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Federal Register

Wednesday
November 20, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Philadelphia, PA, see announcement on the inside cover of this issue.

Selected Subjects

Administrative Practice and Procedure
Nuclear Regulatory Commission

Air Pollution Control
Environmental Protection Agency

Animal Drugs
Food and Drug Administration

Banks, Banking
Federal Reserve System

Cosmetics
Food and Drug Administration

Credit
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Electric Utilities
Rural Electrification Administration

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Federal Reserve System

Freedom Of Information
Army Department

Hazardous Waste
Environmental Protection Agency

Imports
Foreign Agricultural Service

Loan Program—Housing and Community Development
Housing and Urban Development Department

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Selected Subjects

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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Agricultural Marketing Service

Medical Devices
Food and Drug Administration

Old-age, Survivors and Disability Insurance
Social Security Administration

Pesticides and Pests
Environmental Protection Agency

Radio
Federal Communications Commission

Radio Broadcasting
Federal Communications Commission

Railroads
Interstate Commerce Commission

Superfund
Environmental Protection Agency

Surface Mining
Surface Mining Reclamation and Enforcement Office

Water Pollution Control
Environmental Protection Agency

Water Supply
Environmental Protection Agency

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

PHILADELPHIA, PA

WHEN: Dec. 17; at 1 pm.
Dec. 18; at 9 am. (identical session)

WHERE: Room 3306/10,
William J. Green, Jr., Federal Building,
600 Arch Street, Philadelphia, PA.

RESERVATIONS: Laura Lewis,
Philadelphia Federal Information Center,
215-597-1709

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Parts 6 and 1530

Licensing of Sugar Exempt From Quotas for Purpose of Production of Polyhydric Alcohol

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations governing the licensing of sugar that is imported for the purpose of the production of polyhydric alcohol. Those regulations now use the Number 12 contract price of the New York Coffee, Sugar and Cocoa Exchange in calculating the amount of the bond required of the license holder and in determining liquidated damages under the program. Since the New York Coffee, Sugar and Cocoa Exchange has discountinued its reporting of the Number 12 price, the Market Stabilization Price is being substituted for the Number 12 price. In addition, these regulations are transferred from Part 6 to a new part, Part 1530, to more accurately indicate that the Foreign Agricultural Service is the agency responsible for implementing the regulations.

DATES: *Effective Date:* November 19, 1985. In order to be assured of consideration, comments must be received no later than January 21, 1986.

ADDRESS: Send comments to: John Nuttall, Foreign Agricultural Service, Room 6093, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: John Nuttall (Chief, Sugar Group), 202–447–2916.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "not major" since the interim rule will not have any of the effects specified in those documents.

The Administrator, Foreign Agricultural Service (FAS), certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. There are not a substantial number of small entity participants in this program. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

An assessment of the impact on the environment of this interim rule has been completed. It has been determined that this action will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this interim rule. The environmental assessment is available for review in Room 6091, South Building, USDA, during normal business hours.

Imports of sugar are currently subject to quotas, determined in accordance with Presidential Proclamation No. 4941, which limit the amount of sugar which may be entered, or withdrawn from warehouse, for consumption into the customs territory of the United States. Presidential Proclamation No. 5002 of November 30, 1982, in part authorizes the Secretary of Agriculture to issue licenses for the entry of sugar exempt from these quotas for the purpose of production of polyhydric alcohol.

The regulations, "Licensing of Sugar Exempt From Quotas for Purpose of Production of Polyhydric Alcohol," 7 CFR Part 6 implement this provision of Presidentail Proclamation 5002. Those regulations establish procedures and requirements designed to assure that sugar imported under such a license must be solely for the production (other than by distillation) of polyhydric alcohol, except that it may not be used for the production of polyhydric alcohol for use as a substitute for sugar in human food consumption. Those regulations are transferred from 7 CFR Part 6 to a new part, 7 CFR Part 1530, and renumbered accordingly. Since the licensing program under the regulations is administered by the Foreign Agricultural Service, it would be more appropriate and clearer to interested persons to have the regulations within chapter XV, Foreign Agricultural Service, than part 6, Office of the Secretary. The new section numbers for each of the existing sections are provided in the table below:

Old section	New section
6.120	1530.300
6.121	1530.301
6.122	1530.302
6.123	1530.303
6.124	1530.304
6.125	1530.305
6.126	1530.306
6.127	1530.307
6.128	1530.308
6.129	1530.309
6.130	1530.310

In addition, the transferred regulations are amended in this interim rule to facilitate the administration of those regulations. Section 6.126 (now 1530.306) of those regulations provides for the posting of a bond by license holders. Section 6.129 (now 1530.306) provides for assessing liquidated damages against license holders failing to use the sugar as required. As currently written, the amount of the bond and the amount of the liquidated damages are based in part on the Number 12 daily "spot" price for sugar reported by the New York Coffee, Sugar and Cocoa Exchange. That Exchange no longer reports a Number 12 price. Accordingly, this interim rule amends § 6.126(b), redesignated as 1530.306(b), and § 6.129(a), redesignated as 1530.309(a), by substituting the term Market Stabilization Price wherever the term Number 12 appears. The language in § 6.129(a), as redesignated, is also rewritten slightly to more clearly express the intent of that section. The Market Stabilization Price to be used under this interim rule is defined in the interim rule published by the Department of Agriculture on September 5, 1985 and is entitled, "Calculation of the Market Stabilization Price," 7 CFR 6.300–6.302 (50 FR 36040).

Since these amendments to the regulations are needed immediately to calculate the amount of the bond required for entry of sugar under license and liquidated damages under this program, and since the amendments deal with agency procedure or practice, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring

notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable. However, any comments will be received for a period of 60 days after the date of publication of this rule.

List of Subjects

7 CFR Part 6

Imports.

7 CFR Part 1530.

Documentation, Foreign Trade, Imports, Licenses, Quotas, Sugar.

Accordingly, 7 CFR Part 6 and 7 CFR Chapter XV are amended as follows:

1. Chapter XV of 7 CFR is amended by adding a new Part 1530. The part heading and subpart headings are as follows:

PART 1530—SUGAR IMPORT LICENSING

Subparts A-B—[Reserved]

Subpart C—Sugar for Production of Polyhydric Alcohol

2. The table of contents and authority citation for §§ 6.120 through 6.130 are transferred to Subpart C of Part 1530. The section numbers §§ 6.120 through 6.130 in the table of contents are redesignated as §§ 1530.300 through 1530.310, respectively.

§§ 6.120–6.130 [Redesignated as § 1530.300—1530.310]

3. Sections 6.120 through 6.130 are transferred to Subpart C of Part 1530 and redesignated as §§ 1530.300 through 1530.310, respectively. All section numbers and internal references appearing in the newly redesignated Subpart C are revised as appropriate.

4. In newly redesignated § 1530.306, paragraph (b) is revised to read as follows:

§ 1530.306 Bond requirements.

* * * * *

(b) The amount of the bond shall be equal to 1.5 times the difference between the Market Stabilization Price per pound of raw sugar and the daily "spot" price per pound of raw sugar of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange, multiplied by the weight of the sugar entered under the license. The Number 11 contract price and the Market Stabilization Price shall be computed as of the last market day before the entry of the sugar. If the New York Coffee, Sugar and Cocoa Exchange does not report a Number 11 contract price for the last market day before the entry of the sugar, or if there is no Market Stabilization Price in effect, then the Licensing Authority may use such price as he or she deems appropriate.

* * * * *

5. In newly redesignated § 1530.309, paragraph (a) is revised to read as follows:

§ 1530.309 Enforcement.

(a) If at any time after receiving the Certificate of Use described in § 1530.308 of this subpart, the Licensing Authority determines that a quantity of sugar corresponding to the amount of sugar entered under the license was not used for the production (other than by distillation) of polyhydric alcohols, except polyhydric alcohols used for human food consumption, and if the bond has been released under § 1530.306 of this subpart, the Licensing Authority may hold the license holder liable for up to 1.5 times the difference between the Number 11 daily "spot" price and the Market Stabilization Price per pound of raw sugar, as those prices are described in § 1530.306(b) of this program (or such other price determined by the Licensing Authority in the event no Number 11 price is reported or no Market Stabilization Price is effective) in effect on the last market day before entry of the sugar or the last market day prior to the expiration of the 180-day period during which the sugar was to be but was not used in the production of polyhydric alcohols, whichever difference is greater, times the amount of sugar, raw value, that should have been, but was not, used for the production (other than by distillation) of polyhydric alcohol, except polyhydric alcohols used for human consumption.

* * * * *

6. In 7 CFR Part 6, the undesignated center heading "Sugar for Production of Polyhydric Alcohol" for §§ 6.120–6.130 is removed.

Signed at Washington, D.C. on October 31, 1985.

Leo V. Mayer,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 85-27404 Filed 11-19-85; 8:45 am]

BILLING CODE 3410-10-M

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7 CFR Parts 6 and 1530

Licenses for Importation/Transfer of Sugar To Be Re-Exported in Sugar-Containing Products

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the regulations governing the licensing of sugar that is imported for use in sugar-containing products that are subsequently re-exported. The Number 12 contract daily "spot" price reported by the New York Coffee, Sugar and Cocoa Exchange which was used in part in calculating the amount of the bond required of the license holder and in determining liability for failure to export sugar entered under the program will no longer be used because the New York Coffee, Sugar and Cocoa Exchange has discontinued its reporting of the Number 12 price. In addition, the amended regulations are transferred from Part 6 to a new part, Part 1530, to more accurately indicate that the Foreign Agricultural Service is the agency responsible for implementing the regulations.

DATES: Effective Date: November 20, 1985. In order to be assured of consideration, comments must be received no later than January 21, 1986.

