overlooking the Susquehanna River;

Then along the 700-foot contour line of Blue Mountain as it meanders west and around McClures Gap,;

Then along the 700-foot contour line of Blue Mountain to the point were the 700-foot contour line crosses State Rt. 233;

Then northeast along Rt. 233 through Doubling Gap to the 1,000-foot contour line of Blue Mountain;

Then in a generally southwesterly direction along the 1,000-foot contour line of Blue Mountain into Franklin

County to the point where the 1,000-foot contour line meets the roadbed of the Pennsylvania Turnpike, Interstate 76;

Then along the roadbed of the Pennsylvania Turnpike to the east entrance of the Blue Mountain Tunnel;

Then in a straight line approximately 6.5 miles to the intersection of State Rt. 533 and the 1,000-foot contour line of Blue Mountain, approximately one mile west northwest of Upper Strasburg, Pennsylvania;

Then southwest along the 1,000-foot contour line of Blue Mountain to and along the 1,000-foot contour line of Broad Mountain;

Then along the 1,000-foot contour line as it meanders along and around Broad Mountain and Front Mountain to the point where the 1,000-foot contour line crosses Wilson Run near Franklin Furnace, Pennsylvania;

Then southwest in a straight line approximately 3.5 miles to Parnell Knob, elev. 2060 feet;

Then west northwest in a straight line approximately four miles to the point where the 1,000-foot contour line crosses Township Run near Cape Horn on Cove Mountain, approximately two miles north northwest of Fort Loudon, Pennsylvania;

Then southwest along the 1,000-foot contour line of Cove Mountain into and out of Cove Gap;

Then along the 1,000-foot contour line of Cove Mountain and Two Top Mountain in Franklin County, Pennsylvania, and Sword Mountain and Fairview Mountain in Washington County, Maryland, to the point on Fairview Mountain where the 1,000-foot contour line intersects the National Road (U.S. Rt. 40);

Then west along U.S. Rt. 40 approximately 0.5 mile to the intersection of U.S. Rt. 40 and Cove Road;

Then south in a straight line from the intersection of U.S. Rt. 40 and Cove Road approximately 1.25 miles to the intersection of McCoys Ferry Road and State Rt. 56;

Then south along McCoys Ferry Road to the perimeter of the C&O Canal National Historical Park along the Potomac River;

Then southeast along the perimeter of the C&O National Historical Park to the point of beginning.

Signed: February 22, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-4858 Filed 2-27-85; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

Permanent State Regulatory Program of Louisiana

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is proposing to modify the deadline for Louisiana to promulgate and submit rules governing the training, examination and certification of blasters. On January 22, 1985, Louisiana requested an extension of time to promulgate rules concerning blaster certification. All States with regulatory programs approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA of the Act) are required to develop and adopt a blaster certification program by March 4, 1984. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

DATE: Comments not received by April 1, 1985 at the address below, will not necessarily be considered.

ADDRESS: Written comments should be mailed or hand delivered to Mr. Robert Markey, Field Office Director, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Markey, Field Office Director, Tulsa Field Office, Office of Surface Mining, 333 West 4th Street, Room 3432, Tulsa, Oklahoma 74103; Telephone: (918) 745-7927.

SUPPLEMENTARY INFORMATION: On March 4, 1983, OSM issued final rules effective April 14, 1983, establishing the Federal standards for the training and certification of blasters at 30 CFR Chapter M (48 FR 9486). Section 850.12 of these regulations stipulates that the regulatory authority in each State with an approved program under SMCRA shall develop and adopt a program to examine and certify all persons who are directly responsible for the use of explosives in a surface coal mining operation within 12 months after approval of a State program or within 12 months after publication date of OSM's rule at 30 CFR Part 850, whichever is later. In the case of Louisiana's program, the applicable date is 12 months after publication date of OSM's rule, or March 4, 1984.

On January 22, 1985, Louisiana requested an extension until May 31, 1986, to promulgate blaster certification rules.

The Louisiana Department of Natural Resources, Office of Conservation, the regulatory authority for Louisiana's program, advised OSM that the State would require the additional time in order to promulgate and submit proposed rules on blaster certification. The letter stated the first actual surface mining operations are not scheduled to begin until the third quarter of 1985. Further, as previously discussed with OSM, the State does not anticipate the need for blasting for surface mining operations in Louisiana. This is due to the physical nature of the unconsolidated overburden materials associated with coal and lignite in Louisiana. In the interim, Louisiana would recognize and accept as valid a current blasters certification legitimately obtained from any other State Regulatory Authority (or the Federal Government) having an approved blaster certification program pursuant to 30 CFR Part 850.

OSM is seeking comment on the State's request for additional time to promulgate rules concerning blaster certification. Section 850.12(b) of OSM's regulations provides that the Director, OSM, may approve an extension of time for a State to develop and adopt a program upon a demonstration of good cause.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements

established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 918

Coal mining, intergovernmental relations, Surface mining, Underground mining.

Authority: Secs. 102, 201, and 503, Pub. L. 95-87, (30 U.S.C. 1202, 1211, and 1253).

Dated: February 22, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85-4888 Filed 2-27-85; 8:45am]

BILLING CODE 4310-05-M

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30 CFR Part 944

Public Comment and Opportunity for Public Hearing on Proposed Modifications of the Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule. Notice of receipt of permanent program modifications: public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the adequacy of proposed amendments to the Utah Permanent Regulatory Program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) submitted by Utah for the Director's approval. The amendments pertain to the definitions of "adjacent area," "disturbed area," "mine plan area" and "permit area" and to the inspection and enforcement requirements of the Utah program for surface coal mining and reclamation activities.

This notice sets forth the times and locations that the Utah program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed at the public hearing.

DATES: Written comments from members of the public not received by 4:30 p.m. on March 18, 1985, will not necessarily be considered in the Director's decision on whether the proposed amendemnts satisfy the criteria for approval.

A public hearing on the proposed amendments has been scheduled for March 12, 1985. Any person interested in making an oral or written presentation at the hearing should contact Mr. Robert Hagen at the address and telephone number listed below by March 5, 1985. If no person has contacted Mr. Hagen by this date to express an interest in participating in this hearing, the hearing will not be held.

ADDRESSES: The public hearing will be held between 1:00 p.m. and 4:00 p.m. at 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah. Written comments and requests for an opportunity to speak at the public hearing should be sent to Mr. Robert Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Copies of the Utah program, the proposed modifications to the program and all written comments received in response to this notice will be available for public review at the OSM Field Office above and the OSM Headquarters office and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSM albuquerque Field Office.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, Utah 84180-1203, Telephone: (810) 538-5340

Office of Surface Mining, 1100 "L" Street, NW., Room 5124, Washington, D.C. 20240, Telephone: (202) 343-5351

FOR FURTHER INFORMATION CONTACT: Mr. Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-5351.

SUPPLEMENTARY INFORMATION: On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program under SMCRA for the regulation of the surface coal mining operations in the State (46 FR 5899-5915).

Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981 **Federal Register** (46 FR 5899-5915).

On January 21, 1985, the Utah Division of Oil, Gas and Mining (DOGM) submitted proposed regulatory amendments for OSM's approval. The rule changes submitted for approval were adopted by the Utah Board of Oil, Gas and Mining on September 27, 1984 and October 24, 1984, but implementation of the revised rules is pending until approval is granted by OSM.

The amendments include proposed changes to the following sections of Utah's program regulations:

UMC/SMC 700.5 Definitions

Definition of "adjacent Area" is deleted and replaced with a new definition.

Definition of "Disturbed Area" is deleted and replaced with a new definition.

Definition of "Mine Plan Area is deleted and replaced with a new definition.

Definition of "Permit Area" is deleted and replaced with a new definition.

SMC 843.11 Cessation Orders

Existing paragraph (a)(2) is revised and renumbered paragraph (a)(3). A new paragraph (a)(2) is inserted.

Existing paragraph (d) is deleted and a new paragraph (d) is inserted.

SMC 843.15 Informal Public Hearing

New text is added to paragraph (b).

SMC 843.16 Board Review of Citations

A new paragraph (c) is added.

SMC 843.20 Compliance Conference

This is a new section which has been added.

SMC 845.12 When Penalty Will Be Assessed

Paragraphs (a), (b) and (c) have been revised.

SMC 845.13 Point System for Penalties

Paragraph (b)(3) has been revised.

SMC 845.17 Procedures for Assessment of Civil Penalties—Proposed Assessment

New text has been added under paragraph (b)(2).

SMC 845.18 Procedures for Informal Assessment Conference

Paragraph (b)(1) has been revised.

SMC 845.19 Request for Formal Hearing

Paragraph (a) has been revised; paragraph (b) has been revised and renumbered paragraph (c). A new paragraph (b) has been added.

The proposed amendments are available for review, in full text, at the addresses listed above under

administrative record number UT 351. The Secretary seeks public comment on whether the proposed modifications to the Utah permanent program listed above satisfy the criteria for approval of State program amendments. To approve the proposed provisions OSM must find that the provisions are no less stringent than the Act and no less effective than the Federal regulations. With respect to Utah's penalty provisions OSM must find that the State program, as proposed to be amended, incorporates penalties no less stringent than those set forth under the Federal requirements and contains the same or similar procedural requirements. With respect to Utah's enforcement provisions, OSM must find that the State program, as proposed to be amended, incorporates sanctions no less stringent than those set forth in the Federal requirements and contains the same or similar procedural requirements. If the Secretary determines the proposed modifications meet the criteria, the amendments will be approved, and 30 CFR Part 944 modified accordingly.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

Dated: February 22, 1985.

John D. Ward,

Director, Office of Surface Mining.

[FR Doc. 85-4889 Filed 2-27-85; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[Gen. Docket No. 84-1234; Rm-4247; FCC 84-558]

Rules To Allocate Spectrum for, To Establish Rules and Policies Pertaining to, the Use of Radio Frequencies in Land Mobile Satellite Service for Various Common Carrier Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission issues for public comment its proposal to allocate to Mobile Satellite Service eight megahertz (821–825 mHz and 866–870 mHz) in the UHF band. The proposal is made in response to a NASA petition and to the submission of two applications from private commercial entities. The Commission also indicates its intentions regarding selection and licensing of an MSS operator.

DATES: Comments must be received on or before March 29, 1985, and reply comments on or before April 28, 1985. Applications must be received on or before March 29, 1985.

ADDRESS: Federal Communications Commission, 1919 M St., NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Jacqueline Spindler, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554, (202) 632-4047.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations, Communications systems, Radio.

Notice of Proposed Rulemaking

In the matter of amendment of Parts 2, 22 and 25 of the Commission's Rules to allocate spectrum for, and to establish other rules and policies pertaining to, the use of radio frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services; General Docket No. 84-1234, Rm-4247.

Adopted: November 21, 1984.

Released: January 28, 1985.

By the Commission.

Table of Contents

I. Introduction

1. By this Notice, we propose to establish a mobile satellite service (MSS) in response to a November 1982 NASA petition for a rulemaking to allocate spectrum for a mobile satellite service, to establish technical and regulatory guidelines for such a service, and to authorize a licensee.[1] The NASA petition requests the allocation to MSS of 20 MHz of UHF spectrum (821–825) MHz, 845–851 MHz, 866–870 MHz, and 890–896 MHz) which is presently held in reserve for mobile services; NASA notes that the spectrum at 806–890 MHz has been designated by WARC-79 for MSS in Region 2 (the Americas).[2] NASA further proposes an allocation of some 70 MHz for satellite-to-fixed earth station and fixed earth station-to-satellite services (feeder links or backhaul).[3]

[1] MSS is a communications network which uses one or more satellites to serve the purposes similar to those provided by relay antenna towers in terrestrial mobile radio services. MSS can cover vast areas with a distance-insensitive service. This results in uninterrupted, truly universal service, with no requirements of population density or accessibility such as attach to terrestrial services.

[2] International Footnote 700 provides this designation to MSS. WARC 1979, Second Report and Order, FCC 83-511, released December 8, 1983, at p. C-198. *See* note 26, *infra*. The international designation does not apply to 890–896 MHz, which is allocated internationally to fixed mobile (except aeronautical mobile) and radiolocation on a secondary basis.

[3] An additional small amount of spectrum in the fixed satellite bands would be needed for telemetry, tracking and command (TT&C).

2. Two applications for developmental licenses have been submitted in connection with the NASA proposal, one from Mobile Satellite Corporation (Mobilesat) and one from Skylink Corporation (Skylink).[4] Although these applications differ in many respects from each other and from NASA's proposal, they both seek to establish an MSS, and they serve to delineate further some of the possibilities of MSS services and technologies. The applications, and the public comments on them,[5] warrant further consideration as to whether an MSS is needed, wanted, and commercially and technically feasible. MSS, according to NASA and the applicants, would utilize and develop many of the state-of-the-art technologies of terrestrial radio services. Frequency reuse, the highlight of terrestrial cellular radio, can be achieved in a future MSS by the use of spot beams, they state. Narrowband technologies, digital data transfer, high-gain and multiple-beam satellite antennas, multiple access techniques and modular mobile terminals are among the developments suggested for MSS. All three MSS proponents stress that the first-phase MSS will serve to lay the groundwork for increasingly sophisticated and spectrum-efficient satellite communications.

3. Applicants note that although no commercials MSS is now in operation, several nations have begun preparations to initiate such services.[6] Canada has developed a proposal, recently submitted to the International Frequency Registration Board (IFRB), to initiate an MSS in 8 MHz of the UHF reserve mentioned above; such a service would necessarily be coordinated with, or else could preclude, use of this spectrum in the United States. NASA has also run test programs in conjunction with various domestic entities (the ATS series, described in the NASA petition for rulemaking). In the course of the MSS rulemaking, we will consider the following issues:

(1) Whether the public interest would be served by an allocation of spectrum for a mobile satellite service (MSS); if so, how much spectrum, and in what band(s)?

(2) What services should be provided by an MSS?

(3) Whether and to what extent the applicants will be required to use state-of-the-art technology to use the allocated spectrum efficiently.

(4) What regulatory requirements and licensing procedures must be resolved before creating an MSS?

II. Spectrum Allocation

A. Demand for MSS

4. The applicants' demonstration of need for mobile satellite radio services is predicated upon the statutory demand for universal communication service,[7] and upon the simple fact that satellite service can be ubiquitous and both terrain- and distance-insensitive. MSS proponents point out that only MSS can provide a service which is truly universal and is not dependent upon geographic location or upon the stability or placement of earth-bound antennas or transmitters. They further state that MSS can provide high quality service where no service would otherwise exist—for example, to the 2% of the population of the contiguous United States (CONUS) who live in areas too remote, too rugged, and/or too sparsely populated to justify construction and development of terrestrial systems—some 5.7 million people.[8] They state that industrial demand (*e.g.*, trucking and shipping, gas and oil) for universal service cannot be adequately addressed except by MSS. The target populations for MSS service, as identified by the applicants, are as follows:

a. *Rural/Remote Telephone:* According to NASA's petition, about 80% of the land mass of the contiguous U.S. lies outside the Census Bureau's standard metropolitan statistical areas (now called "metropolitan statistical areas," of which there are 305); some 2% of the population of the contiguous United States, which Skylink equates with 1.6 million households, is presently unserved by any telephone system. According to NASA, this results in between 50,000 and 288,000 subscribers for residential rural telephone services, and 111,000 to 976,000 units for rural private land mobile service, by 1990.

b. *New Services:* (1) Transportation Industries: Trucking and other transportation industries in large-region or nationwide route systems require ubiquitous service. At present these potential users are inadequately served, as they must rely on terrestrial systems which develop only where population density warrants. New and incipient terrestrial systems such as cellular radio will not significantly affect this situation, according to NASA, and this lack of adequate service will persist absent MSS.

(2) Oil and Gas Industries: Applicants point out that oil and gas industries, mining, fishing, logging and similar industrial operations after involve remove and/or temporary work sites which are at present virtually unserved and unservable. They would rely heavily on a distance-insensitive and terrain-tolerant service such as MSS; for reasons of safety as well as economy, demand from this market is strong.

c. *Commercial and Public:* Demand from markets in law enforcement, disaster communications, forest fire communications, emergency medical services, search and rescue, and emergency services operations is evaluated in NASA's Attachments F and I. The actual demand for MSS service in such areas is difficult to quantify, according to NASA, but the social value of service to these essential operations is immeasurable. Further, an MSS would make possible the provision of universal radiotelephone services, covering areas where, because of distance or terrain, terrestrial mobile services are not economically justified.

d. *Aeronautical Mobile Satellite Service:* AMSS-type services might include location and surveillance, communications and data for air traffic control (ATC), radiotelephone (air-ground) services for airline passengers, and others.

5. NASA presents (Attachment F) figures indicating the capturable markets for the various populations discussed—that is, the market for which, allowing for *no* incursion upon existing terrestrial services, MSS is the service of choice (for either comparable service at lower cost, or better service at comparable or lower cost). These projection figures, in numbers of mobile units in service in 1996, total 319,500–609,000.[9] Both Mobilesat and Skylink

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[4] These applications have been received, but not accepted for filing, by the Commission. They are instead consolidated with this rulemaking procedure. These two companies, together with NASA, are hereinafter referred to as "Applicants." NASA has indicated that it does not seek to operate an MSS. NASA's purpose in filing its petition for rulemaking is to make possible the commercialization of MSS technology. Its proposals are intended to describe advanced concepts that can be used by the private sector.

[5] Public Comments, which were accepted on two different occasions, are noted at Attachment D.

[6] Programs have been planned and/or initiated in Scandinavia, Canada, and Japan. Also, an ITU-sponsored developmental program for low-cost thin route services via satellite to serve Africa has been initiated by Germany.

[7] Communications Act of 1934, as amended, section 1, 47 U.S.C. 151.

[8] This is the estimate included in NASA's rulemaking petition.

[9] NASA's figures for capturable markets are as follows: rural (residential and mobile), 133,000–257,000; new: gas & oil, 61,000*; trucking, 500; commercial & public, 125,000–291,000; total, 319,500–609,000.

(*This figure represents the gross market rather than the capturable market, according to NASA's Attachment H; no capturable market figure is given for the gas & oil industry.)

offer market figures as well. Mobilesat offers a total of 553,630–2,357,320 for a 1995 capturable market;[10] Skylink expressed its demand projections in terms of Erlangs required rather than mobile units, stating that by 1995, a total of between 4,712 and 29,012 Erlangs capacity will be required.[11] We are concerned that service be provided at costs that can be afforded by potential users in the presently unserved areas, and specifically request comments on this issue.

6. *Canada's MSAT.* Demand for mobile satellite service is arguably even stronger in Canada than in the U.S.[12] Canada was already determined at the time of the 1979 WARC to go ahead with a mobile statellite,[13] and now proposes a launch by late 1988, with commercial service initiation by early 1989.[14] The MSAT is designed to serve all of Canada, and projects an initial service population of 25,000 to 30,000, increasing in the second generation to about 100,000.[15] The Canadian MSAT proposal is similar to those presently before us in that it proposes a variety of services including mobile radio, mobile telephone, and data services, and suggests interconnection with terrestrial systems (*e.g.*, landline and/or cellular systems) by special arrangements. We believe that the Canadian MSAT is to some entent predicated upon the possibility of a cooperative or joint venture involving the United States. The MSAT proposal differs from two of the U.S. proposals in that it uses only one satellite;[16] thus the possibility of a satellite radiodetermination service would be eliminated. MSAT also differs from the U.S. MSS set forth here in the amount of spectrum allocated.[17] The basic system design of MSAT emphasizes practicability, present availability, and low cost. (Where both Mobilesat and Skylink propose mobile antennas with 10 db gain, for example, MSAT uses already-available 4 db gain antennas.[18] The Canadian MSAT proposal is significant because it offers a way to share the very substantial development costs of mobile statellite system between Canadian and U.S. entities. This could be done through joint design and procurement, with the additional possibility of each system serving as operating back-up to the other.

7. *Discussion:* The majority of responses received in this rulemaking, from potential users and providers and government agencies, indicates that a mobile satellite system as described by the applicants is desired. Arguments against an allocation and authorization for MSS tend to focus on the amount and location of spectrum to be granted rather than upon the service *per se*. Most commenters who object to the use of the 800 MHz bands for MSS are terrestrial mobile telephone and paging users and providers; they object to an allocation for MSS on the grounds that the land mobile reserve spectrum will be needed, and should be used, for terrestrial services. Their principal rationale is that many more users can be served by terrestrial systems, with the same amount of spectrum, than appears to be possible with presently envisioned mobile satellite technology. While this argument is meritorious, MSS can meet needs generally unserved and unservable by terrestrial systems. The likelihood of Canadian use of this band, discussed at para. 34 *infra*, further supports an 800 MHz allocation to MSS.

8. We tentatively find that the need for an MSS is demonstrated by the studies and surveys conducted by NASA and the two applicants. Furthermore, the applications of two entities wishing to provide this service, and their informed conviction that MSS constitutes an economically viable commercial venture, give solid, practical evidence of the existence of a market for this service, a conclusion supported by the research and planning engaged in by NASA over the course of the last decade and noted in its attachments E, F, G, H and I. We agree with the supporters and proponents of MSS, who stress the social value of the services to be

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[10] Mobilesat projects: rural/mobile, 65,830–463,520 units; new (gas & oil, trucking)—voice, 137,400; data, 194,400; commercial & public, 156,000–1,562,000; total, 553,630–2,357,320.

[11] Some caution on the demonstration of demand is in order: the projections shown by applicants are based on cost and service assumptions which may prove to be overly optimistic. There are classes of services, however, which may not be significantly price-sensitive, and which can be provided only by an MSS-like service. The services most desirably provided by MSS are inherently those where the end-points are widely dispersed or where very long distances are involved, such as interstate trucking and remote sensor monitoring. The MSS will likely be capacity-limited so that service price will be heavily dependent on transmission capacity required (*i.e.*, bit rate, message length, bandwidth) and independent of distance.

[12] Canada has vast reaches and rugged terrain resulting in isolated and remote communities which would benefit from such a service. Further, it has gas, oil, logging, fishing and other industrial users eager for this service. Estimates indicate that some 15% of MSAT's capacity would be used by the federal government, with local governments requiring another 15–20%.

[13] The Canadian proposal for a mobile statellite service, MSAT, will initially use 8 MHz of UHF spectrum, with the remaining 12 MHz of UHF which is presently reserve spectrum, and 30 MHz at L band (1544–1559 MHz and 1645.5–1660.5 MHz), proposed to be set aside for second- and later-generation expansion.

[14] Canada's domestic timetable is roughly as follows: for 800 MHz band: gazette notice DGTP-003-84/DGTR-014-84, released May 4, 1984. This notice upgrades FN 700 to a primary allocation for Canada for 821–825 and 866–870 MHz; it will drop FN 700 from all other frequencies. 890–896 MHz, also proposes for allocation to mobile satellite, is presently allocated to mobile rather than held in reserve in Canada, and so will be treated separately. This allocation, because it falls outside the terms of the International Table, will also require treatment at the 1987 Mobile-WARC. Another gazette notice will concern MSAT services, service operators (earth as well as space segments), and institutional and regulatory issues. The Canadian DOC proposes to request that the Administrative Council include as an agenda item for the 1987 WARC the reallocation of this part of the L band for mobile satellite service. This L band allocation (1544–1559 MHz, 1645.5–1660.5 MHzx) for Canada domestically was included in the May 4, 1984 gazette notice. The allocation of 11.65–11.7 GHz (downlink) and 13.2–23.25 (uplink) will be proposed in a forthcoming gazette notice.

[15] The system, originally planned as a government operation, has recently been determined to be a commercial venture based on many of the same considerations which operate in the U.S. Telesat Canada has been selected as the service provider for the space segment.

[16] Both Mobilesat and Skylink advocate a two-satellite system, which NASA and Canada's MSAT have proposed single-satellite systems. This is due in part to the areas to be covered; MSAT will serve all of Canada, including coastal waters, and thus includes many areas where the antenna elevation angle will be very small. (The antenna elevation angle is a function of the relative locations of the satellite antenna and of the ground facility in question. Where the ground facility is far removed from the equatorial satellite antenna, the curve of the earth combines with the physical distance to create a very low angle. Areas far to the north, including Alaska and much of Canada, thus have small antenna angles). Placing satellite antennas far to one side or the other could serve to compound this problem. For this reason it is necessary to use a more centrally located satellite (the Canadians propose to use a slot at about 105 degrees) rather than the east-west locations proposed for the U.S. (*i.e.*, 75 degrees and 135 degrees). Further, the Canadians propose a lower-powered satellite than the U.S. applicants suggest.

[17] The spectrum allocations proposed in Canada are as follows:

UHF:

806–821 MOBILE, Fixed Mobile
821–825 MOBILE-SATELLITE (except aeronautical mobile-satellite)
825–845 MOBILE, Fixed
845–851 MOBILE, MOBILE-SATELLITE (except aeronautical mobile-satellite)
851–866 MOBILE, Fixed
866–870 Mobile, MOBILE-SATELLITE (except aeronautical mobile-satellite)
870–890 MOBILE, Fixed

L Band:

1544–1545 MOBILE-SATELLITE (space-to-Earth)
1545–1559 MOBILE-SATELLITE (space-to-Earth)
1645.5–1646.5 MOBILE-SATELLITE (Earth-to-space)
1646.5–1660 MOBILE-SATELLITE (Earth-to-space)
1660–1660.5 MOBILE-SATELLITE (Earth-to-space)

Gazette notice DGTP-003-84/DGTR-014-84, released May 4, 1984.

[18] 10 db gain antennas are so far experimental in nature; while they are likely to be readily available within the timeframe established for the initiation of MSS, none are in production at the present time. MSAT also proposes to use a 9 meter (30 foot) satellite antenna such as is already in use.

provided and state that even were the market projections less persuasive, and the populations much smaller in comparison to those served terrestrially, the fact that MSS may provide initial and exclusive service, and that this may in many cases be essential (emergency and disaster) service, is compelling. While terrestrial systems could undoubtedly use additional spectrum to expand and modify their services, perhaps resulting in greater customer convenience, lower prices, and improved service, MSS would bring first-time service to those who have no other service option or reasonable hope of it, in areas and to populations where the need is critical.[19] Thus it appears that an allocation to MSS would serve the public interest.

B. Amount of Spectrum needed

9. The three proposals under consideration request spectrum allocations varying from 9 MHz to over 100 MHz. The initial proposal, from NASA, contemplates a need for using 20 MHz of spectrum at 800 MHz and an additional 70 MHz in a higher band [20] for backhaul, plus a small (shared) allocation for TT&C.[21] The Skylink application requests 8 MHz at UHF with no additional allocation for feeder links.[22] Mobilesat requests 20 MHz in UHF plus 30 MHz in L band, with an additional 100 MHz in the 11 and 14 GHz (Ku) fixed satellite bands for feeder links, and a small allocation in Ku band for TT&C. (Mobilesat does calculate, however, that it would be possible to establish a viable MSS with an allocation of 20 MHz plus feeder links—the equivalent of NASA's request).

10. The range of spectrum required is determined in large part by two factors: The number and kind of services proposed, and the degree to which spectrum efficiency is incorporated. (*See* Section V, *infra.*) Skylink argues that with the use of spectrum-efficient technologies, a total allocation of MHz is sufficient for the establishment of a viable and adequate MSS.[23] Mobilesat, in contrast, insists that a more generous allocation to begin with will result in a better and more efficient (and less expensive) system which is more likely to serve its target populations adequately. Mobilesat proposes a present allocation sufficient to meet the most optimistic projections for a third- and later-generation system. The Canadian system, designed to serve a population smaller than that to be served here, will use 8 MHz in UHF and 30 MHz of fixed satellite allocation, at least for its first generation. *See* note 18.

11. *Discussion.* The options before use are as follows:

(1) Allocate spectrum sufficient to a fully-developed, multi-service, permanent MSS.[24]

(2) Allocate spectrum sufficient to develop a viable first-generation system, with the realization that this allocation may require expansion as the system develops.[25]

These options must be analyzed in terms of the need for certainty and some degree of permanence in order to stimulate investment in a high-cost, long-term undertaking. Further, although each option posits an allocation to allow at least a viable first-generation system, the amount of spectrum allocated will determine to some extent the types of services that can be offered. The questions of technological development and of availability, quality and cost of equipment must also be considered. NASA and Mobilesat have stated that a full-system allocation would require at least 20 MHz. Beyond this, they posit a need for additional spectrum for expansion, since the optimum spectrum required for a fully developed MSS cannot be determined at this time. Mobilesat and Skylink both indicate a great flexibility in the amount and types of services which could profitably be provided depending on the amount of spectrum which would be made available. Skylink indicates that an allocation of 8 MHz would be sufficient to provide a viable though limited service offering to a certain population. The decision which faces the Commission is therefore what amount of spectrum ought to be made available to MSS to meet or exceed the minimum requirement for a viable service, when other demands for spectrum are also considered. Any estimate of spectrum requirement we make at this point will necessarily be speculative. However, we have realistically examined the spectrum which could be made available, based on the technical requirements of MSS. We do not appear to have the option of making alternative or additional allocations beyond those proposed below, except, perhaps, in higher frequency bands already allocated to the satellite services. We believe, on balance, that a generous or optimistic full-system allocation at this time would be an inefficient and ineffective use of spectrum. We are convinced, however, with NASA and Mobilesat, that an allocation of at least twenty MHz will be needed over the long term in order to allow development of multiple services and efficient use of spectrum. We do not, however, have the option of providing the 20 MHz in the UHF band, given the other demands for and requirements of this segment of spectrum. We are therefore proposing an immediate allocation of 8 MHz in the UHF band and consideration of a further allocation in the L band. We request comments on this proposal and on alternative allocations as noted at para. 20, *infra.*

C. UHF Band

12. The use of frequencies in the 800 MHz band for an MSS has been under discussion for some time.[26] The specific

[19] There may be areas of the country in which cellular carriers or private radio services such as Specialized Mobile Radio Service (SMRS) could provide some of the services proposed by MSS, assuming that antenna height and transmitter power limits were waived. Commenters are requested to address the economic and technical feasibility of these services in rural and remote areas. By the same token, we would be concerned if the MSS licensee concentrated its efforts on competing in markets served by terrestrial mobile systems in derogation of the needs of consumers in rural and remote areas. Given the capacity available on the MSS, it might be desirable to establish service priorities or to adopt some type of regulatory incentive for the licensee to focus on its primary constituency. Parties should address this concern as well.

[20] NASA proposes that portions of the S band (2.5–2.69 GHz) be considered for backhaul (feeder links), but notes that other allocations could be considered for this purpose.

[21] The 20 MHz NASA requests in the UHF band would be allocated in parts: NASA requests 8 MHz for immediate commercial use, and suggests that the remaining 12 MHz be held in reserve until 1990 to assess the outcome of the initial service. Further, NASA proposes an expansion allocation in the L band.

[22] Skylink does require 1 MHz in the 6 or 11 GHz band for TT&C.

[23] Skylink's application mentions the possibility of holding additional spectrum in reserve for system expansion.

[24] Such an allocation might be all, or only partly, in the UHF band; see *infra.* It is recognized that some initial inefficiency of spectrum use could result from this approach. Various benefits would be weighed against this inefficiency, however, as discussed *infra.* Furthermore, the continuing development and utilization of the system should produce increasing efficiency of spectrum use.

[25] This is the approach adopted by the Commission in its initial allocation to cellular radio. Land Mobile Service, Docket No. 18262, 46 FCC 2d 752, 756–7 (1974).

[26] The possibility of an allocation for mobile satellites was first raised by NASA during preparations for the 1979 World Administrative Radio Conference (WARC), when the concept of an MSS was discussed. A UHF allocation for MSS received little support from the land mobile user community, although the Private Land Mobile Service Working Group reported that there might be future satellite applications in spectrum above 1 GHz. At the WARC, in order to provide flexibility in future decisions, the U.S. proposed a footnote which would provide for the MSS at 806–890 MHz in Region 2. The proposal received support from other administrations, and the new International Table of Frequency Allocations contains footnote allocations

Continued

frequency bands requested by NASA in its November 1982 Petition are the 821–825 MHz, 866–870 MHz, 845–851 MHz and 890–896 MHz bands, now held in reserve for land mobile.[27] These bands are adjacent to the bands used for cellular radio systems.[28] NASA had earlier, in Docket 79–318, asked that the reserve bands below 900 MHz be consolidated into two 10 MHz segments.[29] However, the Commission decided to maintain the allocation proposed in Docket 79–318 that places reserve frequencies above and below the cellular bands.

13. Applicants state that the 800 MHz band is the only band in which there are reserve frequencies which are immediately attractive for MSS. The state that the technical characteristics of the 800 MHz band lend themselves to mobil communications.[30] One advantage of using bands adjacent to cellular for MSS is the possibility of compatibility with cellular equipment. Both NASA and Mobilesat state that a low-cost compatibility, possibly using common equipment in the mobile unit, is important to allow satellites to provide nationwide radiotelephone service.[31] Customers could then switch between terrestrial cellular and satellite services as the mobile unit moves through areas served by cellular. Even without cellular compatibility *per sec*, the state of technical development for mobile communications systems using 800 MHz frequencies makes this band attractive for MSS because low-cost equipment components are already available. Applicants argue that this would allow mobile satellite services to be developed fairly quickly, with a high probability of success.[32] The majority of the negative comments, however, oppose the use of this 800 MHz reserve spectrum for MSS, stating that it would be better allocated to terrestrial systems. These opposing commenters, mostly terrestrial providers and users, argue that the provision of land mobile services is likely to grow not only in number of users served but also in geographical area of coverage, and that this growth will be rapid, required the allocation of additional frequencies from the UHF reserve for land mobile service expansion. They argue that although one major feature of cellular radio is cell splitting to effect frequency reuse, this technique is of limited usefulness after a certain point, and that costs of service rise in inverse proportion to the size of the cells. In addition, considerable interest has been expressed regarding rural cellular systems, which could render a satellite system unnecessary. Further, they state, the Commission would be acting prematurely if it failed to maintain this reserve spectrum until such time as cellular demand and technology can be acurately assessed.[33] Some commenters further state that an MSS system is superfluous, or at least that it need not be effected as a complement to cellular service; in the view of these commenters, ongoing cellular application filings [34] will demonstrate this ultimate universality of cellular service, obviating the development of MSS. The allocation problem is due to the mutual exclusivity of the two services; frequencies used for MSS cannot, at this stage of technological development, be shared by cellular users, nor can those assigned to cellular use be reused elsewhere for MSS.[35]

14. *Discussion.* NASA's Petition requests that the two 4 MHz bands, 821–825 MHz and 866–870 MHz, be allocated to MSS on a primary basis, and that the 845–851 MHz and 890–896 MHz bands be held in reserve until 1990, when a decision can be made whether to use this spectrum for terrestrial services or for land mobile satellite serice.[36] The principal alternative use for the reserve bands, as noted above, is for additional cellular service or for some private terrestrial mobile radio service. It has been argued in the comments that an

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for MSS at 806–890 MHz in Region 2, and at 806–890 MHz and 942–960 in part of Region 1 (for Norway and Sweden). International footnote 700 allows the use of the band 806–890 MHz, on a primary basis, for MSS in Region 2. See note 2, *supra*. This footnote states:

Additional allocation: in Region 2, the band 806–890 MHz is also allocated to the mobile-satellite, except aeronautical mobile-satellite, service on a primary basis. The use of this service is intended for operation within national boundaries and subject to agreement obtained under the procedure set forth in Article 14.

International Radio Regulations define the Mobile Satellite Service as: "A radiocommunications service:

—between mobile earth stations and one or more space stations, or

—between mobile earth stations by means of one or more space stations. This service may also include feeder links necessary for its operation."

[The Article 14 procedure referred to in Footnote 700 is discussed at para. 36, *infra*]. Domestically the band 806–890 MHz is allocated to Fixed and Mobile use, having been reallocated from Broadcast use in Docket 18262, *supra* note 25. The issue of whether to implement the international mobile satellite footnote was discussed in Docket 80–736, *supra* note 2. In the NPRM, released December 30, 1982, 48 FR 3790, a secondary allocation for MSS was proposed, but this approach was rejected in the Second Report and Order in Docket 80–739, 49 FR 2357, in favor of resolving the MSS allocation issue in this instant rulemaking proceeding.

[27] These are the bands requested by Mobilesat, and include the bands requested by Skylink, as well; they are also the same frequencies planned for use by Canada. *See* note 17, *supra*. Canada further proposes to change the allocation for the 890–896 MHz band to allow its use for MSS on a co-primary basis.

[28] The allocation is as follows:

806–820	Private LM (mobile-to-base)
821–825	Reserve
825–845	Cellular (mobile-to-base)
845–851	Reserve
851–866	Private LM (mobile-to-base)
866–870	Reserve
870–890	Cellular (base-to-mobile)
890–896	Reserve
896–902	Reserve

[29] Cellular Communications Systems, Notice of Proposed Rulemaking, 78 FCC 2d 984 n. 46 (1979) Report and Order, 86 FCC 469, 480–82 (1981).

[30] The 800–900 MHz band is attractive for both terrestrial and satellite mobile use, as compared to frequencies above 900 MHz, because of the better signal propagation. Other effects, such as fading and blockage, which are more severe in the 800–900 MHz bands than at frequencies below 800 MHz, have been overcome. NASA states that the UHF band is near optimal for MSS because of ground antenna size, uplink and downlink frequency separations, and propagation characteristics.

[31] Skylink, on the other hand, does not see equipment compatability (or interoperability) as necessary to provide viable radiotelelphone services. Its system, while proposing to use UHF frequencies, would not have channeling or other characteristics which would allow it to be compatible with cellular.

[32] Equipment development expense is particularly important due to the "one-of-a-kind" nature of mobile statellites. By using "off-the-shelf" radio components which have already been developed for 800 MHz frequencies, delays and uncertainty are reduced.

[33] The comments of Ameritech and its rulemaking requesting allocation of 12 MHz of the UHF reserve spectrum to cellular use, should be noted. RM–4812. Further, the Land Mobile Communications Council filed a rulemaking requesting allocation of 32 MHz of UHF frequencies to various terrestrial mobile services. RM–4829. We have today considered these and other requests for allocation of the 800 MHz reserve; we are proposing the allocation of 12 MHz to cellular radio, Notice of Proposed Rulemaking in General Docket No. 84–1231, and of 12 MHz to private land mobile services, Notice of Proposed Rulemaking in General Docket No. 84–1233.

[34] Applications for cellular service have been accepted for thirty markets at a time, based on the 1980 census; filings have so far been made for the top 120 markets, with further 30-market increments to follow periodically. It is suggested by the commenters here that cellular coverage will extend not only to all 305 MSAs, but also to non-MSAs and, through waivers of height and power limitations, to remote and rural areas as well.

[35] Second and third generation MSS systems, with their multiple spot beams and frequency reuse, might sharing with terrestrial services possible in some areas of the country. Thus UHF channels assigned to MSS for rural/remote use could be used by cellular operators in high-density urban areas, where the need for cellular expansion spectrum will be keenest.

[36] In addition, several pending petitions and rulemakings for allocations above 890 MHz have been addressed today. Report and Order in Docket 83–30, denying an allocation of four MHz for an air-to-ground public correspondence service; in Docket 83–26, denying and allocation of eight MHz for a Personal Radio Service; Report and Order in Docket 82–243, granting an allocation of six MHz for low capacity fixed systems; Report and the Order in Docket 82–335, granting an allocation of three MHz for Studio Transmitter Link (STL) and Intercity Relay Stations (ICR).

allocation of the reserve spectrum to MSS is premature due to the state of art of MSS technology and the just-operational status of cellular. Commenters urge that these factors indicate that a final allocation decision should not be made until 1990, as NASA originally proposed. However, we think it unlikely that MSS technology will advance in the absence of a specific, permanent allocation. Obviously much better information concerning the spectrum required to meet cellular's need will be available in the coming years.[37] Further, we believe that cellular's actual needs can be outlined concurrent with this instant rulemaking.[38] Additionally, we are concerned that the needs of the private land mobile radio services be met.[39] In spite of these valuable alternative uses of the 800 MHz reserve spectrum, we believe that an allocation to the MSS is in the public interest. We are therefore proposing the allocation on a primary basis of two 4 MHz UHF bands for MSS.[40] The specific frequencies allocated are those identified by NASA, 821–825 MHz and 866–870 MHz. If we ultimately determine not to allocate this spectrum to MSS, we would reexamine the utility of the frequencies proposed here for other land mobile use.

15. We are aware that any allocation, even if appropriate when made, may not remain so as conditions change. We therefore seek comments on the desirability and feasibility of permitting secondary terrestrial operations on these frequencies in those cases where the satellite licensee has no objection to such use. While it is clear that, under current technology, sharing of a given frequency between satellite and terrestrial systems will not be possible, the arrangement proposed here could facilitate terrestrial use of some of this spectrum if MSS usage is much lighter than anticipated. It would also encourage the optimum use of capacity-enhancing technologies, including frequency reuse, in future satellite generations. See Attachment A for proposed Part 2 changes for the UHF band.

D. Allocation in Other Bands

16. Because we are unable to make available sufficient UHF spectrum for a fully-developed MSS, we propose to make additional spectrum available at frequencies above 1 GHz. Industry has given considerable thought to other, higher frequencies which could be used for MSS. Some commenters suggest placing the MSS in the L-Band.[41] NASA and others [42] have been experimenting with fixed satellite services in the 20 GHz band, but true mobile communication with light-weight, inexpensive equipment does not appear feasible, with current technologies, in these higher bands. Mobilesat, in its Amendment Number 5, states that it is unaware of any other "uncommitted bands" practicable for MSS. NASA submitted with its petition an analysis of the possibility of re-allocating portions of the L-Band to MSS. Some of the technical characteristics of the L-Band make it attractive for some MSS applications. Generally, the antenna structures for the L-Band, compared to those for UHF, can be smaller for a similar gain; but this is offset by much greater propagation losses and higher-cost components.[43] The Mobilesat application requests that 1545–1559 MHz and 1646.5–1660.5 MHz be allocated to MSS.

17. *Discussion.* The portion of the International Table of Frequency Allocations pertaining to L band appears in Attachment C. The requested bands, 1545–1559 MHz and 1646.5–1660.5 MHz, are currently allocated to Aeronautical Mobile Satellite (R) Service (AMSS) for communications to support domestic and international air traffic, including air traffic control (ATC).[44] Existing ATC air-ground systems currently do not use satellites, instead relying entirely on terrestrial facilities. These facilities are not always adequate for international flights, over water for example, and the international air traffic industry has been interested in using satellites to improve long range communications, these efforts have not gone beyond the conceptualization stage.[45] The Aeronautical Mobile Satellite allocation in the L-Band is essentially unused.[46] An important factor, which Mobilesat mentions, is that the full 28 MHz now available for Aeronautical Mobile Satellite may not be required for aeronautical communications using new technical approaches. One example of how an ATC system could be implemented is the proposal made by Mobilesat to the FAA, in which only about 4 MHz of spectrum would be required to accommodate foreseeable growth in air traffic.[47] Mobilesat's proposed system

[37] It is generally recognized that while cellular service has extensive capacity to enlarge its cusomer-base within the existing allocation, the addition of spectrum would reduce the cost of serve a large number of customers in the major markets. However, the addition of spectrum probably will not be a significant factor in the development of the market for cellular except in the largest markets.

[38] A study submitted in this docket by a wireline cellular operator showed that an additional 10 or 12 MHz of spectrum for cellular systems would provide considerable growth in the number of subscribers that can be accommodated, while lowering overall costs. *See* Ameritech informal comments, filed March 13, 1984.

[39] *See* Furture Private Land Mobile Telecommunications Requirements: Final Report, Planning Staff, Private Radio Bureau, FCC (PR 82–10). Simultaneously with this action, we have proposed to allocate from the mobile reserve 12 MHz to cellular radio, and 12 MHz to private land mobile radio. General Docket Nos. 84–1233 and 84–1231, adopted November 21, 1984. We are concerned, however, that the 12 MHz proposed for private land mobile radio is less than the projected need in some major metropolitan areas.

[40] We do not foresee the possibility of any future expansion of the MSS by means of an increased UHF allocation.

[41] Internationally, this band, at 1525–1670 MHz, has been allocated for Maritime and Aeronautical Mobile Satellite (R) and other radio navigation services.

[42] Hughes Communications Galaxy, Inc. submitted an application for authority to construct a fixed satellite to operate using frequencies in the 18 and 30 GHz bands December 15, 1983. This system would use small earth stations for a high speed data service.

[43] Mobilesat has indicated that the inherent cost for L-Band components should not be substantially greater than for 800 MHz components. However, since these are new devices with a limited market (*i.e.*, no terrestrial use of these frequencies is contemplated), the entire development cost will be attributed to the satellite system. Some development of equipment for satellite use of the L-Band has taken place, however, in NASA's ATS/6-GEOS project.

[44] ATC functions include aircraft speed and location information provided to the aircraft and ground stations. Normally, this data also includes the altitude of the aircraft. Some ATC functions could be provided by MSS. For example, Mobilesat's proposal is that, for the first generation at least, this altitude data would be provided by conventional altimeters on board the aircraft, because its two-satellite system would be unable to resolve the aircraft's altitude. Mobilesat's proposal includes only a limited capability for voice communication between the aircraft and ground stations.

[45] The international air traffic industry commented in response to the Mobilesat filing that a planning process concerning AMSS is underway. The International Civil Aviation Organization (ICAO) recently established a Committee on Future Air Navigation Systems (FANS) to carry out a systematic study, including identification of the spectrum needs of international civil aviation for air navigation, communications, and surveillance services, including the use of satellites. The FANS study is expected to be completed in three to five years. Domestically, the Radio Technical Commission for Aeronautics (RTCA) Special Committee 155 will develop, *inter alia*, a report on U.S. user requirements, for the FANS committee. Some experimentation is evidently in an advanced preparation stage (see ARINC's Reply Comments to Mobilesat).

[46] The bands 1544–1545 and 1645.5–1646.5 MHz have been allocated for distress and safety operations as part of a worldwide system.

[47] The Mobilesat ATC system would consist of a ground station which would interrogate each aircraft every four seconds by a signal relayed through the satellite. This "polling signal" would occupy a single 10 KHz channel in the L-Band. Each aircraft would respond to the poll via one of the 400 10 KHz-wide return channels which are relayed to the central ground station through the satellite. The polling message consists of 250 bits, the receive time of which is used to measure the range. The response

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would be provided as part of its land mobile satellite system on behalf of (or by) the Federal Aviation Administration (FAA), eliminating the need for a separate allocation fo frequencies specifically for ATC.

18. A second alternative for an aeronautical satellite system would be retain a separate allocation for future use by aeronautical satellites provided by or on behalf of the FAA or other civil aviation entities.[48] As Mobilesat has proposed an allocation of 20 MHz in the L-Band, there would be 8 MHz remaining for an aeronautical satellite system. While the FAA has responded negatively to Mobilesat's specific proposal,[49] the separate allocation option still seems to be appropriate. This would preserve the option to pursue the development of a separate AMSS.[50]

19. We propose that an L-band allocation for MSS be made so that sufficient spectrum is available to allow development of a full range of mobile satellite services. We recognize that the proposed reallocation of L-Band frequencies from AMSS to MSS is likely to cause considerable concern in the international air traffic community as well as from the Federal Aviation Administration.[51] ATC surveillance needs alone will probably not require the full 28 MHz now set aside in the L band.[52] Domestic organizations (including the FAA), as well as international organizations, are presently studying future requirements for ATC communications, navigation and surveillance services via satellites. We find that we are unable to specify the exact amount of spectrum which will be allocated to the Mobile Satellite Service until the long term spectrum requirements for the Aeronautical Mobile Statellite (R) service are identified. We do propose to pursue activity an adequate L band allocation and, by statute [53] we must complete our proceeding within twelve months. Thus, we expect the long term spectrum requirements study to be completed expeditiously. We propose in this proceeding, when the long term requirements have been determined, to allocate to the Mobile Satellite Service that portion of the Aeronautical Mobile Satellite (R) spectrum not required for that service. Consideration of the L-band allocation must also include the requirements of the radio astronomy service at the upper end of the requested band, 1646.5–1660.5 MHz. We invite comments on the impact of MSS operations in the earth-to-space direction on the radio astronomy service. It should be noted here that ATC does not provide passenger communication (air-ground) service, as suggested by some "aerosat" proposals.[54]

E. Allocation for Feeder Links

21. Both Mobilesat and NASA propose the use of spectrum in higher frequency bands to complete the transmission path from the satellite to a base station (or "gateway") where the mobile satellite system is interconnected with the telephone network or other ground facilities. These links, also called "backhaul channels," are technically similar to fixed satellite systems used for telephone and data transmission. The applicants argue that it is reasonable to use the Fixed Satellite bands for feeder links; this avoids a separate allocation for feeder links.[55]

22. *Discussion.* We agree with NASA's and Mobilesat's reasoning that the use of higher-frequency spectrum for backhaul and other fixed services results in an increase in overall system efficiency. Further, the use of backhaul channels is necessary if the system is to provide interconnected telephone services. The amount of feeder link spectrum must be at least equal to the amount used for the mobile-to-satellite link in the UHF or L-Band. Mobilesat, for example, has requested up to 85 MHz in the 11 and 14 GHz FSS bands for feeder links.[56] Mobilesat and Skylink would also use the FSS band for TT&C, which would avoid the need for separate transponders on board the satellite for these functions. Due to the number of requests presently pending for FSS spectrum, some concerns have been raised regarding the availability of spectrum for MSS feeder links. While the amount of spectrum foreseen in this Notice may not be able to be granted in the bands currently used by domestic fixed services, other bands have been allocated to FSS, and these may satisfy the MSS feeder link requirement, subject to additional allocation proceedings.

III. Institutional Configuration and Ownership

A. The Licensee

23. For several reasons, we believe that only one entity can be authorized to operate on the frequencies allocated for MSS. The high cost of an MSS system probably means economic viability will require full use of the system, making unlikely the authorization of a second

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from the aircraft is similarly measured at the ground station. Comparison of the recieve times at the ground station from the two satellites determines the location of the satellite within 600 feet. Additional data could be transmitted to and from the aircraft.

[48] The International Maritime Satellite Organization (INMARSAT) plans to offer limited international civil aviation services using the next generation of INMARSAT capabilities. The frequency range of the new transponders is anticipated to include the 1545–1546 MHz and 1646.5–1647.5 MHz portions of the AMSS–(R) bands.

[49] The FAA has expressed its opposition to this proposal in an April 18, 1984 memorandum to the Interdepartment Radio Advisory Committee (IRAC) and in comments filed in this rulemaking.

[50] For example, Mobilesat has proposed the following allocation:

1544–1545 Mobile Satellite (search & rescue only)

1545–1549 Aeronautical Mobile Satellite (R), MSS Secondary

1549–1559 Mobile Satellite (space-to-earth)

1559–1646.5 Mobile Satellite (search & rescue only)

1646.5–1650.5 Aeronautical Mobile-Satellite (R); MSS Secondary

1650.5–1660.5 Mobile Satellite (earth-to-space), Radio Astronomy

1660.5–1668.4 Radio Astronomy, no change

The following International Table Footnotes would apply:

1549–1559 MHz: footnotes 727, 722, 729, 730.

1650.5–1660.5 MHz: footnotes 730, 722, 735, 736, 727.

A second option would be for the entire 1545–1559 and 1646.5–1660 Mhz bands to be shared by Land Mobile and Aeronautical Satellite, under a future allocation arrangement. The Canadian DOC has asked for comments on a proposal to reallocate the bands 1545–1559 Mhz and 1646.5–1660.5 MHz from Aeronautical Mobile Satellite (R) to Mobile Satellite. "Mobile Satellite Service" refers to aeronautical, land or maritime Mobile Satellite services. Canadian Gazette, DGTP–003–84/DGTR–014–84.

[51] Interference between an operating MSS and an AMSS in the L-Band is also of concern. NASA included (Attachment A) an analysis of factors which would affect a co-frequency sharing arrangement. NASA's contractor, ORI, Inc., concluded that shared use would be limited, and that an exclusive primary allocation for MSS would be required, pending further study.

[52] Enclosure A of the NASA Petition discusses several coordination issues related to use of the L-Band. Shared use of the entire L-Band between MSS and aeronautical services would not be possible. However, the impact of an MSS would be minimized if the MSS were confined to utilizing the upper portions of the two band segments. Any sharing arrangement would have to protect the radio astronomy service, however. Because the MSS operations in the 1660–1660.5 MHz portion of the band would be in the earth-to-space direction, radio astronomy use of this band might be protected by restricting the location of MSS ground stations around certain radio astronomy listening locations. *See* NASA Petition, Attachment A. Radio astronomy also seeks protection from interference in the 1659.5–1600 MHz band segment.

[53] Section 7 of the Communications act of 1934, as amended, 47 U.S.C. 157.

[54] Mobilesat has proposed to provide air-to-ground passenger comunications; there would be economies in using common equipment for these services and on-board ATC services.

[55] NASA's proposal included consideration of the 2.5–2.69 GHz band for feeder links. Some implementation problems arise with regard to this band, and commenters suggest that the FSS band provides a more suitable approach.

[56] Skylink's proposal, on the other hand, has not requested an allocation for feeder links, due to its simplex operation.

(or additional) licensee(s). Furthermore, existing and incipient technology does not allow discrimination between two or more like MSS systems operating on the same frequencies. The need for international coordination and cooperation would be served by the authorization of a single licensee. On the other hand, we are aware that a multi-band allocation such as we are considering here opens the possibility of a split service; for example, it is foreseeable that one entity might wish to provide some services in the UHF allocation while another would provide others in the L band allocation. Although we can foresee certain problems arising from this approach, we are proposing a processing and licensing scheme which would retain the flexibility needed to authorize two or more licensees which are not technically mutually exclusive.

24. In recent years the Commission has taken the approach of minimum regulation for new and still-developing services. In almost all cases this has proved to be the best approach, leading to market-responsive and competitive services. With MSS, however, a totally deregulatory approach does not appear possible. As noted above, it is likely that only one MSS provider will be authorized, absent some arrangement such as split service or another suggestion, and many of the services provided will be unique to MSS; therefore we do not foresee the development of a competitive market in the near term. In order that no available options be precluded by our regulatory classifications, we believe that the satellite provider should be classified a common carrier and treated as a "carriers' carrier." [57]

25. Because of the considerable financial requirements and the limited spectrum which can be made available, a multiownership arrangement seems a reasonable approach. Both Skylink and Mobilesat have made suggestions for the formation of a multiownership entity to be licensed as the sole MSS provider.

26. *Skylink America.* Skylink's application contains a proposal to form an "industry partnership," Skylink America, to provide generic thin-route channels on a wholesale basis. Skylink foresees its position as general manager of this partnership, this position having been gained in exchange for Skylink's plans, expertise and enabling technology. The partners (other carriers, companies with communications needs to be met by MSS, and so on) would own and capitalize Skylink America, and would pay Skylink America utilization charges in proportion to actual use. Skylink states that such a partnership will allow all partners to "benefit equally from the econmic, spectral, and orbital efficiencies that will accrue through the cooperative aggregation of common interests."

27. *Mobilesat Joint Ownership.* By its letter of March 22, 1984, Mobilesat suggests establishment of a joint venture involving all interested parties to allow licensing of a single entity for MSS. The suggestion is put forth in the interest of expedition, and Mobilesat suggests that its own application be the "reference application" for such a venture.[58] The "consortium" suggestion goes even further; Mobilesat suggests that, because econimics and practical considerations dictate that only one licensee will be authorized, a consortium ought to be formed of all interested and qualified parties. Mobilesat suggests that this approach would avoid delay in the initiation of service by shortcutting past the comparative process. Mobilesat cites Commission precedent, discussed below, to support the efficacy of this approach.

28. *Analogous Cases:* (a) Alaska Bush and AT&T Atlantic Cable. Two Commission-approved cases of joint ownership which Mobilesat cites are the Alascom/local teleco joint venture regarding earth stations in the Alaska Bush,[59] and the AT&T joint ownership of the fourth transAtlantic cable with domestic international record carriers (as well as the governments of France and Germany).[60] In both cases, the Commission urged the interested parties to work out cooperative arrangements by which they would work together under a single authorization; the Commission was prepared to organize and regulate the cooperative arrangement only if the parties were unable to do so themselves.

29. (b) *MARISAT.* The establishment in 1973 of the MARISAT maritime satellite communications system as a joint venture involving Comsat and various maritime carriers provides a useful study model.[61] The joint venture eventually organized served to involve all the joint venturers in all aspects of operation, from capitalization and assumption of risk to provision of services to the Navy and use of remaining capacity.[62] Policies and operations were to be decided by consensus whenever possible; otherwise, the joint venturers would vote, such votes being weighted according to the percentage of participation. After the provision of service to the Navy, remaining capacity

[57] The MSS provider would thus be subject to Title II regulation, as has been the case with domestic satellite service providers. A range of regulatory options, including forebearance, would then be available.

[58] Mobilesat had originally suggested (Application, as amended, p.20) that it expected to undertake joint and cooperative efforts with NASA, and that many other organizations might also play important roles in the development of an MSS. Further, Mobilesat suggested (Application Exhibit VI) that it would be capitalized by investors, large users and venture capital in addition to its current six owners.

[59] The Alscom case, set forth in a Tentative Decision, *Earth Stations in the Bush Communities in Alaska*, 92 FCC 2d 736 (1982), and a Final Decision and Policy Statement, 49 FR 9727 (March 15, 1984), deals with joint ownership and operation between Alascom and local carriers. The Commission tried in that case to encourage settlements and mutually agreeable understandings in order to dispose of the competing applications of local carriers challenging Alascom's provision of service to Bush communities (populations between 25 and 1,000). When parties at some of the locations were unable to settle, the Commission proposed certain guidelines, including equal ownership and binding arbitration clauses, to effect agreement in order to make possible single, joint authorizations at each site.

[60] American Tel. & Tel. Co., 37 FCC 1151 (1964). The Atlantic cable case involved the desire of several international record carriers to share in AT&T's 64.844% ownership of the New Jersey-to-France cable applied for in 1963. (France and Germany owned 17.578% each). There, the Commission decided that, in the public interest, the cable "should, to the extent desired by the record carriers, be owned jointly by AT&T and the international record carriers in such proportions as may be agreed to, subject to Commission approval, by and among all of these carriers in accordance with their current and reasonably foreseeable traffic requirements, or, if no such agreement is able to be reached, as determined by this Commission." The Commission went on to discuss the carriers' participation options, including ownership, indefeasible right of use, and lease.

[61] *See Comsat Corporation*, 40 FCC 2d 496 (1973), *modified*, 42 FCC 2d 533 (1973). There, a new service was proposed, and was under certain constraints because of urgent requirements of the U.S. Navy. A single satellite, at a projected cost of $105 million, would exceed not only the Navy's needs but also its budget. Comsat therefore proposed to build and launch a system to serve the Navy to the extent of its budget ($70 million) and to provide the remaining service capacity directly to large end-users. Various maritime carriers objected to Comsat's "cream-skimming" of their maritime service population and demanded to be allowed to participate or compete.

[62] Stating that the maximum investment share of ech participant was not to exceed the *pro rata* share, the Commission proposed that the "joint venture should, *a priori*, be on the basis of investment in the aforementioned facilities in a proportion equivalent to a carrier's proposed use of such facilities for commercial maritime purposes. . . ." 40 FCC 2d at 507. No share could be less than $1 million or more than the *pro rata* share; any differential would be picked up by additional investors or by Comsat. Three applicants, RCA, ITT and WUI, became joint venturers. Although by this order each was entitled to up to 25% ownership of the MARISAT venture, in fact the combined investment totaled less than 20%. Because Comsat had already undertaken preparations and negotiations, including a contract with the Navy, because its service and technical proposal was the basis for the MARISAT system, and because it held over 80% ownership, the Commission named Comsat general manager of MARISAT.

was to be allocated to each joint venturer according to its investment, the market and tariff services individually.[63] The MARISAT system thus became a consortium of carriers sharing, according to their investment, in the risks of the system, the profits (or losses) resulting from the provision of general (*i.e.*, U.S. Navy services), and the remaining system capacity. Furthermore, this consortium was created not at the behest of Congress (as was Comsat), but by the FCC and the parties themselves.

30. Each of the applicants has suggested a multi-participant organizational structure, and the above examples demonstrate the viability of ths goal. Comments are invited on the desirability of the consortium approach in MSS, and suggestions as to the structure or format of the proposed consortium are solicited. We ask comments also on the issue of whether the existence of a consortium should be mandatory.

31. Various suggestions have been made regarding the international configuration of a North American mobile satellite service. Skylink proposes a 50–50 joint venture with Canada, while Mobilesat proposes a use-and investment-weighted arrangement. The Canadian Department of Communications (DOC) has planned its own system, MSAT. Recently, Mexico too has expressed interest in the MSS. It can be expected that an operational system might draw the interest and participation of other American nations as well, suggesting the need for multilateral coordination and cooperation. Parties should comment on the operational, economic and political benefits and drawbacks of this type of arrangement.

B. Regulatory Issues

32. Because of the nature of the services to be offered as well as the nature of the licensee, we propose to regulate the MSS as a common carrier service. Even if the licensee functions as a carriers' carrier, providing service to other communications entities, it will not be precluded from serving end-users directly.[64]

33. We find that any qualified local carrier should be given the opportunity to affiliate with an MSS provider on terms equal to those afforded other carriers, so that each local carrier will be able to offer the benefits of access to nationwide MSS to its local subscribers. This access requirement is similar to policies we have adopted in other contexts prohibiting any restrictions on resale of services, thereby enabling many entities to offer the underlying carrier's service to their own customers in competition with other entities.[65] The MSS licensee may require reasonable terms and conditions for the provision of its services, within the framework of sections 201 and 202 of the Communications Act.

34. Because MSS will be nationwide, and perhaps international, in scope, and will transmit predominantly interstate, we will preempt state regulation over technical standards, entry and rate regulation.[66] The Courts have granted the Commission broad discretion with regard to the exercise of its Title II powers to achieve statutory objectives. The broad power to fashion rules appropriate to the problems confronted applies equally in the area of agency regulation of rates. Although we propose a single licensee for the provision of mobile satellite service, opportunities for participation exist not only in the consortium format we propose here, but also in such areas as resale of services and equipment provision. For this reason we tentatively conclude that the public interest will best be served by our declining to regulate end-user charges for MSS. *See* Nationwide Paging, *supra* note 64, at para. 12. We invite comment on our regulatory proprosals.

IV. International Cooperation

A. U.S.-Canadian

35. The need for and desirability of cooperation between the U.S. and Canada for telecommunications services are clear; the need is especially pressing in the case of mobile satellite services.[67] Canadian utilization of these UHF frequencies for its MSAT may preclude their use for terrestrial services in the U.S. (or, conversely, the use for terrestrial services in the U.S. may preclude MSAT in Canada). In addition, the economic investment and risk involved, especially initially, may favor some type of cooperative arrangement. Furthermore, the proposed Canadian MSAT should be able to meet Canadian demand with spectrum to spare, even on the initial (8 Mhz) system, so that considerations of spectrum efficiency also support a cooperative approach. Differences between the two programs as proposed will require resolution through cooperation if a satellite allocation is adopted.[68] Paired exclusive allocations and interoperability would allow for mutual backup as well as for the evolution of standards of design, equipment, and operation. The broadening of the compatible user base could stimulate equipment production and service design in both nations. Formal and informal discussions among Canadian and U.S. entities indicates a willingness on both sides of the border to proceed cooperatively. Furthermore, NASA and the DOC signed, in November 1983, a Memorandum of Understanding which sets forth the intention of both to cooperate:

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[63] This provision too makes MARISAT analogous to the MSS case. MARISAT agreed to provide needed service to the U.S. Navy, but such service rquired only part of the system's capacity; further, the Navy service requirement expired after two years. Similary, NASA has proposed that it be provided system capacity for testing and development programs; it would need only a small percentage of system capacity, and its testing would be concluded within a two-year period. Further, at least one MSS applicant has proposed to the FAA that aeronautical services can be provided via MSS. *See* paras. 17 to 19, *supra*, with accompanying notes.

[64] The monopolistic position of the single MSS licensee may require that we impose some degree of common carrier-type regulation to assure that the objectives of the Act are met. Because of the open access provision proposed in para. 33, *infra*, it may not be necessary, in the public interest, to impose the traditional full panoply of common carrier regulations and policies. Parties should comment on whether common carrier-type regulation is called for, and on the degree to which licensing, reporting and tariffing requirements for the licensee are necessary.

[65] *See, e.g.*, Cellular Communications Systems, 86 FCC 2d 469, 510–511 (1981), Resale and Shared Use (MTS-WATS), 83 FCC 2d 167 (1980); Nationwide Paging Service, Third Report and Order, Docket No. 80–183, FCC 84–148, released May 24, 1984, at para.8.

[66] Our authority for regulation of charges and services of interstate common carriers is contained in Title II of the Communications Act of 1934, as amended. Sections 201–205 of the Act provide the basic statutory standards by which we judge the lawfulness of carriers' rates and service regulations.

[67] *See* para. 6 and accompanying notes, *supra*. The need to coordinate applies to our other North and Central American neighbors as well; only Canada is discussed here because as yet only Canada has proposed a mobile satellite service.

[68] A board spectrum of possibilities for a cooperation/participation/coordination is before us; the maximum cooperation proposal outlined by Skylink, Application Section 2.2, for example, would produce a virtual joint venture of the U.S. and Canadian licensees, with the licensee of each nation owning and launching one satellite in a combined system, and each satellite providing a combination of U.S. and Canadian coverage. Such a system might well require greater sophistication of the satellite segment to provide polarization and more footprints, but this would be economically feasible because of cost sharing. This increased sophistication, specifically of the satellite antenna system, could allow U.S.-Canadian frequency reuse, an operation which both NASA and SPAR agree is probably viable. Such sharing would probably be on an equal basis through the first generation; a second-generation adjustment could be made to allow the sharing arrangement to reflect actual usage. (MSAT projects user populations of 25,000–30,000 for the first generation and 100,000 for the second, while American projections range from 319,500 to 2,357,000 users by the time of full development of the first generation).

1. To provide an operational commerical mobile-satellite communications capability to the U.S. and Canada.

2. To provide an experimental and test capacity for both countries.

3. To foster the development of mobile technology, systems and services. . .

See NASA Reply Comments. These mutual objectives, formed in recognition that "the nature of mobile communications is such that regional frequency and orbital slot coordination/sharing is fundamental to the implementation of this new service," require close cooperation by both governmental entities and by all relevant commercial entities.

B. Coordination and Registration

36. As discussed above, the Canadian timetable is farther advanced than the U.S. schedule as regards the MSS. Canada has taken several steps toward initiating the lengthy process of registration with the ITU through its International Frequency Registration Board (IFRB).[69] The U.S. response so far has been only that we will defer comments until Publication of the Article 14 requests. At that time, several options will be available to us, including approval or opposition, or several stances in between.[70]

37. The possibility of a regional MSS will also bear consideration in these proceedings. This could eventually include almost all of North and South America.[71] Although neither the NASA proposal[72] nor the comments have focused much attention on this issue, both applicants have discussed it with some interest.[73]

38. The benefits of international cooperation are clear; the potential for a regional/international MSS enterprise is also clear, although the practicality has yet to be demonstrated. We encourage applicants to make provision for sharing in the proposed MSAT system and to pursue cooperative arrangements which further the efficient use of the spectum.

V. Technological Requirements and Spectrum Efficiency

39. Section 7 of the Communications Act mandates that the Commission encourage the provision of new technologies and services to the public. In so doing, we may urge that state-of-the-art spectrum-efficient technologies be utilized to the extent possible. In a service such as is proposed here, certain trade-offs must be weighed; for example, true compatibility with cellular radio systems would require 30 KHz bandwidth, although adequate voice service as proposed by both applicants can be rendered using about 1/6 that amount of spectrum. The Commission must therefore consider whether the convenience of compatibility and the availability of off-the-shelf components can offset the inefficient use of spectrum, and thus whether some part of an allocation to MSS should be earmarked for cellular-compatible service. The question of compatibility with cellular service raises possibilities ranging from virtually separate services, to interoperable services, to directly compatible services. The Commission will consider the benefits and detriments of the various forms of compatibility in terms of universality of service; cost, availability and ease of use of equipment; and efficiency of spectrum use.[74] In addition, the Commission must weigh the relative benefits of service to a smaller population via MSS, versus an allocation to terrestrial (public or private) land mobile radio services to serve a larger population. Terrestrial services presently offer greater frequency reuse and technologies of spectrum efficiency, although, as discussed herein, an MSS would also be expected to incorporate state-of-art, efficient technologies.

40. A complex satellite system like MSS also appears capable of providing a multiplicity of fixed and mobile communications services that may not always fall clearly within previously defined categories. We do not propose to prohibit any auxiliary or incidental common carrier service provided over satellites in the bands to be allocated, provided that the primary purpose of such satellites is to provide mobile radio services by satellite. However, we will require each applicant to describe clearly the services that may potentially be offered over its proposed satellite system and the types of user terminal equipment that will access the satellite system. We believe it necessary to understand the potential range of users and user equipment that will be available for the actual provision of service to the public, as well as the terms and conditions under which user terminal equipment can access the space segment. With such information, we can assure that efficient use is made of the frequencies being allocated and that a market for innovative services can develop on an unregulated basis.

41. We encourage MSS providers to utilize the spectrum as efficiently as possible. It seems clear from the two applications, and our own analysis, that narrowband technologies are readily adaptable to MSS. Digital and low-speed data transmission have also been

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[69] These steps are as follows:

Article 11— Coordination:

800 MHz—API submitted January 1983.

Corrigendum submitted January 1984.

Coordination Request to be submitted virtually immediately.

2 GHz—(TT&C). API January 1983. Published April 1983. Request—virtually immediately.

SHF—API January 1984.

Article 14—Agreement

800 MHz—Request January 1984. Publication probable by end of 1984 (starts 120-day response period).

2GHz—Request January 1984 (as above).

See pertinent parts of the texts of Articles 11 and 14 attached hereto as Attachment B.

[70] International Radio Regulations Article 14, section 3(1) establishes the procedure for responding to notification of registration of a planned assignment:

1617 section 3. (1) Any administration, upon receipt of this information and believing that the planned assignment may affect its services operating in accordance with the Table of Frequency Allocations or planned to be so operated, shall, within four months of the date of the relevant weekly circular, so inform the administration requesting agreement and the Board.

[71] While the efforts at coordination and cooperation between Canada and the U.S. are a starting point, other nations will eventually be involved, at least to the extent of coordination. The international registration process, described in Attachment B, requires the consent of affected nations; just as the U.S. could, under certain conditions, oppose Canada's allocation request, so also other nations could oppose our forthcoming registration.

[72] The NASA proposal discusses regional service only as it applies to U.S.-Canadian efforts.

[73] Mobilesat's application, at Exhibit II K, discusses shared use among interested nations for the first generation system, with later generations to develop national services where desired, through the use of spot beams. Such national systems could be provided from a single satellite, or, depending on demand and capacity, might require additional satellites. Spot beams making frequency reuse possible should obviate any need for additional spectrum allocation, however. Mobilesat notes that "because of lack of antenna directivity in the mobile and satellite, mobile satellites require more stringent coordination and cooperation than fixed satellite systems." Expressing a willingness to participate in such international coordination, Mobilesat states that the potential for a regional or international MSS "raises many complex issues concerning market size and growth and penetration rate, investment ownership and even participation in satellite construction." Skylink also discusses a potential regional service, and proposes a "North American Compatibility Plan" which would include "coordinated frequency use and reuse, joint spacecraft procurement, standardization of network protocols and signaling, mutual backup on satellite and satellite TT&C, technology sharing, cost sharing, a coordinated growth plan, and a Joint Operation Agreement."

[74] It is our preliminary view that full compatibility, *i.e.*, 30 KHz FM channels would be undesirable. Aside from the inefficiency of 30 KHz FM channels when more efficient techniques are currently available, we have proposed in our NPRM, adopted today, to push cellular operators toward more efficient technologies in order to conserve spectrum. Thus, by the time an MSS is operational, 30 KHz FM may no longer be the cellular standard. *See* General Docket 84-1233.

proposed. Whether we should create specific requirements to be met by MSS providers, such as specifying 4 KHz or 5 KHz voice channels or the use of single-sideband technology, or establishing a minimum service level determined, for example, by total numbers of simultaneous voice channels per MHz, is a question open to consideration. Our inclination is to outline basic services and efficiency requirements, but to leave to the licensee the determination of specific means to achieve these ends. Our goal, as always, is to receive maximum service and benefit from any spectrum allocated.

42. The development of frequency reuse through spot-beam technologies is an important part of the MSS proposal. Through use of increasing numbers of ever-smaller footprints, frequencies allocated to MSS can be reused so that, as discussed above, the allocation made here can suffice for full service through several generations. Each of the proposals before us looks to the second generation for the first use of spot beams, with the third-generation proposal of NASA, at 87 beams for CONUS, providing significant frequency reuse. It seems likely, however, that some spot-beam use, and therefore some frequency reuse, is possible even for a first-generation system. This question, as well as proposals for second- and subsequent-generation frequency reuse, will bear careful scrutiny. The possibility of greater frequency reuse, and hence greater spectrum efficiency, at higher frequencies should also be examined.[75]

43. Omninet, in comments to the Notice of Proposed Rulemaking in General Docket Nos. 84–689 and 84–690, *Radiodetermination Satellite Service*, FCC 83–319, released September 7, 1984, has argued that there is a potential relationship between the MSS services to be addressed in this proceeding and the radiodetermination satellite services ("RDSS") that are being addressed in those dockets. Omninet argued that both telecommunications services might more efficiently be provided if the being addressed in those dockets. Omninet argued that both telecommunications services might more efficiently be provided if the satellite facilities can be shared between MSS and RDSS, but that because applications are to be received for RDSS prior to the filing of applications for MSS, it is difficult for applicants to present combined-service proposals. While we believe that the two services are distinct, that the MSS and RDSS use spectrum differently, that it might be difficult to provide both types of telecommunications services on a single satellite without adversely affecting spectrum efficiency or the availability of channels in MSS, and that different offerings will be provided in each case, we do not wish to foreclose applicants procedurally from seeking to convince us to the contrary by submitting combined proposals.

44. Thus, by a recent public notice[76] we delayed the date for filing RDSS applications being addressed in Gen. Docket Nos. 84–689 and 84–690 to facilitate the filing of simultaneous applications for RDSS and MSS. It is unclear just how the two telecommunications services might be provided on a single satellite. The provision of location information, including altitude, requires a constellation of satellites. One possibility might be that multiple transponders would be used to support the RDSS and MSS separately in the same satellite system. Under this approach, the RDSS would be provided on the spectrum tentatively assigned in the RDSS notice, and MSS would be provided on different spectrum to be allocated as a result of this proceeding. A second possibility might be that applicants would seek to utilize the MSS spectrum itself for radiodetermination services on a co-equal or secondary basis. This presents significant potential problems, as the number of simultaneous voice channels in the MSS (at least in the first generation) is limited, and use of these channels for RDSS could limit achievement of the public benefits of the MSS. If applicants seek to pursue this second approach, they should clearly identify the loss of simultaneous voice communications capacity in the MSS that would result. A third idea might be to utilize spectrum tentatively assigned to RDSS for MSS services as well as RDSS services. In view of the existing uses of the RDSS spectrum, and the spectrum allocation discussion in the RDSS notice, we see little possibility that MMS offerings as discussed in this proceeding could be provided on the spectrum tentatively allocated for the RDSS. If review of the applications filed for the proposed RDSS and MSS frequency spectrum confirms our determination that the two services are appropriately treated separately, we will continue to establish rules, policies and licensing procedures for these services in independent proceedings.

45. We propose that only minimal technical standards be established for this service. Such standards must include those specified in the international Radio Regulations. We therefore propose to apply the requirements of Part 25 of the rules to this service, and request comments and proposals for any changes that may be required or for any technical standards needed.

VI. Qualifying and Comparative Criteria

46. We hope that, if an allocation is made, some type of agreement among interested applicants will obviate the need for a comparative process. Should comparative evaluation be necessary, we intend to use written, as opposed to oral, hearing procedures. Service proposals and service area coverage will be treated as both qualifying and comparative issues in the MSS proceeding. Much comment has been made regarding the differences among the three proposals here concerning types and amounts of service offered. The importance and amount of various services to be provided or omitted—digital data, thin-route fixed service, mobile voice, paging and dispatch, interactive data and surveillance, rural and remote telephone, interexchange, trunking, vehicle location—will be carefully weighed. The coverage areas, too—with full and adequate coverage of CONUS to be established as a *sine qua non*, and comparison based on the adequacy of coverage to Alaska, Hawaii, Puerto Rico and offshore areas, for example—will be evaluated.

47. *Qualifying Factors.*[77] As has been noted,[78] MSS makes possible the provision of many services that cannot reasonably or economically be rendered by, or cannot serve the same populations as, terrestrial services. Because the availability of these unique services is the justification for an allocation to MSS, their provision will be a qualifying factor for any MSS applicant. While we are aware that the proposals presently before us vary considerably in this regard, it seems safe to conclude that there are several services innate to MSS. As noted above,

[75] The issue of simplex voice operations has been raised by the Skylink application. We are concerned that such operations may be inefficient in the use of 800 MHz frequencies (assuming the use of feeder links in higher bands), and may limit the use of multiple spot beams in future generations.

[76] The public notice states that the RDSS application date will coincide with the MSS application date, established as sixty days after the release date of this Notice. This delaying of the application period for RDSS did not affect the comment period in that procedure; *see* Public Notice, Report No. DS–348, released November 30, 1984. Comments on the RDSS dockets were due December 17, 1984, with Reply Comments due January 17, 1985.

[77] Attachment E outlines proposed criteria, both qualifying and comparative, for MSS applications.

[78] *see* para. 4, *supra*.

interconnected radiotelephone services are considered essential to any MSS use of UHF frequencies. Further, if an L-band allocation is made, MSS use of those frequencies might create a requirement to provide, or to take into consideration the provision of, air-ground passenger communications services. This framework of qualifying criteria creates the minimum service proposal required of each applicant; additional or expanded services will be considered comparatively.

48. *Comparative Factors.* Comparative criteria will focus on the quality of the applicants' provision of qualifying services, and upon the applicants' proposals for other services. Ownership and/or organizational proposals, together with financial showings, will also be compared. Service areas beyond CONUS will be comparative factors. Rate proposals, and the methods used to calculate them, will be compared. Comments are solicited on the qualifying and comparative factors proposed here.

VII. Procedure

49. In addition to these frequency allocation proposals, we are also proposing policies and procedures to govern the licensing and operation of the facilities that will use the frequencies being allocated. Although both Skylink and Mobilesat suggest the elimination of the comparative aspect of the authorization procedure and the selection of one application as the base or reference application in which other interested parties may join and participate, we conclude that the public interest would not be served by this approach. Due to the great disparity between the two proposals, which are very different in their spectrum requirements, projected markets, costs and efficiencies, services to be provided, and so on, we find that selection now of a single candidate's proposal as a reference application would be unwarranted and premature. For the reasons set forth below, we have determined to accept and process applications for a land mobile satellite system. We will use this rulemaking proceeding, together with the applications filed, to determine the extent of any necessary regulation of this service. Our objective in this proceeding is to authorize a system to offer this new satellite communications service on a timely basis with the minimum amount of regulation practicable.

50. To this end, today in a Public Notice we are formally establishing a 60-day cut-off period for MSS applications.[79] We have not reviewed the Skylink and Mobilesat applications according to the criteria proposed in this Notice. We are herewith returning these applications, without prejudice, and encourage Mobilesat and Skylink to file in keeping with the criteria and procedures established in this Notice.[80]

51. Defective[81] and untimely filed applications will be returned to the applicant without processing. Those that appear *prima facie* acceptable for filing will be place on public notice upon initial review. The Public Notice will set time limits for the filing of petitions or comments on the applications. With respect to application processing, a period of 30 days from the public notice accepting any application for a MSS will be provided for petitions or comments on the applications, and subsequent pleadings on the applications will be due within the time limits provided by § 1.45 of the rules, 47 CFR 1.45. Because of the high degree of participation in this rulemaking already, and the thoroughness and complexity of comments and communications already received, as well as the significant period of time which has elapsed since NASA's original filing, we do not expect to grant any extensions of time in this proceeding, except as noted above, absent the compelling circumstances.

52. Interested parties should review the NASA proposal and the Mobilesat and Skylink applications, as well as any others that might be filed. Comments may address the technical impact of each system proposal on the others, the desirability and utility of the services to be offered over each proposed system, and the ability of each proposal to conform to the regulatory objectives proposed above. Each application should be viewed as a proposed system standard, and parties should focus on whether the proposal is in the public interest. The resulting record is intended to provide the basis for Commission specification of any necessary design and operating standards, as well as terms and conditions on any system.

VI. Conclusion

53. In summary, we propose to allocate frequencies to the land mobile satellite service and simultaneously to process initial applications for such satellite systems. We will, therefore, consider petitions or comments on the specific applications and whether the public interest would be served by grant of the applications, together with comments on the allocation proposals. Such comments, as noted below, will be due 60 days after the release date of this order, with reply comments due 30 days thereafter. All interested parties should note that this schedule is distinct from the application schedule. The proposed calendar for this procedure is thus as follows:

Item or event	Days After release of order
Comments on Rulemaking	60
Reply Comments on rulemaking	90
Applications	**60
Petitions or Comments on Applications	90
Subsequent Pleadings on Applications as set in Section 1.45.	

**The possible departure from this 60-day period at fn. 79, *supra* should be noted.

Thus, this proceeding will adopt any rules or policies necessary to govern the design, operation and licensing of land mobile satellite facilities and services concurrently with the finalization of the frequency allocations for this service. Authorization of a licensee will occur thereafter.

54. This *Notice of Proposed Rulemaking* is issued pursuant to authority contained in sections 4(i), 4(j), 303 and 403 of the Communications Act of 1934 as amended, 47 U.S.C. 154(i), 154(j), 303 and 403.

55. Our initial analysis pursuant to the *Regulatory Flexibility Act*, Pub. L. 96-354, is presented in Attachment F. Our initial conclusion on this matter is that the actions proposed in this proceeding will not have a significant economic impact on a substantial number of small businesses if ultimately adopted.

56. Interested parties may file comments with respect to this *Notice of Proposed Rulemaking* on or before March 29, 1985 and reply comments on or before April 19, 1985. In accordance with § 1.1419 of the Commission's Rules and Regulations, 47 CFR 1.1419, an original and five copies of all documents filed in this proceeding should be furnished to the Commission. Copies of all filings will be available for public inspection during regular business hours

[79] Due to the complexity of application for this new service, and in view of the significant start-up time required by prospective entrants to the field, requests for reasonable extensions of the application period will be entertained if it appears obvious that the stipulated period is inadequate, and if such requests would not unfairly prejudice the position of RDSS applicants. Though we intend to go forward expeditiously with this project, we would not choose to trade quality for expedition.

[80] As noted in paras. 43–44 above, RDSS applications will be due on the same timetable as MSS applications.

[81] Defective applications will be any which fail to comply with Part 25 of the Commission's rules and with the standards outlined above and in Attachment E requiring showings of qualifying criteria such as service provisions, geographic coverage, demand studies, projected second generation, engineering and technical design, and financial qualification.

in the Commission's public reference room at its headquarters in Washington, D.C. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public files, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

57. For the purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a *Notice of Proposed Rulemaking* until the time the public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier.[83] In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Secretary of the Commission for inclusion into the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments in the proceeding must prepare a written summary of that presentation. On the day of the oral presentation, that written summary must be served on the Commission's Secretary for inclusion into the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by Docket Number the proceeding to which it relates. *See generally* § 1.1231 of the Commission's Rules 47 CFR 1.1231. A summary of these Commission procedures governing *ex parte* presentations in informal rulemaking is available from the Commission's Consumer Assistance Office, FCC, Washington, D.C.

(Secs. 4, 303, 48 stat., as amended, 1000, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

William J. Tricarico,

Secretary.

[83] The more restrictive *ex parte* rules for contested applications, § 1.1203, will apply to any applications filed in this procedure.

Attachment A

PART 2—[AMENDED]

Proposed Rule Changes

Part 2 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

§ 2.106 [Amended]

In § 2.106 the Table of Frequency Allocations is revised for the bands 806–890 as follows:

United States		Federal Communications Commission		
Band (MHz)	Allocation	Band (MHz)	Service	Nature of services
5	6	7	8	11
*	*	*	*	*
		806–821	Private Land Mobile	Conventional and trunked systems.
		821–825	Land Mobile	Land Mobile Satellite Service.
		825–845	Land Mobile	Cellular Systems.
		845–851	Private Land Mobile	Reserve.
		851–866	Private Land Mobile	Conventional and trunked systems.
		866–870	Land Mobile	Land Mobile Satellite Service.
		870–890	Land Mobile	Cellular Systems.
		890–896	Land Mobile	Reserve.
*	*	*	*	*

Attachment B

ARTICLE II

Coordination of Frequency Assignments to Stations in a Space Radiocommunication Service Except Stations in the Broadcasting-Satellite Service and to Appropriate Terrestrial Stations.[1]

Section I. Procedures for the Advance Publication of Information on Planned Satellite Networks[2]

1041 Publication of Information.

1042 § 1. (1) An administration (or one acting on behalf of a group of named administrations) which intends to establish a satellite system shall, prior to the coordination procedure in accordance with No. 1060 where applicable, send to the International Frequency Registration Board, not earlier than five years and preferably not later than two years before the date of bringing into service each satellite network of the planned system, the information listed in Appendix 4.

1043 (2) Any amendments to the information sent concerning a planned satellite system in accordance with No. 1042 shall also be sent to the Board as soon as they become available.

1044 (3) The Board shall publish the information sent under Nos. 1042 and 1043 in a special section of its weekly circular and shall also, when the weekly circular contains such information, so advise all administrations by circular telegram. The circular telegram shall include the frequency bands to be used and, in the case of a geostationary satellite, the orbital location of the space station.

1045 (4) If the information is found to be incomplete, the Board shall publish it under No. 1044 and immediately seek, from the administration concerned, any clarification and information not provided. In such cases, the period of four months specified in No. 1047 shall count from the date of publication, under No. 1044, of the complete information.

1046 Comments on Published Information.

1047 § 2. If, after studying the information published under No. 1044, any administration is of the opinion that interference which may be unacceptable may be caused to its existing or planned space radiocommunication services, it shall, within four months after the date of the weekly circular publishing the complete information listed in Appendix 4, send its comments to be administration concerned. A copy of these comments shall also be sent to the Board. If no such comments are received from an administration within the period mentioned above, it may be assumed that that administration has no basic objections to the planned satellite networks) of that system on which details have been published.

1048 Resolution of Difficulties.

1049 § 3. (1) An administration receiving comments sent in accordance with No. 1047 shall endeavour to resolve any difficulties that may arise and shall provide any additional information that may be available.