ADDRESS: Send comments to: John Nuttall, Foreign Agricultural Service, Room 6603 South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John Nuttall, (Chief, Sugar Group), 202-447-2916.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under USDA procedures required by Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" since the interim rule will not have any of the effects specified in those documents.

The Administrator, Foreign Agricultural Service (FAS), certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The method used to calculate the bond requirements and to determine liability for failure to export sugar entered under the program has not been altered significantly. Consequently, no regulatory flexibility analysis is required under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

An assessment of the impact on the environment of this interim rule has been completed. It has been determined that this action will have no foreseeable significant effects on the quality of the human environment. Consequently, no environmental impact statement is necessary for this interim rule. An enviornmental assessment is available for review in Room 6091, South Building, USDA, during normal business hours.

Imports of sugar are currently subject to quotas, determined in accordance with Presidential Proclamation No. 4941.

which limit the amount of sugar which may be entered, or withdrawn from warehouse, for consumption into the customs territory of the United States. Presidential Proclamation No. 5002 of November 30, 1982, in part authorizes the Secretary of Agriculture to issue licenses for the entry of sugar exempt from these quotas for the re-export of sugar-containing products.

On January 25, 1984, the Department of Agriculture published regulations governing "Licenses for Importation/Transfer of Sugar to be Re-Exported in Sugar-Containing Products" 7 CFR Part 6 (49 FR 3051), which implements this provision of Presidential Proclamation No. 5002. Those regulations establish procedures and requirements designed to assure that sugar imported under such a license must be exported in sugar-containing products.

This interim rule transfers those regulations from 7 CFR Part 6 to 7 CFR Part 1530 and renumbers them accordingly. Since the licensing program under the regulations is administered by the Foreign Agricultural Service, it would be more appropriate and clearer to interested persons to have these regulations within chaper XV, Foreign Agricultural Service, than part 6, Office of the Secretary. The new section numbers for each of the existing sections are provided in the table below.

Old section	New section
6.200	1530.200
6.201	1530.201
6.202	1530.202
6.203	1530.203
6.204	1530.204
6.205	1530.205
6.206	1530.206
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6.209	1530.209
6.210	1530.210
6.211	1530.211
6.212	1530.212
6.213	1530.213
6.214	1530.214

Section 6.207 (now § 1530.207) of those regulations provides for the posting of a bond by license holders. Section 6.211 (now § 1530.211) provides for assessing liquidated damages against license holders failing to re-export the sugar in sugar-containing products as required. As currently written, the amount of the liquidated damages are based in part on the Market Stabilization Price established pursuant to presidential proclamation or on the Number 12 contract daily "spot" price reported by the New York Coffee, Sugar and Cocoa Exchange.

Presidential Proclamation No. 5313 of March 29, 1985, suspended the Market Stabilization Price provisions of the applicable presidential proclamation, and the New York Coffee, Sugar and Cocoa Exchange is no longer reporting a daily Number 12 contract price. Accordingly, this interim rule amends §6.207, redesignated as § 1530.207, and § 6.211, redesignated as § 1530.211, by amending the reference to the Market Stabilization Price and deleting references to the Number 12 price wherever they appear. The language in § 1530.211(a) is also rewritten slightly to more clearly express the intent of that section. The Market Stabilization Price to be used under this interim rule is defined in 7 CFR 6.300 (50 FR 36040).

Since these amendments to the regulations are needed immediately to calculate the amount of the bond required for entry or transfer of sugar under license and liquidated damages under this program, and since the amendments deal with agency practice or procedure, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable. However, any comments will be received for a period of 60 days after the date of publication of this rule.

The transfer of the regulations from 7 CFR Part 6 to 7 CFR Part 1530, as more fully described herein, relates to management and to agency organization and procedures. Therefore, pursuant to 5 U.S.C. § 553(a)(2), no notice or public comment is required for the transfer of the regulation.

List of Subjects

7 CFR Part 6

Imports.

7 CFR Part 1530

Documentation, Foreign Trade, Exports, Imports, Licenses, Quotas, Sugar.

Accordingly, 7 CFR Parts 6 and 1530 are amended as follows:

1. Part 1530 of 7 CFR is amended by adding a new Subpart B—Sugar to be Re-Exported in Sugar Containing Products consisting of §§ 1530.200–1530.214.

2. The table of contents and authority citation for §§ 6.200 through 6.214 are transferred to Subpart B of Part 1530. The section numbers § 6.200 through § 6.214 in the table of contents are redesignated as § 1530.200 through § 1530.214, respectively.

§§ 6.200–6.214 [Redesignated as 1530.200–1530.214]

3. Sections 6.200 through 6.214 are transferred to Subpart B of Part 1530 and redesignated as §§ 1530.200 through 1530.214, respectively. All section numbers and internal references appearing in the newly redesignated Subpart B are revised as appropriate.

4. In § 1530.207, paragraph (e) is revised to read as follows:

§ 1530.207 Bond requirements.

* * * * *

(e) The amount of the bond shall be equal to 1.5 times the difference between the Market Stabilization Price in effect for the appropriate period as announced by the Secretary under §§ 6.300–6.302 of this title and the daily "spot" price per pound of raw sugar of the Number 11 contract of the New York Coffee, Sugar and Cocoa Exchange, multiplied by the weight of the sugar, raw value, imported or transferred under the license. In the case of a single entry bond, the Number 11 contract price and the Market Stabilization Price shall be computed as of the last market day before the execution of the bond. However, the Licensing Authority may adjust the amount on a single entry bond on a semi-annual basis, using the Number 11 contract price and the Market Stabilization Price as of the last market day before the end of the six month period, if the Licensing Authority determines it necessary or appropriate for the purposes of this program. In the case of a term bond, the difference between the Number 11 contract price and the Market Stabilization Price shall be computed quarterly based on the average price difference during the 20 consecutive market days preceding the 20th day of the month preceding the calendar quarter for which the bond is to be effective. If the New York Coffee, Sugar and Cocoa Exchange does not report a Number 11 contract price for the last market day before the entry of the sugar, or if there is no Market Stabilization Price in effect, then the Licensing Authority may use such price as he or she deems appropriate.

* * * * *

5. In § 1530.211, paragraph (a) is revised to read as follows:

§ 1530.211 Enforcement.

(a) If at any time after receiving the proof of export described in § 1530.206 of this subpart, the Licensing Authority determines that export of sugar in the form of sugar-containing products corresponsing to the amount of sugar entered/transferred under the license did not occur, and has not been otherwise disposed of or lost in the manufacturing process as valueless sugar, and if the bond has been released under § 1530.207, the Licensing Authority may hold the license holder

liable for up to 1.5 times the difference between the Number 11 daily "spot" price and the Market Stabilization Price per pound of raw sugar, as these prices are described in § 1530.207(e) of this program, in effect on the last market day before entry/transfer of the sugar or the last market day before the end of the period during which export was required, whichever difference is greater, times the amount of sugar, raw value, that should have been, but was not, exported in sugar-containing products. In the event no Number 11 price is reported by the New York Coffee, Sugar and Cocoa Exchange, or no Market Stabilization Price is effective for the relevant market day, then the Licensing Authority may use such price as he/she deems appropriate.

* * * * *

6. In 7 CFR Part 6, the undesignated center heading "Sugar to be Re-exported in Sugar-Containing Products" for §§ 6.200–6.214 is removed.

Signed at Washington, D.C. on October 31, 1985.

Leo V. Mayer,

Acting Administrator, Foreign Agricultural Service.

[FR Doc. 85–27405 Filed 11–19–85; 8:45 am]

BILLING CODE 3410-10-M

Agricultural Marketing Service

7 CFR Part 27

Revised Requirements for Delayed Certification

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

SUMMARY: This rulemaking amends the regulation for delayed delivery of cotton on cotton futures contracts. The amendment simplifies the procedure and facilitates the more orderly and efficient delivery of cotton for delayed delivery on futures contracts.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Loyd R. Frazier, Chief, Marketing Services Branch, Cotton Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–2147.

SUPPLEMENTARY INFORMATION: This rule has been reviewed in accordance with Executive Order 12291 and has been determined not to be a "major rule" since it does not meet the criteria for a major regulatory action as stated in the Order. William T. Manley, Deputy Administrator, AMS has certified that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the changes made to the present regulations will merely simplify the procedure for delayed delivery on cotton futures contracts and will result in reduced paperwork for all size entities. No new costs or additional requirements are being imposed on the affected industry or others.

Background

The U.S. Cotton Futures Act (90 Stat. 1841–46; 7 U.S.C. 15b; the "Act") requires that cotton delivered under futures contracts shall be in accordance with the classification as assigned pursuant to regulations of the Secretary of Agriculture (7 CFR Part 27) by such officer of officers of the Government designated for such purpose.

Under the Act, all cotton delivered under a futures contract is required to have, on the date fixed for delivery, VSDA classification certificates covering the cotton involved in the transaction. The certificates are issued by the Cotton Division of AMS and show the results of the classification of the cotton as to grade, length of staple, and micronaire determination (7 CFR 27.39).

There is a procedure allowing for delayed certification when cotton classification certificates have not been issued by delivery day (7 CFR 27.52–27.56). In such instances, the regulations require that the tenderer give notice of delayed certification to the receiver of the cotton as well as the Marketing Services Office, Cotton Division, have the cotton duly inspected and sampled by an exchange inspection agency and have the samples delivered to the Cotton Division not later than the date of issuance of the transferable notice of delivery of cotton subject to a cotton futures contract. These requirements do not change under this amendment.

Amendment

The regulation amended (7 CFR 27.55) required that, lieu of cotton class certificates on delivery day, the tenderer had to present to the Area Director, Cotton Division a written notice identifying each bale and stating its grade to the best of the tenderer's knowledge and belief. This written notice was otherwise known as the "deliverer's class". This notice was then validated by a Cotton Division representative indicating that written notice of delayed delivery was made and that the samples were received by the Marketing Services Office prior to the date of giving the transferable notice of delivery to the receiver of the cotton. The tenderer had to deliver the written notice to the receiver of the cotton along with the warehouse receipt for each bale. Prior to issuing cotton class certificates, the warehouse receipts had to be returned to the Marketing Services Office for appropriate processing and then, in turn, had to be returned to the receiver.

The Cotton Division, in consultation with the New York Cotton Exchange, has determined that this procedure can be simplified by eliminating the written notice by the Area Director, Cotton Division. Instead, the tenderer will present to the receiver a receipt issued by an exchange inspection agency which inspects and samples cotton that is pending certification. This receipt certifies that the warehouse receipts have been received by the exchange inspection agency, that they represent cotton weighed and sampled in an approved warehouse, and that the warehouse receipts are in custody of the Cotton Division. It is the exchange inspection agency's receipt that is to be delivered to the receiver of the cotton on delivery day in lieu of cotton class certificate and the warehouse receipts. The new procedure eliminates the need for a deliverer's class and the need for a repetitive procedure. It also eliminates the requirement of the receiver having to return warehouse receipts to the Cotton Division for certification when the classing is completed as they will remain in USDA custody.

To make this change, the Department completely revised § 27.55 of the cotton futures regulations. In addition, § 27.56, which describes certain obligations of the person making the tender in regard to timely delivery of class certificates to the receiver after issuance, was removed since the requirements provided therein were revised and incorporated into the proposed § 27.55. References to delivery of cotton class certificates by a specified hour has been deleted in favor of language which requires that the tenderer furnish the cotton class certificates upon issuance by the Marketing Services Office.

Changes in §§ 27.47 and 27.52 of the regulations delete references to § 27.56 which has been removed.

The proposed rule was published in the September 13, 1985, issue of the **Federal Register** (50 FR 37378). The only comment received was from the Commodity Futures Trading Commission (CFTC). The CFTC said they were concerned about the effective date of the proposed change in regulations regarding delayed delivery.

They said that if the rule was made effective in November 1985 that it would affect outstanding cotton futures contracts for December 1985 delivery and this might put a hardship on those involved in these outstanding contracts. The CFTC suggested that making the effective date on or about January 1, 1986, where it would apply to March 1986, contracts and subsequent contracts. March 1986 is the next trading month for cotton futures on the New York Cotton Exchange. This action would alleviate any problem with respect to outstanding contracts. The Cotton Division agrees with this comment and has made the effective date, of this final rule, January 1, 1986.

List of subjects in 7 CFR Part 27

Classification, Cotton, Micronaire, Samples, Spot markets. Accordingly, regulations of 7 CFR Part 27 governing cotton classification under cotton futures legislation are amended as shown. The Table of Contents is amended accordingly.

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

2. In §§ 27.47 and 27.52, all references to "27.56" are removed and replaced with "27.55".

3. Section 27.55 is amended by revising it to read as follows:

§ 27.55 Requirements in lieu of cotton class certificates on delivery day.

If on the morning of the delivery day specified in the transferable notice the cotton class certificates covering the cotton involved are not ready for delivery when called for, the tenderer of the cotton shall present to the receiver a receipt issued by an exchange inspection agency certifying that warehouse receipts, listed by lot numbers, representing cotton weighed and sampled in an approved warehouse under the supervision of such agency, have been received by the exchange inspection agency and are in the custody of the Cotton Division Marketing Services Office where certification requests are required to be filed. The requirements of §§ 27.52–27.55 shall be complied with prior to delivery by the tenderer of the agency's receipt to the receiver. Upon issuance by Marketing Services Office, the tenderer shall furnish to the receiver the cotton class certificates complying with the regulations in this subpart, showing the cotton to be tenderable on a basis grade contract.

§ 27.56 [Removed]

4. Section 27.56 is removed.

Dated: November 14, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–27638 Filed 11–19–85; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 981

Handling of Almonds Grown in California; Changes in Administrative Rules and Regulations Governing Quality Control and Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the quality control and reporting provisions in the administrative rules and regulations established under the Federal marketing order for California almonds. The changes will: (1) Require handlers to notify the Board 72 hours prior to making deliveries of inedible kernels to accepted users and allow the Almond Board of California to supervise, at its option, the delivery of such almonds; and (2) require handlers of California almonds to report to the Board persons or firms for whom they custom process almonds. The changes are intended to improve compliance with almond order requirements. The Board works with USDA in administering the marketing order.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250 (202) 447–5053.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA guidelines implementing Executive Order 12291 and Secretary's Memorandum No. 1512–1 and has been classified a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

Marketing orders and rules proposed thereunder are unique in that they are brought about through group action of essentially small entities for their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that approximately 50 handlers of almonds will be subject to regulation under the Marketing Order for Almonds Grown in California during the course of the current season and the great majority of this group may be classified as small entities. While regulations issued during the season impose some costs on affected handlers and the number of such firms may be substantial, the added burden imposed on small entities, by this amendment, is not significant.

It is found that good cause exists for not postponing the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that: (1) The changes are intended to assure compliance with marketing order requirements by providing the Almond Board of California greater flexibility in controlling the disposition of low-quality almonds and in tracking potential almond handlers; (2) the Board should have the opportunity to utilize these changes as soon as possible since the changes will benefit the entire industry by helping to assure that consumers receive only high-quality almonds; and (3) no useful purpose would be served by delaying the effective date.

Notice of this action was published in the **Federal Register** on September 30, 1985, (50 FR 39706). Comments were invited from interested persons until October 15, 1985. One comment from a handler was received.

This action amends §§ 981.442(a)(5) and 981.474 of Subpart—Administrative Rules and Regulations (7 CFR 981.401–981.474; 50 FR 16451, 24174, and 30263). Section 981.442 is issued under § 981.42 of the marketing agreement and Order No. 981 (7 CFR Part 981), both as amended, regulating the handling of almonds grown in California and hereinafter referred to collectively as the "order." Section 981.474 is issued under the authority of § 981.74 of the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposal is based on two unanimous recommendations of the Almond Board of California, hereinafter referred to as the "Board," which works with USDA in administering the order.

In an effort to keep only high quality almonds in the marketplace, § 981.42 of the order and § 981.442(a)(4) of the administrative rules and regulations currently require handlers to have the inspection agency determine the weight of inedible kernels in each variety of almonds they receive. Sections

8981.42(a) and 981.442(a)(5) provide that the weight of inedible kernels in a lot shall constitute a disposition obligation which handlers must meet by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Accepted users must sign a contract with the Board providing that the Board may enter their premises at any reasonable time to observe the storage or physical disposition of almond material.

To assure that these low-quality almonds are kept out of normal markets for almonds, the changes in § 981.442(a)(5) will require handlers to notify the Board at least 72 hours prior to delivering such material to accepted users and allow the Board to supervise, at its option, the delivery of that material. The changes will give the Board greater flexibility in controlling the disposition of inedible almonds and monitoring compliance with marketing order regulations controlling such dispositions.

The commenter stated that he does not always know 72 hours in advance when a truck will be available to pick up his almonds, and that, therefore, the proposed change would impose an economic hardship because he could not always take advantage of available truckage. In consideration of this objection, a proviso is added giving the Board or its employees the authority to lessen the notification time whenever it determines that the 72 hour requirement would impose a hardship on handlers. In addition, the commenter suggested that if shipment inspection is necessary, it would make more sense to require accepted users to notify the Board 72 hours before or after receiving or picking up inedible product from handlers. The Board and the Department considered this option but determined that more efficient control was possible when notification took place before the product left the handler's premises. Hence, this suggestion is not adopted.

Section 981.74 provides that the Board, with the approval of the Secretary of Agriculture, may request handlers to furnish such information as will enable the Board to perform its duties and exercise its powers. Section 981.474 of the administrative rules and regulations specifies what information handlers must submit pursuant to § 981.74. Section 981.474 currently requires handlers to submit periodic reports of their shipments, commitments, and export sales.

A new paragraph (c) is added to § 981.474 requiring handlers to report to the Board information regarding persons or firms for whom they have custom processed almonds. The new paragraph will require handlers to submit to the Board by the 15th of each month a report of all persons or firms, including growers, for whom the handler has custom processed almonds which have not been reported in the handler's report of almonds received (ABC Form 1). The report would list the name, address, number of pounds processed, net weight returned to the owner, the date(s) on which the processing was accomplished, and the date(s) on which the almonds were returned to the owner. The change will give the Board the means of tracking potential almond handlers and of assuring compliance with marketing order regulations. The Board believes that many growers are acting as handlers, often having their almonds custom processed, but not complying with program requirements. The title of § 981.474 has been changed to reflect the addition of paragraph (c), and some minor working changes have been made in paragraphs (a) and (b).

On this issue the commenter stated that he occasionally custom processes small quantities of almonds for growers for their own personal use, and that reporting these small orders constitutes an unnecessary paperwork burden. This objection has merit in that the Board is only interested in potential almond handlers, and a grower who only has almonds custom processed for his/her personal use would not be a handler as defined in § 981.13 of the order. Likewise, a grower who has almonds custom processed and then sells these almonds only at a roadside stand operated by him under the terms of §§ 981.13 and 981.413 of the order would not be a handler. Therefore, an additional sentence is added to the rule change authorizing the Board to exempt reporting on small quantities of custom processed almonds if it determines that such exemption will not interfere with compliance. We do not anticipate that the exemption would exceed 500 pounds per owner per crop year. An amendment to the order would be necessary to control custom processing by firms who are not handlers.