1050 (2) In case of difficulties arising when any planned satellite network of a system is intended to use the geostationary-satellite orbit:

1051 (a) The administration responsible for the planned system shall first explore all possible means of meeting its requirements, taking into account the characteristics of the geostationary-satellite networks of other systems, and without considering the possibility of adjustment to systems of other administrations. If no such means can be

[1] For the coordination of frequency assignments to stations in the broadcasting-satellite service and other services in the frequency bands 11.7–12.2 GHz (in Regions 2 and 3) and 11.7–12.5 GHz (in Region 1), see also Article 15. (A.11.1)

[2] These procedures may be applicable to stations on board satellite launching vehicles. (A.11.2)

found, the administration concerned is then free to apply to other administrations concerned to solve these difficulties;

1052 (*b*) An administration receiving a request under No. 1051 shall, in consultation with the requesting administration, explore all possible means of meeting the requirements of the requesting administration, for example, by relocating one or more of its own geostationary space stations involved, or by changing the emissions, frequency usage (including changes in frequency bands) or other technical or operational characteristics;

1053 (*c*) If after following the procedure outlined in Nos. 1051 and 1052 there are unresolved difficulties, the administrations concerned shall together make every possible effort to resolve these difficulties by means of mutually acceptable adjustments, for example, to geostationary space station locations and to other characteristics of the systems involved in order to provide for the normal operation of both the planned and existing systems.

1054 (3) In their attempts to resolve the difficulties mentioned above administrations may seek the assistance of the Board.

1055 Results of Advance Publication.

1056 § 4. An administration on behalf of which details of planned satellite networks have been published in accordance with the provisions of Nos. 1042 to 1044 shall, after the period of four months specified in No. 1047, inform the Board whether or not comments provided for in No. 1047 have been received and of the progress made in resolving any difficulties. Additional information on the progress made in resolving any remaining difficulties shall be sent to the Board at intervals not exceeding six months prior to the commencement of coordination or the sending of the notices to the Board. The Board shall publish this information in a special section of its weekly circular and shall also, when the weekly circular contains such information, so inform all administrations by circular telegram.

1057 Commencement of Coordination or Notification Procedures.

1058 § 5. In complying with the provisions of Nos. 1049 to 1054, an administration responsible for a planned satellite system shall, if necessary, defer its commencement of the coordination procedure, or, where this is not applicable, the sending of its notices to the Board, by six months after the date of the weekly circular containing the information listed in Appendix 4 on the relevant satellite network. However, in respect of those administrations with which difficulties have been resolved or which have responded favourably, the coordination procedure, where applicable, may be commenced prior to the expiry of the six months mentioned above.

Section II. Coordination of Frequency Assignments to a Space Station on a Geostationary Satellite or an Earth Station Communicating With Such a Space Station in Relation to Stations of Other Geostationary-Satellite Networks

1059 Requirement for Coordination.

1060 § 6. (1) Before an administration (or, in the case of a space station, one acting on behalf of a group of named administrations) notifies to the Board or brings into use any frequency assignment to a space station on a geostationary satellite or to an earth station that is to communicate with a spece station on a geostationary satellite, it shall, except in the cases described in Nos. 1066 to 1071, effect coordination of the assignment with any other administration whose assignment, for a space station on a geostationary satellite or for an earth station that communicates with a space station on a geostationary satellite, might be affected.

1061 (2) Frequency assignments to which the provisions of No. 1060 are applicable are those:

1062 (*a*) In the same frequency band as the planned assignment and in conformity with No. 1503; *and*

1063 (*b*) Either recorded in the Master Register, or coordinated under the provisions of this Section; *or*

1064 (*c*) To be taken into account for coordination with effect from the date of receipt by the Board, in accordance with No. 1074, of the relevant information as annotated in Appendix 3; *or*

1065 (*d*) Notified to the Board without any coordination in those cases where Nos. 1066 to 1071 apply.

1066 (3) No coordination under No. 1060 is required:

1067 (*a*) When the use a new frequency assignment will cause, to any service of another administration, an increase in the noise temperature of any space receiver or earth station receiver, or an increase in the equivalent satellite link noise temperature, as appropriate, calculated in accordance with the method given in Appendix 29, which does not exceed the threshold value defined therein;

1068 (*b*) When the interference from a modification to a frequency assignment which has previously been coordinated will not exceed that value agreed during coordination;

1069 (*c*) When an administration proposes to notify or bring into use a new earth station within a service area of an existing satellite network, provided that the new earth station would not cause interference of a level greater than that which would be caused by an earth station pertaining to the same satellite network and whose characteristics have been published, together with the information concerning the space station, in accordance with No. 1078;

1070 (*d*) When, for a new frequency assignment to a receiving station, the notifying administration states that it accepts the interference resulting from the frequency assignments referred to in Nos. 1061 to 1065;

1071 (*e*) Between earth stations using frequency assignments in the same direction (either Earth-to-space or space-to-Earth).

1072 Coordination Data

1073 § 7. (1) For the purpose of effecting coordination, the administration requesting coordination shall send to any other administration concerned under No. 1060 all the information listed in Appendix 3 required for the coordination. The request concerning coordination of a space station or an associated earth station may specify all or some of the frequency assignments expected to be used by that space station, but thereafter each assignment shall be dealt with individually.

1074 (2) The administration requesting coordination shall at the same time send to the Board a coopy of the request for coordination, with all the information listed in Appendix 3 required for coordination and the name(s) of the administration(s) with which coordination is sought. An administration believing that the provisions of Nos. 1066 to 1071 apply to its planned assignment may sent to the Board the relevant information listed in Appendix 3, either under this provision or in accordance with Nos. 1488 to 1491. In the latter case, the Board shall immediately inform all administrations by circular telegram.

1075 § 8. On receipt of the information referred to in No 1074, the Board Shall:

1076 (*a*) Immediately examine this information with respect to its conformity with No. 1503 and, as soon as possible, send a telegram to all administrations indicating the identity of the satellite network, its findings with respect to No. 1503 and the date of receipt of the information; this date shall be considered as the date from which the assignment will be taken into account for coordination;

1077 (*b*) Examine the information received with a view to identifying those administrations whose services might be affected in accordance with No. 1060, an inform the administrations concerned by telegram;

1078 (*c*) Publish in a special section of its weekly circular the information received under No. 1074 and the result of the examination under Nos. 1076 and 1077, together with a reference to the weekly circular in which details of the satellite network were published in accordance with Section 1 of this Article. When the weekly circular contains such information, the Board shall so inform all administrations by circular telegram.

1079 Requests for inclusion in the Coordination Procedure

1080 § 9. An administration believing that it should have been included in the coordination procedure under No. 1060 shall have the right to request that it be brought into the coordination procedure. Such a request shall be sent to the administration initiating the coordination procedure, with a copy to the Board, as soon as possible.

1081 Acknowledgement of Receipt of Coordination Data

1082 § 10. An administrator with which coordination is sought under No. 1060 shall acknowledge receipt of the coordination data immedately by telegram. If no acknowledgement is received within thirty days after the date of the weekly circular publishing the information under No. 1078, the administration seeking coordination shall dispatch a telegram requesting acknowledgement, to which the receiving administration shall reply within a further period of fifteen days.

1083 Examination of Coordination Data and Agreement Between Administrations

1084 § 11. (1) On receipt of the coordination data, an administration shall

promptly examine the matter with regard to interference [3] which would be caused to the service rendered by its stations in respect of which coordination is sought under No. 1060 or caused by these station. In so doing, it shall have regard to the proposed date of bringing into use of the assignment for which coordination was requested. It shall then, within four months from the date of the relevant weekly circular, notify the administration requesting coordination of its agreement. If, however, the administration with which coordination is sought does not agree, it shall, within the same period, sent to the administration seeking coordination the technical details upon which its disagreement is based, including those relevant characteristics contained in Appendix 3 which have not previously been notified to the Board, and make such suggestions as it is able to offer with a view to a satisfactory solution of the problem. A copy of these comments shall also be sent to the Board.

1085 (2) Either the administration seeking coordination or an administration with which coordination is sought may request additional information which it may require to assess the interference to the services concerned.

1086 Results of Coordination

1087 § 12. An administration which has initiated a coordination procedure under the provision of Nos. 1060 to 1074 shall communicate to the Board, on expiry of the period of four months following the date of the relevant weekly circular mentioned in No. 1078, the names of the administrations with which an agreement has been reached and any changes in the characteristics of its frequency assignment. It shall also inform the Board of the progress made in effecting coordination with the other administrations or of any difficulties. Such a communication shall be made to the Board every six months after the above-mentioned period. The Board shall publish this information in a special section of it weekly circular and, when the weekly circular contains information on changes in the characteristics published, it shall so inform all administration by circular telegram.

1088 Requests to the IFRB for Assistance in Effecting Coordination

1089 § 13. (1) An administration seeking coordination may request the Board to endeavour to effect coordination in those cases where:

1090 (*a*) An administration with which coordination is sought under No. 1060 fails to acknowledge receipt, under No. 1082, within fourth-five days after the date of the weekly circular publishing the information relating to the request for coordination;

1091 (*b*) An administration has acknowledged receipt under No. 1082, but fails to give a decision within four months from the date of the relevant weekly circular;

1092 (*c*) There is disagreement between the administration seeking coordination and an administration with which coordination is sought as to the acceptable interference; on

1093 (*d*) Coordination between administration is not possible for any other reason.

1094 (2) In so doing, the administration shall furnish the necessary information to enable the Board to endeavour to effect such coordination.

1095 Action to Be Taken by the IFRB

1096 § 14. (1) Where the Board receives a request under No. 1090, it shall forthwith send a telegram to the administration concerned requesting immediate acknowledgement.

1097 (2) Where the Board receives an acknowledgement following its action under No. 1096, or where the Board receives a request under No. 1091, it shall forthwith send a telegram to the administration concerned requesting an early decision in the matter.

1098 (3) Where the Board receives a request under No. 1093, it shall endeavour to effect coordination in accordance with the provisions of No. 1060. The Board shall also act in accordance with Nos. 1075 to 1078. Where the Board receives no acknowledgement to its request for coordination within the periods specified in No. 1082 it shall act in accordance with No. 1096.

1099 (4) Where necessary, as part of the procedure under Nos. 1089 to 1094, the Board shall assess the interference. In any case, the Board shall inform the administrations concerned of the results obtained.

1100 (5) The Board may request additional information which it may require to assess the interference to the services concerned.

1101 (6) Where an administration fails to reply within thirty days of dispatch of the Board's telegram requesting an acknowledgement sent under No. 1096, or fails to give a decision in the matter within thirty days of dispatch of the Board's telegram of request under No. 1097, it shall be deemed that the administration with which coordination was sought has undertaken:

1102 (*a*) That no complaint will be made in respect of any harmful interference which may be caused to the services rendered by its space radiocommunication stations by the use of the assignment for which coordination was requested;

1103 (*b*) That its space radiocommunication stations will not cause harmful interference to the use of the assignment for which coordination was requested.

1104 Notification of Frequency Assignments in the Event of Continuing Disagreement

1105 § 15. In the event of continuing disagreement between an administration seeking to effect coordination and one with which coordination has been sought, the administration seeking coordination shall, except in the cases where the assistance of the Board has been requested, defer the submission of its notice concerning the proposed assignment by six months from the date of publication of the request for coordination under No. 1078, taking into consideration the provisions of No. 1496.

Section III. Coordination of Frequency Assignments to an Earth Station in Relation to Terrestrial Stations

1106 Requirement for Coordination

1107 § 16. (1) Before an administration notifies to the Board or brings into use any frequency assignment to an earth station, whether for transmitting or receiving, in a particular band allocated with equal rights to space and terrestrial radiocommunication services in the frequency spectrum above 1 GHz, it shall, except in the cases described in Nos. 1108 to 1111, effect coordination of the assignment with each administration whose territory lies wholly or partly within the coordination area [4] of the planned earth station. The request for coordination concerning an earth station may specify all or some of the frequency assignments of the associated space station, but thereafter each assignment shall be dealt with individually.

1108 (2) No coordination under No. 1107 is required when an administration proposes:

1109 (*a*) To bring into use an earth station the coordination area of which does not include any of the territory of any other country;

1110 (*b*) To change the characteristics of an existing assignment in such a way as not to increase the interference to or from the terrestrial radiocommunication stations of other administrations;

1111 (*c*) To operate a mobile earth station. However, if the coordination area associated with the operation of such a mobile earth station, in a frequency band referred to in No. 1107, includes any of the territory of another country, the operation of such a station shall be subject to agreement on coordination between the administrations concerned. This agreement shall apply to the characteristics of the mobile earth station(s), or to the characteristics of a typical mobile earth station, and shall apply to a specified service area. Unless otherwise stipulated in the agreement, it shall apply to any mobile earth stations in the specified service area provided that interference caused by them shall not be greater than that caused by a typical earth station for which the technical characteristics appear in the notice and have been or are being submitted in accordance with No. 1494.

1112 Coordination Data

1113 § 17. For the purpose of effecting coordination, the administration requesting coordination shall send to each

[3] The calculation methods and the criteria to be employed in evaluating the interference should be based on relevant CCIR Recommendations agreed by the administration concerned either as a result of Resolution 703 or otherwise. In the event of disagreement on a CCIR Recommendation or in the absence of such Recommendations, the methods and criteria shall be agreed between the administration concerned. Such agreements shall be concluded without prejudice to other administration. (1084.1)

[4] Appendix 28, which shall be used for the calculation of the coordination area, contains criteria relating only to coordination between earth stations and stations in the fixed or mobile services. The criteria relating to other terrestrial radiocommunication services should be based on relevant CCIR Recommendations agreed by the administration concerned either as a result of Resolution 703 or otherwise.

In the event of disagreement on a CCIR Recommendation or in the absence of such Recommendations, the methods and criteria shall be agreed between the administrations concerned. Such agreements shall be concluded without prejudice to other administrations.

administration concerned under No. 1107 a copy of diagrams drawn to an appropriate scale indicating for both transmission and reception the location of the earth station and its associate coordination areas, or the coordination area related to the service area in which it is intended to operate the mobile earth station, and the data on which the diagrams are based, including all pertinent information concerning the proposed frequency assignment as listed in Appendix 3, and an indication of the approximate date on which it is planned to begin operations. A copy of this information with the date of dispatch of the request for coordination shall also be sent for the information of the Board.

1114 Acknowledgement of Receipt of Coordination Data

1115 § 18. An administration with which coordination is sought under No. 1107 shall acknowledge receipt of the coordination data immediately by telegram. If no acknowledgement is received within thirty days of dispatch of the coordination data, the administration seeking coordination shall dispatch a telegram requesting acknowledgement, to which the receiving administration shall reply within a further period of fifteen days.

1116 Examinations of Coordination Data and Agreement Between Administrations

1117 § 19. (1) On receipt of the coordination data an administration shall, having regard to the proposed date of bringing into use of the assignment for which coordination was requested, promptly examine the matter with regard to both:

1118 (*a*) Interference [5] which would be caused to the service rendered by its terrestrial radiocommunication stations operating in accordance with the Convention and these Regulations, or to be so operated prior to the planned date of bringing the earth station assignment into service, or within the next three years, whichever is the longer; *and*

1119 (*b*) Interference [5] which would be caused to reception at the earth station by the service rendered by its terrestial radiocommunication stations operating in accordance with the Convention and these Regulations, or to be so operated prior to the planned date of bringing the earth station assignment into service, or within the next three years, whichever is the longer.

1120 (2) The periods referred to in Nos. 1118 and 1119 may be extended by agreement between the administrations concerned in order to take planned terrestrial networks into account.

1121 (3) The administrationwith which coordination is sought shall, within four months from dispatch of the coordination data:

1122 (*a*) Notify the administration requesting coordination of its agreement with a copy to the Board, indicating, where appropriate the part of the allocated frequency band containing the coordinated frequency assignments; or

1123 (*b*) Send to that administration request for inclusion in coordination of the terrestrial rediocammunication stations mentioned in Nos. 1118 and 1119; or

1124 (*c*) Notify that administration of its disagreement.

1125 (4) In the cases mentioned in Nos. 1123 and 1124, the administration with which coordination is sought shall send to the administration requesting coordination a copy of a diagram drawn to an appropriate scale indicating the location of those terrestrial radiocommunication stations which are or will be within the coordination area of the earth transmitting or receiving station, as appropriate, together with all other relevant basic characteristics and make such suggestions as it may be able to offer with a view to a satisfactory solution of the problem.

1126 (5) When the administration with which coordination is sought sends to the administration seeking coordination the information required in the case of No. 1124, a copy thereof shall also be sent to the Board. The Board shall consider as notifications in accordance with Section I of Article 12 only that information relating to existing terrestrial radiocommunication station or to those to be brought into use within the next three months.

1127 (6) When an agreement on coordination is reached, as a consequence of Nos. 1121 to 1125, the administration responsible for the terrestrial stations may send to the Board the information concerning those terrestrial stations covered by the agreement which are intended to be notified in accordance with Section 1 of Article 12. The Board shall consider as notifications in accordance with that Section only that information relating to existing terrestrial radiocommunication stations or to those to be brought into use within the next three years.

1128 (7) The administration seeking coordination or an administration with which coordination is sought may request additional information which it may require to assess the interference to the services concerned.

1129 Requests to the IFRB for Assistance in Effecting Coordination

1130 § 2. (1) An administration seeking coordination may request the Board to endeavour to effect coordination in those cases where:

1131 (*a*) An administration with which coordination is sought under No. 1107 fails to acknolowledge receipt, under No. 1107 fails to acknowledge receipt, under No. 1115, within forty-five days of dispatch of the coordination data;

1132 (*b*) An administration has acknowledged receipt under No.1115, but fails to give a decision within four months from dispatch of the coordination data under No. 1113.

1133 (*c*) There is disagreement between the administration seeking coordination and an administration with which coordination is sought as to the acceptable interference; or

1134 (*d*) Coordination between administration is not possible for any other reason.

1135 (2) In so doing, the administration shall furnish the necessary information to enable the Board to endeavour to effect such coordination.

1136 Action to Be Taken by the IFRB

1137 § 21. (1) Where the Board receives a request under No. 1131, it shall forthwith send a telegram to the administration concerned requesting immediate acknowledgement.

1138 (2) Where the Board receives an acknowledgement following its action under No. 1137, or where the Board receives a request under No. 1132, it shall forthwith send a telegram to the administration concerned requesting an early decision in the matter.

1139 (3) Where the Board receives a request under No. 1134, it shall endeavour to effect coordination in accordance with the provisions of No. 1107. Where the Board receives no acknowledgement to its request for coordination within the periods specified in No. 1115 it shall act in accordance with No. 1137.

* *1140* (4) Where necessary, as part of the procedure under Nos. 1130 to 1135, the Board shall assess the interference. In any case, the Board shall inform the administrations concerned of the results obtained.

1141 (5) The Board may request additional information which it may require to assess the interference to the services concerned.

1142 (6) Where an administration fails to reply within thirty days of dispatch of the Board's telegram requesting an acknowledgement sent under No. 1137, or fails to give a decision in the matter within thirty days of dispatch of the Board's telegram of request under No. 1138, it shall be deemed that the administration with which coordination was sought has undertaken:

1143 (*a*) That no complaint will be made in respect of any harmful interference which may be caused to the services rendered by its terrestrial stations by the use of the assisgnment for which coordination was requested;

1144 (*b*) That its terrestrial stations will not cause harmful interference to the use of the assignment for which coordination was requested.

1145 Notification of Frequency Assignments in the Event of Continuing Disagreement

1146 § 22. In the event of continuing disagreement between an administration seeking to effect coordination and one with which coordination has been sought, the administration seeking coordination shall, except in the cases where the assistance of the Board has been requested, defer the submission of its notice concerning the proposed assignment by six months from the date of the request for coordination, taking into consideration the provisions of No. 1496.

Section IV. Coordination of Frequency Assignments to a Terrestrial Station for Transmission in Relation to an Earth Station

1147 Requirement for Coordination

[5] The calculation methods and the criteria to be employed in evaluating the interference should be based on relevant CCIR Recommendations agreed by the administrations concerned either as a result of Resolution 703 or otherwise. In the event of disagreement on a CCIR Recommendation or in the absence of such Recommendations, the methods and criteria shall be agreed between the administrations concerned. Such agreements shall be concluded without prejudice to other administrations. 1118.1, 1119.1

1148 § 23. (1) Before an administration notifies to the Board, or brings into use any frequency assignment to a terrestrial station within the coordination area [6] of an earth station, in a band above 1 GHz allocated with equal rights to terrestrial radiocommunication services and space radiocommunication services (space-to-Earth), excepting the broadcasting-satellite service, it shall, except in cases described in Nos. 1155 to 1158, effect coordination of the proposed assignment with the administration responsible for the earth station with respect of the frequncy assignments which are:

1149 (*a*) In conformity with No. 1503; and

1150 (*b*) Either coordinated under No. 1107; *or*

1151 (*c*) To be taken into account for coordinationwith effect from the date of communication of the information referred to in No. 1107; *or*

1152 (*d*) Recorded in the Master Register with a favourable finding with respect to No. 1505; *or*

1153 (*e*) Recorded in the Master Register with an unfavourable finding with respect to No. 1505 and a favourable finding with respect to No. 1509; *or*

1154 (*f*) Recorded in the Master Register with an unfavourable finding with respect to Nos. 1505 and 1509, the notifying administration having stated that it has accepted the interference resulting from the existing terrestrial stations located within the coordination area of the earth station on the date of its recording.

1155 (2) No coordination under Nos. 1148 to 1154 is required when an administration proposes:

1156 (a) To bring into use a terrestrial station which is located, in relation to an earth station, outside the coordination area;

1157 (b) To change the characteristics of an existing assignment in such a way as not to increase the interference to the earth stations of other administrations;

1158 (c) To bring into use a terrestrial station within the coordination area of an earth station, provided that the proposed terrestrial station assignment is outside any part of a frequency band coordinated under No. 1122 for reception by that earth station.

1159 Coordination Data

1160 § 24. For the purpose of effecting coordination, the administration requesting coordination shall send to any other administration concerned under Nos. 1148 to 1154, by the fastest possible means, a copy of a diagram drawn to an appropriate scale indicating the location of the terrestrial station and all other pertinent details of the proposed frequency assignment, and the approximate date on which it is planned to bring the station into use. The request for coordination may specify all or some of the frequency assignments expected to be used within the next three years by stations of a terrestrial network wholly or partly within the coordination area of the earth station. This period may be extended by agreement between the administrations concerned. Thereafter each assignment shall be dealt with individually.

1161 Acknowledgement of Receipt of Coordination Data

1162 § 25. An administration with which coordination is sought under Nos. 1148 to 1154 shall acknowledge receipt of the coordination data immediately be telegram. If no acknowledgement is received within thirty days of dispatch, the administration seeking coordination may dispatch a telegram requesting acknowledgement of receipt of the coordination data, to which the receiving administration shall reply within a further period of fifteen days.

1163 Examination of Coordination Data and Agreement Between Administrations

1164 § 26. (1) On receipt of the coordination data, the administration with which coordination is sought shall promptly examine the matter with regard to interference [7] which would be caused to the services rendered by its earth stations covered by Nos. 1148 to 1154, which are operating, or are to be operated, within the next three years.

1165 (2) In so doing, the administration may take into account any frequency assignment communicated to it for use more than three years in advance.

1166 (3) The administration with which coordination is sought shall, within an overall period of four months [8] from dispatch of the coordination data, either notify the administration requesting coordination of its agreement to the proposals or, if this is not possible, indicate the reasons therefor and make such suggestions as it may be able to offer with a view to a satisfactory solution of the problem.

1167 § 27. Either the administration seeking coordination or the administration with which coordination is sought may request additional information which it may require to assess the interference to the services concerned.

1168 Requests to the IFRB for Assistance in Effecting Coordination

1169 § 28. (1) An administration seeking coordination may request the Board to endeavour to effect coordination in those cases where:

1170 (a) An administration with which coordination is sought under Nos. 1148 to 1154 fails to acknowledge receipt under No. 1162 within thirty days of dispatch of the coordination data;

1171 (b) An administration has acknowledged receipt under No. 1162 but fails to give a decision within four months of dispatch of the coordination data;

1172 (c) There is disagreement between the administration seeking coordination and an administration with which coordination is sought as to the acceptable interference; *or*

1173 (d) Coordination between administrations is not possible for any other reason.

1174 (2) In so doing, the administration shall furnish the necessary information to enable the Board to endeavour to affect such coordination.

1175 Action to Be Taken by the IFRB

1176 § 29. (1) Where the Board receives a request under No. 1170, it shall forthwith send a telegram to the administration concerned requesting immediate acknowledgement.

1177 (2) Where the Board receives an acknowledgement following its action under No. 1176, or where the Board receives a request under No. 1171, it shall forthwith send a telegram to the administration concerned requesting an early decision in the matter.

1178 (3) Where the Board receives a request under No. 1173, it shall endeavour to effect coordination in accordance with the provisions of Nos. 1148 to 1154. Where the Board receives no acknowledgement of its request for coordination within the period specified in No. 1162, it shall act in accordance with No. 1176.

1179 (4) Where necessary, as part of the procedure under Nos. 1169 to 1174, the Board shall assess the interference. In any case, the Board shall inform the administrations concerned of the results obtained.

1180 (5) The Board may request additional information which it may require to assess the interference to the services concerned.

1181 (6) Where an administration fails to reply within thirty days of dispatch of the Board's telegram sent under No. 1176 requesting an acknowledgement, or fails to give a decision in the matter within two months of dispatch of the Board's telegram of request sent under No. 1177, it shall be deemed that the administration with which coordination was sought has undertaken that no complaint will be made in respect of any harmful interference which may be caused by the terrestrial station being coordinated to service rendered by its earth station.

1182 Notification of Frequency Assignments in the Event of Continuing Disagreement

1183 § 30. In the event of continuing disagreement between an administration seeking to effect coordination and one with which coordination has been sought, the administration seeking coordination shall, except in the cases where the assistance of the Board has been requested, defer the submission of its notice concerning the proposed assignment by six months from the

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[6] Appendix 28, which shall be used for the calculation of the coordination area, contains criteria relating only to coordination between earth stations and stations in the fixed or mobile services. The creiteria relating to other terrestrial radiocommunication services should be based on relevant CCIR Recommendations agreed by the administrations concerned either as a result of Resolution 703 or otherwise.

In the event of disagreement on a CCIR Recommendation or in the absence of such Recommendations, the methods and criteria shall be agreed between the administrations concerned. Such agreements shall be conducted without prejudice to other administrations. (1148.1)

[7] The calculation methods and the criteria to be employed in evaluating the interference should be based on relevant CCIR Recommendations agreed by the administrations concerned either as a result of Resolution 703 or otherwise. In the event of disagreement on a CCIR Recommendation or in the absence of such Recommendations, the methods and criteria shall be agreed between the administrations concerned. Such agreements shall be concluded without prejudice to other administrations. (1164.1)

[8] This period may be extended with the agreement of the administration which requested the coordination. (1166.1)

date of the request for coordination, taking into consideration the provisions of Nos. 1230 and 1496.

Section V. Special Assistance by the IFRB

1184 § 31.1 (1) If it is requested by an administration, particularly by an administration of a country in need of special assistance, the Board, using such means at its disposal as are appropriate in the circumstances, shall render the following assistance:

1185 *(a)* Computation of the increases in noise temperatures in accordance with No. 1066;

1186 *(b)* Preparation of diagrams showing the coordination areas as in No. 1113;

1187 *(c)* Any other assistance of a technical nature for completion of the procedures in this Article.

1188 (2) In making a request to the Board under Nos. 1184 to 1187, the administration shall furnish the Board with the necessary information.

1189 to 1213 NOT allocated.

ARTICLE 14

Supplementary Procedure To Be Applied in Cases Where a Footnote in the Table of Frequency Allocation Requires an Agreement With an Administration

1610 § 1. (1) Before an administration notifies to the Board a frequency assignment in accordance with any footnote in the Table of Frequency Allocations which makes reference to this Article, it shall obtain the agreement of any other administration whose services may be affected. In the case of a footnote concerning a space radiocommunication service, this procedure may be initiated before or at the same time as the application of the provisions of Article 11.

1611 (2) The administration seeking such an agreement shall, sufficiently early before the planned date of putting the assignment into service, send to the Board:

1612 *(a)* For terrestrial radiocommunication services, the basic characteristics of the planned assignment listed in the appropriate section of Appendix 1;

1613 *(b)* For space radiocommunication services, the characteristics of the planned assignment listed in Appendix 4, or Appendix 3 when the latter are available.[9]

1614 (3) The administration seeking agreement may, when sending its information to the Board, also identify those other administrations that are believed to have services which may be affected.

1615 § 2. (1) The Board shall publish the information sent under Nos. 1611 to 1614 in a special section of its weekly circular [10] and shall also, when the weekly circular contains such information, so advise administrations by circular telegram.

1616 (2) The Board shall endeavour to identify administrations whose services may be affected, and shall include the names of those administrations it is able to identify in the special section of its weekly circular and in the circular telegram mentioned under No. 1615.

1617 § 3. (1) Any administration, upon receipt of this information and believing that the planned assignment may affect its services operating in accordance with the Table of Frequency Allocations or planned to be so operated, shall, within four months of the date of the relevant weekly circular, so inform the administration requesting agreement and the Board.

1618 (2) Any administration not having commented within the period specified in No. 1617 shall be regarded as unaffected by the planned assignment.

1619 (3) Any administration responding under No. 1617 to a request for agreement shall, if possible at the same time, give at least the relevant basic characteristics of its stations whose services may be affected, and shall make such suggestions as it may be able to offer with a view to a satisfactory solution of the problem. A copy of all this information shall simultaneously be sent to the Board.

1620 § 4. The administration requesting agreement under Nos. 1611 to 1613 and the administration responding under No. 1617 shall together [11] make every possible effort to resolve the problem before the date of bringing into use of the planned assignment.

1621 § 5. Either administration may request from the other additional information which may be required to resolve the problem. A copy of such a request and of any information given in response shall be sent to the Board.

1622 § 6. Either administration may request the assistance of the Board in an attempt to resolve the problem.

1623 § 7. Following resolution of the problem, the administration which sought agreement shall inform the Board of that effect.

1624 § 8. An administration having sought agreement under Nos. 1611 to 1613 and having received no response under No. 1617 from any administration shall inform the Board thereof and shall then be regarded as having successfully completed the procedure of this Article.

1625 § 9. An administration having sought agreement under Nos. 1611 to 1613, having received one or more responses under No. 1617, and having informed the Board under No. 1623 of the resolution of the problem, shall be regarded as having obtained agreement in accordance with the relevant footnote in the Table of Frequency Allocations.

1626 § 10. The Board, following receipt of advice under No. 1624 or 1625 as to the completion of this procedure, shall publish this information in the appropriate special section of the weekly circular.

1627 § 11. An administration seeking agreement or an administration with which agreement is sought or any other administration whose services might be affected may request the assistance of the Board in applying any of the steps of this procedure, particularly in:

1628 *(a)* Identifying administrations whose services might be affected;

1629 *(b)* Evaluating the levels of interference;

1630 *(c)* Defining, with the agreement of the administrations concerned, the technical criteria to be used [12]

1631 to 1655 NOT allocated.

Attachment C

International Table			United States Table		FCC use Designators	
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	RULE PART(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1 429–1 525 FIXED; MOBILE except aeronautical mobile	1 429–1 525 FIXED; MOBILE 723		1 429–1 435 FIXED; MOBILE	1 429–1 435 Land Mobile (telemetering and telecommand) Fixed (telemetering)	Private Land Mobile (90)	
722 1 525–530	722 1 525–1 530	1 525–1 530	722 G30 1 435–1 530	722 1 435–1 530		

[9] The information in Appendix 3 or 4 submitted to the Board under Article 11 may also be used for the purpose of this procedure. (1613.1)

[10] In the case of a space radiocommunication service, the administration submitting the information listed in Appendix 3 or 4 in accordance with the provisions of Article 11 may also ask the Board to apply this information in pursuance of this procedure and the Board shall indicate in the appropriate special section of its weekly circular that agreement under this Article is also sought. (1615.1)

[11] In the absence of appropriate CCIR Recommendations or IFRB Technical Standards, the technical criteria to be used in such a case shall be agreed between the administrations concerned. (1620.1)

[12] In the absence of appropriate CCIR Recommendations of IFRB Technical Standards, the technical criteria to be used in such a case shall be agreed between the administrations concerned. (1630.1)

International Table			United States Table		FCC use Designators	
			Government	Non-Government		
Region 1 allocation MHz	Region 2 allocation MHz	Region 3 allocation MHz	Allocation MHz	Allocation MHz	RULE PART(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
SPACE OPERATION (space-to-Earth); FIXED: Earth Exploration-Satellite; Mobile except aeronautical mobile 724	SPACE OPERATION (space-to-Earth); Earth Exploration-Satellite; FIXED: Mobile 723	SPACE OPERATION (space-to-Earth); FIXED: Earth Exploration-Satellite; Mobile 723 724	MOBILE (aeronautical telemetering)	MOBILE (aeronautical telemetering)	AVIATION (87)	
722 725	722	722	722 US78	722 US78		
1 530–1 535	1 530–1 535		1 530–1 535	1 530–1 535		
SPACE OPERATION (space-to-Earth); MARITIME MOBILE-SATELLITE (space-to-Earth); Earth Exploration-Satellite; Fixed: Mobile except aeronautical mobile	SPACE OPERATION (space-to-Earth); MARITIME MOBILE-SATELLITE (space-to-Earth); Earth Exploration-Satellite; Fixed: Mobile 723		MARITIME MOBILE-SATELLITE (space-to-Earth); (aeronautical telemetering)	MARITIME MOBILE-SATELLITE (space-to-Earth); (aeronautical telemetering)	AVIATION (87); SATELLITE COMMUNICATION (25)	
722 726	722 726		722 US78 US272	722 US78 US272		
1 535–1 544			1 535–544	1 535–544		
	MARITIME MOBILE-SATELLITE (space-to-Earth)		MARITIME MOBILE-SATELLITE (space-to-Earth)	MARITIME MOBILE-SATELLITE (space-to-Earth)	MARITIME (81 and 83); SATELLITE COMMUNICATIONS (25)	
	722 727		722	722		
1 544–1 545			1 544–1 545	1 544–1 545		
	MOBILE-SATELLITE (space-to-Earth)		MOBILE-SATELLITE (space-to-Earth)	MOBILE-SATELLITE (space-to-Earth)	MARITIME (81 and 83); SATELLITE COMMUNICATION (25)	
	722 727 728		722 728	722 728		
1–545–1 559			1 545–1 559	1 545–1 559		
	AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth)		AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth)	AERONAUTICAL MOBILE-SATELLITE (R) (space-to-Earth)	AVIATION (87)	
	722 727 729 730		722 729	722 729		
1 559–1 610			1 559–1 610	1 559–1 610		
	AERONAUTICAL RADIONAVIGATION; RADIONAVIGATION-SATELLITE (space-to-Earth)		AERONAUTICAL RADIONAVIGATION; RADIONAVIGATION-SATELLITE (space-to-Earth)	AERONAUTICAL RADIONAVIGATION; RADIONAVIGATION-SATELLITE (space-to-Earth)	AVIATION (87)	
	722 727 730 731		722 US39 US40 US208 US260	722 US39 US40 US208 US260		
1 610–1 626.5			1 610–1 626.5	1 610–1 626.5		
	AERONAUTICAL RADIONAVIGATION		AERONAUTICAL RADIONAVIGATION	AERONAUTICAL RADIONAVIGATION	AVIATION (87)	
	722 727 730 732 734		722 732 733 734 US39 US40 US208 US260	722 732 733 734 US39 US40 US208 US260		
1 626.5–1 645.5			1 626.5–1 645.5	1 626.5–1 645.5		
	MARITIME MOBILE-SATELLITE (Earth-to-space)		MARITIME MOBILE-SATELLITE (Earth-to-space)	MARITIME MOBILE-SATELLITE (Earth-to-space)	MARITIME (81 and 83); SATELLITE COMMUNICATION (25)	
	722 727 730		722 US39	722 US39		
1 645.5–1 646.5			1 645.5–1 646.5	1 645.5–1 646.5		
	MOBILE-SATELLITE (Earth-to-space)		MOBILE-SATELLITE (Earth-to-space)	MOBILE-SATELLITE (Earth-to-space)	MARITIME (81 and 83); SATELLITE COMMUNICATION (25)	
	722 728		722 728 US39	722 728 US39		
1 646.5–1 660			1 646.5–1 660	1 646.5–1 660		
	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space)		AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space)	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space)	AVIATION (87)	
	722 727 730 735		722 735 US39	722 735 US39		
1 660–1 660.5			1 660–1 660.5	1 660–1 660.5		
	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space); RADIO ASTRONOMY		AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space); RADIO ASTRONOMY	AERONAUTICAL MOBILE-SATELLITE (R) (Earth-to-space); RADIO ASTRONOMY	AVIATION (87)	
	722 735 736		722 735 736	722 735 736		
1 660.5–1 668.4			1 660.5–1 668.4	1 660.5–1 668.4		
	RADIO ASTRONOMY SPACE RESEARCH (passive); Fixed: Mobile except aeronautical mobile		RADIO ASTRONOMY SPACE RESEARCH (passive)	RADIO ASTRONOMY SPACE RESEARCH (passive)		
	722 736 737 738 739		722 US74 US246	722 US74 US246		

Attachment D

Comments [13]

Aeronautical Radio, Inc. (ARINC)

The State of Alaska
American Council of the Blind
American District Telegraph Co.
Ameritech Mobile Communications, Inc.
Bell Atlantic Mobile Systems, Inc.
Bellsouth Mobility, Inc.
NYNEX Mobile Communications Co.
Pactel Mobile Access and Southwestern Belkl Mobile Systems, Inc.
Association of Maximum Service Telecasters
Amery Telephone Co.
State of California, Department of General Services, Office of Telecommunications

[13] These are comments on NASA's Petition for Rulemaking, filed in November 1982.

Central Storage and Transfer Co. of Harrisburg
Communications Satellite Corp. (COMSAT)
Federal Aviation Administration
Gearhart Industries, Inc.
GTE Mobilenet Inc.
Harris Corp., Government Aerospace Systems Division
J. B. Hunt Transport, Inc.
Land Mobile Communications Council
Midwest Tailored Transportation
Millicom
Mobile Satellite Corporation
National Association of Business and Educational Radio, Inc.
National Association for Search and Rescue
National Ocean Industries Association
National Telephone Cooperative Association
North American Commercial Transport
NYNEX
Orbital Sciences Corp.
Governor of Oregon
Pacific Telecom, Inc.
Commonwealth of Pennsylvania
Prime, Inc.
RCA American Communications, Inc.
Rural Electrification Administration
Ryder Systems
Southern Center for Research and Innovation
Southern Regional Medical Consortium
Southfork Software
Stevens Engineering Associates, Inc.
Synergetics
Telocator
Transport Systems, Inc.
Warsaw Moving and Storage

Reply Comments

ARINC
CANADA/Department of Communications
F.B. Childs
Citizens Utilities Company
Hughes Communications, Inc.
Land Mobile Communications Council (12/22 and 1/16)
Mobile Satellite Corporation
National Academy of Sciences
NASA
Orbital Sciences Corp.
Skylink
Western Union
State Department

Comments [14]

American District Telegraph Company
State of Alaska
Amery Telephone Co.
Aeronautical Radio, Inc.
Association of Maximum Service Telecasters
Bell Regional Cellular Companies [Ameritech Mobile Communications, Inc.; Bell Atlantic Mobile Systems, Inc.; Bell South Mobility Inc.; NewVector Communications, Inc.; Nynex Mobile Communications Co.; Pactel Mobile Access; Southwestern Bell Mobile Systems, Inc.]
State of California
Central Storage and Transfer Co. of Harrisburg
Communications Satellite Corp.
Cunningham Telephone Co., Inc.
Federal Aviation Administration
General Electric
GTE Mobilnet Inc.
Harris Corporation
J.B. Hunt Transport, Inc.
Land Mobile Communications Council
Midwest Specialized Transportation, Inc.
Millicom Inc.
Mobile Satellite Corporation
National Association of Business and Educational Radio, Inc.
National Association for Search and Rescue
National Ocean Industries Assoc.
NYNEX
State of Oregon
Orbital Sciences Corp.
Pacific Telecom, Inc.
State of Pennsylvania
Prime, Inc.
RCA American Communications, Inc.
Rural Electrification Administration
Ryder System Inc.
Southern Regional Medical Consortium
Southfork Software, Inc.
Stephens Engineering Associates, Inc.
Synergetics International, Inc.
Telocator Network of America
Warsaw Moving and Storage, Inc.

Replies

Bell Regional Cellular Companies (as above)
Associated Public-Safety Communications Officers, Inc.
Aeronautical Radio, Inc.
Government of Canada
Central Transport Inc.
F. B. Childs
Citizens Utilities Co.
Hughes Communications, Inc.
Land Mobile Communications Council (incl. "Further Reply Comments")
Mobile Satellite Corp.
National Academy of Sciences
National Aeronautics and Space Administration
National Association for Search and Rescue
Orbital Sciences Corp.
Skylink Corp.
United States Telephone Association
Western Union

Attachment E.—Content of Applications

1. Applications should be filed on a Form 401, and will be required to meet all standards of Part 25 of the rules, and all pertinent International Radio Regulations.

2. Service Provision.

A. Indicate varieties of service proposed, including provisions for flexibility in spectrum use; must include mobile voice, paging/dispatch, rural telephone, interconnection;[15] may include interactive data and surveillance, lowspeed data, thin-route fixed, trunking, vehicle location and others.

B. Indicate user equipment, including availability and cost.

C. Indicate proposed grade of service, geographic coverage area, and costs.

D. Indicate markets/populations to be served, with appropriate data to support the determination of demand. Indicate also the likelihood of growth in these markets or populations into a second generation system, and the applicant's proposals to meet changing demand throughout mid-second generation.

3. Technical.

A. Indicate whether a grant of the application will be a major action under § 1.1305 of the rules.

B. Include an exhibit with map of the proposed coverage areas for first and second generation, including indications of spot-beam footprints.

C. Include engineering and design data and calculations used to derive the service contours.

D. Include an exhibit stating how the proposed system complies with the Commission's mobile satellite system design concepts and realizes the potential of this new service.

E. Expansion: indicate how changing demand will be met, including proposals for spot beams (second generation or earlier), antenna development (space and earth), etc. Indicate proposals, if any, for expansion to higher frequencies.

F. Indicate satellite and antenna design.

G. Indicate plans, if any, for interconnection with landline telephone, cellular radio, and/or other terrestrial services.

4. Financial.

A. Provide full particulars regarding the cost of construction and launch of the proposed facilities, together with other initial expenses; estimate operating expenses for a period of one year, depending upon the nature of service proposed, and discuss the degree of uncertainty or risk.

B. Demonstrate financial ability to meet the above expenses, including the following, together with whatever other information the Commission may require:

(1) A balance sheet current within 90 days of the date of application, and copies of any financial commitments (such as, for example, loan agreements and service contracts) in support of the proposed facilities; and

(2) Should that showing fall short of the costs listed above, the applicant shall submit additional information (e.g., a current income statement, and, for the period of proposed construction plus an initial year of operation, a statement of projected revenues and expenses, a statement of projected sources and application of funds, etc.) as is necessary to demonstrate financial ability.

(3) The details of any loan or other credit arrangement to be used to finance the proposed construction, launch and initial expenses, including the identity of the creditor(s), letters of commitment, and terms of the transaction. Applicant will state clearly whether any security interest in the facility is involved.

C. Indicate an ownership or participation proposal keyed to the Commission's desire, as expressed in this Notice, to authorize a single entity while promoting participation and cooperation.

Attachment F.—Regulatory Flexibility Analysis

I. Reason for Action.

[14] These are comments on the Skylink and Mobile Satellite Corp. applications filed on March 9 and September 2, 1983 respectively.

[15] As indicated in para. 47, *supra*, an allocation to MSS of frequencies in the L-band might create some requirement regarding the provision of AMSS/ATC services.

In this proceeding we seek to develop a record and to solicit comments on proposed rules. The proposed rules are in response to a petition for rulemaking.

II. **Objective.**

The proceeding will solicit comments on the public interest benefits in accordance with the fulfilling of the mandate of section 303 of the Communications Act of 1934, as amended to provide new uses for radio that will benefit the public.

III. **Legal Basis.**

The legal basis for soliciting comments on these proposals to change our rules is found in Sections 4 and 303 of the Communications Act.

IV. **Description, Potential Impact, and Number of Small Facilities Affected.**

The proposed rules allocate spectrum bands presently held in reserve or allocated but unused. No reallocations will be necessitated, and the displaced allocatee is a government user (FAA), which can still be accommodated within the framework proposed here, so no small facilities will be affected. We invite interested parties to submit comments if they perceive an economic impact (other than competition) resulting from the proposed allocation.

V. **Recording, Record Keeping and other Compliance Requirements.**

No additional requirements would be imposed if proposed rule changes are adopted.

VI. **Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules.**

None.

VII. **Any Significant Alternative Minimizing Impact on Small Entities and Consistent with stated Objectives.**

There is no significant alternative.

Attachment G.—International Table Footnote

722 In the bands 1400–1727 MHz, 101–102 GHz and 197—in a programme for the search for intentional emissions of extra-terrestrial origin.

727 Additional allocation: In Afghanistan, Saudia Arabia, Bahrain, Hangladesh, Congo, Egypt, the United Arb Emirates, Ethiopia, Iran, Iraq, Isarel, Jordan, Pakistan, Qatar, Sudan, Sri Lanka, Syria, Somalia, Chad, Thailand, Togo, Yemen (P.D.R. of) and Zambia, the bands 1540–1645.5 and 1646.5–1660 MHz are also allocated to the fixed service on a secondary basis.

728 The use of the bands 1544–1545 MHz (space-to-earth) and 1645.5–1646.5 MHz (earth-to-space) by the mobile-satellite service is limited to distress and safety operation.

729 Transmissions in the band 1545–1559 MHz from terrestrial aeronautical stations directly to aircraft stations, or between aircraft stations, in the aeronautical mobile (R) service are also authorized when such transmissions are used to extend or supplement the satellite-to-aircraft links.

730 Additional allocation: in the Federal Republic of Germany, Austria, Bulgaria, Cameroon, Guinea, Hungary, Indonesis, Libya, Mali, Mongolia, Nigeria, Poland, the German Democratic Republic, Roumania, Senegal, Czechosolovakia and the U.S.S.R., the bands 1550–1 645.5 and 646.5 1660 MHz are also allocated to the fixed service on a primary basis.

735 Transmissions in the band 1646.5–1 660.5 MHz from aircraft stations in the aeronautical mobile (R) service directly to terrestrial aeronautical stations, or between aircraft stations, are also authorized when such transmissions are used to extend or supplement the aircraft-to-satellite links.

736 In making assignments to stations of other services to which the band 1660–1670 MHz is allocated, administrations are urged to take all practicable steps to protect the radio astronomy service from harmful interference. Emissions from space or airborne stations can be particularly serious sources of interference to the radio astronomy service (see Nos. 343 and 344 and Article 36).

[FR Doc. 85–4030 Filed 2–27–85; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 85–39; FCC 85–75]

Deletion of AM Application Acceptance Criteria Regarding AM Station Assignment Standards and Relationship Between AM and FM Broadcast Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission issued a *Notice of Proposed Rule Making* to consider whether to delete current restrictions on the filing of AM applications now contained in § 73.37(e) of the Commission's Rules. The goal of the proposal is to facilitate the expansion of AM service consistent with applicable interference protection standards. Also, a petition for reconsideration filed in Docket 18651 which related to § 73.37(e)(3) was dismissed as moot.

DATES: Comments must be filed by June 15, 1985, and Reply Comments must be filed by September 15, 1985.

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

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau, (202) 632–7792 or Wilson La Follette, Mass Media Bureau (202) 632–5414.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rulemaking

In the matter of deletion of AM application acceptance criteria in § 73.37(e) of the Commission's Rules; MM Docket No. 85–39, RM–3683; amendment of Part 73 of the Commission's rules, regarding AM station assignment standards and the relationship between the AM and FM broadcast services; Docket No. 18651.

Adopted: February 13, 1985.

Released: February 21, 1985.

By the Commission: Commissoner Rivera dissenting.

1. The Commission hereby invites comment on a proposal, initially put forward in the above-captioned petition for rule making, filed by the National Radio Broadcasters Association ("NRBA") to delete what they regard as artificial barriers imposed by the "go/no-go" AM application acceptability provisions of § 73.37(e).[1] In addition, if this provision is deleted, changes will also have to be made in Notes 4, 5, 6, 7 & 10 to § 73.37. However, no change is proposed in the initial portion of § 73.37(e) which simply requires compliance with applicable interference protection standards set forth in paragraphs (a), (b), (c) and (d) of § 73.37.

2. Section 73.37 of the Commission's Rules contains a series of technical requirements which must be met in order for an AM application to be acceptable for filing. Some of these requirements deal with preventing objectionable interference of existing stations or interference that would be received by the proposed operation. In addition, paragraph (e) of § 73.37 contains a series of other restrictions not related to interference. Rather, these standards are designed to serve allocations purposes by limiting further growth in AM service solely to those areas which now lack such service or where such service is inadequate. To accomplish this purpose, the rule excludes otherwise acceptable applications in order to avoid precluding AM service for which there is a greater theoretical need. NRBA considers these as artificial barriers, and as set forth in the following discussion, we also question whether the present approach to application acceptance continue to serve a useful purpose.

3. AM radio was the first broadcast medium and over the years, AM applications have been subject to varying acceptance criteria. For a long

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[1] In addition, the Commission has before it a petition for reconsideration of the 1973 Report and Order in Docket No. 18651, which was filed by WFDF Flint Corporation, *et al.* Although it relates to the general subject at hand, the specific provision for which reconsideration has been sought, namely § 73.37(e)(3), has since been deleted. *See* paragraph 50 *et seq.* of the *Report and Order* in Docket No. 20265, 54 FCC 2d 1, at 18–19 (1975). Because the matter it raises has been resolved, in a separate Memorandum Opinion and Order we are dismissing the petition for reconsideration as moot and terminating the earlier proceeding in which it was filed. However, since the general thrust of the petition is consistent with the proposals now being made in regard to enlarging the opportunity for filing AM applications, we welcome any updated materials that these parties may wish to file in the current proceeding.

time, AM applications were accepted on a "demand" basis. Under this system, an applicant was left completely free to choose its own frequency, power, mode of operation, as well as the proposed community of license. Although the applicant was expected whenever possible to avoid causing interference within another station's "normally protected contour" and to comply with applicable requirements regarding interference to be received, neither of these requirements was absolute. Interference could be caused in certain cases so long as it was clearly outweighed by the new service to be provided. Also, the then normal 10% limit on interference received did not apply if the proposal would bring a first transmission service to a community. This led to the filing of proposals which would receive interference to substantial portions of the proposed station's normally protected service area. Moreover, no consideration was given to other possible uses of the frequency.

4. Increasingly, the Commission became concerned about the impact of such allocation methods under which there was a continuing flow of applications to bring service to areas already receiving multiple services. Moreover, nothing was being done to funnel future AM growth into areas where there might be a particular need for such service, and the Commission was concerned that opportunities for service in areas needing it might be lost. For these reasons and because of the inherent inefficiency of many of the proposals, as shown by the interference they would receive or in some cases cause, the Commission decided that action was required. A "freeze" on the acceptance of AM applications was instituted on May 10, 1962, to give the Commission the opportunity to conduct a rule making proceeding if specific requirements should be imposed to promote efficient use of the AM band and to help ensure that service would be brought to areas needing it.

5. In 1964, the Commission, based on its experience and the record developed in Docket No. 15084, adopted several changes in the rules in this area. *See Report and Order* 45 FCC 2d 1515 (1964). No longer would the applicant be permitted to argue that the gain in service was sufficient to overcome the interference losses it would produce. Instead, the rules were changed so that applications involving interference to other stations within their protected contours became unacceptable for filing. In addition, the Commission tightened its requirements regarding the efficiency of proposals by limiting the amount of interference that could be received by a proposed operation.[2]

6. The Commission was not completely satisfied with the results of the earlier rule making action, and a second "freeze" was instituted in July 1968 while the Commission gave further consideration to the subject of AM assignment standards. The *Notice of Proposed Rule Making* in Docket No. 18651, 34 FR 14384 (September 13, 1969) offered an admittedly restrictive proposal that in essence would allow new AM service only if the proposal could offer a first aural service [3] (other than Class IV) to 25 percent of its coverage area or population. As adopted, the rule also allowed the filing of a proposal for a community if it lacked an available FM channel and at least 20 percent of the community did not receive two city-grade services daytime. *See Report and Order* 39 FCC 2d 645 (1973). Although these rule changes succeeded in preventing the creation of new interference, relatively few applicants were interested in establishing a station in those limited areas where they could file, and no opportunity was provided for them to file in those areas in which they wished to bring service. As a result, the Commission conducted another proceeding and decided on a partial relaxation in the previous standards—*Report and Order* in Docket No. 20265 54 FCC 2d 1 (1975). The rules remain much the same to this day.

7. Even though the Commission had amended the rules to permit the filing of some additional applications, they continued to impose rigorous requirements as can be seen from the following outline of the requirements of § 73.37(e):

For Daytime Applications

- That at least 25 percent of the area or population which would receive interference-free primary service from the proposed station does not receive such service from an authorized AM broadcast station, or receive service from an authorized FM broadcast station with a signal strength of 1mV/m or greater or,
- That the proposed station would provide the community designated in the application with a first or second authorized aural transmission service, and that no FM channel is available for use in that community or,
- That at least 20 percent of the area or population of the community designated in the application receives fewer than two daytime aural services from authorized stations, and that no FM channel is available for use in that community.

For Full-Time and Clear Channel Applications

- That at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed station does not receive such service from an authorized AM broadcast station or service from an authorized FM broadcast station with a signal strength of 1 mV/m, or greater, or,
- That the proposed station would provide the community designated in the application with a first or second authorized nighttime aural transmission service, and that no FM channel is available for use in that community, or
- That at least 20 percent of the area or population of the community designated in the aplication receives fewer than two aural services at night from authorized stations, and that no FM channel is available for use in that community, or
- That minority persons hold over 50% of the ownership interests in the applicant for a Class II-B station on one of the 25 Class I channels listed in § 73.25(a), or
- That the applicant proposes to operate a Class II-B station noncommercially on one of the 25 Class I channels listed in § 73.25(a).

8. It has been two decades since the Commission has changed its basic approach to AM allocations. Although various refinements have been made since then, there has been no review of AM allocations practices in light of the substantial changes which have taken place in the intervening period. Although restrictions of the sort contained in §73.37(e) may well have been necessary during earlier stages of the development of AM broadcasting, their continuing need is far from clear. Accordingly, we plan a full review of current policies in this regard so that full recognition can be given to these changes.

9. The situation presented in regard to AM allocations is much the same as the Commission faced in regard to FM allocations policies and which led it to inaugurate the proceeding in Docket 80-130. In FM, as well, the applicable policies had been developed 20 years

[2] See § 73.37(b) for the exceptions to what otherwise are strict "go/no-go" provisions in this regard. However, as noted, this aspect of the revised rules is not at issue here.

[3] For the first time the extent of FM service was being weighed. The purpose was to foster the growth of FM and to recognize its capacity to offer needed aural service. Ultimately, AM and FM came to be considered as joint components of a single aural medium.

earlier and there was ample reason to question their continuing relevance. Even if the restrictions on the assignment of FM channels had once been necessary, the conditions on which they were premised had long changed. In particular, they failed to take into account the fact that FM had developed into a full-fledged aural medium of its own. Since communities desiring an FM channel had an ample opportunity to seek one, the Commission concluded that it could no longer justify a policy that blocked the assignment of additional channels where they were desired and where they could meet applicable spacing criteria.

10. In the case of AM, the "go/no go rules" have served for two decades to preserve opportunities for applications to be filed in those localities meeting the requirements contained in § 73.37(e). Clearly, AM radio has become a mature service and it is our belief that, with few exceptions, ample opportunity has been provided for entities and localities meeting the requirements of § 73.37(e) to express their needs.[4] The issue now to be considered is whether it is appropriate to maintain the restrictions in § 73.37(e) on the filing of applications, or whether it is now time to permit other interested parties to file applications for whatever opportunities remain. We wish to emphasize, however, that we do not contemplate any return to the former practice of attempting to balance interference gains and losses. Likewise, we propose no revision in the standards governing acceptance of interference in this proceeding.

11. Section 307(b) of the Communications Act calls for a fair, efficient and equitable distribution of radio facilities. The Act does not require the Commission to withhold service or to bar applicants falling into particular categories. In fact, section 307(b) of the Act is quite clear as it refers to equitable distribution of facilities "insofar as there is demand for the same." Considering the maturity of the AM service and the substantial length of time that the restrictions of § 73.37(e) have been applicable, there is now reason to believe that the demand for new AM service in remaining eligible localities is diminished because of associated economic and technical difficulties. Thus, § 73.37(e), while functioning for these many years as a mechanism to ensure, among other things, the distribution of radio facilities to those localities having special needs, now appears unnecessarily to be stifling opportunites for improving diversity that new radio voices could bring to the marketplace.

12. We believe it is appropriate to offer some observations in regard to minority or noncommercial applicants. Under the proposal we are making, these entities would not lose any opportunity to file applications for new stations that they now have. Rather, greater opportunity to file such applications would result. This is so because on frequencies other than the 25 U.S. Clear channels minority and noncommercial applicants must meet the same requirements under § 73.37(e as any other entity desiring to file an application for a new station, and under § 73.37(e) as it currently exists this has been quite difficult. With regard to the 25 U.S. Clear Channel frequencies, the issue is whether to continue to afford minority and noncommercial entitities an exclusive arrangement that would exclude all other entities, irrespective of their merit. We believe these particular arrangements had ample opportunity to serve their purpose and it appears appropriate at this time to allow other entities the opportunity to file applications for new stations as well.[5]

13. Based on the foregoing considerations the Commission proposes to delete those portions of paragraph (e) of § 73.37 which impose what appear to be artificial restrictions on the acceptability of applications for filing. Because this represents a marked departure from the approach we have long used in dealing with this matter, we believe it is appropriate to allow ample time for the parties to fully examine the implications of this proposal and to offer the benefits of their studies. In commenting on this proposal parties are invited to provide the results of their engineering studies as well as any data which might be relevant to the subject at issue. In addition, parties are invited to comment on the effect the current approach has had in their own experience.

14. Accordingly, we invite comments on the specific proposal set forth above or on any alternative approaches which could be used. In the latter case, it would be particularly helpful to have full information regarding the implications of the approach being offered. In order to facilitate the submission of studies regarding their implications of the changes being proposed, comment dates have been established which provide ample opportunity to conduct such studies for submission.

Regulatory Flexibility Initial Analysis

I. *Reason for Action.* The proposed change in the rules is designed to increase the opportunity to file applications for new and expanded AM service.

II. *Objective.* By relaxing current restrictions on the filing of AM applications, service could be increased and opportunties for competition enhanced.

III. *Legal Basis.* Sections 303 and 307(b) empower the Commission to foster more efficient use of radio spectrum in the public interest.

IV. *Description, Potential Impact and Number of Small Entities Affected.* The only group of small entities affected is the group of potential applicants who will be able to file for new or improved AM facilities.

V. *Recording, Recordkeeping and Other Compliance Requirements.* No new requirements would be added by the proposed action.

VI. *Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules.* None.

VII. *Any Significant Alternative Minimizing Impact on Small Entities Consistent with Stated Objectives.* No adverse impact on small entities is expected.

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

16. Accordingly, pursuant to the authority contained in sections 4(i), 303 and 307(b) of the Communications Act of 1934, as amended, it is proposed that § 73.37(e) of the Commission's Rules be amended as set forth above.

17. Pursuant to procedures set out in § 1.415 of the Commission's Rules, interested parties may file comments on or before June 14, 1985, and reply comments on or before July 15, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information is placed in the public file,

[4] Two additional expansions of AM service are presently under consideration. The eligibility requirements to be met by applicants for nighttime use of foreign Clear Channels are at issue in Docket 84-281. Also, eligibility standards will need to be developed for new frequencies in the expanded AM band, 1605 to 1705 kHz. We do not in this proceeding pre-judge the outcome of either of these matters.

[5] Nothing we suggest in this Notice of Proposed Rule Making diminishes existing "preferences" in the comparative process for minority applicants.

and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

18. In accordance with the provisions of § 1.419 of the Commission's Rules, formal participants shall file an original 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting 1 copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commisison's Public Reference Room at its headquarters, Room 239, 1919 M Street, NW., Washington, D.C. 20554. For general information on how to file comments, please contact the FCC Consumer Assistance and Information Division at (2020) 632-7000.

19. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a Public Notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and oral arguments) between a person outside the Commission and a Commissioner or proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceeding must prepare a written summary of that presentation on the day of oral presentation that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

20. For further information regarding this proceeding, contact Jonathan David, Mass Media Bureau, (202) 632-7792.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-4876, Filed 2-27-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 74

[MM Docket No 85-36; FCC-85-64]

Review of Technical and Operational Requirements; Aural Broadcast STL and ICR Stations; and TV Auxiliary Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes Rule changes: (1) Affecting frequency authorization procedures; (2) allowing single sideband operation in the 944-952 MHz band; (3) permitting TV auxiliary use of UHF TV channels; (4) relaxing remote control rules; and (5) eliminating station identification requirement for fixed links.

This action is taken by the Commission in its efforts to relax restrictive regulations and policies.

The proposed Rule changes are intended to provide broadcasters more flexibility in operating auxiliary systems and to promote spectrum efficiency.

DATES: Comments due by April 29, 1985, and Reply Comments due by May 29, 1985.

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

FOR FURTHER INFORMATION CONTACT: Hank VanDeursen, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 74

Radio, television.

Notice of Proposed Rulemaking

In the matter of review of technical and operational requirements: Part 74-E Aural Broadcast STL and ICR stations; and Part 74-F TV Auxiliary Broadcast stations; MM Docket No. 85-36.

Adopted: February 12, 1985.
Released: February 20, 1985.

Introduction/Background

1. The Commission, on its own motion, proposed to review and deregulate the rules covering technical and operational requirements for Studio to Transmitter Links (STL), Intercity Relay (ICR), Television Pickup (TVP), and Microwave Booster (booster) stations. These stations are used to transmit program material and control signals from the studio to the broadcast transmitter and for relay of material between locations. The affected rules are contained in the FCC Rules and Regulations, Part 74, Subparts E and F. The proposed actions would allow more flexibility for licensees and provide for more efficient use of the spectrum.

2. Recent Commission actions reallocating spectrum in the 900 MHz band [1] and the lack of new spectrum for auxiliary broadcast services necessitate that the current bands be used more efficiently. Directive antennas, cross polarization, lower transmitter powers, and filters can provide some of this efficiency by increasing the isolation between systems. Narrower channels, where a service does not require the full bandwidth of a current channel, will have the effect of making more channels available.

3. As a means to improve spectrum efficiency, a *Report and Order* (Narrowband *Order*) [2] was adopted for the Broadcast Remote Pickup Service (BRPS) bands below 456 MHz. That decision, authorizing single sideband (SSB) emissions and modifying frequency assignment procedures, has great potential for improving spectrum efficiency in those bands. This was accomplished by dividing most of the BRPS spectrum into small segments which could be combined to form channels of appropriate bandwidth for the technology used. Those rules also provide enough flexibility to allow the continued use of present equipment. Thus, broadcasters have new options to make more efficient use of available spectrum. The proposals in this *Notice* are modeled after that *Order* and are intended to accomplish the same goals here as in the other auxiliary bands.

Proposal 1: Frequency Authorization Procedures

4. Although channels in the 944-952 MHz aural STL band are 500 kHz wide, it is questionable whether all stations actually require such bandwidth. Lacking additional spectrum to accommodate more stations, the alternative is reduction of existing channel bandwidths to make them more closely match the program signal

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[1] *Report and Order* in Docket No. 82-335 (adopted November 21, 1984) and *First Report and Order* in Docket No. 82-243 (adopted November 21, 1984).

[2] Docket No. 84-280, 49 FR 45155 (November 15, 1984), the adopted rules to become effective in a future order after appropriate computer programs are available for implementing the new rules.

bandwidths. To allow for this alternative, we propose immediately to divide the 944–952 Mhz band into 25 kHz segments which can be "stacked" to form channels of varying bandwidths. This will allow flexibility in system development and implementation. Additionally, we propose reducing maximum allowable channel bandwidths to less than 500 kHz after July 1, 1990.[3] This five year period corresponds to the equipment depreciation period allowed by the Internal Revenue Service and allows for development of more spectrum efficient link systems. We also propose to require that stations shift frequencies in cases where the band becomes fragmented as a result of conversion to narrower channels.

5. Comments on this issue should address the following questions: What are the minimum link baseband requirements? What reduced bandwidth link systems (i.e. digital audio processing and narrower bandwidth radios) are available or could be available in the future to provide aural STL service? Since the relative value of channels depends upon their scarcity, should the permitted channel bandwidths be reduced only in certain areas (i.e. in the vicinity of major markets) and, if so, which areas? In the period prior to the date narrower channels are mandated, can the shift to more intensive spectrum use be made more quickly and equitably by encouraging existing and prospective broadcast licensees to trade capacity and interference protection when it is mutually beneficial? If so, could we rely upon this incentive structure to provide for the long term optimum use of broadcast auxiliary spectrum without resorting to mandating narrow channels?

6. We also propose to divide the 1990–2110 and 6875–7125 MHz bands[4] into 1 mHz segments which could be stacked to provide flexibility is system development and implementation.[5] For example, 6 MHz bandwidth Amplitude Modulated Links (AML) currently used in the 13 GHz band might be feasible for the remote TV pick-up service. This could increase channel availability by a factor of 2 to 4. Equipment manufacturers would not be constrained to produce wide bandwidth systems because of predetermined channel size. Instead, channels could be designed with a bandwidth which best fits the technology. We recognize that caution is appropriate when deviating from the current channel plans on these bands in favor of creating more channels. We also recognize that local frequency coordinating committees have much more "first-hand" knowledge about their local ares than the Commission and, thus, they are in far better positions to determine what band plans will work in their area. As in the narrowband *Order*, we propose to give frequency coordinators the tools necessary in the form of a very flexible channel plan to relieve spectrum congestion problems by "engineering in" links that will conserve spectrum. This action would permit operation of current generation equipment to continue where sufficient specturm exists and allow use of more spectrum efficient equipment in congested areas.

Proposal 2: Emission Standards

7. This notice proposes allowing two distinctly different technolgies and various channel bandwidths. This was accomplished in the narrowband *Order* by retaining the existing emission mask limiting out-of-channel products for FM and adopting a separate emission mask for SSB (with emission measurement techniques to be addressed in a future OST bulletin). However, the current FM emission mask in the aural STL service does not make allowances for different channel bandwidths (emission products are directly related to FM deviation) and thererfore must be modified to a form consistent with the narrowband *Order*. Therefore, to encourage development of more spectrum efficient equipment for auxiliary service bands, we propose adopting the same dual emission masks as in the narrowband *Order*.

8. Thus far, we have proposed to allow multiple technologies (a combination of both different channel bandwidths and different emission types) to share certain bands which may affect the interference criteria used for frequency coordination.[6] Comments on these proposals are requested and should address possible conflicts which may arise when different technologies share the same band and if separation of technologies within the band might be necessary.

Proposal 3: TV Auxiliary Use of UHF TV Channels

9. In every market there are UHF TV channels which are unused because of the need to protect existing stations, a lack of demand, or restrictions on eligibility and permissible services. To make more efficient use of this spectrum and relieve congestion elsewhere, we propose to allow these channels to be used for visual STL, ICR, and similar TV auxiliary purposes (using a conventional 6 MHz TV signal.).[7] Although there may be other fixed radio services which could possibly share UHF–TV spectrum, this proceeding will consider only broadcast auxiliary sharing. If this proposal is adopted, the Table of Frequency Allocations contained in § 2.106 would be appropriately amended. Carefully designed auxiliary stations, employing low power, directional antennas, and filters, should be able to operate on a channel without disrupting other services. Therefore we believe it reasonable to permit them only on the basis that they not cause interference to TV, LPTV, or land mobile operations. The TV auxiliary stations would also have to accept any interference caused by the aforementioned operations. It is expected that most TV auxiliary stations would be operated on channels unusable for any other purpose. TV auxiliary stations would not be allowed on those channels which the Commission has allocated for the land mobile services in specific markets. Comments are invited on the feasibility of this proposal and appropriate protection guidelines.

Proposal 4: Remote Control

10. In an effort to unify the broadcast remote control rules, we are proposing to revise appropriate sections in Part 74, Subparts E and F by incorporating language comparable to that in § 73.1410 of the Rules.[8] Basically, licensees would

[3] The proposed revision of § 74.502 in Appendix A contains a list of channel bandwidths which are based upon an FM modulation index of 5 for the primary program audio. It is anticipated that more spectrum efficient systems could be available in the near future to operate in narrower channels. The channel bandwidth reduction may not be necessary in all areas of the country. In this case, stations in some areas could continue operation in 500 kHz channels.

[4] These bands are not shared with other than boradcasters, so this proposal will have no impact on other radio services.

[5] This plan is compatible with 6, 17, 18, 20, and 25 MHz channel plans and would allow immediate use of reduced bandwidth equipment to help relieve spectrum congestion.

[6] It is the Commission's understanding tht the Electronic Industries Association is currently expanding the scope of their *Telecommunications Systems Bulletin No. 10–D* to include systems operating at 13 and 18 GHz. This revision is expected to address the issue of different technology systems sharing a band and may have some implications for the bands affected in this proceeding.

[7] The Commission is considering additional UHF TV and land mobile sharing in a separate proceeding. This proposal is not intended to affect that outcome and would not become effective until a decision is rendered on that issue.

[8] MM Docket No. 84–110, 49 FR 47608 (December 6, 1984).

have complete freedom in the design of remote control systems. The only requirement would be that the remote control installation be capable of providing adequate monitoring and control functions to permit proper operation of the station.

Proposal 5: Modification of Station Identification Requirement

11. There are basically three types of auxiliary station operations: (1) Fixed stations; (2) mobile stations operating locally to their broadcast stations; and (3) mobile stations operating far removed from their broadcast stations to cover special events. Unlike mobile stations, the exact locations and operating frequencies of fixed stations are on file with the Commission and the stations transmit nearly continuously. Rules for other fixed services, for example Private Operational Fixed Microwave service, exempt fixed stations from the identification requirements. We therefore question the necessity to continue requiring on-the-air identification for fixed link auxiliary stations. Accordingly, we propose to eliminate the identification requirement for fixed link stations, but to retain the rule for mobile stations. Comments on this proposal should address whether such a relaxation would have any adverse impact on interference resolution efforts.

Other Considerations

12. Informal inquiries have been received concerning the licensing of 944–952 MHz frequencies to TV broadcast stations for transmission of aural program material. TV stations are authorized to operate on a *secondary basis* in the 944–952 MHz band under § 74.603. Section 74.502 does not clearly reflect this fact, but actually appears to authorize all broadcasters to operate on a co-equal basis in that band. We propose to amend editorially, § 74.502 to reflect the secondary status of TV licensees operating under that section. Considering the scarceness of aural STL frequencies, and the number of aural-only broadcasters needing access to those channels, we believe that TV broadcasters should attempt to make more complete use of their wider TV STL channels by simultaneous transmission of audio and video.

13. The 13 GHz band is shared among several services with both fixed and mobile stations operating on the same channels. There has been concern expressed about appropriate frequency coordination procedures for such mixed operations. Although no rulemaking concerning that band is proposed at this time, comments regarding the effectiveness of the current frequency coordination requirements for the shared 13 GHz band are requested.

14. Regulatory Flexibility Final Analysis.

I. *Reason for action:* This review is necessary to determine the relevance of current rules and to consider whether their revision will help improve spectrum efficiency.

II. *The objective:* The Commission's proposals are designed to provide broadcast licensees with more options and so enable them to use their spectrum more efficiently. Since there is no additional spectrum which can be allocated and some additional auxiliary service channels are needed, it is necessary to promote more efficient use of current resources.

III. *Legal basis:* Action is proposed in accordance with sections 303 (g) and (r) of the Communications Act of 1934, as amended, which charges the Commission to encourage the most effective use of radio in the public interest.

IV. *Description, potential impact, and number of small entities affected:* The proposed Rule changes should favorably affect broadcasters by providing more options to employ spectrum efficient systems in their crowded auxiliary bands. This would permit entry of new users as the market expands. For stations in major market areas, measures ranging from minor system modification to equipment replacement could be necessary. This action would also provide new marketing opportunities for manufacturers of spectrum efficient equipment.

V. *Recording, recordkeeping, and other compliance requirements:* None.

VI. *Federal Rules which overlap, duplicate, or conflict with this Rule:* None.

VII. *Any significant alternatives minimizing impact on small entities and consistent with the states objective:* None.

Paperwork Reduction Act

15. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

Actions

16. The Secretary shall cause a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 50 U.S.C. 601 *et seq.*).

17. Accordingly, it is proposed to amend Part 74 of the Commission's Rules as set forth in the attached Appendix. Authority for the action taken herein is contained in sections 4(i), 303 (g) and (r) of the Communications Act of 1934, as amended.

18. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules and Regulations, interested parties may file comments on or before April 29, 1985, and reply comments on or before May 29, 1985. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, D.C. 20554.

19. For purposes of this nonrestrictive Notice and comment Rule Making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a *Note of Proposed Rule Making* until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments or pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments on the proceeding must prepare a written summary of that presentation; and, on the day of oral presentation, that written summary must be served on the Commission's

Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

20. Further information on this proceeding may be obtained by contacting Hank VanDeursen, Policy and Rules Division, Mass Media Bureau, (202) 632-9660.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 74—[AMENDED]

It is proposed to amend Title 47 of the Code of Federal Regulations, Part 74 as follows:

1. Section 74.501 would be amended by revising paragraphs (a) and (b) to read as follows:

§ 74.501 Classes of stations.

(a) *Aural broadcast STL station.* A fixed station utilizing telephony or digital modulation techniques for the transmission of aural program material between a studio and the transmitter of a broadcasting station other than an international broadcasting station, for simultaneous or delayed broadcast.

(b) *Aural broadcast intercity relay (ICR) station.* A fixed station utilizing telephony or digital modulation techniques for the transmission of aural program material between broadcasting stations other than international broadcasting stations, for simultaneous or delayed broadcast.

* * * * *

2. Section 74.502 would be amended by revising paragraph (a), removing and reserving paragraph (c) and adding new paragraphs (a) (1), (2), (3), and (4) to read as follows:

§ 74.502 Frequency assignment.

(a) The frequency band 944–952 MHz is available for assignment to aural STL and ICR stations. AM and FM broadcast stations shall have primary use of the band; however, TV broadcast stations may be licensed on a secondary, noninterference basis. One or more of the following 25 kHz segments may be stacked to form a channel which may be assigned with a maximum authorized bandwidth of 500 kHz. The channel, which must not extend beyond the band edge, will be assigned by its center frequency, channel bandwidth, and emission designator. The following frequencies are the centers of each segment:

944.0125, 944.0375, 944.0625, 944.0875, 944.1125, 944.1375, 944.1625, 944.1875, 944.2125, 944.2375, 944.2625, 944.2875, 944.3125, 944.3375, 944.3625, 944.3875, 944.4125, 944.4375, 944.4625, 944.4875, 944.5125, 944.5375, 944.5625, 944.5875, 944.6125, 944.6375, 944.6625, 944.6875, 944.7125, 944.7375, 944.7625, 944.7875, 944.8125, 944.8375, 944.8625, 944.8875, 944.9125, 944.9375, 944.9625, 944.9875, 945.0125, 945.0375, 945.0625, 945.0875, 945.1125, 945.1375, 945.1625, 945.1875, 945.2125, 945.2375, 945.2625, 945.2875, 945.3125, 945.3375, 945.3625, 945.3875, 945.4125, 945.4375, 945.4625, 945.4875, 945.5125, 945.5375, 945.5625, 945.5875, 945.6125, 945.6375, 945.6625, 945.6875, 945.7125, 945.7375, 945.7625, 945.7875, 945.8125, 945.8375, 945.8625, 945.8875, 945.9125, 945.9375, 945.9625, 945.9875, 946.0125, 946.0375, 946.0625, 946.0875, 946.1125, 946.1375, 946.1625, 946.1875, 946.2125, 946.2375, 946.2625, 946.2875, 946.3125, 946.3375, 946.3625, 946.3875, 946.4125, 946.4375, 946.4625, 946.4875, 946.5125, 946.5375, 946.5625, 946.5875, 946.6125, 946.6375, 946.6625, 946.6875, 946.7125, 946.7375, 946.7625, 946.7875, 946.8125, 946.8375, 946.8625, 946.8875, 946.9125, 946.9375, 946.9625, 946.9875, 947.0125, 947.0375, 947.0625, 947.0875, 947.1125, 947.1375, 947.1625, 947.1875, 947.2125, 947.2375, 947.2625, 947.2875, 947.3125, 947.3375, 947.3625, 947.3875, 947.4125, 947.4375, 947.4625, 947.4875, 947.5125, 947.5375, 947.5625, 947.5875, 947.6125, 947.6375, 947.6625, 947.6875, 947.7125, 947.7375, 947.7625, 947.7875, 947.8125, 947.8375, 947.8625, 947.8875, 947.9125, 947.9375, 947.9625, 947.9875, 948.0125, 948.0375, 948.0625, 948.0875, 948.1125, 948.1375, 948.1625, 948.1875, 948.2125, 948.2375, 948.2625, 948.2875, 948.3125, 948.3375, 948.3625, 948.3875, 948.4125, 948.4375, 948.4625, 948.4875, 948.5125, 948.5375, 948.5625, 948.5875, 948.6125, 948.6375, 948.6625, 948.6875, 948.7125, 948.7375, 948.7625, 948.7875, 948.8125, 948.8375, 948.8625, 948.8875, 948.9125, 948.9375, 948.9625, 948.9875, 949.0125, 949.0375, 949.0625, 949.0875, 949.1125, 949.1375, 949.1625, 949.1875, 949.2125, 949.2375, 949.2625, 949.2875, 949.3125, 949.3375, 949.3625, 949.3875, 949.4125, 949.4375, 949.4625, 949.4875, 949.5125, 949.5375, 949.5625, 949.5875, 949.6125, 949.6375, 949.6625, 949.6875, 949.7125, 949.7375, 949.7625, 949.7875, 949.8125, 949.8375, 949.8625, 949.8875, 949.9125, 949.9375, 949.9625, 949.9875, 950.0125, 950.0375, 950.0625, 950.0875, 950.1125, 950.1375, 950.1625, 950.1875, 950.2125, 950.2375, 950.2625, 950.2875, 950.3125, 950.3375, 950.3625, 950.3875, 950.4125, 950.4375, 950.4625, 950.4875, 950.5125, 950.5375, 950.5625, 950.5875, 950.6125, 950.6375, 950.6625, 950.6875, 950.7125, 950.7375, 950.7625, 950.7875, 950.8125, 950.8375, 950.8625, 950.8875, 950.9125, 950.9375, 950.9625, 950.9875, 951.0125, 951.0375, 951.0625, 951.0875, 951.1125, 951.1375, 951.1625, 951.1875, 951.2125, 951.2375, 951.2625, 951.2875, 951.3125, 951.3375, 951.3625, 951.3875, 951.4125, 951.4375, 951.4625, 951.4875, 951.5125, 951.5375, 951.5625, 951.5875, 951.6125, 951.6375, 951.6625, 951.6875, 951.7125, 951.7375, 951.7625, 951.7875, 951.8125, 951.8375, 951.8625, 951.8875, 951.9125, 951.9375, 951.9625, 951.9875.

A single broadcast station licensee will normally be limited to one channel for transmission of program material between the same point of origin and destination with a bandwidth dependent upon the baseband requirements. After July 1, 1990, stations will be limited to the bandwidths in paragraphs (a) (1), (2), (3), and (4).

(1) A maximum bandwidth of 75 kHz will be authorized for STLs associated with AM broadcast stations operating in the monaural mode.

(2) A maximum bandwidth of 150 kHz will be authorized for STLs associated with AM broadcast stations operating in the stereophonic mode.

(3) A maximum bandwidth of 200 kHz will be authorized for STLs associated with FM broadcast stations operating in the monaural mode.

(4) A maximum bandwidth of 250 kHz will be authorized for STLs associated with FM broadcast stations operating in the stereophonic mode.

(b) * * *

(c) [Reserved]

* * * * *

3. Section 74.533 would be amended by deleting paragraph (a)(4) and revising paragraphs (a) (1), (2), and (3), to read as follows:

§ 74.533 Remote control and unattended operation.

(a) * * *

(1) The remote control system must provide adequate monitoring and control functions to permit proper operation of the station.

(2) The remote control system must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(3) The remote control system must prevent inadvertent transmitter operation due to malfunctions in circuits between the control point and transmitter.

* * * * *

4. Section 74.535 would be amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 74.535 Emission and bandwidth.

(a) For frequency modulation, the mean power of emissions shall be attenuated below the mean transmitter power (P) in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50% and up to 100% of the authorized bandwidth: at least 25 dB.

(2) On any frequency removed from the assigned frequency by more than 100% and up to 150% of the authorized bandwidth: at least 35 dB.

(3) On any frequency removed from the assigned frequency by more than 150% of the authorized bandwidth: at least 43 + 10 Log(P) dB.

(b) For all emissions except frequency modulation, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including 2500 Hz outside the same edge, the following formula will apply:

$$\text{Attenuation} = 29 \text{ Log} \left[\frac{25}{11} \left(D + 2.5 - \frac{W}{2} \right)^2 \right] \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement frequency (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43 + 10 Log (P) dB.

(c) In the event a station's emissions outside its authorized channel cause harmful interference, the Commission may require the licensee to take such further steps as may be necessary to eliminate the interference.

* * * * *

5. Section 74.536 would be amended by revising paragraph (a) to read as follows:

§ 74.536 Directional antenna.

(a) Aural broadcast STL and ICR stations are required to use a directional antenna with the minimum beamwidth necessary, consistent with good engineering practice, to establish the link.

* * * * *

6. Section 74.550 would be revised to read as follows:

§ 74.550 Equipment authorization.

Each authorization for aural broadcast STL, ICR, and booster stations shall require the use of notified or type accepted equipment, except that operation of non-notified 944–952 MHz equipment may continue until July 1, 1990. Requirements for obtaining a grant of equipment authorization are contained in Subpart J of Part 2 of the Rules. Equipment designed exclusively for fixed operation shall be authorized under notification procedure (see § 2.904(d) of this chapter).

7. Section 47.551 would be amended by revising paragraphs (a)(1) and (2) to read as follows:

§ 74.551 Equipment changes.

(a) * * *

(1) A change in the ERP.

(2) A change in the operating frequency or channel bandwidth.

* * * * *

8. Section 74.561 would be amended by removing and reserving paragraph (a) to read as follows:

§ 74.561 Frequency tolerance.

(a) [Reserved]

* * * * *

9. Section 74.562 would be revised to read as follows:

§ 74.562 Frequency monitors and measurements.

The licensee shall insure that the STL, ICR or booster transmitter does not exceed the emission limitations of § 74.535. This may be accomplished by appropriate frequency measurement techniques and consideration of the transmitter emissions.

10. Section 74.602 would be amended by revising paragraph (a) to read as follows:

§ 74.602 Frequency assignment.

(a) The following frequencies are available to broadcast licensees for assignment to television pickup, television STL, and television relay stations. The bands 1990–2110 and 6875–7125 MHz are divided into 1 MHz segments with the center frequency of each segment 500 kHz above each integer MHz within the bands. (The segment frequencies are from 1990.5 to 2109.5 MHz and from 6875.5 to 7124.5 MHz.) The segments may be combined to form a channel of appropriate bandwidth necessary to transmit television signals, but not exceeding that listed in the table below. The channel, which must not extend beyond the band edge, will be assigned by its center frequency, channel bandwidth, and emission designator. The bands 17,700–18,580 and 19,260–19,700 MHz are available as described in paragraph (i) of this section. Additionally, the band 38.6–40.0 GHz is available for assignment without channel bandwidth limitations to TV pickup stations on a secondary basis to fixed stations.

* * * * *

11. Section 74.634 would be amended by removing paragraph (a)(4) and revising paragraphs (a)(1), (2), and (3) to read as follows:

§ 74.634 Remote control.

(a) * * *

(1) The remote control system must be designed, installed, and protected so that the transmitter can only be activated or controlled by operators authorized by the licensee.

(2) The remote control equipment must be maintained to ensure proper operation.

(3) The remote control system must be designed to prevent inadvertent transmitter operation due to malfunctions in the circuits between the control point and transmitter.

* * * * *

12. Section 74.637 would be amended by revising paragraphs (a) and (b), and adding a new paragraph (f) to read as follows:

§ 74.637 Emission and bandwidth.

(a) For frequency modulation, the mean power of emissions shall be attenuated below the mean transmitter power (P) in accordance with the following schedule:

(1) On any frequency removed from the assigned frequency by more than 50% and up to 100% of the authorized bandwidth: at least 25 dB.

(2) On any frequency removed from the assigned frequency by more than 100% and up to 150% of the authorized bandwidth: at least 35 dB.

(3) On any frequency removed from the assigned frequency by more than 150% of the authorized bandwidth: at least 43 + 10 Log(P) dB.

(b) For all emissions except frequency modulation, the peak power of emissions shall be attenuated below the peak envelope transmitter power (P) in accordance with the following schedule:

(1) On any frequency 500 Hz inside the channel edge up to and including

2500 Hz outside the same edge, the following formula will apply:

$$\text{Attenuation} = 29 \text{ Log } \left[\frac{25}{11} \left(D + 2.5 - \frac{W}{2} \right)^2 \right] \text{dB}$$

or 50 dB whichever is the lesser attenuation. Where: D is the displacement frequency (kHz) from the center of the authorized bandwidth; and W is the channel bandwidth (kHz).

(2) On any frequency removed from the channel edge by more than 2500 Hz: At least 43 + 10 Log (P) dB.

* * * * *

(f) In the event a station's emissions outside its authorized channel cause harmful interference, the Commission may require the licensee to to take such steps as may be necessary to eliminate the interference.

[FR Doc. 85-4874 Filed 2-27-85; 8:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 50, No. 40
Thursday, February 28, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

National Bureau of Standards

National Fire Codes; Request for Comments on NFPA Technical Committee Reports

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for comments.

SUMMARY: The National Fire Protection Association (NFPA) revises existing standards and adopts new standards twice a year. At its Fall Meeting in November or its Annual Meeting in May, the NFPA acts on recommendations made by its technical committees.

The purpose of this notice is to request comments on the technical reports which will be presented at NFPA's 1985 Annual Meeting. The publication of this notice by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Technical Committee Reports were available for distribution on February 15, 1985. Comments received on or before May 3, 1985, will be considered by the NFPA before final action is taken on the proposals.

ADDRESS: The 1985 Fall Technical Committee Reports are available from NFPA, Publications Department, Batterymarch Park, Quincy, Massachusetts 02269. (Single copy price is $5.00 to cover postage and handling.) Comments on the reports should be submitted to Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Secretary, Standards Council, at above address, (617) 770–3000.