After consideration of all relevant matter presented, including the Board's recommendation, the comment received, and other available information, it is further found that the changes hereinafter set forth will tend to effectuate the declared policy of the act.

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)) and have been approved by OMB under OMB Control No. 0581-0071.

List of Subjects in 7 CFR Part 981

Marketing agreements and orders, Almonds, California.

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

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

Subpart—Administrative Rules and Regulations

2. Section 981.442(a)(5) is revised to read as follows:

§ 981.442 Quality control.

(a) * * *

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided,* That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under the supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The almond meat content of each delivery shall be determined by the inspection agency and reported by the inspection agency to the Board and the handler and credited to the handler's disposition obligation on ABC Form 8. Deliveries containing less than 10 percent almond meat content shall not be credited against the disposition obligation. Each

handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31, succeeding the crop year in which the obligation was incurred.

* * * * *

3. In § 981.474, the heading and paragraphs (a) and (b) are revised and paragraph (c) is added. As amended § 981.474 is revised to read as follows:

§ 981.474 Other reports.

(a) *Report of shipments and commitments.* Each handler shall report on ABC Form 25 the following: (1) All shipments of almonds, inshell and shelled and by classification (domestic, and export by countries of destination); and (2) all commitments (almonds not shipped, but sold or otherwise obligated) whether domestic contract, export contract, or non-contract. If the destination of any export is unknown to the handler, he shall have the broker/exporter furnish this information to the Board. In support of this report, the handler shall keep invoices on the shipments, or such other documentation as may be acceptable to the Board. The reports shall be filed with the Board within five business days after the close of each month of the crop year.

(b) *Report of export sales.* At the time of each export sale, each handler shall report it to the Board on ABC Form 18 and upon delivery into export shall report this on ABC Form 19. If any export is not made directly by the handler, he shall send the ABC Form 19 to the broker/exporter and request him to make the report to the Board. These forms shall include the number and type of container, net weight, variety and whether inshell or shelled, time of export and destination. In years of minimum export prices applicable to reserve almonds, ABC Form 19 shall include the grade and size, the inspection certificate number, the price, and any terms defining the price. Whenever export shipments are included with domestic shipments in the estimated trade demand for a crop year, this paragraph shall not apply.

(c) *Custom processing report.* Handlers shall submit to the Board, by the 15th of each month, a report of all persons or firms, including growers, for whom they have custom processed almonds which have not been reported in the handler's report of almonds received, ABC Form 1. The report shall list the name, address, number of pounds processed and returned to owner, date(s) on which the processing was accomplished, and the date(s) on which almonds were returned to the owner. The Board may exempt reporting on small quantities of custom processed almonds if it determines that the exemption is consistent with other order requirements and will not interfere with its compliance activities.

Dated: November 12, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 85-27493 Filed 11-19-85; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) hereby amends 7 CFR Part 1736 by adding §§ 1736.10–1736.70. The final rule sets forth the rules and procedures to be followed by REA and manufacturers when REA acceptance is being sought for material and equipment items for general use by REA borrowers. Currently, this material is set forth in REA Bulletin 44–7, "Acceptance of Standards, Specifications, Drawings, Materials and Equipment, and Timber Inspection Programs and Agencies." The purpose of this final rulemaking action is to codify the regulations and to coordinate with § 1736.97 of this Part in providing for the cessation of listing of timber treating companies and timber inspection agencies. REA Bulletin 44–7 is hereby rescinded by this action.

EFFECTIVE DATE: November 20, 1985.

FURTHER INFORMATION CONTACT: Mr. Edmond W. Overstreet, Chief, Distribution Branch, Engineering Standards Division, Rural Electrification Administration, Room 1270–S, Washington, DC 20250–1500, telephone (202) 382–9088. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Mr. Overstreet at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) hereby amends 7 CFR Part 1736, Electric Standards and Specifications, by adding sections which will provide rules and procedures to be followed for REA acceptance of standards and specifications and for material and equipment items for use on REA borrowers' electric systems. These rules were previously contained in REA Bulletin 44–7, "Acceptance of Standards, Specifications, Drawings, Materials and Equipment, and Timber Inspection Programs and Agencies." This action includes several minor changes and clarifications. This final action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or (3) result in significant adverse effects on competition, employment, investment or productivity and, therefore, has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB) under docket Number 0572–0077.

Final rule, supporting documentation and comments received by REA concerning the proposed rule shall be available for public inspection at the above location from 8:15 a.m. to 4:45 p.m., Monday through Friday, excluding holidays.

Background

The Rural Electrification Administration (REA) maintains regulations pertaining to design and construction of electric power systems for REA electric borrowers. REA is codifying these regulations, which are presently contained in REA bulletins listed in Appendix A of 7 CFR Part 1701. The regulations for system design and construction will be contained in 7 CFR Chapter XVII. Part 1736, Electric Standards and Specifications, will contain rules and procedures to be followed by REA, its borrowers and manufacturers, for REA acceptance of material and equipment items for general use by REA borrowers.

REA uses existing voluntary standards wherever they are practical for use on rural electric systems; however, where there are no standards, or where the existing standards are not

appropriate for REA's unique requirements, REA develops standards and specifications of its own. Part 1736 will contain the REA standards and specifications. Section 1736.97 lists standards and specifications which have been incorporated by reference. Part 1736 will also contain sections which will set out the text of specifications for certain other items of material and equipment. These complete specifications will be published at a later date. Construction standards and material and equipment specifications ensure uniform quality and performance of system components and limit the total cost of construction and operation of the resulting electric power system.

REA hereby revises these rules in coordination with a separate revision of the timber program specifications by eliminating the REA listing of timber treating plants and independent inspection agencies. Although REA will no longer list timber plants and inspection agencies, REA borrowers will be required to select timber products in compliance with REA timber specifications. A proposed rule, 7 CFR Part 1736, covering the timber specifications appeared on page 2115, Vol 49, No. 12, of the **Federal Register** (January 18, 1984).

This final rule will also establish a one-year limit on the technical acceptance of nondomestic materials and equipment (nondomestic items are items which do not qualify as domestic products pursuant to REA "Buy American" requirement.

The following options were considered before this action was taken: (a) Codify rules in CFR leaving rules unchanged, (b) revise the rules as outlined above, (c) leave bulletins unchanged.

A Notice of Proposed Rulemaking was published in the **Federal Register** March 9, 1984, Vol. 49, No. 48, pages 8933–8937. Interested parties were given (60) days in which to express their comments on the proposed rule. However, comments received after sixty (60) days were also considered.

The following comments were received and resolved.

Comment: It was suggested that the proposed rule should be redrafted in terms of recommendations set forth by the National Bureau of Standards (**Federal Register**, Vol. 49, No. 32, February 15, 1984, page 5792). This would have required independent third party certification of test results before items could be listed in Bulletin 43–5, List of Materials Acceptable for Use on Systems of REA Electrification Borrowers (List of Materials).

Response: It was decided that requiring third party certification would be an unnecessary burden on manufacturers. REA accepts self-certified test data as well as certifications from independent laboratories. This allows flexibility to manufacturers that have data available from their own testing programs. We know of no reason to change this, and we have no basis for ceasing to accept self-certified manufacturer test data.

Comment: It was suggested that REA electric borrowers should have more flexibility to use unlisted items.

Response: REA recognizes that in certain special cases it may be necessary to use items which are not listed in the List of Materials. Section 1736.70(c) provides that borrowers may request case-by-case approval of unlisted items of material and equipment. If the borrowers were given the choice to use unlisted items without regard to the need, it would eliminate the major advantages of standardization, and could reduce the quality of construction on systems of REA borrowers.

Comment: It was suggested that REA should allow more than one item of a particular type of material or equipment to be listed by each manufacturer. (Multiple listings are not presently permitted.)

Response: If multiple listings were allowed, the List of Materials would become a catalog of all manufactured material with little regard for the unique needs of rural electric systems. It would be more expensive to REA borrowers, material distributors and material manufacturers, since they would have to keep larger inventories with many duplicate items due to the lack of standardization. The cost of maintaining the List of Materials would also increase and would be reflected in the cost of the List of Materials to users.

REA has received other comments regarding the changes in the timber specification and these comments are covered in the final impact statement and final rule that will be published separately in the **Federal Register** for the timber specification.

In view of the above, 7 CFR Part 1736, Electric Standards and Specifications, is hereby amended as follows:

1. The authority citation for 7 CFR Part 1736 continues to read:

Authority: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*

2. The table of contents is amended by adding the following entries:

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

Sec.
1736.10 General purpose and scope.
1736.20 Establishment of standards and specifications.
1736.30 Inclusion of an item for listing or technical acceptance.
1736.40 Procedure for submission of a proposal.
1736.50 Removal of an item from listing or technical acceptance.
1736.60 List of materials and equipment.
1736.70 Procurement of materials.

3. Sections 1736.10 through 1736.70 are added to read as follows:

§ 1736.10 General purpose and scope.

(a) The requirements of this part are based on contractural provisions between REA and the organizations which receive financial assistance from REA.

(b) REA will establish certain specifications and standards for materials, equipment, and construction units that will be acceptable for REA financial assistance for the electric program. Materials and equipment purchased by the electric borrowers or accepted as contractor-furnished material must conform to REA standards and specifications where they have been established and, if included in REA Bulletin 43–5, "List of Materials Acceptable for Use on Systems of REA Electrification Borrowers" (List of Materials), must be selected from that list or must have received technical acceptance from REA. REA, through its Technical Standards Committees, will evaluate certain materials, equipment and construction units, and will determine acceptance.

§ 1736.20 Establishment of standards and specifications.

(a) *National and Other Standards.* REA will utilize standards of national standardizing groups, such as the American National Standards Institute (ANSI), American Wood Preservers' Association (AWPA), the various national engineering societies and the National Electric Safety Code (NESC), to the greatest extent practical. When there are no national standards or when REA determines that the existing national standards are not adequate for rural electric systems, REA will prepare standards for material and equipment to be used on systems of electric borrowers. REA standards and specifications will be codified or listed in § 1736.97, Incorporation by Reference of Electric Standards and Specifications. REA will also prepare specifications for materials and equipment when it determines that such specifications will

result in reduced costs, improved materials and equipment, or in the more effective use of engineering services.

(b) *Deviations from Standards.* No member of the REA staff will be permitted to authorize deviations from the standard specifications, or to establish or change the technical standards, or to authorize the use of items that have not received acceptance by the Technical Standards Committees, except as provided for under § 1736.70, or by authorization and/or delegation of authority by the Administrator of REA.

(c) *Category of Items.* Items appearing in the List of Materials are listed by categories of generic items which are used in REA construction standards incorporated by reference in § 1736.97. REA will establish and define these categories and will establish all criteria for acceptability within these categories.

§ 1736.30 Inclusion of an item for listing or technical acceptance.

(a) *Scope.* REA, through its Technical Standards Committees "A" and "B" will determine the acceptability of certain standards, standard specifications, standard drawings, and items of materials and equipment to be used in transmission, distribution and general plant (excluding office equipment, tools, and work equipment, and consumer-owned electric wiring facilities).

(b) *Addresses of Committees.* The address of Technical Standards Committee "A" is: Chairman, Technical Standards Committee "A" (Electric), Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500. The address of Technical Standards Committee "B" is: Chairman, Technical Standards Committee "B" (Electric), Rural Electrification Administration, U.S. Department of Agriculture, Washington, DC 20250–1500.

(c) *Review by Technical Standards Committee "A".* All proposals for listing a product in the List of Materials must be addressed to Technical Standards Committee "A." This committee will consider all proposals made by sponsors of specifications, drawings, materials, or equipment in categories for which REA has established criteria for acceptability. A sponsor may be a manufacturer, supplier, contractor or any other person or organization which has made an application for listing or has requested an action by the committee. Committee "A" will consider all relevant information presented in determining whether an item should be accepted by Technical Standards Committee "A." Formal rules of evidence and procedure shall not apply to proceedings before this committee.

(d) *Action by Technical Standards Committee "A".* (1) Committee "A" may take one of the following actions:

(i) Accept an item for listing without conditions (domestic items only).

(ii) Reject an item (domestic or nondomestic).[1]

(iii) Accept an item for listing with conditions (domestic items only).

(iv) Table an item for a time period sufficient to allow the sponsor to be notified and furnish additional information (domestic or nondomestic).

(v) Grant technical acceptance with or without conditions for a period of one year from the date of notification by REA (nondomestic items only).

(2) All committee decisions regarding the actions listed above must be unanimous. If the vote is not unanimous, the item shall be referred to Technical Standards Committee "B." Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(3) Items accepted without conditions by the Technical Standards Committees will be considered to be accepted on a general basis. No restrictions as to quantity or application will be placed on items which have received general acceptance. Items accepted subject to certain conditions, such as limited use to gain service experience, or limited use appropriate to certain areas and conditions, will be considered to be accepted on a conditional basis. The conditions will be cited as a part of the listing provided for in § 1736.60, or as part of the technical acceptance for nondomestic items.

(e) *Appeal to Technical Standards Committee "B".* A sponsor may request a review of an adverse decision by Technical Standards Committee "A" within ten (10) days of notification of such decision by submitting a letter requesting such review to Technical Standards Committee "B" (Electric).

(f) *Action by Technical Standards Committee "B".* Committee "B" may take any of the actions listed for Committee "A" in Section 1736.30d. However, for a Committee "B" action to be effective it must be by majority vote. Failure to obtain a majority on one of the proposed actions shall mean that the product will not be listed or accepted. Committee "B's" determination shall be based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of procedure and evidence shall not apply to proceedings before Committee "B." Written notice of Committee "B's" decision, stating the basis of the decision, will be provided to the sponsor.

(g) *Appeal to the Administrator.* In the event of an adverse decision by Committee "B," the sponsor may, within ten (10) days of notification of such decision, request a review of this decision by submitting a letter to the Administrator requesting such a review.

(h) *Change in Design.* REA acceptance of an item will be conditioned on the understanding that no design changes (material or dimensions) affecting the quality, strength, or electrical characteristics of the item shall be made without prior concurrence of Technical Standards Committee "A."

§ 1736.40 Procedure for submission of a proposal.

(a) *Written Request.* Consideration of an item of material or equipment will be obtained by the sponsor through the submission of a written request in an original and five copies addressed to the Chairman, Technical Standards Committee "A" (Electric). The letter must include the catalog number or other identifying number or code as well as a description of the item. In the event that an item being submitted is also intended for consideration by Technical Standards Committee "A" (Telephone), a separate request must be made to the telephone committee. (See Part 1772 of this chapter).

(b) *Technical and Performance Data.* Six copies of the specification of manufacture, drawings and test data must be submitted to the committee. Six copies of the performance history shall also be submitted unless REA determines that such performance history is not reasonably available.

(c) *Sample.* One sample of the item must be submitted to the Chairman, Technical Standards Committee "A," unless REA waives the requirements of the sample. In case of large, bulky or extremely heavy samples, the sponsor should contact the Chairman, Technical Standards Committee "A" (Electric), at the above address, before any sample is shipped.

(d) *Action on Proposal.* REA will inform a sponsor of the action taken on the sponsor's proposal.

§ 1736.50 Removal of an item from listing or technical acceptance.

(a) *Removal Actions.* An item of material or equipment may be removed from the listing or technical acceptance in accordance with the following procedures upon determination that the

[1] Nondomestic items are items which do not qualify as domestic products pursuant to REA "Buy American" requirement.

item is unsatisfactory or has been misrepresented to the owner or REA.

(b) *Notification by the Committee.* The sponsor of an item of material or equipment will be notified in writing of a proposal to remove such item from the listing or technical acceptance.

(c) *Supplemental Information.* Within ten (10) days of receipt of such notification, the sponsor may submit to Committee "A" a letter expressing the sponsor's intent to submit written supplemental technical information relevant to Committee "A's" determination. The sponsor must submit such information within twenty (20) days from the submission of its letter to Committee "A." Committee "A" will have the discretion of making a decision following the expiration of the time periods provided in this paragraph.

(d) *Review by the Technical Standards Committee "A".* Committee "A" will consider all relevant information presented in determining whether an item should be removed from the listing or technical acceptance. Formal rules of evidence and procedure shall not apply to proceedings before Technical Standards Committee "A."

(e) *Action by the Technical Standards Committee "A".* Committee "A" may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which will adequately protect the interest of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to Technical Standards Committee "B."

All committee "A" decisions regarding the actions listed above must be by unanimous vote. If the vote is not unanimous, the item will be referred to Technical Standards Committee "B."

Written notice of Technical Standards Committee "A's" decision, stating the basis for the decision, will be provided to the sponsor.

(f) *Additional Opportunity to Present Information.* At the request of the sponsor, REA may afford additional opportunity for consideration of relevant information. Such additional opportunity may include, without limitation, a meeting between REA and the sponsor in such a forum that REA may determine. In making this decision, REA will consider, among other things, the best interests of REA, its borrowers, and the sponsor, and the best manner to develop sufficient information relating to the proposed action.

(g) *Appeal to the Technical Standards Committee "B".* Within ten (10) days of notification of Committee "A's" decision, a sponsor may appeal in writing to Technical Standards Committee "B" to review Committee "A's" decision, specifying the reasons for such a request. Committee "B's" determination, in response to such request, shall be based on the record developed before Committee "A" and such additional information as Committee "B" may request. Formal rules of precedure and evidence shall not apply to proceedings before Committee "B."

(h) *Action by Technical Standards Committee "B".* Committee "B," by majority vote, may take one of the following actions:

(1) Order the immediate removal of the item from listing, or technical acceptance,

(2) Condition the item's continued listing, or technical acceptance,

(3) Recommend a basis of settlement which adequately protects the interests of the Government, or

(4) Delay the effectiveness of its decision for a time period sufficient to allow the sponsor to appeal to the Administrator of REA.

Failure to obtain a majority vote on any of the above actions shall mean that the product will continue to be listed or accepted.

Written notice of Committee "B's" decision stating the basis of the decision will be provided to the sponsor.

(i) *Appeal to the Administrator.* Within ten (10) days of the receipt of Committee "B's" decision, a sponsor may appeal to the Administrator to review Committee "B's" decision. If an appeal is made, the sponsor shall submit a written request to the Administrator, Rural Electrification, Room 4053, South Building, U.S. Department of Agriculture, Washington, D.C. 20250–1500 specifying the reasons to request reconsideration. The Administrator will have the option to decline the request, in which case the decision of Committee "B" shall stand. If a review is granted, the determination by the Administrator or the Administrator's designee shall be based on the record developed before Committee "A" and Committee "B" and such additional information as the Administrator may request. Formal rules of procedure and evidence shall not apply to the actions of the Administrator.

(j) *Action by the Administrator.* The Administrator may take one of the following actions:

(1) Order the immediate removal of the item from the listing, or technical acceptance,

(2) Condition its continued listing, or technical acceptance, or

(3) Recommend a basis of settlement which adequately protects the interests of the Government.

Written notice of the Administrator's determination, stating the basis for the decision, will be provided to the sponsor.

The Administrator's actions are final.

§ 1736.60 List of materials and equipment.