SUPPLEMENTARY INFORMATION:

Background

Standards developed by the technical committees of the National Fire Protection Association (NFPA) have been used by various Federal Agencies as the basis for Federal regulations concerning fire safety. The NFPA standards are known collectively as the National Fire Codes. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Revisions of existing standards and adoption of new standards are reported by the technical committees at the NFPA's Fall Meeting in November or at the Annual Meeting in May of each year. The NFPA invites public comment on its Technical Committee Reports.

Request for Comments

Interested parties may participate in these revisions by submitting written data, views, or arguments to Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Commentors may use the forms provided for comments in the Technical Committee Reports. Each person submitting a comment should include his or her name and address, identify the notice, and give reasons for any recommendations. Comments received on or before May 3, 1985, will be considered by the NFPA before final action is taken on the proposals.

Copies of all written comments received and the disposition of those comments by the NFPA committees will be published as the Technical Committee Documentation by September 27, 1985, prior to the Fall Meeting.

A copy of the Technical Committee Documentation will be sent automatically to each commentor. Action on the Technical Committee Reports (adoption or rejection) will be taken at the Fall Meeting, November 18–21, 1985, in Baltimore, Maryland, by NFPA Members.

Dated: February 22, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

Action at the NFPA Fall Meeting in November 1985 is being proposed on the NFPA standards listed below:

1985 FALL MEETING.—TECHNICAL COMMITTEE REPORTS

Committee reporting and document	Action
Atomic Energy	
NFPA 801, Facilities Handling, Radioactive Materials.	P.
Building Construction	
Construction and Demolition: NFPA 241, Construction and Demolition Operations.	C.
Chemicals and Explosives	
Electrical Equipment in Chemical Atmospheres:	
NFPA 497A (existing NFPA 497), Rec. Prac. for Classification of I Hazardous Locations for Electrical Installations.	C.
NFPA 497M, Manual for Classification of Gases, Vapors and Dusts for Electrical Equipment in Hazardous Locations.	P.
Hazardous Chemical Reactions: NFPA 491M, Manual of Hazardous Chemical Reactions.	R.
Storage, Handling and Transportation of Hazardous Chemicals:	
NFPA 40E, Storage of Pyroxylin Plastic	R.
NFPA 43B, Storage of Organic Peroxide	N.
NFPA 43C, Gaseous Oxidizers	R.
NFPA 43D, Pesticides in Portable Containers	R.
NFPA 490, Ammonium Nitrate	R.
Criteria for the Accreditation of Fire protection Education Programs	
NFPA 1461, Criteria for the Accreditation of Fire Protection Education Programs.	N.
Dry Chemical Extinguishing Systems	
NFPA 17A, Liquid Agent Extinguishing Systems	N.
Fire Department Equipment	
NFPA 1921, Portable Pumping Units	R.
Fire Hose	
NFPA 1962, Care, Use, and Maintenance of Fire Hose.	C.
Fire Service Training	
NFPA 1403, Live Fire Evolutions for Training Purposes.	N.
Fire Tests	
NFPA 260A, Cigarette Ignition Resistance of Upholstered Furniture Components.	P.
NFPA 263, Test Method For Heat Release Rates of Materials.	N.
Fixed Guideway Transit Systems	
NFPA 130, Fixed Guideway Systems	P.
Foam	
NFPA 11C, Mobile Foam Apparatus	P.
NFPA 18, Wetting Agents	P.
Forest	
NFPA 296, Guide on Air Operations for Forest, Brush and Grass Fires.	N.
NFPA 297, Guide on Telecommunications Systems, Principles and Practices for Rural Forestry Fire Services.	N.
Liquefied Petroleum Gases	
NFPA 58, Storage and Handling of Liquefied Petroleum Gases.	P.
Mining Facilities	
NFPA 121, Fire Protection for Mobile Surface Mining Equipment.	P.
NFPA 122, Storage and Handling of Flammable and Combustible Liquids Within Underground Mines other than Coal.	N.
Non-Nuclear Power Generating Plants	
NFPA 850, Fire Protection for Fossil Fuel Fired Steam.	N.

1985 FALL MEETING.—TECHNICAL COMMITTEE REPORTS—Continued

Committee reporting and document	Action
Safety to Life	
NFPA 102, Assembly Seating for Tents and Air-Supported Structures.	C.
Signaling Systems	
NFPA 72B, Auxiliary Protective Signaling Systems	C.
NFPA 72C, Remote Station Protective Signaling Systems.	C.
NFPA 72D, Proprietary Signaling Systems	C.
Storage	
Rack Storage: NFPA 231C, Rack Storage of Materials.	P.
Record Protection:	
NFPA 232, Protection of Records	R.
NFPA 232AM, Manual for Fire Protection for Archives and Record Centers.	R.
Storage of Rubber Tires: NFPA 231D, Storage of Rubber Tires.	P
Systems Concepts for Fire Protection in Structures	
NFPA 550, Guide for Firesafty Concepts Tree	N.
Water Extinguishing Systems	
Standpipes: NFPA 14, Standpipe and Hose Systems.	P.

Types of Action: C—Complete Revision; N—Official Adoption; P—Partial Amendments; R—Reconfirmation.

[FR Doc. 85-4860 Filed 2-27-85; 8:45 am]

BILLING CODE 3510-13-M

National Fire Codes; Request for Proposal for Revision of Standards

AGENCY: National Bureau of Standards, Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety standards and requests proposals from the public to amend existing NFPA fire safety standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its standards. The publication of this notice of request for proposals by the National Bureau of Standards (NBS) on behalf of NFPA is being undertaken as a public service; NBS does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

DATES: Interested persons may submit proposals on or before the dates listed with the standards.

ADDRESS: Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269.

FOR FURTHER INFORMATION CONTACT: Secretary, Standards Council, at above address, (617) 770-3000.

SUPPLEMENTARY INFORMATION:

Background

The National Fire Protection Association (NFPA) develops fire safety standards which are known collectively as the National Fire Codes. Federal agencies frequently use these standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

Request for Proposals

Interested persons may submit amendments, supported by written data, views, or argument to Secretary, Standards Council, NFPA, Batterymarch Park, Quincy, Massachusetts 02269. Each person who submits a proposal must include his or her name and address, must give reasons for the proposal. The NFPA will consider any proposal that it receives on or before the date listed with the standard.

The NFPA will publish a copy of each written proposal that it receives and the disposition of each proposal by the NFPA Committee as the Technical Committee Report. The NFPA will send a copy of the Technical Committee Report to each person who submits a proposal.

Dated: February 22, 1985.

Ernest Ambler,

Director, National Bureau of Standards.

Committees Soliciting Proposals

The following Committees are planning to meet to begin preparation of their respective reports. In accordance with the Regulations Governing Committee Projects, Committees are now accepting proposals for recommendations on document content on the documents listed below. Proposals received by the closing date indicated will be acted on by the Committee, and that action will be published in the Committee's Report. Proposals must be submitted to Assistant Vice President Arthur E. Cote on Proposal Forms (available from Mr. Cote).

Building Construction: Proposed NFPA 90M, Mechanical Smoke Control Systems.	July 12, 1985.
Chimneys and Heating Equipment: NFPA 96-1984, Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment.	Do.
Combustible Metals:	
NFPA 48-1981, Magnesium	June 30, 1985.
NFPA 482-1982, Zirconium	Do.
NFPA 481-1982, Titanium	Do.
Dust Explosion Hazards:	
NFPA 61A-1984, Manufacturing and Handling of Starch.	(Open.)
NFPA 61B-1980, Grain Elevators and Bulk Grain Handling Facilities.	July 12, 1985.
NFPA 61C-1984, Dust Explosions in Feed Mills.	(Open.)
NFPA 61D-1984, Milling of Agricultural Commodities for Human Consumption.	Do.
NFPA 65-1980, Processing and Finishing of Aluminum.	July 12, 1985.
NFPA 651-1980, Manufacture of Aluminum of Magnesium Powder.	Do.
NFPA 664-1981, Woodworking and Wood Floor Manufacturing Plants.	Do.
Electrical Equipment Maintenance: NFPA 70B-1983, Electrical Equipment Maintenance.	Do.
Fire Service Professional Standards Development for Fire Fighter Qualifications:	
NFPA 1001-1981, Fire Fighter Qualification.	Do.
Proposed NFPA 1005, Crash Fire Rescue Specialist.	Mar. 15, 1985.
Fire Tests:	
NFPA 256-1982, Roof Coverings	July 12, 1985.
NFPA 258-1982, Measuring Smoke Generated by Solid Materials.	Do.
NFPA 259-1982, Potential Heat of Building Materials.	Do.
Foam:	
NFPA 11-1983, Low Expansion and Combined Agent Systems.	(Open.)
NFPA 11A-1983, High Expansion Foam Systems.	Do.
Health Care Facilities: NFPA 99-1984, Health Care Facilities.	July 12, 1985.
Pyrotechnics:	
Proposed NFPA 1125, Manufacture of Model Rocket Engines.	Jan. 17,1986.
Proposed NFPA 1126, Use of Pyrotechnics in the Performing Arts.	Do.
Signaling Systems NFPA 72A-1985, Local Protective Signaling Systems for Watchman, Fire Alarm and Supervisory Service.	July 12, 1985.
Storage: NFPA 81-1981, Fur Storage, Fumigation and Cleaning.	Apr. 1, 1985.
Water Extinguishing Systems: NFPA 13-1984, Installation of Sprinkler Systems	July 12, 1985.
NFPA 13A-1981, Care and Maintenance of Sprinkler Systems.	Do.

[FR Doc. 85-4861 Filed 2-27-85; 8:45 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Issuance of General Permit

On February 21, 1985, a general permit to incidentally take marine mammals during commercial fishing operations in 1985 was issued to: FEDERPESCA, Rome, Italy, in Category 1: Towed or Dragged Gear, to take 5 harbor seals and 10 cetaceans.

All takings are incidental to commercial fishing operations within the U.S. Fishery Conservation Zone, pursuant to 50 CFR 216.24.

This general permit is available for public review in the office of the Assistance Administrator for Fisheries, 3300 Whitehaven Street NW., Washington, D.C.

Dated: February 21, 1985.

Richard B. Roe, Director,

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

[FR Doc. 85-4891 Filed 2-27-85; 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 groundfish, foreign fishing and enforcement committees; reports of the Chairmen/Executive Directors' and Mid-Atlantic Fishery Management Council meetings, as well as discuss other fishery management and administrative matters.

The public meeting will convene on March 5, 1985, at 10 a.m., adjourn on March 6, at approximately noon, and will take place at the Sheraton Regal Inn, Hyannis, MA. For further information 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: February 25, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85-4892 Filed 2-27-85; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will convene a public meeting at the Portland Hilton Hotel, 921 SW. Sixth Avenue, Portland, OR, on March 12-14, 1985. On March 12, after a short closed session (not open to the public) to discuss litigation and personnel matters, the Council will continue its open meeting to consider FY 86 programmatic budget needs; review the 1984 salmon fisheries and the status of the stocks for 1985; hear recommendations from the Salmon Advisory Subpanel, the states, the National Marine Fisheries Service (NMFS), and the public for 1985 salmon management measures, and provisionally adopt management options. At 7 p.m., there will be a public meeting to discuss the NMFS proposed interjurisdictional fisheries management policy. On March 13, the Council will consider applications for foreign and jont venture fisheries, consider proposed amendments to the Magnuson Fishery Conservation and Management Act, and adopt changes in the Council organization and procedures. Also, there will be a public comment period at 4 p.m. On March 14, the Council will finalize its actions on salmon management options for public review.

The Council's committees on budget, foreign fishing, the Scientific and Statistical Committee, Salmon Advisory Subpanel, and Salmon Plan Development Team will convene public meetings on March 14 at the same location as the Council to consider agenda items. Detailed agendas for all meetings will be available for the public around February 28. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW. Mill Street, Portland, OR 97201; telephone: (503) 221-6352.

Dated: February 25, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85-4893 Filed 2-27-85; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

The Commission of Fine Arts will next meet in open session on Wednesday, March 13, 1985 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, D.C. 20006 to discuss various projects affecting the appearance of Washington including buildings, memorials, parks, etc., also matters of design referred by other agencies of the government. Access for handicapped persons will be through the main entrance to the New Executive Office Building on 17th Street between Pennsylvania Avenue and H Street, NW.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 566-1066.

Dated in Washington, D.C. February 22, 1985.

Charles H. Atherton,

Secretary.

[FR Doc. 85-4850 Filed 2-27-85; 8:45 a.m.]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in Peru Under a New Bilateral Agreement; Correction

February 22, 1985.

On February 8, 1985 a notice was published in the **Federal Register** (50 FR 5412) implementing the import restraint limits under a new bilateral agreement between the Governments of the United States and Peru. Footnote 2 in the directive to the Commissioner of Customs which followed that notice should be corrected to read as follows:

[2] In Category 317, only TSUS items 320.— through 331.—with statistical suffixes 50, 87, and 93.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-4871 Filed 2-27-85; 8:45 am]

BILLING CODE 3510-DR-M

Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore Effective on January 1, 1985; Correction

February 22, 1985.

On December 27, 1984 a notice was published in the **Federal Register** (49 FR 50232) which established restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in Singapore and exported during 1985. The limit for Category 638/639 and the sublimit for Category 638 should have been shown as follows in the letter to the Commissioner of Customs which followed that notice:

Category	12-Mo. level of restraint
638/639	3,345,256 dozen of which not more than 418,157 dozen shall be in Category 638.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-4872 Filed 2-27-85; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a consumer usage survey to measure the extent of, and patterns of,

usage of portable electric heaters in U.S. households.

Portable electric heaters are a significant cause of fire in U.S. homes. Estimates based on U.S. Fire Administration and CPSC data indicate that in 1982 there were 3,300 fires, 370 injuries, and 130 deaths associated with portable electric heaters. The purpose of this collection of information project is to obtain data on the extent to which portable electric heaters are used in U.S. homes and on the patterns of use for such heaters. The survey will produce exposure data and use patterns which will be used, together with other hazard and engineering data, to assess the relative risk of fire involved in various usages. This information on consumer use patterns can be used by manufacturers or the Commission to provide safer heaters, both by improving the design of the product and by improving the instructions for the product's use. Such data are needed by the Commission to plan future programs designed to address these risks. Such programs could include information and education campaigns and recommendations for the improvement of voluntary standards to address the risks found to exist.

A contract will be awarded to conduct a survey of a representative sample of consumers who use portable electric heaters.

Questionnaires will be administered by telephone to a consumer panel. A screening technique will identify a sample of 700 households from the panel. The sample will be balanced to reflect the U.S. Population in terms of geography and selected household characteristics.

Information about the Proposed Collection of Information:

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, DC 20207.

Title of information collection: Consumer usage survey to measure extent and patterns of usage of portable electric heaters in U.S. households.

Type of reuest: Approval of new plan.

Frequency of collection: One time.

General description of respondents: Members of consumer panel.

Estimated number of respondents: 560.

Estimated average number of hours per response: ¼.

Comments: Comments on this proposed collection of information should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; telephone (202) 395–7313. Copies of the proposed collection of information requirement are available from Francine Shacter, Office of Budget and Program Implementation, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: February, 21, 1985.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 85–4853 Filed 2–27–85; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

National Institute of Handicapped Research

ACTION: Extension of Closing Date for Transmittal of Applications for Innovation Grants for Fiscal Year 1985.

The Secretary extends the closing date for transmittal of applications for grant awards for new Innovation Grants for Fiscal Year 1985 to July 1, 1985.

Authority for this program is contained in section 204(b)(13) of the Rehabilitation Act of 1973, as amended by Pub. L. 95–602 and Pub. L. 98–221 (29 U.S.C. 762(b)(13)).

Closing Date for Transmittal of Applications: Applications for new awards must be mailed or hand delivered by July 1, 1985. The National Institute of Handicapped Research (NIHR) may convene peer review panels and award grants from time to time during the year, so that applicants may submit applications at any time up to the closing date. However, early submission does not necessarily commit the Department of Education to review or fund any applications before the final closing date.

Applications Delivered by Mail: An application sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: 84.133C, 400 Maryland Avenue, SW, Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Each late applicant will be notified that its application will not be considered.

Applications Delivered by Hand: An application that is hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 5673, Regional Office Building, #3, 7th and D Streets, SW., Washington, D.C. 20202.

The Application Control Center will accept a hand delivered application between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays. Applications that are hand delivered will not be accepted after 4:30 p.m. on the closing date.

Available Funds: NIHR expects to fund approximately 10 Innovation Grants at a maximum of $50,000 each. These grants will be for periods not to exceed one year. NIHR has reserved $500,000 to fund grants under this program. However, these estimates do not bind the U.S. Department of Education to a specified number of grants or to the amount of any grant unless that amount is otherwise specified by statute or regulation.

Program Information: In Pub. L. 98–221, the 1984 amendments to the Rehabilitation Act, Congress established a program of small grants (maximum $50,000 funding level per grant), in order to: Test new concepts and innovative ideas; demonstrate research results of high potential benefits; purchase and evaluate prototype aids and devices; develop unique rehabilitation training curricula; and respond to the special initiatives of the Director of NIHR. These provisions are being implemented for the first time.

The proposed regulations which would govern this program were published in the **Federal Register** on November 23, 1984 at 49 FR 46244–46249. Potential applicants should submit their applications based on the provisions of the proposed regulations. NIHR will allow additional time for potential applicants to revise their applications if

there are significant changes in the final regulations which would affect the evaluation of the applications.

These grants are for the purpose of conducting research, demonstrations, planning and feasibility studies, curriculum development projects, evaluation of aids and devices, unique programs to disseminate research findings or define the state-of-the-art in specific problem areas, and evaluations of techniques or programs related to the vocational and general rehabilitation of disabled individuals, especially the most severely handicapped. These grants may be used to investigate problems and solutions related to disabled persons of all ages and with all types of disabilities.

On December 14, 1984, the Secretary published in the Federal Register (49 FR 48788) a Notice of Transmittal of Applications for Innovation Grants, requesting applications by March 1, 1985. However, the Secretary has determined that the purposes of this program would be better served by providing a longer period for potential applicants to consider and prepare their applications. This is a new program designed to encourage new and innovative ideas from a variety of prospective applicants; the Secretary believes that a longer response period will unable more interested parties to learn of the program and also provide necessary time for the preparation of applications.

Organizations and institutions that submitted applications in response to the March 1 deadline have the option of revising their applications by the new due date; other interested parties may also submit applications by this date.

Application Forms: Application forms and further information may be obtained by writing to or calling the National Institute of Handicapped Research, U.S. Department of Education, Mailstop 3070–2305, Switzer Office Buildling, 400 Maryland Avenue, SW., Washington, D.C. 20202 (Attention: Peer Review Unit), Telephone (202) 732–1207. Deaf and hearing impaired individuals may call (202) 732–1198 for TTY services. Requests should refer to applications for Innovation Grants, 84.133C.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information packages. However, the program information is only intended to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirement beyond those imposed under the statute and regulations.

The Secretary suggests that applicants limit the number of pages in their applications to 20 pages for the project narrative and 50 pages for the total application.

(Approved by the Office of Management and Budget under Control Number 1820–0027.)

Applicable Regulations: The following regulations are applicable to this program:

(a) Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

(b) National Institute of Handicapped Research Regulations (34 CFR Part 350, and, when adopted as final regulations, proposed Part 358, published on November 23, 1984 in the Federal Register at 49 FR 46244–46249.

Applicants should prepare their applications based on proposed regulations. If there are any substantive changes made in the regulations when published in final form, applicants will be given the opportunity to amend or resubmit their applications.

For Further Information Contact: Ms. Gail Perry, National Institute of Handicapped Research, U.S. Department of Education, Switzer Office Building, Room 3070, 330 C Street, SW., Washington, D.C. 20202. Telephone (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TTY services.

(29 U.S.C. 760–762)

Dated: February 25, 1985.

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 85–4885 Filed 2–27–85; 8:45 am]

BILLING CODE 4000–01–M

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Notice of proposed annual funding priority.

SUMMARY: The Secretary proposed an annual priority for the Training Personnel for the Education of the Handicapped—Preparation of Regular Educators.

DATE: Comments must be received on or before April 1, 1985.

ADDRESS: Comments should be addressed to: Dr. Norman Howe, Division of Personnel Preparation, Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511—M/S 2313, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Norman Howe, Telephone (202) 732–1071.

SUPPLEMENTARY INFORMATION: The Training Personnel for the Education of the Handicapped program, authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act, provides financial assistance through grants to State educational agencies, institutions of higher education, and other appropriate nonprofit agencies or organizations to increase the quantity and improve the quality of personnel available to educate handicapped children and youth. This Notice of Proposed Funding Priority, however, addresses awards for Fiscal Year 1985 only under section 632 of the Act. In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(b)(2) and 75.105(c)(3)(i), and subject to available funds, the Secretary proposes to give an absolute preference to each application under this priority which provides satisfactory assurance that the recipient will use the funds made available for these projects to conduct the activities in paragraph 2 below.

1. *Eligible applicants.* In accordance with section 632 of the Act, awards under this priority are limited to State educational agencies.

2. *Activities.* The Preparation of Regular Educators priority supports projects for training regular educators to assist with the identification and delivery of special education and related services to children with learning disabilities. The objective of these projects is to develop personnel training programs for regular educators which will facilitate the State-wide delivery of comprehensive educational services to learning disabled children and youth. Projects must provide regular education teachers with innovative approaches to referral, assessment, placement, service delivery, and placement review processes for learning disabled children and youth. Further, such training will enhance regular educators' ability to maintain in the regular classroom those children who are in need of educational assistance but who are not classified as handicapped. The content and scope of the training models is limited only by a focus on State-wide efforts to meet the needs of the learning disabled population and by emphasis on innovative approaches to serving this

population through improved training of regular educators.

The notice of a proposed annual priority is necessary to allow for the implementation of the OSERS' initiative on regular education. This initiative addresses the need to train regular education personnel in the skills, techniques, and strategies that will decrease the number of children with mild learning problems who are referred to special education programs, and improve the quality of education for learning disabled children and youth in the least restrictive environment.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed priority.

All comments submitted in response to the proposed priority will be available for public inspection, during and after the comment period, in Room 4625, Switzer Building, 330 C Street SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday each week except Federal holidays.

(20 U.S.C. 1432)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: February 25, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-4904 Filed 2-27-85; 8:45 am]

BILLING CODE 4000-01-M

Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of Fiscal Year 1985 New Grant Applications.

Applications are invited for new projects under the Training Personnel for the Education of the Handicapped program.

Grants for the Training Personnel for the Education of the Handicapped program are authorized by sections 631, 632, and 634 of Part D of the Education of the Handicapped Act.

The Training Personnel for the Education of the Handicapped program provides financial assistance through grants to institutions of higher education, other nonprofit agencies, and State educational agencies to increase the quantity and improve the quality of personnel available to educate handicapped children and youth. This application notice, however, addresses only one priority for fiscal year 1985 awards under section 632 of the Act.

Closing Date for Transmittal of Applications: An application for a new award must be mailed or hand delivered on or before May 1, 1985.

Applications delivered by Mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029S, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Each late applicant will be notified that its application will not be considered.

Applications delivered by hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted by the Application Control Center after 4:30 p.m. on the closing date.

Program Information

1. *Eligible applicants.* In accordance with Section 632 of the Act, awards under this priority will be limited to State educational agencies.

Notice of a proposed annual funding priority for regular educators is published in this issue of the **Federal Register.** Prospective applicants are advised that the proposed annual funding priority is subject to modification based on public comments submitted within 30 days of publication. In the event any substantive changes are made in the priority or other requirements for new projects, applicants will be given an opportunity to amend or resubmit their applications.

Available Funds: An applicant for a grant may propose a project period of up to 60 months. Generally, awards will be made for a period of 24 to 36 months. It is expected that about $1,000,000 of the funds made available for new Training Personnel for the Education of the Handicapped awards will be made available for this priority. The average grant is expected to be about $75,000. These estimates of funding level do not bind the Department to a specific number of grants, nor to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Application Forms: Application forms and program information packages for new applications are scheduled to be available for mailing on March 4, 1985. These materials may be obtained by writing to the Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820-0028)

Applicable Regulations: Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped (34 CFR Part 318). The Secretary published final regulations for this program on July 11, 1984 (49 FR 28370).

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, and 78).

For Further Information Contact: Dr. Max Mueller, Director, Division of Personnel Preparation, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202. Telephone: (202) 732–1068.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

(20 U.S.C. 1432)

Dated: February 25, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–4911 Filed 2–27–85; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[Docket No. ERA–FC–84–025; OFP Case No. 61048–9260–20–24]

Calcogen, Inc.; Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration; Department of Energy.

ACTION: Order Granting to Calcogen, Inc., Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act") to Calcogen, Inc. (Calcogen or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a 27 MW (net, approximate) combined cycle cogeneration facility designed to produce electricity and process steam at the California Polytechnic State University (Cal Poly), San Luis Obispo, California. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on April 29, 1985. The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA–073L, Washington, D.C. 20585, Phone (202) 252–1774

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A–113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252–6947.

SUPPLEMENTARY INFORMATION: On November 26, 1984, Calcogen petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a 27 MW (net, approximate) combined cycle cogeneration facility consisting of a gas turbine generator, waste heat recovery steam generator, and a steam extraction turbine generator. As all of the net annual generation of electric power from the unit will be sold to the Pacific Gas and Electric Company, the unit is, by definition, an electric powerplant under 10 CFR 500.2. The facility will produce approximately 17,000 pounds of steam per hour which will supply Cal Poly's needs.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Calcogen's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the Federal Register on December 21, 1984 (49 FR 49708), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on February 4, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environemental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Calcogen has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Calcogen to permit the use of natural gas as the primary energy source for its cogeneration facility at the California Polytechnic State University, San Luis Obispo, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before April 29, 1985.

Issued in Washington, D.C., on February 15, 1985.

Robert L. Davies,

Director, Coal & Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85–4867 Filed 2–27–85; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. ERA–FC–84–024; OFP Case No. 57125–9219–21–24]

Texasgulf, Inc.; Exemption From the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Order Granting to Texasgulf, Inc., Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act")

to Texasgulf, Inc. (Texasgulf or "the petitioner"). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a cogeneration facility designed to produce electricity and process steam near Newgulf in Wharton County, Texas. The final exemption order and detailed information on the proceeding are provided in the **SUPPLEMENTARY INFORMATION** section, below.

DATES: The order shall take effect on April 29, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, D.C. 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Roland DeVries, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-073L, Washington, D.C. 20585, Phone (202) 252-6002

Steven E. Ferguson, Office of the General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, D.C. 20585, Phone (202) 252-6947.

SUPPLEMENTARY INFORMATION: On October 25, 1984, Texasgulf petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in the proposed electric power and steam plant facility. The facility will consist of a gas turbine generator and a heat recovery boiler. The turbine/generator package includes a gas turbine with an output capacity of 75,260 KW of electric power under normal operating conditions. The unit will be equipped to burn only natural gas. The heat recovery boiler will use exhaust heat from the turbine to produce steam for Texasgulf's sulphur mining operation. The electric power from the generator will be delivered to the Houston Lighting and Power Company (HL&P); HL&P is interconnected with the Electric Reliability Council of Texas regional grid. Accordingly, Texasgulf will be selling more than 50 percent of the annual electric power generation of the turbine generator to HL&P making the cogeneration facility an electric powerplant in accordance with the definition of "electric generating unit" contained in 10 CFR 500.2.

Basis for Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including Texasgulf's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of Certification in the **Federal Register** on December 10, 1984 (49 FR 48090), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection Agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on January 24, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that Texasgulf has satisfied the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to Texasgulf to permit the use of natural gas as the primary energy source for its cogeneration facility near Newgulf in Wharton County, Texas.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before April 29, 1985.

Issued in Washington, D.C. on February 15, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-4868 Filed 2-27-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. C185-244-000]

Arkoma Production Co.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

February 22, 1985.

Take notice that on February 15, 1985, Arkoma Production Company (Arkoma), 5000 Rogers Avenue, Suite 610, Ft. Smith, Arkansas 72903, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and sections 157 and 284 of the Commission's Regulations for a limited-term certificate of public convenience and necessity authorizing Arkoma to conduct a short-term spot sales marketing program entitled ASP. The certificate would: (1) Authorize the sale of natural gas by Arkoma for resale in interstate commerce; (2) permit limited-term partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize the transportation of natural gas by interstate pipeline companies able and willing to participate in the ASP program; and (5) confer pre-granted abandonment for the transportation service authorized under the requested certificate, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Under the ASP program, Arkoma proposes to sell on a spot basis, natural gas qualifying for the applicable maximum lawful price governed by sections 102 and 103 of the Natural Gas Policy Act of 1978 (NGPA). Only gas contractually committed on or before the date of issuance of the requested certificate will be sold. Arkoma will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold the program. Transportation of the released gas will be accomplished on a case-by-case basis.

It appears resonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make protest with reference to said application should on or before March 5, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.211, 385.214). 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. A party wishing to participate in any hearing must file a petition to intervene in accordance with the Commission's rules.

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

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4883 Filed 2-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER80-259-006]

Kansas Gas and Electric Co.; Refund Report

February 20, 1985.

Take notice that on February 6, 1985, Kansas Gas and Electric Company submitted for filing a refund report for the City of Augusta, the City of Burlington, the City of Girard, the City of Oxford, Kansas Power and Light Company (KPL) and Missouri Public Service Company (MPS).

The refund amounts includes interest from the date payment was received through January 18, 1985 for the Cities of Augusta, Burlington and Girard, and through February 1, 1985 for the City of Oxford, KPL and MPS.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before March 1, 1985. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-4885 Filed 2-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST85-251-000, et al.

Natural Gas Pipeline Co. of America, et al.; Self-Implementing Transactions

February 22, 1985.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 or Part 157 of the Commission's Regulations and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline pursuant to § 284.102 of the Commission's Regulations.

A "C" indicates transportation by an intrastate pipeline pursuant to § 284.122 of the Commission's Regulations. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and expiration date for the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

A "D" indicates a sale by an intrastate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

An "F(157)" indicates transportation by an interstate pipeline for an end-user pursuant to § 157.209 of the Commission's Regulations.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to a blanket certificate issued under § 284.221 of the Commission's Regulations.

Any person desiring to be heard or to make any protests with reference to a transaction reflected in this notice should on or before March 8, 1985, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). 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 party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date[2]	Transportation rate (¢/MMBtu)
ST85-251	Natural Gas Pipeline Co. of America	Baltimonre Gas and Electric Co	12-03-84	B		
ST85-252	Valero Transmission Co	El Paso Natural Gas Co	12-03-84	C		
ST85-253	Trunkline Gas Co	Consolidated Gas Transmission Corp	12-03-84	G		
ST85-254	Tennessee Gas Pipeline Co	Texas Eastern Transmission Corp	12-03-84	G		
ST85-255	Panhandle Eastern Pipe Line Co	Consolidated Gas Transmission Corp	12-03-84	G		
ST85-256	Columbia Gulf Transmission Co	Washington Gas Light Co., et al	12-04-84	B, G		
ST85-257	K N Energy, Inc	Northern Utilities, Inc	12-03-84	B		
ST85-258	National Fuel Gas Supply Corp	McInnes Steel Co	12-03-84	F (157)		
ST85-259	National Fuel Gas Supply Corp	Arco Metals Co	12-03-84	F (157)		
ST85-260	Oklahoma Natural Gas Co	Natural Gas Pipeline Co. of America	12-04-84	C		
ST85-261	Oklahoma Natural Gas Co	Tennessee Gas Pipeline Co	12-04-84	C	05-03-85	24.32
ST85-262	Columbia Gulf Transmission Co	Dayton Power and Light Co	12-04-84	B		
ST85-263	Columbia Gas Transmission Corp	Dayton Power and Light Co	12-04-84	B		
ST85-264	Valley Gas transmission, Inc	Corpus Christi Gas Gathering, Inc	12-05-84	B		
ST85-265	Columbia Gas Transmission Corp	Washington Gas Light Co., *et al*	12-04-84	B, G		
ST85-266	Columbia Gulf Transmission Co	Texas Eastern Transmission Corp	12-05-84	G		
ST85-267	Delhi Gas Pipeline Corp	Northern Illinois Gas Co	12-06-84	C		
ST85-268	Oklahoma Natural Gas Co	Natural Gas Pipeline Co. of America	12-05-84	C	05-04-85	24.32
ST85-269	Sunflower Electric Cooperative, Inc	Northern Natural Gas Co	12-06-84	C	05-05-85	12.00
ST85-270	Delhi Gas Pipeline Corp	United Gas Pipe Line Co	12-06-84	C		
ST85-271	Columbia Gas Transmission Corp	Consolidated Aluminum Corp	12-07-84	F (157)		

Docket No.[1]	Transporter/seller	Recipient	Date filed	Subpart	Expiration date [2]	Transportation rate (¢/MMBtu)
ST85-272	Columbia Gas Transmission Corp	Wierton Steel Corp	12-07-84	F (157)		
ST85-273	Columbia Gulf Transmission Co	Consolidated Aluminum Corp	12-07-84	F (157)		
ST85-274	Columbia Gulf Transmission Co	Wierton Steel Corp	12-07-84	F (157)		
ST85-275	ANR Pipeline Co	Bridgeline Gas Distribution Co	12-07-84	B		
ST85-276	United Gas Pipe Line Co	Faustina Pipe Line Co	12-07-84	B		
ST85-277	Valero Transmission Co	United Gas Pipe Line Co	12-07-84	C		
ST85-278	Transcontinental Gas Pipe Line Corp	Federal Paper Board Co., Inc.	12-07-84	F (157)		
ST85-279	Delhi Gas Pipeline Corp	Baltimore Gas and Electric Co	12-06-84	C		
ST85-280	Channel Industries Gas Co	Texas Eastern Transmission Co	12-10-84	C		
ST85-281	ANR Pipeline Co	Texas Gas Transmission Corp	12-10-84	G		
ST85-282	Trunkline Gas Co	Cokinos Natural Gas Co	12-10-84	B		
ST85-283	Trunkline Gas Co	Cokinos Natural Gas Co	12-10-84	B		
ST85-284	Texas Eastern Transmission Corp	New Jersey Natural Gas Co	12-10-84	B		
ST85-285	Tennessee Gas Pipeline Co	Florida Gas Transmission Co	12-11-84	G		
ST85-286	Northern Natural Gas Co	Amoco Gas Co	12-12-84	B		
ST85-287	Northern Natural Gas Co	Power-Tex Joint Venture	12-12-84	B		
ST85-288	Texas Eastern Transmission Corp	Winnie Pipeline Co	12-12-84	B		
ST85-289	PGC Pipeline	Washington Gas Light Co	12-12-84	D		
ST85-290	United Gas Pipe Line Co	United Texas Transmission Co	12-12-84	B		
ST85-291	Tennessee Gas Pipeline Co	Columbia Gas Transmission Corp	12-12-84	G		
ST85-292	Monterey Pipeline Co	Columbia Gulf Transmission Co	12-13-84	C		
ST85-293	Transcontinental Gas Pipe Line Corp	Delmarva Power and Light Co	12-13-84	B		
ST85-294	Tennessee Gas Pipeline Co	Public Service Electric and Gas Co	12-13-84	B		
ST85-295	Lone Star Gas Co	PPG Industries, Inc	12-14-84	F (157)		
ST85-296	ANR Pipeline Co	Texas Gas Transmission Corp	12-13-84	G		
ST85-297	Panhandle Eastern Pipe Line Co	Anderson, Clayton and Co	12-14-84	F (157)		
ST85-298	Tennessee Gas Pipeline Co	Creole Gas Pipeline Corp	12-14-84	B		
ST85-299	Algonquin Gas Transmission Co	South County Gas Co	12-14-84	B		
ST85-300	Oklahoma Natural Gas Co	Phillips Pipeline Co	12-17-84	C	05-16-85	24.32
ST85-301	Consolidated Gas Transmission Corp	Manville Service Corp	12-14-84	F (157)		
ST85-302	El Paso Natural Gas Co	Power-Tex Joint Venture	12-17-84	B		
ST85-303	Texas Eastern Transmission Corp	Winnie Pipeline Co	12-17-84	B		
ST85-304	Transcontinental Gas Pipe Line Corp	Long Island Lighting Co	12-17-84	B		
ST85-305	Transcontinental Gas Pipe Line Corp	Lynchburg Gas Co	12-17-84	B		
ST85-306	Transcontinental Gas Pipe Line Corp	South Jersey Gas Co	12-17-84	B		
ST85-307	Transcontinental Gas Pipe Line Corp	North Carolina Natural Gas Co	12-17-84	B		
ST85-308	Transcontinental Gas Pipe Line Corp	Pennsylvania Gas and Water Co	12-17-84	B		
ST85-309	Transcontinental Gas Pipe Line Corp	Eastern Shore Natural Gas Co	12-17-84	G		
ST85-310	El Paso Natural Gas Co	Valero Transmission Co	12-19-84	B		
ST85-311	Tennessee Gas Pipeline Co	Louisiana Intrastate Gas Co	12-19-84	B		
ST85-312	United Gas Pipe Line Co	Louisiana Resources Co	12-19-84	B		
ST85-313	Columbia Gulf Transmission Co	UGI Corp	12-19-84	B		
ST85-314	Columbia Gulf Transmission Co	Columbia Gas of Pennsylvania, Inc	12-19-84	B		
ST85-315	Columbia Gulf Transmission Co	Cincinnati Gas and Electric Co	12-19-84	B		
ST85-316	Columbia Gas Transmission Corp	UGI Corp	12-19-84	B		
ST85-317	Columbia Gas Transmission Corp	Roanoke Gas Co	12-19-84	B		
ST85-318	Columbia Gas Transmission Corp	Columbia Gas of Pennsylvania, Inc	12-19-84	B		
ST85-319	Columbia Gas Transmission Corp	Cincinnati Gas and Electric Co	12-19-84	B		
ST85-320	Columbia Gas Transmission Corp	Rocco Feeds, Inc	12-19-84	F (157)		
ST85-321	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	12-20-84	B		
ST85-322	Panhandle Eastern Pipe Line Co	Motor Wheel Corp	12-20-84	F (157)		
ST85-323	El Paso Natural Gas Co	Colorado Interstate Gas Co	12-21-84	G		
ST85-324	El Paso Natural Gas Co	Esperanza Transmission Co	12-21-84	B		
ST85-325	Transcontinental Gas Pipe Line Corp	Washington Gas Light Co	12-21-84	B		
ST85-326	Transcontinental Gas Pipe Line Corp	Philadelphia Electric Co	12-21-84	B		
ST85-327	Transcontinental Gas Pipe Line Corp	Brooklyn Union Gas Co	12-21-84	B		
ST85-328	Transcontinetal Gas Pipe Line Corp	Public Service Co. of NC, Inc	12-21-84	B		
ST85-329	Transcontinetal Gas Pipe Line Corp	Elizabethtown Gas Co	12-21-84	B		
ST85-330	Natural Gas Pipeline Co. of America	GHR Transmission Corp	12-21-84	B		
ST85-331	Natural Gas Pipeline Co. of America	Tennessee Gas Pipeline Co	12-21-84	G		
ST85-332	Transcontinental Gas Pipe Line Corp	Consolidated Edison Co. of NY, Inc	12-21-84	B		
ST85-333	Tennessee Gas Pipeline Co	Elizabethtown Gas Co	12-21-84	B		
ST85-334	Columbia Gas Transmission Corp	Hercules, Inc	12-21-84	F (157)		
ST85-335	Columbia Gas Transmission Corp	Metallurgical Exoproducts Corp	12-21-84	F (157)		
ST85-336	Nothwest Centeral Pipeline Corp	Cincinnati Gas and Electric Co	12-21-84	B		
ST85-337	Northern Natural Gas Co	Colorado Interstate Gas Co	12-24-84	G		
ST85-338	Northern Natural Gas Co	M-Ren	12-24-84	F (157)		
ST85-339	Michigan Gas Storage Co	Kellogg Co	12-24-84	F (157)		
ST85-340	Texas Eastern Transmission Corp	Brooklyn Union Gas Co	12-26-84	B		
ST85-341	Texas Eastern Transmission Corp	Public Service Electric and Gas Co	12-26-84	B		
ST85-342	Texas Eastern Transmission Corp	Philadelphia Electric Co	12-26-84	B		
ST85-343	Tennessee Gas Pipeline Co	Louisiana State Gas Corp	12-26-84	B		
ST85-344	Tennessee Gas Pipeline Co	Energy North, Inc	12-26-84	B		
ST85-345	Tennessee Gas Pipeline Co	Concord Natural Gas Corp	12-27-84	B		
ST85-346	Tennessee Gas Pipeline Co	Creole Gas Pipeline Corp	12-27-84	B		
ST85-347	Valero Transmission Co	THC Pipeline Co	12-27-84	C		
ST85-348	Natural Gas Pipeline Co. of America	Pacific Gas and Electric Co	12-26-84	B		
ST85-349	United Texas Transmission Co	United Gas Pipe Line Co	12-26-84	C		
ST85-350	Transcontinental Gas Pipe Line Corp	Carolina Pipeline Co	12-28-84	B		
ST85-351	Transcontinental Gas Pipe Line Corp	Philadelphia Gas Works	12-28-84	B		
ST85-352	Arkansas Louisiana Gas Co	Texas Eastman Co	12-31-84	F (157)		
ST85-353	Texas Gas Transmission Corp	C. F. Industries, Inc	12-31-84	F (157)		
ST85-354	SNG Interstate Pipeline Inc	Southern Natural Gas Co	12-03-84	D		
ST85-355	Algonquin Gas Transmission Co	Bristol Gas Co., *et al*	12-31-84	B		
ST85-356	ANR Pipeline Co	Texas Gas Transmission Corp	12-31-84	G		

[1] The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.
[2] The intrastate pipeline has sought Commission approval of its transportation rate pursuant to § 284.123(b)(2) of the Commission's Regulations (18 CFR 284.123(b)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[FR Doc. 85-4886 Filed 2-27-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ST81-274-002, et al.]

Coronado Transmission Co., et al.; Extension Reports

February 22, 1985.

The companies listed below have filed extension reports pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. The following symbols are used for transactions pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations: A "G(HT)", "G(HS)" or "G(HA)", respectively, indicates transportation, sale or assignments by a Hinshaw pipeline; a "G(LT)" indicates transportation by a local distribution company, and a "G(LS)" indicates sales or assignments by a local distribution company.

Any person desiring to be heard or to make any protests with reference to said extension report should on or before March 8, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). 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 party to a proceeding. Any person wishing to become a part to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No.	Transporter/seller	Recipient	Dated filed	Part 284 subpart	Effective date
ST81-274-002 [1]	Coronado Transmission Co., 333 Clay St., Houston, TX 77001	Southern Natural Gas Co	01-31-85	C	04-09-85
ST81-277-002	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Southern Natural Gas Co	01-30-85	C	05-06-85
ST81-278-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	Public Service Electric & Gas Co	01-31-85	C	05-01-85
ST81-279-002	Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co	01-22-85	C	04-20-85
ST81-280-002	Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001	El Paso Natural Gas Co	01-22-85	C	04-20-85
ST83-332-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Natural Gas Pipeline Co. of America	01-16-85	G	04-16-85
ST83-333-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Southern Connecticut Gas Co	01-18-85	B	04-20-85
ST83-336-001 [1]	National Fuel Gas Supply Corp., 10 Lafayette Square, Buffalo, NY 14203.	Southern Connecticut Gas Co	01-22-85	B	04-18-85
ST83-340-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	United Gas Pipe Line Co	01-18-85	G	04-20-85
ST83-341-001	Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001	Unitd Gas Pipe Line Co	01-18-85	G	04-20-85
ST83-346-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	United Gas Pipe Line Co	01-22-85	G	04-20-85
ST83-370-001	Texas Eastern Transmission Corp., P.O. Box 2521, Houston, TX 77001	Natural Gas Pipeline Co. of America	01-30-85	G	05-01-85
ST83-430-001	Southern Natural Gas Co., P.O. Box 2563, Birminghan, AL 35202	Producer's Gas Co	01-31-85	B	05-01-85
ST83-436-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	Texas Eastern Transmission Corp	01-31-85	G	05-01-85
ST83-479-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	Western Gas Interstate Co	01-25-85	G	05-16-85
ST83-480-001	El Paso Natural Gas Co., P.O. Box 1492, El Paso, TX 79978	Intratex Gas Co	01-29-85	B	05-20-85
ST83-628-001	Natural Gas Pipeline Co. of America, P.O. Box 1208, Lombard, IL 60148.	West Texas Gas, Inc.[2]	01-28-85	B	07-21-85
ST84-946-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Mississippi River Transmission Corp	01-30-85	C	06-08-85
ST85-84-001	Delhi Gas Pipeline Corp., 1700 Pacific Ave., Dallas, TX 75201	Mississippi River Transmission Corp	01-30-85	C	05-31-85
ST85-516-001 [1]	Kansas Power & Light Co., P.O. Box 889, Topeka, KS 66601	Northern Natural Gas Co	01-31-85	C	03-02-85

[1] These extension reports were filed after the date specified by the Commission's Regulation, and shall be the subject of a further Commission order.
[2] Originally Peoples Natural Gas Co. was noticed as the recipient in this transaction. On May 10, 1984, Peoples granted full assignment rights to West Texas Gas, Inc.

Note.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's Regulations.

[FR Doc. 85-4884 Filed 2-27-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding $6,577.76 to members of the public. This money is being held in escrow following a Memorandum and Order issued to Glen Martin Heller by the United States District Court in Massachusetts (Case Number HEF-0088).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, D.C. 20585. All comments should conspicuously display a reference to the above case number.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a Memorandum and Order issued to Glen Martin Heller (Heller) by the United States District Court in Massachusetts. The

Memorandum and Order involves a particular audit period and a distinct refund amount as set forth in the Proposed Decision. The Memorandum and Order adjudicated pricing violations in Heller's sales of motor gasoline to customers during the audit period.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Heller pursuant to the Memorandum and Order. The DOE has tentatively decided that the refund amount should be distributed to those customers of Heller who establish that they were injured by Heller's overcharges. Such customers will receive refunds proportionate to the volume of motor gasoline they purchased from Heller. However, Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the **Federal Register**, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 to 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue SW., Washington, D.C. 20585.

Dated: February 20, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

February 20, 1985.

Name of Firm: Glen Martin Heller.

Date of Filing: October 13, 1983.

Case Number: HEF-0088.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged or adjudicated violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983, requesting that the OHA implement proceedings to distribute the funds received from Glen Martin Heller (Heller) of Boston, Massachusetts, pursuant to a federal district court order.

I. Background

Heller is a "retailer" of "motor gasoline," as these terms were defined in 10 CFR 212.31. An ERA audit of Heller's operations during the period August 1, 1979 through December 1, 1979 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations.[1] In a Memorandum and Order issued on December 29, 1981, the United States District Court in Massachusetts found that Heller had overcharged his customers by $6,577.76 in sales of motor gasoline at his Beacon Hill Gulf Station during the audit period. *United States v. Heller*, 542 F. Supp. 154 (D. Mass. 1981), *aff'd*, DKT. No. 1-12 (Temp. Emer. Ct. App. June 9, 1982).[2] Accordingly, the court ordered Heller to pay the overcharge amount, plus interest of $1,337.14 into an interest-bearing escrow account under the control of the DOE.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to readily identify persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as a result of settlement agreements or judicial or administrative orders, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*).

After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Heller refund amount. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of these funds.

III. Proposed Refund Procedures

Insofar as possible, the refund amount should be distributed to those customers of Heller who were injured by the price violations. We therefore propose to establish a claims procedure in which we will accept applications for refund from customers who can demonstrate that they were injured as a result of any overcharges made by Heller during the audit period.

As in many prior special refund cases, we will adopt a presumption that the overcharges were dispersed equally in all sales of motor gasoline made during the audit period. The OHA has referred to this presumption in the past as a volumetric refund amount.

Presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR 205.282(e). The volumetric refund presumption is designed to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged or adjudicated overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. However, we also recognize that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser is allowed to file a refund application based on a claim that it suffered a disproportionate share of the overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233-34 (1984); *Sid Richardson Carbon and*

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[1] In an enforcement proceeding involving an earlier audit period, December 1, 1976, through June 14, 1979, the DOE issued a Remedial Order (RO) to Heller, which required him to refund overcharges of $54,347.98. *Glenn Martin Heller*, 11 DOE ¶ 83,005 (1983). Heller's appeal of this RO is presently pending before the Federal Energy Regulatory Commission. DKT. No. R079-13-001.

[2] In the Memorandum and Order, the court found that Heller had overcharged his motor gasoline customers by a total of $11,359.47, but had refunded $4,781.71 to the market. The court therefore ordered Heller to refund the balance of $6,577.76, plus interest, to the DOE. The court also imposed a civil penalty of 25 percent of the overcharge and interest, which the firm paid in full on June 23, 1982.

Gasoline Co./Siouxland Propane Co., 12 DOE ¶ 85,054 at 88,164 (1984).

In the present case, the audit records do not identify any purchasers of motor gasoline from Heller's Beacon Hill Gulf Station or list any overcharge amounts by customer. Consequently, the available information is insufficient to base refunds on the amount each individual applicant was overcharged. We therefore propose to use the volumetric method to allocate the refund amount. To determine the volumetric factor, the refund amount ($7,914.90) will be divided by the estimated total volume of gasoline sold by Heller during the audit period (148,777 gallons), resulting in a per gallon refund amount of $0.05320.[3] The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

In addition to the volumetric refund presumption, we are making a finding that Heller's customers, all of whom were end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the overcharges adjudicated in the Memorandum and Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the audit period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984). We have therefore concluded that end-users of motor gasoline purchased from Heller during the audit period need only document their purchase volumes from Beacon Hill Gulf to make a sufficient showing that they were injured by the overcharges.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR § 205.286(b).

In the present case, an end-user would have to have purchased 281 gallons of motor gasoline from Heller during the four month audit period in order to be eligible for the minimum refund amount of $15. While many motorists will therefore be ineligible for refunds in this proceeding, we recognize that there may have been persons or firms who purchased relatively large volumes of motor gasoline from Heller during the audit period. In the course of evaluating numerous Applications for Exception from the Mandatory Petroleum Allocation Regulations during the period of price and allocation controls, we learned that it was not unusual for local governmental entities and small businesses to regularly patronize one retail service station, often on a contractual basis. This was particularly true for governmental entities and businesses with multiple vehicles (buses, police and fire vehicles, delivery vans, taxis, etc.) which required a dependable supply of motor gasoline, but did not have bulk storage facilities of their own. It is possible that Heller had such customers during the audit period. In order that these customers may be notified of their opportunity to apply for a refund, we intend to publicize this proceeding in local newspapers in the area where Heller conducted business.

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publicizing this proceeding in local newspapers, we will publish copies of the proposed and final decisions in the **Federal Register**.

In the event that money remains after all first stage claims have been disposed of, the refund amount could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage refund procedure is completed.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Glen Martin Heller pursuant to the Memorandum and Order issued by the United States District Court for the District of will be distributed in accordance with the foregoing Decision.

[FR Doc. 85-4870 Filed 2-27-85; 8:45 am]

BILLING CODE 6450-01-M

[3] Because our records do not list the volumes of motor gasoline sold by Heller during the entire four months of the audit period, we have extrapolated sales figures from the available data.

ENVIRONMENTAL PROTECTION AGENCY

[W-H-FRL-2785-7]

Management Advisory Group to the EPA Construction Grants Program; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two day meeting of the Management Advisory Group to the EPA Construction Grants Program (MAG) will be held on March 20-21, 1985, in Room 3908 at EPA Headquarters, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. The meeting will begin at 9:00 a.m. on both days and will adjourn at 5:00 p.m. on March 20, and 12 Noon on March 21.

The principal agenda items will be to discuss and prepare the basis for reports on: (1) Municipal wastewater treatment construction financing, and (2) compliance and operation and maintenance. The agenda will also include briefings and discussions on other topics of current or future interest to MAG. Any member of the public wishing to make comments is invited to submit them in writing to the executive Secretary at the meeting.

The meeting will be open to the public. Any member of the public wishing additional information should contact Ms. Georgette Brown at (202) 382-5859.

Dated: February 21, 1985.

Henry L. Longest II,

Assistant Administrator for Water.

[FR Doc. 85-4864 Filed 2-27-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180658; FRL-2786-7]

Alabama, Louisiana, and Mississippi; Receipt of Applications for Specific Exemptions To Use a Pesticide for an Unregistered Use; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Alabama Department of Agriculture and Industries, the Louisiana Department of Agriculture and the Mississippi

Department of Agriculture and Commerce (hereafter referred to individually by State name or collectively as "Applicants") for use of the unregistered pesticide product Sceptor to control sicklepod in soybeans. Sceptor, manufactured by the American Cyanamid Company, contains the unregistered active ingredient imazaquin. EPA is soliciting comment before making the decision whether or not to grant these specific exemptions.

DATE: Comments must be received on or before March 15, 1985.

ADDRESS: Three copies of written comments, bearing the identifying notation "OPP–180659," should be submitted by mail to:

Information Service Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for inspection in Rm. 236 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack E. Housenger, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., NW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716C, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703–557–1192).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicants have requested the Administrator to issue specific exemptions to permit the use of the unregistered herbicide imazaquin, manufactured as Sceptor, to control sickle-pod in soybeans. Information in accordance with 40 CFR Part 166 was submitted as part of these requests.

The Applicants have requested a maximum of two applications of Sceptor; one as a preplant incorporated or preemergence treatment and one as an early post-emergence over-the-top treatment. A maximum of 0.125 pound of active ingredient is proposed to be applied per acre per application. A 90-day pre-harvest interval is proposed and no treated plants or straw will be fed to livestock. Applications are proposed to commence in April and continue through July.

Alabama has requested authorization to treat a maximum of 69,500 acres of soybeans in the counties of Baldwin, Coffee, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile with a maximum of 11,583 gallons of Sceptor. All applications are proposed to be made using ground equipment only. Louisiana and Mississippi have requested authorization to treat 50,000 and 170,000 acres of soybeans with 8,250 and 28,333 gallons of Sceptor, respectively. Applications are proposed to be made using either air or ground equipment.

The Applicants anticipate yield losses averaging 20 to 30 percent due to sicklepod infestations. Losses as high as 50 percent were reported in some research trials. Each of the Applicants anticipates substantial yield losses resulting in significant economic losses without the proposed use of Sceptor.

Alabama and Mississippi claim that emergency conditions will exist due to the unavailability of a registered pesticide which will adequately control sicklepod in soybeans. Although a number of registered herbicides are currently available (including metribuzin, vernolate, alachlor, norflurazon and linuron) for this use, they are not generally effective on the soil types (sands, loamy sands and sandy loams) where applications of Sceptor are proposed. Toxaphene is effective for this use on these soil types and has been used in the past to control sicklepod under section 24(c) registrations. However, stocks of toxaphene are not adequate to deal with the situation this year. The use of toxaphene on soybeans for sicklepod control was cancelled; however, an existing stock provision allows use to continue until December 31, 1986. However, stocks have already been depleted. If there were adequate supplies of toxaphene, the use of Sceptor would not be necessary.

Louisiana claims the existence of emergency conditions due to the poor control obtained using registered pesticides for this use and that the acreage infested with sicklepod is increasing at a rate of 10 percent a year. Furthermore, the severity of infestations has increased. Louisiana claims that 80 percent control of sicklepod can be obtained under optimum conditions. However, under heavy infestations or when it is not possible to treat a field at the proper time due to rainfall, this level of control is not approached. Complicating the situation is the fact that many growers have shifted to a narrow row or drill system of producing soybeans which reduces the ability to use direct sprays. Unlike the States of Alabama and Mississippi, Louisiana does not have a section 24(c) registration for the use of toxaphene on soybeans.

This notice does not constitute a decision by EPA on the application itself. It is the Agency's policy to solicit public comment on applications involving unregistered active ingredients. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above. The comments must be received on or before March 15, 1985 and should bear the identifying notation "OPP–180658." All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemptions requested by the Alabama Department of Agriculture and Industries, the Louisiana Department of Agriculture and the Mississippi Department of Agriculture and Commerce.

Dated: February 21, 1985.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 85–4998 Filed 2–27–85; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL HOME LOAN BANK BOARD

[No. AC-422]

Southern Federal Savings and Loan Association of Georgia, Atlanta, GA; Final Action Approval of Conversion Application

Dated: February 19, 1985.

Notice is hereby given that on January 31, 1985, the Office of General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Southern Federal Savings and Loan Association of Georgia, Atlanta, Georgia, for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Secretariat of the Board, 1700 G Street, NW., Washington, D.C. 20552, and at the Office of the Supervisory Agent of the Federal Home Loan Bank of Atlanta, Post Office Box 56527, Atlanta, Georgia 30343.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 85-4852 Filed 2-27-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Citizens Financial Corp.; 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 (12 CFR 225.14) 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 (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, 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 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 March 15, 1985.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Citizens Financial Corporation,* Highland Park, Illinois; to become a bank holding company by acquiring First Highland Corporation, Highland Park, Illinois, and thereby indirectly acquire First National Bank of Highland Park, Highland Park, Illinois; Elk Grove Investment Corporation, Elk Grove Village, Illinois, and thereby indirectly acquire Bank of Elk Grove, Elk Grove Village, Illinois; Financial Investments Corporation, Chicago, Illinois, and thereby indirectly acquire Hyde Park Bank & Trust Company, Chicago, Illinois; Woodfield Investments Corporation, Schaumburg, Illinois and thereby indirectly acquire Woodfield Bank, Schaumburg, Illinois; North State Investment Corporation, Highland Park, Illinois, and thereby indirectly acquire Marina Bank & Trust Company, Chicago, Illinois; and Citizens Bank & Trust Company, Park Ridge, Illinois.

Citizens Financial Corporation has also applied under section 4(c)(8) of the Act to engage through Interfinancial Corporation, Chicago, Illinois, in the operation of a commercial finance company, including the making, acquiring or servicing of loans or other extensions of credit, for its own account or for the account of others, and factoring.

Board of Governors of the Federal Reserve System, February 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4837 Filed 2-27-85; 8:45 am]

BILLING CODE 6210-01-M

Fairfax Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 20, 1985.

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

1. *Fairfax Bancshares, Inc.,* Fairfax, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Exchange Bank of Fairfax, Missouri.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First City Bancorporation of Texas, Inc.,* Houston, Texas; to acquire 100 percent of the voting shares of First City Bank-Sioux Falls, N.A., Sioux Falls, South Dakota, a *de novo* bank.

Board of Governors of the Federal Reserve System, February 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4838 Filed 2-27-85; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 1985.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to act, through its *de novo* subsidiary, Security Pacific Mortgage Advisors, Inc., Denver, Colorado, as investment or financial advisor to the extent of serving as the advisory company for mortgage or real estate investment trusts or companies, pursuant to § 225.25(b)(4)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, February 22, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-4839 Filed 2-27-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79N-0113; DESI 2847]

Drugs for Human Use; Drug Efficacy Study Implementation; Parenteral Multivitamin Products; Withdrawal of Approval of Parts of a New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of portions of the new drug application that provide for Berocca C and Berocca C-500 Injectable. The withdrawal is based on lack of substantial evidence that the products are effective as fixed combinations.

EFFECTIVE DATE: April 1, 1985.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with Docket No. 79N-0113 and reference number DESI 2847 and directed to the Division of Drug Labeling Compliance (HFN-310), Rm. 216, Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 17, 1984 (49 FR 36446), FDA announced the conditions under which an effective parenteral multivitamin formulation may be marketed. The notice, published as part of the Drug Efficacy Study Implementation, also offered an opportunity for a hearing on a proposal to withdraw approval of portions of the new drug applications (NDA's) for certain formulations. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.111 and 21 CFR 300.50. In response to that notice, Hoffmann-La Roche, Inc., requested a hearing for Berocca C and Berocca C-500 Injectable.

Subsequently, the firm withdrew its hearing request. Accordingly, FDA is now withdrawing approval of parts of the following NDA:

NDA 6-071; those parts that provide for Berocca C and Berocca C-500 Injectable both containing thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride dexpanthenol, d-biotin, and ascorbic acid; Roche Laboratories, Division of Hoffmann-La Roche, Inc., Roche Park, Nutley, NJ 07110.

This notice does not apply to those portions of NDA 6-071 which provide for Berocca PN and Berocca-WS. These two products are formulated in accordance with the September 1984 notice.

In addition to Hoffman-La Roche, three other manufacturers requested a hearing in response to the September 1984 notice.

1. NDA 8-809; those parts that provide for M.V.I Injectable containing ascorbic acid, vitamin A, ergocalciferol, thiamine hydrochloride, riboflavin, niacinamide, pyrodoxine hydrochloride, dexpanthenol, and dl-alpha tocopherol acetate; USV Laboratories Division, USV Pharmaceuticals, Tuckahoe, NY 10707.

2. No NDA; Various products marketed by Carter-Clogau Laboratories, Inc., 5160 W. Bethany Home Rd., Glendale, AZ 85301.

3. No NDA; Multi Vitamin Concentrate marketed by LyphoMed, Inc., 2020 Ruby St., Melrose Park, IL 60160.

Marketing of those products for which hearing requests are under review may continue pending a ruling on the requests. These hearing requests will be addressed in a future **Federal Register** notice.

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application or the subject of a pending hearing request is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific drug product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52

Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the parenteral multivitamin products Berocca C and Berocca C–500 Injectable will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 6–071 that provide for the combination products specified above and all amendments and supplements thereto is withdrawn effective April 1, 1985. Shipment in interstate commerce of the products specified above or any identical, related, or similar product that is not the subject of an approved new drug application or the subject of a pending hearing request will then be unlawful.

Dated: February 20, 1985.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 85–4840 Filed 2–27–85; 8:45 am]

BILLING CODE 4160–01–M

Social Security Administration

Refugee Resettlement Program; Formula for Allocations to States of FY 1985 Funds for Social Services for Refugees and Cuban/Haitian Entrants

AGENCY: Office of Refugee Resettlement (ORR), SSA, HHS.

ACTION: Final notice.

SUMMARY: This notice establishes the formula for allocation to States of FY 1985 funds for social services under the Refugee Resettlement Program (RRP). The formula yields the allowable allocation of FY 1985 refugee and Cuban/Haitian entrant social service funds for each State participating in the RRP.

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: David Howell (202) 245–1923.

SUPPLEMENTARY INFORMATION: Notice of the proposed formula for the allocation of FY 1985 social service funds was published in the **Federal Register** on November 14, 1984 (49 FR 45072). No major changes have been made in the formula allocations as a result of comments on the previously published proposal. However, one modification (the addition of a formal waiver provision for the requirement that 85% of a State's allocation be used for priority services) and some technical changes were made.

I. Amounts Available for Allocation

The Office of Refugee Resettlement (ORR) will make available $71,700,000 in FY 1985 refugee/entrant social service funds. This determination is based upon the Continuing Resolution for FY 1985 (Pub. L. 98–473) which provides that funding for social services be at the same level as in FY 1984.

Of the total of $71,700,000 in social service funds, the Director of ORR will make available to States during FY 1985 $64,858,100 under the social service allocation formula set out in this notice. These funds will be made available for the purpose of providing social services to refugees and entrants. Separate announcements will be made for additional social service funds not included in this notice.

All allocation figures include both refugees and entrants, since both populations may be served through funds addressed in this notice.

Of the $64,858,100 covered by this notice, the Director will allocate funds directly to States in the following manner:

- $61,525,513 will be allocated on the basis of each State's proportion of the national population of refugees and entrants who had been in the U.S. less than 3 years as of October 1, 1984.
- $282,270 will be allocated to States which have particular needs associated with small refugee/entrant populations in order to provide a floor of $75,000 for States with fewer than 500 refugees/entrants.
- $3,050,317 will be allocated to each State on the basis of its proportion of the 3-year refugee/entrant population (but including a floor amount of $5,000 to States with small refugee popualtions) in order to provide an incentive for States to fund refugee/entrant mutual assistance associations (MAA's). A written assurance that these optional funds will be used for MAA's is required in order for a State to receive the funds. Separate guidance will be provided to States regarding this assurance.

The $6,841,900 remaining in social service funds will be used on a discretionary basis to carry out individual projects intended to contribute to the effectiveness and efficiency of the refugee resettlement program in service delivery and self-support, as described in the previous notice.

While the formula is based on the 3-year refugee and entrant population, social service programs are not limited to refugees who have been in the U.S. only three years. States may provide services without regard to an individual refugee's or entrant's length of residence. (A State must, however, have an approved State plan for the Cuban/Haitian Entrant Program in order to use funds on behalf of entrants as well as refugees.) ORR funds may not be used to provide services to United States citizens since they are not covered under the refugee and entrant legislation (except that services may be provided to a U.S.-born minor child in a family in which both parents are refugees or entrants or, if only one parent is present, in which that parent is a refugee or entrant).

In accordance with ORR's "Statement of Program Goals, Priorities and Standards for State-Administered Refugee Resettlement Program" issued March 1, 1984, funds awarded under this notice are subject to a requirement that at least 85 percent of a State's award be used for employment services, English language training, and case management services, reflecting the Congressional objective that "employable refugees should be placed in jobs as soon as possible after their arrival in the United States" and that social service funds be focused on these types of services. (Immigration and Nationality Act (INA), section 412(a)(1)(B).) ORR will consider granting, under specific circumstances, a waiver of this provision. In order to receive a waiver, a State must be able to demonstrate to the satisfaction of the Director, ORR, that two of the following three conditions exist: The cash assistance rate for time-eligible refugees in the State is below the national average for all time-eligible refugees in the U.S.; less than 85% of the State's social service allocation is sufficient to meet all employment-related needs of the State's refugees; and/or ther are nonemployment-related service needs which are so extreme as to justify an allowance above the basic 15 percent.

States should also expect to use funds proposed under this notice to pay for social services which are provided to refugees who participate in alternative projects. The Continuing Resolution for FY 1985, in addition to providing funds for the refugee program, amended the Immigration and Nationality Act to provide that:

> The Secretary [of HHS] shall develop and implement alternative projects for refugees who have been in the United States less than thirty-six months, under which refugees are provided interim support, medical services, support [social] services, and case management, as needed, in a manner that encourages self-sufficiency, reduces welfare

dependency, and fosters greater coordination among the resettlement agenices and service providers.[1]

The Department plans to issue a separate notice with respect to applications for such projects. The notice on alternative projects is not expected to contain provisions for the allocation of additional social service funds beyond the amounts proposed for availability in this notice. Therefore a State which may wish to consider carrying out such a project should take note of this in planning its use of social service funds proposed for allocation under the present notice.

II. Discussion of Comments Received

Twenty-four comments were received during the public comment period in response to the notice of the proposed formula for the allocation to States of FY 1985 funds for social services for refugees and Cuban/Haitian entrants. Many of the Commenters expressed concern about the proposed approach to social service priorities, and some included recommendations for particular changes. These are summarized below and are followed in each by the Department's response.

Comment: Eight comments opposed the inclusion in the allocation notice of ORR's requirement that at least 85% of a State's refugee social service funds be used for priority services (employment services, English language training, and related services). Nearly all of these comments came from one State (California).

Response: ORR continues to believe that the 85% funding of priority services is a necessary and effective means of carrying out the intent of Congress (as mandated by section 412(a)(1)(B) of the INA) for the national Refugee Resettlement Program, and of promoting the early achievement of refugee self-sufficiency. However, ORR concurs that such a policy should also allow a degree of flexibility in order to address special conditions or circumstances which could not otherwise be addressed in particular areas. Therefore, ORR has included in this final notice the provision that a State may request, and ORR will consider granting, a waiver of the priority services requirement. This provision is consistent with ORR's base social service policies that States should determine, within general RRP policy guidelines, the specific services to be provided to refugees, the location of these services, and the refugee client population, and that ORR maintain the flexibility to address, both directly and through State refugee programs, unique and urgent program needs.

Comment: Fourteen commenters raised complaints about the use of the three-year population base in the formula, about the secondary migration corrections used in the formula, or about the actual allocation amounts yielded by the formula. Several of these commenters offered suggestions for alternate formulas.

Response: The Department has argued elsewhere (47 FR 22566; 47 FR 42634; 48 FR 24996; 49 FR 36702; as well as in the proposal under discussion at 49 FR 45073) that the 3-year population base is a sound approach to social service allocations because (1) it reflects population trends over a period of time in which refugees have te greatest need for services, (2) it is not subject to the instability of shart-term biases, (3) it provides some incentive for States to use their program funds for priority services, and (4) it is consistent with program policies and priorities of ORR to provide services to refugees in order that they become self-sufficient as quickly as possible. The Department continues to believe that the 3-year population base is most appropriate for the allocation of social service funds. Further, the Department believes that the allocation in previous years of targeted assistance funds, as well as funding for various special initiatives, has already provided the most appropriate means of addressing needs based on longer term populations.

ORR recognizes that for some States the change in allocation level for social services for FY 1985, in comparison to the FY 1984 level, is significant. However, in most of these cases, the reduction is a result of the special adjustments which were provided for those States in FY 1984 and does not represent a change in the formula itself. The reasons for the FY 1984 adjustments, which were explained at 49 FR 36703, stemmed from ORR's desire to avoid prescribing, in the belated final announcement of September 19, 1984, major reductions below the FY 1984 amounts that had been proposed much earlier in the year. A more appropriate comparison of FY 1984 and FY 1985 would involve only the final *formula* figures without the FY 1984 adjustments.

Comment: Two commenters suggested that ORR should not expect States which plan alternate assistance projects under the Wilson/Fish Amendment language included in Pub. L. 98-473 to use their social service funds in support of those projects.

Response: ORR believes that the increased refugee self-sufficiency and reduced costs expected to result from such alternative projects provide an incentive to States to conduct such demonstrations and will justify a State's use of funds from its ORR allocation in support of those projects. Therefore, this notice retains the language of the proposal. ORR prefers this approach because it initially palces more funds with States through the formula allocation and leaves to States decisions regarding the specific use of social service funds. It also would allow ORR more initial flexibility in the use of non-formula funds than would be the case if funds were set aside at this time for support of projects which, for the most part, are not yet in development.

III. Allocation Formula

Of the funds available for FY 1985 for social services, $81,525,513 will be allocated to States in accordance with the formula specified below. A State's allowable allocation will be calculated as follows:

1. The total amount of funds determined by the Director to be available for this purpose; divided by—

2. The total number of refugees and entrants who arrived in the United States not more than three years prior to the beginning of the fiscal year for which the funds are appropriated, as shown by the ORR Refugee Data System. The resulting per capita amount will be multiplied by—

3. The number of refugees and entrants in item 2, above, in the State as of October 1, 1984, adjusted for estimated secondary migration.

The calculation above will yield the formula allocation for each State.

MAA incentive award supplements are allocated on the same 3-year population basis as that used in the social service formula. These funds will be made available contingent upon letters of assurance from States.

IV. Basis of Refugee and Entrant Population Estimates

The population estimates for the allocation of funds in FY 1985 are based on data on refugee arrivals from the ORR Refugee Data System, adjusted as of October 1, 1984, for estimated secondary migration. The data base includes refugees of all nationalities as well as Cuban and Haitian entrants resettled after September 30, 1981. Slight changes have been made in the estimated State refugee population totals since the publication of the proposed formula on November 14, 1984, to reflect new data received. As we

[1] This provision, generally known as the Wilson/Fish Amendment, was originally included in the House-passed reauthorization of the Refugee Act, H.R. 3729, as modified and reported by the Senate Judiciary Committee.

noted in the November 14 proposal, "The population estimates developed here are tentative and will be replaced with final population estimates" (49 FR 45074). For the present notice, final arrival figures for FY 1984 were compiled and used. Five States submitted late data on secondary migration on Form ORR–11, so a new set of adjustments for secondary migration was calculated and applied to all States. Four States submitted convincing evidence of larger time-eligible populations than had been estimated previously, and their population estimates were revised accordingly. These revisions have resulted in some changes both in estimated populations and in the amounts allocated—both increases and decreases. However, no resultant decrease, as compared with the tentative amount indicated in the November 14 proposal, has exceeded 8% and most have been less than 1%.

For fiscal year 1985, ORR's formula allocations to the States for social services for refugees are based on the numbers of refugees who arrived, and on the numbers of entrants who arrived or were resettled, during the preceding three fiscal years: 1982, 1983, and 1984. Therefore, estimates have been developed of the numbers of refugees and entrants with arrival or resettlement dates between October 1, 1981, and September 30, 1984, who are thought to be living in each State as of October 1, 1984. The population estimates for the FY 1985 allocations cover refugees of all nationalities and Cuban/Haitian entrants.

All States submitted data on their secondary in-migration on Form ORR–11 in time for use in adjusting these population estimates. The total reported migration was summed, yielding a net migration figure for each State. This figure, the minimum documented migration affecting each State, was applied to the total arrival figure, resulting in a revised population estimate. This estimate was coverted into a percentage of the total 3-year refugee/entrant population. The percentage distribution was compared with the percentage distribution generated from the refugee child count done by the U.S. Department of Education in March 1984. Where a significant discrepancy between the two percentage distributions existed which could not be explained except by secondary migration, a further adjustment was made to the State's estimated population. The population estimates of 27 States were adjusted in this manner. Finally, each State's population was inflated by approximately 1.7 percent, to bring the sum of the State figures to the known national total.

Estimates were developed separately for refugees and entrants and then combined into a total estimated 3-year refugee/entrant population for each State. In doing so, ORR excluded from the population totals nationwide 4,208 refugees who were resettled subject to a full Federal match of $1,000 under ORR's matching-grant program with national voluntary refugee resettlement agencies. The social service funds available to serve non-matching-grant refugees are limited and are, therefore, directed to the areas where those refugees live.

Table 1 below, shows the estimated 3-year populations, as of October 1, 1984, of all refugees and entrants (col. 1), excluding those matching-grant refugees discussed above; the formula amounts which the population estimates yield (col. 2); the total allocation amounts after allowing for the minimum amounts (col. 3), and the amounts available as an incentive to States to used MAA's as service providers (col. 4).

V. Allocation Amounts

The following amounts are allocated for refuge social services in FY 1985:

TABLE 1.—ESTIMATED THREE-YEAR REFUGEE/ENTRANT POPULATIONS OF STATES PARTICIPATING IN THE REFUGEE PROGRAM AND SOCIAL SERVICE FORMULA AMOUNTS AND ALLOCATIONS FOR FY 1985

State	Total population	Formula amount	Allocation	MAA incentive allocation
	(1)	(2)	(3)	(4)
Alabama	1,057	$285,195	$285,195	$14,039
Arizona	1,682	453,896	453,896	22,343
Arkansas	468	126,259	126,259	6,215
California	76,879	20,747,950	20,747,950	1,021,312
Colorado	2,718	733,576	733,576	36,110
Connecticut	3,101	836,985	836,985	41,200
Delaware	49	13,194	75,000	5,000
District of Columbia	954	257,378	257,378	12,669
Florida	5,547	1,496,889	1,496,889	73,684
Georgia	3,575	964,725	964,725	47,488
Hawaii	1,089	293,969	293,969	14,471
Idaho	588	158,652	158,652	7,810
Illinois	9,802	2,645,454	2,645,454	130,222
Indiana	832	224,592	224,592	11,055
Iowa	2,081	561,894	561,894	27,649
Kansas	3,275	883,934	883,934	43,511
Kentucky	853	230,342	230,342	11,339
Louisiana	3,528	952,089	952,089	46,866
Maine	918	247,846	247,846	12,200
Maryland	3,293	888,621	888,621	43,742
Massachusetts	9,366	2,527,803	2,527,803	124,430
Michigan	3,947	1,065,146	1,065,146	52,432
Minnesota	5,493	1,482,521	1,482,521	72,977
Mississippi	668	180,303	180,303	8,875
Missouri	2,175	587,111	587,111	28,900
Montana	134	36,232	75,000	5,000
Nebraska	705	190,176	190,176	9,361
Nevada	936	252,698	252,698	12,439
New Hampshire	380	102,653	102,653	5,053
New Jersey	3,284	886,287	886,287	43,627
New Mexico	514	138,601	138,601	6,823
New York	14,551	3,927,017	3,927,017	193,306
North Carolina	2,148	579,632	579,632	28,532
North Dakota	443	119,559	119,559	5,885
Ohio	3,343	902,288	902,288	44,415
Oklahoma	2,310	623,340	623,340	30,684
Oregon	4,555	1,229,285	1,229,285	60,511
Pennsylvania	8,033	2,167,922	2,167,922	106,715
Rhode Island	1,445	390,075	390,075	19,201
South Carolina	551	148,762	148,762	7,323
South Dakota	405	109,231	109,231	5,377
Tennessee	2,208	595,782	595,782	29,327
Texas	16,260	4,388,157	4,388,157	216,006
Utah	2,444	659,557	659,557	32,466
Vermont	245	66,151	75,000	5,000
Virginia	7,639	2,061,529	2,061,529	101,478
Washington	9,305	2,511,233	2,511,233	123,615
West Virginia	96	25,802	75,000	5,000
Wisconsin	2,005	541,069	541,069	26,634
Wyoming	50	13,450	75,000	5,000
Guam	48	12,901	75,000	5,000
Totals	227,975	61,525,513	61,807,763	3,050,317

VI. Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

[Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs]

Dated: January 18, 1985.

Phillip N. Hawkes,

Director, Office of Refugee Resettlement.

[FR Doc. 85–4866 Filed 2–27–85; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–85–1505; FR–2076]

Section 8 Housing Vouchers for Use With the Rental Rehabilitation Program

ACTION: Notice of Funding Availability.

SUMMARY: This Notice informs the public that HUD is making additional funding available for Section 8 Housing Vouchers for use in connection with HUD's Rental Rehabilitation Program.

FOR FURTHER INFORMATION CONTACT: For the Housing Voucher Program: Madeline Hastings, Room 6124, Existing Housing Division, (202) 755–6887, or Gerald Benoit, Room 6128, Existing Housing Branch, (202) 755–5720. For the Rental Rehabilitation Program: Robert Dodge, Room 7170, (202) 755–5685, or Craig Nickerson, Room 7164, (202) 755–

5970, Office of Urban Rehabilitation. Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Background

On July 12, 1984, HUD published a Notice of Funding Availability at 49 FR 28458. The Notice (1) informed the public that HUD was establishing a rental rehabilitation component and a freestanding component of the demonstration Housing Voucher Program authorized under section 8(o) of the U.S. Housing Act of 1937 (1937 Act), (2) informed the public that HUD was also making funding available for Certificates under the section 8 Existing Housing (Certificate) Program (see 24 CFR Part 882) for use in connection with the Rental Rehabilitation Program (see 24 CFR Part 511) and (3) set forth the policies and procedures for use of those Housing Vouchers and Certificates.

HUD invited comments on the Notice by September 10, 1984 and is still considering these comments. HUD plans to publish another Notice later in this fiscal year responding to comments, announcing additional funding of Housing Vouchers for new purposes, and making certain other changes to the policies in the July Notice which will apply to all outstanding Vouchers.

Additional Funding

This Notice advises the public that HUD is making additional funding available for Housing Vouchers to be used in connection with the Rental Rehabilitation Program in accordance with the policies and procedures set forth in the Notice published on July 12, 1984, with a few variations which also apply to funding for Housing Vouchers under the July Notice. HUD is not making additional funding available for Certificates to be used in connection with the Rental Rehabilitation Program.

Family Eligibility

The Technical Amendments Act of 1984 (Pub. L. 98-479, 98 Stat. 2218), approved October 17, 1984, extends Housing Voucher eligibility to families determined to be Lower Income Families at the time they initially receive assistance and that are displaced by rental rehabilitation activities. Lower Income Family is defined in 24 CFR Part 813 as follows:

> A Family whose Annual Income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Section V.5.(a) of the Notice published July 12, 1984 permitted Housing Vouchers to be issued only to Very Low-Income Families (those whose incomes do not exceed 50 percent of the median income for the area) and families continuously assisted under the 1937 Act, in accordance with the law then in effect. The 1984 Act extended the range of Housing Voucher eligibility to include families with incomes above 50 percent and up to 80 percent of median area income, but only if they are displaced by rental rehabilitation activity under 24 CFR Part 511. Families who live in a project undergoing rental rehabilitation activities and whose post-rehabilitation rents would not be affordable are not considered "displaced" for this purpose, whether or not they choose to move. These families may, however, receive a Certificate, allocated for use in connection with the Rental Rehabilitation Program in fiscal year 1984, to assist them in paying the higher rents or in finding another unit, but only if HUD approves the PHA's request to issue a Certificate for this purpose to a family with an income above 50 percent of the area median (see 24 CFR 813.105(c)(2)).

Although displaced families with incomes above 50 percent of median income may now receive a Housing Voucher, as described in the preceding paragraph, PHAs must first apply to HUD for permission to issue Housing Vouchers to one or more families in this income range. This is the same policy applicable to Certificates under Part 813. This restriction is part of HUD's implementation of section 16 of the 1937 Act, which restricts to 5 percent the number of 1937 Act units becoming available for occupancy on or after October 1, 1981, to which Lower Income Families with incomes above 50 percent and up to 80 percent of median income may be admitted. HUD intends to conform Part 813 to include this requirement for Housing Vouchers.

For families selected from PHA waiting lists who are eligible for Housing Vouchers because they are continuously assisted under the 1937 Act, PHAs must request permission from HUD before issuing the Housing Voucher if the family's assistance began on or after July 1, 1984 (the effective date of Part 813). If a family was assisted under the 1937 Act before July 1, 1984, the PHA may issue the family a Voucher without requesting prior HUD approval, but the PHA must report the case to HUD so that HUD can keep accurate records of the number of these families being assisted under the 1937 Act. Part 813 will also be amended to incorporate this policy into the regulations.

Recapture of Contract and Budget Authority

Section III.9 of the July Notice provides that when HUD deobligates rental rehabilitation grant amounts in accordance with § 511.33 of the rental rehabilitation regulations, HUD may reduce the amounts of contract and budget authority reserved for the Certificates and Housing Vouchers for use in connection with a grantee's rental rehabilitation program by up to an amount proportional to the reduction in the grant. In fiscal year 1985, HUD will not reduce, pursuant to section III.9, the amounts of contract and budget authority reserved for such use in fiscal year 1984. However, HUD may reduce the amount of contract and budget authority allocated and reserved in fiscal year 1985 for Housing Vouchers for use in connection with a grantee's rental rehabilitation program sufficient to fund up to one Voucher for each $5,000 reduction of a fiscal year 1984 or 1985 rental rehabilitation grant.

Other Matters

A Finding of No Significant Impact with respect to the environment required by the National Environmental Policy Act (42 U.S.C. 4321-4347) is unnecessary since the Section 8 Housing Voucher Program is part of the Section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.21(d).

The information collection requirements contained in this Notice have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. No person may be subject to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Authority: Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)).

Dated: February 22, 1985.

Shirley McVay Wiseman,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-4862 Filed 2-27-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Arizona Strip District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: A meeting of the Arizona Strip District Advisory Council will be held March 26, 1985 in St. George, Utah at 8:00 A.M. at the Sugar Loaf Restaurant, 290 E. St. George Blvd., in St. George, Utah.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 196 E. Tabernacle St., St. George, Utah 84770 (801) 673-3545.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include wilderness management plans, BLM–FS interchange, resource management plans, and desert tortoise update.

G. William Lamb,

Arizona Strip District Manager.

February 20, 1985.

[FR Doc. 85-4845 Filed 2-27-85; 8:45 am]

BILLING CODE 4310-84-M

Salt Wells Planning Unit, Sweetwater County, WY; Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Intent to Amend the 1982 Management Framework Plan, Salt Wells Planning Unit, Sweetwater County, Wyoming.

SUMMARY: This notice issued pursuant to 43 CFR Parts 1600 and 2700 invites public review and comment on preliminary issues and planning criteria to be used in identifying and evaluating proposals to offer for public sale certain lands in Sweetwater County, Wyoming.

The proposed planning action involves preparation of an environmental assessment utilizing input received from the public. The environmental assessment, to be issued on or about May 15, 1985, will be prepared in accordance with 40 CFR Part 1500 and will include a determination of the proposed action's consistency with the policies and programs of local, State, and other Federal agencies. Upon approval of the plan amendment by the Wyoming State Director, a public notice will be issued by the District Manager and a thirty (30) day protest period will be allowed (43 CFR 1610.5–2).

The public lands presently being considered for public sale are:

Legal description	Acreage
T. 18 N., R. 104 W.,	
Sec. 6: Lots 8, 9, 10, 11, 12, S½NE¼, SE¼NW¼	285.21
Sec. 8: E½	320.00
Sec. 10: All	640.00
Sec. 28: N½, SE¼	480.00
T. 19 N., R. 104 W.,	
Sec. 30: S½S½	160.00
T. 18 N., R. 105 W.,	
Sec. 10: Lots 3, 4, 5, 6, 11, 12, 13, 14	317.48
Sec. 12: Lots 1, 2, 7, 8, 9, 10, 15, 16	281.63
Sec. 22: Lots 4, 5, 12, 13	156.89
T. 19 N., R. 105 W.,	
Sec. 36: Lots 9, 18	77.65
T. 18 N., R. 106 W.,	
Sec. 14: All	640.00
Sec. 22: All	640.00
Sec. 24: All	640.00

Preliminary issues identified include: economics of continued management as part of the public lands, rights of permittees and lessees, interests of adjoining landowners, and consistency with the plans and programs of other governmental entities.

The following criteria, as set forth in Section 203 of the Federal Land Policy and Management Act of 1976, will be used to evaluate the public sale proposals.

1. Due to location or other characteristics, the land is difficult and uneconomic to manage, or

2. The land was acquired for a specific purpose and is no longer required for that or any other Federal purposes; or

3. Disposal of the lands will serve important public objectives, including but not limited to, expansion of communities and economic development.

The environmental assessment will be prepared by an interdisciplinary team which will determine the impacts of public land sales on present and future use of the affected lands and adjoining properties.

DATES: The public is invited for a period of thirty (30) days from the date of publication of this notice to submit written comments, including any issues for consideration, to the following address.

CONTACT ADDRESS: Robert W. Bierer, Salt Wells Resource Area Manager, BLM, P.O. Box 1170, Rock Springs, Wyoming 82902–1170; (307) 382–7350.

Donald H. Sweep,

District Manager.

[FR Doc. 85-4849 Filed 2-27-85; 8:45 am]

BILLING CODE 4310-22-M

Final Decision on Plan Amendment and Realty Action for Sale of Lands in San Juan County, UT

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Correction notice.

SUMMARY: This action will correct a notice published in the **Federal Register** on February 14, 1985, as FR Vol. 50, No. 31 (FR Doc. 85-3700), on Page 6259, as follows:

Legal Description

Section 30.

Kenneth V. Rhea,

Acting District Manager.

February 22, 1985.

[FR Doc. 85-4848 Filed 2-27-85; 8:45 am]

BILLING CODE 4310-DQ-M

[NM 58275]

Zuni Salt Lake Exchange, Catron County, NM

Correction

In FR Doc. 85-1849, beginning on page 3417 in the issue of Thursday, January 24, 1985, make the following corrections.

1. On page 3418 first column, sixth line of the Summary, "Lake, to be held on trust by the United" should have read "Lake, to be held in trust by the United".

2. On the same page, in the same column, twenty first line from the bottom of the page, "sec. 301" should have read "Sec. 30".

BILLING CODE 1505-01-M

Minerals Management Service

Development Operations Coordination Document; Mark Producing Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mark Producing Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3408, Block 311, Eugene Island 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 offshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 15, 1985.

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 Director, 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 Building, 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. Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

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 Mineral 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: February 15, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–4846 Filed 2–27–85; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Walter Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Walter Oil and Gas Corp. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 3990, Block 44, Eugene Island 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 Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on February 15, 1985. 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 Director, 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 Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday though 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: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section; Exploration/Development Plans Unit; Phone (504) 838–0875.

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: February 15, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85–4847 Filed 2–27–85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 84–42]

Spoon's Pharmacy, Charlotte, NC; Hearing

Notice is hereby given that on September 12, 1984, the Drug Enforcement Administration, Department of Justice, issued to Spoon's Pharmacy, Hickory Grove Drugs, an Order To Show Cause as to why the Drug Enforcement Administration should not revoke the DEA Certificate of Registration, AS8660260, and deny the application, executed on February 21, 1984, for registration as a retail pharmacy under 21 U.S.C. 823(f).

Thirty days having elapsed since the said Order To Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held, commencing at 9:30 a.m. on Wednesday, March 6, 1985, in the U.S. Tax Court Courtroom, Room 207, U.S. Post Office and Courthouse Building, 101 West Fifth Street, Winston-Salem, North Carolina.

Dated: February 25, 1985.

Francis M. Mullen, Jr.,

Administrator, Drug Enforcement Administration.

[FR Doc. 85–4857 Filed 2–27–85; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-12]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission. The NASA Supplement to the Federal Acquisition Regulation has been previously cleared by OMB (2700-0043), subject to submission of clearance requests for specific reporting and recordkeeping requirements. The information requirements for the Report on NASA Subcontracts (NASA Authorization Acts) have already been cleared by OMB (2700-0004) and are mentioned here as a collection of information contained in an existing regulation.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by March 11, 1985. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Carl F. Steinmetz, NASA Agency Clearance Officer, Code NIM, NASA Headquarters, Washington, DC 20546; Kenneth Allen, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Carl F. Steinmetz, NASA Agency Clearance Officer, (202) 453-2941.

Reports

Title: NASA FAR Supplement, Part 18-32, Contract Financing. Type of Request: Existing regulation (no change proposed). Frequency of Report: On occasion.
Type of Respondent: Small and Large Businesses, State and Local Governments, and Non-Profit Institutions.
Annual Responses: 135.
Annual Reporting Hours: 675.

Abstract-Needs/Users: Contractor must notify NASA if provided funds are considered inadequate for performance through agreed upon date.

Title: Report on NASA Subcontracts.
Type of Request: Extension of the expiration date of a currently approved collection.
Frequency of Report: On occasion.
Type of Respondent: Businesses or other for-profit.
Annual Responses: 6,000.
Annual Reporting Hours: 1,500.

Abstract-Need/Users: The NASA Form 667 is used to evaluate the extent to which NASA's subcontracting program is attaining its stated purpose to distribute its procurement as widely as possible in order to encourage a broad national base of research capability to assist small businesses, disadvantaged businesses, and to aid labor surplus areas.

L.W. Vogel,

Director, Logistics Management and Information Programs Division.

[FR Doc. 85-4833 Filed 2-27-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-15]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Informal Executive Subcommittee.

DATE AND TIME: March 28, 1985, 8:30 a.m. to 5:30 p.m.; March 29, 1985, 8:30 a.m. to 2:00 p.m.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue, SW, Room 625, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Dr. Raymond S. Colladay, National Aeronautics and Space Administration, Code R, Washington, D.C. 20546 (202/453-2695).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee was established to provide overall guidance and direction to the aeronautics research and technology activities of the Aeronautics Advisory Committee. The Subcommittee, Chaired by Mr. Holden Withington, is comprised of twelve members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda

March 28, 1985

8:30 a.m.—Chairperson's Remarks.
9:00 a.m.—Committee Activities and Plans for Fiscal Year 1985/1986.
10:00 a.m.—NASA Aeronautics Research and Technology Program Plan.
11:30 a.m.—Goals for Aeronautics/ Implications to Program.
1:30 p.m.—Fiscal Year 1986 Aeronautics Budget Status.
2:30 p.m.—Strategy Session for Fiscal Year 1987 Budget.
3:30 p.m.—Subcommittee Chairperson's Reports.
5:30 p.m.—Adjourn.

March 29, 1985

8:30 a.m.—Discussion and Consolidation of Subcommittee Reports.
9:30 a.m.—Identification of Candidate Study Areas.
11:00 a.m.—Development of Study Plans and Agenda.
1:00 p.m.—Summary of Meeting Results to the Office of Aeronautics and Space Technology Management.
2:00 p.m.—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

February 19, 1985.

[FR Doc. 85-4832 Filed 2-27-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-13]

NASA Advisory Council, Space Systems and Technology Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Executive Subcommittee.

DATE AND TIME: March 21, 1985, 8:30 a.m. to 5 p.m.; March 22, 1985, 8:30 a.m. to 12 noon.

ADDRESS: National Aeronautics and Space Administration, 600 Independence Avenue SW, Room 625, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Raymond S. Calladay, National Aeronautics and Space Administration, Code R, Washington, DC 20546 (202/453-2895).

SUPPLEMENTARY INFORMATION: The Informal Executive Subcommittee was established to provide overall guidance and direction to the space research and technology activities of the NAC Space Systems and Technology Advisory Committee. The Subcommittee, Chaired by Mr. Robert L. Walquist, is comprised of eight members. The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons including the Subcommittee members and participants).

Type of meeting: Open.

Agenda

March 21, 1985

8:30 a.m.—Chairperson's Remarks.
9 a.m.—Committee Activities and Plans for Fiscal Year 1985/1986.
10 a.m.—NASA Space Research and Technology Program Plan.
11:30 a.m.—Fiscal Year 1986 Space Research and Technology Budget Status.
1:30 p.m.—Strategy Session for Fiscal Year 1987 Budget.
2:30 p.m.—Subcommittee Chairpersons' Reports.
3:30 p.m.—Status/Summary Reports of Outstanding Actions.
5 p.m.—Adjourn.

March 22, 1985

8:30 a.m.—Discussion and Consolidation of Reports.
9:30 a.m.—Identification of Candidate Study Areas and Agenda Development.
11 a.m.—Summary of Meeting Results to the Office of Aeronautics and Space Technology Management.
12 noon—Adjourn.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management.

February 22, 1985.

[FR Doc. 85-4831 Filed 2-27-85; 8:45 am]

BILLING CODE 7510-01-M

[Notice 85-14]

NASA Wage Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Wage Committee.

DATE AND TIME: March 22, 1985, 1:30 p.m. to 3:00 p.m.

ADDRESS: National Aeronautics and Space Administration, Room No. 5092, 400 Maryland Avenue SW, Washington, DC 20546

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Green, Code NPC, National Aeronautics and Space Administration Washington, DC 20546 (202-453-2622).

SUPPLEMENTARY INFORMATION: The Committee's primary responsibility is to consider and make recommendations to the Director, Personnel Programs Division, National Aeronautics and Space Administration, on all matters involved in the development and authorization of a wage schedule for the Cleveland, Ohio, Wage Area pursuant to Pub. L. 92-392.

Type of meeting: Open.

Agenda: The approved agenda of the Committee provides that it will review the survey specifications for the Cleveland, Ohio, Wage Area which were recommended by the Local Wage Committee and will determine whether to recommended acceptance or modification of those survey specifications.

February 19, 1985.

Richard L. Daniels,

Deputy Director, Logistics Management and Information Programs Division, Office of Management..

[FR Doc. 85-4834 Filed 2-27-85; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-455A, 50-456A and 50-457A]

Commonwealth Edison Company; Receipt of Updated Information for Antitrust Review of Operating License Application

Commonwealth Edison Company filed updated information for Antitrust Review of the Operating License Application for Byron Station, Unit 2 and Braidwood Station, Units 1 and 2, dated January 14, 1985. The original submission of information for the antitrust review of the operating license application was filed by letter, dated March 22, 1979.

The information filed contains updated antitrust information for review pursuant to NRC Regulatory Guide 9.3 to determine whether there have been any significant changes since the completion of the antitrust review at the construction permit stage.

The plants are pressurized water reactors and Byron Station, Unit 2 is located in Rockvale Township, Ogle County, Illinois and the Braidwood Station, Units 1 and 2 are located in Reed Township, Will County, Illinois. Byron Station, Unit 1 was issued a fuel load and low power and testing license on October 31, 1984 not to exceed 5% of full power and a full power license (100% power) on February 14, 1985.

On completion of the staff's antitrust review of the Byron Station, Unit 2 and Braidwood Station, Units 1 and 2 the Director, Office of Nuclear Reactor Regulation will issue an initial finding as to whether there have been "significant changes" under section 105c(2) of the Atomic Energy Act. A copy of this finding will be published in the **Federal Register** and will be sent to the Washington, D.C. and local public document rooms established for the Byron and Braidwood Stations and to those persons providing comments or information in response to this notice. If the initial finding concludes that there have not been any significant changes, requests for revaluation may be submitted for a period of 30 days after the date of the Federal Register notice. The results of any reevaluation that is requested will also be published in the **Federal Register** and copies sent to the Washington, D.C. and local public document rooms established for these plants.

A copy of the updated information for Antitrust Review for an Operating License Application is available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the local public document rooms located in the Rockford Public Library, (Byron), 215 N. Wyman Street, Rockford, Illinois 61103 and in the Wilmington Township Public Library, (Braidwood), 201 S. Kankakee Street, Wilmington, Illinois 60481.

Any person who desires additional information regarding the matter covered by this notice or wishes to have his views considered with respect to significant changes related to antitrust matters which have occurred in the licensee's activities since the construction permit antitrust review for the Byron Station, Unit 2 and Braidwood Station, Units 1 and 2 should submit such requests for information or reviews to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 Attention: Site Analysis Branch, Antitrust & Economic Analysis Section.

Office of Nuclear Reaction Regulation, on or before March 29, 1985.

Dated at Bethesda, Maryland this 20th day of February, 1985.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Branch Chief, Licensing Branch No. 1, Division of Licensing.

[FR Doc. 85-4907 Filed 2-27-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322-OL-4; Low Power—Remand; ASLBP No. 77-347-01D-0L]

Establishment of Atomic Safety and Licensing Board to Preside in Proceeding; Long Island Lighting Co.

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a new Atomic Safety and Licensing Board is being established in the following proceeding to preside over the remand proceeding involving the October 29, 1984 initial decision issued by the previous Licensing Board [1] which granted Long Island Lighting Company's March 20, 1984 "Supplemental Motion for Low Power Operating License" (LBP-84-45, 20 NRC 1343). On February 21, 1985, the Atomic Safety and Licensing Appeal Board remanded the case to the Licensing Board for further proceedings. ALAB-800, 21 NRC ——— (February 21, 1985).

Long Island Lighting Company

Shoreham Nuclear Power Station, Unit 1

(Low Power—Remand)

Construction Permit No. CPPR-95

This Board is being established pursuant to a notice published by the Commission on March 18, 1976 in the **Federal Register** entitled, "Receipt of Application for Facility Operating License, Availability of Applicant's Environmental Report; Consideration of Issuance of Facility Operating License; Opportunity for Hearing." 41 FR 11367-11368 (1976).

The Board is comprised of the following Administrative Judges:

James L. Kelley, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Glenn O. Bright, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Elizabeth B. Johnson, Oak Ridge National Laboratory, P.O. Box X, Building 3500, Oak Ridge, Tennessee 37830

Issued at Bethesda, Maryland, this 22nd day of February, 1985.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 85-4909 Filed 2-27-85; 8:45 am]

BILLING CODE 7590-01-M

[1] The members of the previous Licensing Board were Administrative Judges Marshall E. Miller, Glenn O. Bright and Elizabeth B. Johnson. Judge Miller plans to retire at the end of the month and will not be available to serve.

[Docket No. 40-8684]

Western Nuclear Incorporated; Final Finding of No Significant Impact Regarding the Renewal of Source and Byproduct Material License SUA-1337 for Operation of the Willow Creek Research and Development Site No. 1—Christensen Ranch In Situ Leach Project in Campbell County, WY

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of finding of no significant impact.

(1) *Proposed Action.* The U.S. Nuclear Regulatory Commission (the Commission) is issuing a renewed Source and Byproduct Material License SUA-1337 authorizing Western Nuclear, Inc. to perform research and development scale uranium in situ leach activities at their Christensen Ranch project site located in Campbell County, Wyoming.

(2) *Reasons for Finding of No Significant Impact.* The Commission's Uranium Recovery Field Office has prepared an environmental assessment for the proposed action. Based on this assessment, the Commission has determined that an environmental impact statement is not warranted for this particular action.

The environmental assessment performed by the Commission's staff evaluated potential impacts on surface and ground waters due to excursions, solar evaporation reservoir seepage and/or spills, and ground-water restoration. Additionally, the assessment evaluated potential on-site and off-site impacts due to radiological releases which may occur during the course of the proposed activities. Documents used in preparing the appraisal included the licensee's submittals of July 11, 1983, December 12, 1983, March 16, 1984, June 11, 1984, August 3, 1984, August 20, 1984, October 1, 1984, December 14, 1984, December 20, 1984, and January 3, 1985; U.S. NRC regulations and regulatory guides, and professional publications.

Based on these evaluations, the Commission's staff has determined that the proposed operations will not have a significant effect onthe quality of the human environment. Specific reasons for making this determination are as follows:

(a) Ground-water control and monitoring are sufficient for detecting either vertical or hoirzontal excursions.

(b) The solar evaporation reservoir will be lined with a synthetic membrane liner to prevent seepage of waste solutions into the subsurface. Additionally, the leak detection system beneath the liner is designed to detect any leakage which may occur to assure that corrective action is promptly taken.

(c) Radiological releases resulting from the proposed activities will be minimal and monitored closely to detect potential problems.

(d) Radioactive wastes resulting from the proposed activities will be disposed of at a licensed radioactive waste disposal site.

(e) The proposed restoration and reclamation plans should be sufficient to return affected lands and ground water to their pre-mining conditions. On a parameter-by-parameter basis, ground-water quality will be returned to as near to original quality as is reasonably achievable.

This finding, together with the environmental assessment setting forth the basis for the finding, is available for public inspection and copying at the Commission's Uranium Recovery Field Office located at 730 Simms Street, Suite 100, Golden, Colorado, and at the Commission's Public Document Room at 1717 H Street NW, Washington, D.C.

Dated at Denver, Colorado, this 19th day of February, 1985.

For the Nuclear Regulatory Commission.

Edward F. Hawkins,

Chief, Licensing Branch 1, Uranium Recovery Field Office, Region, IV.

[FR Doc. 85-4908 Filed 2-27-85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Revised Notice of Meeting

This revised **Federal Register** Notice reflects changes in the conduct of the 299th ACRS meeting previously announced in the **Federal Register** on January 23, 1985 to provide for discussion not open to the public during the ACRS' consideration of an ACRS member's outside activities as a

nongovernment employee and their impact on his activities as an ACRS member and to reflect changes in the schedule.

The revised agenda for the subject meeting will be as follows:

Thursday, March 7, 1985

8:30A.M.–8:45 A.M.: Report of ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest to the Committee.

8:45 A.M.–9:00 A.M.: Emergency Core Cooling Systems (Open)—The Committee will hear and discuss a report of its subcommittee regarding proposed changes in 10 CFR 50.46, acceptance criteria for emergency core cooling systems for light water nuclear power reactors, and proposed changes in the upper head injection system for a PWR nuclear plant. Representatives of the NRC staff and the licensee will participate, as appropriate.

9:00 A.M.–10:00 A.M.: Management and Disposal of Radioactive Wastes (Open)—The members will hear and discuss the report of its Waste Management Subcommittee regarding proposed changes in NRC regulations (10 CFR Part 60) regarding disposal of high level radioactive wastes in geologic repositories. Representatives of the NRC Staff will participate as appropriate.

10:A.M.–12:15 P.M.: Evaluation of Nuclear Facility Accidents (Open)—The members will discuss proposed ACRS comments regarding the need for an NTSB-type organization to review nuclear power plant accidents and the ACRS role in accident evaluation.

12:15 P.M.–12:30 P.M.: Activities of ACRS Members (Closed)—The members will discuss nongovernment activities of ACRS members.

Portions of this session will be closed as required to discuss information the release of which would represent an unwarranted invasion of personal privacy.

1:30 P.M.–5:30 P.M.: Nine Mile Point Nuclear Plant, Unit 2 (Open/Closed)—The Committee will hear and discuss the report of its subcommittee and reports of representatives of the NRC Staff and the Applicant regarding the request for an operating license for this facility.

Portions of this session will be closed as required to discuss Proprietary Information applicable to this facility and details of the provisions for plant security.

I have determined in accordance with subsection 10(d) Pub. L. 92–463 that it is necessary to close portions of this meeting as noted above to discuss safeguards information [5 U.S.C. 552b(c)(3)], Proprietary Information [5 U.S.C. 552b(c)(4)]; and information the release of which would represent an unwarranted invasion of personal privacy [5 U.S.C. 552b(c)(6)].

Dated: February 22, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–4906 Filed 2–27–85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Form 6–K
No. 270–107

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form 6–K which serves as a periodic report form for foreign private issuers subject to the reporting requirements of the Securities Exchange Act of 1934.

The form provides information on a periodic basis permitting investors to make informed judgements on the performance of plan investment vehicles.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20502.

John Wheeler,

Secretary.

February 22, 1985.

[FR Doc. 85–4915 Filed 2–27–85; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Form 18–K
No. 270–108

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form 18–K which serves as an annual report form for foreign governments and political subdivisions subject to the reporting requirements of the Securities Exchange Act of 1934.

The form provides information on an annual basis permitting investors to make informed judgments on the performance of plan investment vehicles.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

February 22, 1985.

[FR Doc. 85–4916 Filed 2–27–85; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Form F–3
No. 270–251

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form F–1, Securities Act of 1933 registration form for securities of certain foreign private issuers.

The form provides a basis for the Commission to fulfill its statutory responsibility of requiring the filing of a registration statement making publicly available information regarding such securities.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

February 22, 1985.

[FR Doc. 85–4917 Filed 2–27–85; 8:45 am]

BILLING CODE 8010-01-M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Form F–1

No. 270–249

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form F–1, Securities Act of 1933 registration form for securities of foreign private issuers.

The form provides a basis for the Commission to fulfill its statutory responsibility of requiring the filing of a registration statement making publicly available information regarding such securities.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

February 22, 1985.

[FR Doc. 85–4918 Filed 2–27–85: 8:45 am]

BILLING CODE 8010–01–M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Form F–2

No. 270–250

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form F–2, Securities Act of 1933 registration form for securities of certain foreign private issuers.

The form provides a basis for the Commission to fulfill its statutory responsibility of requiring the filing of a registration statement making publicly available information regarding such securities.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

February 22, 1985.

[FR Doc. 85–4919 Filed 2–27–85: 8:45 am]

BILLING CODE 8010–01–M

Form Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, Washington, D.C. 20549.

Form 18

No. 270–105

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission has submitted for an extension of clearance Form 18 which serves as a registration form for foreign governments and political subdivisions subject to the reporting requirements of the Securities Exchange Act of 1934.

The form provides information permitting investors to make informed judgments on the performance of plan investment vehicles.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395–7231, Office of Information and Regulatory Affairs, Room 3235 NEOB, Washington, D.C. 20503.

John Wheeler,

Secretary.

February 22, 1985.

[FR Doc. 85–4920 Filed 2–27–85: 8:45 am]

BILLING CODE 8010–01–M

[File No. 22–13635]

Application and Opportunity for Hearing; ACF Industries, Inc.

February 25, 1985.

Notice is hereby given ACF Industries, Inc. (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Mercantile-Safe Deposit and Trust Company ("Mercantile") under an existing Equipment Trust Agreement heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Mercantile from acting as trustee under another proposed Equipment Trust Agreement.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in such Section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of such Section provides that, with certain exceptions, a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture under which other securities of the same obligor are outstanding, if the obligor shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that the trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee frm acting as trustee under any of such indentures.

The Applicant alleges that:

(1) Applicant, a New Jersey corporation, on December 21, 1984, in a private placement sold $63,000,000 aggregate principal amount of Equipment Trust Certificates Series P, under an Equipment Trust Agreement dated December 15, 1984, between the Applicant and Mercantile as trustee.

(2) Under a related Registration Rights Agreement dated December 21, 1984, Applicant agreed with the purchasers of the Series P Certificates to file on or prior to April 15, 1985, a registration statement to register the Series P Certificates pursuant to Rule 415 under the 1933 Act.

(3) As of February 14, 1985, the Applicant has outstanding $9,500,000 principal amount of its Equipment Trust Certificates, Series B, issued under an Equipment Trust Agreement dated as of March 20, 1973, between the Applicant and Mercantile as trustee, qualified under the Act. In November, 1984, Applicant privately placed $50,000,000 of Certificates of Interest under a Conditional Sale Agreement which was not qualified under the Act with Mercantile named as Agent, however, Mercantile gave notice on February 12, 1985 of its resignation as Agent.

(4) The Equipment Trust Certificates issued under the Series B Trust Agreement and the Series P Equipment Trust Certificates for which Mercantile is acting as trustee, are each secured by separate lots of identified railroad cars (and, in the case of the Series P Certificates, by the leases on such railroad cars and the proceeds of such leases). A default entitling the trustee to accelerate the maturity of either Series would trigger a similar default for the other series. In the event that the trustee

should have occasion to enforce its security interest under either Agreement, such action would not affect the Trustee's security interest, or its ability to enforce such other security interest, under the other Agreement. Accordingly, the existence of the two trusteeships should in no way inhibit or discourage the actions of Mercantile as trustee under either Agreement.

(5) The applicant is not in default under any of its Equipment Trust obligations.

(6) Such differences as exist between the two Equipment Trust Agreements are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Mercantile from acting as trustee under either of said Equipment Trust Agreements.

The applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, NW., Washington, D.C. 20459.

Notice is further given that any interested persons may, not later than March 19, 1985, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application which he desires to controvert. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and in the interest of investors.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-4921 Filed 2-27-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

February 22, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Staley Continental Inc.
Common Stock, No Par Value, File No. 7-8318

Logicon, Inc.
Common Stock, $.10 Par Value, File No. 7-8319

United Stockyards Corporation
Common Stock, $.01 Par Value, File No. 7-8320

First Interstate Bancorp
Series A Convertible Preferred Stock, No. Par Value, File No. 7-8321

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4914 Filed 2-27-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

February 22, 1985.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Comdisco, Inc.
Common Stock, $.10 Par Value, File No. 7-8316

Paine Webber Group, Inc.
$2.25 Conv. Exch. Pfd. Stock, File No. 7-8317

Am International, Inc.
Common Stock, No Par Value, File No. 7-8322

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before March 15, 1985, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-4913 Filed 2-27-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/827]

Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on March 19, 1985 in Room 521J of the National Aeronautics and Space Administration, 600 Independence Avenue, SW., Washington, D.C. The meeting will begin at 9:30 a.m.

Study Group 2 deals with matters relating to the communications for scientific satellites, space probes, spacecraft, exploration satellites (e.g., meteorological and geodetic) and to interference problems concerning the radio astronomy and radar astronomy services. The purpose of the meeting is to discuss preparations for the

international meeting of Study Group 2 in September, 1985.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman.

Requests for further information should be directed to Mr. Richard E. Shrum State Department, Washington, D.C. 20520, telephone (202) 632–2592.

Dated: February 20, 1985.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 85–4897 Filed 2–27–85; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–81825]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 21, 1985 at 9:30 a.m., Conference Room 10AB, AT&T Building, 1120 20th Street, NW., Washington, D.C.

The meeting will be concerned with optical fibers.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Requests for further information should be directed to Mr. Earl Barbely, State Department, Washington, D.C. 20520; telephone (202) 632–3405.

Dated: February 21, 1985.

John T. Gilsenan,

Acting Director, Office of International Communications Policy.

[FR Doc. 85–4895 Filed 2–27–85; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/824]

Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Group C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on April 2, 1985 at 9:30 a.m., Room 1408, Department of State, 2201 C Street, NW., Washington, D.C.

The meeting will be concerned with video teleconferencing.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. It is requested that prior to the meeting, persons who plan to attend, so advise the office of Mr. Earl Barbely, Department of State; telephone (202) 632–3405. All attendees must use the C Street entrance to the building.

Dated: February 21, 1985.

John T. Gilsenan,

Acting Director, Office of International Communications Policy.

[FR Doc. 85–4894 Filed 2–27–85; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–81826]

Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on March 21, 1985 at the Holiday Inn-Surfside Hotel, Clearwater Beach, Florida. The meeting will begin at 8:30 a.m. This Working Party deals with matters in telecommunications relating to the development of international digital data transmission.

The purpose of the meeting is to prepare for the meeting of international CCITT Study Group XVII in April, 1985. In particular, the group will review the special Rapporteurs Report concerning a 14.4 kilobit-per-second modem recommendation.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Requests for further information may be directed to Mr. Earl Barbely, State Department, telephone (202) 632–3405 or Mr. T. de Haas, Chairman of U.S. Study Group D, Department of Commerce, Boulder, Colorado, telephone (303) 497–3728.

Dated: February 21, 1985.

John T. Gilsenan,

Acting Director, Office of International Communications Policy.

[FR Doc. 85–4896 Filed 2–27–85; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 6–85]

Treasury Notes of May 15, 1990; Series J–1990

February 21, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,000,000,000 of the United States securities, designated Treasury Notes of May 15, 1990, Series J–1990 (CUSIP No. 912827 RY 0), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securites

2.1. The Notes will be dated March 1, 1985, and will accrue interest from that date, payable on a semiannual basis on November 15, 1985, and each subsequent 6 months on May 15 and November 15 through the date that the principal becomes payable. They will mature May 15, 1990, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that my be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Standard Time, Tuesday, February 26, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, February 25, 1985, and received no later than Friday, March 1, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a spcified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not acceped in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Friday, March 1, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Wednesday, February 27, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Friday, March 1, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying number)". Specific

instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., and individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-4898 Filed 2-25-85; 3:35 pm]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 40
Thursday, February 28, 1985

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).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, Feburary 25, 1985, the Corporation's Board of Directors determined, on motion of Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), seconded by Director Irvine H. Sprague (Appointive), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of a notice of acquisition of control (name and location of bank and names of acquiring parties authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii))).

The Board further determined, by the same majority vote, that no earlier notice of this change in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: February 25, 1985.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-4961 Filed 2-26-85; 12:05 pm]
BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting.

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, March 4, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 25, 1985.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 85-4950 Filed 2-28-85; 11:32 am]
BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, March 4, 1985, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Discussion Agenda

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: February 25, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-4951 Filed 2-26-85; 11:32 am]

BILLING CODE 6714-01-M

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FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, March 5, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, March 7, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC. (Fifth Floor.)

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings
Correction and approval of minutes
Eligibility for candidates to receive Presidential primary matching funds
Draft advisory opinion #1985-8; Marty Russo, U.S. House of Representatives
1985 Legislative recommendations
Sunshine regulations: Second notice of proposed rulemaking and announcement of hearing date
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-5028 Filed 2-26-85; 2:25 pm]

BILLING CODE 6715-01-M

5

FEDERAL RESERVE SYSTEM; BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, March 6, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, 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. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: February 26, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-5042 Filed 2-26-85; 3:52 pm]

BILLING CODE 6210-01-M

6

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The meeting will commence at 8:30 a.m., Thursday, March 7, 1985 and recess at 9:00 a.m. The meeting will resume at 9:00 Friday, March 8, 1985 and continue until all official business is completed.

PLACE:

March 7th—Ramada Renaissance Hotel, 1143 New Hampshire Ave. NW., La Martine Room, Washington, D.C. 20037
March 8th—Legal Services Corporation Headquarters, 733 Fifteenth Street, NW., Eighth Floor Conference Room, Washington, D.C. 20005

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act (5 U.S.C. 552b(c)(2), (6), (7), (9), (B), and (10) and 45 CFR 1622.5(a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —January 25, 1985
3. Report from Interim Corporation President
4. Report from Special Committee on Presidential Search
5. Action on Recommendations of the Appropriations and Audit Committee
   —Reconsideration of Line Item Allocations in FY '86 Appropriations Request
6. Action of Recommendations of the Operations and Regulations Committee
   —45 CFR Part 1601 (By-Laws)
   —45 CFR Part 1612 (Lobbying)
   —45 CFR Part 1614 (Private Attorney Involvement)
   —45 CFR Part 1620 (Priorities)
   —45 CFR Part 1622 (Sunshine Act)

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

DATE ISSUED: February 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-5061 Filed 2-26-85; 4:47 am]

BILLING CODE 6820-35-M

7

LEGAL SERVICES CORPORATION COMMITTEE ON APPROPRIATIONS AND AUDIT

TIME AND DATE: The meeting will commence at 3:30 p.m. on Thursday, March 7, 1985 and continue until all official business is completed.

PLACE: Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., La Martine Room, Washington, D.C. 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Draft Minutes
   —February 21, 1985
3. Reconsideration of Line Item Allocations in FY '86 Appropriations Request

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

DATE ISSUED: February 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-5062 Filed 2-26-85; 4:47 pm]

BILLING CODE 6820-35-M

8

LEGAL SERVICES CORPORATION, OPERATIONS AND REGULATIONS COMMITTEE

TIME AND DATE: Meeting will commence at 9:00 a.m. and continue until 1:00 p.m., Thursday, March 7, 1985. If all official business has not been completed, the meeting will be recessed and resume March 8th after completion of the Board of Directors meeting.

PLACE:

March 7th—Ramada Renaissance Hotel, 1143 New Hampshire Ave., NW., La Martine Room, Washington, D.C. 20037
March 8th—Legal Services Corporation Headquarters, 733 Fifteenth Street, NW., Eighth Floor Conference Room, Washington, D.C. 20005

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —February 22, 1985
3. Report from the Office of General Counsel
   —45 CFR Part 1612 (Lobbying)
   —45 CFR Part 1614 (Private Attorney Involvement)
   —45 CFR Part 1620 (Priorities)
4. Recommendations to full Board on above cited regulations Adopted after April 27, 1984
5. Other Regulations

CONTACT PERSON FOR MORE INFORMATION: Dennis Daugherty, Executive Office, (202) 272-4040.

DATE ISSUED: February 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-5063 Filed 2-26-85; 4:47 pm]

BILLING CODE 6820-35-M

9

LEGAL SERVICES CORPORATION SPECIAL COMMITTEE ON PRESIDENTIAL SEARCH

TIME AND DATE: Meeting will commence at 1:00 p.m. and continue until 3:00 p.m. or all official business is completed, Thursday, March 7, 1985.

PLACE: Ramada Renaissance Hotel, 1143 New Hampshire Avenue, NW., La Martine Room, Washington, D.C. 20037.

STATUS OF MEETING: Open [Portion of meeting may be closed to discuss matters related to Presidential Search as authorized under The Government in the Sunshine Act (5 U.S.C. 552b(c)(2), (6) and (9)(B)) and 45 CFR 1622.5(a), (e), and (g) and 1622.6(b).]

MATTERS TO BE CONSIDERED:

1. Adoption of Agenda
2. Adoption of Draft Minutes —February 22, 1985
3. Report of the Special Counsel
4. Recommendations from Public on Criteria for Selection of President
5. Matters related to Presidential Search (may be closed)

CONTACT PERSON FOR MORE INFORMATION: Tim Baker, Office of General Counsel, (202) 272-4010.

DATE ISSUED: February 26, 1985.

Dennis Daugherty,

Acting Secretary.

[FR Doc. 85-5064 Filed 2-26-85; 4:47 pm]

BILLING CODE 6820-35-M

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TENNESSEE VALLEY AUTHORITY

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 7444 (February 22, 1985).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:15 a.m. (EST), Tuesday, February 26, 1985.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

ADDITIONAL MATTER: The following item is added to the previously announced agenda:

F. Unclassified

10. Supplement No. 1 to Contract No. TV-60000A with the Tellico Reservoir Development Agency

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call 615-632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office, 202-245-0101.

SUPPLEMENTARY INFORMATION:

TVA Board Action

The TVA Board of Directors has found, the public interest not requiring otherwise, that TVA business requires the subject matter of this meeting be changed to include the additional item shown above and that no earlier announcement of this change was possible.

The members of the TVA Board voted to approve the above findings and their approvals are recorded below:

C.H. Dean, Jr.,

Director and Chairman.

Richard M. Freeman,

Director.

John B. Waters,

Director

Dated: February 25, 1985.

[FR Doc. 85-4962 Filed 2-26-85; 12:05 pm]

BILLING CODE 8120-01-M

federal register

Thursday
February 28, 1985

Part II

Environmental Protection Agency

40 CFR Parts 220, 227, 228 and 234
Ocean Incineration Regulation; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 220, 227, 228, and 234

[FRL-2698-5]

Ocean Incineration Regulation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify the provisions in the Ocean Dumping Regulations (40 CFR Parts 220–228) to the extent that the Ocean Dumping Regulations govern the issuance of ocean incineration permits and the designation and management of ocean incineration sites. EPA is taking this action to propose more specific criteria to regulate ocean incineration activities. Explicit information is included in the proposed rule on the contents of a permit application, on the permit processing procedures, on how EPA would review the application, and on the performance standards and operating requirements to be imposed in a permit.

DATE: Written public comments should be submitted by May 29, 1985.

ADDRESS: Criteria and Standards Division (WH–585), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Marjorie A. Pitts, (202) 755–0100.

SUPPLEMENTARY INFORMATION:

Introduction

The rule that the U.S. Environmental Protection Agency (EPA) is proposing today would regulate the incineration of liquid wastes at sea. The proposed rule is being developed under the authority of the Marine Protection, Research, and Sanctuaries Act (MPRSA or the Act) of 1972 as amended (33 U.S.C. 1401 *et seq.*) and would modify the Ocean Dumping Regulations found in 40 CFR Parts 220–228, to the extent that the Ocean Dumping Regulations apply to the incineration of liquid wastes at sea. Where appropriate, the Agency has incorporated sections of the existing Ocean Dumping Regulations into this proposed rule. Changes are proposed for the ocean incineration permitting process and specific criteria are proposed for EPA to use in reviewing and evaluating ocean incineration permit applications. These regulations would also govern the designation of specific geographic areas to be used for ocean incineration. Generally, the Agency is proposing the same procedures and requirements established in the existing Ocean Dumping Regulations (40 CFR Part 228) in designating ocean incineration sites. However, in addition to the existing requirements, the Agency is proposing to add a new provision which defines how it would regulate the use of an incineration site based on the site's carrying capacity for specific incineration emissions and on a site-specific environmental monitoring program.

The Incineration Process

Incineration of liquid wastes is a process that uses high-temperature thermal oxidation to reduce the volume of the wastes and to convert the residues (emissions) to minute quantities of less hazardous materials. Incineration of simple, non-halogenated wastes involves the oxidation of the carbon and hydrogen atoms present in organic materials into carbon dioxide and water. For example:

$$CH_4 + 2O_2 = CO_2 + 2H_2O$$

If conditions for complete combustion are not present, carbon monoxide is also formed, but this product can be minimized by appropriate controls on temperature, turbulence and oxygen. As a result, the persence of an excessive amount of carbon monoxide in the flue gas is commonly used as a measure of process upset.

In general, however, the residues (emissions) of incineration vary with the wastes that are burned, the design of the incinerator and its operational characteristics. Many industrial processes generate liquid hazardous wastes containing halogenated materials, with chlorinated compounds being the most common. When chlorinated organic compoundds are combusted, the residues (emissions) will include hydrogen chloride and small amounts of chlorine, as well as carbon dioxide and water. Other liquid hazardous wastes may contain metals, sulfur, or organically bound nitrogen and produce, when incinerated, oxides of metals, sulfur, and nitrogen.

In addition, all combustion sources from small amounts of other substances which are known collectively as products of incomplete combustion (PICs). PICs may be similar to or very different in chemical structure from the original constituents of the mixture incinerated.

An important consideration in incineration is the heating value of the wastes. To maintain stable combustion, the heat released by combustion must also heat incoming waste to its ignition temperature and provide the activation energy for oxidation reactions to occure. The heating value of a waste normally decreases as the percentage of water increases and as the percentage of chloreine by weight in the organic compounds increases. Liquid wastes, with low heating values may require auxiliary fuel or blending with wastes that have higher British thermal unit (Btu) values. As a practical matte, commercial operators incinerating wastes from a variety of sources will blend wastes to produce optimum values for Btu, chlorine, water, and other contents.

While incineration has long been practiced on land, incineration onboard specially equipped vessels has only been performed in Europe since 1969, where industrial organochlorine wastes are routinely incinerated-at-sea. Currently, there are two different types of vessel operations that have been used or are being considered for incineration-at-sea. The first type employs a double hulled, double bottomed vessel that has several independent compartments into which the wastes are pumped and stored prior to incineration. The cargo capacity of these vessels range from 800,000 gallons (3,500 metric tons) to 1,300,000 gallons (6,000 metric tons). The second type of operation being considered would make use of a vessel or of an oceangoing barge which would be towed by a tug and would carry mobile stainless steel tank containers. The wastes would be pumped into containers at the waste generator's site and then the containers would be transported by truck or rail and lifted on-board the vessel or barge by container cranes without further pumping of the wastes. The known cargo carrying capacity of this type of operation would be approximately 750,000 gallons (3,400 metric tons).

Both of these operations use liquid injection incinerators mounted on the stern of the vessel. There are normally two or three incinerators on a vessel with each of the incinerators having an average incineration capacity of between 1,650 gallons per hour (7½ metric tons per hour) and 2,750 gallons per hour (12½ metric tons per hour).

One type of incinerator has three rotary cup vortex burners which introduces the wastes into a cylindrical, refractory-lined combustion chamber in the form of the fine droplets where it is combusted. The other type of incinerator is equipped with four burners which in conjunction with four air atomizers introduces the wastes into a cylindrical,

refractory-lined combustion chamber in fine droplets where it is combusted.

History of U.S. Ocean Incineration Activities

Since 1974, four series of burns have been conducted in the United States under the Ocean Dumping Regulations. Between October 1974, and January 1975, 16,800 metric tons of organo-chlorine wastes from the Shell Chemical Company Deer Park manufacturing complex were incinerated in the Gulf of Mexico. In October 1976, Shell was issued a permit to incinerate up to 50,000 metric tons of mixed wastes at the Gulf Incineration Site. Approximately 29,100 metric tons of wastes were actually incinerated. In 1977, the U.S. Air Force incinerated its stock of Herbicide Orange at a site 322 kilometers west of Johnston Atoll in the Pacific Ocean. The last series of burns were performed in 1981 and 1982 when liquid PCB wastes were incinerated at the Gulf Incineration Site under a research permit issued to Chemical Waste Management, Inc. and Ocean Combustion Services, B.V.

Chemical Waste Management, Inc. and Ocean Combustion Services, B.V. submitted an application for a special permit on July 10, 1981, and an application for a research permit on November 2, 1981. Public meetings were held in Brownsville, Texas, May 25, 1982, and in Mobile, Alabama, May 27, 1982, to discuss the permit requests and the preliminary results of their first research burn on PCBs. On August 31, 1982, a public hearing was held in Brownsville, Texas to receive formal comments on the permits. Subsequent to the public hearing and after considering the hearing record, the Agency decided to revise its approach in developing the conditions for the proposed permits.

On October 17, 1983, EPA made a new tentative determination to issue the Special and Research permits to Chemical Waste Management and Ocean Combustion Services. A public hearing was held in Brownsville, Texas on November 21, 1983, and another hearing was held in Mobile, Alabama, the evening of November 22, 1983, and the morning of November 23, 1983. Six thousand four hundred eighty-eight (6,488) people registered at those two public hearings.

By the close of the comment period on January 31, 1984, EPA had received 2,039 letters and postcards on the proposed permits. While most of the comments were from the Gulf Coast Region, there were comments from 41 States and the District of Columbia.

On May 23, 1984, the Assistant Administrator for Water issued his decision not to grant the permits to Chemical Waste Management and Ocean Combustion Services. That decision was based on:

(a) The deficiencies in information considered by the Agency in determining the need for incineration-at-sea;

(b) The lack of specific criteria regulating incineration-at-sea; and

(c) The fact that the research permits recommended by the Hearing Officer departed significantly from the original research permit and thus had never been the subject of a tentative determination, of a pubic hearing or, of public comment.

While the Assistant Administrator denied the permits, he did not rule out future ocean incineration. Rather, he deferred permit issuance until a more deliberative approach had been developed for ocean incineration. To that end, he directed his staff to develop a research strategy that would respond to the needs of the program and to propose specific regulations for ocean incineration. A draft of the Research Strategy was discussed at a public meeting on November 13, 1984. The Strategy is being revised based on the comments received and will be published separately at a later date.

The rules proposed today provide a framework for the ocean incineration program. EPA developed these proposed rules by applying the Agency's experience in permitting and monitoring land-based incineration facilities and ocean incineration vessels. In addition, the United States, as a Contracting Party to the Convention on the Prevention of Marine Pollution by Dumping of Waste and other Matter (London Dumping Convention or LDC), is bound by the Annexes to that Convention and the "Regulations for the Control of Incineration of Waste and Other Matter at Sea" (Regulations) and is required "to take full account of" the "Technical Guidelines" to the extent the requirements of the Act are not relaxed. The Agency also used the extensive public comments on the Tentative Determination To Issue Special and Research Permits to Chemical Waste Management (48 FR 48986, October 21, 1983) in preparing this proposed rule.

Prior to explaining the provisions of the rule proposed today, the following topics of general interest which are not specifically addressed in the proposed regulation will be discussed. These topics include: EPA's Incineration Study; the Agency's Environmental Impact Statement (EIS) policy on this rule; and transportation and loading issues.

Incineration Study

EPA recognizes that many people have questions concerning: the environmental effect of incinerating liquid wastes at sea; the risks of incinerating-at-sea as compared to incinerating on land; the risk involved in the transportation and loading activities that support incineration-at-sea, particularly the risk of a catastrophic spill; and the determination of a need for incineration-at-sea which the Agency must make prior to issuing a permit. To examine these questions, the Agency initiated an Incineration Study.

The Incineration Study is intended to provide a sound analysis of the technical, economic and environmental benefits of and problems with incineration to better inform Agency decisionmakers who must regulate the disposal or treatment of liquid organic hazardous wastes. Ocean and land-based incineration are being assessed equally with respect to capability, risks, and economics in order to be able to make comparisons between the two technologies. Newer technologies with potential for treating or disposing of liquid hazardous wastes (such as high temperature pyrolysis, plasma arc treatment, molten glass incineration, and chemical and biological treatment and fixation) are being assessed to determine their commercial viability and, if commercially viable, when the technology might become competitive. Other methods in use to treat or dispose of these wastes (such as landfilling or deep-well injection) are being examined only as necessary to understand their effects on and relationship to incineration.

The analyses included in the Incineration Study will identify and quantify the risks of land-based and ocean incineration, will discuss the efficacy of the technology, and the capacity of existing incineration facilities to meet present and future demand for incineration under different regulatory scenarios. The regulatory scenarios that will be examined include potential restrictions on the land disposal and deep well injection of hazardous wastes, the use of hazardous wastes in industrial boilers and furnaces and the reduction of the small hazardous waste generator exemption. The Incineration Study along with other materials prepared in the past and noted in the bibliography (Appendix B of this document) should provide background to the pubic necessary for them to comment on the merits of this proposed rule. The Study should put into context the risks and uncertainties about ocean

incineration as compared to the land-based alternatives available.

Many people questioned the prudence of publishing this proposed rule prior to the Agency completing the Incineration Study. The Agency discussed this and concluded that since the Incineration Study is focusing on a general comparison of land and at sea incineration, the Study's results should not significantly affect the results of the proposed rule nor may of the specific requirements contained therein. Therefore, EPA decided that it was more efficient to proceed simultaneously with both the development and proposal of this regulation and with the preparation of the Study.

The Incineration Study is expected to be completed in March 1985 and will be made available to the public. EPA is providing a 90 day comment period on this proposed rule in order to give the public an opportunity to study the analyses in the Incineration Study as it evaluates this proposed rule. Should publication of the Study be delayed, the comment period on this rule will be extended. The public will thus have ample opportunity to evaluate this rule in light of the Study's conclusions. Of course, prior to promulgating the final Ocean Incineration Regulation, the results of the Incineration Study as well as public comment on this proposed rule will be carefully evaluated.

Environmental Impact Statement (EIS) Policy

In 1974 EPA published a voluntary environmental impact statement (EIS) policy (39 FR 16186, May 7, 1974) that identified a number of programs for which an EIS would be prepared, including the criteria that EPA would use in regulating incineration-at-sea. This policy made clear that although EPA has no legal obligation under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) to prepare and EIS for the listed activities, including the criteria that the Agency would establish for evaluating incineration-at-sea permit applications under section 102(C) of MPRSA, EPA had nonetheless chosen to do so in the interest of providing a thorough environmental assessment of its proposals which could be more easily evaluated by the public.

Consistent with that policy, the U.S. Department of State and the EPA jointly prepared an EIS on the amendments to Annexes I and II of the London Dumping Convention which established international regulations for the incineration of wastes at sea. A *Draft EIS for the Incineration of Wastes at Sea under the 1972 London Dumping Convention* was made available, October 4, 1978, and a *Final EIS*, February 4, 1979. The EIS was based on environmental studies conducted while negotiations were underway within the LDC which led to the LDC regulations and technical guidelines. These studies found only a few minor changes in air and water quality resulting from incineration at a burn site. Analyses of sea water samples for organochlorines during incineration showed values below the 0.5 parts per billion (ppb) limit of detection. Water samples collected at test and control stations showed no significant differences in trace metals between the two stations. Aerial monitoring showed that the maximum concentration of hydrogen chloride in the air five miles downwind of the burn site was on the order of 0.1 parts per million (ppm), which is much lower than the 5 ppm standard necessary to protect human health. Eight miles downwind the concentration was below detection limits—lower than the concentration of other acidic components allowed under the most stringent air standards for either SO_x or NO_x. At a distance greater than 10 miles, the effect would be even less with continued dispersion and neutralization of that hydrogen chlorine which contacts the ocean or reacts with naturally occurring ammonia (20 ppb) in the atmosphere. For these reasons, the EIS indicated, the acidity of rainfall on coastal locations would not be increased due to at sea incineration at the Gulf Incineration Site.

The biological specimens (phytoplankton and zooplankton) showed no deleterious or subtile adverse impacts based on an examination of chlorophyll-a (an indicator of phytoplankton activity) levels, and adenosine triphosphate (ATP) levels in the specimens. Various fish species exposed to the plume showed an elevation in the activity of P-450 enzymes. However, when the exposed fish were left in clean sea water for a few days, the enzyme activity returned to that of control organisms.

The EIS also evaluated the environmental damage that might result were a spill to occur. A major spill near shore affecting an estuary would destroy many organisms (including bottom-living forms) and contaminate the area for a substantial period of time. A spill on the continental shelf could have a significant short-term impact on local organisms; however, as the wave and current actions would greatly disperse the contaminants and the large volume of water would dilute the contaiminants, the long-term impacts at the spill site would be signficantly reduced. The EIS pointed out, however, that the probability of accidental discharges is significantly reduced because of the regulations and design standards which control the transfer and the transport of chemicals in bulk. Based on this EIS, EPA concluded that the overall environmental impact of incineration-at-sea would be negligible when conducted under the LDC criteria and standards.

Over the years since the issuance of the EIS, the Agency has considered and made available to the public a substantial amount of data and information on the environmental effects of incineration-at-sea. A list of these publications is included in Appendix B to this **SUPPLEMENTARY INFORMATION** section. To supplement this environmental information, EPA is nearing completion of the Incineration Study which will further evaluate the risks involved in incineration-at-sea. The results of this Study and public comments on its will be carefully considered before promulgating a final regulation. Further, the various alternatives which were considered in the development of this proposed rule are for the most part more stringent than the Regulations of the London Dumping Convention and are discussed in this **SUPPLEMENTARY INFORMATION** section. As always, EPA has provided and will continue to provide extensive public involvement in this rulemaking process.

In light of all of this, EPA does not believe that preparing a new EIS on the proposed Regulation would add in any significant way to the Agency's decisionmaking process or the public's understanding of the issues and environmental affects of incineration-at-sea. It is therefore rescinding the applicability of the Agency's voluntary EIS policy with respect to this proposed rule.

EPA has retained the requirement in the existing Ocean Dumping Regulations (40 CFR 228.6(b)) that the Agency prepare an environmental impact statement of Ocean incineration sites proposed as part of a formal rule making process to the extent that such a statement is required by EPA policy.

Transportation and Loading Issues

The public has raised numerous concerns about the transportation, both on land and at sea, of the hazardous wastes intended for incineration-at-sea. With respect to issues concerning land transportation of hazardous wastes, EPA relies heavily on the experience and expertise of the U.S. Department of Transportation (DOT), which is primarily responsible for regulating the

transport of all types of materials, including hazardous wastes. DOT's regulations address risks inherent in all forms of land transportation of wastes across the public highways. These risks exist regardless of the proposed method of disposal, be it land-based (including transport to impoundments or land-based incineration facilities) or ocean incineration.

All aspects of tank truck transportation of hazardous wastes are subject to extensive regulation by DOT under the Hazardous Materials Transportation Act, 49 U.S.C. 1801 *et seq.* and detailed implementing regulations found in 49 CFR Parts 171–179. These regulations require the development of an operating plan which is quite detailed and covers such matters as driver qualification, schedules and routes to be followed, emergency response procedures, truck construction and maintenance and financial responsibility.

In addition to DOT requirements, the transportation of hazardous wastes is subject to regulations promulgated under the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 *et seq.*) in 40 CFR Part 263. RCRA requirements include a manifest and reporting system to ensure close tracking of wastes being transported. They also require that in the event of a discharge of the wastes during transport, the transporter must take immediate action to clean up the discharge and protect against any hazards to human health and the environment.

EPA has determined that controls imposed by programs specially designed and experienced in the area of land transportation are best able to provide protection against environmental risks during that phase of ocean incineration activities. It was not the intent of the MPRSA to require EPA to exercise more specific control over the complex issues of land transportation of hazardous wastes, thereby second guessing the experienced judgment of those regulatory programs whose principal focus, particularly in the case of DOT, is the regulation of transportation of hazardous wastes. Therefore, this rule does not address the land-based transportation activities associated with ocean incineration.

Another area of concern are the transfer facilities where wastes are stored prior to loading onto the vessel. Wastes stored for 10 days or more require a RCRA permit (40 CFR 264.1(g)(9)). Where wastes are stored at a waterfront transfer facility, the transfer activities conducted at the facility are subject to comprehensive control under regulations promulgated by the U.S. Coast Guard. The specific U.S. Coast Guard regulations are discussed later in this **SUPPLEMENTARY INFORMATION** section. These regulations address, among other requirements, conditions which must be met for the designation of a waterfront facility for the handling and loading of hazardous substances (33 CFR Part 126).

The risk associated with the loading of wastes onto a vessel is another area of concern raised by the public in previous permit issuance proceedings. In general, EPA believes that loading activities like land transportation should be regulated by the agency with special expertise in the area. The U.S. Coast Guard Captain of the Port (COTP) has the authority under 33 CFR Part 126 to regulate the handling, storage, and vessel loading and discharging of hazardous materials including any flammable or combustible liquid in bulk at waterfront facilities. Thus, the COTP regulates the storing, handling and loading or unloading of hazardous wastes for incineration-at-sea. The COTP under 33 CFR Part 156 has the authority to establish procedures for transfer of oil, including oil containing hazardous wastes, to or from a vessel on the navigable waters or contiguous zone. The COTP inspects facilities and vessels and monitors oil transfer operations between facilities and vessels to ensure compliance with the pollution prevention regulations in 33 CFR Parts 154–156. EPA does not propose to incorporate all these U.S. Coast Guard requirements as conditions in a permit since the U.S. Coast Guard is best able to monitor and enforce its own requirements that permittees must meet. However, the U.S. Coast Guard may recommend specific requirements to be included in a permit.

Although U.S. Coast Guard regulations are the primary means of regulating port loading activities, EPA also believes that some consideration should be given to loading activities under the ocean incineration program. Therefore, in addition to the requirements imposed by U.S. Coast Guard regulations, EPA is proposing that the applicants submit, as part of their applications, a contingency plan (see § 234.19) which among other things, outlines detailed safety precautions to be taken to prevent an accident during loading. These precautions are designed to significantly minimize the likelihood that a catastrophic spill or other serious accident would occur during the loading activities. In the unlikely event that an accident did occur during loading, the proposed rule includes a requirement (see § 234.49(l)) that the applicant take all necessary clean up and mitigation measures as prescribed by the predesignated Federal On-Scene Coordinator as described in the National Oil and Hazardous Substances Pollution Contingency Plan. The plan also contains the coordination mechanisms and responses to be taken if a spill, explosion, fire, or other accident should occur. The main focus of the plan is the steps that would be taken to minimize and correct adverse impacts to the environment or to human health. Both the U.S. Coast Guard and EPA would review the contingency plan submitted by an applicant and recommend changes where necessary and appropriate.

The potential for a spill of wastes in transit to the incineration site or at the site is a concern to many. General requirements exist to ensure that such an occurrence is remote. Incinerator vessels at a minimum must be type two bulk chemical carriers. This means that they must have double hulls and double bottoms, and store the wastes in several independent compartments which minimizes the likelihood that any collision would cause a rupture of the storage compartments. In containerized operations, five thousand gallon containers would most likely remain sealed even if the barge or vessel were involved in a collision. The COTP has the authoritity under existing regulations to provide for safe transit of a partially or fully loaded incineration vessel from the loading area to the incineration site and return. The COTP can require some or all of the following measures or any other measures that are necessary for safe transit:

(a) U.S. Coast Guard escort and/or commercial tug to standby or assist,

(b) Restrict transit to daylight hours,

(c) Restrict transit routes,

(d) Set weather condition restrictions for transit,

(e) Require moving safety zone around vessel, and

(f) Broadcast a Notice to Mariners on the ship's route and departure and arrival schedules.

The proposed rule also includes a provision similar to that in the existing Ocean Dumping Regulations that the U.S. Coast Guard may recommend provisions to be included in a permit that it deems necessary and appropriate to ensure that the marine transportation activities are safely conducted.

The probability of a spill in transit to an incineration site is also being examined in the Agency's Incineration Study. If a spill were to occur, any waste released would most likely sink since the wastes are generally heavier than water. Were a spill to occur in the

harbor, it is likely that such a spill could be contained and cleaned-up using vacuum dredges, hydraulic submersible pumps, etc. However, were a spill to occur at the incineration site in water of at least 2,000 feet, it is unlikely that much of the wastes could be recovered. Material denser than water would sink to the bottom in a difuse pattern. Although EPA would mandate state-of-the-art equipment and procedures, given today's technology, much of this waste could not be recovered. The consequences if such a spill were to occur would depend on the exact location, extent of the release and the composition of the waste mixture.

While a catastrophic spill from an incineration vessel is of concern, several additional factors must be considered. The volume of hazardous substances going into and out of American ports every day dwarfs the volume of hazardous wastes that would be transported in incinerator ships. The estimated additional volume of hazardous substances that would be transported by incinerator ships represents about 0.03 percent of the current total volume of such traffic in U.S. ports. According to the U.S. Coast Guard, in fiscal year 1983, the total volume of hazardous substances passing through all U.S. ports was 8,701.6 million barrels. This can be compared to the estimated 2.18 million barrels per year that might be carried by six built or planned incinerator vessels.

Even if all incinerator ships were to operate in the Gulf, which is highly unlikely, the volume of hazardous substances transported in the Gulf would increase by only 0.05 percent. If petroleum were excluded from the total of hazardous substances currently transported in the Gulf, the increase in volume would be 0.11 percent.

The remaining portion of this **SUPPLEMENTARY INFORMATION** section discusses the provisions of the proposed Regulation. Throughout the discussion, EPA is requesting public comment on its approach. The public's attention is directed specifically to:

- The extent to which the permit processing procedures for ocean incineration permits should be modified from the existing ocean dumping procedures and whether the ocean incineration permitting procedures should be included in the Agency's Consolidated Procedureal Regulations (40 CFR Part 124);
- The amount of financial responsibility that an applicant should be required to demonstrate and the mechanisms to be used to demonstrate that responsibility;
- The prohibition on accepting wastes for incineration with more than 500 parts per million (ppm) of a metal and the appropriateness of using a metal concentration of 500 ppm to distinguish between metallic wastes and wastes contaminated with small amounts of metals;
- The need for trial burns on PCBs, PCT, TCDD, BHC, and DDT because the London Dumping Convention's Technical Guideline 4.1.2 indicates that there are doubts as to the thermal destructability of these compounds even though the Agency does not doubt their thermal destructability.
- The validity of an acid forming emission performance standard based on the change in total alkalinity in the release zone;
- The model used in limiting metal concentrations in a waste mixture and in determining that if the incinerator performance standards in § 234.47 are attained and the environmental performance standards in § 234.48 are attained there will be no adverse effect on human health, welfare or the marine environment;
- The nature of the "needs determination" to be required;
- Whether to address products of incomplete combustion in the incinerator emissions and if addressed, the mechanisms to be used;
- The method for calculating the carrying capacity of an ocean incineration site for the constituents in the incinerator emissions; and
- The environmental monitoring program for the ocean incineration sites.

The remainder of this section is organized following the organization of the proposed rule. The discussion focuses on the changes that were made when incorporating sections of the Ocean Dumping Regulations into the proposed Ocean Incineration Regulation and on the proposed provisions and criteria that were developed to regulate incineration-at-sea activities.

Subpart A—General

Purpose, Scope and Applicability (§ 234.1)

The section included in Subpart A lay the framework for the proposed Ocean Incineration Regulation. This rule proposes to regulate the incineration of liquid wastes at sea. In the future, EPA will consider criteria for regulating the ocean incineration of solid wastes and will propose rules to do so.

This rule does not require a permit for effluent or emission discharges incidental to the routine propulsion of a vessel, or to the operation of motor-driven equipment on the vessel. Section 2(f) of the MPRSA and Article III of the London Dumping Convention explicitly exclude these activities.

The London Dumping Convention defines marine incineration facility as a vessel, platform, or other man-made structure operating for the purpose of incineration-at-sea. The proposed Regulation applies to and permits incineration from either self-propelled or towed vessels. EPA considered including fixed structures under the proposed Regulation but ultimately rejected this option for the following reasons. First, the increased risk of spillage at sea during transfer of hazardous wastes from the supply vessel to the platform needs to be further evaluated. Second, a fixed platform would have to be sited in shallow water over the continental shelf for anchoring. A general criterion for the selection of ocean dumping sites including incineration of chemical wastes at sea sites under the current Ocean Dumping Regulation (40 CFR 228.5(e)) states: "EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf".

The proposed Ocean Incineration Regulation would apply to both hazardous and non-hazardous liquid materials. The MPRSA states in section 2(b) that * * * "it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare and amenities, or the marine environment, ecological systems, or economic potentialities." Although there is unlikely to be a market for the ocean incineration of nonhazardous wastes (because, as a fuel in industrial boilers, nonhazardous wastes have more value as a commodity than as a "waste" to be disposed of), if liquid nonhazardous waste were incinerated-at-sea, there is not sufficient justification to develop a separate set of performance standards governing the efficiency of the operation or the amount of emissions released to the evnironment. The incineration process regardless of whether wastes are hazardous or nonhazardous is the same. Therefore, whatever liquids are incinerated, except those incidental to the routine propulsion of the vessel and to the fossil fuels that are used to bring the incinerators into compliance with the permit specified operating conditions prior to waste being fed into them, the standards proposed in this rule would apply.

Pursuant to section 102 of the MPRSA, the United States would accept the permit issued by other Contracting Parties to the London Dumping Convention to an agency or instrumentality of the U.S. or a vessel registered in the U.S. or flying the U.S flag for the transportation of material, as long as the terms and conditions of the permits issued by another Contracting Party meet the requirements of the regulations proposed today. In the case of an agency or instrumentality of the United States, no application may be made for a permit issued pursuant to the authority of a foreign State Party to the Convention unless the Assistant Administrator concurs in the filing of such application.

The London Dumping Convention prohibits the dumping of certain classes of materials. These prohibited materials include: high level radioactive wastes; materials in whatever form produced or used for radiological, chemical or biological warfare; materials which after incineration emit persistent inert synthetic or natural materials which may float or remain in suspension in the ocean such that they materially interfere with fishing, navigation or other legitimate uses of the ocean; and materials insufficiently described by the applicant or permittee for the Agency to determine their environmental impact. The incineration of these materials is also prohibited (see § 234.45(a)–(d)).

Definitions (§ 234.2)

Several definitions applicable to incineration-at-sea have been included in the proposed rule that were not in the Ocean Dumping Regulations. Only those terms that were not defined in the Ocean Dumping Regulations will be discussed in this **SUPPLEMENTARY INFORMATION** section today. For an explanation of the definitions not discussed today, see 42 FR 2462, January 11, 1977.

Combustion efficiency and destruction efficiency are the two incinerator performance standards. Combustion efficiency, (§ 234.2(e)), expressed as a percent (i.e., 99.95 ± 0.05 percent combustion efficiency), is a measure of the efficiency with which the incinerators are burning the waste stream. Combustion efficiency is calculated by comparing the concentration of carbon monoxide in the incinerator emissions to the concentration of carbon dioxide in the incinerator emissions. Regulation 5.2 of the London Dumping Convention requires a combustion efficiency of 99.95 ± 0.05 percent. The Toxic Substances Control Act (TSCA) regulation for the incineration of polychlorinated biphenyls (PCBs) (40 CFR 761.70(a)(2)) requires a combustion efficiency of at least 99.9 percent. RCRA does not set a performance standard for combustion efficiency. EPA is proposing a combustion efficiency of 99.95 ± 0.05 percent to be consistent with the requirements of the London Dumping Convention.

Destruction efficiency (§ 234.2(f)) is the primary performance standard for an incinerator. It is a measure of the destruction of an individual compound or constituent in waste mixture. Destruction efficiency expressed as a percent is determined from the following formula:

$$DE = \frac{(Win - Wout)}{Win} \times 100\%$$

Where:

Win = Mass feed rate of one constituent in the waste stream feeding into the incinerator, and

Wout = Mass emission rate of the same constituent present in the incinerator exhaust emissions prior to release to the atomsphere.

The rule proposes a destruction efficiency of 99.99 percent be attained on all compounds other than PCBs, tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans for which a destruction efficiency of 99.9999 percent is proposed. These performance standards would be the same as those in the RCRA and TSCA landbased incinerator programs and are discussed in greater detail later in this **SUPPLEMENTARY INFORMATION** section.

Limiting permissible concentration (LPC) (§ 234.2(j)) is that concentration of a residue in the incinerator emissions which after allowance for initial mixing will not adversely affect human health or aquatic life. The concentration of the residue in the water which would not adversely affect human health or aquatic life is either the applicable marine water quality critierion or if there is no marine water quality criterion, marine aquatic life no-effect level or 0.01 of a concentration shown to be acutely toxic to "appropriate sensitive marine organisms" in a bioassay carried out in accordance with approved EPA procedures.

Such a concentration is determined to satisfy the LDC provision that prohibits the incineration of organohalogens and other specified substances unless it can be demonstrated that the residue entering the marine environment will be rapidly rendered harmless by the physical, chemical or biological processes in the sea or are present only as a trace contaminant. The LDC Regulations and Technical Guidelines for determining whether stack residues are considered to be present only as a trace contaminants or are rapidly rendered harmless are generally the same. For organohalogens and the substances listed in Technical Guideline 4.1.2,[1] the maximum permissible stack concentration is to be established using a mathematical plume model (taking into account the prevailing atmospheric conditions at the incineration site and the maximum permissible atmospheric concentrations) and by using a dispersion model (taking into account the interaction of the plume with the marine environment and the maximum permissible environmental concentrations for marine life). Mercury and cadmium are treated somewhat differently under the LDC. Concentrations of mercury or cadmium which would not be considered as trace contaminants for the purposes of direct dumping would also not be considered as trace contaminants for the purpose of incineration-at-sea. The model EPA is proposing to use is discussed in Appendix A.

The Permit Program Manager (§ 234.2(m)) is an EPA employee designated by the Assistant Administrator to manage the Ocean Incineration permit program. The Permit Program Manager would oversee the day-to-day activities of the program to ensure that the incineration operations are carried out safely and efficiently. These duties include but are not necessarily limited to:

- Conducting a survey of vessels' incinerators and overseeing the permittees' trial burns (§ 234.53);
- Approving changes, if appropriate, in the incinerators after the survey and trial burn (§ 234.55);
- Providing scientific and technical support to the Assistant Administrator in determining whether to issue a permit (Subpart D);
- Reviewing the waste analyses (§ 234.58) and monitoring data (§ 234.60) submitted by the permittee;
- Enforcing provisions of the permit in Subpart E including if necessary ordering an "emergency suspension" of the permit (§ 234.67);
- Recommending the initiation of modification or revocation proceedings (§ 234.72); and

[1] Polychlorinated biphenyls (PCBs), polychlorinated terphenyls (PCTs), tetrachlorodibenzo-*p*-dioxin (TCDD), dichlorodiphenyl trichloroethane (DDT), and hexachlorocyclohexane (BHC).

• Regulating the use of ocean incineration sites (§ 234.79).

Quantifiable concentration (§ 234.2(o)) is defined as the minimum concentration of a discrete chemical constituent (element or compound) in a waste mixture than can be detected, identified, and quantified without confirmatory analyses. The amount of this concentration will vary depending on the chemical constituent, possible interferences of other constituents in the waste mixture, the method of sample preparation, and the method of analytical detection, identification, and quantification. Using standard methods, quantifiable concentrations of an organochlorine are generally in the range of 1–2 parts per million (ppm) and quantifiable concentrations of a metal are in the range of 1–10 parts per billion (ppb). This level of analysis would be sufficient to ensure that prohibited constituents are not in the waste mixture and that restricted constituents are not in the waste mixture in concentrations that are greater than those authorized by the permit. The methods to be used in sampling and analyzing the wastes would be stipulated in the permit (see § 234.58). EPA expects that the *Test Methods for Evaluation of Solid Waste, Physical/Chemical Methods* in 40 CFR 270.6 will be the methods required by the permit, unless an alternative method is determined to be acceptable and is so explained in the permits.

Relationship to International Agreements (§ 234.3)

The United States is a Contracting Party to the London Dumping Convention. The London Dumping Convention is an international agreement requiring the Contracting Parties (member nations) to establish national systems to control all substances leaving their shores for the purpose of being dumped at sea. The Convention was negotiated in London in November 1972 and came into force on August 30, 1975, following receipt of the required fifteen ratifications or accessions. Fifty-three countries are now Contracting Parties to the Convention.

The U.S. authority for implementing international requirements for the control of ocean dumping is the MPRSA. Amendments to MPRSA in 1974 and in 1980 bring the Act into conformance with the Convention.

Technical aspects of the Convention regarding types of materials and other factors are contained in three annexes. Annex I establishes a list of substances whose dumping is prohibited unless they would be "rapidly rendered harmless." The substances on this list are mercury and cadmium and their compounds, organohalogen compounds such as DDT and PCBs, persistent plastics, and oil. Dumping of high-level radioactive wastes, and chemical and biological warfare agents is completely prohibited. Annex II contains a category of substances requiring special care in each dumping. These substances include heavy metals, cyanides and fluorides, waste containers which could present a serious obstacle to fishing or navigation, and medium and low-level radioactive wastes. Annex III sets forth factors to be considered regarding characteristics and composition of the material, method of disposal, and characteristics of the dumping site before a permit may be issued.

The Convention provides that each Contracting Party will take appropriate steps to ensure that the terms of the Convention apply to its flagships and aircraft and to any vessel or aircraft loading in its ports for the purpose of dumping. Full continuous use is to be made of the best available technical knowledge in its implementation which, together with periodic meetings and planned participation by appropriate international technical bodies, is designed to keep the contents of the Annexes up to date and realistic in meeting the needs for controlling ocean pollution stemming from ocean dumping.

Consultative Meetings of the Contracting Parties have generally convened on an annual basis since 1976. Ad hoc advisory groups are established to work on particular subjects when necessary. In 1978, the Third Consultative Meeting of Contracting Parties, in an Addendum to Annex I, adopted Regulations for the Control of Incineration of Wastes and Other Matter At Sea (Regulations). Under these amendments in issuing incineration-at-sea permits, Contracting Parties are to apply to Regulations and take full account of the Technical Guidelines. As explained below this proposed rule meets or exceeds the Regulations of the London Dumping Convention.

Regulation 2.2 of the London Dumping Convention requires that Contracting Parties first consider the practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the wastes or other matter less harmful, before issuing a permit for incineration-at-sea. This same need is one of the criteria that the Assistant Administrator uses in evaluating an operating permit application (see § 234.50(c)). The Proposed Regulation requires EPA to determine in reviewing an application for an operating permit that the applicant's operations pose no greater human health or environmental risk than practicable land-based alternatives. Further discussion of this criterion is provided later in this **SUPPLEMENTARY INFORMATION** section.

Regulation 3 of the London Dumping Convention stipulates that a survey must be conducted on an incineration system to ensure that the combustion and destruction efficiencies meet or exceed the requirements of the London Dumping Convention. The LDC requires a combustion efficiency of 99.95±0.05 percent and a destruction efficiency of at least 99.9 percent. As part of the survey, Regulation 3 identifies the monitoring and recording devices and the equipment that must be examined. In addition, Regulation 3 requires that an incinerator system be re-surveyed every two years. Upon satisfactory completion of a survey, Regulation 3 requires that the Contracting Party issue a form of approval with a copy of the survey report attached to it. A form of approval issued by a Contracting Party is to be recognized by other Contracting Parties unless there are clear grounds for believing that the incinerator system is not in compliance with the LDC regulations. The form of approval and the survey report are to be sent to the Secretariat, LDC, International Maritime Organization. Changes in a system which would affect the efficiency of the system are precluded after a survey or recertification without the approval of the Contracting Party which conducted the survey.

These requirements are included in the proposed rule except that the rule proposes a destruction efficiency of at least 99.99 percent on compounds other than PCBs, tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans for which incinerators must achieve a destruction efficiency of 99.9999 percent.

Regulation 4 states that "where a Contracting Party has doubts as to the thermal destructability of the wastes, pilot scale tests shall be undertaken." For the purposes of Regulation 4, Technical Guideline 4.1.2 lists five compounds including polychlorinated biphenyls (PCBs), polychorinated terphenyls (PCTs), tetrachloro-dibenzo-p-dioxin (TCDD), diphenyl trichloroethane (DDT), and benzene hexachloride (benzenhexchorocyclohexane) (BHC).

The Agency has data documenting the ability of incinerators to thermally destroy BHC, DDT, and PCBs. In June 1973, at a pilot scale liquid injection incinerator in Redondo, CA, TRW, Inc.

demonstrated in excess of 99.99 percent destruction efficiency on a waste containing 12 percent BHC. At an incinerator in Pittsfield, MA, the General Electric Corporation in 1974 demonstrated in excess of 99.99 percent destruction efficiency on DDT wastes. EPA and U.S. Air Force supported pilot scale tests confirm the thermal destruction of DDT. Incinerators of SCA, Inc. in Chicago, IL, Rollins Environment Services, in Deer Park, TX, the facilities operated by Energy Systems Company in El Dorado, AR, and by the General Electric Corporation in Waterford, NY have demonstrated destruction efficiencies of 99.9999 percent on PCBs.

With its mobile incinerator, the Agency is conducting further trial burns and field demonstrations of on-site incineration of dioxin-contaminated liquids and solids at the James Denny Farm Site in Southwest Missouri. The concentration of dioxins in this material are higher than the concentration which would be typically found in a liquid waste mixture incinerated-at-sea. The concentration of dioxin in a waste mixture incinerated-at-sea is never likely to be more than 5–10 ppm. In the 1977 incineration of the U.S. Air Force's stock of Herbicide Orange, the concentration of TCDD averaged 1.9 ppm. The destruction efficiency measured over four tests averaged 99.93 percent which exceeded the LDC requirements.

In order to demonstrate a destruction efficiency on a specific compound, scientists must be able to measure and calculate any unburned portion of that compound remaining in the emissions after incineration. Public health considerations preclude, in most cases, "spiking" a waste to obtain a concentration of at least 1000 ppm of dioxin. At present levels of detection, 1,000 ppm would be necessary to measure dioxin in the incinerator emissions and to scientifically demonstrate a 99.9999 percent destruction efficiency. Therefore, the Agency is proposing that permittees conduct trial burns on PCBs or other compounds more difficult to burn than the dioxins to demonstrate a 99.9999 destruction efficiency. If an incinerator demonstrated, in a trial burn, a destruction efficiency of 99.9999 percent on a compound more difficult to incinerate than the dioxin isomers (see Table 1), the Agency would not require a trial burn specifically on TCDD prior to allowing it in a waste mixture. For example if an incinerator demonstrated a 99.9999 destruction efficiency on PCP, which has a heat of combustion of 2.09 kcal/gm, it could incinerate TCDD and all other dioxin isomers since the most difficult dioxin to incinerate is hexachlorinated dibenzo-*p*-dioxin with a heat of combustion of 2.81 kcal/gram. The rationale for this approach is described in greater detail later in this **SUPPLEMENTARY INFORMATION** section.

TABLE I

Compound	Heat of combustion (kcal/gm)
Chlorinated Dibenzo-*p*-Dioxins:	
Tetra	3.46
Penta	3.10
Hexa	2.81
Chlorinated Dibenzofurans:	
Tetra	3.65
Penta	3.40
Hexa	3.07
Chlorinated Biphenyls:	
Mono	7.75
Di	6.36
Tri	5.10
Tetra	4.29
Penta	3.66
Hexa	3.28
Hepta	2.98
Octa	2.72
Nona	2.19
Deca	1.93
Typical Compounds on which DE's performed:	
Tetrachloromethane	0.24
Tetrachloroethane	1.39
Hexachlorobenzene	1.79
1,1,1, Trichloroethane	1.99
Pentachlorophenol	2.09

EPA is proposing to require trial burns on PCTs prior to their inclusion in waste mixtures eligible for incineration or allow incineration of PCTs if data is received which confirms the thermal destruction of PCTs in an incinerator. The reason for this approach is that the LDC Technical Guideline questions the thermal destructibility of this compound and the Agency has no data confirming the thermal destructibility of PCTs. If data are available on the thermal destructibility of PCTs, the Agency would like to review and evaluate this data. If the Agency is satisfied that the data documents the ability of incinerators to thermally destroy PCTs, destruction efficiency tests specifically on PCTs would not be required. Instead, in its permit application, the applicant would request a waiver from conducting destruction efficiency tests on PCTs prior to their inclusion in the waste mixture. The Agency would grant such a waiver if in its trial burn, the applicant demonstrated that a destruction efficiency of at least 99.99 percent was achieved on compounds more difficult to incinerate than PCT.

Regulation 5.1 prohibits flame temperatures of less than 1250° centigrade, unless the results of tests demonstraste that the required combustion and destruction efficiencies can be achieved at a lower temperature. The same requirement is included in § 234.56(b) of the proposed rule.

Regulation 5.2 requires that combustion efficiency shall be at least 99.95 ± 0.05 percent. The performance standard stipulated in the proposed rule is the same (see § 234.47(a)).

Regulations 5.3 and 5.4 state that there shall be no black smoke or flame above the plane of the stack and that the vessel shall reply promptly to radio calls at all times during the incineration. Similar requirements are included in § 234.56 (h) and (k) respectively of the proposed rule.

Regulation 6 requires the following data be recorded and retained during each incineration operation:

(a) Continuous temperature measurement by approved temperature measuring devices;

(b) Date and time during incineration and record of waste being incinerated;

(c) Vessel position by appropriate navigational means;

(d) Feed rates of waste and fuel—for liquid wastes. For fuel the flow rate shall be continuously recorded. This latter requirement does not apply to vessels operating on or before January, 1979;

(e) Carbon monoxide and carbon dioxide concentrations in combustion gases;

(f) Vessel's course and speed.

The monitoring and recording requirements in the proposed rule are found in § 234.60. In addition to monitoring and recording the parameters listed above, the proposed rule requires continuous monitoring and recording of air flow to the incinerators, and the level of oxygen in the combustion gases. Continuous monitoring of the level of oxygen in the stack gases would be required because the level of oxygen in the combustion gases is one of the key parameters in determining the operating efficiency of the incinerators. If oxygen levels in the combustion gases fall below the specified minimum (i.e., 3 percent), there is concern that not enough combustion air is available to completely oxidize all the wastes fed into the incinerators. The proposed rule would also require the continuous monitoring and recording of the feed rates of waste and/or fuel (if used) even though the vessel was operating prior to January 1, 1979.

Regulation 7 requires that a permit application for the incineration of wastes or other matter at sea include information on the characteristics of wastes or other matter sufficient to comply with the notification requirements (which includes an analyses of the wastes and the properties of the wastes). Section 234.16 lists the parameters that are to be

included in the description of the wastes that must be submitted as part of a permit application. These parameters meet the LDC requirements. In addtion, prior to departing for the incineration site, the permittee must also submit to the Permit Program Manager analyses of the wastes to be incinerated on a particular voyage (see § 234.56). The waste analyses are described later in this **SUPPLEMENTARY INFORMATION** section.

Annex III and Regulation 8 outline a broad range of criteria to be considered in selecting appropriate incineration sites. The criteria in Annex III are as follows:

(A) Characteristics and composition of the matter:

1. Total amount and average composition of matter dumped (e.g., per year).
2. Form, e.g., solid, sludge, liquid, or gaseous.
3. Properties: physical (e.g., solubility and density), chemical and biochemical (e.g., oxygen demand, nutrients) and biological (e.g., presence of viruses, bacteria, yeasts, parasites).
4. Toxicity.
5. Persistence: physical, chemical and biological.
6. Accumulation and biotransformation in biological materials or sediments.
7. Susceptibility to physical, chemical and biochemical changes and interaction in the aquatic environment with other dissolved organic and inorganic materials.
8. Probability of production of taints or other changes reducing marketability of resources (fish, shellfish, etc.).

B. Characteristics of dumping site and method of deposit:

1. Location (e.g., coordinates of the dumping area, depth and distance from the coast), location in relation to other areas (e.g., amenity areas, spawning, nursery and fishing areas and exploitable resources).
2. Rate of disposal per specific period (e.g., quantity per day, per week, per month).
3. Methods of packaging and containment, if any.
4. Initial dilution achieved by proposed method of release.
5. Dispersal characteristics (e.g., effects of currents, tides and wind on horizontal transport and vertical mixing).
6. Water characteristics (e.g., temperature, pH, salinity, stratification, oxygen indices of pollution—dissolved oxygen (DO), chemical oxygen demand (COD), biochemical oxygen demand (BOD)—nitrogen present in organic and mineral form including ammonia, suspended matter, other nutrients and productivity).
7. Bottom characteristics (e.g., topography, geochemical and geological characteristics and biological productivity).
8. Existence and effects of other dumpings which have been made in the dumping area (e.g., heavy metal background reading and organic carbon content).
9. In issuing a permit for dumping, Contracting Parties should consider whether an adequate scientific basis exists for assessing the consequences of such dumping, as outlined in this Annex, taking into account seasonal variations.

Regulation 8 adds the following:

(1) Provisions to be considered in establishing criteria governing the selection of incineration sites shall include, in addition to those listed in Annex III to the Convention, the following:

(a) The atmospheric dispersal characteristics of the area including wind speed and direction, atmospheric stability, frequency of inversions and fog, precipitation types and amounts, humidity—in order to determine the potential impact on the surrounding environment of pollutants released from the marine incineration facility, giving particular attention to the possibility of atmospheric transport of pollutants to coastal areas; (b) oceanic dispersal characteristics of the area in order to evaluate the potential impact of plume interaction with the water surface; (c) availability of navigational aids.

(b) Oceanic dispersal characteristics of the area in order to evaluate the potential impact of plume interaction with the water surface;

(c) Availability of navigational aids.

(2) The coordinates of permanently designated incineration zones shall be widely disseminated and communicated to the Organization."

The MPRSA and the proposed rule in § 234.75 and 234.76 require the same range of factors to provide the Agency with sufficient environmental information to be considered in proposing incineration sites.

Regulation 9 requires that in notifying the Secretariat, the London Dumping Convention, International Maritime Organization (IMO) of an ocean incineration permit that the following information be included:

(1) Issuing authorities;

(2) Date issued;

(3) Period during which the permit is valid;

(4) Country of origin of wastes and port of loadings;

(5) Total quantity of wastes (in metric units) covered by the permit;

(6) Form in which the waste is presented (bulk or containers; in the latter case, also size and labeling;

(7) Composition of the waste, such as: .1 principal organic components; .2 organohalogens; .3 main inorganic components; .4 solids in suspension; and .5 other relevant constituents;

(8) Properties of the waste, such as: .1 physical form; .2 specific gravity; .3 viscosity; .4 calorific value; .5 radioactivity; and .6 toxicity and persistence, if necessary;

(9) Industrial process giving rise to the waste;

(10) Name of the marine incineration facility and state of registration;

(11) Area of incineration (geographical location; distance from the nearest coast);

(12) Expected frequencies of incineration;

(13) Special conditions relating to the operation of the marine incineration facility which are more stringent than those specified in the Regulations or other than those in the Technical Guidelines;

(14) Additional information, such as relevant factors listed in Annex III to the Convention.

When the permit becomes effective, § 234.43 of the proposed rule requireds the Assistant Administrator to inform the Secretariat, the London Dumping Convention, Internations Maritime Organization, about the permit and the waters to be incinerated.

Considerations Under Federal Law (§ 232.4)

Permittes must meet all applicable Federal, State and local laws and ordinances whether or not the laws are specifically metioned in these rules or in any permits issued. This includes obtaining all necessary certificates for the vessel and all permits for port facilities prior to initiating incineration operations. Two federal statutes are specifically mentioned in the proposed rule to advise prospective applicants that they must meet the requirements of these statutes and implementing regulations prior to EPA issuing them a permit.

The first statute is the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*). Section 307(c) of the Coastal Zone Management Act and implementing regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the federally approved State coastal zone management program and the State or its designated agency concurs with the certification or is deemed to have waived such certification (or the Secretary of Commerce overrides the State's nonconcurrence).

The second statute is the Endangered Species Act. Section 7 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and implementing regulations (50 CFR Part 5402) require EPA to ensure, in consultation with the Secretary of the Interior or Commerce, that any action it authorizes is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat. As part of the site designation process described in § 234.77(c), EPA will assess the impact of incineration activities on any endangered or threatened species and their habitats identified by the U.S.

Fish and Wildlife Service and the U.S. National Marine Fisheries Service. The assessment would be included in the site designation study and would be available for public review and comment. EPA would review and, if necessary, update its endangered species assessment each time an applicant proposed to use a site designated in accordance with the procedures in § 234.77(c).

In preparing an application for a permit, the applicant must assess the effects of its loading and transportation activities on endangered or threatened species and such species' habitats. Applicants requesting a site to be designated as a condition of a research permit must also assess the effects of the research activities on endangered or threatened species at the proposed site since no prior assessment would have been done by EPA. EPA will contact the appropriate Regional Directors of the U.S. Fish and Wildlife Service and the U.S. National Marine Fisheries Service to obtain a list of the endangered or threatened species from which the applicants are to prepare an assessment. EPA will independently review the applicant's assessment to ensure that sufficient analyses are done and to determine that the activities in fact will not threaten or jeopardize these species or their critical habitat. EPA retains full responsibility and authority to ensure that the requirements of the Endangered Species Act are satisfied. Prior to preparing a draft permit, EPA will provide an opportunity for the U.S Fish and Wildlife Service and U.S. National Marine Fisheries Service, as appropriate, to review the assessment.

Authority to Issue Permits (§ 232.5)

The Administrator of EPA delegated to the Assistant Administrator for Water (Assistant Administrator) the authority to issue, deny, modify, revoke, suspend, impose conditions on, initiate and carryout enforcement actions and to take any and all necessary and appropriate actions permitted by law with respect to ocean incineration permits and the designation and management of ocean incineration sites.

The authority to issue ocean inceneration permits and manage ocean incineration sites was retained at EPA Headquarters and was not delegated to the EPA Regional Administrators as is the case with other EPA permit programs. At this time, EPA is managing the program from Headquarters because the program is new and the number of permits likely to be issued and the number of sites likely to be managed does not merit building regional staff resources. EPA regional staff would be involved in the review of any application received and in the preparation of a draft permit. If the number of permits and sites were to increase substantially, EPA would consider delegating the authority to issue the permits and manage the sites to the appropriate Regional Administrators.

Categories of Permits (§ 234.6)

There are three types of permits which may be issued under the proposed Ocean Incineration Regulation—research permits, operating permits and emergency permits.

Research permits would be issued to gather data and information on new ocean incineration technologies for industrial wastes and the effects of incinerating these wastes at sea on human health, welfare or the marine environment, its ecology or the economic potentialities of the ocean. As required by the MPRSA these permits may only be issued for up to six months. One area of study under a research permit might be the evaluation of products of incomplete combustion (PICs)—what they are, their toxicity, when they occur, how they occur and their relationship to combustion and destruction efficiency. Others areas of research might include the effect of incineration emissions on the microlayer which is the thin layer of material at the air-sea interface, and verification of new and/or improved plume and atmospheric models. Research permits would also be issued to investigate new incineration technologies such as those which might be developed for the incineration of solid wastes. Prior to issuing a research permit, EPA would consult with the Secretary of Commerce for the Secretary's views on whether the benefits of the research outweight any potential adverse impacts. This consultation is required under MPRSA (33 U.S.C. 1412(b)(3)).

The second category of permit is an operating permit. An operating permit will take the place of "special permits" under the Ocean Dumping Regulations. EPA is proposing to change the terminology from "special" permits to "operating" permits because "operating" permits are more descriptive of the nature of these permits.

As proposed, there would be two phases to an operating permit. The first phase is a trial burn. During the trial burn the incinerator system is surveyed and its performance tested for combustion and destruction efficiencies on wastes similar to those that are to be incinerated during the operational phase of the permit. Surveying and testing of new incinerators prior to the initiation of ongoing commercial operations is required by Regulation 3 of the London Dumping Convention. In addition, the conditions at which the incinerators must operate during the operational phase of the permit are established during the trial burn based on the readings recorded during the destruction efficiency tests.

Under the existing regulations EPA has required separate permits for both the trial burn phase and the operating phase of ocean incineration activities. Research permits have been used to regulate trial burn activities, while special permits were intended to cover only the operating phase. EPA has now determined that this spearate treatment and the need for two permits is no longer approrpiate nor necessary. At the time the existing Ocean Dumping Regulations were issued, ocean incineration was relatively new to the U.S. Thus, it was felt that tests on the performance of the incineration technology, Which had not been previously demonstrated in U.S. waters, was appropriately treated as a research activity. The type of technology intended to be employed by companies which have expressed interest in ocean incineration is now more established and thus, trial burn tests conducted to evaluate the performance of this technology is no longer, in the Agency's view, the type of activity for which the Act contemplated research permits to be issured. EPA believes it is more accurately handled as a component of commercial operating activities. For this reason and for the reasons discussed below, the Agency is proposing a two-phased operating permit, similar to the one used to permit land-based incineration activities under the RCRA program.