(a) *General.* Those items of material or equipment accepted by Technical Standards Committee "A" or "B," with the exception of technically accepted nondomestic items, will be listed in the List of Materials. Items which do not qualify as domestic products may be accepted on a technical basis only (technical acceptance) for a period of one year as provided in § 1736.30(c)(1) and will not be included in the List of Materials.

(b) *Publishing and Revisions.* REA will reissue the List of Materials every year, dated July, and issue supplements, if needed, dated October, January, and April of every year. An REA office copy, which is the official current copy, of the List of Materials, will be updated every time changes are made by the Technical Standards Committees.

(c) *Dual Listings.* REA, through its Technical Standards Committees, will accept for listing only one item of a particular type of material or equipment for each manufacturer. If a manufacturer submits an item to perform the identical function of a listed item, REA, through its Technical Standards Committees, may accept that item and remove the one previously listed. REA will list only new items of material and equipment in the List of Materials. Used items will not be considered for listing.

§ 1736.70 Procurement of materials.

(a) *By Owner.* When purchasing the type of materials included in the List of Materials, REA borrowers shall purchase only materials listed in the List of Materials, or materials which have a current technical acceptance by REA and meet the "Buy American" requirement.

(b) *By Contractor.* When performing work for an REA borrower, contractors shall supply only items from the general acceptance pages of the List of Materials, or obtain the borrower's concurrence prior to purchase and use of a technically nondomestic item or any item listed on a conditional basis.

(c) *Procurement of Unlisted Items.* (1) The borrower shall request prior approval from REA for use of an item that does not fall in categories established by REA in the List of Materials for which acceptability has been established by the Technical Standards Committees.

(2) REA will also determine, on a case-by-case basis, whether to allow use of an unlisted item in emergency situations and for experimental use or to meet a specific need. For purposes of this Part 1736, an emergency shall mean a situation wherein the supply of listed material and equipment from the industry is not readily available, or the standard designs are not applicable to the borrower's specific problem under consideration.

(3) REA will make arrangements for test or experimental use of newly developed items requiring limited trial use. REA, working with the borrower and the manufacturer, will establish test locations for the items to facilitate installation and observation.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards.

Dated: November 6, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85-27646 Filed 11-19-85; 8:45 am]

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7 CFR Part 1736

Electric Standards and Specifications

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends 7 CFR Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50-17(DT-5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys; and REA Bulletin 50-18(DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs. These two bulletins contain the REA specifications for timber products to be purchased by REA borrowers. The main changes are: (1) Eliminate the REA list of acceptable timber treating plants and acceptable timber inspection agencies; (2) extend the provisions of the Quality Assurance Plan that presently apply to poles so that they also apply to crossarms; and (3) permit, at the option of and with specific acceptance by borrowers, the sulfate formulations of chromated copper arsenate (CCA). These changes place more responsibility for assuring quality of timber products on the borrowers.

REA also amends 7 CFR Part 1736, Electric Standards and Specifications, by issuing a new REA Bulletin 50-24 (DT-19), REA Specification for Quality Control and Inspection of Timber Products. This new bulletin contains material which is currently contained in REA Bulletin 44-4, "Quality Control and Inspection of Timber Products," which was previously approved for incorporation by reference. The main change in this publication is to coordinate with the changes in the timber treatemnt specifications by eliminating the REA lists of acceptable timber treating plants and of acceptable timber inspection agencies.

REA Bulletin 44-4 is rescinded by this action.

EFFECTIVE DATE: November 6, 1985. The incorporation by reference of the publications mentioned in this rule has been approved by the Director, Office of the Federal Register, effective November 6, 1985.

Producers currently producing material for reserve treated stock for REA borrowers shall be allowed to supply such material to borrowers until December 31, 1985, without acknowledgement from REA on their intent to treat material for reserve stock. This will allow an orderly phase-in of the new policy. Any producer currently not producing reserve treated stock shall notify REA and receive acknowledgement, as specified in Bulletin 50-18, before borrowers are allowed to purchase their reserve treated stock.

As of March 1, 1986, borrowers shall purchase reserve treated stock only from producers that have received acknowledgement from REA on their intent to treat material for REA borrower reserve stock. Producers are encouraged to contact REA well in advance of the date to ensure their acknowledgement is received before March 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. H. Robert Lash, Transmission and Timber Specialist, Engineering Standards Division, Rural Electrification Administration, Room 1263-S, Washington, DC 20250, telephone (202) 382-9098. The Final Impact Statement describing the options considered in developing these rules and the impact of implementing the chosen option are available on request from Mr. Lash at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*), the Rural Electrification Administration (REA) is amending 7 CFR Part 1736, Electric Standards and Specifications, by revising REA Bulletin 50-17(DT-5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys; and REA Bulletin 50-18(DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs. REA also is amending 7 CFR Part 1736, Electric Standards and Specifications, by issuing a new specification, REA Bulletin 50-24(DT-19), REA Specification for Quality Control and Inspection of Timber Products. This action has been reviewed in accordance with Executive Order 12291, Federal Regulation. The action will not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity, and, therefore, has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. This program is listed in the Catalog of Federal Domestic Assistance as 10.850, Rural Electrification Loans and Loan Guarantees. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in this final rule have been approved by OMB (OMB No. 0572-0076, expiration date March 31, 1987).

Background

The Rural Electrification Administration (REA) maintains a system of bulletins that contains construction standards and specifications for materials and equipment which are applicable to electric system facilities constructed by REA electric borrowers in accordance with the REA loan contract. These standards and specifications contain REA's requirements for construction units and material items and equipment units commonly used in REA electric borrowers' systems. REA Bulletin 50-17(DT-5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys; REA Bulletin 50-18(DT-5C), REA Specification for Wood Poles, Stubs and Anchor Logs; and Bulletin 50-24(DT-19), REA Specification for Quality Control and Inspection of Timber Products, contains REA's requirements for timber products and the quality control provisions to be applied to them for purchase of such items by REA

borrowers. REA has revised these rules by eliminating the REA lists of acceptable timber treating plants and acceptable independent inspection agencies. REA has also extended provisions for use of the Quality Assurance Plan provided in the January 1982 revision of REA Specification DT-5C to crossarms purchased under REA Specification DT-5B. REA allows the use of sulfate formulations of chromated copper arsenate (CCA) at the option of an with the approval of the purchaser. Various minor changes and corrections have been made to bring the specifications in line with current industry standards and practices. The reason for reissuing REA Bulletin 44-4, Quality Control and Inspection of Timber Products, as REA Bulletin 50-24(DT-19), REA Specification for Quality Control and Inspection of Timber Products, is to group it with the other bulletins dealing with similar subjects; i.e., bulletins concerning materials and equipment applicable to electric system facilities constructed by REA electric borrowers in accordance with the REA loan contract. REA Bulletins 50-17 and 50-18 have previously been approved for incorporation by reference in 7 CFR Part 1736, Electric Standards and Specifications. The notice appeared in the **Federal Register** (48 FR 31852) on July 12, 1983. REA Bulletin 44-4 was approved for incorporation by reference in 7 CFR Part 1701 by notice in the **Federal Register** (46 FR 63479) on December 31, 1984.

A notice of proposed rulemaking was published in the **Federal Register** on January 18, 1984, Volume 49, Number 12. Interested parties were given sixty (60) days in which to express their views on the proposed rule, however, comments received after the date were considered. As a result of the notice in the **Federal Register**, comments were received from nine treaters, six inspection related organizations, a consultant, and one utility. The following significant comments were received.

a. Two comments were received that suggested the specifications should be left unchanged since the present specifications result in a satisfactory product for the use intended at reasonable cost.

The technical portions of these specifications, for the most part, have been left unchanged. REA has given more responsibility for monitoring quality control to REA borrowers and feels that the quality of poles and crossarms being produced will not be adversely affected.

b. Most people that commented felt that it is a mistake for REA to eliminate the approved list of treating plants and inspection agencies. If REA abolishes this list, it will permit plants and agencies not properly equipped to produce, inspect and ship material to REA borrowers.

REA has not relaxed its technical requirements for manufacture, inspection and purchase of timber products. By eliminating the approved list of treating plants and inspection agencies, REA borrowers will have the same freedom and responsibility for selecting treaters and inspection agencies as they do for selecting engineering consultants.

REA will perform monitoring of specification compliance to determine if borrowers are purchasing acceptable products.

c. Six comments from inspection agencies were received that suggested REA was encouraging the use of one specific Quality Assurance Plan, i.e., the Wood Quality Control (WQC) program, administered by the National Rural Electric Cooperative Association (NRECA).

The changes to REA Bulletin 50-18 should in no way reduce the need for inspection agencies by borrowers. REA has left unchanged the three plans under which poles can be supplied to borrowers: Insured Warranty Plan, Independent Inspection Plan and Quality Assurance Plan. The borrowers choose the plan under which they want to purchase poles. REA does not promote one plan over another.

d. Three comments were received which suggested that poles produced under the WQC program cannot be expected to be of the same quality as poles produced under the Independent Inspection Plan.

The WQC program monitors the ability of treaters to continue to produce poles that meet or exceed REA specifications by utilizing statistically valid sample procedures at treating plants and at destination. If treaters fail to meet the stringent requirements, they are dropped from the program. To date, REA has not received any complaints on the quality of poles produced under the WQC program and, as such, will continue to allow poles to be purchased under all three plans.

e. One person that commented suggested that borrowers are not qualified and may not have the manpower to perform and overview function for assuring quality of timber products.