Under current ocean dumping procedures, which called for two separate permits for the trial burn and for commercial operations respectively, it was necessary to go through a complete new permit process following completion of the trial burn, during which all issues concerning ocean incineration activities could be reexamined. It was thus possible that a company who had invested significant time and money in conducting a trial burn (under a research permit as required by the current Ocean Dumping Regulations), could ultimately have a final operating permit denied to them, for example, based upon a determination that adequate need had not been demonstrated. In disucssions held during development of this proposed Regulation, it was generally agreed that such a result was neither

desirable nor fair. A company should not have to go through a trial burn demonstration if a operating permit is to be ultimately denied based on factors other than those related to meeting the incinerator performance standards (§ 234.47). Therefore, EPA is proposing to adopt the RCRA permitting process.

Under the RCRA program, a single permit which includes terms and conditions which govern both the trial burn and operating phase is drafted and published for public notice. In this way all issues concerning both the appropriateness of authorizing any incineration activities, and the specific conditions under which incineration will be allowed to proceed are evaluated and decided upfront. Following public notice, a single final permit governing both these phases is issued by the Agency and is open to challenge. Even though the operating phase is not authorized to commence until successful completion of the trial burn, neither the validity of the underlying operating permit nor its specific terms or conditions are reopened for consideration or challenge at the time the operating phase begins. If it is determined based on a review of the trial burn data that permit conditions must be significantly changed from those initially set forth in the permit, EPA would initiate a permit modification proceeding before the operating phase is allowed to commence.

EPA is proposing to adopt this same procedure with one small change. Following completion of the trial burn, EPA will give formal notice of the availability of the trial burn data in accordance with § 234.33 and provide the public a 45 day period in which to submit their comments on this information, prior to the Agency authorizing commercial operations to begin. Under RCRA the public may request the trial burn data and is free to submit comments on it to the Agency. Thus, EPA's proposal would merely make this process more formal under the ocean incineration program.

If as a result of the trial burn the Agency decides that any changes are required in the operating conditions from the range of conditions identified in the original permit, EPA would propose for public comment modifications in the permit in accordance with § 234.72 prior to allowing commercial operations. Public notice of any proposed modification is likely to proceed simultaneously with notice to the public of the trial burn data. However, this opportunity for public input should not be misunderstood as a new permit proceeding in which issues evaluated and decided during the initial permit proceeding can be reconsidered, nor does any opportunity to challenge the permit exist at this point. If a member of the public were to disagree with the Agency's decision to allow commercial operations to proceed, the sole remedy at this point would be to request the Agency to initiate modification or revocation proceedings.

The Assistant Administrator will notify the permittee that he has successfully completed the trial burn and can commence commercial operations by issuing a Letter of Approval. The Letter of Approval is required by Regulation 3 of the LDC.

The Agency is proposing to issue operating permits for up to ten years. The permit would be reviewed five years after issuance or reissuance and may be modified as necessary in accordance with § 234.72 to assure that the incinerators continue to meet the requirements of this Part 234. Special permits under the Ocean Dumping Regulations were limited to three years. RCRA incineration permits are issued for up to ten years. Permits for RCRA land disposal facilities are to be reviewed every five years in accordance with the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984).

In evaluating the time frame for operating permits, EPA also considered maintaining the current three year term or proposing a five year tem. EPA selected a ten year time frame for the ocean incineration program with the flexibility to modify the terms of the permit if, EPA finds, for example:

- Inadequate performance based on a review of the monitoring data or destruction efficiency tests; or
- There is no longer a need for the ocean incineration of a particular hazardous waste based on the availability of practicable land-based destruction alternatives for that particular hazardous waste; or
- Unacceptable human health or environmental impacts exist based on new evidence of the effect of ocean incineration activities.

With safeguards built into an automatic review of the permit after five years or more frequently as the Assistant Administrator deems necessary, EPA selected the ten year permit term to enable prospective applicants to make long-term commitments with waste generators to incinerate liquid hazardous wastes. EPA believes that this approach will provide sufficiente Agency control while also providing for the necessary "business certainty" to use this destruction technology.

In reapplying for an operating permit, the applicant would submit a new application in accordance with Subpart B of this proposed rule six months prior to the expiration of his or her permit. This should provide sufficient time for the Agency to process the application. Should there be a delay, the permittee's existing permit would remain in force until the Agency had made a final determination to renew or to deny the permit if the permittee had submitted a complete renewal application six months prior to the expiration of his or her existing permit.

Applicants renewing their permits would not have to conduct another trial burn prior to initiating their commercial activities under the renewed permit. The Assistant Administrator would issue the Letter of Approval with the renewed permit.

The third type of ocean incineration permit is an emergency permit. The existing Ocean Dumping Regulations also includes emergency permits and as has been the case under the Ocean Dumping Regulations, the Agency anticipates that such a permit would be rarely issued. An "emergency" refers to situations requiring a marked degree of urgency affecting public health for which the only feasible solution is incinerating the materials at sea. The criteria for issuing an emeregency permit are in § 234.51. If an applicant meets these criteria, the Agency would suspend the application processing procedures in Subpart C and publish a notice of the permit as soon as possible after issuing the permit. This procedure is identical to that in the existing Ocean Dumping Regulations (see 40 CFR 220.3(c) and 222.3(b)(3)).

Subpart B—Permit Application

The permit application is a detailed document that the Assistant Administrator uses in determining whether the applicant's operations meet the requirements of the Act, the London Dumping Convention and the rules proposed today.

Section 104(f) of the Act requires that information received as part of any application or in connection with any permit issued shall be available to the public as a matter of record at every stage of the proceeding. EPA, therefore, believes that it must make available to the public all the information that it receives as part of a permit application or in connection with any permit and may not keep confidential any information that it receives from the

applicant or on the application. This confirms the Agency's interpretation of section 104(f) found at 40 CFR 2.309.

Signatories to Permit Applications (§ 234.9)

All applications and any other information that the Assistant Administrator may request in order to complete the review of a permit application must be signed as follows:

(a) For a corporation, by principal executive officer of at least the level of vice president. This includes persons who perform similar policy or decisionmaking functions for the corporation;

(b) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(c) For a municipality, State, Federal, or other public agency, by either a principal executive officer or ranking elected official.

This proposed requirement is to ensure that the application is submitted with the knowledge of the highest policy levels of a corporation, partnership or governmental entity. The individual signing the application would also be required to certify that the information submitted was collected and prepared by persons qualified to do so and that the best of the signator's knowledge, the information is true, accurate and complete.

This signatory requirement is similar to that required of applicants for other EPA-administered permit programs. For a further explanation of these requirements, see 47 FR 25546 *et seq.* (June 14, 1982) and 48 FR 39612 *et seq.* (September 1, 1983).

Financial Responsiblity Requirements (§ 234.10)

During the Agency's most recent consideration of ocean incineration permits and the development of this proposed Regulation, numerous commenters expressed concern with the potential for accidental releases of the wastes to be incinerated and the ability of the Agency to impose obligations on the permittee and to ensure that the permittee has adequate financial resources to respond to such events. As discussed previously, in the Agency's view, several measures, including the structural soundness of incineration ships and safety precautions taken to ensure safe passage of the ships to incineration sites, help to minimize the probability of an accidental release. However, despite these conditions, the Agency recognizes that an accident could occur and that in the event of an accidental release, particularly of a catastrophic nature, significant damage could be done to the marine environment. Thus, EPA believes it is important to ensure that measues are imposed which will protect against the effects of an accident and which will ensure that appropriate response measures can and will be taken if an accident were to occur. Several such measures are proposed in today's rules.

First, all applicants will be required to prepare a contingency plan which is specific to the port and to the incineration route. As discussed in more detail elsewhere in this proposal, this plan would outline precautionary measures to be taken to prevent accidents which could result in the unauthorized release of waste. It would also outline response measures to be taken in the event of an accident. Underlying the development of this plan would be a mandatory permit condition to take all necessary cleanup and mitigation measures in response to an accidental release or threatened release of wastes during any part of the permittees' activities authorized by this Part 234 (see § 234.52(1)). This obligation to take all necessary response measures is authorized by the MPRSA, whose broad purposes make clear the ability of the Administrator to promulgate regulations requiring permittees to protect ocean resources from any release incidental to their activities.

Second, companies which choose to engage in ocean incineration activities would be required to provide assurances that they have the financial capability to take necessary response measures. EPA has concluded that financial responsibility requirements are necessary to assure that funds will be available to pay for cleanup and recovery measures required by the MPRSA or other applicable legal recovery provisions and to satisfy any legitimate damage claims which may arise during the term of the permit. It is also the Agency's desire to ensure that only financially responsible companies capable of responding to emergency situations, potentially of a catastrophic nature, are authorized to engage in ocean incineration activities. The broad purposes of the MPRSA and the rulemaking authority provided to the Administrator, coupled with traditional acceptance of the imposition of appropriate insurance requirements upon permitttees for activities presenting risks to the general public, provide strong support for the imposition of insurance requirements, in addition to the cleanup provisions required of permittees.

In developing today's proposal, EPA has considered numerous options for deciding upon the appropriate type, amount, and mechanism for demonstrating financial responsibility. Alternatives ranged from tracking the financial responsibility provisions imposed on land-based incinerators by RCRA regulations to setting required insurance amounts, permit-by-permit, based on an assessment of the overall degree of risk involved in light of the company's waste handling procedures, the type of wastes carried and the vessel's incineration route.

EPA decided that it was not sufficient to track insurance requirements or liability schemes established under other statutes, since such provisions might not be appropriate for ocean incineration activities. For example, it is the Agency's belief that the levels of financial responsibility imposed by the RCRA regulations (see 40 CFR 264.147)) may be inadequate to cleanup and mitigate accidents which could occur at sea. In addition, it is our understanding that vessels involved in ocean transportation, whether of hazardous substances or not, carry insurance policies of a much higher amount. The Agency also decided that leaving the question of the appropriate amount and method of establishing financial responsibility requirements for determination in each permit proceeding would provide no clear indication to persons interested in entering the field of ocean incineration as to the likely requirements which would be imposed on them. As importantly, it would severely and unnecessarily complicate individual permit proceedings.

EPA has determined that the most appropriate approach is to establish by regulation a figure which represents the amount of insurance which would be required of any individual incineration operation. This figure would be required unless the owner or operator could demonstrate, to the satisfaction of the Agency, that some lesser amount was justified in light of the degree and duration of potential risk from his or her operation or the Assistant Administrator determined that because of unique circumstances that a greater amount was justified. In this way the Agency can establish a uniform figure which is generally appropriate for the type of operations intended to be authorized under this Regulation, provide upfront notice to both the public and the appicants of the requirements which will be imposed, and protect against needlessly complicated and lengthy permit proceedings.

A major difficulty the Agency has faced in establishing the appropriate amount and method of demonstrating financial responsibility is the lack of

actuarial data on the ocean incineration industry. While the Agency believes that the requirements imposed by these and other applicable regulations may reduce the likelihood of accidental releases and their severity, the degree to which this would occur is difficult to estimate. In addition, the Agency acknowledges that its expertise does not lie in the area of insurance. Within these limitations, the Agency has attempted to establish a level of coverage that would provide reasonable protection to the public and to the marine environment, but which is not prohibitively expensive for reliable firms who wish to engage in ocean incineration. EPA is proposing that the amount of insurance required for each incineration vessel be set between $50 and $500 million and is soliciting pubic comment and supporting information on what figure within this range should be chosen.

In establishing this range for consideration EPA has looked at liability schemes developed in other areas and current insurance coverage for vessels similar to ocean incineration ships. In the area of oil spill pollution, international agreements have been established to provide for levels of liability and compensation for clean up actions in the event of a spill. (These pollution liability regimes are contained in the International Convention on Civil Liability for Oil Pollution Damage, 1969 (Civil Liability Convention or CLC) and the International Convention on the Establishment of an International Fund for the Compensation for Oil Pollution Damage, 1971 (the Fund). It is generally acknowledged that the existing limits of liability imposed by these Conventions (which establish a maximum liability limit of $14.5 million under the CLC for shipowners for any incident, and a combined maximum of about $45 million with additional contributions by the Fund) is inadequate in light of historical claim experience for cleaning up oil spills. At the Spring, 1984 meeting of the International Maritime Organization (IMO), the International Conference on Liability and Compensation (CLC) voted to adopt protocols significantly increasing maximum limits of liability and compensation under these two treaties. Maximum limits of liability for ship owners under the CLC were increased to $59.7 million and the combined maximum under the Fund was increased to $200 million. Proposals are currently being discussed in the U.S. Congress to establish limits of liability consistent with those adopted in these protocols.

Limits of liability established under CERCLA vary depending upon the categorization of the operation. Although vessels which routinely transport hazardous substances as cargo or residue are limited to a maximum liability of $300 per gross ton or $5 million, which ever is greater, for any incindent, facilities, which would include land-based incinerators, are liable for the full cost of any recovery, plus $50 million in natural resources damage.

EPA recognizes that most of the above provisions impose limits on the amount an operator can be held liable for, as opposed to imposing insurance requirements which is the intent of this Regulation. Nonetheless, they are a useful reference point for considering an appropriate level of financial capability which should be demonstrated by an incinerator vessel.

With respect to insurance coverage, it is the understanding of the Agency that operators of vessels moving hazardous cargoes (such as oil and chemicals) use protection and indemnity and excess policies for insurance coverage related to pollution incindents, such as the costs of containment and cleanup. These policies provide insurance coverage for various obligations set forth in State, Federal, and international statutes, conventions, and voluntary schemes such as those in the Federal Water Pollution Control Act and its amendments, the Trans-Alaska Pipeline Act, the Tanker Owner's Voluntary Agreement Concerning Liability for Oil Pollution (TOVALOP), and the CLC. The level of insurance that companies maintain does not seem to be related to any one of these requirements, but rather is set by the carrier's judgment of a prudent policy, and is indeed well above any of these limits. Coverage for some typical companies range from $375 million to $500 million for vessels in the range of 20,000–70,000 dead weight tons. Incinerator vessels are in the range of 3,500–6,000 dead weight tons. Chemical Waste Management indicated in its recent application for an incineration-at-sea permit that it carried an insurance policy of $350 million.

The upper range of insurance amounts being considered by the Agency is based on the concern that cleanup and mitigation measures for a large spill of hazardous substances could potentially result in costs of hundreds of millions of dollars. It appears that policies in the upper levels of the coverage range proposed have been obtained by carriers, although it is not clear that there are available policies subject to the terms and conditions being considered in these proposed regulations. It is also generally the case that the first increment of coverage in an insurance policy is the most costly and therefore, additional coverage beyond this amount might be obtainable for a lower per dollar cost of coverage. However, EPA acknowledges that limited discussions it has had with protection and indemnity (P&I) firms and insurance companies raised serious questions about whether insurance coverage in the upper range of $500 million is available and could be obtained for a reasonable amount. Also, insurance companies have limited actuarial data on ocean incineration *per se* on which to base the level of premiums. Since the vessels that up to now have engaged in ocean incineration have had no known incidents or spills, insurance companies have no actuarial data with which to estimate cleanup costs. The usual procedure in this situation is to extrapolate from similar cleanups, such as oil spills.

EPA requests public comment, including supporting data, on the level of insurance that an applicant should be required to carry. The Agency is particularly interested in learning about what kind and amount of coverage is or could be made available to ocean incinerator companies and what the cost of the annual premium would be. Would an insurance requirement at the upper ranges of $500 million be unavailable or too expensive for entrance into the ocean incineration market. What information would justify establishing a lower amount of insurance coverage? What historical data exists on the number, severity, and cost of accidents for operations of a similar nature, for example, chemical tanker transportation, that could help the Agency assess the potential for spills and other unauthorized releases during ocean incineration activities? If an applicant requests a lower level of insurance than the amount established in the Regulation based on the degree and duration of risks associated with its operation, what criteria should the Agency establish to determine specific standards for a reasonable and workable variance procedure? Finally, should the Regulation set a maximum amount never to be exceeded or should the Agency have the flexibility to set a higher amount based on the degree and duration of risks associated with a particular operation?

EPA is currently proposing that applicants be required to carry insurance as opposed to other methods of demonstrating financial responsibility, such as the use of a surety bond, trust or qualification as a self insurer. This is primarily because

these alternative methods do not appear feasible at the higher levels of coverage being considered. The Agency would like comment on the accuracy of this assumption and on whether, if an amount in the lower range being considered is chosen, these alternative methods would become feasible and appropriate. If other methods are allowed, what limitations on them should be imposed? For example, if the Agency provided an opportunity for the permittee to demonstrate all or part of the financial responsibility through qualification as a self insurer, what level of tangible net assets should be required? RCRA regulations require demonstration of net assets six times that of $10 million. At the highest figure of $500 million that would be $3 billion in net assets. If a trust fund or surety bond were used what provisions should EPA require to assure the integrity of these instruments.

EPA is further proposing that the insurance policy be issued by an insurer or group of insurers which at a minimum, are licensed to transact the business of insurance in one or more States or to provide insurance as an excess or surplus line insurer, such as a Protection and Indemnity Club, and is determined to be acceptable by the Agency. EPA would consult with the U.S. Coast Guard on the acceptability of such insurers.

EPA is also proposing that the insurance policy include several specific provisions. The first provision is that bankruptcy or insolvency of the insured shall not relieve the insurer of its obligation. A second provision is that the insurer is liable for payments of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer. This language is intended to assure that the insurer would satisfy the requirements of the policy on a first-dollar basis. This provision reduces the burden on the Agency of reviewing the level of the deductible in the policies and determining whether the insured is financially capable of paying claims within the deductible. The third provision is that the insurer agrees to furnish a signed duplicate original of the policy if requested by the Assistant Administrator. This allows the Agency and the public to review the policy in case questions arise about its coverage. The fourth provision is to protect against cancellation of the policy during a voyage. This provision states that cancellation can only be effective upon written notification and could only take effect 60 days after a copy of such written notification is received by the Assistant Administrator. EPA requests comments on how these requirements will influence the availability and expense of coverage.

The final two requirements are that the policy must be effective on the date that the permit is effective and that no activities authorized by a permit issued pursuant to this Part 234 may take place without the specified liability insurance coverage.

Finally, we would like to respond to questions which have been raised concerning third party recovery rights. The first is whether EPA, through its regulation, can guarantee a right for third parties to seek recovery for personal damage in the event of an unauthorized release. The second is whether, in the event other statutes or principles of law would impose limits on the amount a third party might be able to recover, EPA could impose, as a permit condition, a requirement that the permittee waive any such limits on liability. A regulation is effective only to the extent it is authorized by its underlying statute. The MPRSA creates no private cause of action for damages caused by ocean incineration activities and thus, provides no support for creating such a cause of action through these regulations. Similarly, the MPRSA and its legislative history do not appear to authorize the Administrator to repeal limits on liability established under other statutes which might affect third party recovery rights and thus, would not authorize the Administrator to require a permittee to waive such limitations as a condition of his permit. The question of whether any third party recovery is available must be decided based upon other Federal or State statutes or common law principles and cannot be answered by these regulations.

Vessel (§ 234.11) and Incineration System (§ 234.12)

The engineering design data that the applicant would be required to submit as part of a permit application would assist EPA in independently evaluating the likelihood that the incinerators could achieve the incinerator performance standards in § 234.47 and the operating requirements in § 234.56. Previous certification and operating data would also assist EPA in evaluating the overall performance of the incinerators and identify any potential problems that an incinerator may have in meeting the incinerator performance standards in this proposed rule.

For research permits where there may be little or no operating data on the incinerators, EPA would use the engineering design information to evaluate whether the incinerators are likely to achieve the required incinerator performance standards and minimum operating conditions. If EPA is convinced that the incinerators are likely to achieve the required performance standards and minimum operating conditions, then EPA can be assured that the activities proposed for the permit will have minimal adverse impact on human health or on the environment.

The engineering design information would also enable EPA to evaluate whether the incinerators are identical in design. If the incinerators onboard a multi-incinerator vessel are identical, only one incinerator needs to be tested in a trial burn. If, however, the incinerators do not have an identical design, all must be tested in a trial burn. In determining whether the incinerators on a vessel are identical EPA will compare the major features of the incinerators including the engineering design, physical shape, burner design technology, construction material classes, orientation, dimensions, instrumentation and control systems which affect incinerator performance. Limited differences within the manufacturer's design specifications can be expected since no two pieces of equipment can ever be truly identical. Any subtle differences which might affect the performance of an incinerator or the condition at which it operates would be immediately identified by the automatic monitoring devices and the flow of wastes to the incinerators would be automatically shut-off.

Monitoring and Recording Devices (§ 234.13)

In this section of the application, applicants are to describe for EPA the automatic, tamper resistant devices which would monitor and record flame status, flame and wall temperature, oxygen, carbon monoxide, and carbon dioxide in the combustion gases, flow rates of the wastes and/or auxiliary fuel (if used), air flow to the incinerators, time, date, wind speed and direction, and vessel position, course and speed. Instruments must be capable of monitoring these conditions at least once every four seconds and recording the readings at least once every three minutes. Temperature, oxygen and carbon monoxide are the key parameters which determine the operating efficency of the incinerators. In addition, carbon dioxide, waste feed flow and/or auxiliary fuel flow (if used), and air flow to the incinerators are required in order to calculate

combustion efficiency, and dwell time as required by the London Dumping Convention. EPA would use the monitoring data to verify that the performance standards and operating requirements were met, that the incineration activities took place at the designated site and that there was no direct discharge of wastes to the water. EPA would also require that the applicants describe the procedures to be used and the frequency of instrument calibration to assure that the devices operate properly during an incineration voyage.

Waste Storage and Handling System of the Vessel (§ 234.14)

Applicants are to identify and describe the methods for testing ballast waters, and for disposing of any contaminated ballast waters, tank washing or bilge waters or of any incinerator residues. None of this may be disposed at sea, so applicants must identify how this material would be disposed. The contaminated material must either be incinerated-at-sea in accordance with the permit requirements or disposed in an approved land-based facility. In addition, the applicant is to describe the method of off-loading and handling any wastes not incinerated in the event a voyage is aborted.

Waste Analysis Procedures (§ 234.15)

Applicants are to identify the procedures that they propose to use in analyzing the wastes to be incinerated. There are two types of waste analyses which must be performed. The first analysis must be sufficeint to verify that waste accepted for incineration do not contain prohibited materials. By requiring wastes to be analyzed prior to their blending with other wastes to be incinerated, EPA can be assured that prohibited substances would not be blended beyond the limits of detection. The second analysis is to be conducted on a representative sample of the blended wastes that will be incinerated. The purpose of this second analysis is to ensure that the wastes incinerated meet the permit specified limits for the concentration of organic and metallic constituents. If the applicant proposes to use methods other than those in EPA's *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* in 40 CFR 270.6, such as methods published by the American Society of Testing and Materials (ASTM), the applicant must provide sufficient documentation for the Agency to determine that the methods are equivalent.

EPA would also evaluate the quality assurance and quality control procedures that the applicant proposes and the qualification of the personnel, laboratories and waste generators that the applicant anticipates using in performing these wastes analyses. This is to assure that consistently high quality waste analyses have been demonstrated.

Description of the Wastes (§ 234.16)

Applicants would be required to estimate the amount of wastes proposed for incinertion over the life of the permit and to include in the application a description of the physical and chemical characteristics of the wastes proposed for incineration. Regulation 9 of the London Dumping Convention requires that information on the characteristics of the wastes to be incinerated be included in a permit application. The description of the wastes is to include the principle organic and inorganic components of the waste mixture. EPA is proposing that applicants identify the hazardous wastes according to the hazard codes and industry and EPA hazardous waste numbers for those wastes listed or designated in 40 CFR Part 261, Subparts C and D that they would anticipate incinerating during the life of their permit.

The proposed rule would also require that an applicant identify other principle organic and inorganic compounds such as diesel oil, non halogenated alaphatics, fatty acids etc., that it anticipates would be in the waste mixture. This provision requires a more extensive description than that required under RCRA because the MPRSA requires the Administrator to regulate the dumping of all materials into the oceans. Halogen, nitrogen and sulfur constituents are specifically identified to be included in the description of the wastes because EPA is proposing to establish an environmental performance standard for acid forming emissions (see § 234.48(a)) as described later in this **SUPPLEMENTARY INFORMATION** section.

Trial Burn Plan (§ 234.17)

In a trial burn, EPA surveys the incinerators and approves the placement of monitoring recording instruments and the applicant tests the performance of the incinerators on wastes similar to those which the applicant proposes to incinerate over the life of the permit. EPA is proposing that applicants use wastes similar to those which would be incinerated over the life of the permit in their trial burn because the London Dumping Convention (see Regulation 3(1)(b)(vi)) includes such a requirement. The Agency believes that by using wastes similar to those which would be incinerated over the life of the permit, the trial burn will provide an accurate picture of the performance of the incinerator.

The analysis of the wastes for the trial burn is to include the amount of wastes that the applicant proposes to use in the trial burn and a description of the physical and chemical properties of this waste. The description of the physical properties is to include the percent moisture, solid and ash content in the wastes, and the wastes' specific gravity (density), viscosity, and heating value. The description of the chemical composition of the wastes is to include whether there are any radioacitive wastes and whether there are quantifiable concentrations of any hazardous organic constituents listed in 40 CFR Part 261, Appendix VIII. The applicant need not analyze for constituents liste in 40 CFR Part 261, Appendix VIII which would reasonably not be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis of the exclusion stated. The applicant must also identify the chemical classes of other organic compounds not listed in 40 CFR Part 261, Appendix VIII which would reasonably be expected to be in the wastes, for example fuel oil. However, the applicant would not be expected to identify all the specific components of classes of such compounds. In addition, the applicant would be required to include in the waste analysis the percent of halogens, nitrogen and sulfur and the concentration in the waste of aluminum, arsenic, cadmium,. chromium, copper, iron, lead, mercury, nickle, selenium, silver, thallium, tin, and zinc.

The permit application is to provide a detailed plan on how the trial burn would be conducted and the personnel who would collect and analyze the samples. The trial burn plan would list the constituents on which destruction efficiency tests are to be performed. The compounds on which the destruction efficiency test are to performed are to be selected based on their heat of combustion and on their concentration in the waste mixture. By selecting compounds with a very low heat of combustion (i.e., very difficult to burn), the applicant increases the range of compounds eligible for incineration under a permit. (The POHC-Index of Incinerability System upon which this approach is based is discussed later in this **SUPPLEMENTARY INFORMATION** section). Guidance on the selection of the constituents for the destruction efficiency tests may be found in EPA's "Guidance Manual for Hazardous

Waste Incinerator Permits", SW-966 (July 1983). The trial burn plan would also include the number of tests to be conducted (as described later, a minimum of three separate and distinct tests would be required), the anticipated range of temperature, oxygen and carbon monoxide concentrations in the combustion gases, air feed rate, waste feed rate, auxiliary fuel feed rate, and the methods for collecting and analyzing the waste and gas samples during the tests.

In addition, to identifying the methods and tests for determining whether the incinerators can achieve the incinerator performance standards, EPA would also require applicants to identify the models and methods to be used or which have been used to demonstrate that the emissions from the incinerators meet the environmental performance standards proposed in § 234.48. These standards are discussed in more detail later in this **SUPPLEMENTARY INFORMATION** section.

Proposed Incineration Site(s), Port(s), Incineration Schedule and Rate of Incineration (§ 234.18)

In this part of the application, the applicant identifies the port or ports through which the wastes are to be transported and the site or sites at which the applicant proposes to incinerate the wastes. If the applicant wishes to use more than one site an estimate of the volume of wastes to be incinerated at each site must be provided.

EPA is proposing to issue operating permits only at sites listed in § 234.78(b) and designated in accordance with the formal rulemaking procedures outlined in § 234.77(c). Research permits may, depending on the nature of the research activities proposed, take place at sites designated in accordance with § 234.77(a). Such a site would be designated as a condition of the permit and only for the length of the permit (i.e., six months for research permits). If the purpose of the research permit is to investigate new ocean incineration technologies, EPA anticipates issuing these research permits only at sites listed in § 234.78(b). However, with proven technologies, when the purpose of the research burn is to evaluate the effect of incineration emissions on the marine environment, EPA may consider the conduct of this research at sites specified as a condition of the permit in accordance with § 234.77(a). Such a site may better serve the purpose of the research activities because of its size, location and/or other characteristics. This information might also assist the Agency in determining whether to consider the site for formal designation following the procedure in § 234.77(c). The criteria that will be used in approving such a site is discussed under Subpart G, Criteria for the Designation and Management of Ocean Incineration Sites.

EPA plans to issue emergency permits at sites listed in § 234.78(b). However, if the applicant believes that there is another more suitable location for the incineration activities given the nature of the emergency, the Agency may consider such a request. Such a site should meet, however, the criteria in § 234.75 and § 234.76.

The remaining elements in this section would require the applicant to estimate the rate at which the incinerators will operate, the duration of each voyage and the frequency of the voyages. This information is necessary for EPA to regulate the use of an incineration site as provided in § 234.79 and to ensure that the carrying capacity and loading rate of a site is not exceeded.

Contingency Plan (§ 234.19)

An applicant would be required to prepare a contingency plan that outlines the measures it would take in case of any emergency that potentially could involve a release of the wastes in port, in transit to the incineration site or at the incineration site. The contingency plan covers only the permit applicant's response to an incident involving the vessels and does not extend to any Federal, State, or local governmental response to such an incident. The contingency plan would reflect the requirement that the applicant must take all necessary measures to reduce the likelihood of a spill and if a spill were to occur, must take all necessary cleanup and mitigation measures.

The goal of the contingency plan is to minimize hazards to human health and safety and to the environment resulting from potential incidents in the harbor, in transit to the incineration site and at the site. The contingency plan is to cover the steps that would take to minimize the environmental consequences of any incident including the notices to be given, the communication networks to be established and the responses to be implemented should a particular type of incident occur. The incidents to be discussed include collision, stranding, fire, steering or power failure and problems resulting from foul weather.

For each port or ports through which the wastes are to be transported, port specific elements are to be appended. Port specific elements would include the port facility's and command post's location and 24 hour telephone numbers, cleanup firms and firms providing specialized services and equipment during cleanup and their 24 hour telephone numbers. In addition, Federal, State and local emergency coordinators and their telephone numbers are to be included. The contingency plan would also identify particular requirements, if any, the Captain of the Port, U.S. Coast Guard, imposes for releases and marine casualties.

Endangered or Threatened Species Assessment (§ 234.20)

As indicated earlier, applicants are to assess the effect of their transportation and loading activities and incineration research activities, if the incineration activities are to be conducted at a site designated as a condition of the permit, on any endangered or threatened species and their critical habitats. EPA will review and if necessary, update its endangered species assessment prepared as part of its designating an incineration site in accordance with the procedures in § 234.77(c). EPA will contact the appropriate Regional Directors of the U.S. Fish and Wildlife Service (FWS) and U.S. National Marine Fisheries Service (NMFS) for the endangered or threatened species listed or proposed which may be present in the loading area, along the transport route to the incineration site or, at the incineration site. EPA believes it is reasonable to require the applicant to prepare an initial assessment of the impact of activities unique to its own operation, such as its loading and transportation activities or incineration research activities conducted at a site to be designated as a condition of the permit, on endangered or threatened species and their habitat. However, EPA ultimately retains full responsibility and authority for ensuring that the requirements of the Endangered Species Act are satisfied. Upon receipt of the applicant's assessment, EPA will independently evaluate the adequacy of the analysis and the conclusions drawn by the applicant. Following its own evaluation, EPA will comply with the Endangered Species Act regulations (50 CFR Part 402) in determining whether consultation with the FWS or NMFS is necessary.

Based on the recommendations of the NMFS and FWS, EPA has developed the following suggestions for applicants to use in conducting the assessment:

(a) Conduct analyses of the area affected by the loading, transportation or incineration research activities if these activities are conducted at a site designated as a condition of the permit. This would include a detailed survey of the area to determine if listed or proposed species are present or occur

seasonally and whether suitable habitat exists within the area for either expanding the existing population or re-introducing a new population.

(b) Review literature, other scientific data and interview recognized experts including those within the FWS, NMFS, State conservation agencies, universities to determine the species distribution, habitat needs, and other biological requirements.

(c) Review and analyze the effects of the activities on the species, including consideration of the cumulative effects of the permittee's activities on their numbers and habitat.

(d) Analyze altenative actions that may reduce any impacts on the species from incineration activities.

Consistency With Approved State Coastal Zone Management Programs (§ 234.21)

Under the Coastal Zone Management Act (CZMA, 16 U.S.C. 1451 *et seq.*) and implementing regulations (15 CFR Part 930), an applicant for a Federal permit whose activities affect the land or water uses in the coastal zone of a State with a federally approved management program must provide in the application a certification that the proposed activity complies with the State's management program and that the activity will be conducted in a manner consistent with the program. Prior to submitting an application for an ocean incineration permit, the applicant should meet with the appropriate coastal zone management agencies to determine the information necessary for a consistency determination and for a review of that consistency determination by each State coastal zone management agency whose coast would be affected by the proposed activities. If a State determines that the ocean incineration activities that affect its coast are consistent with its coastal management plan, or fails to make a determination within the time allotted by the CZMA and its implementing regulations, EPA may issue a permit for ocean incineration. If a State determines that the ocean incineration activities are inconsistent with its coastal zone management plan, an applicant may appeal that determination to the Secretary of Commerce through the appropriate administrative processes.

This proposed rule does not imply that ocean incineration related activities do or do not affect the land and water uses of the coastal zone. The Coastal Zone Management Act and applicable implementing regulations must be consulted to answer those questions.

Coordination With Other Federal, State and Local Agencies (§ 234.22)

Applicants are to identify the agencies that were contacted in preparing the application and to briefly describe any agreements that were made related to, or in support of, the incineration activities proposed in the application. EPA is recommending that applicants contact:

1. U.S. Coast Guard,
2. U.S. Department of State,
3. U.S. National Oceanic and Atmospheric Administration,
4. U.S. Fish and Wildlife Service,
5. Appropriate State coastal zone management, water, air and hazardous waste pollution control agencies, and State and local emergency response coordinators in ports where the wastes are to be transferred to the vessel.

This provision would assure EPA that the appropriate Federal, State and local governmental entities were aware of the proposed incineration activities and had an opportunity, where appropriate, to provide direction on how the activities should be carried out.

Other Information (§ 234.23)

If the information provided in the application is inadequate for the Assistant Administrator to apply the criteria for evaluating a permit application in Subpart D of the proposed rule, additional information would be requested. As described under the Application Processing Procedures in Subpart C, the additional information would normally be requested within thirty days of the receipt of the application. The application would not be considered complete until the applicant had supplied the additional information.

Processing Fee (§ 234.24)

Section 104(b) of MPRSA authorizes the Administrator to "prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him * * * as he deems appropriate." The existing Ocean Dumping Regulations stipulate an application processing fee of $1,000 for dumping at designated sites and an application processing fee of an additional $3,000 for dumping at non-designated sites (i.e., $4,000). These are the fees proposed in this rule.

Copies of the Application (§ 234.25)

When the Assistant Administrator determines that an application is complete, the applicant must supply sufficient copies of the completed application for review by the agencies identified in § 234.28 and for placement in the locations where the administrative record is to be established in § 234.32.

Subpart C—Application Processing Procedures

EPA requests comment on the extent to which the permit processing procedures should be modified from the existing procedures in the Ocean Dumping Regulations (40 CFR Part 222).

The current ocean dumping permitting procedures include publishing a notice of a tentative determination to issue a permit in newspapers of general circulation, providing an opportunity for a public hearing, and for public comment, preparing a Hearing Officer's Report, and allowing appeals to an adjudicatory hearing and to the Administrator.

RCRA land-based incineration permits are processed in accordance with the Agency's Consolidated Procedural Regulations which establish a somewhat more streamlined process for permit issuance (40 CFR Part 124). As with the ocean dumping procedures, RCRA requires for publication of a notice of a draft permit in newspapers and provides an opportunity for public comment and a hearing. However, no formal Hearing Officer's Report is prepared following a public hearing and no opportunity for adjudicatory hearings are provided. Only an appeal to the Administrator is necessary prior to seeking judicial review.

The first modifications EPA is proposing is to eliminate the opportunity for an adjudicatory hearing. EPA's decision to do this is based on several factors. First, EPA does not believe that the MPRSA requires the Agency to hold a formal adjudicatory hearing under section 554 of the Administrative Procedures Act (APA) prior to issuing a permit. Section 102(a) does provide that there shall be notice and opportunity for a public hearing prior to the issuance of a permit. The statute does not further elaborate on the type of hearing intended by this phrase. There is nothing in the statute or the legislative history to indicate that Congress intended the hearing to be a formal adjudication. In fact, the legislative history actually points to an informal procedure. See Senate Report No. 92-451, 92 Congress, 1st session, 1971 at page 20. In addition, the alternative procedures for permit issuance which are being proposed by the Agency fully satisfy any due process requirements which may apply.

Although adjudicatory hearings have been provided for several years in the ocean dumping regulations, there has

not been great reliance on their availability on the part of the public. Of the few Agency permit issuance decisions concerning ocean incineration, none have resulted in a request for an adjudicatory hearing. In the ocean dumping program, which has been in operation longer and been more active in the issuance of permits, the opportunity for an adjudicatory hearing has only been exercised in a limited number of cases. EPA's experience in other areas, particularly the National Pollutant Discharge Elimination System (NPDES) programs, has led the Agency to conclude that adjudicatory hearings provide few benefits to the permit issuance process. Such proceeds do not substantially increase the public's input in the Agency's decision-making, since extensive opportunity for involvement is already provided. On the other hand, such proceedings create significant resources burdens on both the Agency and the public. This is particularly true since adjudicatory hearing decisions often result in further appeals to the Administrator and challenges in court. In addition, requests for adjudicatory hearings often result in long delays in reaching a final permit decision, which, except in the case of new activities, can result in delays in the imposition of needed environmental controls. Thus, EPA believes that the burdens and delays created by such proceedings are not outweighed by any benefits they may present.

Finally, EPA wishes to establish a uniform set of procedural regulations governing, to the maximum extent possible, each of its permit programs. Previously, EPA had consolidated the procedural requirements governing four permit programs administered under EPA authorities. These included the NPDES program under the Clean Water Act (CWA), the Hazardous Waste Management Program under the RCRA, the Underground Injection Control Program under the Safe Drinking Water Act, and to a more limited extent the Prevention of Significant Deterioration program under the Clean Air Act. Regulations were issued at 40 CFR Part 124 which established a uniform set of procedural requirements for these programs (see 45 FR 33290 *et seq.*, May 19, 1980). These regulations set the framework for receiving permit applications, writing draft permits, soliciting public comments on them, and issuing final permits. Formal adjudicatory hearings have been provided for only one of these permit programs, the NPDES program under the CWA. Such hearings were provided for this program only because several Circuit Court decisions have held that the CWA requires them. These decisions rested largely on interpretations of the CWA which are distinguishable from the other statutes involved, including the MPRSA. Today's proposal would adopt the Agency's consolidated procedural requirements for the ocean incineration program. Elimination of the opportunity for adjudicatory hearings, except where otherwise mandated by statute, is consistent with the approach taken in this proposed regulation. The use of uniform procedures among EPA permit programs should result in more consistent and predictable handling of permit decisions.

Consistent with the Agency's consolidated procedural regulations, EPA is also proposing the elimination of the Hearing Officer's Report. As with adjudicatory hearings, EPA believes that the problems created by preparation of this formal report outweigh any perceived benefits. All the information that would be found in a Hearing Officer's Report must be included in the administrative record on the final permit decision (§ 234.38) and therefore, merely duplicates the record. The public will not be denied access to the permit decision-making process, since full opportunity to comment and participate in public hearings will continue to be provided. In the Agency's most recent permit issuance experience for ocean incineration, the need for preparation of a formal Hearing Officer's Report created a significant delay in the process and resulted in the creation of unnecessary barriers to open discussions between the permit decision-maker and his staff on issues important to final permit decisions.

Notwithstanding the proposed elimination of these two provisions, the proposed rule affords substantial opportunity for the public to become involved in the permit issuance process. The proposed rule provides public notice and opportunity to comment on any tentative determination to issue or to deny a permit application request. Any person may request a public hearing on such a tentative determination and where held, the Assistant Administrator appoints a Hearing Officer who is responsible for the conduct of the hearing. A transcript of the hearing becomes part of the administrative record upon which the permit decision is made. Following the public comment period and any public hearing held, the Assistant Administrator issues a permit decision, which must be sent to all commenters or individuals requesting a copy. Any person who filed comments on the permit or who participated in a public hearing on the permit may petition the Administrator to review the Assistant Administrator's permit decision. Persons who failed to comment on the permit or to participate in a hearing on the permit may request a review by the Administrator if the permit issued by the Assistant Administrator differs from the draft permit. In addition, the public is provided 45 days to comment on the trial burn data prior to allowing a permittee to initiate the activities authorized by an operating permit.

While EPA believes that adjudicatory hearings do not measurably increase the public's ability to influence the permit process, the Agency requests public comment on its proposal and will carefully evaluate all comments prior to promulgating a final rule.

The proposed permit processing procedures in subpart C follow the Consolidated Procedural Regulations in 40 CFR Part 124. As an alternative to restating those regulations in this rulemaking package, the Agency is also considering amending the Part 124 regulations to include the Ocean Incineration Program. This would promote greater consistency among the Agency's permit programs and further consolidate the Agency's procedural requirements for permit applications and their review, the preparation of draft permits and public comment on them, and the issuance of a permit. The flow chart in Figure 1 illustrates that process. The Agency has previously explained its rationale for promulgating the specific procedural requirements found in 40 CFR Part 124, and the public is directed to that rulemaking for a detailed explanation of today's proposal. See 45 FR 33405 *et seq.* (May 19, 1980) and 49 FR 38041 *et seq.* (September 26, 1984).

The Agency recommends that a person interested in obtaining an ocean incineration permit request a preapplication conference (§ 234.26). Although not required, a preapplication conference is recommended prior to initiating the preparation of a permit application. In the preapplication conference EPA reviews the requirements of this Part 234, directs the potential applicant to the appropriate Federal, State, and local officials with which the applicant must coordinate the preparation of the application, and answers questions on the permit application requirements and procedures, and on the EPA-approved monitoring and analytical procedures. EPA would also review with the potential applicant the criteria on which EPA would evaluate the permit

application. At the preapplication conference, potential applicants should identify the port or ports through which they plan to ship their waste and load their vessel and the incineration sites or sites they plan to use so that EPA may request a list of endangered or threatened species from the appropriate Regional Directors of the FWS or the NMFS. The preapplication conference should provide potential applicants with a firm basis on which to initiate the preparation of an application.

The Agency initially reviews an application for completeness. This may take as long as thirty (30) days to ensure that all the information is included in the application for the Assistant Administrator to evaluate the applicant's proposed activities and to apply the criteria in Subpart D. If the application is incomplete, the Assistant Administrator would list the information necessary to make the application complete. Upon receiving this supplementary information, the Assistant Administrator would notify the applicant in writing that the application is complete.

EPA is proposing to forward copies of a completed application to Federal and State agencies for their review and comment prior to the Agency proposing a draft permit. This procedure would alert the Agency early in the process to any conditions that these agencies may wish to recommend for the permits. EPA relies on the expertise of other agencies in assisting it to manage the ocean incineration program and based on experience, believes that early advice from these agencies will improve the administration of the program. The agencies to which the application would be sent and the anticipated focus of their reviews are as follows:

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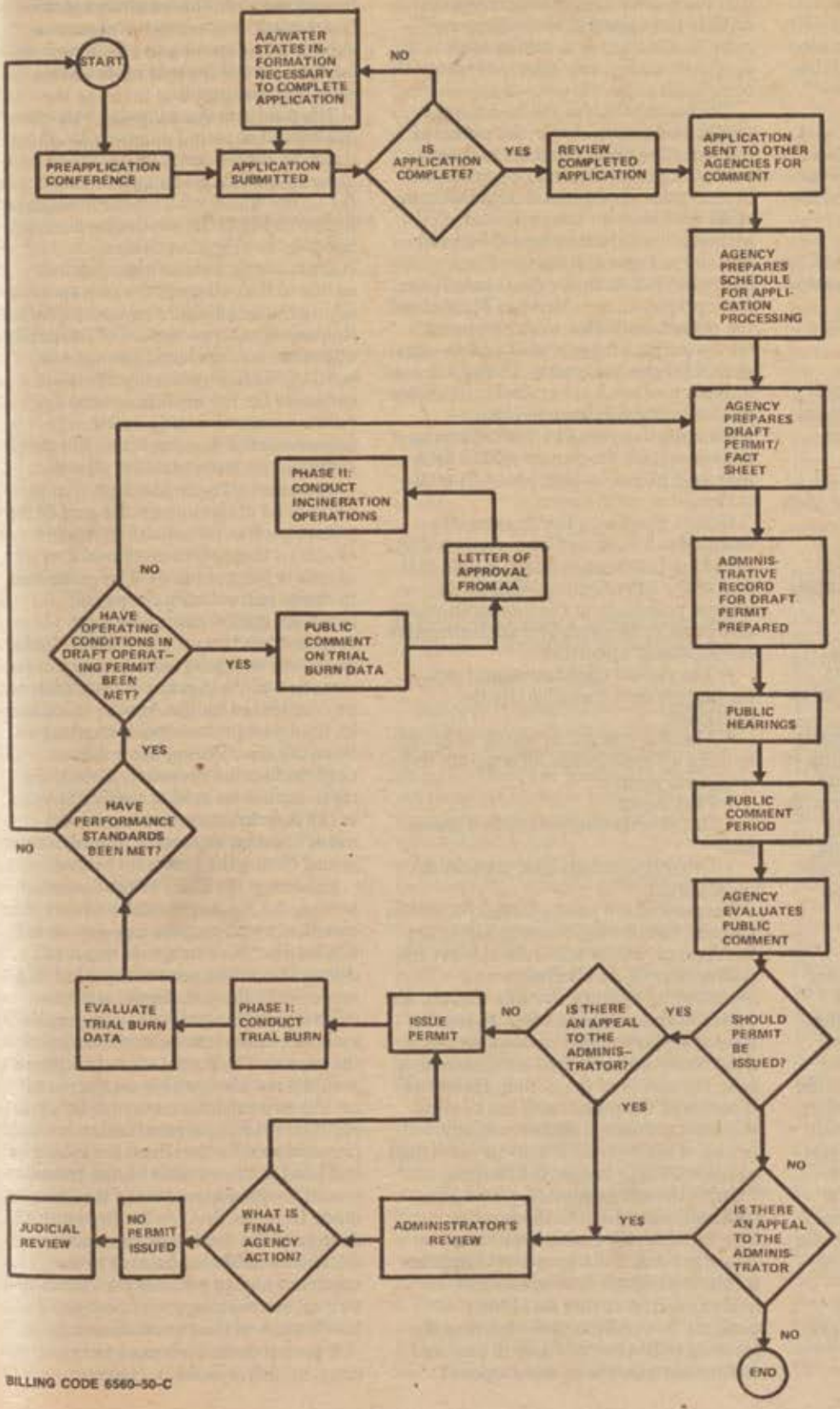
Figure 1

OCEAN INCINERATION PERMITTING PROCEDURES



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(1) Secretary of Commerce for his or her views on whether the potential benefits of the research proposed in a research application outweight any potential adverse impacts as required by 33 U.S.C. 1412(a)(3).

(2) Administrator of the National Ocean and Atmospheric Administration for his or her views on the effect of the incineration activities on the marine environment and a review of the assessment of potential impacts, if any, on endangered or threatened species.

(3) Regional Director of the U.S. Fish and Wildlife Service for a review of the endangered or threatened species assessment.

(4) Commandant, U.S. Coast Guard for a review of the applicant's contingency plan and for recommendations on specific provisions to be included in a permit.

(5) Assistant Legal Adviser for Oceans, International Environmental and Scientific Affairs, U.S. Department of State for a determination that the permit application meets the requirements of the London Dumping Convention and that the contigency plan is consistent with applicable international agreements.

(6) State coastal zone management, air and water pollution control agencies in States within 500 miles of the incineration site.

This preliminary review by these agencies would assist the Agency in determining the conditions to include in a draft permit. The Assistant Administrator would request that these agencies complete their review within 45 days. This process does not preclude EPA from proceeding expeditiously with the preparation of a draft permit nor preclude these agencies from making further recommendations when a draft permit is published for public review and comment.

Within 60 days of notifying an applicant that an application is complete, the Assistant Administrator would provide the applicant with a projected schedule for completing the processing of the permit application. During this time, the Assistant Administrator would tentatively decide whether to prepare a draft permit or to deny a permit. If the tentative decision is to deny the permit, a notice of intent to deny is prepared. If the Assistant Administrator tentatively decides to issue a draft permit, the Agency would prepare a draft permit that contains the conditions under which the permittee would operate.

The Agency would prepare a fact sheet on a draft permit. The fact sheet sets forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. In the fact sheet, the Agency would explain the basis on which the Assistant Administrator made his determination that the permit application meets the criteria in Subpart D of the proposed rule. The fact sheet would be sent to the applicant and to any other person that requests a copy.

The information in the fact sheet would be summarized in the notice of the tentative determination to issue a permit. The notice would be published in newspapers of general circulation in close proximity to the ports and incineration sites that would be used and in the **Federal Register**. The notice alerts the public that a draft permit has been prepared, provides key facts about the permit, indicates where comments on the permits may be sent and the time period for the comments. The notice also indicates where background information on the permit application (i.e., administrative record § 234.32) can be examined and the person within EPA that may be contracted for additional information on the permit.

EPA is proposing that a complete administrative record be maintained at EPA Headquarters in Washington, D.C. and at the EPA Regional Offices in closest proximity to the incineration site and ports to be used. The administrative record would consist of:

- The permit application and any supporting data furnished by the applicant;
- The draft permit or notice of intent to deny an application for a permit or to terminate permit;
- Fact sheet;
- Documents cited in the fact sheet; and
- Other documents that support the draft permit.

Because of the public interest in ocean incineration, for the foreseeable future, the Agency would schedule at least one public hearing on all draft ocean incineration permits. For this reason, the notice of the public hearing, giving the time and place of the hearing, would most likely be published simultaneously with the notice of the permit. However, if notice of the permit and the hearing were not published simultaneously, notice of the hearing would be published at least 30 days before the hearing.

Public hearings would be held at a location convenient to those most interested in the draft permit. The Assistant Administrator would appoint a Hearing Officer to schedule the hearing and to ensure its orderly conduct. In conducting the hearing, the Hearing Officer would accept oral and written statements on the proposed permit. However, if there were a large number of persons who wished to testify, the Hearing Officer may have to place limits on the time for oral statements. Written statements would be encouraged. The transcript of the hearing and any written statements submitted to the Hearing Officer would become part of the administrative record on the permit.

The public comment period on the draft permits would normally be 45 days. This time could be extended on a case-by-case basis by announcement in the initial Notice of a longer time period, by the Hearing Officer during a public hearing, or by the Assistant Administrator publishing a separate notice to that effect in the newspapers where the original notice was published. Requests for an extension of the public comment period should be made in writing. Such requests must include a rationale for the need to extend the public comment period and a recommended date on which the public comment period should be closed.

In commenting on the draft permit, there is an obligation on the part of the public to raise issues and to submit evidence that any condition of a draft permit is inappropriate. The obligation to raise issues during the public comment period cannot be over emphasized. Not only is it essential for questions or issues to be brought to the attention of the Agency so that they can be considered by the Agency in making its final permit decision, but unless an issue is raised during the public comment on the proposed permit, the issue cannot be subsequently appealed to the Administrator, unless "good cause" can be shown for failure to raise issues during the comment period.

Following the close of the comment period, the Agency would evaluate the comments and prepare a response to the comments. The comments received during the public comment period, the response to the comments, and the transcript of the public hearing would be included in the administrative record of the permit. The Assistant Administrator would base his decision on the permit on this administrative record. When the Assistant Administrator makes his final permit decision, that decision would be included in the administrative record as would be documentation of the changes made from the draft to the final permit. A copy of the Assistant Administrator's decision would also be sent to the applicant and to persons who submitted written comments or who requested notification of the permit decision.

A permit decision means to issue, deny, modify, revoke, reissue or

terminate a permit. The permit decision would become effective 30 days after the decision unless a later effective date is specified in the permit. The commencement of the incineration activities authorized by an operating permit, except those related to the trial burn, would not commence until successful completion of the trial burn, notice of the availability of the trial burn data, public comment on that data for at least 45 days, and a Letter of Approval issued by the Assistant Administrator. The Letter of Approval, an LDC requirement, would state that the incinerators had attained the incinerator performance standards. Attached to the Letter of Approval would be the survey report on the incinerators.

Within 30 days of the Assistant Administrator's decision, any person who submitted comments on the draft permit or who participated in a public hearing on the draft permit may petition the Administrator to review the permit decision of the Assistant Administrator. Persons who failed to comment on the permit or to participate in a hearing on a permit may request a review by the Administrator to the extent that the permit issued by the Assistant Administrator differs from the draft permit. The petition for review must include a statement of supporting reasons and, where appropriate, a showing that the initial decision contains: (a) a finding of fact or conclusion of law which is clearly erroneous; or (b) an exercise of discretion or policy which is important and which the Administrator should review. The Administrator within this same 30 day period may also decide to review the decision. An appeal to the Administrator would be required to exhaust all administrative remedies prior to judicial review.

In an initial permit proceeding, if the conditions of that permit are appealed to the Administrator, the applicant would be without a permit pending final Agency action. However, if the permit proceeding was for a renewal of a permit, and certain conditions of the renewal permit are appealed to the Administrator, the permittee would operate under the new permit except for the contested conditions. For those contested conditions, the conditions in the previous permit would remain operable.

A permit becomes effective when the Administrator issues a notice ot the parties that review has been denied, or when the Administrator issues a decision on the merits of the appeal and the decision does not include a remand of the proceedings; or upon the completion of remand proceedings if the proceedings are remanded, unless the Administrator's remand order specifically provides that appeal of the remand decision will be required to exhaust administrative remedies.

When the permit becomes effective, a copy of the permit is sent to the Secretariat, the London Dumping Convention, International Maritime Organization. This fulfills the notice requirements of the London Dumping Convention's Regulations.

In order to define time periods in the proposed rule, a section on "computation of time" is included. This section is consistent with the computation of time sections in the other rules of the Agency. This section states that:

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be completed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

Subpart D—Criteria for the Evaluation of Ocean Incineration Activities

Applicability (§ 234.44)

Subpart D includes the criteria that the Agency would use in determining whether to issue ocean incineration permits. There are general criteria covering substances which may not be incinerated-at-sea, (prohibited substances, § 234.45), and those substances which may only be incinerated if specific conditions are met (restricted substances, § 234.46), incinerator performance standards (§ 234.47), and environmental performace standards (§ 234.48) as well as specific criteria for the evaluation of research permit applications (§ 234.49), operating permit applications (§ 234.50), and emergency permit applications (§ 234.51).

In defining the conditions to be included in a permit, the Agency would use both the criteria proposed in Subpart D and the requirements for regulating the use of the incineration site proposed in § 234.79. Depending on the site that an applicant requests to use and the existing use of that site, the Assistant Administrator may include in a permit limits on the incineration of particular waste constituents, limit the frequency of incineration voyages or may increase the frequency or extent of the environmental monitoring required of the permittee to ensure that the carrying capacity of the incineration site is not exceeded.

This section of the **SUPPLEMENTARY INFORMATION** addresses each of the criterion to be used in evaluating permit applications.

Prohibited Substances (§ 234.45)

The London Dumping Convention prohibits the incineration of high-level radioactives wastes. Other substances which are prohibited from incineration include materials in whatever form produced or used for radiological, chemical or biological warfare; materials which upon incineration produce and subsequently discharge persistent inert synthetic materials which may float or remain in suspension in the ocean in such a manner as to interfere materially with fishing, navigation or other legitimate uses of the ocean, and materials insufficiently described by the applicant in terms of their composition and properties for the Agency to determine that the incinerator and environmental performance standards would be met.

The rule proposes to prohibit quantifiable concentrations of compounds which are more difficult to destroy than the most thermally refractive compound on which the incinerator attained a destruction efficiency of at least that specified in § 234.47(b). The ocean incineration program is proposing to adopt the system employed under RCRA for regulation of land-based incinerators, which relies on the identification of Principal Organic Hazardous Constituents (POHC) in the waste feed mixture which must be destroyed as required by the applicable performance standard. This POHC system was first described in the rulemaking for "Incinerator Standards for Owners and Operators of Hazardous Waste Management Facilities"—Interim Final Rule Parts 264 and 122, 46 FR 7666, January 23, 1981, and has been used in recent permits for land-based incineration of complex waste mixtures under RCRA.

The Agency is proposing to designate certain constituents on which to test the performance of the incinerator rather than require that all consituents in the waste feed mixture be tested. Mixtures containing compounds which are easier to burn than those identified as the consituents tested in a trial burn would be eligible for incineration. This will reduce the analytical burden and associated cost of conducting destruction efficiency tests on every

compound to be incinerated over the life of the permit. Selecting specific constituents avoids the necessity for measuring compliance against potentially dozens of constituents that may be present in complex waste mixtures, many of which may be present in insignificant quantities or in amounts for which accurate verification would be difficult. A concentration of 100 ppm of a compound is generally needed to accurately measure and demonstrate an incinerator's destruction on that compound to at least 99.99 percent. Finally, designating and testing those compounds which are the most difficult to destroy will generally ensure that less stable compounds will also be destroyed.

The permit writer will make the final selection of the constituents on which the destruction efficiency tests will be conducted based primarily on information indicating the difficulty of incinerating the compounds and the concentration of the compound in the waste mixture. Under the RCRA program, EPA has developed guidance for permit writers to assist them in determining the degree of incinerability of compounds so as to identify appropriate POHCs. The principal method recommended uses heat of combustion of constituents as an indication of their incinerability. Constituents having low heat of combustion values are assumed to be more difficult to incinerate. EPA believes that the heats of combustion hierarchy is generally reliable and that its use is greatly enhanced by the selection of more than one POHC as recommended in this guidance. Other ranking systems have been suggested for use including bond strength energies, toxicity, autoignition temperatures and other physical or chemical properties. EPA intends to rely on this guidance for the incineration program. Permit writers may consider the use of these other systems in addition to the heats of combustion hierarchy when developing permit limitations.

The issue of selecting the appropriate measure for a ranking system becomes less important when one considers the temperatures that the organic compounds are subject to in land and ocean hazardous waste incinerators. Practically all thermal destruction occurs either in or at the periphery of the flame. Normal operating flame temperatures are several hundred degrees higher than temperatures needed to destroy any compounds at the top of all investigated or considered hierarchies.

The proposed rule prohibits the incineration of materials insufficiently described by the applicant in terms of their composition and properties for the Agency to determine that these materials when incinerated would meet the incinerator performance standards in § 234.47 or the environmental performance standards in § 234.48.

EPA is proposing to preclude permittees from accepting for incineration wastes with a high metallic content. MPRSA and LDC discourage ocean disposal of wastes more appropriately disposed by other methods. The proposed Ocean Inceneration Regulation reflects this philosophy. Metallic waste is an example of a waste more appropriately treated or disposed of by a variety of land-based alternatives. Metals are not destroyed by the incineration process; they are oxidized and become less biologically available. However, many combustible organic waste appropriate for ocean incineration will contain some metals. For example, it would be expected that a PCB waste drained from a capacitor or transformer removed from service would contain up to several hundred parts per million of copper since copper is used in the manufacture of electrical capacitors and transformers. The internal thermal and electrical corrosive processes in these devices would be expected to produce low concentrations of copper in the PCBs drained.

For the purposes of this rule, metallic wastes would be defined as wastes with a metal concentration of more than 500 parts per million (ppm) and would be prohibited. Wastes containing less than 500 ppm of a metal would be defined as metal-contaminated wastes and would be permitted as long as the concentration of the metal, in the blended wastes for incineration, did not exceed the limits specified in the permit (see § 234.46(b)). The 500 ppm level is proposed based on an evaluation of the metals content of several RCRA-coded liquid combustible waste streams known not to originate from any processes involving metals or known not to have been subsequently adulterated with wastes high in metallic content. The highest individual metal content of these wastes was approximately 500 ppm. The Agency requests public comment on the appropriateness of this level.

Restricted Substances (§ 234.46)

The rule proposes to restrict the incineration-at-sea of certain materials. These materials include low-level radioactive wastes. Amendments to the Act in 1983 (Pub. L. 97–424, January 6, 1983) prohibited the dumping of low-level radioactive wastes until January 1985. After January 1985, the MPRSA (33 U.S.C. 1414(i)) requires that before EPA may issue a permit to dump low-level radioactive wastes, the applicant must prepare a Radioactive Materials Disposal Impact Assessment and Congress must authorize the issuance of a permit by Congressional resolution.

The final blended mixture of wastes that is loaded onto the vessel to be incinerated may not contain metallic or organic compounds in concentrations greater than those specified in the permit. Permittees would be allowed to blend wastes such that the permittee could meet the permit limits.

EPA selected 14 metals whose concentration would be specifically limited in a waste mixture. The metals are: aluminum, arsenic, cadmium, chromium, copper, iron, lead, mercury, nickel, selenium, silver, thallium, tin and zinc. These metals were selected because of their toxicity to marine life, because the Agency has either published marine water qualify criteria or has marine aquatic life no-effect levels for these metals, and because, in the case of mercury and cadmium, the LDC precludes their inclusion in wastes unless it can be demonstrated that they are present only as trace contaminants.

The London Dumping Convention in Technical Guideline 4.2.2 permits the incineration-at-sea of wastes containing Annex I substances and the substances listed in Technical Guideline 4.1.2 [2] if it is "determined that the residues from such waste entering the marine environment after incineration are rapidly rendered harmless or present as trace contaiminants through procedures adopted by Contracting Parties in consultation". The LDC goes on to state that "the emission products may not be regarded as 'trace contaminants' and/or being 'rapidly rendered harmless' if they occur in such amounts that the incineration of the wastes and other materials could cause undesirable effects, especially the possibility of chronic or acute toxic effects on marine organisms or human health or wildlife whether or not arising from their bioaccumulation in marine organisms and especially in food species. A persistent substance should not be regarded as 'harmless' except when present as a 'trace contaminants'."

[2] Polychlorinated biphenyls (PCBs), polychlorinated triphenyls (PCTs), tetrachlorodibenzo-*p*-dioxin (TCDD), benzene hexachloride (hexachlorocyclohexane, BHC) and dichlorodiphenyl trichloroethane (DDT).

The procedures for the evaluation of the terms "trace contaminants" and "rapidly rendered harmless" under LDC should be "established by using a mathematical plume model (taking into account the prevailing atmospheric conditions at the incineration site and the maximum permissible atmospheric concentrations) and by using a dispersion model (taking into account the interaction of the plume with the marine environment and the maximum permissible environmental concentrations for marine life)."

These LDC procedures also state that concentrations of mercury and cadmium which would not be considered as trace contaminants for the purposes of direct dumping would also not be considered as trace contaminants for incineration-at-sea. EPA through a mathematical plume and oceanic dispersion model (as described in Appendix A) has shown that even under worst case conditions, the residuals from limited concentrations of metallic and organic compounds in the waste feed would not cause the applicable marine water quality criteria to be exceeded. Metallic and organic compounds would be limited to the amount that if emitted and dispersed into the marine environment, would not exceed marine water quality criteria or the marine aquatic life no-effect level. The Agency has therefore determined that limited concentrations of mercury, cadmium and other metals and of organic compounds are rapidly rendered harmless or present only as trace contaminants. As the discussion in Appendix A indicates, the model is site and incinerator specific so that limits specified in the permit would depend on the particular incineration site and the incinerators on any particular vessel. EPA requests comments on the model to be applied.

As discussed elsewhere in this **SUPPLEMENTARY INFORMATION** section, polychlorinated triphenyls (PCTs) may only be included in a waste mixture eligible for incineration if a trail burn is conducted or has been conducted on this compound.

Incinerator Performance Standards (§ 234.47)

Combustion efficiency and destruction efficiency are the two incinerator performance standards proposed for the ocean incineration program. Incinerators must demonstrate a combustion efficiency of 99.95± 0.05 percent on the entire waste mixture and a destruction efficiency of at least 99.99 percent on compounds tested except that a destruction on PCBs, tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. The standard for combustion efficiency is more stringent than the 99.9 percent combustion efficiency required by TSCA (40 CFR 761.70(a)(2)) in order to be consistent with the London Dumping Convention requirement. The standards for destruction efficiency are more stringent than the LDC requirement to be consistent with RCRA and TSCA regulations.

Combustion efficiency is measured by comparing carbon monoxide and carbon doxide concentrations in the combustion gas. LDC Regulation 5 states that the combustion efficiency shall be 99.95± 0.05 percent. This has been interpreted to mean that the combustion efficiency values must average 99.95 percent for the entire burn with fluctuations within the burn of ±0.05 percent. EPA requests public comments on the appropriateness of this interpretation.

EPA is requiring that at sea incinerators attain a destruction efficiency performance standard equivalent to applicable EPA land-based incineration programs. This means that destruction efficiencies of at least 99.99 percent must be attained on all compounds except PCBs, tetra-, penta-, and hexahlorodibenzo-*p*-dioxins and dibenzofurans, for which a 99.9999 percent destruction efficiency must be attained. A 99.99 percent destruction efficiency was adopted as an incinerator performance standard except for the most toxic compounds under the land-based program and is proposed for the ocean incineration program for two reasons. First, there is extensive data indicating that such destruction efficiencies are attainable and can be routinely measured in incinerators buring a wide range of organic wastes when the concentration of the compound in the waste to be tested is over 100 ppm. Second, based on modeling the emissions, these destruction efficiencies ensure that any emissions would not exceed the environmental performance standards discussed immediately below.

The rationale for adopting a 99.9999 percent destruction efficiency for the most toxic compounds and the procedures proposed for a trial burn were described elsewhere in this **SUPPLEMENTARY INFORMATION** section.

The proposed destruction efficiencies are more stringent than that required under the London Dumping Convention. LDC requires that incinerators demonstrate a destruction efficiency of only 99.9 percent. EPA believes that a more stringent destruction efficiency performance standard is attainable with current technology and is warranted for increased environmental protection. In adopting national regulations and criteria, Section 102(a) of MPRSA requires that EPA apply the standards and criteria binding upon the U.S. under LDC to the extent that application of such standards and criteria do not relax the requirements of the Act. EPA views the destruction efficiency of LDC as a minimum requirement and is proposing to adopt a more stringent standard.

Environmental Performance Standards (§ 234.48)

EPA is proposing two environmental performance standards. The first environmental performance standard proposed is to control acid forming emissions, primarily hydrochloric acid (HCl). In the past, acid forming emissions have not been regulated in ocean incineration permits based on the determination that the acids are rapidly rendered harmless by the buffering action of the marine environment. Agency scientists continue to believe that this determination is accurate. However, there were comments on the Tentative Determination to Issue Chemical Waste Management Special and Research Permits that scrubbers with HCl removal capability should be required because the ocean does not have an infinite buffering capacity. Rather than requiring scrubbers which the Agency does not believe are justified, EPA is proposing a performance standard to limit the total acid forming emissions or to have the applicant demonstrate that the dispersion of acid forming emissions is such that:

> After allowance for initial mixing, the change in the average total alkalinity in the release zone during incineration is no more than 10 percent, based on stoichiometric calculations.

This environmental performance standard is based on the environmental criteria for the dumping of highly acid wastes found in § 227.7(d) of the Ocean Dumping Regulations and addresses any long-term cumulative impact of the acid emissions. In addition to protecting the environment, the Agency believes that this is a feasible environmental performance standard. If, for example, we assume that a vessel is burning carbon tetrachloride (which contains 92.2 percent chlorine) at a rate of 25 metric tons per hour while moving at three knots, let us also assume for the purposes of this example, that all the chlorine forms HCl. The release zone of the plume is defined as 100 meters on either side of the vessel to a depth of 20 meters, or 22×10^9 liters per hour (an estimate of the depth of the surface

layer to the thermocline where the HCl would be mixed within four hours).

Seawater has a natural alkalinity of approximately 2.3 millimoles per liter. A 10 percent change in alkalinity would be equal to 0.23 millimoles per liter. Therefore, the maximum change in alkalinity that the impacted seawater volume (22×10^9 liters) could accept in an hour without changing the alkalinity more than 10 percent is equal to:

0.23 millimoles per liter $\times 22 \times 10^9$ liters $= 5.06 \times 10^9$ millimoles per hour or 5.06×10^6 moles of alkalinity per hour

If the incinerator is burning 25 metric tons of waste per hour that is 9.2 percent chlorine, 23.05 metric tons of chlorine are being burned per hour. Assuming all the chlorine forms HCl and the molecular weight of HCl is 36.5 (molecular weight of Cl is 35.5), 23.7 metric tons of HCl would be emitted per hour (or 6.5×10^5 miles of HCl per hour). Thus, if the release zone could handle a change in alkalinity of 5.06×10^6 moles per hour and the vessel is emitting 0.65×10^6 miles of acid per hour, the actual depression in alkalinity would be 87 percent less than the maximum allowable depression of alkalinity of 0.23 millimoles per liter which would have to be emitted for the alkalinity of the release zone to be changed by 10 percent. Since it is highly unlikely that a permittee would incinerate pure carbon tetrachloride which produces the largest mass of HCl per unit of compound incinerated, it is also highly unlikely that any single incinerator vessel would depress the alkalinity of a release zone by 10 percent.

The second standard is to limit the incinerator emissions such that the effect of the emissions would not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities or recreational or commercial shipping or boating or recreational use of beaches or shorelines. This criterion would be based on a demonstration through the use of an EPA-approved mathematical plume and an oceanic dispersion model that after initial mixing of incinerator emissions into the water, the receiving water would only contain trace contaminants which would be rapidly rendered harmless. However, for the purpose of incinerating mercury and cadmium, the amount of these compounds would be limited to that amount which if directly dumped would not exceed their applicable marine water quality criteria. As discussed in greater detail in this **SUPPLEMENTARY INFORMATION** section, EPA believes that this environmental performance standard meets the requirements of the MPRSA and the London Dumping Convention.

A trace contaminant, which is rapidly rendered harmless, is defined as that ambient marine concentration of a chemical constituent of the emissions which, after allowance for initial mixing, does not exceed its applicable water quality criterion or where there is no applicable water quality criterion, a marine aquatic life no-effect level, or toxicity threshold defined as 0.01 of an ambient marine water concentration shown to be acutely toxic to appropriate sensitive marine organisms in a bioassay carried out in accordance with EPA-approved procedures. Ambient marine concentration below these criteria will prevent long term adverse effects in marine organisms and will prevent concentrations of these chemicals harmful to human life from occurring in edible marine organisms.

The model EPA would use to make this determination is a combination of a mathematical plume model (taking into account the prevailing atmospheric conditions at the incineration site) and a dispersion model (taking into account the interaction of the plume with water at the site). The model is discussed in detail in Appendix A. EPA requests public comment on the use of this model for organic and metallic emissions as was discussed earlier. The model would be used to determine the concentration of constituent which could be in a waste mixture which if the compound were destroyed to 99.99 percent efficiency (or 99.9999 percent destruction efficiency for PCBs, tetra-, penta-, and hexachlorodibenzo-*p*-dioxine and dibenzofurans) would not exceed the limiting permissible concentration in the stack emissions which, by definition (§ 234.2(j)), would not exceed marine water quality criteria, the marine aquatic life no-effect level or the toxicity threshold.

This rule does not propose a performance standard specifically limiting the emission of products of incomplete combustion (PICs). Rather, the Agency has stressed that the incinerators operate at a very high level of efficiency which minimizes all emissions including the amount of PICs.

The Agency has identified three possible ways that PICs are formed. The first way that a PIC may be formed is from the fragmentation of a molecule of an organic compound in the original feed that was not completely oxidized. A PIC formed in this way is probably the result of the original molecule leaving the flame too soon. The second way PIC may be formed is where new molecules are formed from the free radicals present in the flame. As the free radicals cool at the flame tip, they may combine rather than oxidize and form new compounds. A third possibility is that precursors in the feed (i.e., molecules that only need small changes to become a different compound) convert into compounds that were not present in the feed. We believe that these three mechanisms, plus variations in each, all contribute to PICs formation.

The PICs formed in high temperature incinerators tend to be small, low molecular weight compounds. Typically, they are chlorobenzene, cloroform, methylene chloride and other such compounds. These compounds are emitted at about the same rate as the original compounds in the feed that were not destroyed; the rate rarely exceeds a few parts per million in the flue gas. With a few exceptions, the toxicities of these PICs are also low, and consequently, the risks associated with these PICs are also low. On occasion, very toxic PICs have been detected when certain chlorinated compounds have been incinerated. For example, dioxin and dibenzofurans have been detected when chlorinated phenols and PCBs are burned. While the toxicities of these compounds are very high, the emission rates were very low. Therefore, the risks were no greater than the low toxicity PICs or other organics emitted.

The formation of PICs is not limited to high temperature incinerators. PICs are formed from all combustion sources including autombiles and wood burning stoves. The Agency has a great deal of ongoing research on the formation of PICs from conventional combustion devices and from high temperature incinerators and plans to expand this research into ocean incineration as well. In conducting this research, our primary goal is to learn to control, minimize, or eliminate the formation of PICs.

In recent meetings of EPA's Science Advisory Board on ocean incineration, Board members emphasized the need to more thoroughly evaluate combustion emissions. As part of a research effort, EPA will gather more data to further identify the PICs emitted, their toxicity, and their mass emissions. As information on the toxicities and the environmental fate of these PICs is developed, EPA may determine that PIC emissions should be limited. However, based on our knowledge at this time EPA is not proposing to regulate the emission of PICs. In limiting PIC emissions, the specific PICs formed and their emission rates are dependent on the chemical composition of the product being combusted, the design of the

incinerator, how it is operated, chemical kinetics and thermodynamics thus making the regulation of specific emissions difficult.

Although EPA is not proposing limitations on PIC emissions at this time, two approaches for possible future regulation of PICs once more is learned are discussed below.

(a) Limit the emissions of PICs, on a PIC-by-PIC basis, so that the resulting ambient receiving water concentration of a particular PIC, after allowance for initial mixing, does not exceed its corresponding ambient marine water quality criterion or its marine aquatic life no-effect level.

There are at least two difficulties in setting the above limit. First, EPA has not yet developed water quality criteria for many of the potential PICs and second, EPA would have no way of monitoring the performance standard during regular incineration operations. There does not appear to be a parameter that could serve as a surrogate for identifying and quantifying a particular PIC emitted. A PIC performance standard is quite different from the incinerator performance standard for destruction efficiency. While we cannot continuously monitor destruction efficiency, we can continuously monitor temperature, carbon monoxide, carbon dioxide and oxygen. These parameters serve as surrogates for the destruction efficiency attained in a trial burn.

(b) Set an upper limit on the concentration of total unburned hydrocarbons (which include both surviving organics and PICs) permitted in the stack gas emissions. The upper limit would be established based on continuously monitoring total unburned hydrocarbon concentrations found in the incinerator emissions during a trial burn that established a destruction efficiency of at least 99.99 percent on selected constituents or 99.9999 percent on PCBs, tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. If such an operating parameter were established, it would enable us to limit the total emissions of PICs and surviving organics to the level found when the incinerator was operating efficiently based on the attainment of the specified destruction efficiencies. Continuously monitoring total unburned hydrocarbon concentrations does not tell use which PICs are being emitted or their toxicity. Thus, monitoring total unburned hydrocarbon concentrations would not be an appropriate surrogate if a performance standard were proposed for limiting quantities of particular PICs in the emissions. However, restricting the amount of total unburned hydrocarbon concentrations would set limits on the emission of potentially hazardous by-products of the incineration process and would be another parameter monitoring the efficiency of the incinerators.

Research Permit Applications (§ 234.49)

The overriding criteria in determining whether to issue a research permit is the determination that the potential benefits of the proposed research outweigh any potential adverse impacts. This determination is made in consultation with the Secretary of Commerce as required by the Act in 33 U.S.C. 1412(b)(3).

In reaching the determination that the potential benefits of the proposed research outweigh any potential adverse impacts, the Agency would consider several factors. The first factor is whether the information sought can be reasonably developed through other means. For example, if the purpose of the research is to develop methods for collecting emission samples for use in aquatic toxicity testing, research permits for incineration-at-sea would not be necessary as these method could be developed using existing land-based incinerators. However, once these methods were developed, an ocean incineration research permit would be needed to conduct the toxicity testing of the actual emissions.

The other factors include whether the incinerators are likely to meet the performance standards in § 234.47, whether the emissions are likely to meet the environmental performance standards in § 234.48, or whether the scale of the proposed incineration research is such that it will not unreasonably degrade or endanger human health, welfare and amenities and the marine environment, ecological systems and economic potentialities of the ocean. The underlying concept is that if there are doubts as to whether the incinerator can achieve the performance standards then the amount of wastes incinerated should be limited until there is assurance that there will be minimal adverse environmental effects.

Operating Permit Applications (§ 234.50)

In determining whether to issue an operating permit, the Agency would first evaluate the trial burn plan discussed above under "Permit Application." Since two of the purposes of the trial burn are to test the performance of the incinerators and to determine the appropriate operating requirements, EPA would approve the trial burn plan if these objectives are likely to be met.

The Agency would also evaluate the models that the applicant used and the calculations made to demonstrate that the incinerator emissions would meet the environmental performance standards. The model EPA is considering is the model discussed in Appendix A. EPA would evaluate and approve, if appropriate, an equivalent model.

The next criterion that the Assistant Administrator would use in evaluating an operating permit application is whether there is a need for ocean incineration. In establishing criteria for reviewing and evaluating permit applications, § 102 of the MPRSA requires the Administrator to consider a range of factors including the "need for the proposed dumping". The London Dumping Convention in Annex III addresses the "need" for ocean dumping by stating that Contracting Parties should consider:

> The practical availability of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.

The Eighth Consultative Meeting of Contracting Parties to the Convention, 20–24 February 1984, interpreted this provision as follows:

> Before considering the dumping of matter at sea every effort should be made to determine the practical availability, including technical feasibility and environmental soundness, of alternative land-based methods of treatment, disposal or elimination, or of treatment to render the matter less harmful for dumping at sea.
>
> Other means of disposal should be considered in the light of a comparative assessment of:
>
> —Human risks;
> —Environmental costs;
> —Hazards (including accidents) associated with treatment, packaging, transport and disposal;
> —Economics (including energy costs);
> —Exclusion of future uses of disposal areas, for both sea disposal and the alternatives."
>
> If the foregoing analysis shows the land alternatives to be more practical, a license for sea disposal should not be given.

The Agency has interpreted the requirement of § 102 to consider the "need" for ocean incineration in a manner consistent with the foregoing discussion. The environmental and human health risks of ocean incineration will be compared to those associated with practicable land-based alternatives, taking into consideration technical feasibility and economics. Need will be presumptively demonstrated if ocean incineration poses less or no greater risks than practicable land-based alternatives. Although the volume of existing wastes and the availability of alternative disposal mechanisms could be a factor

considered by the Agency in its decision-making. EPA does not agree with those who define need solely in terms of capacity and argue that so long as available land-based capacity exists, need has not been demonstrated.

As discussed earlier, the Agency is conducting an Incineration Study which should provide a better basis for evaluating the relative risks of ocean incineration as compared to land-based incineration and other available land-based alternatives. As part of that Study, EPA will be evaluating the practicality of alternative land-based disposal or treatment methods.

Based on the information provided by this Incineration Study and any other available information, the Agency will prepare a generic assessment of the "need" for ocean incineration. EPA believes it is appropriate to consider the question of need up front on a national scale in the case of ocean incineration. Although this is somewhat different from its treatment of need in the context of ocean dumping, the nature of ocean incineration activities justify this difference. Unlike most ocean dumping situations, ocean incineration generally involves applicants who are not the same as the party generating the wastes. Indeed, the four companies who have already expressed an interest in ocean incineration are not waste generators, but rather companies in the business of providing waste disposal services. In addition, wastes disposed of through ocean incineration will routinely come from many different sources and different parts of the country. Because of this it may not be possible for individual applicants to prepare the type of comprehensive evaluation which the Agency believes must be undertaken in evaluating whether ocean incineration should be considered a viable technology for the destruction of wastes. Such an evaluation is important to continued development of an ocean incineration program.

The Agency's generic needs analysis will be available for public review and comment. EPA is proposing that the analysis be revised every five years to take into account any new developments in waste reduction, recycling and economically feasible land-based disposal technologies for particular types of hazardous wastes. If any of these alternatives become practicable and clearly pose on balance less risk than ocean incineration for these wastes, new ocean incineration permits would not be issued for the incineration of those wastes.

EPA's generic need analysis will establish a rebuttable presumption of need in individual permit issuance. EPA will consider the specific aspects of an applicant's operations in light of the Agency's generic needs analsysis. Only where information is submitted or is available to the Agency which indicates that an applicant's operations are unique from those considered in the generic analysis or which demonstrate that the information which the Agency based its assessment have significantly changed will the issue of need be reconsidered.

The Agency considered but rejected a proposal to include in its criteria for evaluating a permit application, an applicant's past history in complying with other Federal, State or local environmental laws. While in theory it may sound reasonable to look at an applicant's history of compliance under other laws, the Agency found that equitable criteria were impossible to develop. Instead, the Agency will develop an enforcement strategy to guide the Agency in responding to permit violations. Criteria for revocation of a permit are discussed later in this **SUPPLEMENTARY INFORMATION** section.

Emergency Permit Application (§234.51)

EPA is proposing to use the same criteria in evaluating emergency permit applications as are in the Ocean Dumping Regulations (see 40 CFR 222.3(b)(3)(i)–(iv)). An applicant for an emergency permit would have to demonstrate that:

(a) An emergency exists; and

(b) The emergency poses an unreasonable risk to human health; and

(c) The emergency admits of no other feasible solutions than ocean incineration taking into account the nature of the emergency and the degree of urgency involved; and

(d) The public interest, health, welfare and safety require the issuance of an emergency permit for ocean incineration.

The Agency anticipates that the use of an emergency permit would be extremely limited. For the Assistant Administrator to issue an emergency permit, all of the above criteria would have to be met. However, were a clear emergency to exist, the Agency must be able to expeditiously process the application and foreshorten the permit processing procedures. Therefore, the Assistant Administrator would publish a notice of the emergency permit in accordance with § 234.33 as soon as practicable after issuing the permit.

Subpart E—Ocean Incineration Permits

This Subpart outlines the terms and conditions of a permit. Depending on the nature of the activities proposed, the level of detail and type of requirements may vary. For example, the emissions monitoring to be conducted under a research permit is more extensive than the emissions monitoring conducted under an operating permit and this difference would be reflected in the permit issued. The terms and conditions of each permit would provide the specific information necessary for the permittee to conduct its operation in accordance with this proposed rule and for the public to evaluate and to monitor a permittee's ocean incineration activities.

General requirements (§ 234.52)

The elements listed in this section are applicable to all permits. The name and address of the permittee and the Permit Program Manager, and the name, flag, port of registry, classification and identification code of the vessel would be identified in the permit. Each vessel would have a separate permit which must be prominently displayed on the vessel. No vessel other than the vessel specified in the permit could be used for the activities authorized under the permit. The effective date of the permit and the expiration date of the permit would be included in the permits.

The permittee would be required to prominently display the U.S. Coast Guard Certificate of Inspection. The Certificate of Inspection indicates that the vessel complies with all U.S. Coast Guard regulations including those for navigation safety, pollution prevention and those for the vessel's hull, equipment, machinery and incinerators.

The port or ports through which the vessel is authorized to transport the wastes and the site or sites at which the vessel is authorized to incinerate would be specified in the permit. Also, the total amount of wastes authorized for incineration under the permit and the maximum permissible load for each voyage would be specified. If any limitation is placed on the time or rate at which the vesel is authorized to use the site, this also would be in the permit. Such limitations may be included to ensure that the site's carrying capacity is not exceeded when multi-vessel operations are occurring at a particular site. The regulation of the use of an incineration site is discussed later in this **SUPPLEMENTARY INFORMATION** section.

The U.S. Coast Guard may recommend specific provisions that it deems necessary and appropriate for the monitoring and surveillance of the vessel's operation to be included in a permit. This is required under the MPRSA.

All permits would include a requirement that in the event of an unauthorized release of wastes, the permittee must take all necessary cleanup and mitigation measures.

Questions were raised in public comments on the Tentative Determination to issue permits to Chemical Waste Management on the existence and adequacy of State and Federal regulations dealing with the transportation of the wastes to the port, port transfer facilities, safety features of the vessels, crew safety, the operation of the vessels in the port and during hurricanes and cleanup of catastrophic spills. Many recommended that specific requirements be incorporated into the permits and into the Ocean Incineration Regulation.

The U.S. Coast Guard provided the Agency with a list of regulations which it believes address the concerns of the public. The regulations include:

(1) Waterfront facilities (in 33 CFR Part 6, 125, 126);

(2) Pollution prevention (in 33 CFR Parts 153, 154, 155, 156, 157);

(3) Ports and water safety (in 33 CFR Parts 160, 161, 164, 165);

(4) National oil and hazardous substances pollution contingency plan (in 40 CFR Part 300);

(5) Personnel (in 46 CFR Parts 10, 12);

(6) Tank vessels (in 46 CFR Parts 30–35 and 40, as applicable);

(7) Load lines (in 46 CFR Part 42);

(8) Marine engineering (in 46 CFR Parts 50–54, as applicable and 56–63, as applicable);

(9) Cargo and miscellaneous vessels (in 46 CFR Parts 90–98, as applicable);

(10) Electrical engineering (in 46 CFR Parts 110–113, as applicable);

(11) Bulk dangerous cargo (in 46 CFR Parts 150, 153);

(12) Manning of vessels (in 46 CFR 157);

(13) Hazardous material regulations (in 49 CFR 171–179).

In addition, the Agency worked closely with the U.S. Department of Transportation on developing rules for the transportation of hazardous wastes. These rules are included in 40 CFR Part 263. Anyone shipping hazardous wastes must comply with the regulations in 40 CFR Part 263 as well as those in Part 264. Part 264 deals with minimum national standards which define the acceptable management of hazardous waste. As discussed previously, permittees must also comply with the RCRA (40 CFR Parts 262–266) and TSCA (40 CFR 761.70) regulations and implementing policies in disposing of incineration residues, tank washings, and wash waters from any decontamination operations.

Trial Burn (§ 234.53)

Prior to initiating regularly scheduled incineration activities, a permittee must conduct a trial burn. As part of the trial burn activities, EPA surveys and approves the location and the manner of use of the equipment that monitors and records the combustion gases, temperature, air flow to the incinerators, and the navigational system of the vessel including wind speed and direction, vessel course, speed and direction and vessel location. The survey and approval are required by Regulation 3 of the London Dumping Convention. All of this equipment must automatically monitor and record the data and must be sealed tamper resistant and/or tamper detectable devices. In addition, as part of its survey of the monitoring and recording devices, EPA tests the devices that automatically shut off the flow of the wastes whenver the flame goes out or the wall temperature or the concentrations of oxygen or carbon monoxide fall outside the range specified in the permit, whenever the waste feed rate specified in the permit is exceeded or whenever the devices monitoring temperature, oxygen, carbon monoxide, carbon dioxide, air flow to the incinerators and flow rates of wastes and auxiliary fuel fail. The survey of the incinerators also includes examining and approving the seals to ensure that during normal operations wastes cannot be disposed of except by incineration. In addition, EPA would examine the apparatus that is to be used to collect the gas samples for the destruction efficiency tests.

The proposed rule would prohibit significant changes in the incinerator system which might affect the efficiency of the system without the written approval of the Permit Program Manager after the survey has been completed. This follows a similar LDC requirement. A copy of the survey report would be attached to the Letter of Approval which the Assistant Administrator issues to the permittees after successful completion of the trial burn and public comment on the trial burn data.

In the second part of the trial burn, the permittee conducts the tests to demonstrate that the incinerators can achieve 99.95 $\pm$0.05 percent combustion efficiency on the waste stream and at least 99.99 percent destruction efficiency on the compounds tested except that a 99.9999 percent destruction efficiency must be demonstrated on PCBs, tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and dibenzofurans. During these tests, wastes, similar to those that would be incinerated over the life of the permit, would be fed to the incinerators at the maximum rate that the permittee would ever be allowed to incinerate. The temperature and the concentration of oxygen, carbon monoxide and carbon dioxide in the combustion gases would be carefully monitored in order to set the conditions at which the incinerators must operate once the operational activities of the permit are initiated. The concept is to have the incinerators operate under the same conditions as were recorded when the incinerators demonstrated that the performance standards were achieved. Since destruction efficiency is calculated and cannot be continuously monitored and recorded, temperature, oxygen, and carbon monoxide which can be continuously monitored are used as surrogates for ensuring that the incinerators continue to meet the incinerator performance standards.

If the incinerators on a multi-incinerator vessel have the identical design, EPA is proposing that only one of the incinerators be tested. Traditionally, in both land-based and ocean incineration programs, EPA has tested only one incinerator in a system if the incinerators in that system were similar. As discussed earlier any subtle or undetected differences in design that might affect the performance or operating conditions of an incinerator not tested would be immediately identified by the automatic monitoring devices and the flow of wastes to the incinerators would be automatically shut-off. Were this to occur, the incinerator would then be tested for destruction efficiency.

EPA is proposing that trial burns be conducted every two years, or at the discretion of the Permit Program Manager, to retest the incinerator system for destruction efficiency. The London Dumping Convention requires that a Contracting Party recertify the incinerator system biennially but does not require that the recertification include destruction efficiency tests. However, the Agency believes that it is important to periodically test the incinerators to ensure that they are performing at the prescribed levels of efficiency. In compliance with LDC Regulation 3, EPA, as the representative of a Contracting Party to the Convention, will recognize the biennial recertification issued by another Contracting Party to the Convention unless there are clear grounds for believing that the incineration system is not in compliance with LDC regulations. However, the rule as proposed would also require that a permittee conduct destruction efficiency tests biennially or at the discretion of the Permit Program

Manager irrespective of the type of biennial survey conducted by another Contracting Party. EPA requests public comment on its proposal to require, as part of the biennial survey, destruction efficiency tests.

EPA would have an observer onboard the vessel during the trial burn and would evaluate the data and independently verify that the incinerator performance standards and the operating conditions proposed in the permit were met. If, based on the trial burn, modifications were required in the permit because the operating conditions were not within the range specified in the permit, these changes would be renoticed for public comment. The permit modification procedures follow the original permitting procedures, except that the whole permit would not be open to comment, only those sections to be modified. The public would have the same opportunity to contest the modifications as it had in contesting the conditions of the draft permit.

If the Agency does not believe modifications in the permit are needed, EPA would notice the availability of the trial burn data and would provide for a 45 day review period on the data. Following this, if no modifications in the permit are needed; the Assistant Administrator would issue a Letter of Approval which allows the permittee to commence the operational activities authorized in the permit.

The incinerator and environmental performance standards discussed earlier would be included in the permit.

Operating Requirements (§ 234.56)

Until the incinerators reach the operating conditions specified in the permit, wastes may not be fed into the incinerators. This assures that the wastes will only be incinerated when the incinerators are operating efficiently. Auxiliary fossil fuel would be used to bring the incinerators up to the proper operating conditions.

The proposed rule would require the LDC minimum flame temperature of 1250 °C as measured by an optical pyrometer and an incinerator wall temperature of 1100 °C which is the value recently adopted by the OSLO Convention and the London Dumping Convention. The minimum wall temperature is the figure used to trigger the automatic waste feed shut off devices. The London Dumping Convention allows lower temperatures if combustion and destruction efficiencies were demonstrated at a lower temperature. EPA has included this same provision in the proposed rule.

The minimum waste dwell time of one second is included in the proposed regulation to be consistent with the London Dumping Convention (see Technical Guideline 2.5). TSCA regulations (40 CFR 761.70(a)(1) (i) and (ii)) stipulate a 2 second dwell time at 1200 °C (± 100 °C) or a 1½ second dwell time at 1600 °C (± 100 °C). This TSCA provision is being waiver because residence time once a parameter felt to be of major significance in developing regulatory policy for both the land-based and oceanic incineration program is currently overshadowed by the more important parameter of destruction efficiency. EPA formerly believed that residence times of 2 seconds or more were universally needed to achieve good destruction performance. The Agency now has an extensive data base which indicates that as little as tenths of one second may be sufficient in well designed incinerators for many kinds of materials. RCRA land-based incineration regulations do not have a residence time requirement and TSCA incineration regulations have a waiver provision which relies on destruction removal efficiency as the primary measure of incinerator performance.

The proposed minimum oxygen requirement of three (3) percent oxygen in the combustion gases proposed meets the requirement of the London Dumping Convention and TSCA. If oxygen levels in the combustion gases fall below 3 percent, there is concern that not enough combustion air is available to completely oxidize all the wastes and fuel oil fed into the incinerators.

The carbon monoxide level would be established based on the readings of carbon monoxide shown during the period when the combustion and destruction efficiencies tests were conducted and the performance standards in § 234.47(b) attained. These levels would include any temporary excursions (spikes) of no greater magnitude and duration than those shown during the period when the combustion and destruction efficiency tests were conducted and the incinerator performance standards were achieved. Since high carbon monoxide concentrations are indicative of incinerator upsets, the Agency's preference is for as low or, as close to zero carbon monoxide levels as possible.

The condition that there be no black smoke or extension of flame above the plane of the incinerator stack proposed is a requirement of the London Dumping Convention (see Regulation 5). Black smoke or the extension of the flame above the stack is indicative of incineration upsets with a high probability that there is incomplete combustion.

If waste storage tanks on the vessel are washed, the washings and any tank residues remaining after incineration would have to be incinerated-at-sea or upon return to port, disposed in EPA-approved land-based facilities. This provision meets the requirements of the RCRA regulations at 40 CFR Parts 262–266, of the TSCA regulations at 40 CFR 761.60 and of the TSCA Compliance Program Policy NO. 6 PCB–2—Physical Separation Techniques (August 16, 1983).

Any wash waters, ballast waters, or pump-room bilge water found to be contaminated with hazardous constituents beyond background levels at the incineration site, or any residues (ash) remaining in the incinerator would have to be incinerated-at-sea or, on return to port either incinerated in EPA-approved land-based facilities or, alternatively, treated according to applicable EPA regulations. Wash water, ballast waters, or pump-room bilge waters would have to be analyzed onboard the vessel. One method acceptable to EPA for conducting this analysis is "Analytical Procedures for Determination of Chemical Waste Contamination of Aqueous Samples and Samples of Cargo Tank Washings Using Combustible Solvents," in Official Methods of the Association of Analytical Chemists, William Horevitz, ed., 1980. In no case could these waters contaminated with hazardous constituents or incinerator residues contaminated with hazardous constituents be discharged directly to the ocean or into the harbor. This provision further assures that all possible measures would be taken to protect the environment.

The LDC requirement that all radio calls be promptly answered on a frequency to be specified is included in the rule proposed today to ensure that there is continuous opportunity for communication between the vessel, the U.S. Coast Guard, Captain of the Port and the Permit Program Manager during transport and incineration activities.

Depending on the particular operations proposed in a permit, EPA is proposing that the Assistant Administrator include additional conditions as (s) he deems necessary and appropriate. This provision is proposed because a regulation cannot anticipate all possible conditions which may be needed to be included in a permit. A regulation provides the framework within which a permit is prepared. The public would have an opportunity to evaluate and comment on specific permit conditions at the time a draft permit is proposed.

Instantaneous Waste Feed Shut-off System (§ 234.57)

Automatic waste feed shutoff devices would be required to stop the flow of the wastes to the incinerators whenever the flame goes out, or whenever the operating conditions specified for wall temperature, oxygen, or carbon monoxide are not achieved, the waste feed rate exceeds the specified maximum, or, whenever the monitoring devices for flame status, flame and wall temperature, air flow to the incinerators, oxygen, carbon monoxide, carbon dioxide or waste feed flow and/or auxiliary fuel (if used) fail. This is to prevent incomplete combustion of the wastes. EPA recognizes that the electronics of any waste feed shutoff system require a finite time to react. The time from the sensing of the event that requires shutdown to shutting off the wastes should take no longer than 4 seconds. Four seconds was selected based on a U.S. Coast Guard requirement in 46 CFR 63.05–35 requiring sensors to detect flame failure and close fuel valves within 4 seconds. Prior to each voyage, the waste shutoff system is to be tested to ensure that it is working properly.

Waste Analysis (§ 234.58)

EPA requests comment on the two waste analyses that the permittee must submit to the Permit Program Manager prior to departing for the incineration site. The first analysis must be sufficient to verify that each shipment of wastes that the permittee accepts for incineration does not contain prohibited substances, (i.e., organic compounds which are more difficult to destroy than those compounds on which destruction efficiency tests have been conducted, high-level radioactive wastes, and metals in concentrations greater than 500 ppm, etc.).

The second analysis would be performed on a representative sample of the waste mixture to be incinerated. This analysis must be sufficient to verify that the wastes are within the parameters specified in the permit. For example, the permit would specify the percent of halogens, nitrogen, and sulfur content of the waste because, when incinerated, these compounds comprise the acid forming emissions which are to be dispersed or controlled in accordance with the environmental performance standard proposed in § 234.48(a). The fourteen metals for which analyses must be conducted are toxic to marine life and are metals for which EPA has published marine water quality criteria or has data on their marine aquatic life no-effect levels. As discussed earlier and explained in detail in Appendix A, EPA would limit the concentration of metals in the waste mixture to the amount that if emitted would not exceed their marine water quality criteria or their marine aquatic life no-effect level. For mercury and cadmium, the concentration in waste mixture would be limited to that amount which if directly dumped would not exceed their applicable marine water quality criteria. The permit would also limit the concentration of organic compounds such as PCBs so that after incineration the emissions would not violate the environmental performance standard in § 234.48(b). The concentration of an organic compound authorized in a permit would also be based on the model discussed in Appendix A. The permittee would not need to analyze for those compounds which would not reasonably be expected to be in the wastes. Such a circumstance may occur if particular compounds are not used in the manufacturing processes from which the wastes were generated. The constituents excluded from the analyses must be identified and the basis for their exclusion explained.

Periodically, the Permit Program Manager may take duplicate samples for confirmatory analyses. If the confirmatory waste analysis contains prohibited substances, or restricted substances in concentrations greater than those authorized in the permit, and the presence of such substances was determined by the Permit Program Manager to create an imminent and substantial endangerment to human health and the environment, the Permit Program Manager may order an emergency suspension of the permit which would stop all operations whether or not the vessel had been loaded, was in transit to the site, or was already conducting incineration operations at the site. The processing and appeal of an emergency suspension order is discussed later in this **SUPPLEMENTARY INFORMATION** section.

Waste Limitation (§ 234.59)

As indicated elsewhere, EPA is prohibiting the incineration of high-level radioactive wastes or compounds more thermally refractive than the compounds on which the incinerators achieved the prescribed destruction efficiency. In other cases, as discussed earlier, the concentration of compounds in the waste mixture is restricted such that the resulting emissions will not exceed the marine water quality criteria, the marine aquatic life no-effect level, or 0.01 of the toxicity threshold. The Appendix A model or an equivalent would be used to set these concentrations. Since the model is site and incinerator specific, the limits that would be set would also be permit specific.

Monitoring and Recording Requirements (§ 234.60)

The monitoring and recording requirements included in this section cover the full range of ocean incineration activities including those related to a research permit or to a trial burn. The first series of requirements cover the monitoring and recording of navigation and operating conditions. Use of sealed automatic tamper resistant and/or tamper detectable devices would be required. Automatic monitoring (sensing) and recording devices are capable of sensing items to be monitored once every four seconds. To avoid an intractable quantity of recorded data, it is proposed to record at a frequency of once every three minutes.

The navigation items to be monitored and recorded are time, date, vessel position, vessel course and speed, and wind speed and direction. This information is needed to verify that the incineration of the wastes occurred in the designated site at the specified times. Vessel course and speed together with prevailing wind speed (a combined total of 3 knots of more) ensures that the incinerator emissions do not come in contact with shipboard personnel. The operating data to be automatically monitored and recorded are flame status, flame and wall temperature, oxygen, carbon monoxide and carbon dioxide concentrations in the combustion gases, combustion air flow to the incinerators and waste and/or auxiliary fuel (if used) feed rates to the incinerators. EPA would use this information to determine whether the incinerator performance standard of combustion efficiency was attained, to verify that the operating requirements were met, and to confirm that there was no direct discharge of wastes into the marine environment.

All instruments would have to be calibrated before each voyage and in accordance with the manufacturer's instruction. This would ensure that the devices worked properly during incineration activities. The permittee would be required to make a record of each calibration.

As discussed earlier, the permittee would be required to test all ballast waters, tank washings, wash waters from any decontamination operations and pump-room bilge water to ensure that any waters contaminated with hazardous constituents are either incinerated-at-sea or collected and upon return to port discharged to port

facilities for disposal in accordance with RCRA and or as appropriate, TSCA regulations. A record of all such analyses would have to be made and submitted to the Permit Program Manager following each voyage.

The sampling of the emissions during a trial burn or under a research permit would be conducted in accordance with the standard EPA methods in 40 CFR Part 60, Appendix A or their equivalent as appropriate. EPA has the discretion to approve modifications to the methods in 40 CFR Part 60, Appendix A, and regularly does so by authorizing the use of "Modified Method 5" for collecting organic nonvolite incineration emissions samples and the VOST train (Volatle Organic Sample Train) for volite organics collected. All methods proposed and any modifications to the standard methods would be included in a draft permit for public review and comment.

It has been suggested that permittees be allowed to conduct the stack traverses at dockside using fuel oils to establish a single sampling point for subsequent destruction efficiency tests. There is no question that conducting stack traverses at dockside rather than at sea would be much simpler. However, stack traverses may still need to be conducted at sea using wastes similar in character to those which the permittee would incinerate during normal operations in order to collect samples for destruction efficiency calculations. The incineration of fuel oils can be used as a surrogate for establishing oxygen, carbon monoxide and carbon dioxide profiles but may not be useful in establishing profiles for fixed point sampling of surviving organic compounds (for destruction efficiency calculations). EPA has no data as yet to indicate that profiles or oxygen, carbon monoxide or carbon dioxide obtained from fuel oils would necessarily be the same as the profiles for surviving organic compounds from incinerating hazardous waste mixtures. The distribution of surviving compounds in the combustion gases may be quite different from the distribution of oxygen, carbon monoxide and carbon dioxide. EPA will be conducting studies of these relationships as part of its Research Strategy. If commenters have data comparing these relationships, EPA would also like to examine these data.

The analyses of the emission samples for surviving organic compounds (used in determining destruction efficiency) and for products of incomplete combustion, if required, are to be done in accordance with EPA-approved gas chromatograph/mass spectrometry methods in *Test Methods for the Evaluation of Solid Wastes, Physical/Chemical Methods* in 40 CFR § 270.6 or their equivalent and in accordance with approved quality assurance and quality control procedures. The level of detection would be specified in the draft permit.

It is proposed that at least three separate and distinct destruction efficiency tests be conducted. On each test the incinerator would have to attain the prescribed destruction efficiency in order for the trial burn to be successful.

EPA is proposing that periodically permittees be required to participate in the environmental monitoring of each site that they are authorized to use. The environmental monitoring to be conducted by the permittee would be carried out under the direction of EPA. If more than one permit were issued for a site, the permittees could share the costs of participating in the environmental monitoring program.

EPA-approved or other federal agency-approved methods would be used in conducting the environmental monitoring. At this time, there are no "standard methods" for environmental monitoring; the methods are evolving as they are used and improvements are made. However, whenever conducting environmental monitoring, the proper quality assurance and quality control procedures would be specified.

Many of the environmental monitoring methods used in a research permit may be experimental. It has been suggested that EPA fully test environmental monitoring methods using nonhazardous wastes. While nonhazardous wastes could be used in evaluating methods for ambient air and water monitoring, this is not true for assessing the adequacy of bioassay methods on the marine biota. Trace quantities of hazardous compounds similar to the quantities that would be emitted during incineration are needed to establish dose/response levels for determining the necessary limits of detection in any biological monitoring program. Therefore, EPA is not stipulating that methods used in the environmental monitoring program or in a research permit be tested using nonhazardous wastes.

EPA would review the qualifications of individuals that the permittees propose to use in collecting and analyzing the emission samples and in conducting the environmental monitoring. The individuals would be specifically approved by EPA before the voyage on which these activities were to occur to ensure that only qualified individuals participate.

Reporting Requirements (§ 234.61)

As described above, EPA is proposing that prior to the vessel departing for an incineration site, that the permitte submit two separate analyses of the wastes to be incinerated which would verify that the wastes meet the permit requirements. In addition, within 10 days following each voyage or prior to the vessel departing on a new voyage, the permittee would be required to forward to the Permit Program Manager the operating data from the previous voyage. Trial burn data and the environmental monitoring data would have to be submitted within 90 days of the completion of the voyage when these activities were conducted. All data reports submitted are to be submitted and certified by the signator of the permit or by a person authorized to sign the permit. The information included in these reports is critical and should be reviewed by responsible individuals in the organization who would be liable for any discrepancy.

Shiprider (§ 234.62)

EPA is proposing to require an EPA observer on each incineration voyage. This provision is predicated on the nature of incineration-at-sea activities which preclude unannounced spot checks which are possible in land-based incinerator facilities.

Shipriders would be trained to perform inspections and to evaluate the incineration operations. The Shiprider would have the authority to stop the flow of wastes to the incinerator if, in his or her opinion, any term of the permit was not being met or unreasonable risk to human health, welfare, or to the environment was occurring or was about to occur.

Inspections (§ 234.63)

The permittee would be required to allow the Permit Program Manager or his/her authorized representatives, upon presentation of proper credentials, to inspect records, monitoring equipment and take duplicate samples for analysis, etc. This generic provision ensures the ability of the Agency to check for compliance with the terms and conditions of the permit.

Contingency Plan (§ 234.64)

The contingency plan discussed earlier would be a part of the permit and would have to be followed in the same manner as other terms and conditions of a permit have to be followed. Any time the contingency plan is implemented, a full written report describing the incident requiring implementation of the contingency plan must be submitted to

the Permit Program Manager within 10 days of the termination of the voyage on which the contingency plan was implemented.

Financial Responsibility (§ 234.65)

Elsewhere in this **SUPPLEMENTARY INFORMATION** section EPA requested comment on the amount of insurance that an applicant must carry. The amount of insurance is included in the permit and must be maintained during the life of the permit. The permittee would be required to carry onboard the vessel a signed duplicate original of a certificate issued by the insurer attesting that the permittee carried insurance in accordance with the requirements in § 234.10 and for the amount specified in the permit.

Penalties (§ 234.66)

If any provision of the permit were violated, the permittee would liable for a civil penalty of not more than $50,000 for each violation. No penalty would be assessed until the permittee had been given notice and an opportunity for a hearing on the violation. The Assistant Administrator, in determining the amount of the penalty would consider the gravity of the violation, prior violations and the demonstrated good faith of the permittee in attempting to achieve rapid compliance after notification of a violation. In addition, if a permittee knowingly violates any provision of a permit issued under these proposed rules, the permittee would be subject to a fine of not more than $50,000 or imprisonment for not more than one year, or both. For the purpose of imposing civil penalties and criminal fines under this provision, each day of a continuing violation would constitute a separate offense. These penalties are the penalties stipulated in Section 105 of the Act. As discussed earlier, EPA will be developing an enforcement strategy to further define the appropriate response measures for different types of permit violations.

Section 105 of the Act also provides that no one would be subjected to penalties or fines if materials were dumped in an emergency to safeguard life at sea. If jettisoning the cargo were contemplated, the proposed rule requires in §234.61(g) that the permittee immediately notify the nearest U.S. Coast Guard district and the Permit Program Manager. If possible, the U.S. Coast Guard would dispatch representatives to the scene of the incident to evaluate the conditions, advise the Master and develop possible alternatives to jettisoning the cargo to alleviate the life threatening situation. However, the Master of the vessel is ultimately responsible for decisions affecting the safety of the vessel and its crew.

The proposed rule requires that a full written report of the emergency and the actions taken be submitted to the Assistant Administrator within 10 days of the incident. Although a dumping that was determined to be necessary to safeguard life at sea is not subject to penalties under the Act, EPA believes that incinerator vessel owners should, nevertheless, be responsible for any damage which may result from such a dumping. Thus, any emergency actions taken do not exempt the permittee from the cleanup and mitigation measures required in § 234.52(1) of this proposed rule. In addition, the insurance obtained by the permittee must be available to cover the costs of cleanup and mitigation measures from the effect of a release of wastes to safeguard life at sea.

Emergency Suspension (§ 234.67)

The Permit Program Manager may issue an emergency suspension order if, based on the waste analyses reports, the monitoring data reports, or a report from the Shiprider, the Permit Program Manager believes continuation of the incineration activities by the permittee presents imminent and substantial risk to human health or to the environment. Upon receipt of an emergency suspension order, the permittee must terminate all incineration activities, whether or not the vessel had been loaded, was in transit to the site, or was already conducting incineration operations at the site. The procedures for appealing such an emergency suspension order are discussed in the next section of this **SUPPLEMENTARY INFORMATION** section.

Subpart F—Modification, Suspension or Revocation of a Permit

Section 104(d) of the Act provides that the Administrator, or in this case, the Assistant Administrator, review periodically and, if appropriate, revise permits issued pursuant to the Act. Section 104(d) further provides that the permits may be altered or revoked partially or entirely if the materials authorized for incineration cannot be incinerated consistent with the criteria required to be applied in evaluating the permit application. Subpart F of the proposed rule outlines the causes that would trigger modification, suspension or revocation of a permit. It also specifies the processing procedures for modifying, suspending or revoking a permit. Although EPA is not intending to provide an opportunity for adjudicatory hearings in the case of permit issuance, EPA is proposing to retain adjudicatory hearings for permit revocation or suspension (except for emergency suspensions as discussed below). Because revocation and suspension is very likely to rest on an "accusatory" determination that standards established in the past have not been met, rather than on a judgment of what the goals of the statute require by way of control requirements, EPA believes that due process concerns require retention of adjudicatory hearings. Such hearings would be held in acordance with the procedures outlined in 40 CFR Part 124, Subpart E. This is consistent with the procedures for terminating RCRA permits under the Agency's Consolidation Procedural Regulations. Also similar to the treatment of RCRA permits, the modification of an ocean incineration permit is considered to be similar to permit issuance; thus adjudicatory hearings will not be provided in modification decisions.

The proposed rule limits minor modifications of a permit to correcting typographical errors, to changing the listed coordinators or equipment in the contingency plan or to reducing the estimate of the total amount of wastes to be incinerated. These minor modifications do not require that the Agency publish a public notice of the changes or provide an opportunity for public review or comment. All other modifications do require public notice, public review and comment. Where the specific operating conditions are based on the results of the trial burn (i.e., temperature, carbon monoxide concentration in the combustion gases) and the conditions achieved when the incinerators attained the incinerator performance standards are within the range included in the permit, insertion of these numbers into the operating permit would not be considered a modification of the permit.

If the Permit Program Manager issues an emergency suspension order for reasons described earlier, the permittee has ten days to appeal that order. The appeal is to be made in writing to the Assistant Administrator. The Assistant Administrator would then decide whether to withdraw the emergency suspension order or to initiate permit revocation proceedings. If there is no appeal of the emergency suspension order, the Assistant Administrator would initiate permit revocation proceedings. Although EPA has proposed to retain adjudicatory hearings in the event of permit revocation or suspension, it is well established that in the event of emergency situations requiring immediate action to safeguard

the public health or interest, the Agency need only afford a permittee minimal procedures to contest its actions. The appeal procedures proposed for emergency suspensions satisfy this requirement.

Under the rule proposed today, the Assistant Administrator could initiate permit revocation proceedings if:

(a) The permittee is in significant noncompliance with any conditions of the permit; or

(b) The permittee failed in the application or during the permit issuance process to fully disclose all relevant facts, or the permittee misrepresented any relevant facts at any time; or

(c) The permittee is no longer able to obtain insurance for the amount specified in the permit in accordance with the terms in § 234.10; or

(d) The permittee's incinerators failed to attain the incinerator performance standards in § 234.47 during the biennial trail burn; or

(e) There is a determination that the permitted activity endangers human health or the environment and cannot be regulated to acceptable levels.

The procedures for modifying or revoking a permit are the same procedures used in preparing and processing a draft permit discussed elsewhere in this **SUPPLEMENTARY INFORMATION** section. However, if a permit is to be modified, only those conditions to be modified are re-opened. All other aspects of the permit remain in effect for the duration of the unmodified portion of the permit.

Subpart G—Criteria for the Designation and Management of Ocean Incineration Sites

Subpart G generally follows the provisions in the Ocean Dumping Regulations which govern the designation and management of disposal sites for ocean dumping. EPA has supplemented these provisions to address the concerns of those commenting on the Agency's Tentative Determination To Issue Chemical Waste Management Special and Research Permits. The major changes proposed include establishing a carrying capacity for sites listed in § 234.78(b) and designated in accordance with the rulemaking procedures in § 234.77(c) and requiring that an environmental monitoring plan be developed for each site designated. These two provisions provide the bases for regulating the use of the ocean incineration sties.

Incineration Site Management Responsibilities (§ 234.74)

The Permit Program Manager is the Agency official who would be responsible for the management of ocean incineration sites. Management responsibilities include conducting or overseeing the conduct of studies that would be used in designating an ocean incineration site. They also involve regulating the time, rate, quantities and types of materials incinerated by limits established in a permit. In addition, the Permit Program Manager would be responsible for implementing the environmental monitoring programs for the sites, evaluating the effect of incinerator emissions on the sites, and if ncesssary, recommending that the Assistant Administrator modify the use of the sites or propose that use of the sites be terminated.

Criteria for the Selection of Sites (§§ 234.75 and 234.76)

EPA is proposing the same criteria in evaluating potential sites for incineration as those in § 228.5 and § 228.6 of the Ocean Dumping Regulations (see 42 FR 2462, January 11, 1977) except that EPA is proposing to add an additional factor that would require the examination of the effect of incinerator emissions or endangered or threatened species at or near the site. Because such an evaluation is routinely done as part of the preparation of an EIS on designated sites under current Agency policy, EPA believes it is appropriate to recognize this in the Regulation. EPA retained the existing criteria in the Ocean Dumping Regulations because these criteria adequately reflect the factors mandated in the Act.

Procedures for Designating Ocean Incineration Sites (§ 234.77)

Two mechanisms are proposed for designating ocean incineration sites. The first mechanism allows sites to be designated as a condition of a permit. This mechanism could be used for environmental research activities in a research permit or for incineration activities in an emergency permit if using a site listed in § 234.78(b) for an emergency permit posed an unreasonable risk to human health, welfare or safety. The other mechanism for designating ocean incineration sites is through formal rulemaking procedures. Incineration activities authorized under an operating permit and those research permit activities on new ocean incineration technologies could only take place at sites designated in accordance with the formal rulemaking procedures in § 234.77(c) and listed in § 234.78(b).

If an applicant believes that a site other than one listed in § 234.78(b) would be more appropriate for the proposed research activities, the site would be requested as part of the research permit application. The applicant would have to submit sufficient information for the Agency to determine that the site met the general and specific criteria for selecting incineration sites in § 234.75 and § 234.76. The Agency would assure that at a minimum, such a site would not interfere with other activities in the marine environment, particularly areas of existing fisheries or shellfisheries and regions of heavy commercial or recreational navigation. If the Agency determines that the site is appropriate for the activities proposed in the research permit, the site would be included in the draft research permit for public review and comment. Background information on the proposed research incineration site supplied by the applicant and any additional information that the Agency believes relevant would be included in the Fact Sheet and Notice of the permit.

The rulemaking process for designating ocean incineration sites in § 234.77(c) is the same as that for proposing any rule except that EPA is also proposing to publish a notice of the rule in newspapers of general circulation as provided in § 234.33. This process provides ample opportunity for public hearings and for public review and comment on a proposed site.

Prior to proposing an incineration site, an incineration site designation study would be prepared . This site designation study would be an environmental assesment of the use of a site for incineration and may be used in the preparation of an environmental impact statement for each site where such a statement is required by EPA policy. These studies would be the basis for determining whether to propose a rule for the designation of the site and would address the general and specific criteria in § 234.75 and § 234.76. Such studies would involve the collection, analysis and interpretation of all available, pertinent data and information on the proposed site including, but not limited to that form baseline surveys, special purpose surveys, public data archives, and social and economic studies and records of areas which would be affected by use of the proposed site.

As part of the site designation studies, the carrying capacity of the site would be calculated for the incinerator

emissions based on the incinerator performance standards proposed in this rule today. Because the exact makeup of the wastes and subsequent emissions may not be fully known at the time of a site designation study, the carrying capacity and loading rates would only be calculated for acid forming emissions, the 14 metals listed in § 234.58(b)(2)(ii)(B) and the most prevalent organics expected to be incinerated.

The carrying capacity of a site for a particular constituent in the emissions would be expressed in terms of the rate at which a specific waste may be incinerated, such that after initial mixing, the emissions would not exceed the environmental performance standards in § 234.48.

EPA is proposing to calculate the carrying capacity of the site for specific incinerator emissions based on the two equations listed below. The Agency requests comments on this approach.

(a) Acid forming emissions:

$$X = \frac{(V)\ (0.23\ \text{millimoles})}{F}$$

Where:

X = Millimoles of halogens, sulfur or nitrogen compounds that may be incinerated per hour at the incineration site

V = Volume of the top 20 meters of water of the incineration site (expressed in liters)

F = Average flushing period of the incineration site calculated by dividing the length of the incineration site by the average suface current at the site (expressed in hours)

In the equation, "X" is the maximum amount of halogens, sulfur or nitrogen compounds that may be incinerated per hour such that the change in the average total alkalinity of the incineration site would not exceed 10 percent. This amount, expressed in terms of millimoles per hour, is computed by multiplying the volume of the top 20 meters of water in the incineration site by 0.23 millimoles per liter (the average alkalinity of sea water is approximately 2.3 millimoles per liter) divided by the flushing period of the incineration site.

(b) Organic and metallic emissions:

$$X = \frac{(V)\ (C)}{(1-D)\ (F)}$$

Where:

(V) = Volume of the upper 20 meters of water of the incineration site (expressed in liters)

(F) = Average flushing period of the incineration site in hours calculated by dividing the length of the incineration site by the average surface current at the site (expressed in hours)

(C) = Marine water quality criterion for the organic or metallic constituent possibly present in the emissions (expressed in grams per liter)

(D) = Destruction efficiency (expressed as a unitless decimal, i.e., 0.999999 for PCBs; 0 for metals)

In this equation "X" is the maximum feed rate of a constituent in a waste (expressed in grams per hour) that can be incinerated at the site such that (C) is not exceeded. In calculating "X", it is assumed that the constituents remain in the top 20 meters of the sea.

As indicated earlier, the Agency would prefer that emergency permit activities take place at sites that would be listed in § 234.75(b). However, if this would pose an unreasonable risk to human health, welfare or safety, the Assistant Administrator may designate another location for the emergency permit activities. To the extent possible, the location selected would meet the general and specific criteria in § 234.75 and in § 234.76 for the designation of ocean incineration sites. The Agency will be investigating potentially appropriate locations for emergency permit activities as it studies future ocean incineration sites.

Designated Sites (§ 234.78)

Sites designated in accordance with § 234.77(c) would be codified in 40 CFR § 234.78(b). Each rule would contain the following information:

(a) The boundary coordinates of the site, in latitude and longitude;

(b) Limits on the time the site may be used. Use of a site may not exceed 10 years unless the site has been redesignated;

(c) Limits, if any, on the type and/or quantity of materials that may be in the incinerator emissions; and

(d) An environmental monitoring program.

At present, while there is only one ocean incineration site, the Gulf Incineration Site in the Gulf of Mexico. The Agency anticipates that other sites may be designated. Any future sites that are designated would be designated in accordance with this Regulation as promulgated. The rule on the Gulf Incineration Site would be appropriately modified to add the information requirements imposed in the final rule.

Regulation of Incineration Site Use (§ 234.79)

The Agency proposes to regulate the use of an ocean incineration site in two ways. First, on a permit-by-permit basis, EPA would establish limits on the time and rate of incineration based on the carrying capacity of the site for substances emitted. Second, the Permit Program Manager would implement an environmental monitoring program included in each site designation rule.

The primary purpose of the environmental monitoring program is to evaluate the impact of incineration on the marine environment. The baseline conditions, established during the site designation studies, would be compared to the conditions which occur as incineration activities are conducted.

Special studies would be conducted to identify immediate and short term impacts as well as the long term impacts from incineration operations. An example of a short term impact study might be the collection of indigenous organisms for subsequent testing of their ability to tolerate DCl which they might be exposed to from the plume.

The environmental monitoring program would also include periodic collection of air, water and biota samples inside the site and in the area surrounding the site. Air samples would be collected for analysis of chemical substances which may be in the incinerator emissions. Water samples would be collected from various depths for salinity, pH, chlorophyll content, temperature and alkalinity analyses as well as for chemical substances which may be in the incineration emissions. Biota such as neuston (surface plankton), subsurface plankton, fish and shrimp would be collected for chemical analysis.

The sampling and analysis procedures for the environmental monitoring of the sites must be able to detect the presence of minute quantities of emission by-products in the environment and thus must be capable of achieving very low limits of detection. The procedures that are intended to be used include: high volume air and water samples collected with polyurethane foam plug filtering systems; high volume neuston samples collected using a neuston net, and the chemical analysis of foam plugs and biota using high resolution gas chromatography and mass spectroscopy.

The overall strategy of the monitoring plan is to make full use of ongoing monitoring and research activities, such as those of NOAA to the extent feasible and to supplement these additional monitoring operations as may be needed. At the discretion of the Permit Program Manager, permittees may be required to periodically participate in the environmental monitoring of sites they use.

The environmental monitoring program would include a hierarchy of monitoring activities. EPA requests

comment on this approach. A description of each of the components of the overall monitoring program follows.

(a) *Permittee Monitoring.* During research permit burns and potentially during trial burns while collecting stack samples, permittees would participate in the routine collection of air, water and neuston samples in the immediate vicinity of the vessel.

(b) *Near-field Monitoring.* The purpose of near-field monitoring is to follow the dispersion and diffusion of the plume until it is no longer identifiable and to assess the extent of the impacts of the incineration plume. This involves taking samples as the plume disperses. Substances such as HCl, sulfur hexafluoride, or ammonia may be used to track the plume. The permittee monitoring would be part of this near-field monitoring.

(c) *Far-field Monitoring.* The objectives of this activity are to determine whether any unburned wastes or HCl emitted at the site are transported in detectable quantities outside the incineration site, the direction that the emissions move, and whether there is any potential for the incineration emissions to reach shore through movement of the substances in the water or in the air.

Mathematical modelling of the overall transport processes would provide the basis for predicting transport of unburned wastes discharged at the site and would provide the basis for selecting sampling sites. Adjustments would be made in sampling station numbers, locations, and frequency of sampling as field data are collected and analyzed.

Based on the monitoring data collected, EPA would evaluate whether there was movement of emissions toward estuaries or marine sanctuaries, onto oceanfront beaches or shorelines or toward productive fishery or shellfishery areas; whether pollution-sensitive biota characteristic of the general area were absent from the incineration site; whether there was progressive, non-seasonal changes in water quality at the incineration site, where these changes could be attributable to materials resulting from incineration at the site; whether there was progressive, non-seasonal changes in composition or numbers of pelagic, demersal, or benthic biota at or near the incineration site, and if these changes could be attributed to the effects of incineration at the site; and whether there was a progressive accumulation of chemical species attributable to materials resulting from incineration in waters or marine biota at or near the site.

Adverse impacts would be identified by the progressive movement of wastes or emission constituents toward estuaries, marine sanctuaries, ocean beaches, shorelines or productive fisheries or shellfishery areas in detectable concentrations above naturally occurring ambient marine water concentrations or naturally occurring concentrations in biota. Adverse impacts would also be identified by an accumulation of any waste or emission constituent at the incineration site or adjacent areas, or if the biota, sediments, or water column at the incineration site, or of any area outside the site contained detectable concentrations of, or were adversely affected by such waste or emission constituent above naturally occurring background levels. Other adverse effects would be identified by statistically significant decreases in the populations of valuable commercial or recreational species, or of specific species of biota essential to the propagation of such species, within the incineration site and surrounding area as compared to populations of the same organisms in comparable locations outside the site and surrounding area.

Modification in Incineration Site Use (§ 234.80)

If the Agency determines that ocean incineration is causing an increase in pollutant levels and/or adversely affecting the marine environment, there are several actions which could be taken depending on the nature and extent of the effect. The Assistant Administrator could deny permits for a specific waste constituent or could impose conditions in the permits governing the amount, time or rate of incineration of particular constituents. However, if the determination is made that continued incineration at the site would have a permanent adverse effect on the site, the Assistant Administrator would propose termination of the use of the site in accordance with the same procedures used to designate the site in § 234.77(c).

Reports (§ 234.81)

The impact of incineration on each site listed in § 234.75(b) would be evaluated annually, and a report would be submitted, as appropriate, as part of the Annual Report to Congress under section 112 of the Act. The report would be based on an evaluation of all data available from baseline and trend assessment surveys, monitoring surveys, and other data pertinent to conditions at or near a site.

Regulatory Impact Analysis, Regulatory Flexibility Analysis and Paperwork Reduction Act Requirements

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposed regulation is not major because it does not impose new annual obligations on the industrial sector of $100 million, nor does it satisfy any of the criteria identified in section 1(b).

This notice was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments will be available for public inspection through contacting the person listed at the beginning of this notice.

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. EPA has determined that this rule does not have significant adverse impact on small entities.

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Submit comments on these requirements to:

Richard Otis, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, D.C. 20503.

The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 234

Vessels, Water pollution control, Ocean dumping, Vessels, Waste treatment and disposal, Intergovernmental relations, Administrative practices and procedures, Reporting and recordkeeping.

Authority: 33 U.S.C. 1401 *et seq.*, MPRSA as amended 1972.

Dated: February 19, 1985.

Lee M. Thomas,

Administrator.

It is proposed to amend 40 CFR Chapter I as follows:

PART 220—GENERAL

§ 220.3 [Amended]

1. Section 220.3(f) is removed.

PART 227—CRITERIA FOR THE EVALUATION OF PERMIT APPLICATIONS FOR OCEAN DUMPING OF MATERIALS

§ 227.6 [Amended]

2. Section 227.6(h) is removed.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

§ 228.12 [Amended]

3. Section 228.12(b) (1) and (2) are removed.

4. Part 234 is added to 40 CFR Subchapter H.

PART 234—OCEAN INCINERATION REGULATIONS

Subpart A—General

Sec.

Subpart B—Permit Application

Subpart C—Application Processing Procedures

Subpart D—Criteria for the Evaluation of Ocean Incineration Activities

Subpart E—Ocean Incineration Permits

Subpart F—Modification Suspension or Revocation of a Permit

Subpart G—Criteria for the Designation and Management of Ocean Incineration Sites

Authority: 33 U.S.C. 1401 *et seq.*

Subpart A—General

§ 234.1 Purpose, scope and applicability.

(a) This Part 234 establishes procedures and criteria for the United States Environmental Protection Agency (EPA) to use in issuing incineration permits to thermally destroy liquid wastes at sea and for the designation and management of ocean incineration sites. Except as may be authorized by permits issued pursuant to this Part:

(1) No person shall transport from the United States any material for the purpose of incinerating this material at sea.

(2) In the case of a vessel registered in the United States or flying the United States flag or in the case of a United States department, agency, or instrumentality, no person shall transport from any location any material for the purpose of incinerating this material at sea.

(3) No person shall transport from a location outside the United States any material for the purpose of incinerating this material:

(i) In the territorial sea of the United States; or

(ii) In a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial seas or the territory of the United States.

(b) In the case of transportation of material by an agency or instrumentality of the United States or by a vessel registered in the United States or flying the United States flag, from a location in a foreign State which is a Party to the Convention, a permit issued pursuant to the authority of that foreign State Party, in accordance with Convention requirements and the requirements of this Part 234, and which otherwise could have been issued pursuant to this Part shall be accepted as if it were issued by the EPA under authority of this Part: *Provided,* that in the case of an agency or instrumentality of the United States, no application shall be made for a permit to be issued pursuant to the authority of a foreign State Party to the Convention unless the Assistant Administrator concurs in the filing of such application.

(c) In no case shall permits be issued for the prohibited substances in § 234.45(a)–(e).

(d) This Part 234 does not apply to an no permit hereunder shall be required for the routine combustion of materials incidental to the propulsion of vessels,

or to the operation of motor driven equipment on vessels.

§ 234.2 Definitions.

"Act" means the Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401 *et seq.*)

"Appropriate sensitive marine organisms" means at least one species each representative of phytoplankton or zooplankton, crustacean or mollusk, and fish species chosen from among the most sensitive species and life stages documented in the scientific literature or accepted by EPA as being reliable test organisms to determine the anticipated impact of the constituent on the ecosystem at the incineration site. These organisms shall be representative of species inhabiting various levels of the vertical water column from surface waters to below thermocline waters at the site.

"Assistant Administrator" means the Assistant Administrator for Water, EPA or another official that the Administrator delegates the responsibility for implementing this Part 234.

"Bioassays," except on phytoplankton or zooplankton, shall be run for a minimum of 96 hours under temperature, salinity, and dissolved oxygen conditions representing the extremes of environmental stress at the incineration site. Bioassays on phytoplankton or zooplankton may be run for shorter periods of time as appropriate for the organisms tested at the discretion of EPA and in accordance with procedures approved by EPA. These procedures shall require exposure of organisms to provide reasonable assurance based on considerations of statistical significance of effects at the 95 percent confidence level, that the constituents in the emissions after incineration will cause no undesirable effects due to acute toxicity, chronic toxicity or to bioaccumulation of the constituents.

"Combustion efficiency" is one of the performance standards for an incinerator. It is a measure of the operational efficiency of the incinerator on the waste stream and/or auxilliary fuel (if used) at a given time. Combustion efficiency, expressed as a percent, is calculated by comparing the concentration of carbon monoxide in the incinerator emissions to the concentration of carbon dioxide in the incinerator emissions through the following formula:

$$\text{Combustion efficiency} = \frac{[^{c}CO_2] - [^{c}CO]}{[^{c}CO_2]} \times 100\%$$

where:

$[^{c}CO_2]$ = concentration of carbon dioxide in the combustion gases

$[^{c}CO]$ = concentration of carbon monoxide in the cumbustion gases

"Destruction efficiency" is the primary performance standard for an incinerator. It is a measure of the destruction of an individual organic constituent in a waste mixture. Destruction efficiency, expressed as a percent, is calculated by the following formula:

$$\text{Destruction efficiency} = \frac{(\text{Win} - \text{Wout})}{\text{Win}} \times 100\%$$

Where:

Win = mass feed rate of one constitutent in the waste stream feeding into the incinerator, and

Wout = mass emission rate of the same constituent present in the exhaust emission prior to release to the atmosphere

"High-level waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels or irradiated fuel from nuclear power reactors.

"Incineration-at-sea" or "ocean incineration" means the deliberate combustion of wastes or other matter on incineration vessels for the purpose of their thermal destruction. Routine combustion of materials incidental to the propulsion of vessels or to the operation of motor driven equipment on vessels are excluded from the scope of this definition.

"Initial mixing" is defined to be that dispersion or diffusion of incinerator emissions into the receiving water which occurs within four hour after release from the incinerator.

"Limiting permissible concentration" (LPC) is that concentration of an individual chemical constituent in an incinerator stack emission which, after allowance for initial mixing as defined in § 234.2(i), does not cause applicable marine water quality criteria to be exceeded or, when there are no applicable marine water quality criteria, that concentration of an individual chemical constitutent in an incinerator stack emission which will not exceed an aquatic life no-effect level or a toxicity threshold, defined as 0.01 of an ambient marine water concentration shown to be acutely toxic to appropriate sensitive marine organisms (§ 234.2(b)) in a bioassay (§ 234.2(d)) carried out in accordance with approved EPA procedures. When there is reasonable scientific evidence on a specific waste constituent to justify the use of an application factor of other than 0.01, at the discretion of EPA, such alternative application factor shall be used in calculating LPCs.

"London Dumping Convention" or "LDC" or "Convention" means the "Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter".

"Parameters" are analytical descriptors. They include individual waste constituents such as metals, individual organic compounds, organic chemical classes or chemical families of organics or chemical/physical characteristics such as heat content, viscosity, moisture, ash content, solids or presence or absence of functional groups such as halogens.

"Permit Program Manager" means an EPA official who is formally designated by the Assistant Administrator to carry out specified responsibilities.

"Person" means an individual, association, partnership, corporation, municipality, State or Federal agency, an agency or employee thereof, or foreign governments or instrumentalities thereof.

"Quantifiable concentration" means a minimum concentration of a discrete chemical constituent (element or compound) in a waste mixture that can be detected, identified, and quantified without confirmatory analyses. The magnitude of this concentration will vary depending on the chemical constituent, possible interferences of other constituents in the waste mixture, the method of sample preparation, and method of analytical detection, identification, and quantification. The analytical procedures to be used are *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* in 40 CFR 270.6 or their equivalent.

"Release zone" is the area swept out by the locus of points constantly 100 meters from the perimeter of the conveyance engaged in incineration-at-sea activities, beginning at the first moment in which incineration is scheduled to occur and ending at the last moment in which incineration is scheduled to end. No release zone shall

exceed the total surface area of the incineration site.

"Water quality criteria" means the criteria given for marine waters in the EPA publication "Water Quality Criteria Documents; Availability" as published in 1980 (45 FR 79318 November 28, 1980) and amended by subsequent supplements and additions (46 FR 40919; August 31, 1981).

§ 234.3 Relationship to international agreements.

In accordance with section 102(a) of the Act, this Part 234 applies the criteria binding upon the United States under the "Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter" and its Annexes to the extent that application of such criteria does not relax the requirements of the Act. EPA shall recognize the form of approval for an incineration system issued by another Contracting Party to the Convention unless there are clear grounds for believing that the incineration system is not in compliance with the Convention's regulations.

§ 234.4 Considerations under Federal law.

Permits shall be issued consistent with the requirements of applicable Federal laws. These laws may include:

(a) *The Coastal Zone Management Act.* (16 U.S.C. 1451 *et seq.*). Section 307(c) of the Coastal Zone Management Act and implementing regulations (15 CFR Part 930) prohibit EPA from issuing a permit for an activity affecting land or water use in the coastal zone until the applicant certifies that the proposed activity complies with the federally approved State coastal zone management program and the State or its designated agency concurs with the certification or is deemed to waive such certification (or the Secretary of Commerce overrides the State's nonconcurrence).

(b) *The Endangered Species Act.* (16 U.S.C. 1531 *et seq.*). Section 7 of the Endangered Species Act and implementing regulations (50 CFR Part 402) require the Administrator to ensure, in consultation with the Secretary of the Interior or Commerce, that any action authorized by EPA is not likely to jeopardize the continued existence of any endangered or threatened species or adversely affect its critical habitat.

§ 234.5 Authority to issue permits.

The Administrator or his or her delegated representative may issue, deny, modify, revoke, suspend, impose conditions on, initiate and carry out enforcement actions, and take any and all other actions necessary or proper and permitted by law with respect to ocean incineration permit and the designation and management of ocean sties.

Note.—The Administrator has delegated this authority to the Assistant Administrator for Water.

§ 234.6 Categories of permits.

(a) *Research permits.* (1) Research permits may be issued for up to six months to conduct research on new ocean incineration technology for industrial wastes or to evaluate whether ocean incineration unreasonably degrades or endangers human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities of the ocean.

(2) Incineration sites for research permits shall be determined by the nature of the proposed study and should conform with the factors listed in § 234.75 and § 234.76.

(3) Research permits may be issued for sites designated in acordance with the procedures in § 234.77(a) or listed in § 234.78(b).

(b) Operating permits. (1) Operating permits may be issued for a fixed term not to exceed 10 years for the incineration of liquid wastes at sea. Each permit shall be reviewed five years after the date of issuance or reissuance and shall be modified as necessary to assure continued compliance with the applicable requirements of this Part 234.

(2) Operating permits have two phases which are implemented sequentially.

(i) Phase I is the trial burn stage of the permit. During this phase, EPA surveys the incinerators and approves the placement of monitoring and recording instruments and the permittee conducts a trial burn to test the performance of the incinerators.

(ii) Phase II is the operating stage of the permit. The permittee is not authorized to commence Phase II until the Assistant Administrator issues the permittee a Letter of Approval certifying that the requirements of § 234.53 have been met. Prior to issuing the Letter of Approval, EPA shall make the trial burn data available to the public in accordance with § 234.33.

(3) Changes in the operating permit, other than minor modifications defined in § 234.69(a), must be processed in accordance with § 234.72

(4) Operating permits may be renewed upon demonstration through a trial burn and a new operating permit application that the incinerators continue to meet the performance standards in § 234.47 and § 234.48.

(5) If the permittee has made application for a renewal of an Ocean Incineration Permit in accordance with this Part 234, Subpart B, six months prior to the expiration of his or her permit, in accordance with 5 U.S.C. 558(c) the existing permit does not expire until the Agency has made a final determination to renew or to deny the permit.

(6) Operating permits shall only be issued for sites designated in accordance with procedures in § 234.77(c) and listed in § 234.78(b).

(c) *Emergency permits.* (1) To protect human health, the Assistant Administrator may issue emergency permits for the incineration-at-sea of industrial wastes except for those substances specified in § 234.45.

(2) As used herein, "emergency" refers to situations requiring actions with a marked degree of urgency to protect human health or welfare.

(3) The location of the incineration activities shall be specified as a condition of the permit in accordance with § 234.77(d).

(4) Emergency permit applications that meet the criteria in § 234.51 are not subject to the application processing procedures in Subpart C of this Part except that the Assistant Administrator shall publish, in accordance with § 234.33, a notice of the emergency permit as soon as practicable after its issuance.

(5) Emergency permits are to be developed in accordance with Subpart E.

Subpart B—Permit Application

§ 234.7 Applicability.

The requirements included in this Subpart apply to research, operating and emergency permit applications unless otherwise noted. Applications must be submitted in writing to the Assistant Administrator.

§ 234.8 Availability of information.

In accordance with section 104(f) of the Act, information received by EPA as a part of any application or in connection with any permit granted under this Part 234 shall be available to the public as a matter of public record, at every stage of the proceeding.

§ 234.9 Signatories to permit applications.

(a) The applicant shall furnish the name, address and telephone number of the person(s) applying for the permit and signing the application. All applications and other information requested by the Assistant Administrator shall be signed as follows:

(1) For a corporation, by the principal executive officer of at least the level of vice president or other person who performs similar policy or decisionmaking functions for the corporation;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal, or other public agency, by either a principal executive officer or ranking elected official.

(b) Any person signing the application under § 234.9(a) shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

§ 234.10 Financial responsibility.

(a) At the time the application for a permit is submitted, the applicant must demonstrate evidence of an annual aggregate insurance coverage of [$50,000,000 to $500,000,000] to cleanup and mitigate the effect of any unauthorized release of the wastes to be incinerated or to cleanup and mitigate the effect of a release of wastes to safeguard life at sea.

(b) The applicant may provide such technical and engineering data to demonstrate that the level of insurance required by paragraph (a) is not consistent with the degree and duration of risk associated with the applicant's operation. In a draft permit, the Assistant Administrator may propose a level of insurance different from that in paragraph (a) if the Agency determines that a different level is more consistent with the degree and duration of risk of the applicant's operation.

(c) Each insurance policy must be:

(1) Issued by an insurer which, at a minimum, is licensed to transact the business of insurance in one or more States, or is eligible to provide insurance as an excess or surplus line insurer and is determined to be acceptable by EPA.

(2) Endorsed with the following provisions:

(i) Bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy to which this endorsement is attached.

(ii) The insurer is liable for the payment of amounts within any deductible applicable to the policy, with a right of reimbursement by the insured for any such payment made by the insurer.

(iii) Whenever requested by the Assistant Administrator, the insurer agrees to provide a signed duplicate original of the policy and all endorsements to the Assistant Administrator or to the Permit Program Manager.

(iv) Cancellation of the insurance, whether by the insurer or the insured, shall be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the Assistant Administrator.

(3) Effective on the date that the permit is effective.

(d) The applicant shall provide, as part of its application, a certificate issued by the insurer attesting that the applicant has obtained insurance in accordance with the provisions of this § 234.10.

(e) No incineration activities authorized by a permit issued pursuant to this Part 234 may take place without the insurance coverage specified in the permit.

§ 234.11 Vessel.

The applicant shall provide the following:

(a) Name, flag, port of registry, classification and official number of the vessel for which the permit is to be used.

(b) Vessel blueprint showing cargo capacity, location of tanks, incinerators, and ballast areas.

(c) U.S. Coast Guard Certificate of Inspection.

§ 234.12 Incineration system.

The applicant shall provide the following information:

(a) A detailed engineering design and description of the incinerator system including:

(1) Manufacturer's name and model number of incinerators,

(2) Type of incinerators,

(3) Linear dimension of each incinerator including cross sectional drawing of the combustion chambers,

(4) Description of auxiliary fuel system (type/feed),

(5) Capacities of blowers,

(6) Nozzle and waste and fuel burner design,

(7) Construction material, and

(8) Location and size of sampling probes.

(b) Previous trial burns, surveys of the incinerator system, and operating data, if applicable.

§ 234.13 Monitoring and recording devices.

The applicant shall describe and specify the location of:

(a) The instruments that automatically monitor and record:

(1) Flame status,

(2) Flame temperature,

(3) Incinerator wall temperature,

(4) Oxygen concentration in the combustion gases,

(5) Carbon monoxide concentration in the combustion gases,

(6) Carbon dioxide concentration in the combustion gases,

(7) Flow rates of liquid waste and/or auxiliary fuel (if used),

(8) Flow rates of air into the incinerator,

(9) Time and date,

(10) Wind speed and direction,

(11) Vessel course and speed, and

(12) Vessel position by appropriate navigational means.

(b) The automatic waste feed cutoff system including its design, operation and sensitivity.

(c) The procedures to be used and the frequency of instrument calibration for the items listed in paragraphs (a) and (b) of this section.

§ 234.14 Waste loading, storage, and handling system of the vessel.

The applicant shall furnish detailed engineering designs and shall describe the vessel's waste loading, storage, and handling systems. The required information includes:

(a) Number, location, and capacities of waste cargo tanks, or containers (if used), and auxiliary fuel tanks.

(b) Waste cargo and auxiliary fuel piping and pumps.

(c) Description of the methods for monitoring, storing, handling, treating and/or disposing of ballast waters, bilge waters, tank washings (if generated), and waters generated from shipboard decontamination operations.

(d) Procedures for off-loading any residues and the manner in which residues will be disposed.

(e) Methods of handling the wastes not incinerated in the event of an aborted voyage.

§ 234.15 Waste analysis procedures.

The applicant shall submit a written description of the procedures that will be used to analyze the wastes to be incinerated. At a minimum, the waste analysis procedures must include:

(a) The method(s) that the applicant proposes to use to verify that each separately manifested shipment of waste (defined in 40 CFR 264.71) accepted for incineration does not contain the prohibited substances listed in § 234.45. If the applicant proposes to use methods other than *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* in 40 CFR 270.6, the applicant must provide

sufficient documentation for the Assistant Administrator to determine that the proposed methods are equivalent.

(b) The method(s) that the applicant proposes to use to verify that a representative sample of the blended wastes to be incinerated is in accordance with the parameters specified in § 234.46. If the applicant proposes to use methods other than *Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods* in 40 CFR 270.6, the applicant must provide sufficient documentation for the Assistant Administrator to determine that the proposed methods are equivalent.

(c) The quality assurance and quality control procedures to be followed in conducting the analyses.

(d) Information on the qualifications of personnel, independent laboratories or waste generators who will analyze the wastes as specified in paragraphs (a)-(c) of this section.

§ 234.16 Description of the wastes.

The applicant is to describe the wastes that are proposed for incineration over the life of the permit. The description is to include:

(a) The total quantity of the wastes (in metric tons) to be incinerated during the life of the permit.

(b) The properties of the wastes including:

(1) Percent moisture, solid and ash content,

(2) Specific gravity (density),

(3) Viscosity, and

(4) Heating value.

(c) The composition of the wastes including:

(1) Radioactivity,

(2) The wastes listed or designated under 40 CFR Part 261, Subparts C and D,

(3) Polychlorinated terphenyls (PCTs),

(4) Other principal organic compounds not listed in 2–3 above,

(5) Main inorganic constituents, and

(6) Halogens, nitrogen and sulfur constituents.

§ 234.17 Trial burn plan.

The purposes of the trial burn are for the applicant to demonstrate that the incinerators are able to attain the incinerator performance standards in § 234.47, and to demonstrate that the incinerator emissions meet the enforcemental performance standards in § 234.48, and for EPA to survey and approve the sampling and measuring devices and to determine the operating requirements to be specified in the permit under § 234.56. Applicants must propose a trial burn plan that includes:

(a) The amount of wastes (in metric tons) proposed for incineration during the trial burn;

(b) An analysis of the wastes to be incinerated during the trial burn. These wastes must be typical of those expected to be incinerated during the life of the permit. The analysis of the wastes must include:

(1) The properties of the wastes including:

(i) the percent moisture, solid and ash content,

(ii) Specific gravity (density),

(iii) Viscosity, and

(iv) Heating value.

(2) The composition of the wastes including:

(i) Quantifiable concentrations of any hazardous organic constituents listed in 40 CFR Part 261, Appendix VIII. The applicant need not analyze for constituents listed in 40 CFR Part 261, Appendix VIII which would not reasonably be expected to be found in the waste. The constituents excluded from analysis must be identified, and the basis of the exclusion stated;

(ii) Chemical classes of other organic compounds not listed in 40 CFR Part 261, Appendix VIII which would reasonably be expected to be in the wastes;

(iii) Radioactivity,

(iv) Percent halogens, nitrogen and sulfur;

(v) Concentration of: (A) aluminum, (B) arsenic, (C) cadmium, (D) chromium, (E) copper, (F) iron, (G) lead, (H) mercury, (I) nickle, (J) selenium, (K) silver, (L) thallium, (M) tin, and (N) zinc.

(c) The constituents for which destruction efficiencies are to be calculated during the trail burn. These constituents are to be specified based on the degree of difficulty of incineration of the constituents identified in the waste analysis, and their concentration or mass in the waste feed. EPA may specify additional constituents on which destruction efficiency tests are to be calculated;

(d) The proposed destruction efficiency test schedule for each waste including the number of tests to be conducted, the duration of each test, and the quantity of waste to be burned for all the tests;

(e) The procedures for collecting samples of the wastes and of the emissions samples during the destruction efficiency tests, the sampling locations on the incinerator to be tested, and the sampling equipment to be used. If the applicant proposes to use methods other than the standard EPA methods in 40 CFR Part 60, Appendix A, the applicant must submit sufficient documentation for EPA to determine that the proposed methods are equivalent;

(f) The proposed test protocols, the anticipated range of temperature, oxygen, carbon monoxide and carbon dioxide concentrations in the combustion gases, the air feed rate, waste feed rate, auxiliary fuel (if used) rate that may affect the destruction efficiency of the incinerator;

(g) The proposed protocols for analyzing the emission samples including the gas chromatography/mass spectrometry methods to be used;

(h) The qualification of personnel collecting and analyzing samples;

(i) The method(s) to be used to demonstrate that acid forming emissions do not exceed the environmental performance standard in § 234.48(a); and

(j) The model(s) to be used to demonstrate that the constituents in the incinerator emissions do not exceed the environmental peformance standard in § 234.48(b).

§ 234.18 Proposed incineration site(s), port(s), incineration schedule and rate of incineration.

The applicant shall:

(a) Identify the port or ports through which the wastes are to be transported. At the time an ocean incineration permit application is filed uder this Part 234, an applicant must have filed for all necessary port facility permits.

(b) Identify the incineration site or sites to be used.

(1) The nature of the proposed research or emergency permit activities will determine the site to be used. To request a site that has not been designated in accordance with the procedures in § 234.77(c), the applicant must accompany the request with sufficient information for EPA to apply the criteria in § 234.75 and § 234.76. If acceptable, the Assistant Administrator would specify the site as a condition of the research or emergency permit.

(2) Incineration activities under an operating permit may only take place at sites designated in accordance with procedures in § 234.77(c) and listed in § 234.78(b).

(c) Estimate the amount of wastes to be incinerated at each site if more than one site is proposed.

(d) Establish the rate at which the wastes are to be incinerated. This rate shall not exceed the rate proposed in the trial burn plan.

(e) Estimate the duration of each incineration voyage.

(f) Project the frequency of incineration voyages.

§ 234.19 Contingency plan.

(a) The applicant shall submit a contingency plan with port specific appendices for each port through which the wastes are proposed to be transported.

(b) The goal of the plan is to minimize hazards to human health and safety and to the environment resulting from potential incidents in the harbor, in transit to the incineration site and at the site.

(c) The plan shall reflect the requirement of § 234.52(1) that the applicant take all necessary cleanup and mitigation measures.

(d) The plan shall contain:

(1) Applicant's response organization including:

(i) Names of responsible personnel and position within the organization,

(ii) 24 hour telephone numbers and addresses of the responsible personnel,

(iii) Alternates to the responsible personnel and their 24 hour telephone numbers and addresses;

(2) Description of the applicant's procedures to minimize the likelihood of a release of wastes from incidents such as leaks, grounding, collisions, etc., and the company's organizational response in case of such a release;

(3) Description of the shipboard personnel's procedures to minimize the likelihood of a release of wastes from incidents such as leaks, grounding, collisions, etc., and their response in case of a release;

(4) Port specific elements including:

(i) Port facility 24 hour telephone numbers,

(ii) Command post location and 24 hour telephone numbers,

(iii) Federal, State and local agency emergency coordinators and their 24 hour telephone numbers,

(iv) U.S. Coast Guard Captain of the Port's requirements, if any,

(v) Cleanup firms in the area that are capable and available for responding to releases and their 24 hour telephone numbers,

(vi) Other firms that could be required to provide special equipment during cleanup, i.e. dredging, salvage, construction, and

(vii) Reporting procedures for releases and marine casualties.

§ 234.20 Endangered or threatened species assessment.

An applicant must prepare an assessment of the effect on endangered or threatened species' distribution, habitat and biological requirements of its loading and transportation activities. The applicant must also assess the effect of research incineration activities, if these activities are to be conducted at a site designated as a condition of the permit, in accordance with § 234.77(a).

§ 234.21 Certification of consistency with approved State coastal zone management programs.

For activities affecting land or water uses in the coastal zone, applicants must certify in accordance with section 307(c) of the Coastal Zone Management Act and implementing regulations (15 CFR 930) that the activities proposed are consistent with the applicable approved State coastal zone management programs and submit such certification to EPA as part of the permit application and to the State coastal zone management agency.

§ 234.22 Coordination with other Federal, State and local agencies.

The applicant shall identify the principal agencies with which the preparation of the application was coordinated and briefly describe or reference any agreements made with these agencies. EPA recommends that the applicant coordinate the preparation of the application with:

(a) U.S. Coast Guard,

(b) U.S. Department of State,

(c) U.S. National Oceanic and Atmospheric Administration,

(d) U.S. Fish and Wildlife Service,

(e) Appropriate State coastal zone management, water, air and hazardous waste pollution control agencies, and

(f) State and local emergency response coordinators in ports where wastes are to be transferred to the vessel.

§ 234.23 Other information.

In the event the Assistant Administrator determines that additional information is needed to evaluate the application, (s)he shall so advise the applicant in writing. All additional information requested pursuant to this § 234.23, shall be deemed part of the application. The application will not be considered complete until such information has been filed.

§ 234.24 Processing fees.

(a) A processing fee of $1,000 will be charged in connection with an operating permit application.

(b) A processing fee of $4,000 will be charged in connection with a research or emergency permit application for incineration at a site designated in accordance with procedures in §234.77(a) or § 234.77(d)(ii), respectively. If the research or emergency permit activities are to be conducted at an existing site listed in §234.78(b), $1,000 will be charged.

§ 234.25 Copies of the application.

An applicant for any ocean incineration permit shall submit sufficient copies of the completed application for distribution to agencies identified in § 234.28(a) and to the locations of the administrative record as specified in § 234.32.

Subpart C—Application Processing Procedures

§ 234.26 Preapplication conference.

A person interested in applying for an ocean incineration permit may request a preapplication conference. Although not required, a preapplication conference is recommended prior to initiating permit applications. In the preapplication conference, the Permit Program Manager will review the requirements of this Part 234, answer questions on the permit application requirements and processing procedures, on the EPA-approved monitoring and analytical methods and on the criteria that EPA will use in evaluating permit applications. At the preapplication conference, potential applicants should identify the port or ports through which they plan to ship their wastes and the incineration site or sites they plan to use so that EPA may request a list of endangered or threatened species from the appropriate Regional Directors of the U.S. Fish and Wildlife Service or the U.S. National Marine Fisheries Service. The preapplication conference should provide a potential applicant with a firm basis on which to initiate the preparation of an application.

§ 234.27 Review of an application for completeness.

EPA shall review every application for completeness. This review should be completed within 30 days. Upon completion of the review, the Assistant Administrator shall notify the applicant in writing whether the application is complete. If the application is incomplete, the Assistant Administrator shall list the information necessary to make the application complete. Upon receipt of the information requested, the Assistant Administrator shall notify the applicant that the application is complete.

§ 234.28 Review of a completed application.

(a) At the time the Assistant Administrator notifies the applicant that the application is complete, a copy of the completed application shall be sent to the:

(1) Secretary of Commerce for his or her views on whether the potential benefits of the research proposed in a

research permit application outweigh any potential adverse impacts as required by 33 U.S.C.1412(a)(3);

(2) Administrator of the National Oceanic and Atmospheric Administration for his or her views on the effect of the proposed activities on the marine environment and a review of the assessment of potential impacts, if any, on endangered or threatened species and their critical habitat;

(3) Regional Director of the U.S. Fish and Wildlife Service for a review of the assessment of the potential impacts, if any, on endangered or threatened species;

(4) Commandant, U.S. Coast Guard (G-W) for a review of the contingency plan and for recommendations on necessary and appropriate provisions to be included in a permit;

(5) Assistant Legal Adviser for Oceans, International Environmental and Scientific Affairs, U.S. Department of State for his or her view on whether the application meets the requirements of the London Dumping Convention and whether the contingency plan is consistent with applicable international agreements; and

(6) State coastal zone management, air and water pollution control agencies in coastal States whose coasts are within 500 miles of the incineration site.

(b) The Assistant Administrator shall request that these agency officials review the application within 45 days from the date of its receipt.

§ 234.29 Schedule for application processing.

Within 60 days of the determination that the application is complete, the Assistant Administrator shall notify the applicant in writing of a projected schedule for processing the permit application.

§ 234.30 Draft permit.

(a) After receiving a complete application the Assistant Administrator shall tentatively decide whether to prepare a draft permit or to deny the application.

(b) If the Assistant Administrator tentatively decides to deny a permit, (s)he shall issue a notice of intent to deny. A notice of intent to deny is processed following the same procedures as a draft permit prepared under this Subpart. If the Assistant Administrator's final decision is that the tentative decision to deny the permit application was incorrect, (s)he shall withdraw the notice of intent to deny and proceed to prepare a draft permit under paragraph (c) of this section.

(c) If the Assistant Administrator tentatively decides to issue a permit, (s)he shall prepare a draft permit that contains the conditions in Subpart E, as appropriate.

§234.31 Fact sheet.

(a) EPA shall prepare a fact sheet for every draft permit. The fact sheet shall briefly set forth the principal facts and the significant factual, legal, methodological and policy questions considered in preparing the draft permit. This fact sheet shall be sent to the applicant and, on request to any other person.

(b) The sheet shall include:

(1) Name and address of the applicant;

(2) A brief description of the vessel which is the subject of the draft permit;

(3) The type and quantity of wastes which the applicant proposes to incinerate;

(4) A brief summary of the basis for the draft permit conditions including references to applicable statutory or regulatory provisions and appropriate supporting references to the administrative record;

(5) Reasons why any requested variances or alternatives to required standards do or do not apppear justified;

(6) A description of the procedures for reaching a final decision on the draft permit including:

(i) The beginning and ending dates of the comment period and the address where comments should be sent;

(ii) Procedures for requesting a public hearing and the nature of that hearing; and

(iii) Any other procedures by which the public may participate in the final decision;

(7) Location of the administrative record and information on the draft permit;

(8) Name and telephone number of the person within EPA to contact for additional information.

§ 234.32 Administrative record for the draft permit.

(a) The provisions of a draft permit shall be based on the administrative record defined in this section.

(b) The administrative record for a draft permit shall consist of:

(1) The application and any supporting data furnished by the applicant;

(2) The draft permit or notice of intent to deny the application or to terminate the permit;

(3) The fact sheet;

(4) All documents cited in the fact sheet; and

(5) Other documents contained in the supporting file for the draft permit.

(c) Material readily available at the location of the administrative record or published material that is generally available, and that is included in the administrative record need not be physically included with the rest of the record as long as it is specifically referred to in the fact sheet.

(d) The administrative record shall be maintained at EPA Headquarters and at the EPA Regional Office(s) closest to the incineration site(s) and/or port(s) designated in the draft permit.

§ 234.33 Public notice.

(a) Public notice shall be given by the following methods:

(1) Publication in a daily newspaper of general circulation in closest proximity to the proposed incineration site(s);

(2) Publication in a daily newspaper of general circulation in closest proximity to the port(s) through which the wastes are to be transported;

(3) Publication in the **Federal Register**; and

(4) Mailing a copy of a notice to the following persons:

(i) The applicant; and

(ii) Federal, State and local agencies specified in §234.28(a), and

(iii) Mailing list of interested persons developed by:

(A) Including those who request in writing to be on the list;

(B) Soliciting persons for "area lists" from participants in past permit proceedings in that area; and

(C) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals. (The Assistant Administrator may update the mailing list from time to time by requesting written indication of continued interest from those listed. The Assistant Administrator may delete from the list the name of any person who fails to respond to such a request).

(b) Public notice of a public hearing shall be given at least 30 days before the hearing. (Public notice of the hearing may be given at the same time as public notice of the draft permit and the two notices may be combined). The public notice of a hearing shall contain the following information:

(1) Reference to the date of previous public notices relating to the permit;

(2) Date, time, and place of the hearing;

(3) A brief description of the nature and purpose of the hearing, including the applicable rules and procedures; and

(4) A summary of major issues raised to date during the public comment period.

(c) Public notices shall contain the following minimum information:

(1) Name and address of the applicant;

(2) Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit and the fact sheet;

(3) The location of the administrative record required by § 234.32, the times at which the record will be open to public inspection and a statement that all data submitted by the applicant is available as part of the administrative record;

(4) A brief statement of the factors considered in reaching a decision to issue, deny, modify or revoke a permit, as appropriate; and

(5) A brief description of the comment procedures; the time and place of any public hearing that will be held, including a statement of procedures to request a public hearing (unless a hearing has already been scheduled); and other procedures by which the public may participate in the final permit decision.

§ 234.34 Public comment period.

(a) Public notice of a draft permit, of trial burn data, or of revocation, modification, reissuance, or suspension of a permit, shall allow at least 45 days for public comment.

(b) EPA may extend the public comment period on a case-by-case basis. Requests for an extension of the public comment period must be made in writing and must include a rationale for the need to extend the public comment period and a recommended date on which the public comment period should be closed.

(c) If any data, information or arguments submitted during the public comment period appear to raise substantial new questions concerning a permit, the Assistant Administrator may take one or more of the following actions:

(1) Prepare a new draft permit, appropriately modified, under § 234.30;

(2) Prepare a revised fact sheet under § 234.31; or

(3) Reopen or extend the comment period under § 234.37 to give interested persons an opportunity to comment on the information or argument submitted.

(d) Comments filed during the reopened comment period shall be limited to the substantial new questions that caused its reopening. The public notice under § 234.33 shall define the scope of the reopening.

(e) Public notice of any of the above actions shall be issued under § 234.33.

§ 234.35 Public hearing(s).

(a) The Assistant Administrator shall hold a public hearing whenever (s)he finds, on the basis of requests or at his/her own discretion, a significant degree of public interest in a draft permit.

(b) Requests for public hearing shall be in writing and shall state the nature of the issues proposed to be raised at the hearing.

(c) At the discretion of the Assistant Administrator, one or more public hearing(s) may be held at a location convenient to those most interested in the draft permit.

(d) Whenever a public hearing is held, the Assistant Administrator shall designate a Hearing Officer for the hearing who shall be responsible for its scheduling and orderly conduct.

(e) Any person may submit oral or written statements and data concerning the draft permit. Reasonable limits may be set upon the time allowed for oral statements, and the submission of statements in writing may be required. The public comment period shall automatically be extended to at least the close of any public hearing under this section. The Hearing Officer may also extend the comment period by so stating at the hearing.

(f) A tape recording or written transcript of the hearing shall be made available to the public at the location of the administrative record.

§ 234.36 Obligation to raise issues and provide information during public comment.

All persons, including the applicants, who believe any condition of a draft permit is inappropriate or that the Assistant Administrator's tentative decision to deny an application, revoke or suspend a permit, or prepare a draft permit is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period (including any public hearing) under § 234.35. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting materials not already included in the administrative record available to EPA as directed by the Assistant Administrator.

§ 234.37 Reopening of the public comment period.

(A) (1) The Assistant Administrator may order the public comment period reopened if the procedures of this paragraph could expedite the decisionmaking process. When the public comment period is reopened under this paragraph, all person, including applicants, who believe any condition of a draft permit is inappropriate or that the Assistant Administrator's tentative decision to deny an application, revoke a permit, or prepare a draft permit is inappropriate, must submit all reasonably available factual grounds supporting their position, including all supporting material, by a date, not less than 45 days after the public notice under paragraph (a)(2) of this section, set by the Assistant Administrator. Thereafter, any person may file a written response to the material filed by any other person, by a date, not less than 20 days after the date set for filing of the material, set by the Assistant Administrator.

(2) Public notice of any comment period under this paragraph shall identify the issues to which the requirements of § 234.37(a) shall apply.

(3) On his or her own motion or on the request of any person, the Assistant Administrator may direct that the requirements of paragraph (a)(1) of this section shall apply during the initial comment period where it reasonably appears that issuance of the permit will be contested and that applying the requirements of paragraph (a)(1) of this section will substantially expedite the decisionmaking process. The notice of the draft permit shall state whenever this has been done.

(4) A comment period of longer than 45 days will often be necessary in complicated proceedings to give commenters a reasonable opportunity to comply with the requirements of this section. Commenters may request longer comment periods and they shall be granted under § 234.34 to the extent they appear necessary.

§ 234.38 Administrative record for the final permit.

(a) The Assistant Administrator shall base final permit decisions on the administrative record which must include the elements defined in this section.

(b) The administrative record for any final permit shall consist of the administrative record for the draft permit (see § 234.32) and:

(1) All comments received during the public comment period;

(2) The tape or transcript of any hearing(s) held;

(3) Any written materials submitted at such a hearing;

(4) Any new material placed in the record;

(5) Other documents contained in the supporting file for the permit;

(6) Response to the public comments which shall:

(A) Specify which provisions, if any, of the draft permit have been changed in the final permit decision, and the reasons for the change;

(B) Briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing; and

(C) Upon request, be made available to the public;

(7) the final permit.

(c) Any additional documents should be added to the record as soon as possible after their receipt or publication by the Agency. The record shall be complete on the date the final permit is issued or the permit is denied.

(d) Material readily available at EPA Headquarters or in the Regional Office, or published materials which are included in the administrative record, need not be physically included in the same file as the rest of the record as long as it is specifically referred to in the response to comments.

§ 234.39 Issuance and effective date of the permit.

(a) After the close of the public comment period on a draft permit, the Assistant Administrator shall issue a permit decision. The Assistant Administrator shall notify the applicant, each person who submitted written comments or requested notice of the permit decision. For the purposes of this section, a permit decision means: to issue, deny, modify, revoke, reissue, or suspend a research permit or an operating permit.

(b) A permit decision shall become effective 30 days after the service of notice of the decision under paragraph (a) of this section except:

(1) If a later effective date is specified in the permit; or

(2) Review is requested under § 234.41; or

(3) No comments requested a change in the draft permit, in which case the permit shall become effective upon issuance; or

(4) If a request for an appeal to the Administrator is granted under § 234.41(c) for an initial permit, the applicant shall be without a permit pending final Agency action under § 234.41(g).

(c) For the purposes of judicial review, final agency action on a permit does not occur unless and until a party has exhausted its administrative remedies under § 234.41. Any party which neglects or fails to seek review under § 234.41, thereby waives its opportunity to exhaust available agency remedies.

§ 234.40 Stays of contested permit conditions.

(a) Stays. (1) If a request for review by the Administrator under § 234.41 is granted, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final Agency action. If the permit proceeding is for a new permit, the applicant shall be without a permit, pending final Agency action.

(2) Uncontested conditions which are no serverable from those contested shall be stayed together with the contested conditons. Stayed provisions of permits shall be identified by the Assistant Admistrator. All other provisions of the permit shall remain fully effective and enforceable.

(b) A permittee holding an existing permit must:

(1) Comply with the conditions of that permit during any modification or revocation or reissuance proceeding; and

(2) To the extent conditions of any new permit are stayed under this section, comply with the conditions of the existing permit which correspond to the stayed conditions, unless compliance with the existing conditions would be technologically incompatible with compliance with other conditions of the new permit which have not been stayed.

§ 234.41 Appeal to the Administrator.

(a) (1) Within 30 days after the Assistant Administrator makes a permit decision, any interested person who submitted comments pursuant to § 234.34 or who participated in a hearing held pursuant to § 234.35 may appeal any matter set forth in the permit decision by filing with the Administrator notice of appeal and petition for review. Any person may appeal a condition of the permit decision to the extent that the condition differs from that in the draft permit. The petition shall include a statement of the supporting reasons and, when appropriate, evidence that the initial decision contains:

(i) A finding of fact or conclusion of law which is clearly erroneous, or

(ii) An exercise of discretion or policy which is important and which the Administrator should review.

(2) Within 15 days after service of a petition for review under paragraph (a)(1) of this section, any other party to the proceeding may file a responsive petition.

(b) Within 30 days of the permit decision by the Assistant Administrator, the Administrator may, *sua sponte*, review the decision.

(c) Within a reasonable time following the filing of the petition for review, the Administrator shall issue an order either granting or denying the petition for review. To the extent the review is denied, the conditions of the final permit decision become final Agency action. Public notice of any grant of review by the Administrator under paragraph (a) or (b) of this section shall be given as provided in § 234.33. Public notice shall set forth a briefing schedule for the appeal and shall state that any interested person may file an amicus brief. Notice of denial of review shall be sent only to the person(s) requesting review.

(d) Review by the Administrator of the Assistant Administrator's permit decision shall be limited to the issues specified under paragraph (a) of this section, except that after notice to all parties, the Administrator may raise and decide other matters which he or she considers material on the basis of the record.

(e) Notwithstanding the grant of a petition for review or a determination under paragraph (b) of this section to review a decision, the Administrator may summarily affirm without opinion the permit decision by the Assistant Administrator.

(f) A petition to the Administrator under paragraph (a) of this section for review of a permit decision by the Assistant Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final decision of the Agency.

(g) If a party timely files a petition for review or if the Administrator *sua sponte* orders review, then, for purposes of judicial review, final Agency action on an issue occurs as follows:

(1) If the Administrator denies review or summarily affirms without opinion as provided in § 234.41(f), then the permit decision by the Assistant Administrator becomes the final Agency action and occurs upon the service of notice of the Administrator's action.

(2) If the Administrator issues a decision without remanding the proceeding then the final permit, redrafted as required by the Administrator's decision, shall be reissued and served upon all parties to the appeal.

(3) If the Administrator issues a decision remanding the proceeding, then

final Agency action occurs upon completion of the remanded proceeding, unless the Administrator's remand order specifies that appeal of the remand decision will be required to exhaust administrative remedies.

§ 234.42 Computation of time.

(a) Any time period scheduled to begin on the occurrence of an act or event shall begin on the day after the act or event.

(b) Any time period scheduled to begin before the occurrence of an act or event shall be computed so that the period ends on the day before the act or event.

(c) If the final day of any time period falls on a weekend or legal holiday, the time period shall be extended to the next working day.

§ 234.43 Notice to the International Maritime Organization.

When a permit becomes effective, the Assistant Administrator shall inform the Secretariat, the London Dumping Convention, International Maritime Organization, of any permit issued under this Part 234.

Subpart D—Criteria for the Evaluation of Ocean Incineration Activities

§ 234.44 General criteria.

In determining whether to permit ocean incineration activities, EPA will evaluate where appropriate, the need for ocean incineration as required in § 234.45(a), the criteria set forth in this Subpart D, and the requirements for the regulation of the use of an incineration site set forth in § 234.79. As appropriate, the Assistant Administrator may impose conditions on a permit to assure that the activities proposed meet the requirements of the Act and this Part 234.

§ 234.45 Prohibited substances.

The incineration of the following materials at sea is prohibited:

(a) High-level radioactive wastes (defined in § 234.2(g)); and

(b) Materials in whatever form produced or used for radiological, chemical or biological warfare; and

(c) Materials which after incineration emit persistent inert synthetic materials which may float or remain in suspension in the ocean in such a manner as to interfere materially with fishing, navigation, or other legitimate uses of the ocean; and

(d) Quantifiable concentrations of organic compounds which are more difficult to destroy than most thermally refractive compound on which, in a trial burn the incinerator attained a destruction efficiency of at least that specified in § 234.47(b); and

(e) Materials insufficiently described by the applicant in terms of their composition and properties for EPA to determine that the materials when incinerated would meet the incinerator performance standards in §234.44 or the environmental performance standards in § 234.45; and

(f) Separately manifested shipments of materials (as defined in 40 CFR 264.71) containing metals in concentrations of greater than 500 ppm.

§ 234.46 Restricted substances.

The following materials may not be incinerated-at-sea unless the requirements in paragraphs (a)–(c) of this section are met:

(a) Low level radioactive wastes. The applicant and the Administrator must comply with the requirements of 33 U.S.C. 1414(i) (1)–4(A) and Congress must authorize by resolution a permit for the incineration of low-level radioactive wastes in accordance with 33 U.S.C. 1414(i)(4)(B).

(b) Metallic and organic compounds. Concentrations of metallic and organic compounds in the final blended waste mixture to be incinerated must not exceed the concentrations shown to meet the environmental performance standard in § 234.48(b), or in the case of research permits, concentrations demonstrated to be likely to have minimal adverse impacts upon human health, welfare, and amenities, and the marine environment, ecological systems and economic potentialities of the ocean.

(c) Quantifiable concentrations of polychorinated terphenyls (PCTs). The applicant may not incinerate PCT unless a destruction efficiency test is conducted or has been conducted specifically on PCT.

§ 234.47 Incinerator performance standards.

Incineration-at-sea activities will only be permitted upon demonstration by the applicant that the incinerators are likely to achieve or have achieved:

(a) A combustion efficiency of 99.95 ± 0.05 percent on the waste stream. Combustion efficiency is to be determined as follows:

$$\text{Combustion efficiency} = \frac{[^{c}CO_2]-[^{c}CO]}{[^{c}CO2]} \times 100\%$$

Where

$[^{c}CO_2]$ = concentration of carbon dioxide in the combustion gases

$[^{c}CO]$ = concentration of carbon monoxide in the combustion gases

(b) A destruction efficiency of at least 99.99 percent on all compounds for which destruction efficiency tests were performed except that a destruction efficiency of at least 99.9999 percent must be demonstrated on polychlorinated biphenyls, tetra-, penta-, and hexachlorodibenzo-*p*-dioxins and -dibenzo-furans. Destruction efficiency is to be determined as follows:

$$\text{Destruction efficiency} = \frac{(\text{Win}-\text{Wout})}{\text{Win}} \times 100\%$$

Where

Win = mass feed rate of one constituent in the waste stream feeding into the incinerator, and

Wout = mass emission rate of the same constituent present in the exhaust emissions prior to release to the atmosphere.

§ 234.48 Environmental performance standards.

Except as noted in § 234.49(c), incineration-at-sea activities will only be permitted upon demonstration by the applicant that:

(a) The total acid forming emissions or the dispersion of acid forming emissions are such that after allowance for initial mixing, as defined in § 234.2(i), the change in average total alkalinity in the release zone, as defined in § 234.2(p), is no more than 10 percent during incineration operations, based on stoichiometric calculations.

(b) The effect of the emissions will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities or recreational or commercial shipping or boating or recreational uses of beaches or shorelines based on a demonstration through the use of EPA-approved models that after initial mixing of the stack emissions, the ambient marine

concentrations of the chemical constituents of the emissions do not exceed applicable water quality criteria or where there are no applicable water quality criteria, an aquatic life no-effect level, or a toxicity threshold defined as 0.01 of an ambient marine water concentration shown to be acutely toxic to appropriately sensitive marine organisms in a bioassay carried out in accordance with EPA-approved procedures. For the purposes of mercury and cadmium, the amount of these compounds would be limited to that amount which if directly dumped would not exceed their applicable water quality criteria.

§ 234.49 Research permit applications.

In evaluating a research permit application, the Assistant Administrator, after consulting with the Secretary of Commerce, shall determine that:

(a) The proposed research permit activities are necessary and that the information sought cannot reasonably be developed through other means.

(b) The incinerator are likely to achieve the incinerator performance standards in § 234.47.

(c) The emissions are likely to meet the environmental performance standards in § 234.48 or, that the scale of the proposed incineration will have minimal adverse impact upon human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities of the ocean.

(d) The potential benefits of the research outweigh any adverse impact.

§ 234.50 Operating permit applications.

In evaluating an operating permit application:

(a) The Assistant Administrator shall consider the need for ocean incineration by assessing the human health and environmental risks associated with ocean incineration as compared to those of practicable land-based alternatives.