REA believes that the quality of timber products purchased by REA borrowers will not decline under this proposal. REA plans to monitor the borrower's timber product purchases to assure that acceptable quality is maintained. Increased borrower involvement in timber product quality overview will be beneficial.

f. One person that commented suggested Bulletin 50-24(DT-19), REA Specification for Quality Control and Inspection of Timber Products, only provides for inspection under the Independent Inspection Plan, thus allowing poles manufactured under an Insured Warranty Plan to be without inspection guidelines.

As previously written, Bulletin 50-24 could have been misconstrued as only covering the inspection of timber products purchased under the Independent Inspection Plan. Bulletin 50-24 has been editorially revised to cover inspection of timber products purchased under all three plans.

g. Four persons that commented stated that destination inspection of poles, as allowed by section X of REA Bulletin 50-18, would be done by unknowledgeable people, thus resulting in many unjustified claims.

Section X allows for destination inspection by the purchaser or the purchaser's representative. This is not a new revision to this specification. This provision was added in the 1982 revision and we have received no reports of it resulting in unjustified claims.

h. One person that commented stated, "The Quality Assurance Plan (QAP), as currently operated, is the exclusive domain of WQC, Inc., who has chosen to work exclusively with one inspection agency. This apparent exclusion of competition might be construed to be a restraint of trade under the law and we fail to see how this arrangement could work for the benefit of the REA borrowers or manufacturers."

The WQC program is currently the only REA-approved Quality Assurance Plan because it is the only program ever submitted to REA for acceptance as a borrower monitored Quality Assurance Plan. Borrowers may still set up other Quality Assurance Plans, which must be acceptable to REA, for the purchase of timber products.

Currently the WQC program is working with one inspection agency, selected by NRECA, to do its plant and destination inspection. We understand that future plans by NRECA may include the expansion of inspection capability if the volume of business warrants such expansion. REA is not, however, a party to the personnel hiring or contracting by any inspection agency or NRECA, and we have no control of the selection of additional inspection services.

REA disagrees with the statement that the WQC program constitutes a restraint of trade. Each borrower has the prerogative of selecting the plan (Independent Inspection, Insured Warranty or Quality Assurance) under which it wishes to purchase timber products. The WQC Quality Assurance Plan operator (NRECA), has the prerogative of selecting inspectors for their respective plan. Under the Independent Inspection Plan, each borrower has the prerogative of selecting an independent inspection agency. Since borrowers have wide latitude in their choices, competitive forces in the marketplace, which include quality of work, are in operation. REA does not feel that any plan creates an unfair advantage.

i. Three persons that commented complained that the WQC program has not reduced the costs of poles supplied under that program.

Even with the recent price increase, the WQC program is still considered to be competitively priced. Since borrowers have the option to purchase under any of the three purchase plans, borrowers may purchase poles under another plan if WQC raises prices too much.

j. Two comments were received objecting to the easing of experience requirements for individual inspectors.

After consideration of these comments, REA decided to retain the 1982 specification requirements for experience of inspectors.

k. One person stated, "The opportunity for each individual cooperative to establish their own 'selected purchase plan' eliminates the current uniformity and places the manufacturer at the mercy of the individual cooperative."

As currently set up, borrower groups, not individual borrowers, are permitted to set up assurance programs, and these assurance programs must be acceptable to REA in order for borrowers to purchase timber products under the Quality Assurance Plan. By permiting groups of borrowers, rather than individual borrowers, to set up programs and by retaining its right of approval of any such program, REA does not expect the current uniformity in quality to be eliminated.

l. Three comments were received objecting to the addition of CCA sulfate formulation because of reports that this formulation causes increased corrosion to hardware.

REA has been shown that with the proper formulations and quality control of CCA sulfate, hardware corrosion is nearly nonexistent. REA is also aware of studies showing some formulations of CCA sulfate to be highly corrosive. REA will allow the sulfate formulation of chromated copper arsenate (CCA), but only with the specific agreement by the borrower. Without such specific agreement by the borrower, the CCA sulfate formulation is not to be supplied.

The purchase of poles by a borrower is a major investment that has to last for decades. Thus, borrowers considering the sulfate CCC formulation are advised to contact treaters and inquire about demonstrated capabilities and experience with the formulation of CCA. Since the sulfate formulation can only be supplied with specific approval by the purchaser, we do not believe it will be purchased unless the producer can demonstrate satisfactory capability and experience.

m. Two comments were received objecting to the addition of the sulfate formulation of CCA and alleging it to be an inferior treatment. Also, due to 15–20 percent less chemical cost compared to the oxide formulation, it was alleged the entire market will be forced to start offering this preservative.

Borrowers are encouraged to contact treaters to inquire about demonstrated capabilities and experience with their formulation of CCA. Since the cost of chemicals is such a small percentage of the total cost of a treated pole and because the oxide formulation is to be furnished unless the purchaser specifically permits the sulfate formulation, this slight cost differential should not upset the competitive market.

n. One comment was received suggesting REA remove all water dispersible penta treatments from the specification because at this time the treatment is not fully proven or reliable.

The allowable Water Dispersed Pentachlorophenal preservative systems meet the REA requirements in accordance with paragraph VII.B of Bulletin 50–18. The draft proposal contained no change in this section and we believe it would be inappropriate to make such a substantive change in the final document. These preservative systems will continue to be evaluated as preliminary test data is collected.

o. Two comments were received suggesting only full size 3⅝ inch by 4⅝ inch crossarms be allowed with an occasional arm being undersized by no more than ⅛ of an inch.

Presently, Bulletin 50–17 calls for crossarms to have the intended actual size with a tolerance of ± ⅛ of an inch on occasional arms. For example, distribution arms shown on Drawing M–19 of the specification (nominal dimension 3⅝ inch by 4⅝ inch) shall have a minimum cross section of 3½ inch by 4½ inch. It also specifies in section III that if any arms shall be found defective or nonconforming under this specification within one year after shipment, the crossarm shall be replaced as promptly as possible by the producer.

Borrowers are encouraged to check the cross sections of arms at the time of delivery and within the one year guarantee period because arms that shrink below the minimum cross section are not in compliance with this specification and are required to be replaced.

p. One person stated, "It is incredible to me that X-ray analysis (A9–70) is conspicuously omitted from the lists of approved methods of analysis of waterborne (salt) preservatives."

Presently, as stated in Bulletin 50–18, paragraph VIII.D.2.d., Testing Method AWPA Standard A9–70—Analysis of treated wood and treating solution by X-ray is allowed for plant control analysis only. After consideration, REA decided to allow AWPA Standard A9–70 to be used for plant control and independent inspection.

q. One person stated, "All references to laboratory facilities off the treating plant site should be deleted. The REA specification should require that the treating plant have adequate laboratory facilities available on site. If a plant does not have its own lab, how can management monitor its own quality control?"

REA has found that in certain cases, treating plants do not have an onsite laboratory but have access to adequate laboratory facilities in close proximity. These plants have been able to maintain acceptable quality control. Therefore, this practice will be allowed to continue in specific cases where it is acceptable to the purchaser.

r. One comment received on Bulletin 50–18 stated, "In section B on page 7, I noted that only Type A and B carriers for pentachlorophenal are listed. This seems unusual because other government specifications additionally list the other carriers (Types C and D) as approved."

REA currently allows Type A, B, D, or E hydrocarbon solvents for introducing the preservative in wood. REA does not allow the use of Type C solvent. Type C solvent is a mineral spirit which is not in general use for pole treatments. Poles that have been treated with Type C solvent have shown early problems. It is also highly flammable until fully evaporated.

List of Subjects in 7 CFR Part 1736

Electric utilities, Engineering standards.

In view of the above, 7 CFR Part 1736, § 1736.97(b) is amended by revising the entry for 50–17(DT–5B), and adding an entry for 50–24(DT–19) as follows:

PART 1736—ELECTRIC STANDARDS AND SPECIFICATIONS

§ 1736.97 Incorporation by Reference of Electric Standards and Specifications.

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Bulletin 50–17(DT–5B), REA Specification for Wood Crossarms (Solid and Laminated), Transmission Timbers and Pole Keys (Nov. 6, 1985) Bulletin 50–18(DT–5C), REA Specification for Wood Poles, Stubs, and Anchor Logs (Nov. 6, 1985)

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Bulletin 50–24(DT–19), REA Specification for Quality Control and Inspection of Timber Products (Nov. 6, 1985)

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Dated: November 6, 1985.

Jack Van Mark,

Acting Administrator.

[FR Doc. 85–27645 Filed 11–19–85; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

General Statement of Policy and Procedure for Enforcement Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Revised general statement of policy.

SUMMARY: The NRC is publishing minor revisions to its enforcement policy (49 FR 8583 (March 8, 1984)) to describe how its enforcement policy applies to vendors of products or services that are supplied to the nuclear industry for ultimate use in facilities or activities that are licensed by the NRC. The policy statement is intended to inform licensees, vendors, and the public of the bases for taking various enforcement actions. The policy is codified as Appendix C to Part 2 of Title 10 of the Code of Federal Regulations.

DATES: This revised statement of policy is effective February 18, 1986.

Submit comments on or before January 21, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Any comments or suggestions should be sent to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments may be examined in the U.S. Nuclear Regulatory Commission Public Document Room, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jane A. Axelrad, Director, Enforcement Staff, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (301–492–4909).

SUPPLEMENTARY INFORMATION:

Background

The criteria used by the Commission to conduct its enforcement activities were first published on October 17, 1972 (37 FR 21962). These criteria were subsequently modified on January 3, 1975 (40 FR 820) and on December 3, 1979 (44 FR 77135). In late 1979, the Commission directed the staff to prepare a comprehensive statement of enforcement policy. This staff effort was given added urgency by the enactment of Pub. L. 96–295 (signed June 30, 1980), that, among other things, amended section 234 of the Atomic Energy Act to raise the maximum civil penalty the NRC can impose from $5,000 to $100,000 per violation per day and eliminated the provision limiting the total civil penalties for any 30-day period to $25,000. On September 4, 1980, the Commission approved a proposed general statement of policy on enforcement. Comments were solicited on the policy and a series of public meetings was held. On March 9, 1982, the Commission published a final version of the policy (47 FR 9987). These revisions were published in the Federal Register (49 FR 8583) and became effective on March 8, 1984.