(b) The Assistant Administrator determines that:

(1) A trial burn has or will likely demonstrate that the incinerators can meet the incinerator performance standards in § 234.47;

(2) The emissions will meet the environmental performance standards in § 234.48; and

(3) The proposed operating requirements (listed in § 234.56) are appropriate.

§ 234.51 Emergency permit applications.

In evaluating an emergency permit application, the Assistant Administrator shall determine that the applicant has adequately demonstrated that:

(a) An emergency, as defined in § 234.6(c) exists; and

(b) The emergency poses an unreasonable risk to human health; and

(c) The emergency admits of no other feasible solutions than ocean incineration taking into account the nature of the emergency and the degree of urgency involved; and

(d) The public interest, health, welfare and safety require the issuance of an emergency permit for ocean incineration.

Subpart E—Ocean Incineration Permits

§ 234.52 General requirements.

The following shall be included in all permits.

(a) Signature of the permittee and the permittee's name, address and telephone number.

(b) Signature of the Assistant Administrator and the name, address and telephone number of the Permit Program Manager.

(c) Identification of the name, flag, port of registry, classification and identification code of the vessel.

(d) Specification of the effective date and expiration date of the permit.

(e) Identification of the port or ports through which the vessel is authorized to transport the wastes to the incineration site.

(f) Identification of the site or sites at which the vessel is authorized to incinerate, including any limitations on the time or rate at which the vessel is authorized to use the site or site(s).

(g) Identification of the total amount of wastes authorized for incineration under the permit and the maximum permissible load for each voyage.

(h) Prohibition against waste being transferred from barges or other vessels to the incinerator vessel outside harbor limits.

(i) Prohibition against taking wastes onboard the vessel in damaged containers.

(j) Requirement that containers loaded on board the vessel shall be labeled in accordance with 49 CFR Part 172, and/or 40 CFR § 761.40, as appropriate.

(k) Requirement that containerized wastes shall be stowed in accordance with the regulations of the IMCO International Maritime Dangerous Goods Code (IMDG Code).

(l) Requirement that in the event of an unauthorized release of wastes that the permittee shall take all necessary cleanup and mitigation measures.

(m) Requirements which are deemed necessary and appropriate after consultation with the U.S. Coast Guard.

(n) Attachment of the U.S. Coast Guard Certificate of Inspection.

(o) Requirement that a copy of the permit shall be placed in a conspicuous place on the vessel.

§ 234.53 Trial burn.

The permittee shall conduct a trial burn prior to the initiation of operational activities authorized by the permit and thereafter biennially or at the discretion of the Permit Program Manager. A trial burn shall include:

(a) An EPA conducted survey of the vessel's incinerator system to:

(1) Approve the siting, type and manner of use of devices measuring and recording flame status, flame and wall temperature, oxygen, carbon monoxide and carbon dioxide in the combustion gases, air flow to the incinerator, waste and auxiliary fuel feed rate, wind speed and direction, vessel course, speed and direction and vessel location;

(2) Ensure that devices have been installed and are operating in accordance with § 234.57(b) to automatically stop the flow of the wastes to the incinerator if the flame or wall temperature or the concentration of oxygen in the combustion gases falls below the specified minima, or the concentration of carbon monoxide in the combustion gases exceeds the specified maximum, the flame is extinguished, or the maximum waste feed rate is exceeded, or the devices monitoring wall temperature, oxygen, carbon monoxide and carbon dioxide in the combustion gases, air flow to the incinerator, and flow rates or wastes and auxiliary fuel fail;

(3) Approve the gas sampling system including probe locations, analytical devices and the manner or recording; and

(4) Ensure that there are no means of disposing of wastes except by thermal destruction during normal operations.

(b) Testing the performance of an incinerator, if the incinerators are of identical design in a multi-incinerator vessel or each incinerator if EPA has determined that the incinerators are not identical, in accordance with § 234.60(e) using wastes typical of those to be incinerated during the operational phase of the permit, and using the maximum waste feed rate anticipated during the operational phase of the permit to confirm that the incinerator(s) can achieve the incinerator performance standards specified in § 234.47.

(c) A determination that the operating requirements proposed are the operating

conditions attained during the tests conducted in accordance with § 234.60(e).

§ 234.54 Letter of approval.

After notice and public comment on the trial burn date, in accordance with § 234.33 and § 234.34, the Assistant Administrator shall issue a Letter of Approval with a copy of the survey report containing the information in § 234.53 certifying that the vessel's incinerators meet the requirements of § 234.53. The permittee shall prominently display on the vessel the Letter of Approval with a copy of the survey report containing the information in § 234.53. The Assistant Administrator shall send a copy of the survey report along with the Letter of Approval to Secretariat, London Dumping Convention, IMO.

§ 234.55 Changes.

After the Assistant Administrator issues a Letter of Approval, the permittee may not make significant changes in the incinerators which could affect their performance without the written approval of the Permit Program Manager.

§ 234.56 Operating requirements.

Unless otherwise specified, each permit shall contain the following conditions which shall be attained at all times:

(a) Between start-up and shut-down of an incinerator, the permittee shall only feed fuel oil into the incinerators and shall not feed wastes into the incinerator unless the incinerator has attained the conditions set forth in paragraphs (b)–(f) of this section.

(b) A minimum optically measured flame temperature of 1250 °C, unless the results of the trial burn demonstrate the combustion and destruction efficiencies required by § 234.47 can be achieved at a lower temperature.

(c) A minimum termperature of 1100 °C as measured at the wall, unless the results of the trial burn demonstrate the combustion and destruction efficiencies reuired by § 234.47 can be achieved at a lower temperature.

(d) A concentration of oxygen in the combustion gases of at least 3 percent.

(e) A carbon monoxide concentration in the combustion gases of no greater magnitude and duration than that shown during the period when the combustion and destruction efficiency tests were conducted and the incinerator performance standards under § 234.47 were achieved.

(f) A waste feed rate of the incinerator equal to or less than the highest waste feed rate achieved during the tests conducted in trial burn for which incinerator performance standards under § 234.47 were achieved.

(g) A dwell time of at least 1.0 second.

(h) No black smoke or flame extension above stack plane.

(i) Tank washings, wash waters from any decontamination operations, ballast waters and dump-room bilge waters found to be contaminated beyond background levels with hazardous constitutes, as determined by on-board analysis (in accordance with the procedures to be specified in the permit), shall be incinerated-at-sea in accordance with these provisions or discharged to port facilities for disposal in accordance with 40 CFR Parts 262–266 or with 40 CFR 761.70 and applicable implementating policies.

(j) Resides contaminated with hazardous constituents remaining in the incinerator shall not be dumped at sea and shall be off-loaded at port facilities for disposal in accordance with 40 CFR Parts 262–266 or with 40 CFR 761.70 and applicable implementing policies.

(k) The vessel shall respond promptly to radio calls at all times during incineration on the frequency to be specified.

(l) Other conditions as the Assistant Administrator deems necessary and appropriate.

§ 234.57 Instantaneous waste feed shut-off system.

(a) Permittees shall have automatic waste feed shut off systems that instantaneously stop the flow of the wastes to the incinerators whenever:

(1) The flame goes out, or

(2) The operating conditions specified in § 234.56(c)–(f) are not achieved, or

(3) Any of the devices monitoring or recording flame status, flame and wall temperature, oxygen, carbon monoxide, carbon dioxide, combustion air flow, waste feed and auxillary fuel (if used) flow to the incinerators fail.

(b) Instantaneous waste feed shut off means that within 4 seconds from the time the monitoring devices sense that the flame is extinguished and/or any operating requirement specified in § 234.56(c)–(f) are not being achieved, the waste feed to the incinerator will be shut off.

(c) The complete system for waste feed shut-off shall be tested by appropriate methods, in accordance with manufacturer's instructions, before each voyage and be set such that the condition in paragraph (b) of this section above is met.

§ 234.58 Waste analysis.

(a) The permittee is to analyze the wastes in accordance with the procedures specified in the permit.

(b) Prior to each voyage the permittee is to send to the Permit Program Manager:

(1) An analysis sufficient to verify that each separately manifested shipment of wastes accepted for incineration does not contain the prohibited substances listed in § 234.45;

(2) An analysis sufficient to verify that a representative sample of the blended wastes to be incinerated is in accordance with § 234.46. The analysis is to identify:

(i) The properties of the wastes including:

(A) Percent moisture, solid and ash content,

(B) Specific gravity,

(C) Viscosity,

(D) Heating value.

(ii) The composition of the wastes including:

(A) Radioactivity,

(B) Percent halogens, nitrogen and sulfur,

(C) Quantifiable concentrations of: (*1*) aluminum, (*2*) arsenic, (*3*) cadmium, (*4*) chromium, (*5*) cooper, (*6*) iron, (*7*) lead, (*8*) mercury, (*9*) nickel, (*10*) selenium, (*11*) silver, (*12*) thallium, (*13*) tin and (*14*) zinc, and

(D) Quantifiable concentrations of the organic compounds whose maximum concentrations in a waste mixture are specified in the permit except that the permittee need not analyze for those compounds which would not reasonably be expected to be found in the wastes for a particular incineration voyage. The constituents excluded from the analysis must be identified and the basis for their exclusion stated.

(c) At the Permit Program Manager's discretion, EPA may take duplicate samples for confirmatory analyses.

(d) The Permit Program Manager may order an emergency suspension of the permit as provided for in § 234.67, if the analysis of the wastes to be incinerated indicates that the wastes contain prohibited compounds or concentrations of restricted substances greater than those in the permit.

§ 234.59 Waste limitations.

The materials listed in § 234.45 are prohibited and the materials in § 234.46 are restricted in accordance with the provisions specified therein.

§ 234.60 Monitoring and recording requirements.

The permittee shall:

(a) Monitor and record navigational operations with appropriately sealed automatic tamper resistant and/or tamper detectable devices.

(1) The devices shall record:

(i) Time,

(ii) Date,

(iii) Vessel position,

(iv) Vessel course and speed, and

(v) Wind speed and direction.

(2) The sensing of the items monitored in (a)(l)(i)–(v) shall be at a frequency of 4 seconds or less and the recording of these items shall be at a frequency of three minutes or less.

(3) If any of the devices monitoring and/or recording the items specified in (a)(l)(i)-(v) fail, an hourly manual log shall be maintained for those items.

(b) Monitor and record operating requirements with appropriately sealed automatic tamper resistant and/or tamper detectable devices on each incinerator.

(1) The devices shall monitor and record:

(i) Flame temperature,

(ii) Incinerator wall temperature,

(iii) Oxygen concentration in the combustion gases,

(iv) Carbon monoxide concentration in the combustion gases,

(v) Carbon dioxide concentration in the combustion gases,

(vi) Combustion air flow to the incinerators;

(vii) Waste and/or auxiliary fuel (if used) feed rates to the incinerator;

(viii) Flame status; and

(ix) Amount of wastes incinerated.

(2) The sensing of items specified in paragraphs (b)(l) (i)-(ix) of this section shall be at a frequency of 4 seconds or less and the recording of these items shall be at a frequency of three minutes or less.

(c) Calibrate the devices in Paragraphs (a) and (b) of this section before each voyage and as frequently as necessary during the incineration voyage following the manufacturer's instructions. A permanent record shall be made of each calibration for each voyage.

(d) Record on board tests and analyses of all ballast waters, tank washings, wash waters from any decontamination operations and pump-room bilge water in accordance with procedures specified on the permit.

(e) During a trial burn, when destruction efficiency tests are performed, conduct emission sampling and analysis in accordance with the following requirements:

(1) Conduct a minimum of three separate and distinct destruction efficiency tests on specified compounds in accordance with paragraphs (e)(2) and (3) of this Section

(2) Sample combustion gases from the incinerator in accordance with standard EPA methods in 40 CFR Part 60, Appendix A, or their equivalent, as specified in the permit;

(3) Analyze the samples for compound that were selected for testing the compliance of the incinerator with the performance standard in § 234.47(b) in accordance with gas chromatography/mass spectrometry methods specified in the permit and in accordance with quality assurance and quality control procedures specified in the permit; and

(4) At the discretion of the Permit Program Manager, analyze the samples for additional selected compounds in 40 CFR Part 261, Appendix VIII in accordance with the gas chromatography/mass spectrometry methods specified in the permit and in accordance with quality assurance and quality control procedures specified in the permit.

(f) During a research burn, when destruction efficiency tests are performed, conduct emissions sampling and analysis in accordance with the following requirements:

(1) Conduct a minimum of three separate and distinct destruction efficiency tests on specified compounds in accordance with paragraphs (f) (2) and (3) of this section;

(2) Sample combustion gases from the incinerator in accordance with the standard EPA methods in 40 CFR Part 60, Appendix A or their equivalent as specified in the permit;

(3) Analyze the samples for compounds that were selected for testing the compliance of the incinerators with the performance standard in § 234.47(b) in accordance with gas chromatography/mass spectrometry methods specified in the permit and in accordance with quality assurance and quality control procedures specified in the permit; and

(4) Analyze the samples for additional compounds selected by the Permit Program Manager in accordance with the gas chromatography/mass spectrometry methods specified in the permit and in accordance with quality assurance and quality control procedures specified in the permit.

(g) When required by the Permit Program Manager, conduct ambient air, water and biota monitoring using the latest scientific methods specified by the Permit Program Manager.

(h) Obtain the approval of the Permit Program Manager of the qualifications of individuals collecting and analyzing the emissions samples and indviduals conducting ambient air, water and biota monitoring prior to the initiation of the voyage on which the sampling is to be conducted.

§ 234.61 Reporting requirements.

(a) Waste analyses as required in § 234.58 shall be forwarded to the Permit Program Manager prior to the vessel's departure for the incineration site.

(b) All monitoring and recording data specified in § 234.60(a)–(d) shall be forwarded to the Permit Program Manager within 10 days of the completion of an incineration voyage or no later than the next departure of the vessel for the incineration site.

(c) All data specified in § 234.60(e) and that which may be required in § 234.60 (f) and (g) shall be forwarded to the Permit Program Manager within 90 days of the completion of an incineration voyage on which the data was collected.

(d) For an emergency permit the Permittee shall:

(1) Notify the Permit Program Manager orally, followed by immediate written notification, of the initiation and completion of the incineration activities; and

(2) Provide the Permit Program Manager with a written report of the incineration activities within 30 days of the completion of the emergency permit voyage.

(e) All data and reports required in this section are to be certified by the person(s) authorized to sign the permit.

(f) All data and reports specified in paragraphs (a)–(d) of this section shall be retained by the permittee for the duration of the permit or for five years, whichever is longer.

(g) If material to be incinerated is discharged to safeguard life at sea or in a manner not in full accordance with the terms and provisions of the permit, the permittee shall immediately notify the nearest U.S. Coast Guard District and the Permit Program Manager of the incident by radio, telephone or telegraph and shall make a full written report, in accordance with 18 U.S.C. 1001, within 10 days to the Assistant Administrator detailing the conditions of this emergency and the actions taken. This report shall not exempt the Permittees from cleanup and mitigation measures in § 234.52(1) for such discharge.

§ 234.62 Shiprider.

(a) The permittee shall not transport for incineration or incinerate any material unless the Permit Program Manager and/or his authorized representative (hereinafter "Shiprider") are onboard the vessel.

(b) The Shiprider may immediately stop the flow of the waste to the incinerators if, in his or her opinion, any term or provision of the permit is not being met or unreasonable risk to human health, welfare or to the environment is occurring or is about to occur.

(c) The permittee shall provide quarters and subsistence for the Shiprider while Shiprider is onboard the vessel.

§ 234.63 Inspections.

The permittee shall allow, upon presentation of proper credentials, the Permit Program Manager and/or his or her authorized representatives to:

(a) Enter into, upon or through the permittee's premises, vessel, or other premises or vessels under the control of the permittee where, or in which, materials to be incinerated are stored or assembled prior to loading onto the vessel, or where, or in which, any records are required to be kept under the terms and provisions of the permit; and

(b) Examine and copy any records required to be kept under the terms and provisions of the permit; and

(c) Inspect any monitoring equipment or monitoring method required by the permit; and

(d) Sample, or require that under the supervision of EPA or an EPA-authorized representative, a sample be drawn of any material to be incinerated or resulting from incineration; and

(e) Inspect any incineration or navigation equipment installed onboard the vessel; and

(f) Take such other action as is necessary in order to determine whether the terms and provisions of the permit have been fulfilled.

§ 234.64 Contingency plan.

The contingency plan described in § 234.19 is to be part of the permit. The permittee is to submit to the Permit Program Manager, a full written report describing any incident requiring implementation of the contingency plan within 10 days after the completion of the cruise on which the contingency plan was implemented.

§ 234.65 Financial responsibility.

The permittee shall continuously maintain evidence of an annual aggregate coverage of [$50,000,000 to $500,000,000], or of the amount specified in the permit in accordance with the provisions of § 234.10. The permittee shall carry onboard the vessel a signed duplicate original of a certificate issued by the insurer attesting that the permittee carries insurance in accordance with § 234.10(c) for the amount specified in the permit.

§ 234.66 Penalties.

(a) In accordance with section 105 of the Act, any person who violates any provision of the Act, this Part 234 or permits issued hereunder shall be liable for a civil penalty of not more than $50,000 for each violation. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. The Assistant Administrator in determining the amount of the penalty shall consider the gravity of the violation, prior violations and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation. In addition, any person who knowingly violates any provision of the Act, this Part 234, or a permit issued hereunder shall be fined not more than $50,000 or imprisoned for not more than one year, or both. For the purpose of imposing civil penalties and criminal fines under this provision, each day of a continuing violation shall constitute a separate offense.

(b) No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped to safeguard life at sea.

§ 234.67 Emergency suspension.

If, based on the waste analysis reports required in § 234.61(a), or the monitoring data reports in § 234.61(b), or report(s) by the Shiprider, the Permit Program Manager determines that a term or condition of the permit has not been met and that continued incineration may present an imminent and substantial risk to human health or to the environment, (s)he may order an emergency suspension of the permit as provided in § 234.70.

Subpart F—Modification, Suspension, or Revocation of a Permit

§ 234.68 Applicability.

This Subpart F shall govern all proceedings under section 104(d) of the Act to revise, revoke or limit the terms and conditions of any permit issued pursuant to Part 234.

§ 234.69 Modifications.

(a) Minor modifications are not subject to paragraphs (c)–(e) of this section and may only:

(1) Correct typographical errors,

(2) Change the listed coordinators or equipment in the permittee's contingency plan,

(3) Reduce the estimate of total amount of wastes to be incinerated,

(4) Require more frequent monitoring or reporting.

(b) All other modifications are subject to the provisions of paragraphs (c)–(e) of this section and § 234.72.

(c) Permits may be modified, either at the request of any interested person (including the permittee) or upon the Assistant Administrator's initiative. All requests shall be in writing and shall contain facts or reasons supporting the request.

(d) If the Assistant Administrator decides that the request for a modification in the permit is not justified, he or she shall send the requester a brief written response giving a reason for the decision. Denials of requests for modification are not subject to public notice, comment, or hearings. Denials by the Assistant Administrator may be informally appealed to the Administrator by a letter briefly setting forth the relevant facts. The Administrator may direct the Assistant Administrator to begin modification proceedings in accordance with § 234.72. The appeal shall be considered denied if the Administrator takes no action on the letter within 60 days after receiving it. This informal appeal is, under 5 U.S.C. 704, a prerequisite to seeking judicial review of EPA action in denying a request for modification.

(e) (1) If the Assistant Administrator tentatively decides to modify a permit he or she shall prepare a draft permit incorporating the proposed changes. The Assistant Administrator may request additional information and may require the submission of an updated application.

(2) Only those conditions to be modified shall be reopened when a new draft permit is prepared. All other aspects of the existing permit shall remain in effect for the duration of the unmodified permit.

§ 234.70 Emergency suspension.

(a) The Permit Program Manager may order an emergency suspension of the permit by informing the permittee either orally or in writing that a substantive term or condition of the permit has not been met, and that the continued incineration activities may present an imminent and substantial risk of injury to human health or to the environment. If notice is given orally, the Permit Program Manager shall immediately follow up the oral order with a written explanation.

(b) Upon notice of the emergency suspension order, the permittee shall cease all activities authorized under this permit.

(c) Within 10 days of the Permit Program Manager's emergency suspension order, the permittee may petition the Assistant Administrator in writing to review the order. That petition shall include a statement of reasons supporting the review. If no petition for review is filed, the Assistant Administrator shall within a reasonable period of time, initiate permit modification or revocation proceedings under § 234.72. If a petition for review is filed, within 10 days of its filing the Assistant Administrator shall:

(1) Allow the permittee to resume activities authorized under the permit; or

(2) Initiate permit modification or revocation proceedings under § 234.72.

§ 234.71 Revocation.

(a) The Assistant Administrator may initiate proceeding to revoke a permit if:

(1) There is significant noncompliance by the permittee with any condition of the permit; or

(2) The permittee failed in the application or during the permit issuance process to fully disclose all relevant facts, or the permittee misrepresented any relevant facts at any time; or

(3) The permittee is no longer able to obtain insurance in accordance with the provisions in § 234.10, for the amount specified in § 234.65; or

(4) The permittee's incinerators failed to attain the incinerator performance standards in § 234.47 during any of the trial burns; or

(5) There is a determination that the permitted activity endangers human health or the environment, can no longer be carried out consistent with the environmental criteria in § 234.48 and can not be regulated to acceptable levels.

(b) If the Assistant Administrator tentatively decides to terminate a permit, he or she shall initiate termination proceedings in accordance with § 234.72.

(c) The Assistant Administrator's decision to terminate a permit, if appealed must be appealed in accordance with the procedures found at 40 CFR Part 124, Subpart E.

§ 234.72 Procedures for modifying or revoking permits.

In modifying or revoking a permit, the Assistant Administrator shall follow the application processing procedures in § 234.30–§ 234.41 except that in modifying a permit only those conditions to be modified shall be reopened when a new draft permit is prepared and all other aspects of the existing permit shall remain in effect for the duration of the unmodified portion of the permit.

Subpart G—Criteria for the Designation and Management of Ocean Incineration Sites

§ 234.73 Applicability.

Pursuant of section 102 of the Act, the criteria in this Subpart G apply to the evaluation of proposed ocean incineration sites and to the requirements for effective management of the incineration sites to prevent unreasonable degradation of the marine environment from incinerator emissions.

§ 234.74 Incineration site management responsibilities.

The Permit Program Manager is responsible for the management of incineration sites. Management of a site consists of conducting incineration site evaluation and designation studies; recommending to the Assistant Administrator limitations on the times, rates, quantities, and types of materials incinerated; developing and maintaining environmental monitoring programs for the site; and modifying the use of the site or proposing its de-designation.

§ 234.75 General criteria for the selection of sites.

All sites proposed for incineration must meet the following general criteria:

(a) The incineration of materials over the ocean shall be permitted only at sites or in areas selected to minimize the interference of incineration activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, areas of special biological and historical sensitivity, regions of heavy commercial or recreational navigation and areas of military or strategic importance.

(b) Locations and boundaries of incineration sites shall be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing of the incineration emissions anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

(c) The size, configuration, and location of any incineration site shall be determined as part of the site designation study in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to detect and subsequently prevent adverse long-range impacts.

(d) EPA shall, wherever feasible, designate ocean incineration sites beyond the edge of the Continental Shelf.

§ 234.76 Specific criteria for the selection of sites.

In addition to the general criteria in § 234.75, the following factors are to be considered:

(a) Geographical position, depth of water, bottom topography and distance from coast. This will include an evaluation of possible transit times for emissions in air or water to reach land, and estimates of dilution;

(b) Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases. This will include an evaluation of possible transit times for emissions in air or water to reach these areas and estimates of dilution, and an estimate of the possible effects of emissions on marine life. Particular attention is to be given to the presence of endangered or threatened species and their habitat;

(c) Location in relation to beaches, marine sanctuaries, and other amenity areas;

(d) Types and quantities of wastes proposed to be incinerated, and proposed methods of incineration;

(e) Feasibility of surveillance and monitoring;

(f) Circulation patterns, dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing water current and wind direction and velocity, and atmospheric stability, frequency of inversions and fog, precipitation amounts and humidity and seasonal effects;

(g) Existence and effects of current and previous discharges from incineration or other disposal activities in the area (including cumulative effects);

(h) Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean;

(i) The existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys;

(j) Availability of navigational aids;

(k) Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

§234.77 Procedures for designating ocean incineration sites.

(a) Incineration sites for research permits will be determined by the nature

of the proposed activities. Research incineration sites shall:

(1) Be requested by the applicant in the permit application and shall be specified by EPA as a permit condition;

(2) Conform with the factors listed in § 234.75 and § 234.76 as demonstrated by information supplied by the applicant;

(3) Be noticed and subject to public comment as part of the proposed permit; and

(4) Be used for research involving the effect of incineration emissions on the marine environment using incinerators that have demonstrated attainment of the performance standards in § 234.47 and in § 234.48. Research on new technologies shall be conducted only at sites listed in § 234.78(b).

(b) Incineration activities authorized in operating permits and those authorized in research permits for the study of new incineration technology shall only take place at areas listed in §234.78(b).

(c) In listing an ocean incineration site in § 234.78(b), the Assistant Administrator shall:

(1) Prepare a draft ocean incineration site designation study. An ocean incineration site designation study is an environmental assessment of the use of a site for ocean incineration which may be used in the preparation of an environmental impact statement for each site where such a statement is required by EPA policy. The study will address the criteria in § 234.75 and § 234.76 and will include the collection, analysis and interpretation of all available pertinent data and information on a proposed ocean incineration site prior to use, including but not limited to, that from baseline surveys, special purpose surveys of other Federal agencies, public data archives, and social and economic studies and records of areas which would be affected by use of a proposed site. A baseline survey of the water quality and biological conditions at a proposed site will be conducted and summarized in the ocean incineration site designation study. The ocean incineration site designation study will also include a calculation of the site's carrying capacity for acid forming emissions, organic constituents and metal particulates emitted after incineration. The carrying capacity for these emissions will be used as a basis for proposing limits on acid forming, organic and particulate emissions.

(2) Publish simultaneously a notice of the availability of a draft ocean incineration site designation study and a proposed rule for the designation of a site in accordance with § 234.33. A final site designation study shall be made available at the time of final rulemaking for the site. The final rulemaking will become effective 30 days following publication in the **Federal Register**.

(d)(i) Where practicable, the Assistant Administrator shall issue emergency permits for sites listed in § 234.78(b).

(ii) Where paragraph(d)(i) of this section would pose an unreasonable risk to human health, welfare or safety, the Assistant Administrator may designate a location for the activities as a condition of the permit. Such locations should meet the criteria in § 234.75 and § 234.76.

§ 234.78 Designated sites.

(a) Site designations promulgated by rule in accordance with the procedures in § 234.77(c) shall include:

(1) Latitude and longitude;

(2) Limits on the time that the site may be used. Use of a site may not exceed 10 years unless the site has been re-designated in accordance with the procedures in §234.77(c);

(3) Limits on the type and the quantity of materials that may be in the incineration emissions, based on the carrying capacity of the site for these emissions; and

(4) An environmental monitoring program.

(b) List of sites:

(1) Gulf Incineration Site.

(i) Boundary coordinates:

Latitude	Longitude
26°20'00"N	93°20'00"W
26°20'00"N	94°00'00"W
27°00'00"N	93°20'00"W
27°00'00"N	94°00'00"W

(ii) Use of the site may be up to 10 years.

§ 234.79 Regulation of incineration site use.

(a) Regulation of the use of an incineration site shall be on a permit-by-permit basis by establishing limits on the times and rate of incineration so as not to exceed the carrying capacity of the site for substances emitted from the incineration process.

(b) An environmental monitoring program shall be implemented for each site and may include baseline or trend assessment surveys and the analysis and interpretation of data from remote or automatic sampling and/or sensing devices. The primary purpose of the monitoring program is to evaluate the impact of incineration on the marine environment by referencing the monitoring results to a set of baseline conditions and the ambient marine water quality criteria. Such programs may consist of the following components:

(1) Trend assessment or monitoring surveys conducted periodically to assess the extent and impacts of incineration emissions;

(2) Special studies conducted to identify immediate and short-term impacts;

(3) Data collected from the use of automatic sampling buoys, satellites or in situ platforms and from experimental programs.

(c) In implementing the environmental monitoring program EPA will seek the participation of other Federal, State, and local agencies in monitoring the sites and may require the permittees to periodically participate in the environmental monitoring program.

(d) The following types of effects, in addition to other necessary or appropriate considerations, will be evaluated in determining to what extent the marine environment has been impacted by the operations at an ocean incineration site:

(1) Movement of emissions toward estuaries or marine sanctuaries, or on to oceanfront beaches or shorelines;

(2) Movement of emissions toward productive fishery or shellfishery areas;

(3) Absence from the incineration site of pollution-sensitive biota characteristic of the general area when these changes are attributable to materials resulting from incineration at the site;

(4) Progressive, non-seasonal changes in water quality at the incineration site, when these changes are attributable to materials resulting from incineration at the site;

(5) Accumulation of materials in the water or marine biota at or near the site as a result of incineration activities.

(e) The determination of the overall severity of ocean incineration impacts on the marine environment, including but without limitation, the incineration site and adjacent areas, shall be based on the evaluation of the entire body of pertinent data using appropriate methods of data analysis for the quantity and type of data available. Impacts shall be identified according to the overall condition of the environment of the site and adjacent areas based on the determination that:

(1) There is identifiable progressive movement or accumulation of chemical species, in detectable concentrations above naturally occurring ambient marine water concentrations or naturally occurring concentrations in biota as a result of incineration activities;

(2) The biota, sediments, or water column of the incineration site, or of any area outside the site, contain detectable concentrations of any waste or chemical species above naturally occurring levels due to incineration and are adversely affected by such waste or emission constituents. Adverse effects may include statistically significant decreases in the populations of valuable commercial or recreational species, or of specific populations of species or biota essential to the propagation of such species, within the incineration site and surrounding area as compared to populations of the same organisms in comparable locations in the immediate surrounding area; and

(3) There are adverse effects on the taste or odor or overall health of valuable commercial or recreational species as a result of incineration activities.

§ 234.80 Modification in incineration site use.

(a) If the determination is made that incineration activities at a site have adversely impacted the site based on the criteria in § 234.79(e), the Assistant Administrator shall place such limitations on the use of the site as are necessary to reduce the impacts to acceptable levels by:

(1) Denying permits for incineration of some or all waste constituents, or

(2) Imposing appropriate conditions in permits, or

(3) Terminating use of the site and designating new incineration sites under the procedures of § 234.77(c).

(b) If the determination is made that any continued incineration at the site would have a permanent adverse affect on the site, the Assistant Administrator shall propose the termination of the use of the site in accordance with the same procedures used to designate the site in §234.77(c).

§ 234.81 Reports.

Periodically, the Assistant Administrator shall evaluate the impact of incineration on each designated site and shall prepare a report, as appropriate, as part of the Annual Report to Congress under section 112 of the Act. The report shall be based on an evaluation of all data available from baseline and trend assessment surveys, monitoring surveys, and other data pertinent to conditions at or near a site.

[Note.—Appendix A will not appear in the Code of Federal Regulations.]

Appendix A—Model Used To Derive Allowable Concentrations of Organochlorines and Metals in Wastes for Incineration-at-Sea

Introduction

The environmental performance standard proposed today in § 234.48(b), requires that a concentration of a constituent in the stack emissions, after allowance for initial mixing, does not exceed its marine water quality criterion, marine aquatic life no-effect level, or that concentration of a constituent in the stack emissions which would not cause a toxicity threshold defined as 0.01 of an ambient marine water concentration shown to be acutely toxic to appropriately sensitive marine organisms to be exceeded. For mercury and cadmium, the amount of these compounds are to be limited to that amount which, if directly dumped, would not exceed their applicable water quality criteria after initial mixing. EPA developed a two-part atmospheric and oceanic dispersion model to determine the concentration of an organochlorine and a metal which could be in the waste stream such that, after incineration, the amount of a constituent in the emissions would not exceed this environmental performance standard.

The oceanic dispersion model uses the mixing coefficient of the water, surface and subsurface currents and wind shear on the ocean surface to determine the maximum rate of deposition of a constituent from the plume that could occur without exceeding its water quality criterion, aquatic life no-effect level, or toxicity threshold. The results of this oceanic dispersion model are used in the atmospheric model to determine the maximum concentration of a constituent in the plume, i.e., the limiting permissible concentration (LPC) of the constituent, in order to determine the allowable concentrations in the waste mixture. In the case of mercury and cadmium, the maximum amounts of these pollutants which would be allowable in directly dumped wastes (i.e., those amounts in directly dumped wastes which would not result in the applicable water quality criteria for these pollutants being exceeded at the site after initial mixing) should be determined and used instead.

The model used PCBs as a surrogate for all organochlorines because PCBs are among the most toxic and persistent compounds that tend to bioaccumulate in the marine environment. In running the model on PCBs a destruction efficiency of 99.99 percent was used even though the rule proposes a destruction efficiency of 99.9999 percent for PCBs. This means that there is a built in safety factor in the model of two orders of magnitude. That is, the actual amount of PCBs in the emissions would be less than that assumed in the model.

For the metals it was assumed that none of the metals were destroyed, that all were emitted in the stack emissions and that all of the metals were in a biologically available form. These assumptions are conservative because it is likely that some of the metals would remain in the ash or refractory surface of the incinerators and that the metals emitted would be in the form of an oxide, a form not generally biologically available to marine aquatic life.

In both the atmospheric and oceanic dispersion model monthly data were evaluated to select the "worst" case conditions. While the model was developed using the characteristics of the VULCANUS I incinerators, marine water quality criteria for PCBs and 14 metals, and the worst atmospheric and oceanic conditions of the Gulf Incineration Site, the model may be adapted to the characterists of any incinerator and any ocean incineration site by substituting the rate of incineration of a particular incinerator and the oceanic and atmospheric conditions at a particular site.

The following discussion describes the model. EPA requests public comment on its use in the ocean incineration program.

Ocean Modeling

To determine the maximum allowable concentrations of metals and PCBs in the waste stream to be incinerated at sea, the maximum concentration of each metal and PCBs that can fall onto the ocean's surface before the concentrations in the water column exceed marine water quality criteria must first be determined. These amounts can also be used to estimate maximum allowable plume concentrations (limiting permissible concentration) of the metals and PCBs. This information can then be used to calculate the total amount of each metallic species and PCBs that can be in the waste stream. This modelling was performed under EPA contract 68-01-6388 *(Permissible Metal, PCB, and TCDD (Dioxin) Concentrations in Incineration Waste Material)*, September 26, 1983, prior to the tentative determination to issue permits to Chemical Waste Management (48 FR 48986; October 21, 1983). The model was run for the operational characteristics of VULCANUS I at the Gulf of Mexico Incineration Site. The following describes the model from a generic sense as it is applied to metallic species and PCBs and, where

appropriate for clarity or illustrative purposes, utilizes site-specific information from the Gulf of Mexico Incineration Site and operational characteristics of the VULCANUS I.

To model the distribution of the metallic species and PCBs in the ocean for a worst case situation, the following assumptions were made:

(a) Concentration changes due to atmospheric advection can be disregarded, because there will be low winds and minimal current.

(b) Horizontal dispersion in the water column can be disregarded, creating a worst case by minimizing the dilution effects of the ocean.

(c) Mixing of the metallic species and PCBs down into the water column is a result of turbulence induced by surface stress.

The mixing of a quantity of any chemical species into the water column is a function of vertical density variations and the intensity of the cause of mixing at an ocean disposal site. For incineration at sea, wind stress is the principal cause of the vertical mixing, and vertical density variations for an ocean incineration site can be obtained from standard atlases. As the momentum of the wind is mixed downward, the amount of a metal or PCBs that has fallen on the surface is mixed downward also. For the model, it is assumed that the mixing of momentum and metallic species and PCBs is identical. Thus, the vertical distribution of metal and PCB concentrations in the water column will be similar in form to the vertical distribution of total momentum.

In order to determine the momentum distribution, a dynamic point model of the ocean surface mixed layer is used (Mellor and Durbin, 1975). Inertia, the Coriolis effect, and vertical variations of horizontal stresses are considered for turbulent ocean layers. The only source of stress is a constant wind, and the algorithm models the propagation of the wind-induced momentum down through the water column. A schematic representing this model is found in Figure 1. The following is a description of the ocean model, which is a mathematical representation of the mechanism for dispersion of a plume constituent in the receiving water.

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Inertia + Coriolis Effect = Vertical Variations of Horizontal Shear Stress

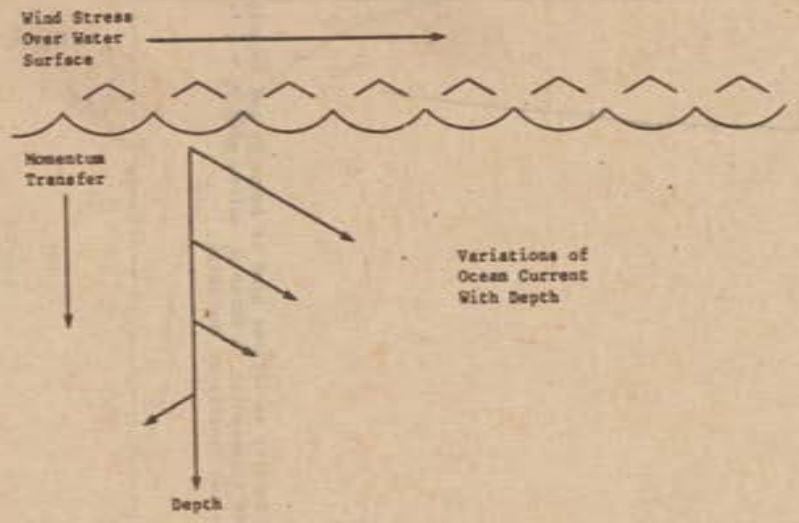

Figure 1 A schematic representing the ocean model used in this study. The degree of vertical momentum transfer is a function of the magnitude of the wind stress and the variations of water density with depth.

Table 1 Vertical density variations used as input to the dynamic model. Density is represented in terms of σ_t units, with $\sigma_t = (\rho-1) \cdot 10^3$ where ρ is the density of the water.

Depth (m)	Density (10^3 g/cm^3)			
	Feb	Jun	Aug	Nov
0	25.67	23.40	23.09	24.27
30.5	25.67	24.57	23.97	24.42
61	25.82	25.44	25.39	24.75
91.5	25.94	25.95	26.15	25.47
122	26.20	26.19	26.46	25.98
150	26.42	26.43	26.59	26.29
200	26.78	26.78	26.78	26.78
300	27.00	27.00	27.00	27.00
400	27.08	27.08	27.08	27.08
500	27.15	27.15	27.15	27.15
600	27.23	27.23	27.23	27.23
700	27.34	27.34	27.34	27.34
800	27.45	27.45	27.45	27.45

Model Parameters

Salinity and temperature data from a variety of sources were used to construct average vertical density variations for each month of the year in the region of the Gulf of Mexico Incineration Site (Naval Oceanographic Office, 1967; Nowlin and McLellan, 1967; Robinson, 1973; Churgin and Halminski, 1974). Variations in the monthly data were studied (e.g., densest and lightest surface waters, shallowest pycnoclines, etc.), and the densities shown in Table 1 were chosen as input to the model. In February, the data indicate that the water column is mixed to its greatest depth. By June, a seasonal pycnocline forms; and this pycnocline is found at a slightly greater depth in August during which the least dense surface water is found. Cooling during the fall and winter results in overturning, and November water column densities are halfway through this process. Plots of the vertical density variations have been developed (Figure 2).

Wind stress data for the above 4 months were used to derive the model. To consider the worst case, wind speed histograms of the study area were used to calculate an average low wind speed, as an average burn lasts 10 days (or ⅓ month) and there always exists the possibility that the wind speed could be small during the entire 10 days. The histograms give the following average low wind speeds (Naval Oceanographic Office, 1972):

February—3.2 m/s
June—2.6 m/s
August—1.9 m/s
November—3.1 m/s

Vertical Momentum Distributions

The dynamic model was run for each monthly set of parameters until steady-state conditions could be approximated (3 to 4 inertial periods). The total momentum per unit area was then calculated down to 50 m using currents at 1.0 m intervals:

$$M = \int_0^{50m} \rho (u^2+v^2)^{1/2} dt$$

The momentum distributions for the four simulations are presented in Figures 3–6. The distributions, scaled by the maximum momentum per unit volume in the water column,

$$M_m = [\rho (u^2+v^2)^{1/2}]_{max},$$

are assumed to be identical to the metal and PCB concentration distributions scaled by the average marine water quality criteria concentrations, Q_m.

Thus, the total quantity of metallic and PCB species per unit area that can fall on the ocean surface before reaching Q_m in the water column is given by,

$$Q = Q_m \times M/M_m,$$

where Q is in g/cm². Since we are considering a 10 day burn, the average flux of metallic species and PCBs out of the atmospheric plume onto the ocean surface cannot exceed,

$$Q' = Q/(864 \times 10^3 s).$$

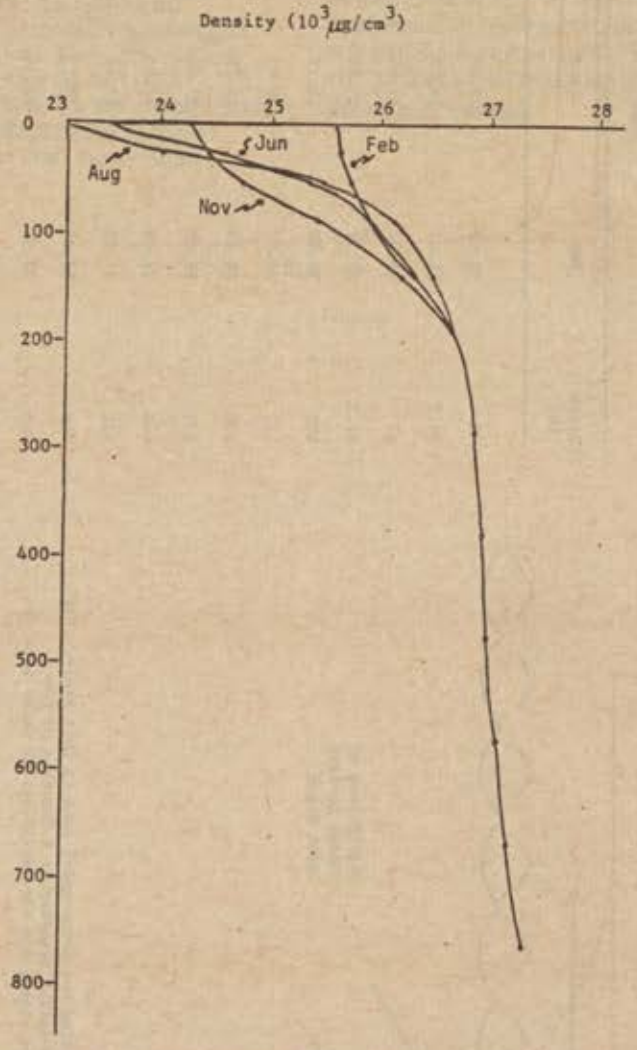

Figure 2 Vertical density variations used as input to the dynamic model. Density is represented in terms σ_t units, with $\sigma_t = (\sigma - 1) \cdot 10^3$ where σ is the density of the water.

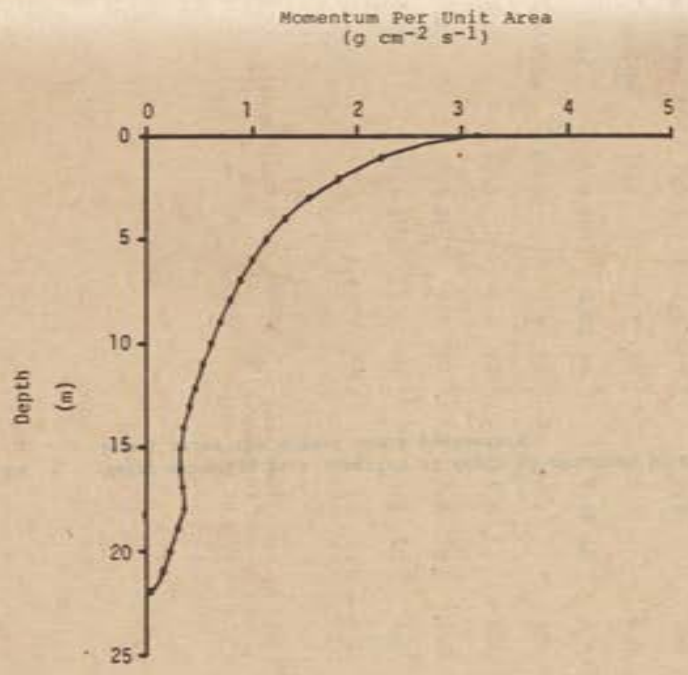

Figure 3 Water momentum as a function of depth as obtained by the dynamic model using the February input parameters.

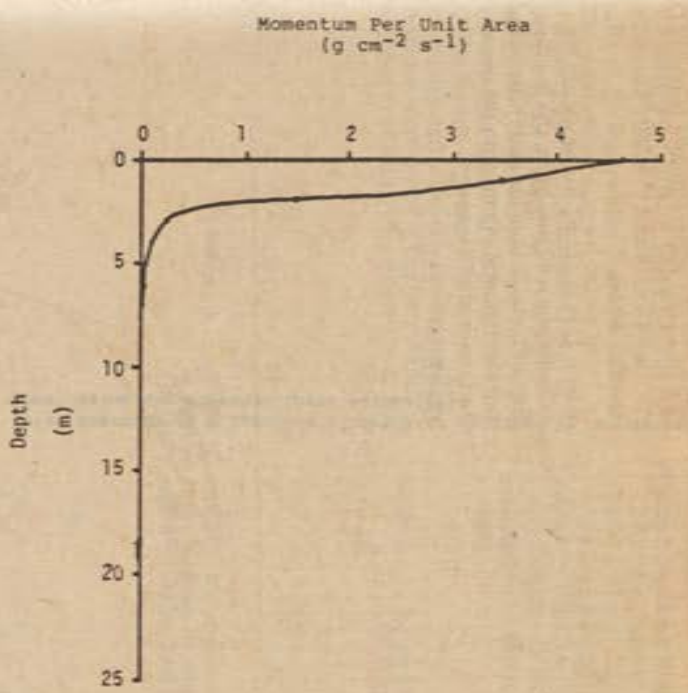

Figure 4 Water momentum as a function of depth as obtained by the dynamic model using the June input parameters.

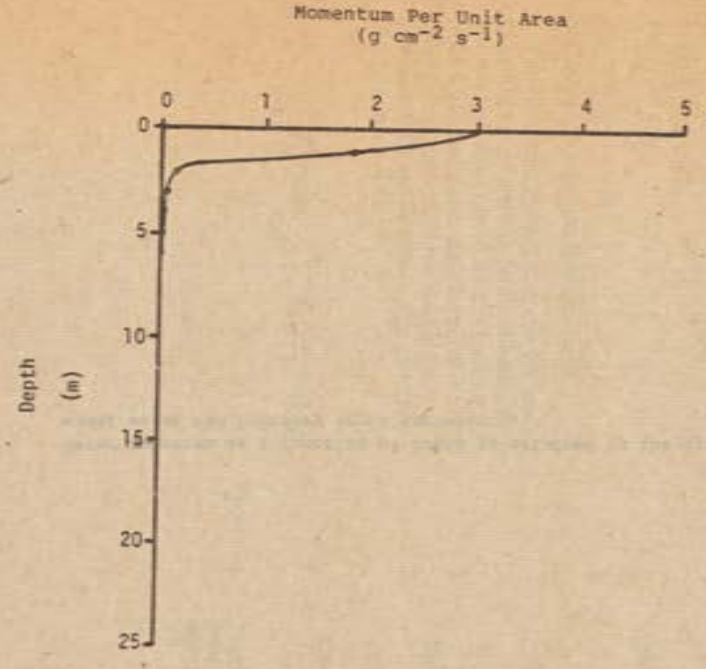

Figure 5 Water momentum as a function of depth as obtained by the dynamic model using the August input parameters.

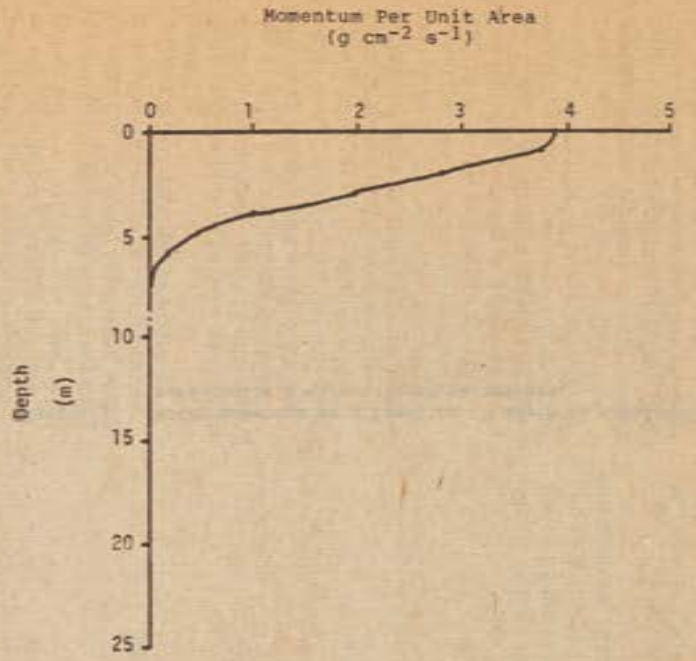

Figure 6 Water momentum as a function of depth as obtained by the dynamic model using the November input parameters.

The marine water quality criteria or aquatic life no-effect ambient marine water concentrations used in this study are shown in Table 2. Table 3 gives the values of Q and Q' based on these criteria for each of the four simulations. The mixing processes resulted in February having the largest Q and Q' values while August, with the lower winds and the seasonal pycnocline, had the smallest Q and Q' values. The effect of the seasonal pycnocline is that of a boundary across which the momentum transfer is inhibited. Thus, a metallic species or PCBs can be diluted to a greater extent by vertical mixing during the fall and winter that during the spring and summer.

Table 2 Ambient Marine Water Quality Criteria or Aquatic Life No-Effect Marine Water Concentrations for Metals and PCBs (from Marine Water Quality Criteria, Documents Availability: 45 FR 79318, November 28, 1980 and 46 FR 40919, August 13, 1981)

Arsenic	50.8μg/l lowest acute value×0.1 application factor.†
Cadmium	4.5μg/l 24 hour average.
Chromium*‡	18μg/l 24 hour average.
Copper	4.0μg/l 24 hour average.
Lead	25μg/l lowest chronic value.
Mercury	0.10μg/l revised criteria 0.10 μg/L 24 hour average.
Nickel	7.1μg/l 24 hour average.
Selenium	54μg/l 24 hour average.
Silver	.23μg/l lowest acute value×0.1 application factor.†
Thallium	213μg/l lowest acute value×0.1 application factor.†
Zinc	58μg/l 24 hour average.
PCB	3×10^{-5}μg/l 24 hour average.

*See Revision to Criteria at 46 FR 40919 August 13, 1981.
† Application factor applied to obtain a value comparable to a chronic value from the acute value.

Table 3 Q and Q^1 results for the four model simulations. Q is the total amount of the substance in the water column (ug/cm^2) and Q^1 is the average flux over a 10 day period (ug/cm^2s).

	Q	Q'	Q	Q'	Q	Q'	Q	Q'
Arsenic	16.01	$1.9\ 10^{-5}$	4.87	$5.6\ 10^{-6}$	3.84	$4.4\ 10^{-6}$	7.74	$9.0\ 10^{-6}$
Cadmium	1.4	$1.6\ 10^{-6}$	0.4	$5.0\ 10^{-7}$	0.3	$3.9\ 10^{-7}$	0.7	$7.9\ 10^{-7}$
Chromium	5.0	$6.5\ 10^{-7}$	1.7	$2.0\ 10^{-6}$	1.4	$1.6\ 10^{-6}$	2.7	$3.2\ 10^{-6}$
Copper	1.3	$1.5\ 10^{-6}$	0.4	$4.4\ 10^{-7}$	0.3	$3.5\ 10^{-7}$	0.6	$7.1\ 10^{-7}$
Lead	5.0	$9.0\ 10^{-6}$	2.4	$2.8\ 10^{-6}$	1.9	$2.2\ 10^{-6}$	3.8	$4.4\ 10^{-6}$
Mercury	$3\ 10^{-2}$	$3.6\ 10^{-8}$	$9.6\ 10^{-3}$	$1.12\ 10^{-8}$	$7.6\ 10^{-3}$	$8.8\ 10^{-9}$	$1.52\ 10^{-2}$	$1.76\ 10^{-8}$
Nickel	2.2	$2.6\ 10^{-6}$	0.7	$7.9\ 10^{-7}$	0.5	$6.2\ 10^{-7}$	1.1	$1.3\ 10^{-6}$
Selenium	17.1	$1.9\ 10^{-5}$	5.2	$6.0\ 10^{-6}$	4.1	$4.7\ 10^{-6}$	8.2	$9.5\ 10^{-6}$
Silver	$6.9\ 10^{-2}$	$8.05\ 10^{-8}$	$2.18\ 10^{-2}$	$2.53\ 10^{-8}$	$1.73\ 10^{-2}$	$2.07\ 10^{-8}$	$3.45\ 10^{-2}$	$4.03\ 10^{-8}$
Thallium	66.00	$7.5\ 10^{-5}$	20.42	$2.4\ 10^{-5}$	16.11	$1.9\ 10^{-5}$	32.47	$3.7\ 10^{-5}$
Zinc	18.0	$2.1\ 10^{-5}$	5.6	$6.4\ 10^{-6}$	4.4	$5.1\ 10^{-6}$	8.8	$1.0\ 10^{-5}$
PCB	$9.5\ 10^{-3}$	$1.1\ 10^{-8}$	$2.8\ 10^{-3}$	$3.3\ 10^{-9}$	$2.3\ 10^{-3}$	$2.6\ 10^{-9}$	$4.6\ 10^{-3}$	$5.3\ 10^{-9}$
TCDD	$1.2\ 10^{-5}$	$1.4\ 10^{-11}$	$3.8\ 10^{-6}$	$4.4\ 10^{-12}$	$7.5\ 10^{-7}$	$8.6\ 10^{-13}$	$6.1\ 10^{-6}$	$7.1\ 10^{-12}$
	Feb		Jun		Aug		Nov	

Atmospheric Modeling of Inorganic Constituents

Introduction

This section describes the atmospheric loading of metallic species and PCBs which will not cause their marine water quality criteria to be exceeded after allowance for initial mixing. This loading is looked at as an inverse atmospheric model. That is, starting with marine water quality criteria and the outputs of the previously described ocean model, this model works backward through the appropriate transport, dispersion, and diffusion equations to determine the maximum allowable concentrations (limiting permissible concentrations) in the stack emissions. This is an extremely difficult problem and any solution is going to contain a high degree of uncertainty.

A box model was used for the atmospheric modeling of the incineration process. This model is described in Hanna, et al. (1982). It treats advection, dry deposition, precipitation loss, and chemical loss, and is used to predict the transport of a metallic species based on a material balance through a confined space. The species is assumed well-mixed in a volume of depth Z_i and horizontal dimension Δx. The wind speed is assumed constant within the volume. The continuity equation for this volume can then be written as:

$$\underset{\text{change in C with time}}{\Delta X Z_i \frac{\delta C}{\delta t}} = \underset{\text{source}}{X Q_a} - \underset{\text{advective loss}}{u Z_i C} - \underset{\text{dry deposition}}{V_d C \Delta X} - \underset{\text{chemical loss}}{\lambda C \Delta X Z_i} - \underset{\text{precipitation loss}}{\left(\frac{C}{T_c}\right) \Delta X Z_i} \quad (1)$$

where:

Q_a is the effective flux at the sea surface ($MT^{-1}L^{-2}$)

ΔX is the length of the side of an incineration track = 50 km

u is the wind speed

Z_i is the height of the inversion
V_d is the dry deposition velocity
c is the concentration which is assumed to be uniform throughout the incineration box
λ is the scavenging coefficient (T^{-1})
T_c is the time constant for the chemical decay rate (T)

If conditions are steady state (i.e., there is no local time rate of change in concentration), then the term on the left side of the above equation is zero. For the case of metallic species, the model assumes that all forms of the metallic species are treated as one. That is, that the metal, the metal oxides, and the metal chlorides, etc., are included under the one metallic species limit (i.e., arsenic, arsenic oxide, arsenic chloride). The continuity equation for this model is given by the following expression:

$$\Delta X Q_a - u Z_i C - V_d C \Delta X - \lambda C \Delta X Z_i - \left(\frac{C}{Tc}\right)\Delta X Z_i = 0 \quad (2)$$

Description of Scenario

Assume the ship is steaming around in a 20 km by 20 km box and the wind speek, u, is so light that we can consider the concentration, C, to be roughly uniform over the box. The ship burns M g/sec of waste material and the effective flux over the box, Q_a, is:

$$Q_a = \frac{M}{(\Delta X)^2} \quad (3)$$

The equilibrium concentration is

$$C = \frac{Q_a\left(\frac{\Delta X}{u Z_i}\right)}{1 + (V_d + \lambda Z_i)\left(\frac{\Delta X}{u Z_i}\right)} \quad (4)$$

This equation does not include an entrainment term by it can be easily added:

$$C = \frac{Q_a\left(\frac{X}{u Z_i}\right)}{1 + (W_e + V_d + \lambda Z_i)\left(\frac{\Delta X}{u Z_i}\right)} \quad (5)$$

where W is the entrainment term. The entrainment term is included to account for precipitation and other effects which will pull the particulates down from the plume.

The total flux deposited in the 20×20 km square is:

$$F = (V_d + \lambda Z_i)C \quad (6)$$

or

$$F = \frac{\dot{M}}{(\Delta X)^2}\left(\frac{a}{1 + a + b}\right) \quad (7)$$

where

$$a = (V_d + \lambda Z_i)\left(\frac{\Delta X}{uZ_i}\right) \quad (8a)$$

$$b = \frac{W_e \Delta X}{uZ_i} \quad (8b)$$

The largest term of the three velocity terms is likely to be the wet removal, Z_t. Note that there are two types of wet removal processes.

(1) Subcloud: rain drops falling through the non-cloudy air, characterized by scavenging coefficient, λ.

(2) In-cloud: rain drops failling through cloudy air. This is a much more efficient removal process. It is best characterized by $V_d = \lambda \Delta Z$, where ΔZ is the cloud thickness, and λ the in-cloud scavenging coefficient.

Since in-cloud removal is much more inportant, the "worst-case" example should assume that the boundary layer includes a precipitating cloud. Furthermore, the model assumes three particle sizes for the stack emissions. Current data indicates the likehood that the stack particulates will range in size from 0.1 to 10 um. The behavior of each particle according to its size is unique.

Two examples will be considered:

Example 1: Stable surface layer, Z_i = 100 m, $X = 2 \times 10^4$ m, u = 2 m/s, subcloud wet removal, J = .1 mm/hr, W_e = 0 (stable).

Particle Diameter (um)	V_d(cm/s)	$\lambda(s^{-1})$	λZ_i(cm/s)	a	b	$\frac{a}{1+a+b}$
.1	.005	7×10^{-9}	7×10^{-5}	.005	0	.005
1	.05	2.5×10^{-8}	2.5×10^{-4}	.05	0	.05
10	1	2.5×10^{-5}	2.5^{-1}	1.25	0	.56

Example 2: Unstable surface layer, Z_i = 500 mm, $\Delta X = 2 \times 10^4$ m, u = 2m/s, incloud, J = .1 mm/hr, W_e = 0.5 cm/s.

Particle Diameter (um)	V_d(cm/s)	V_w(cm/s)	a	b	$\frac{a}{1+a+b}$
.1	.01	.05	.01	.1	.01
1.0	.1	.5	.1	.1	.08
10.0	2.0	5.0	1.2	.1	.5

$$F = \frac{M}{(\Delta x)^{-2}} \quad \frac{a}{1+a+b} = \text{Flux to the ocean} \quad (9)$$

the mass burn rate (M) is then computed.

$$M = \frac{(\Delta x)^2 F}{\frac{a}{1+a+b}} \quad (10)$$

Results

Table 3 provides the average flux over a 10-day period determined using applicable marine water quality criteria. Using the box model described earlier, the mass burn rate for the various

metallic species is computed for Cases 1 and 2 using the following expression:

$$\dot{M} = \frac{(\Delta x)^2 Q'}{\frac{a}{1+a+b}} \quad (11)$$

The box model results are shown in Table 4. Based on these cases and initial calculations, very high mass burn rates are possible before marine water quality criteria are exceeded. Several cases other than these presented in this description of the model may be considered to examine the effects of changing model parameters. The gneric model described herein is very flexible and can be used to examine a variety of environmental settings.

Using the calcultaions derived from the atmospheric model, the mass burn rate is used to calculate the maximum allowable concentrations of metallic species in the waste stream. This calculation is performed by the equation:

$$- \frac{\dot{M}}{\Sigma} -$$

$\dot{M}$ = burn rate

Σ = maximum burn rate of VULCANUS I (55,125 lb/hour)

For the purposes of this analysis the smallest volume of mass burn rate per metallic species was used. In all cases, for metallic pollutants the Case 1 scenario for a 10 um particle was used. The use of this value gives a "worst case situation", or the maximum allowable concentrations in the waste which do not allow the LPCs and therefore the marine water quality criteria to be exceeded at any time with any size particle. The results of this calculation are given in Table 5, for each metallic species (as total metal) in the waste stream. These values are given both as percent and parts per million (ppm) of the waste stream by weight.

TABLE 4.—BURN RATES

[$\dot{M}$—Burn Rate (g/sec)]

Pollutant and particle size (μm)	February		June		August		November	
	Case 1	Case 2	Case 1	Case 2	Case 1	Case 2	Case 1	Case 2
Arsenic:								
0.1	1.52×10^{4}	7.6×10^{2}	4.48×10^{3}	2.24×10^{2}	3.52×10^{3}	1.76×10^{3}	7.24×10^{3}	3.64×10^{3}
1	1.52×10^{3}	9.5×10^{2}	4.48×10^{2}	2.8×10^{2}	3.52×10^{2}	2.2×10^{2}	7.2×10^{2}	4.5×10^{2}
10	1.36×10^{2}	1.52×10^{2}	4.0×10^{1}	4.48×10^{1}	3.14×10^{1}	3.52×10^{1}	6.43×10^{1}	7.2×10^{1}
Cadmium:								
0.1	1.28×10^{2}	6.4×10^{2}	4.0×10^{2}	2.0×10^{2}	3.12×10^{2}	1.56×10^{2}	6.32×10^{2}	3.16×10^{2}
1	1.28×10^{2}	8.0×10^{1}	4.0×10^{1}	2.5×10^{1}	3.12×10^{1}	1.95×10^{1}	6.32×10^{1}	3.95×10^{1}
10	1.14×10^{1}	1.28×10^{1}	3.57×10^{0}	4.0×10^{0}	2.79×10^{0}	3.12×10^{0}	5.64×10^{0}	6.32×10^{0}
Chromium:								
0.1	5.2×10^{2}	2.6×10^{2}	1.6×10^{2}	8.0×10^{2}	1.28×10^{2}	6.4×10^{2}	2.56×10^{2}	1.28×10^{2}
1	5.2×10^{1}	3.25×10^{1}	1.6×10^{2}	1.0×10^{2}	1.28×10^{2}	8.0×10^{1}	2.56×10^{2}	1.6×10^{2}
10	4.64×10^{0}	5.2×10^{0}	2.43×10^{1}	1.6×10^{1}	1.14×10^{1}	1.28×10^{1}	2.29×10^{1}	2.56×10^{1}
Copper:								
0.1	1.2×10^{2}	6.0×10^{2}	3.52×10^{2}	1.76×10^{2}	2.8×10^{2}	1.4×10^{2}	5.68×10^{2}	2.84×10^{2}
1	1.2×10^{2}	7.5×10^{1}	3.52×10^{1}	2.2×10^{1}	2.8×10^{1}	1.75×10^{1}	5.68×10^{1}	3.55×10^{1}
10	1.07×10^{1}	1.2×10^{1}	3.14×10^{0}	3.52×10^{0}	2.5×10^{0}	2.8×10^{0}	5.07×10^{0}	5.68×10^{0}
Lead:								
0.1	7.2×10^{2}	3.6×10^{2}	2.24×10^{2}	1.12×10^{2}	1.76×10^{2}	8.8×10^{3}	3.52×10^{2}	1.76×10^{2}
1	7.2×10^{2}	4.5×10^{2}	2.24×10^{2}	1.4×10^{2}	1.76×10^{2}	1.1×10^{2}	3.52×10^{2}	2.2×10^{2}
10	6.43×10^{1}	7.2×10^{1}	2.0×10^{2}	2.24×10^{2}	1.57×10^{1}	1.76×10^{1}	3.14×10^{1}	3.52×10^{1}
Mercury:								
0.1	2.88×10^{1}	1.44×10^{1}	8.96×10^{2}	4.48×10^{3}	7.04×10^{3}	3.52×10^{3}	1.41×10^{2}	7.04×10^{3}
1	2.88×10^{0}	1.8×10^{0}	8.96×10^{-1}	5.6×10^{-1}	7.04×10^{-2}	4.4×10^{-1}	1.41×10^{0}	8.8×10^{-2}
10	2.57×10^{-1}	2.88×10^{-1}	8.0×10^{-2}	8.96×10^{-2}	6.28×10^{-2}	7.04×10^{-2}	1.26×10^{-1}	1.41×10^{-1}
Nickel:								
0.1	2.08×10^{2}	1.04×10^{2}	6.32×10^{2}	3.16×10^{2}	4.96×10^{2}	2.48×10^{2}	1.04×10^{2}	5.2×10^{2}
1	2.08×10^{2}	1.3×10^{2}	6.32×10^{1}	3.95×10^{1}	4.96×10^{1}	3.1×10^{1}	1.04×10^{2}	6.5×10^{2}
10	1.86×10^{1}	2.08×10^{1}	5.64×10^{0}	6.32×10^{0}	4.43×10^{0}	4.96×10^{0}	9.29×10^{0}	1.04×10^{1}
Selenium:								
0.1	1.52×10^{4}	7.6×10^{2}	4.8×10^{3}	2.4×10^{2}	3.76×10^{3}	1.88×10^{3}	7.6×10^{3}	3.8×10^{3}
1	1.52×10^{3}	9.5×10^{2}	4.8×10^{2}	3.0×10^{2}	3.76×10^{2}	2.35×10^{2}	7.6×10^{2}	4.75×10^{2}
10	1.36×10^{2}	1.52×10^{2}	4.29×10^{1}	4.8×10^{1}	3.36×10^{1}	3.76×10^{1}	6.79×10^{1}	7.6×10^{1}
Silver:								
0.1	6.44×10^{1}	3.22×10^{1}	2.02×10^{1}	1.01×10^{1}	1.66×10^{1}	8.28×10^{0}	3.22×10^{1}	1.61×10^{1}
1	6.44×10^{0}	4.03×10^{0}	2.02×10^{0}	1.27×10^{0}	1.66×10^{0}	1.04×10^{0}	3.22×10^{0}	2.01×10^{0}
10	5.75×10^{-1}	6.44×10^{-1}	1.81×10^{-1}	2.02×10^{-1}	1.48×10^{-1}	1.66×10^{-1}	2.88×10^{-1}	3.22×10^{-1}
Thallium:								
0.1	6.0×10^{4}	3.0×10^{4}	1.92×10^{4}	9.6×10^{3}	1.52×10^{4}	7.6×10^{3}	2.96×10^{4}	1.48×10^{4}
1	6.0×10^{3}	3.75×10^{3}	1.92×10^{3}	1.2×10^{3}	1.52×10^{3}	9.5×10^{2}	2.96×10^{3}	1.85×10^{3}
10	5.36×10^{2}	6.0×10^{2}	1.71×10^{2}	1.92×10^{2}	1.36×10^{2}	1.52×10^{2}	2.64×10^{2}	2.96×10^{2}
Zinc:								
0.1	1.68×10^{4}	8.4×10^{3}	5.12×10^{3}	2.56×10^{3}	4.08×10^{3}	2.04×10^{3}	8.0×10^{3}	4.0×10^{3}
1	1.68×10^{3}	1.05×10^{3}	5.12×10^{2}	3.2×10^{2}	4.08×10^{2}	2.55×10^{2}	8.0×10^{2}	5.0×10^{2}
10	1.5×10^{2}	1.68×10^{2}	4.57×10^{1}	5.12×10^{1}	3.64×10^{1}	4.08×10^{1}	7.14×10^{1}	8.0×10^{1}

TABLE 5.—MAXIMUM ALLOWABLE CONCENTRATIONS OF THE SPECIFIC METALLIC SPECIES IN WASTES THAT CANNOT BE EXCEEDED IN ORDER TO SATISFY LPC'S AND INSURE THAT APPLICABLE AMBIENT MARINE WATER QUALITY CRITERIA ARE NOT EXCEEDED

Metal	(Weight percent)	(Weight [1] ppm)	(Weight [1] ppm with 0.1) safety factor
Arsenic	0.451	4,510	451
Cadmium	0.39	3,900	390
Chromium	0.16	1,600	160
Copper	0.035	350	35
Lead	0.24	2,400	240
Mercury	0.0009	9	0.9
Nickel	0.063	630	63
Selenium	0.48	4,800	480
Silver	0.00213	21.3	2.1
Thallium	1.94	19,400	1,940
Zinc	0.52	5,200	520

[1] Assumes that the oxides and other forms of the metal are included in the number.

The calculation of maximum allowable metallic species concentrations in the waste stream being fed to the incinerators of the VULCANUS I is based on the limiting permissible concentrations for individual metallic species. These sbustances are processed in the incinerator, enter an atmospheric box, and then enter the water column. The model used to describe the atmosphere is called a box or compartment model. The important assumption involved in using a box model is that the contents of the box are uniform in concentration. When the metallic species enter the water column they are fluxed downward according to the metallic species concentration gradient and eddy diffusivity.

The worst-case situation with respect to maximum concentrations occurs at steady state transport. At steady state, concentrations have peaked and the input of a metallic species to the box is equal to the output(s). There may be more than one output such as flux to the sea surface and an advection (wind) flux out of the box.

Atmospheric Modeling of Organic Constituents

The calculation of a range of component-specific burn rates for PCBs on the VULCANUS I involves estimating ranges of independent variables. Referring to equation (5) from which the box concentration is calculated, the most important independent variable is the gas deposition velocity, V_d. The scavenging coefficient, λ, is set to zero in this equation since it is *not* applicable to gases which are not highly reactive or which are merely soluble in water (Hanna, et al, 1982, see especially page 71); this describes PCBs. By including a non-zero scavenging coefficient, a worst-case scenario would definitely be described. There are other methods used to model the wet-removal of trace pollutants from the atmosphere and these methods use "so-called" washout ratios or wet deposition velocities. Since the predictions concerning the VULCANUS I are for short-term events (i.e., 10 days) and washout ratios are best suited to long-term events where single storm variability is integrated out, the washout ratio in equation (5) is set to zero.

Equation (5) is the expression for the atmospheric concentration of the pollutant at steady state. This concentration is multiplied by the deposition velocity to yield the flux to the ocean surface. The source flux quantity (i.e., the ship burn rate) in equation (3) is used to introduce the burn rate into the equation for C. Thus, varying V_d yields a set burn rates, $\dot{M}$. The burn rate is then equated to the total material balance for a pollutant according to:

$$Z_f F (1-E) = \dot{M} \text{ (burn rate)}$$

Thus, the burn rate, $\dot{M}$, is somewhat of a misnomer up to now: it is really the "stack release rate." The burn rate, or actually the incinerator feed rate, is $Z_f F$ where Z_f is the weight fraction of PCB in the feed, and F is the *total* feed rate (PCB + other organohalogens + fuel oil). By varying the gas deposition velocity, $\dot{M}$ varies, and combinations of PCB feed concentrations and destruction efficiencies, E, can be calculated.

Two extensive reviews of (dry) gas deposition velocities have been published (McMahon and Denision, 1979; Sehmel, 1980). These reviews provide some insight with respect to the meaning of the term deposition velocities and the range of values expected. Also, comparison of the definition(s) to interphase mass transfer as described by Liss and Slater (Liss and Slater, 1974) can be examined.

Mass transfer of a pollutant such as PCB occurs because of a gradient in its concentration (over a distance). Thus, from one meter above the ocean surface to the ocean surface the flux of PCBs is written as:

$$\text{flux} = k(C_a - C_s)$$

where C_a is the concentration in the air at one meter, C_s is the concentration at the surface, k is a mass transfer coefficient which takes into account "boundary layer" phenomenon. For the case of a pollutant that is highly reactive at the ocean surface (i.e., it disappears rapidly), $C_s = 0$ and:

$$\text{flux} = kC_a$$

This equation is the exact form of the definition of a gas deposition velocity where $V_d = k$. However, note that gas deposition velocities *never* take into account C_s and the field data are always "reduced" according to the defining equation for V_d. Thus, for a pollutant such as SO_2 which is highly reactive in water (via solubility) C_s is probably close to zero and V_d is reported in the range 0.1 to 4 cm/sec (see especially Sehmel, Table 4). But for a gas that is not reactive like SO_2 (i.e., O_3) the V_d values over water are reported at 0.02 to 0.07 cm/sec (see the same table). Likewise, iodine V_d values over water range from 0.0025 to 1.2 cm/sec.

Therefore, in examining the probable feed rate variation of PCBs for the case of the VULCANUS I, V_d values of 0.08 cm/sec (high) down to 0.001 were chosen. PCBs are *not* reactive like SO_2, hence, lower V_d values were chosen. Also it should be emphasized that the entire V_d data base is rather sparse, and that gas deposition velocities is an on-going research interest. Hence, any calculation should include a range of expected values for V_d.

The results of varying V_d and calculating PCB stack release rates and required destruction efficiencies are presented in Table 6. Note that the design feed concentration of 0.35 weight fraction PCBs requires a destruction efficiency ranging from 0.99994 to 0.995. Table 7 presents calculated PCB feed concentrations for a specified incinerator destruction efficiency of 0.99990 for each gas deposition velocity listed in Table 6. PCB feed weight fractions greater than unity are the result of specifying a total feed (PCB + fuel) to the incinerator.

The *other* method of calculating the required destruction efficiencies for PCBs is designated "gas-phase transport" in the following text. This method considers the only path out of the box as being the water column which is characterized by a turbulent vertical diffusivity (D_e) and an associated depth. The result of using the specified independent variables for calculating the destruction efficiency is in the range of 0.999 (3 nines) for PCBs and pointed out in Table 6. A large D_e and shallower depth will shift the required destruction efficiency, as calculated by this alternate method, to the right of the arrow in Table 6 (i.e., smaller values). Also, smaller D_e values and increasing depths will require higher destruction efficiencies.

The range of gas deposition velocities used to calculate the results in Tables 6 and 7, are expected to include the probable environmental condition for the VULCANUS I. Certainly the highest gas deposition velocity used in these

calculations for PCBs is conservatively high based on comparisons to other molecules. An expected gas deposition velocity for PCBs is $V_d=0.008$; such a value has not been measured for this specific molecule, but this value appears reasonable based on the existing data base.

3Gas-Phase Transport

The maximum water concentration of organic pollutants such as PCBs can also be calculated by considering gas-phase transport only. The major assumptions are that the only mass exit from the box is through the water column, and that transport through the water column is due to a concentration gradient C/X. Thus, at steady state all the PCBs put into the box must exit the box through the water column. In order to simplify the mathematics the PCB accumulation in the water column is neglected with respect to the mass balance, and the PCB gradient through the water column is assumed to always be flat. A transient material balance yields:

$$C_w = \frac{Z_f\,(1-E)Fx}{l^2 De}\left[1 - \exp - \left(\frac{De}{aHx}\right)\,t\right]$$

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TABLE 6

REQUIRED DESTRUCTION EFFICIENCIES FOR PCB FOR A RANGE OF DEPOSITION VELOCITIES & PCB FEED CONCENTRATIONS

PCB Feed Concentration	Gas Deposition Velocities, cm/sec (specified)						
	0.08	0.04	0.01	0.008	0.004	0.001	
	M/F, Stack Release Divided by Feed Rate* (calculated)						
	2×10^{-5}	3.8×10^{-5}	1.5×10^{-4}	1.8×10^{-4}	3.7×10^{-4}	1.5×10^{-3}	
z_f**	E, destruction efficiency						
0.1	0.9998	0.9996	0.9985	0.9982	0.9962	0.985	
0.2	0.9999	0.9998	0.9992	0.9991	0.9962	0.992	
0.35	0.99994	0.9998	0.9995	0.9994	0.998	0.995	Design Feed Concentration
0.5	0.99996	0.99992	0.9997	0.9996	0.9993	0.997	
1.0	0.99998	0.99996	0.9998	0.9998	0.9996	0.998	

See Note

* unitless

**weight fraction

NOTE: See text for description of calculating E by alternate method, values for E by the alternate method in this range.

TABLE 7

CALCULATED PCB FEED CONCENTRATION FOR A SPECIFIED INCINERATOR DESTRUCTION EFFICIENCY OF 0.99990

Gas Deposition Velocity, cm/sec (see Table 3-2)	PCB Feed Concentration, Wt. Fraction
0.08	0.2
0.04	0.38
0.01	1.5 (see note)
0.008	1.8
0.004	3.7
0.001	15.0

NOTE: PCB weight fractions greater than unity are the result of a specified total feed of 6952 gm/sec (55125 lbs(mass)/hr). Thus a PCB feed weight fraction of 1.5 implies a feed rate of 10428 gm/sec; if this PCB mass rate is in a feed stream at 0.35, a total incinerator feed (PCB + fuel) is 29794 gm/sec (236250 lbs(mass/hr).

where Cw is the water-column concentration of the pollutant at the surface, Z_f is the weight fraction of the pollutant in the feed stream to the incinerator on the VULCANUS I, E is the destruction efficiency, F is the total mass flow rate to the incinerator, X is the thickness of the water column where C/X is assumed to be flat, 1 is the length of one side of the box, a is the height of the box, De is the effective turbulent diffusivity in the water column, H is Henry's Law coefficient for PCBs, and t is time.

The following are values for PCBs:

$C_w = 3 \times 10^{-11}$ gm/cm³ (from water quality criterion)
H = 3 unitless
$Z_f = 0.3$ unitless (i.e., 30% PCBs)
F = 6.952 gm/sec
$1 = 20 \times 10^5$ cm (20 km)
De = 100 cm²/sec
$X = 10^4$ cm
$a = 10^4$ cm

Calculating the unspecified variable E, the destruction efficiency, yields a required value of 0.9994. This value is calculated at $t \to \infty$. Note that the Henry's Law constant appears in the exponential expression and thus affects only the time required to attain steady-state transport. This is expected because at steady state, input must equal output, and output is described by the water-column gradient and conductance (De), not by H. H affects only the capacitance of the atmosphere (box) and thus the time required to attain steady state or some fraction thereof.

A destruction efficiency of a least 0.9994 is necessary to insure that the marine water quality criteria for PCBs is not exceeded. This is approximately three orders of magnitude less than the 0.999999 destruction efficiency that the proposed regulation would require. It is apparent that a considerable margin of safety exists.

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[**Note.**—Appendix B will not appear in the Code of Federal Regulations.]

Appendix B—Ocean Incineration Environmental Reports

JRB Associates. Ambient Air Monitoring of the August 1982 M/T VULCANUS PCB Incineration at the Gulf of Mexico Designated Site. Prepared for U.S. EPA. Contract No. 68–01–6388. 1983.

JRB Associates. Expended Modeling of Incineration at Sea Impacts: Gulf of Mexico. Final Report. Prepared for U.S. EPA. Contract No. 68–01–6388. 1984.

JRB Associates. Permissible Metal, PCB, and TCDD (Dioxin) Concentrations in Incineration Waste Material. Prepared for U.S. EPA. Contract No. 68–01–6388. 1983.

JRB Associates. Worst Case Scenarios for Spillage of PCBs at Sea, and Transport of Stack Gas Over Land. Prepared for U.S. EPA. Contract No. 68–01–6388. 1983.

Louis Berger and Associates et al. Environmental Impact Statement for the Safe Collection, Transportation and Final Disposal of U.S. Department of Defense Stocks of DDT. Environmental Impact Statement. Prepared for the Defense Logistics Agency. Contract No. 45–80–0032. 1981.

Redford, D.P., Assessment of the Impact of Incineration of Mixed Chemical Wastes in the Gulf of Mexico on Endangered and Threatened Species. U.S. EPA. 1984.

TerEco Corporation. Biological Monitoring of PCB Incineration at the Designated Site in the Gulf of Mexico. Prepared for U.S. EPA. Contract No. 2W–3676–NASX and JRB Subcontract 03–852–17. 1982.

TerEco Corporation. Proposed Northeastern Pacific Ocean Waste Incineration Site. Prepared for U.S. EPA. Contract No. 6801–01–6805. 1983.

TNO. Monitoring of Combustion Efficiency, Destruction Efficiency and Safety during the Test Incineration of PCB Waste. Sponsored by Ocean Combustion Service B.V. Subsidiary of Chemical Waste Management, Inc. 1982.

TRW, Inc. At-sea Incineration of Herbicide Orange Onboard the M/T VULCANUS. Prepared for U.S. EPA Environmental Protection Technology Series. EPA–600/2–78–086. 1978.

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TRW, Inc. Incineration of Volatile Organic Compounds on the M/T VULCANUS II. Prepared for Chemical Waste Management, Inc. 1983.

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TRW, Inc. Operations Plan and Guidelines for the At-Sea Incineration of Liquid Silvex. Prepared for U.S. EPA. Contract No. 68–02–3174. 1980.

TRW, Inc. A Summary of Events, Communications, and Technical Data Related to the At-Sea Incineration of PCB-Containing Wastes Onboard the M/T VULCANUS. Prepared for U.S. EPA. Contract No. 68–02–3174. 1983.

U.S. Department of State and U.S. EPA. Incineration of Wastes at Sea under the 1972 Ocean Dumping Convention. Final Environmental Impact Statement. 1979.

U.S. EPA. At-Sea Incineration of PCB-Containing Wastes Onboard the M/T VULCANUS. Interagency Energy-Environmental Research and Development Series. EPA–600/7–83–024. 1983.

U.S. EPA. Audit of the VULCANUS Incineration Ship Prior to the August 1982 PCB Burn, Mobile, Alabama. Interagency Energy-Environment Research and Development Series. EPA–600/7–83–023.

U.S. EPA. Disposal of Organochlorine Wastes by Incineration at Sea. U.S. EPA–430/9–75–014. 1975.

U.S. EPA. Draft Final Report of the North Atlantic Incineration Site 1983 Preliminary Baseline Cruise. 1984.

U.S. EPA. Draft Monitoring Plan for the Gulf of Mexico Incineration Site. 1984.

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U.S. EPA. Draft Monitoring Strategy for Incineration-At-Sea. 1984.

U.S. EPA. North Atlantic Incineration Site Designation. Final Environmental Impact Statement. 1981.

U.S. EPA. Notice of Availability and Summary Report; Monitoring Results and Environmental Impact on the Gulf of Mexico Incineration Site from the Incineration of PCB's under Research Permit HQ 81–002. **Federal Register** (48 FR 20984, May 10, 1983).

U.S. EPA. Proposed Designation of At-Sea Incineration Site. **Federal Register:** Ocean Dumping (47 FR 51769 November 17, 1982).

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federal register

Thursday
February 28, 1985

Part III

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources; Proposed Rule and Notice of Public Hearing

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-2714-3]

Standards of Performance for New Stationary Sources; Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This action proposes revisions to Appendix A of 40 CFR Part 60 to add instrumental test methods for oxygen or carbon dioxide, sulfur dioxide, and nitrogen oxides. It also proposes to add these methods to the presently specified test methods in Subparts D and and Da of Part 60, where applicable. Use of these methods may result in savings in both time and costs.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed revisions.

DATES: *Comments.* Comments must be received on or before May 6, 1985.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by March 11, 1985, a public hearing will be held on April 5, 1985 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Shelby Journigan at (919) 541-5578 to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by March 11, 1985.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (LE-131), Attention Docket Number A-84-35, U.S. Environmental Protection Agency, 401 M Street SW, Washington, D.C. 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Docket. Docket No. A-84-35, containing materials relevant to this rulemaking, 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. K. William Grimley or Mr. Roger Shigehara, Emission Measurement Branch (MD-19), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2237.

SUPPLEMENTARY INFORMATION: Instrumental test methods for oxygen or carbon dioxide, sulfur dioxide, and nitrogen oxides have been employed by local agencies and private consultants to gather emission data at fossil-fuel-fired combustion processes. EPA has reviewed these methods and such supporting information that is available, and in this action is proposing to include these methods in Appendix A of 40 CFR Part 60. EPA is also proposing to add these methods to Subparts D and Da of Part 60.

Miscellaneous

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

This regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that the attached rule willl not have a significant economic impact on small entities because there will not be any additional testing required, or any changes in the presently specified test methods.

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

List of Subjects in 40 CFR Part 60

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

Dated: February 12, 1985.

Lee M. Thomas,

Administrator.

PART 60—[AMENDED]

It is proposed to amend 40 CFR Part 60 as follows:

1. In Appendix A, it is proposed to add Test Methods 3A, 6C, and 7E as follows:

* * * * *

Method 3A. Determination of Oxygen and Carbon Dioxide Concentrations in Emissions from Stationary Sources (Instrumental Analyzer Procedure)

1. *Applicability and Principle.*

1.1 Applicability. This method is applicable to the determination of oxygen (O_2) and carbon dioxide (CO_2) concentrations in emissions from stationary sources only when specified within the regulations.

1.2 Principle. A sample is continuously extracted from the effluent stream; a portion of the sample stream is conveyed to an instrumental analyzer(s) for determination of O_2 and CO_2 concentration(s). Performance specifications and test procedures are provided to ensure reliable data.

2. *Range and Sensitivity.*

Same as Method 6C, Sections 2.1 and 2.2.

3. *Definitions.*

3.1 Measurement System. The total equipment required for the determination of the O_2 or CO_2 concentration. The measurement system consists of the same major subsystems as defined in Method 6C, Sections 3.1.1, 3.1.2, and 3.1.3.

3.2 Span, Calibration Gas, Analyzer Calibration Error, Sampling System Bias, Zero Drift, Calibration Drift, Response Time, and Calibration Curve. Same as Method 6C, Sections 3.2 through 3.8, and 3.10.

3.3 Interference Response. The output response of the measurement system to a component in the sample gas, other than the gas component being measured.

4. *Measurement System Performance Specifications.*

Same as Method 6C, Sections 4.1 through 4.4.

5. *Apparatus and Reagents.*

5.1 Measurement System. Use any measurement system for O_2 or CO_2 that meets the specifications of this method. A schematic of an acceptable measurement system is shown in Figure 6C-1 of Method 6C. The essential components of the measurement system are described below:

5.1.1 Sample Probe. a leak-free probe of sufficient length to traverse the sample points.

5.1.2 Sample Line. Tubing to transport the sample from the probe to the moisture removal system.

5.1.3 Calibration Valve Assembly, Moisture Removal System, Particulate Filter, Sample Pump, Sample Flow Rate Control,

Sample Gas Manifold, and Data Recorder. Same as Method, 6C, Sections 5.1.3 through 5.1.8, and 5.1.10.

5.1.4 Gas Analyzer. An analyzer to determine continuously the O_2 or CO_2 concentration in the sample gas stream. The analyzer must meet the applicable performance specifications of Section 4. A means of controlling the analyzer flow rate and a device for determining proper sample flow rate (e.g., precision rotameter, pressure gauge downstream of all flow controls, etc.) must be provided at the analyzer.

5..2 Calibration Gases. The calibration gases for O_2 analyzers shall be O_2 in N_2. The calibration gases for CO_2 analyzers shall be CO_2 in N_2 or CO_2 in air. Use four calibration gases as specified in Method 6C, Sections 5.3.1 through 5.3.4. For O_2 monitors that cannot analyze zero gas, a calibration gas concentration equivalent to less than 10 percent of the span may be used in place of zero gas.

6. *Measurement System Performance Test Procedures.*

Perform the following procedures before measurement of emission (Section 7).

6.1 Calibration concentration Verification. Same as Method 6C, Section 6.1, except if calibration gas analysis is required, use Method 3 and change the acceptance criteria for agreement among Method 3 results to 5 percent (or 0.2 percent by volume, whichever is greater).

6.2 Interference Response. Conduct an interference response test of the analyzer prior to its initial use in the field. Thereafter, recheck the measurement system if changes are made in the instrumentation that could alter the interference response (e.g., changes in the gas detector). Conduct the intereference response in accordance with Section 5.4 of Method 20.

6.3 Measurement System Preparation, Analyzer Calibration Error, Response Time, and Sampling System Bias Check. Same as Method 6C, Sections 6.2 through 6.5.

7. *Emission Test Procedure.*

7.1 Selection of Sampling Site and Sampling Points. Select a measurement site and sampling using the same criteria that are applicable to tests performed using Method 3.

7.2 Sample Collection. Position the sampling probe at the first measurement point, and begin sampling at the same rate as used during the response time test. Maintain constant rate sampling (i.e., ±10 percent) during the entire run. The sampling time per run shall be the same as for tests conducted using Method 3 plus twice the average system response time. For each run, use only those measurements obtained after twice the response time of the measurement system has elapsed to determine the average effluent concentration.

7.3 Zero and Calibration Drift Test. Same as Method 6C, Section 7.4.

8. *Quality Control Procedures*

The following quality control procedures are recommended when the results of this method are used for an emission rate correction factor or excess air determination. The tester should select one of the following options for validating measurement results:

8.1 If both O_2 and CO_2 are measured using Method 3A, the procedures described in Section 4.4 of Method 3 should be followed to validate the O_2 and CO_2 measurement results.

8.2 If only O_2 is measured using Method 3A, measurements of the sample stream CO_2 concentration should be obtained at the sample by-pass vent discharge using an Orsat or Fyrite analyzer, or equivalent. Duplicate samples should be obtained concurrent with at least one run. Average the duplicate Orsat or Fyrite analysis results for each run. Using the average CO_2 values for comparison with the O_2 measurements in accordance with the procedures described in Section 4.4 of Method 3.

8.3 If only CO_2 is measured using Method 3A, Concurrent measurements of the sample stream CO_2 concentration should be obtained using an Orsat or Fyrite analyzer as described in Section 8.2. For each run, differences greater than 0.5 percent between the Method 3A results and the average of the duplicate Fyrite analysis should be investigated.

9. *Emission Calculation.*

Same as Method 6C, Section 8, except that all concentrations must be expressed as percent by volume rather than ppm.

10. *Bibliography.*

Same as in Bibliography of Method 6C.

* * * * *

Method 6C. Determination of Sulfur Dioxide Emissions From Stationary Sources (Instrumental Analyzer Procedure)

1. *Applicability and Principle.*

1.1 Applicability. This method is applicable to the determination of sulfur dioxide (SO_2) concentrations in controlled and uncontrolled emissions from stationary sources only when specified within the regulations.

1.2 Principle. A sample is continuously extracted from the effluent stream; a portion of the sample stream is conveyed to an instrumental analyzer for for determination of SO_2 gas concentration. Performance specifications and test procedures are provided to ensure reliable data.

2. *Range and Sensitivity.*

2.1 Analytical Range. The analytical range is determined by the instrumental design. For this method, a portion of the analytical range is selected by choosing the span of the monitoring system. The span of the monitoring system shall be selected such that the mean gas concentration of each run is between 20 and 90 percent of the span. If at any time during a run the measured gas concentration exceeds the span, the run shall be considered invalid.

2.2 Sensitivity. The minimum detectable limit depends on the analytical range, span, and signal to noise ratio of the measurement system. For a well designed system, the minimum detectable limit should be less than 2 percent of the span. Measurement system components, including the data recorder, shall be selected such that the method can resolve a change in stack gas concentration of ±0.5 percent of the span.

3. *Definitions.*

3.1 Measurement System. The total equipment required for the determination of gas concentration. The measurement system consists of the following major subsystems:

3.1.1 Sample Interface. That portion of a system used for one or more of the following: sample acquisition, sample transport, sample conditioning, or protection of the analyzers from the effects of the stack effluent.

3.1.2 Gas Analyzer. That portion of the system that senses the gas to be measured and generates an output proportional to its concentration.

3.1.3 Data Recorder. A strip chart recorder, analog computer, or digital recorder for recording measurement data from the analyzer output.

3.2 Span. The upper limit of the gas concentration measurement range displayed on the data recorder.

3.3 Calibration Gas. A known concentration of a gas in an appropriate diluent gas.

3.4 Analyzer Calibration Error. The difference between the gas concentration exhibited by the gas analyzer and the known concentration of the calibration gas when the calibration gas is introduced directly to the analyzer.

3.5 Sampling System Bias. The difference between the gas concentrations exhibited by the measurement system when a known concentration gas is introduced at the outlet of the sampling probe and when the same gas is introduced directly to the analyzer.

3.6 Zero Drift. The difference in the measurement system output reading from the initial calibration response at the zero concentration level after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.7 Calibration Drift. The difference in the measurement system output reading from the initial calibration response at a mid-range calibration value after a stated period of operation during which no unscheduled maintenance, repair, or adjustment took place.

3.8 Response Time. The amount of time required for the measurement system to display 95 percent of a step change in gas concentration on the data recorder.

3.9 Interference Check. A method for detecting analytical interferences and excessive biases through direct comparison of gas concentrations provided by the measurement system and by a modified Method 6 procedure. For this check, the modified Method 6 samples are acquired at the sample by-pass discharge vent.

3.10 Calibration Curve. A graph or other systematic method of establishing the relationship between the analyzer response and the actual gas concentration introduced to the analyzer.

4. *Measurement System Performance Specifications.*

4.1 Analyzer Calibration Error. Less than ±2 percent of the span for the zero and low-, mid-, and high-range calibration gases.

4.2 Sampling System Bias. Less than ±3 percent of the span for the zero and mid-range calibration gases.

4.3 Zero Drift. Less than ±2 percent of the span over the period of each run.

4.4 Calibration Drift. Less than ±2 percent of the span over the period of each run.

4.5 Interference Check. Less than ±7 percent of the modified Method 6 result for each run.

5. *Apparatus and Reagents.*

5.1 Measurement System. Use any measurement system for SO_2 that meets the specifications of this method. A schematic of an acceptable measurement system is shown in Figure 6C–1. The essential components of the measurement system are described below:

5.1.1 Sample Probe. Glass, stainless steel, or equivalent, of sufficient length to traverse the sample points. The sampling probe shall be heated to prevent condensation.

5.1.2 Sample Line. Heated (sufficient to prevent condensation) stainless steel or Teflon tubing to transport the sample gas to the moisture removal system.

5.1.3 Calibration Valve Assembly. A three-way valve assembly, or equivalent, for blocking the sample gas flow and introducing calibration gases to the measurement system at the outlet of the sampling probe when in the calibration mode.

5.1.4 Moisture Removal System. A refrigerator-type condenser or other device (e.g., permeation dryer) designed to remove condensate continuously from the sample gas while maintaining minimal contact between the condensate and the sample gas. The moisture removal system is not necessary for analyzers that can measure gas concentrations on a wet basis; for these analyzers, (a) heat the sample line and all interface components up to the inlet of the analyzer sufficiently to prevent condensation, and (d) determine the moisture content and correct the measured gas concentrations to a dry basis using appropriate methods, subject to the approval of the Administrator.

5.1.5 Particulate Filter. An in-stack or heated, out-of-stack glass fiber filter or borosilicate glass wool plug. Additional filters at the inlet or outlet of the moisture removal system and inlet of the analyzer may be used to prevent accumulation of particulate material in the measurement system and extend the useful life of the components.

5.1.6 Sample Pump. A leak-free pump to pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. The pump may be constructed of any material that is nonreactive to the gas being sampled.

5.1.7 Sample Flow Rate Control. A sample flow rate control valve and rotameter, or equivalent, to maintain a constant sampling rate within 10 percent.

5.1.8 Sample Gas Manifold. A sample gas manifold to divert a portion of the sample gas stream to the analyzer and the remainder to the by-pass discharge vent. The sample gas manifold should also include provisions for introducing calibration gases directly to the analyzer. The manifold may be constructed of any material that is nonreactive to the gas being sampled.

5.1.9 Gas Analyzer. An analyzer to determine continuously the SO_2 concentration in the sample gas stream. The analyzer must meet the applicable performance specifications of Section 4. A means of controlling the analyzer flow rate and a device for determining proper sample flow rate (e.g., precision rotameter, pressure gauge downstream of all flow controls, etc.) must be provided at the analyzer.

5.1.10 Data Recorder. A strip chart recorder, analog computer, or digital recorder for recording measurement data.

5.2 Method 6 Apparatus and Reagents. The apparatus and reagents described in Method 6 and shown by the schematic of the sampling train in Figure 6C–2 are used to conduct the interference check.

5.3 SO_2 Calibration Gases. The calibration gases for the gas analyzer shall be SO_2 in N_2 or SO_2 in air. Use four calibration gases as specified below:

5.3.1 High-Range Gas. Concentration equivalent to 80 to 90 percent of the span.

5.3.2 Mid-Range Gas. Concentration equivalent to 50 to 60 percent of the span.

5.3.3 Low-Range Gas. Concentration equivalent to 20 to 30 percent of the span.

5.3.4 Zero Gas. Concentration of less than 0.25 percent of the span. Purified ambient air may be used for the zero gas by passing air through a charcoal filter or through one or more impingers containing a solution of 3 percent H_2O_2.

6. *Measurement System Performance Test Procedures*

Perform the following procedures before measurement of emissions (Section 7).

6.1 Calibration Gas Concentration Verification. There are two alternatives for establishing the concentrations of calibration gases.

6.1.1 Alternative Number 1. Use calibration gases that are analyzed following the Environmental Protection Agency Traceability Protocol Number 1 (see Citation 1 in Bibliography). Obtain a certification from the gas manufacturer that Protocol Number 1 was followed.

6.1.2 Alternative Number 2. Use calibration gases not prepared according to Protocol Number 1. If this alternative is chosen, obtain gas mixtures with a manufacturer's tolerance not to exceed ±2 percent of the tag value. Within 6 months before the emission test, analyze each of the calibration gases in triplicate using Method 6. Citation 2 in Bibliography describes procedures and techniques that may be used for this analysis. Record the results on a data sheet (example is shown in Figure 6C–3). For the low-, mid-, or high-range gases, each of the individual SO_2 analytical results must be within 5 percent (or 5 ppm, whichever is greater) of the triplicate set average; otherwise, discard the entire set and repeat the triplicate analyses. If the average of the triplicate analyses is within 5 percent of the calibration gas manufacturer's tag value, use the tag value; otherwise, conduct at least three additional analyses until the results of six individual runs (the three original plus three additional) agree within 5 percent (or 5 ppm, whichever is greater) of the average. Then use this average for the cylinder value.

6.2 Measurement System Preparation. Assemble the measurement system following the manufacturer's written instructions in preparing and preconditioning the gas analyzer and, as applicable, the other system components. Introduce any combination of calibration gases, and make all necessary adjustments to calibrate the analyzer and the data recorder. Adjust system components to achieve correct sampling rates.

6.3 Analyzer Calibration Error. Conduct the analyzer calibration error check by introducing calibration gases to the measurement system at any point upstream of the gas analyzer as follows:

6.3.1 After the measurement system has been prepared for use, introduce the zero and low-, mid-, and high-range gases to the analyzer. During this check, make no adjustments to the system except those necessary to achieve the correct calibration gas flow rate at the analyzer. Record the analyzer responses to each calibration gas on a form similar to Figure 6C–4.

Note.—A calibration curve established prior to the analyzer calibration error check may be used to convert the analyzer response to the equivalent gas concentration introduced to the analyzer. However, the same correction procedure must be used for all effluent and calibration measurements obtained during the test.

6.3.2 The analyzer calibration error check shall be considered invalid if the gas concentration displayed by the analyzer exceeds ±2 percent of the span for the zero or low-, mid-, or high-range calibration gases. If an invalid calibration is exhibited, take corrective action and repeat the analyzer calibration error check until acceptable performance is achieved.

6.4 Response Time. Determine response time by first positioning the sampling probe to obtain effluent samples at the measurement location, and adjusting the measurement system to achieve the proper sampling rate. Introduce zero gas into the system at the calibration valve until the analyzer response is stable; then switch to monitor the stack effluent until a stable reading can be obtained. A stable value is equivalent to a change of less than 1 percent of span for 30 seconds or less than 5 percent of the measured average concentration for 2 minutes. Record the upscale response time. Next, introduce high-range calibration gas into the system. Once the system has stabilized at the high-range concentration, switch to monitor the stack effluent, and wait until a stable value is reached. Record the downscale response time. Repeat the procedure three times. Record the response time data on a form similar to Figure 6C–5, average the three measurements of the upscale and downscale response times, and report the greater time as the "response time" for the measurement system.

6.5 Sampling System Bias Check. Perform the sampling system bias check by introducing calibration gases at the calibration valve installed at the outlet of the sampling probe as follows:

6.5.1 Introduce the mid-range calibration gas, and record the gas concentration displayed by the analyzer on a form similar to Figure 6C–6. Then introduce zero gas, and record the gas concentration displayed by the analyzer. During the sampling system bias check, operate the system at the normal sampling rate, and make no adjustments to the measurement system other than those necessary to achieve proper calibration gas

flow rates at the analyzer. Introduce both the zero and mid-range gases for a period not less than twice the response time.

6.5.2 The sampling system bias check shall be considered invalid if the difference between the gas concentrations displayed by the measurement system for the analyzer calibration error check and for the sampling system bias check exceeds ±3 percent of the span for either the zero or mid-range calibration gases. If an invalid calibration is exhibited, take corrective action, and repeat the sampling system bias check until acceptable performance is achieved. If adjustment to the analyzer is required, first repeat the analyzer calibration error check, then repeat the sampling system bias check.

7. *Emission Test Procedure.*

7.1 Selection of Sampling Site and Sampling Points. Select a measurement site and sampling points using the same criteria that are applicable to Method 6.

7.2 Interference Check Preparation. Conduct an Interference check for at least three runs per test.

Assemble the modified Method 6 train (flow control valve, two midget impingers containing 3 percent H_2O_2, and dry gas meter) as shown in Figure 6C–2. Install the sampling train to obtain a sample at the measurement system sample by-pass discharge vent. Record the initial dry gas meter reading.

This check may be omitted, subject to the approval of the Administrator, provided that: (a) Information is submitted prior to the test demonstrating that measurement results for the gas analyzer used for the tests cannot be biased low because of the presence of interferents within the sample stream, and (b) no adjustment to the test data is made to account for interferents that may create a high bias in the measurement results.

7.3 Sample Collection. Position the sampling probe at the first measurement point, and begin sampling at the same rate as used during the response time test. Maintain constant rate sampling (i.e., ±10 percent) during the entire run. The sampling time per run shall be the same as for Method 6 plus twice the average system response time. For each run, use only those measurements obtained after twice the response time of the measurement system has elapsed to determine the average effluent concentration. Concurrent with the initiation of the sampling period, open the flow control valve on the modified Method 6 train, and adjust the flow to 1 liter per minute (±10 percent).

Note.—If a pump is not used in the modified Method 6 train, caution should be exercised in adjusting the flow rate since overpressurization of the impingers may cause leakage in the impinger train, resulting in positively biased results.

7.4 Zero and Calibration Drift Test. Immediately following each run, or if adjustments are necessary for the measurement system during the run, repeat the sampling system bias check procedure described in Section 6.5. (Make no adjustments to the measurement system until after the drift checks are completed.) Record the analyzer's responses on a form similar to Figure 6C–6.

7.4.1 If either the zero or mid-range calibration valve exceeds the sampling system bias specification, then the run is considered invalid. Repeat both the analyzer calibration error check procedure (Section 6.3) and the sampling system bias check procedure (Section 6.5) before repeating the run.

7.4.2 If both the zero and mid-range calibration values are within the sampling system bias specification, then the average of the initial and final bias check values shall be used to calculate the gas concentration for the run. If the zero or mid-range drift value exceeds the drift limits, repeat both the analyzer calibration error check procedure (Section 6.3) and the sampling bias check procedure (Section 6.5) before conducting additional runs.

7.5 Interference Check. After completing the run, record the final dry gas meter reading, meter temperature, and barometric pressure. Recover and analyze the contents of the midget impingers, and determine the SO_2 gas concentration using the procedures of Method 6. (It is not necessary to analyze EPA performance audit samples for Method 6.) Determine the average gas concentration exhibited by the analyzer for the run. If the gas concentrations provided by the analyzer and the modified Method 6 differ by more than 7 percent of the modified Method 6 result, the run shall be considered invalid.

8. *Emission Calculation.*

The average gas effluent concentration is determined from the average gas concentration displayed by the gas analyzer and is adjusted for the zero and mid-range sampling system bias checks as determined in accordance with Section 7.4. Calculate the effluent gas concentration using Equation 6C–1.

$$C_{gas} = (C - C_o)\frac{C_m}{C_m - C_o} \qquad \text{Eq. 6C–1}$$

Where:

C_{gas} = Effluent gas concentration, ppm by volume (dry basis).

C = Average gas concentration indicated by gas analyzer, ppm (dry basis)

C_o = Average of initial and final system calibration bias check responses for the zero gas, ppm.

C_m = Average of intitial and final system calibration bias check responses for the mid-range gas, ppm.

9. *Bibliography.*

1. Traceability Protocol for Establishing True Concentrations of Gases used for Calibrations and Audits of Continuous Source Emission Monitors: Protocol Number 1. U.S. Environmental Protection Agency, Quality Assurance Division. Research Triangle Park, N.C. June 1978.

2. Westlin, Peter R. and John W. Brown. Methods for Collecting and Analyzing Gas Cylinder Samples. U.S. Envorionmental Protection Agency, Emission Measurement Branch. Research Triangle Park, N.C. July 1978. Source Evaluation Society Newsletter 3(3):5–15, September 1978.

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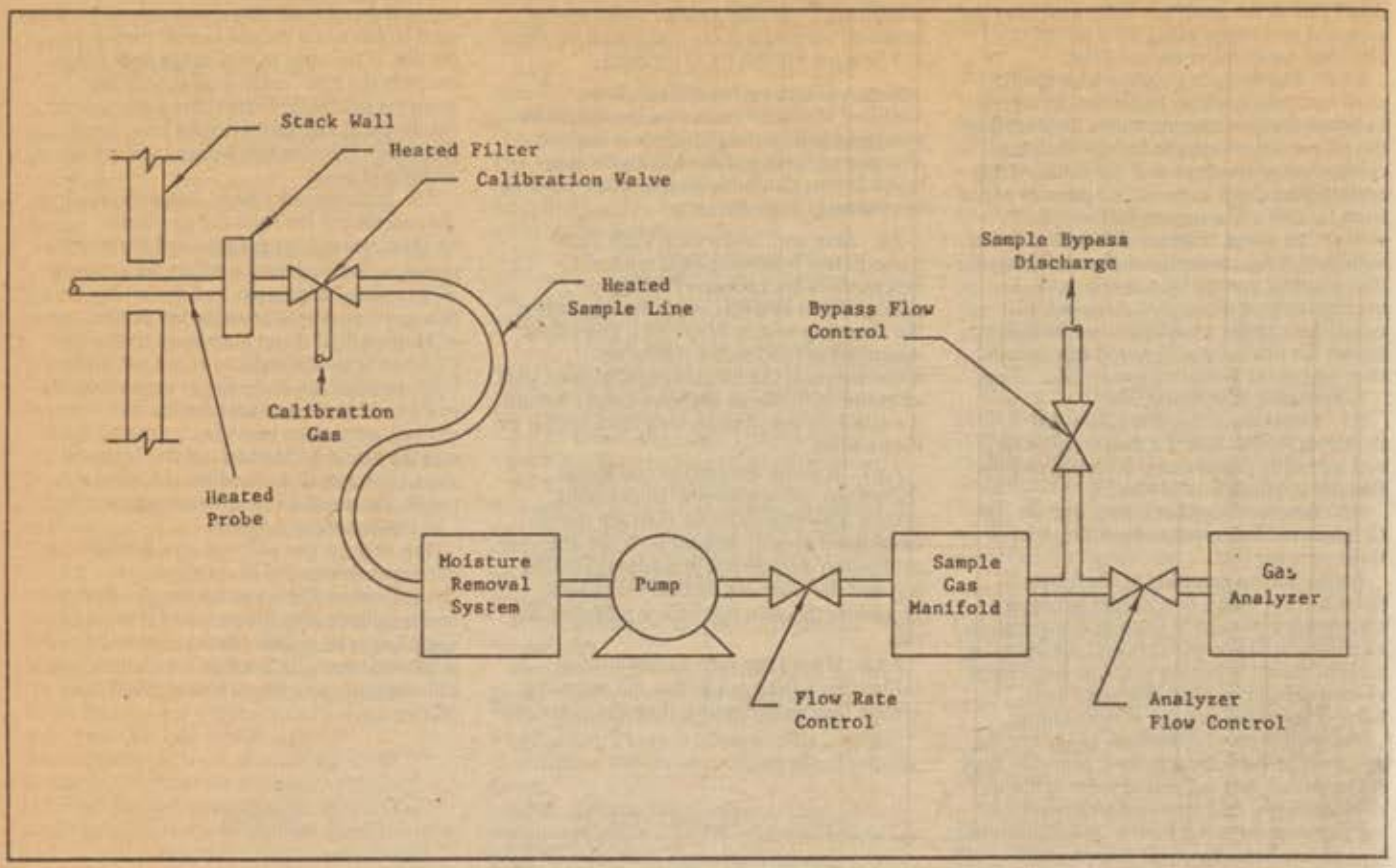

Figure 6C-1. Measurement system schematic.

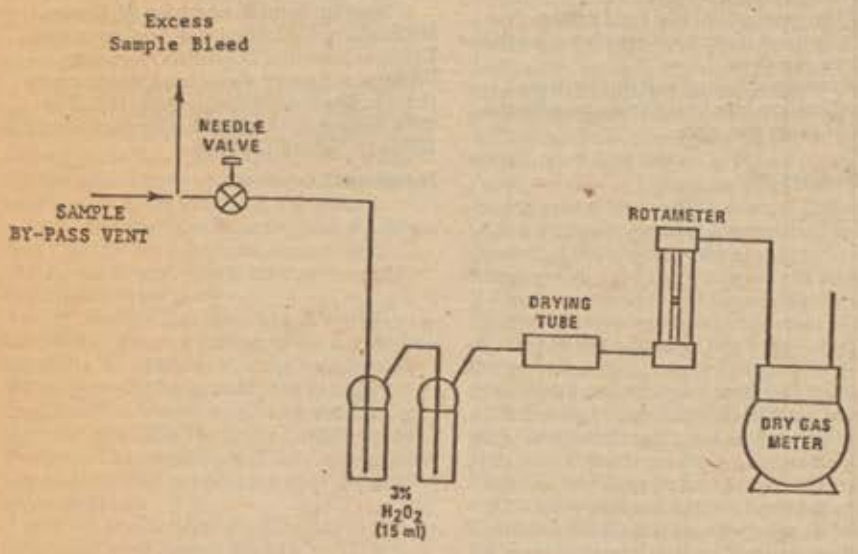

Figure 6C-2. Interference check sampling train.

Date _____

Analytical method used _____

Sample run	Gas concentration (indicate units)		
	Low level[a]	Mid-level[b]	High level[c]
1			
2			
3			
Average			
Maximum % deviation			

[a] Average must be 20 to 30 percent of span.

[b] Average must be 50 to 60 percent of span.

[c] Average must be 80 to 90 percent of span.

Figure 6C-3. Analysis of calibration gases.

Source identification: _____

Test personnel: _____

Date: _____

Analyzer calibration data for sampling runs: _____

Span: _____

	Cylinder value	Analyzer calibration response	Absolute difference	Difference (% of span)
	(indicate units)			
Zero gas				
Low range				
Mid-range				
High range				

Figure 6C-4. Analyzer calibration data.

Date of test _____

Analyzer type _____ SN _____

Span gas concentration _____ (indicate units)

Analyzer span setting _____ (indicate units)

Upscale	1	_____	seconds
	2	_____	seconds*
	3	_____	seconds
Average upscale response		_____	seconds
Downscale	1	_____	seconds
	2	_____	seconds
	3	_____	seconds
Average downscale response		_____	seconds

System response time = slower average time = _____ seconds

Figure 6C-5. Response time.

Source identification: _____

Test personnel: _____

Date: _____ Run number: _____

Span: _____

	Initial Values		Final Values		
	Analyzer calibration response	System calibration response	System cal. bias (% of span)	System calibration response	System cal. bias (% of span)	Drift (% of span)
Zero gas						
Mid-range						

$$\text{System Calibration Bias} = \frac{\text{System Cal. Response} - \text{Analyzer Cal. Response}}{\text{Span}} \times 100$$

$$\text{Drift} = \frac{\text{Final System Cal. Response} - \text{Initial System Cal. Response}}{\text{Span}} \times 100$$

Figure 6C-6. System calibration bias and drift data.

* * * * *

Method 7E. Determination of Nitrogen Oxides Emissions From Stationary Sources

Instrumental Analyzer Procedure

1. *Applicability and Principle.*

1.1 Applicability. This method is applicable to the determination of nitrogen oxides (NO_x) concentrations in emissions from stationary sources only when specified within the regulations.

1.2 Principle. A sample is continously extracted from the effluent stream; a portion of the sample stream is conveyed to an instrumental chemiluminescent analyzer for determination of NO_x concentration. Performance specifications and test procedures are provided to ensure reliable data.

2. *Range and Sensitivity*

Same as Method 6C, Sections 2.1 and 2.2.

3. *Definitions*

3.1 Measurement System. The total equipment required for the determination of NO_x concentraton. The measurement system consists of the following major subsystems:

3.1.1 Sample Interface, Gas Analyzer, and Data Recorder. Same as Method 6C, Sections 3.1.1, 3.1.2, and 3.1.3.

3.1.2 NO_2 to NO Converter. A device that converts the nirtrogen dioxide (NO_2) in the sample gas to nitrogen oxide (NO).

3.2 Span, Calibration Gas, Analyzer Calibration Error, Sampling System Bias, Zero Drift, Calibration Drift, and Response Time. Same as Method 6C, Sections 3.2 through 3.8.

3.2 Interference Response. The output response of the measurement system to a component in the sample gas, other than the gas component being measured.

4. *Measuremnt System Performance Specifications.*

Same as Method 6C, Sections 4.1 through 4.4.

5. *Apparatus and Reagents.*

5.1 Measurement System. Use any measurement system for NO_x that meets the specifications of this method. A schematic of an acceptable measurement system is shown in Figure 6C-1 of Method 6C. The essential components of the measurement system are described below:

5.1.1 Sample Probe, Sample Line, Calibration Valve Assemply, Moisture Removal System, Particulate Filter, Sample Pump, Sample Flow Rate Control, Sample Gas Manifold, and Data Recorder. Same as Method 6C, Section 5.1.1 through 5.1.8, and 5.1.10.

5.1.2 NO_2 to NO Converter. That portion of the system that converts the nitrogen dioxide (NO_2) in the sample gas to nitrogen oxide (NO). A NO_2 to NO converter is not

necessary if the NO_2 portion of the exhaust gas is less than 5 percent of the total NO_x concentration.

5.1.3 NO_x Analyzer. An analyzer based on the principles of chemiluminescence to determine continuously the NO_x concentration in the sample gas stream. The analyzer must meet the applicable performance specifications of Section 4. A means of controlling the analyzer flow rate and a device for determining proper sample flow rate (e.g., precision rotameter, pressure gauge downstream of all flow controls, etc.) must be provided at the analyzer.

5.2 NO_x Calibration Gases. The calibration gases for the NO_x analyzer shall be NO in N_2. Use four calibration gases as specified in Method 6C, Sections 5.3.1 through 5.3.4. Ambient air may be used for the zero gas.

6. *Measurement System Performance Test Procedures.*

Perform the following procedures before measurement of emissions (Section 7).

6.1 Calibration Gas Concentration Verification. Same as Method 6C, Section 6.1, except if calibration gas analysis is required, use Method 7, and change all 5 percent performance values to 10 percent (OR 10 PPM, whichever is greater).

6.2 Interference Response. Conduct an interference response test of the analyzer prior to its intial use in the field. Thereafter, recheck the measurement system if changes are made in the instrumentation that could alter the interference response (e.g., chages in the gas detector). Conduct the interference response in accordance with Section 5.4 of Method 20.

6.3 Measurement System Preparation, Analyzer Calibration Error, Response Time, and Sample System Bias Check. Same as Method 6C, Sections 6.2 through 6.5.

6.4 NO_2 to NO Conversion Efficiency. If the NO_2 concentration within the sample stream is greater than 5 percent of the NO_x concentration, conduct an NO_2 to NO conversion efficiency test in accordance with Section 5.6 of Method 20.

7. *Emission Test Procedure.*

7.1 Selection of Sampling Site and Sampling Points. Select a measurement site and sampling points using the same criteria that are applicable to tests performed using Method 7.

7.2 Sample Collection. Position the sampling probe at the first measurement point, and begin sampling at the same rate as used during the response time test. Maintain constant rate sampling (i.e., ±10 percent) during the entire run. The sampling time per run shall be the same as the total time required to perform a run using Method 7 plus twice the average system response time. For each run, use only those measurements obtained after twice the response time of the measurement system has elapsed to determine the average effluent concentration.

7.3 Zero and Calibration Drift Test. Same as Method 6C, Section 7.4.

8. *Emission Calculation.*

Same as Method 6C, section 8.

9. *Bibliography.*

Same as in Bibliography of Method 6C.

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2. In subpart D, it is proposed to amend § 60.45 by revising paragraph (c)(1) as follows:

§ 60.45 Emission and fuel monitoring.

* * * * *

(c) * * *

(1) Methods 6 or 6C and 7, 7A, 7C, 7D, or 7E, as applicable, shall be used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

* * * * *

3. In Subpart D, it is proposed to amend § 60.46 by revising paragraphs (a)(2), (a)(4), (a)(5), (f)(2), and (f)(3)(i) as follows:

§ 60.46 Test methods and procedures.

(a) * * *

(2) Method 3 or 3A for gas analysis to be used when applying Methods 5, 6 or 6C, and 7, 7A, 7C, 7D, or 7E.

(3) * * *

(4) Method 6 or 6C for concentration of SO_2. Method 6A may be used whenever Methods 6 or 6C and 3 or 3A data are used to determine the SO_2 emission rate in ng/J, and

(5) Method 7, 7A, 7C, 7D, or 7E for concentration of NO_x.

* * * * *

(f) * * *

(2) C = pllutant concentration, ng/dscm (1b/dscf) determined by Method 5, 6, 6C, 7, 7A, 7C, 7D, or 7E.

(3) Percent O_2 = Oxygen content by volume (expressed as percent), dry basis. Percent oxygen shall be determined by using the integrated or grab sampling and analysis procedures of Method 3 as applicable, or by using Method 3C. Oxygen samples shall be obtained as follows:

(i) For determination of sulfur dioxide by Method 6 or 6C and nitrogen oxides emissions by Method 7, 7A, 7C, 7D, or 7E, the oxygen sample shall be obtained simultaneously at the same point in the duct. For Method 7 or 7A, the oxygen sample shall be obtained using the grab sampling and analysis procedures of Method 3, or by using Method 3C.

* * * * *

4. In Subpart D, it is proposed to amend § 60.46 by revising the first sentence of paragraph (c) to read as follows:

§ 60.46 Test methods and procedures.

* * * * *

(c) For Methods 6 or 6C, and 7, 7A, 7C, 7D, or 7E, the sampling site shall be the same as that selected for Method 5.

* * * * *

5. In Subpart Da, it is proposed to amend § 60.47a by revising the first two sentences of paragraph (h)(1), the first sentence of paragraph (h)(4), and all of paragraph (h)(5)(i)(1) to read as follows:

§ 60.47a Emission monitoring.

* * * * *

(h) * * *

(1) Methods 3 or 3A, 6 or 6C, and 7, 7A, 7C, 7D, or 7E, as applicable, are used. Method 6B may be used whenever Methods 6 or 6C and 3 or 3A data are required to determine the SO_2 emission rate in ng/J.

* * * * *

(4) For Method 3, the oxygen or carbon dioxide sample is to be taken for each hour when continuous SO_2 and NO_x data are taken or when Methods 6 or 6C and 7, 7A, 7C, 7D, or 7E are required.

* * * * *

(5) * * *

(i) * * *

(1) Method 6, 6C, 7, 7A, 7C, 7D, or 7E, as applicable, is used for conducting performance evaluations of sulfur dioxide and nitrogen oxides continuous monitoring systems.

* * * * *

6. In Subpart Da, it is proposed to amend § 60.48a by revising paragraph (a)(1) as follows:

§ 60.48a Compliance determination procedures and methods.

(a) * * *

(1) Method 3 or 3A is used for gas analysis when applying Method 5 or Method 17.

* * * * *

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February 28, 1985

Part IV

Department of Education

Office of Special Education and Rehabilitative Services

34 CFR Part 373

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals; Supported Employment; Proposed Rule

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

34 CFR Part 373

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals; Supported Employment

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to revise regulations under section 311(a)(1) of the Rehabilitation Act of 1973, as amended. This program provides financial assistance for projects that expand or otherwise improve vocational rehabilitation services and other rehabilitation services for severely handicapped individuals. In particular, the Secretary proposes to revise the program regulations to expressly provide for projects that stimulate the development and provision of supported employment services on a statewide basis.

These proposed regulations include information about the kinds of activities and services that are to be provided under supported employment projects, and contain separate selection criteria for evaluating applications for this type of demonstration project.

DATES: Comments must be received on or before April 1, 1985.

ADDRESSES: Comments should be addressed to Albert Rotundo, Rehabilitation Services Administration, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3038), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Albert Rotundo, Telephone: (202) 732-1269.

SUPPLEMENTARY INFORMATION: The Special Projects and Demonstrations Program for Providing Vocational Rehabilitation Services to Severely Handicapped Individuals is authorized by section 311(a)(1) of the Rehabilitation Act of 1973, as amended. This program supports a wide variety of projects that expand or otherwise improve vocational rehabilitation services and other rehabilitation services for severely handicapped individuals, irrespective of their age or vocational potential.

The Secretary proposes to use this authority to assist in the redirection of services for severely disabled individuals who would not be judged to have vocational potential because of the severity of their disabilities. In particular, the Secretary proposes, on a statewide basis, to assist States to move from existing day activity programs to supported employment programs. These programs would provide specially designed paid work in a variety of settings, particularly regular work sites. The Secretary is convinced that many severely handicapped individuals who, in day activity programs, are not provided the opportunity to earn money or to interact with nonhandicapped employees, could benefit greatly from supported employment programs.

The secretary believes that the redirection of existing service delivery systems to emphasize supported employment programs can be achieved without substantial additional Federal funds. Rather, the Secretary believes that present State and local funding resources can be shifted to supported employment programs and that Federal assistance by the Department under this program is needed only to assist grantees with start-up and other program development costs. The Department's appropriation for Fiscal Year 1985 includes $4.2 million for these projects. *See* House Rep. No. 911, 98th Congress 2nd Session 113 (1984).

A summary of the proposed regulations follows:

Section 373.14 describes supported employment projects. Section 373.14(a) describes the purpose of these projects. Section 373.14(b) defines "supported employment" for purposes of Part 373. Section 373.14(c) describes the activities that these projects are authorized to carry out. Section 373.14(d) requires that grantees provide, or ensure the provision of, the ongoing delivery of direct support services from funds other than assistance under this part.

Current § 373.30 is revised and a new § 370.31 is added to describe the selection criteria that the Secretary uses in making awards for supported employment projects. The Secretary proposes weighted criteria that reflect the relative importance of the elements of an application in order to ensure that the most promising projects are selected.

Separate selection criteria are proposed for supported employment projects in order to focus the evaluation of application on programmatic elements which are key to the success of the program. Examples of these key programmatic elements are the applicant's ability to achieve lasting statewide change and the coordination and participation in the projects of groups which are essential to the successful conduct of the project. Existing criteria that apply to all other types of projects under Part 373 do not address these elements that are key to the success of supported employment projects.

Execution Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities. The application procedures in the proposed regulations will not place undue burdens on small entities submitting applications under this program.

Paperwork Reduction Act of 1980

The information collection requirements contained in these proposed regulations will be sent to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

Information collection requirements are contained in § 373.31.

A copy of comments that pertain only to information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, 17th and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All comments regarding proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Invitation to Comment:

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3329, Switzer Building, 330 C Street, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these regulations.

List of Subjects in 34 CFR Part 373

Grant programs-education, Grant programs-social programs, Reporting

and recordkeeping requirements, Vocational rehabilitation.

Citation of Legal Authority

A citation of statutory of other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance No. 84.128, Special Projects and Demonstrations: Supported Employee)

Dated: February 25, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Part 373 of Title 34 of the Code of Federal Regulations as follows:

PART 373—SPECIAL PROJECTS AND DEMONSTRATIONS FOR PROVIDING VOCATIONAL REHABILITATION SERVICES TO SEVERELY HANDICAPPED INDIVIDUALS

1. A new § 373.14 is added to read as follows:

§ 373.14 What are Supported Employment demonstration projects?

(a) *Purpose.* The purpose of Supported Employment demonstration projects is to stimulate the development and provision of supported employment on a statewide basis for severely handicapped individuals who, because of the severity of their handicap, would not normally receive vocational rehabilitation services.

(b) *Definition.* "Supported employment", as used in this part, means paid work in a variety of settings, particularly regular work sites, especially designed for severely handicapped individuals, irrespective of age or vocational potential—

(1) For whom competitive employment at or above the minimum wage is unlikely; and

(2) Who, because of their disability, need intensive ongoing post-employment support to perform in a work setting.

(c) *Authorized activities.* Under the Supported Employment demonstration program, the Secretary provides financial assistance for projects that may include—

(1) Program development, including program start-up costs, for new or existing community organizations and employers;

(2) Staff training;

(3) Program evaluation; and

(4) Program reorganization to convert existing day activity programs to programs that offer supported employment services.

(d) *Restrictions on the use of funds.* (1) Under this program the Secretary does not provide financial assistance for the ongoing delivery of direct supported employment services.

(2) A grantee must provide, or ensure the provision of, the ongoing delivery of those direct services needed by severely handicapped individuals in order for them to maintain employment. These supported employment services include—

(i) Job training to prepare and enable the handicapped individual to perform work;

(ii) Ongoing supervision of the handicapped individual on the job;

(iii) Ongoing behavior management; and

(iv) Case management including assistance to coordinate services from various sources.

(Sec. 311(a)(1) of the Act; 29 U.S.C. 777a(a)(1))

2. Section 373.30 is amended by adding introductory text at the beginning of the section to read as follows:

§ 373.30 What selection criteria does the Secretary use under this program?

The Secretary uses the criteria in this section to evaluate applications for all projects under this part, except for Supported Employment demonstration projects. the maximum score for all of the criteria is 100 points.

* * * * *

3. A new § 373.31 is added to read as follows:

§ 373.31 What selection criteria does the Secretary use for Supported Employment demonstration projects?

The Secretary uses the criteria in this section to evaluate applications for Supported Employment demonstration projects. The maximum score for all of the criteria is 100 points.

(a) *Plan of operation.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(a).

(b) *Quality of key personnel.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(b).

(c) *Budget and cost effectiveness.* (10 points) The secretary reviews each application on the basis of the criterion in § 369.31(c).

(d) *Evaluation plan.* (10 points) The Secretary reviews each application on the basis of the criterion in § 369.31(d).

(e) *Adequacy of resources.* (5 points) The Secretary reviews each application on the basis of the criterion in § 369.31(e).

(f) *Capacity to achieve lasting statewide change.* (15 points) (1) The Secretary reviews each application for information that demonstrates the capacity of the applicant to achieve lasting statewide change in the provision of supported employment for handicapped individuals.

(2) The Secretary looks for information that shows—

(i) The applicant agency has responsibility for programs to be changed or is able to assure that program change will occur;

(ii) The project resources will be used to change how existing service funds are spent, not to supplant those funds; and

(iii) A sufficient number of service programs and work opportunities can be developed within the project period to achieve statewide change.

(g) *Project design.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the project design and approach.

(2) The Secretary looks for information that shows—

(i) The applicant has clearly defined the services and service delivery system which will result from the project and has analyzed in detail how these differ from current services and the current service delivery systems;

(ii) All relevant barriers to implementing the proposed statewide change are indentified and appropriate strategies are proposed for eliminating those barriers;

(iii) The project will employ a multi-faceted and systematic approach for achieving project objectives, which may include activities such as dissemination of information, training and technical assistance, start-up of new programs, and development of incentives for employer participation; and

(iv) The project is designed to achieve a range of service approaches that are appropriate for the variety of employment opportunities in the State.

(h) *Participation and coordination.* (15 points) (1) The Secretary reviews each application for information that shows coordination with and participation of all affected groups and agencies.

(2) The Secretary reviews each application for information that demonstrates that—

(i) Handicapped individuals and parents of handicapped individuals participate in project decision-making.

(ii) Potential employers of handicapped individuals are involved in project planning and decision-making; and

(iii) All State agencies whose cooperation and participation are necessary for statewide implementation of supported employment projects are actively collaborating in project management. These agencies may include those responsible for secondary

special education, vocational rehabilitation, and day services for individuals with developmental disabilities.

(i) *Impact on other States.* (5 points)

(1) The Secretary reviews each application for information that shows the impact the proposed project will have on other States.

(2) The Secretary looks for information that shows—

(i) The approach to be used can be applied to other States; and

(ii) The applicant will disseminate its project information to other States.

(Secs. 12(c) and 311(a)(1) of the Act, 29 U.S.C. 711(c) and 777a(a)(1))

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February 28, 1985

Part V

Department of Education

34 CFR Parts 425, 426, 431, and 432
Adult Education—State-Administered Program and National Adult Education Discretionary Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 425, 426, 431, and 432

Adult Education—State-Administered Program and National Adult Education Discretionary Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of Education proposes to issue and amend regulations to implement the Adult Education Act. The Adult Education Act was amended and extended by Title I of the Education Amendments of 1984 (Pub. L. 98–511). These proposed regulations govern the State-administered program of adult basic and adult secondary education and the national adult education discretionary program for research, development, demonstration, dissemination, and evaluation. An additional purpose of these proposed regulations is to reduce the administrative burden on grantees, to eliminate certain existing regulations that are unnecessary, and to clarify certain provisions of the existing regulations to make them more understandable to the public.

DATES: Comments on these proposed regulations must be received on or before April 29, 1985.

ADDRESSES: Comments should be addressed to Dr. Charles Buzzell, OVAE Regulations Officer, U.S. Department of Education, (ROB–3, Room 5600), 400 Maryland Avenue, SW., Washington, DC 20202–3579, Telephone: (202) 245–8190.

FOR FURTHER INFORMATION CONTACT: Mr. Paul V. Delker, Director, Division of Adult Education, U.S. Department of Education, (ROB–3, Room 5610), 400 Maryland Avenue, SW., Washington, DC 20202–3585, Telephone: (202) 245–9793; or Dr. Thomas L. Johns, Chairperson, Adult Education Regulations Task Force, U.S. Department of Education, (ROB–3, Room 5126), 400 Maryland Avenue, SW., Washington, D.C. 20202–3579, Telephone: (202) 245–8176.

SUPPLEMENTARY INFORMATION:

Background

On October 19, 1984, the Education Amendments of 1984 (Pub. L. 98–511) were signed into law. Title I of this legislation contains amendments to the Adult Education Act (the Act), Pub. L. 91–230 (20 U.S.C. 1201 *et seq.*), as amended. The primary purpose of the Act has been, and continues to be under the recent amendments, to offer educationally disadvantaged adults an opportunity to acquire basic literacy skills necessary to function in society, to continue their education to at least the level of completion of secondary school, and to become more employable, productive, and responsible citizens.

There are two major parts to the adult education program established by the Act: The State-administered program and the national adult education discretionary program.

Under the State-administered program, the Secretary of Education makes grants to States on a formula basis to assist them in administering and conducting adult education projects that meet the needs of their adult populations. States in turn allocate funds to local providers of adult education services on the basis of available resources and need. The regulations governing the State-administered program, which the Secretary proposes to amend, are found in 34 CFR Parts 425 and 426 and were published in the **Federal Register** (as 45 CFR Parts 166 and 166a) on April 3, 1980 (45 FR 22776).

The Act also authorizes the Secretary's national adult education discretionary program. At an appropriation level of $112 million, or higher, the Secretary may set aside up to 5 percent of that amount for programs under section 309. At the current appropriation level of $100 million for program operations, this authority is not available to the Secretary. The regulations governing the Secretary's discretionary program, which the Secretary proposes to amend, are found in 34 CFP Part 431 and were published in the **Federal Register** (as 45 CFR Part 166b) on April 3, 1980 (45 FR 22783).

The Emergency Adult Education Program for Indochina Refugees was repealed by the Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35. The Adult Education Program for Adult Immigrants and Special Projects for the Elderly have been repealed by the Education Amendments of 1984, Pub. L. 98–511. The regulations governing the refugee and immigrant programs found in 34 CFR Part 432 published in the **Federal Register** (as 45 CFR Part 166c) on April 3, 1980 are repealed. No regulations had been published for Special Projects for the Elderly.

Consistent with the President's goal to reduce regulatory burden, these proposed regulations eliminate unnecessary and unproductive administrative requirements. The Secretary believes that by allowing greater administrative flexibility, recipients of Federal funds for adult education will be able to plan and conduct more effective and efficient programs for serving the needs of educationally disadvantaged adults.

As noted in § 425.2(a) of these proposed regulations, the Education Department General Administrative Regulations (EDGAR) apply to the adult education programs. Specific regulatory requirements for EDGAR are not repeated in these proposed regulations. However, particular attention should be directed to the following EDGAR requirements:

(A) The SEA must have on file with the Secretary a single State application that covers adult education programs (34 CFR 76.101).

(B) By submitting a single State application under 34 CFR 76.101, an SEA meets the requirements of section 306(b)(6) of the Act, covering fiscal control and fund accounting procedures.

(C) A State plan for adult education must include the certifications required by 34 CFR 76.104.

(D) Computation of the non-Federal share of expenditures for matching or cost-sharing is discussed in 34 CFR 74.52. The non-Federal share of expenditures under the State plan may be computed on a statewide basis and may come from any source other than Federal assistance so long as these expenditures are made to further the purposes of the State plan for adult education.

(E) An SEA must administer special experimental demonstration projects and teacher training projects under section 310 of the Act in accordance with the requirements contained in Subparts D and E of 34 CFR Part 76.

Summary of Significant Changes

These proposed amendments to the existing regulations are intended to reduce the regulatory burden on the States administering adult education programs and to comply with the statutory amendments in Pub. L. 98–511.

State educational agencies are advised to use these proposed regulations as initial guidance in developing their new three-year State plans. However, these proposed regulations do not affect the process for developing and submitting State plans. Some adjustments to the plan may be necessary after final regulations are issued. A State may amend its State plan at any time.

(A) General

Definition of "adult"—The statutory definition of "adult" is amended and cited in proposed § 425.3(a). The definition now encompasses anyone age 16 and over or who is beyond the age of compulsory school attendance under

State law. States with compulsory school attendance laws below age 16 may now serve youth below age 16 in adult education programs.

(B) State-administered Program

(1) *Expansion of the Delivery System*—Emphasis in the legislation to expand significantly the delivery system for adult education remains. Proposed § 426.12(1) modifies the concept of "expansion". "Expansion" is defined as efforts to increase the number of participating agencies, organizations, and institutions other than the public school systems used to provide adult education and support services and efforts to increase the number of adults participating in adult basic education. This change reduces the data burden on States by allowing States to use data already available on adult basic education participants rather than making two special counts of participants who are least educated and most in need.

(2) *Data Collection*—A new provision in the legislation authorizes the Secretary to collect program performance data. Under proposed § 426.11(b)(8), a State educational agency assures that it will provide demographic and statistical information about students, programs, expenditures, and goals of the adult education program as may be required by the Secretary.

(3) *State Advisory Councils*—The statutory amendments covering State advisory councils are less prescriptive than the requirements of previous law. Proposed § 426.45 would describe the functions of a State advisory council in more general terms, eliminate the requirement of certification of a State advisory council by the Secretary, and no longer prescribe membership requirements, the frequency and nature of meetings, and allowable expenses. These changes directly follow the statute and will broaden a State's decision-making authority and lessen the administrative burden on a State, while continuing a State's authority to use Federal funds for State advisory councils.

(4) *Administrative Costs*—Section 426.32 of the current regulations limits State administrative costs. The amended legislation retains the requirement, in section 306(b)(2), that the State plan provide for the administration of the program by the State educational agency. However, the amendments are silent on a separate authorization for, or a maximum limitation on, administrative costs. Proposed § 426.21 would allow a State to expend funds under the Act for State and local administration of the adult education program. In the amended legislation a State is given flexibility in determining allowable local administrative costs, as well as in determining the amount of funds to be spent for the administration of the program at the State level. The Secretary believes that administrative costs should be held to a minimum so as to allow maximum funding for programs to serve the needs of educationally disadvantaged adults.

(5) *Eligible Applicants*—Proposed § 426.30 describes eligible applicants for local adult education projects. Under section 304 of the amended statute, for-profit agencies, organizations, or institutions, in addition to local educational agencies and nonprofit entities, may apply to a State educational agency for funding. However, in order to be considered for funding, for-profit entities must be able to make a significant contribution to attaining the objectives of the Act and must provide substantially equivalent education at a lesser cost or provide services and equipment not available in public institutions. Under proposed § 426.32, the State must determine that a for-profit applicant meets these requirements before the State approves the applications. Proposed § 426.31(b) would authorize the State educational agency or an eligible applicant to contract with for-profit entities when it is determined that those entities can provide adult education projects and services more effectively or efficiently than other eligible applicants.

(6) *State Review of Applications.* (a) *Criteria*—Section 306 of the Act requires that a State plan include the criteria used by the State to evaluate applications. However, the Act does not specify factors that the State must consider in evaluating applications. These factors, set forth in § 426.51(b) of the current regulations, have been deleted from the proposed regulations. The Secretary believes that this deletion will allow States more flexibility in making funding decisions and permit each State to determine which data and criteria it needs to best evaluate applications addressing the unique needs of the adult population of that State.

(b) *Process*—Because there is no statutory basis to require a "competitive" process, the proposed regulations would eliminate the requirement in § 426.51(b) of the current regulations. However, a State educational agency would be required by proposed § 426.12(j) to "describe the local application process and the criteria for evaluating local applications submitted by all eligible applicants for subgrants or contracts."

The two-step process, in § 426.41(b) of the current regulations, for a local educational agency to give advice and comment on applications is expanded in proposed § 426.32(b) to apply to any application from a public or private agency, organization, or institution other than a local educational agency. That two-step process requires that these entities (1) seek the advice of the applicable local educational agency on the development of the application and (2) provide the local educational agency an opportunity to comment on the application prior to its submission to the State educational agency. This process seeks to encourage cooperation among all applicant entities in a geographical area to develop the best delivery system possible for reaching educationally disadvantaged adults.

(7) *Multi-year Projects*—Section 426.51(a) of the current regulations requires that a State educational agency review annually all applications submitted by eligible appalicants. To reduce the burden on and to allow more flexibility to a State educational agency, that requirement has been eliminated in these proposed regulations. A State may elect to award multi-year grants and eliminate the annual application review process.

(C) State-Administered Special Experimental Demonstration Projects and Teacher Training Projects Program

Section 310 of the Act requires that each State expend at least 10 percent of its Federal allocation for special experimental demonstration projects and teacher training projects.

(1) *Eligible applicants*—Under § 426.71 of the current regulations, individuals qualify as eligible applicants unless precluded by State law. Individuals would no longer be eligible applicants under the proposed regulations for the State-administered special experimental demonstration projects and teacher training projects.

(2) *Statewide Criteria and Priorities*—The proposed regulations would eliminate the provision in § 426.72 of the current regulations that the Secretary publish national priorities in adult education and the requirement that the States report in their State plans how statewide criteria and priorities relate to national priorities. The Act does not specifically impose this State plan requirement, and the Secretary believes that its elimination would reduce a burden on a State.

(3) *Report Requirement*—In § 426.74 of the current regulations, a State is

required to send a copy of each final report of special projects and teacher training projects to the Secretary and a copy to the adult education information clearinghouse. Proposed § 426.11(b)(9) would eliminate the requirement to send a copy of each final report to the clearinghouse.

(D) National Adult Education Discretionary Program

Part 431 of the proposed regulations addresses the national discretionary program. Pub. L. 98–511 amends section 309 of the Act which authorized the current National Development and Dissemination Program. The amendment authorizes the national adult education discretionary program to support applied research, development, demonstration, dissemination, and evaluation. Individuals and private, for-profit agencies, institutions, and organizations, including business concerns, are eligible for funding in addition to public nonprofit entities. These national programs may be carried out by cooperative agreements, in addition to grants and contracts, between the Secretary and eligible recipients.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations will not have a significant economic impact on a substantial number of small entities. This program makes grants to States for adult education purposes. States and State agencies are not considered to be small entities under the Regulatory Flexibility Act. This program also makes grants to small entities (e.g., public and private agencies, organizations, and institutions). The regulations contain paperwork compliance and reporting requirements, but these will not have a significant economic impact on the small entities participating in the program.

Paperwork Reduction Act of 1980

The information collection requirements contained in these proposed regulations will be sent to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

Information collection requirements are contained in the following sections: 426.11, 426.12, and 431.31.

A copy of comments that pertain only to information collection requirements should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3108, 17th Street and Pennsylvania Avenue, NW., Washington, D.C. 20503. Attention: Desk Officer for the U.S. Department of Education.

All other comments regarding these proposed regulations should be sent to the Department of Education at the address given at the beginning of this preamble.

Intergovernmental Review

The adult education program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 5600, ROB–3, 7th and D Streets, SW., Washington, D.C., between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, public comment is invited on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 425

Administrative practice and procedure, Adult education, Education, Grant programs—education.

34 CFR Part 426

Adult education, Education, Grant programs—education, Reporting and recordkeeping requirements, State advisory councils, Teachers.

34 CFR Part 431

Adult education, Education, Grant programs—education, Nonprofit organizations.

34 CFR Part 432

Adult education, Education, Grant programs—education, Immigrants, Indochina, Non-profit organizations, Refugees.

Citation of Legal Authority

A citation of statutory or other legal authority is placed in parentheses on the line following each substantive provision of these proposed regulations.

(Catalog of Federal Domestic Assistance Numbers: 84.002 Adult Education—State-administered Program; National Adult Education Discretionary Program (Number not assigned)).

Dated: February 25, 1985.

William J. Bennett,

Secretary of Education.

The Secretary proposes to amend Parts 425, 426, and 431 and to remove Part 432 of Title 34 of the Code of Federal Regulations as follows:

1. Part 425 is proposed to be revised as follows:

PART 425—ADULT EDUCATION—GENERAL PROVISIONS

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under the Adult Education Programs?

Authority: Secs. 301–315 of the Adult Education Act, as amended by Pub. L. 98–511; 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

Subpart A—General

§ 425.1 What are the Adult Education Programs?

(a) Under the Adult Education Programs the Secretary provides Federal financial assistance to encourage and expand educational opportunities for adults.

(b) The regulations in this Part 425 govern the following programs:

(1) 34 CFR Part 426—State-Administered Adult Education Program.

(2) 34 CFR Part 431—National Adult Education Discretionary Program.

(20 U.S.C. 1201 *et seq.*)

§ 425.1 What regulations apply to the Adult Education Programs?

The following regulations apply to the Adult Education Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 76 (State-administered Programs), Part 77 (Definitions that Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(b) The regulations in this part.

(c) The regulations in 34 CFR Parts 426 and 431.

(20 U.S.C. 1201 *et seq.*)

§ 425.3 What definitions apply to the Adult Education Programs?

(a) *Program definitions.* The following definitions apply to the Adult Education Programs:

"Act" means the Adult Education Act as amended (20 U.S.C. 1201 *et. seq.*)

"Adult" means an individual who has attained 16 years of age or who is beyond the age of compulsory school attendance under State law, except that for the purpose of section 305(a) of the Act, the term "adult" means an individual 16 years of age or older.

"Adult basic education" means adult education for adults whose inability to speak, read, or write the English language constitutes a substantial impairment of their ability to get or retain employment commensurate with their real ability, which is designed to help eliminate such inability and raise the level of education of those individuals with a view to making them less likely to become dependent on others, to improving their ability to benefit from occupational training and otherwise increasing their opportunities for more productive and profitable employment, and to making them better able to meet their adult responsibilities.

"Adult education" means instruction or services below the college level for adults who do not have—

(1) The basic skills to enable them to function effectively in society; or

(2) A certificate of graduation from a school providing secondary education (and who have not achieved an equivalent level of education).

"Basic literacy skills," as used in § 425.10(b)(1), means the skills taught in adult basic education.

"Immigrant" means any refugee admitted or paroled into this country or any alien except one who is exempt under the provisions of the Immigration and Nationality Act, as amended.

(8 U.S.C. 1101(a)(15))

"Institution of higher education" means any such institution as defined by section 481 of the Higher Education Act of 1965.

"Institutionalized person" means an adult, as defined in the Act, who is an inmate, patient, or resident of a correctional, medical, or special institution.

"Limited English proficiency" or "limited English language skills" refers to difficulty of adults in speaking, reading, writing, or understanding the English language so that those adults are denied the opportunity to learn successfully in a learning environment where the language of instruction is English.

"Local educational agency" means a public board of education or other public authority legally constituted within a State for either administrative control or direction of public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools, except that, if there is a separate board or other legally constituted local authority having administrative control and direction of adult education in public schools therein, the term means that other board or authority.

"Outreach" means activities designed to—

(1) Inform adult populations who are least educated and most in need of assistance of the availability and benefits of the adult education program; and

(2) Assist these adult populations to participate in the program by providing reasonable and convenient access.

"State" includes, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"State administrative costs" means costs for those management and supervisory activities necessary for the direction and control by the State educational agency responsible for developing the State plan and overseeing the implementation of the adult education program under the Act. The term includes those costs incurred for State Advisory Councils under section 311 of the Act, but does not include those costs incurred for ancillary services such as evaluation, teacher training, dissemination, and curriculum development.

"State educational agency" means the State board of education or other agency or officer primarily responsible for the State supervison of public elementary and secondary schools; or if there is a separate State agency or officer primarily responsible for supervision of adult education in public schools, then that agency or officer may be designated for the purpose of the Act by the Governor or by State law. If no agency or officer qualifies under the preceding sentence, the term means an appropriate agency or officer designated for the purpose of the Act by the Governor.

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR Part 77:

Applicant
Application
Award
Budget
Budget period
ED
EDGAR
Grant
Grantee
Nonprofit
Private
Project
Project period
Public
Secretary
Subgrant
Subgrantee

(Sec. 303; 20 U.S.C. 1201 *et seq.*)

§§ 425.4–425.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under the Adult Education Programs?§

425.10 What kinds of activities does the Secretary assist?

The Secretary provides financial assistance to support one or more of the following activities:

(a) Expand educational opportunities for adults.

(b) Encourage the establishment of programs of adult education that will—

(1) Enable all adults to acquire basic literacy skills necessary to function in society;

(2) Enable adults who so desire to continue their education to at least the level of completion of secondary school; and

(3) Make available to adults the means to secure training and education that will enable them to become more employable, productive, and responsible citizens.

(Sec. 302; 20 U.S.C. 1201)

2. Part 426 is proposed to be revised as follows:

PART 426—STATE-ADMINISTERED ADULT EDUCATION PROGRAM

Subpart A—General

Sec.

Subpart B—How Does a State Apply for a Grant?

Subpart C—How is a Grant Made to a State?

Subpart D—How Does a State Distribute Funds?

Subpart E—What Conditions Must Be Met by a State?

Authority: Secs. 301–315 of the Adult Education Act, as amended by Pub. L. 98–511, 20 U.S.C. 1201 *et seq.*, unless otherwise noted.

Subpart A—General

§ 426.1 How is the adult education State-administered program governed?

(a) *Federal-State relationship.* The adult education State-administered program is a cooprative effort between the Federal Government and the States to provide adult education. Federal funds are granted to the States on a formula basis. The States fund local programs of adult education based on need and resources available.

(b) *Other applicable provisions.* The provisions of 34 CFR Part 425 apply to the State-administered Adult Education Program under this part.

(20 U.S.C. 1201 *et seq.*)

Subpart B—How Does a State Apply for a Grant?

§ 426.10 Who is eligible?

Any State may apply for a grant under this part.

(Sec. 304(a); 20 U.S.C. 1203(a))

§ 426.11 What documents must a State submit to receive its grant?

A State educational agency (SEA) shall submit to the Secretary the following:

(a) A State plan, developed once every three years, that meets the requirements of the Act and the regulations in this part.

(b) Program assurances, signed by an authorized official of the SEA, to provide that—

(1) Special emphasis will be given to adult basic education programs except where these needs have been met in the State;

(2) Adults enrolled in adult basic education programs will not be charged tuition, fees, or any other charges, or be required to purchase any books or any other materials that are needed for participation in the program;

(3) The SEA will make available not to exceed 20 percent of the funds granted to the State under the Act for programs of equivalency for a certificate of graduation from a secondary school;

(4) Not more than 20 percent of the funds granted to the State under the Act for any fiscal year will be used for the education of institutionalized adults;

(5) The SEA will use not less than 10 percent of the funds granted to the State under the Act for special experimental demonstration projects and teacher training projects under section 310 of the Act.

(6) Special assistance will be given to the needs of persons with limited English proficiency by providing bilingual adult education programs of instruction in English and, to the extent necessary to allow these persons to progress effectively through the adult education program, in the native language of these persons; and these programs will be carried out in coordination with programs of bilingual education assisted under title VII of the Elementary and Secondary Education Act of 1965 and bilingual vocational education programs under the Carl D. Perkins Vocational Education Act;

(7)(i) For each year covered by the plan, the fiscal effort per student or the aggregate amount available for expenditure by the State for adult education from non-Federal sources for the preceding fiscal year was not less than the fiscal effort per student or the amount available for expenditure for such purposes from those sources during the second preceding fiscal year;

(ii) In the event of exceptional and uncontrollable circumstances, the State may, under §426.42, request a one-time waiver of the requirement in paragraph (b)(7)(i) of this section;

(8) The SEA will report demographic and statistical information about the State's adult education students, programs, expenditures, and goals as may be required by the Secretary under section 306(b)(14) of the Act; and

(9) The SEA will send to the Secretary one copy of each final report of special experimental demonstration projects and teacher training projects supported under section 310 of the Act.

(Secs. 304(b), 306, 307(b) and 310; 20 U.S.C. 1203(b), 1205, 1206(b), 1208.

§ 426.12 What must the State plan contain?

An SEA shall include all of the following in its State plan:

(a) The SEA shall describe the means by which one or more representatives of each of the following agencies and groups were involved in the development of the State plan and how they will continue to be involved in carrying out the plan:

(1) The business community.

(2) Industry.

(3) Labor unions.

(4) Public educational agencies and institutions.
(5) Private educational agencies and institutions.
(6) Churches.
(7) Fraternal/sororal organizations.
(8) Voluntary organizations.
(9) Community organizations.
(10) State manpower and training agencies.
(11) Local manpower and training agencies.
(12) Adult residents of rural areas.
(13) Adult residents of urban areas with high rates of unemployment.
(14) Adults with limited English language skills.
(15) Institutionalized adults.
(16) Other entities concerned with adult education, such as basic skills programs, volunteer literacy programs, libraries, and organizations offering education programs for older persons and military personnel and their adult dependents.

(b) The SEA shall describe—
(1) Its accomplishments in meeting the goals included in the previous three-year plan; and
(2) How the assessment of accomplishments and the evaluation required by paragraph (o) of this section were considered in establishing the State's goals for adult education in the plan being submitted.

(c) The SEA shall describe, for the three-year period covered by the plan, the adult education needs of all segments of the adult population in the State.

(d) The SEA shall—
(1) Demonstrate that the special educational needs of adult immigrants in the State have been examined; and
(2) Provide for the implementation of adult education and adult basic education programs for immigrants to meet existing needs.

(e) The SEA shall identify the other Federal non-Federal resources available to meet the needs described in paragraph (d) of this section.

(f) The SEA shall describe its planned use of Federal funds for the administration of the program under § 426.21 including any planned expenditures for a State advisory council under § 426.46.

(g) The SEA shall—
(1) Identify the goals it intends to achieve in meeting the needs described in paragraph (c) of this section for the period covered by the plan. These goals must be designed to develop a statewide program in which the adult populations in the State that are least educated and most in need of assistance are served in a manner whereby they learn most effectively; and
(2) Describe proposed activities for reaching each goal and give estimated percentages of funds under the State plan to be allocated to each goal.

(h) The SEA shall describe—
(1) The outreach activities that the State intends to carry out during the period covered by the plan; and
(2) In conjunction with these outreach activities, for the period covered by the State plan, the efforts it will undertake to assist adult participation in adult education programs through flexible course schedules, convenient locations, adequate transportation, and child care services. The State shall make a concerted effort to provide these services through other programs, agencies, and organizations.

(i) The SEA shall describe the procedures the State will use to ensure that in carrying out the program there will be—
(1) Adequate consultation, cooperation, and coordination among the SEA, State manpower service councils, State occupational information systems, and other agencies, organizations, and institutions in the State which operate employment and training programs or other educational or training programs for adults; and
(2) Coordination of programs carried out under this part with other programs carried out by State and local agencies, including reading improvement programs, designed to provide reading instruction for adults.

(j) The SEA shall describe the local application process and the criteria for evaluating local applications submitted by all eligible applicants for subgrants or contracts.

(k) The SEA shall describe the method of determining the amount of funds to be distributed to applicants approved for funding.

(l) The SEA shall describe the means by which the delivery of adult education services will be significantly expanded by—
(1) Efforts to increase the number of participating agencies, institutions, and organizations other than the public school systems, such as business, labor unions, libraries, institutions of higher education, public health authorities, antipoverty programs, and community organizations; and
(2) Efforts to increase the number of participants in adult basic education.

(m) An SEA that is prohibited by State law from awarding Federal funds by grant or contract to public or private agencies, organizations, or institutions, other than local educational agencies, shall describe in its State plan—
(1) The legal basis of this prohibition; and
(2) How public or private agencies, organizations, or institutions will be used for expanding the delivery of services.

(n) The SEA shall describe—
(1) Its policies, procedures, and activities for carrying out special experimental demonstration projects and teacher training projects in accordance with § 426.33; and
(2) Its criteria and priorities for awarding special projects and teacher training projects.

(o) The SEA shall provide for an evaluation of activities under sections 306 and 310 of the Act. The evaluation must be performed at least once every three years. Evaluation procedures, schedule of evaluations, and specific criteria to be used in assessing the effectiveness of all activities must be included in the State plan. A summary of the State's evaluation of activities must be sent to the Secretary within 90 days of the close of each program year.

(Secs. 306 and 310; 20 U.S.C. 1205, 1208)

§§ 426.13—426.19 [Reserved]

Subpart C—How Is a Grant Made to a State?

§ 426.20 How is the amount of each State's grant determined?

The Secretary determines the amount of each State's grant according to the formula in section 305(a) of the Act.

(Sec. 305; 20 U.S.C. 1204)

§ 426.21 How does a State provide for the administration of the program?

A State may use funds received under section 304 of the Act to provide for State and local administration of the program. Allowable administrative costs must be necessary and reasonable for proper and efficient administration of the program. A State shall determine allowable local administrative costs.

(Sec. 306(b)(2); 20 U.S.C. 1205(b)(2))

§§ 426.22-426.29 [Reserved]

Subpart D—How Does a State Distribute Funds?

§ 426.30 Who is eligible for a subgrant or contract?

(a) Local educational agencies and public or private agencies, organizations, and institutions are eligible to apply for funds.

(b) An SEA shall give public notification of the availability of Federal and State funds to eligible applicants—
(1) For the purpose of notifying local educational agencies, an SEA shall provide the notice directly; and

(2) For the purpose of notifying public or private agencies, organizations, and institutions, an SEA shall give sufficient public notice throughout all regions of the State.

(Sec. 304; 20 U.S.C. 1203)

§ 426.31 How does a State distribute funds?

(a) An SEA shall distribute funds on the basis of applications submitted by eligible applicants.

(b) If funds are awarded to a for-profit agency, organization, or institution, the award must be in the form of a contract.

(Sec. 304; 20 U.S.C. 1203)

§ 426.32 How does a State approve applications?

(a) An SEA may not approve an application from a for-profit agency, organization, or institution unless the State has first determined that the applicant—

(1) Can make a significant contribution to attaining the objectives of the Act; and

(2) Can provide substantially equivalent education at a lesser cost or can provide services and equipment not available in public institutions.

(b) An SEA may not approve an application from a public or private agency, organization, or institution other than a local educational agency unless the applicant—

(1) Provides assurance to the State that advice on the development of its application has been sought from the applicable local educational agency, located in the same city, county, township, school district, or other political subdivision of the State to be served by the application; and

(2) Provides the applicable local educational agency the opportunity to comment on the application prior to submitting it to the State.

(Sec. 304; 20 U.S.C. 1203)

§ 426.33 What are special experimental demonstration projects and teacher training projects?

In accordance with section 310 of the Act, the SEA shall provide assistance for—

(a) Special projects which will be carried out in furtherance of the purposes of the Act, and which—

(1) Involve the use of innovative methods, including methods for educating persons of limited English-speaking ability, systems, materials, or programs which may have national significance or may be of special value in promoting effective programs under the Act; or

(2) Involve programs of adult education, including education for persons of limited English-speaking ability, which are part of community school programs, carried out in cooperation with other Federal, federally assisted, State, or local programs which have unusual promise in promoting a comprehensive or coordinated approach to the problems of persons with educational deficiencies; and

(b) Training persons engaged, or preparing to engage, as personnel in programs designed to carry out the purposes of the Act.

(Sec. 310; 20 U.S.C. 1208)

§§ 426.34–426.39 [Reserved]

Subpart E—What Conditions Must Be Met by a State?

§ 426.40 What are the matching requirements of the program?

(a) The Federal share of expenditures made under the State plan may not exceed 90 percent of the cost of carrying out a State's program.

(b) No matching is required for American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(Sec. 307; 20 U.S.C. 1206)

§ 426.41 What are the maintenance of effort requirements of the program?

(a) To be eligible for Federal funds a State shall expend for adult education from non-Federal sources an amount equal to the fiscal effort of the State in the preceding fiscal year.

(b) A State may determine its fiscal effort on a per student expenditure basis or on a total expenditure basis.

(Sec. 307; 20 U.S.C. 1206)

§ 426.42 How is a maintenance of effort waiver granted?

(a) The Secretary may waive for one fiscal year only the maintenance of effort requirement in section 307(b) of the Act if the Secretary determines it would be equitable to do so in view of exceptional or uncontrollable circumstances affecting a State.

(b)(1) If an SEA wishes to receive a waiver from the maintenance of effort requirement in paragraph (a) of this section, the SEA shall submit a request for a waiver.

(2) An SEA shall include in the request for a waiver the reason for the request and any additional information the Secretary may require.

(Sec. 307; 20 U.S.C. 1206)

§ 426.43 What are exceptional or uncontrollable circumstances?

(a) The Secretary considers exceptional or uncontrollable circumstances under § 426.42 to include situations in which a State had no control of the events resulting in decreased expenditures but has made a reasonable effort in a timely fashion to comply with the maintenance of effort requirement of the Act.

(b) Exceptional or uncontrollable circumstances include, but are not limited to, the following situations:

(1) A sudden, substantial reduction in available revenue due to—

(i) A natural disaster;

(ii) The unforeseen removal of property from the tax roll by government action; or

(iii) The unforeseen departure of an industrial or commercial facility.

(2) An uncontrollable diversion of available revenue to other purposes outside the control of the State due to emergency circumstances such as those resulting from a disaster of human or natural causes.

(Sec. 307; 20 U.S.C. 1206)

§ 426.44 How is maintenance of effort computed in the event of a waiver?

A State shall determine fiscal effort for the year following the year for which a waiver granted based on the level of effort that existed prior to the waiver. For example, if in fiscal year (FY) 1986 a State receives a waiver for its failure in FY 1985 to maintain fiscal effort at the level established in FY 1984, the State shall compute its fiscal effort for FY 1986 on the basis of the fiscal effort for FY 1984.

(Sec. 307; 20 U.S.C. 1206)

§ 426.45 What are a State's responsibilities regarding State advisory councils and what are the functions of these councils?

(a) A State may use funds received under section 304 of the Act to support a State advisory council.

(b) The State shall determine the membership, method of appointment, manner of operation, and necessary support services of a State advisory council.

(c) The functions of a State advisory council are to assist the SEA to plan, implement, or evaluate programs or activities assisted under the Act.

(Sec. 311; 20 U.S.C. 1206b)

§§ 426.46–426.49 [Reserved]

3. Part 431 is proposed to be revised as follows:

PART 431—NATIONAL ADULT EDUCATION DISCRETIONARY PROGRAM

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make an Award?

Subpart E—What Condition Must Be Met by a Recipient?

Authority: Sec. 309 of the Adult Education Act, as amended by Pub. L. 98-511; 20 U.S.C. 1207a, unless otherwise noted.

Subpart A—General

§ 431.1 What is the National Adult Education Discretionary Program?

The National Adult Education Discretionary Program supports projects that contribute to the improvement and expansion of adult education.

(Sec. 309(a)(1); 20 U.S.C. 1207a(a)(1))

§ 431.2 Who is eligible to apply for an award under the National Adult Education Discretionary Program?

The following are eligible to apply for grants, contracts, or cooperative agreements under this program:

(a) Public and private institutions, agencies, and organizations;

(b) Individuals; and

(c) Business concerns.

(Sec. 309(a)(2); 20 U.S.C. 1207a(a)(2))

§ 431.3 What regulations apply to this program?

The following regulations apply to the National Adult Education Discretionary Program:

(a) The regulations in 34 CFR Part 425.

(b) The regulations in this part.

(20 U.S.C. 1201 *et seq.*)

§ 431.4 What definitions apply to this program?

The definitions in 34 CFR 425.3 apply to this program.

(20 U.S.C. 1201 *et seq.*)

§§ 431.5–431.9 [Reserved]

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 431.10 What types of projects may be funded?

(a) The Secretary directly or through grants, contracts, or cooperative agreements supports projects for the improvement and expansion of adult education. Funds may be used for—

(1) Applied research;

(2) Development;

(3) Demonstration;

(4) Dissemination;

(5) Evaluation; and

(6) Related activities.

(b) Projects may include, but are not limited to—

(1) Improving adult education opportunities for elderly individuals and adult immigrants;

(2) Evaluating educational technology and computer software suitable for providing instruction to adults; and

(3) Supporting exemplary cooperative adult education programs that combine the resources of business, schools, and community organizations.

(Sec. 309(a)(1); 20 U.S.C. 1207a(a)(1))

§ 431.11 How does the Secretary establish priorities for this program?

(a) The Secretary announces, through one or more notices published in the **Federal Register**, the priorities for this program, if any, from the topics described in § 431.10, and the manner in which those priorities will be implemented.

(b) The Secretary may establish a separate competition for one or more of the priorities selected. If a separate competition is established for one or more priorities, the Secretary may reserve all applications that relate to those priorities for review as part of the separate competition.

(20 U.S.C. 1201 *et seq.*)

§§ 431.12—431.19 [Reserved]

Subpart C—[Reserved]

§§ 431.20—431.29 [Reserved]

Subpart D—How Does the Secretary Make an Award?

§ 431.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application for a grant or cooperative agreement on the basis of the criteria in § 431.31.

(b) The Secretary may award up to 100 points, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 431.31.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion are indicated in parentheses after the heading for each criterion.

(d) For each competition, as announced through a notice published in the **Federal Register**, the Secretary may assign the reserved points among the criteria in § 431.31.

(20 U.S.C. 1201 *et seq.*)

§ 431.31 What selection criteria does the Secretary use?

The Secretary uses the following criteria in evaluating each application:

(a) *Plan of operation.* (20 points)

(1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective;

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(b) *Quality of key personnel.* (15 points)

(1) The Secretary reviews each application for information that shows

the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time each person referred to in paragraphs (b)(2)(i) and (ii) of this section will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepensented, such as—

(A) Member of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(c) *Budget and cost effectiveness.* (10 points)

(1) The Secretary reviews each application for information that shows that the project has an adequate budget and it cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Cost are reasonable in relation to the objectives of the project.

(d) *Evaluation plan.* (5 points)

(1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross Reference. See 34 CFR 75.590 (Evaluation by grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(e) *Adequacy of resources.* (5 points)

(1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies that the applicant plans to use are adequate.

(f) *National need.* (20 points)

(1) The Secretary reviews each application to determine how it addresses a national need in adult education.

(2) The Secretary looks for information that describes—

(i) The need in terms of the problem rather than the symptom of the problem;

(ii) Who or what will be helped by the project; and

(iii) How the project will improve and expend adult education; and

(iv) The extent to which the project involves creative or innovative techniques and concepts.

(g) *Dissemination plan.* (10 points)

(1) The Secretary reviews each application for information that shows the quality of the dissemination plan for the project.

(2) The Secretary looks for information that shows—

(i) The extent to which the project is designed to yield outcomes that can be readily disseminated;

(ii) A clear description of the project outcomes; and

(iii) A detailed description of how information and materials will be disseminated to educators.

(Sec. 309; 20 U.S.C. 1207a)

§ 431.32 How does the Secretary select an application for funding?

(a) After evaluating the applications according to the criteria contained in § 431.31, the Secretary may determine whether the most highly rated applications are broadly and equitably distributed throughout the Nation.

(b) The Secretary may select other applications for funding on the basis of geographic distribution if doing so would contribute to achieving the purposes of this discretionary program.

(c) The Secretary may decline to fund any project that is eligible for funding under a different competition or Department of Education program.

(Sec. 309, 20 U.S.C. 1207a)

§§ 431.33–431.39 [Reserved]

Subpart E—What Condition Must Be Met by a Recipient?

§ 431.40 What condition must be met under this program?

A recipient shall not charge participants for their participation in the projects assisted under this program.

(Sec. 309(a)(2); 20 U.S.C. 1207a(a)(2))

§§ 431.41–431.49 [Reserved]

4. Part 432 is proposed to be removed.

PART 432—ADULT EDUCATION PROGRAMS FOR IMMIGRANTS AND INDOCHINA REFUGEES [REMOVED]

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Thursday
February 28, 1985

Part VI

Office of Personnel Management

5 CFR Part 890
Federal Employees Health Benefits Program; Final Rules

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 890

Federal Employees Health Benefits Program

AGENCY: Office of Personnel Management.

ACTION: Final rules.

SUMMARY: The Office of Personnel Management will require the submission of comprehensive medical plan applications and supporting documents 2 months earlier than has previously been required. This change will enable OPM to make decisions on new applications and provide time for newly-admitted carriers to formulate decisions about their coverage offerings before the deadline for all plans to submit benefit and rate proposals.

EFFECTIVE DATE: February 28, 1985.

FOR FURTHER INFORMATION CONTACT: John Ray, (202) 632-9677.

SUPPLEMENTARY INFORMATION: On December 11, 1984, OPM published in the **Federal Register** (49 FR 48193) proposed regulations to change the deadline for new comprehensive medical plans to apply for initial participation in the Federal Employees Health Benefits (FEHB) Program. Each year, OPM accepts applications from comprehensive medical plans seeking to participate in the FEHB Program. Previously, for a plan to be offered during the next open season, an application had to be submitted by March 31, and all documentation to support approval had to be submitted by May 31. Once approved, no further application is required for participation in subsequent years. May 31 also is the deadline for plans already in the Program to submit benefit and rate proposals.

The application review process overlapped with benefit and rate negotiations. To afford OPM the opportunity to make decisions on new applications, and to provide time for newly-admitted carriers to formalize benefit and rate packages before the deadline for submitting benefit and rate proposals, we proposed to amend 5 CFR Part 890 and 41 CFR Part 16–4 to change the dates for submitting new applications and supporting documents to January 31 and March 31, respectively, of the year preceding the contract year.

Nine affected plans, one HMO management services firm representing two potential applicant plans, the Blue Cross and Blue Shield Association, the Kaiser Foundation Health Plan Inc., two Members of Congress, and one trade association for comprehensive plans, Group Health Association of America, sent written comments during the comment period. All the commenters believed that the March 31 deadline for submitting the applications should not be changed to January 31 for the 1985 review cycle. They believed the January 31 date would not give plans seeking participation in the Program enough time to prepare and submit their applications.

By letter dated December 12, 1984, OPM sent copies of the notice of proposed rulemaking published in the **Federal Register** on December 11, 1984, to each comprehensive medical plan which had expressed an interest in applying during the 1985 review cycle. OPM's cover letter notified the plans that should the regulations become effective, applications would be due two months earlier in 1985 than in previous years. We believe that this individual plan notification provided ample time to alert potential applicants of the new deadline date for submitting applications. However, to accommodate those plans which have expressed their difficulties in meeting the January 31 deadline date for the 1985 review cycle, we have provided an extension of that deadline *for 1985 only* to March 6. This one-month extension should provide sufficient time for interested plans to complete work on their applications and be considered for participation in the FEHB Program in 1986.

Pursuant to section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make these amendments effective in less than 30 days. The regulations are being made effective immediately so that the changes prescribed in the regulations can take effect with the 1985 application review cycle.

E.O. 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that, within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 5 CFR Part 890

Administrative practice and procedure, Government employees, Health insurance, Retirement.

U.S. Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, OPM is amending 5 CFR Part 890 as follows:

PART 890—FEDERAL EMPLOYEES HEALTH BENEFITS PROGRAM

1. The authority for Part 890 is revised to read as follows:

Authority: 5 U.S.C. 8913, unless otherwise noted.

2. In § 890.203, paragraph (a)(1) is revised to read as follows:

§ 890.203 Application for approval of, and proposal of amendments to, health benefits plans.

(a) (1) Comprehensive medical plans should apply for approval by writing to the Office of Personnel Management, Washington, D.C. 20415. Application letters must be accompanied by any descriptive material, financial data, or other documentation required by OPM. Plans must submit the letter and attachments in the OPM-specified format by January 31 of the year preceding the contract year. For contract year 1986 only, the letter application and attachments may be submitted as late as March 6, 1985. Plans must submit evidence demonstrating they meet all requirements for approval by March 31 of the year preceding the contract year. Plans that miss either deadline cannot be considered for participation in the next contract year. All newly approved plans must submit benefit and rate proposals to OPM by May 31 of the year preceding the contract year to be considered for participation in that contract year. OPM may make counterproposls at any time.

* * * * *

[FR Doc. 85–4725 Filed 2–27–85; 9:33 am]

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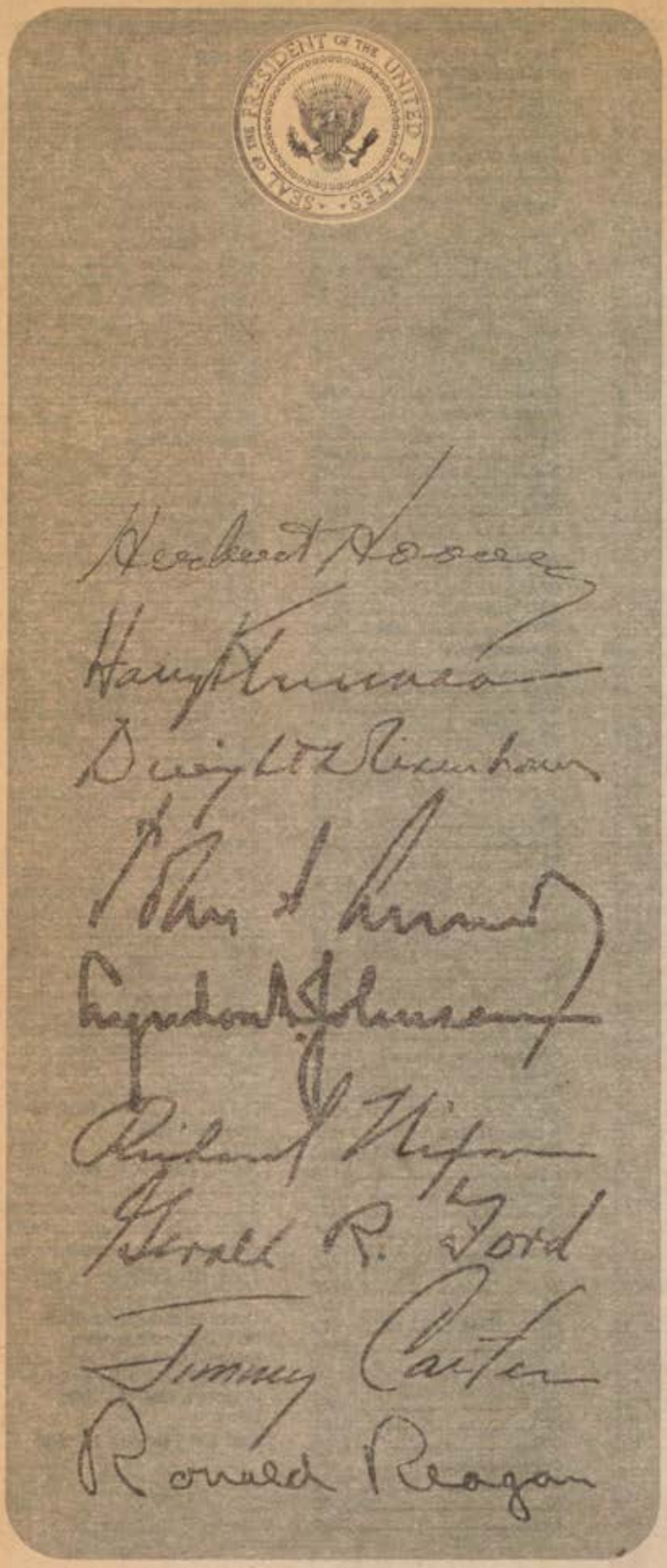

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