The Commission subsequently decided that the enforcement policy should be revised to add a section regarding vendor enforcement. Accordingly, the Commission is today revising the enforcement policy to indicate how it has been and is being applied to vendors and to licensees' control of vendor activities.

The term "vendor" as it is used in the discussion which follows means a supplier of products or services to be used in an NRC-licensed facility or activity.

Vendor Program—Description and Objectives

The agency's enforcement program for vendors has been and should continue to be designed to further the basic objective of the vendor inspection program. That objective is to increase public health and safety by providing increased assurance that the products and services provided by unlicensed organizations for use in licensed activities meet NRC requirements. The program is based, however, on the premise that licensees have the primary responsibility for the procurement of quality products and services for use in licensed activities.

The vendor community is a large and diverse group of companies that includes the architect engineering and nuclear steam supply system manufacturing firms, component and equipment manufacturers, testing facilities, and material manufacturers and suppliers that provide a wide variety of equipment, parts and services. These companies are motivated by different considerations than licensees and the degree of NRC contact with the various companies differs.

For example, for utilities and materials licensees, the need for the safe and reliable conduct of licensed activities is a strong incentive for the procurement of quality products and services. NRC issuance of a license provides a direct mechanism through inspection and enforcement for ensuring that this incentive is maintained. Except in limited circumstances such as when a vendor seeks a license to manufacture a facility under Appendix M of 10 CFR Part 50, or approval of a standard design under Appendix O of the same part, vendors are not licensed or otherwise subject to a licensing type review by the NRC and the NRC has limited direct control over their activities. Vendors do, however, exist in a very competitive environment and their incentive to provide good quality products and services is based on financial considerations rather than on the need to obtain and maintain a license.

To ensure that licensees obtain quality products and that defective products are identified and reported in a timely manner, the Commission has promulgated certain regulatory requirements. The most important of these is 10 CFR Part 50, Appendix B. These requirements regarding quality assurance programs are directly applicable to reactor licensees for safety-related components and are made applicable indirectly to their vendors through their procurement contracts with these licensees. Title 10, CFR, Part 21 addresses the reporting of defects in goods or services supplied for licensed activities for both reactor and materials licensees.

The NRC inspection program for licensees and vendors was designed to

determine whether licensees and vendors were conducting their activities so as to promote safety and compliance with these requirements. The vendor inspection program does not presently include inspection of vendors of licensees licensed under Parts 30, 40, and 70 for which no specific quality assurance requirements comparable to Appendix B exist. It does include inspections of holders of spent fuel cask certificates under Part 71 and their suppliers. The vendor inspection program is being directed to determine if reactor licensees are adequately monitoring the activities of their vendors. Vendor inspections are conducted at vendor shops principally to examine whether they have been complying wth Appendix B of 10 CFR Part 50 as they are required to do under their procurement contracts with licensees.

The scope and focus of these inspections have evolved with the industry as its emphasis has shifted from construction-related activities to procurement of replacement parts, modifications, outage support and other related services. However, the philosophy that the licensee should be held primarily responsible for the procurement of high quality products that are to be used in nuclear activities has remained unchanged. In furtherance of this philosophy, reactor licensees have been held primarily accountable from an enforcement standpoint if violations of Appendix B to 10 CFR Part 50 are identified. Escalated enforcement action, if appropriate, is taken against a reactor licensee for significant breakdowns in the licensee's or vendor's quality assurance program that have resulted in the use of products or services of defective or indeterminate quality that have safety significance. Notices of Nonconformance and Notices of Violation are issued to vendors for failures to meet quality commitments and Part 21 respectively. These notices can also be issued to materials licensees and their vendors for violations of Part 21.

The NRC has issued Notices of Nonconformance to vendors of reactor licensees when deviations from contracts, quality assurance programs or internal procedures were discovered or identified during the inspection process. A nonconformance involves a failure to satisfy a commitment or obligation that has or could cause a vendor product or service to be unacceptable. The NRC expects vendors to respond in writing to Notices of Nonconformance describing their corrective action to remedy the problem and the measures to be taken to prevent recurrence.

The NRC also issues Notices of Violation to vendors when the NRC has direct statutory authority over them. *See* 10 CFR 2.201. For example, pursuant to Section 206 of the Energy Reorganization Act, 42 U.S.C. 5846, and the Commission's implementing regulation, 10 CFR Part 21, persons who supply certain types of components are subject to reporting and related requirements intended to ensure that the Commission is promptly informed of defects in such components. The NRC has issued Notices of Violation to non-licensees, for violations of Part 21. These included violations involving inadequate implementation of procedures to address the review and reporting of defects, and failure to pass on Part 21 requirements in procurement documents.

Revisions to the Enforcement Policy

The existing Enforcement Policy does not contain any references to vendors and is geared to enforcement against licensees. The Commission has decided to add a section to the existing policy describing its present enforcement policy for vendors including the use of Notices of Nonconformance and to change certain references to licensees to include non-licensees where appropriate. Accordingly, the Commission is publishing the attached proposed revisions to the Enforcement Policy, which will take effect thirty days after the close of the comment period. The proposed revision to the enforcement policy reflects for the most part the NRC's practices that have evolved over the years and are currently in use.

The Commission believes that the provisions of the revised policy are sufficient to achieve NRC objectives with respect to the health and safety of the public, compliance with legal requirements, and conformance to commitments and obligations of vendors.

In the following paragraphs, the revisions to the policy which are being made now are described. Only the sections to which changes were made are discussed here. The numbering of the sections tracks the section numbers in the policy.

I. Introduction and Purpose

The purpose was expanded to encompass vendor activities.

IV. Enforcement Conferences

The use of enforcement conferences has been expanded to include meeting with vendors for significant findings of nonconformance.

V. Enforcement Actions

1. References to the Notice of Nonconformance for vendors were added.

2. Vendors were deleted from the section on Notices of Deviation because the Notice of Nonconformance is used for vendors.

3. The use of Confirmatory Action Letters was expanded to include vendors.

4. A section on Notices of Nonconformance was added to recognize its use as an administrative tool for vendors.

VIII. Vendor Enforcement

A new section was added to explain how the NRC's enforcement policy applies to vendor activities. This new section describes the requirements that are applicable to vendors and the enforcement sanctions available for violations of those requirements.

Supplement I

A new example was added to Supplement I, Severity Level III for violations involving operating plants in which, through inadequate oversight of vendor activities, a safety significant product or service of defective or indeterminate quality is used at a plant.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 552 of Title 5 of the United States Code, the following statement of policy is published as Appendix C to 10 CFR Part 2 as a document subject to codification effective thirty days after the close of the comment period.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073,

2092, 2093, 2111, 2133, 2134, 2135); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 186, 234, 68 Stat. 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.300-2.309 also issued under Pub. L. 97-415, 96 Stat. 2071 (42 U.S.C. 2133). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853 as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770 also issued under 5 U.S.C. 557. Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Appendix A also issued under sec. 6, Pub. L. 91-580, 84 Stat. 1473 (42 U.S.C. 2135).

2. Appendix C to Part 2 is revised to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

The following statement of general policy and procedure explains the enforcement policy and procedures of the U.S. Nuclear Regulatory Commission and its staff in initiating enforcement actions, and of presiding officers, the Atomic Safety and Licensing Appeal Boards, and the Commission in reviewing these actions. This statement is applicable to enforcement in matters involving the public health and safety, the common defense and security, and the environment.[1]

I. Introduction and Purpose

The purpose of the NRC enforcement program is to promote and protect the radiological health and safety of the public, including employees' health and safety, the common defense and security, and the environment by:

- Ensuring compliance with NRC regulations and license conditions;
- Obtaining prompt correction of violations and adverse quality conditions which may affect safety;
- Deterring future violations and occurrences of conditions adverse to quality; and
- Encouraging improvement of licensee and vendor[2] performance, and by example, that of industry, including the prompt identification and reporting of potential safety problems.

Consistent with the purpose of this program, prompt and vigorous enforcement action will be taken when dealing with licensees or vendors who do not achieve the necessary meticulous attention to detail and the high standard of compliance which the NRC expects. It is the Commission's intent that sanctions should be designed to ensure that a licensee or vendor does not deliberately profit from violations of NRC requirements. Each enforcement action is dependent on the circumstances of the case and requires the exercise of discretion after consideration of these policies and procedures. In no case, however, will licensees who cannot achieve and maintain adequate levels of protection be permitted to conduct licensed activities.

II. Statutory Authority and Procedural Framework

A. Statutory Authority

The NRC's enforcement jurisdiction is drawn from the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act (ERA) of 1974, as amended.

Section 161 of the Atomic Energy Act authorizes NRC to conduct inspections and investigations and to issue orders as may be necessary or desirable to promote the common defense and security or to protect health or to minimize danger to life or property. Section 186 authorizes NRC to revoke licenses under certain circumstances (e.g., for material false statements, in response to conditions that would have warranted refusal of a license on an original application, for a licensee's failure to build or operate a facility in accordance with the terms of the permit or license, and for violation of an NRC regulation). Section 234 authorizes NRC to impose civil penalties not to exceed $100,000 per violation per day for the violation of certain specified licensing provisions of the Act, rules, orders, and license terms implementing these provisions, and for violations for which licenses can be revoked. In addition to the enumerated provisions in section 234, sections 84 and 147 authorize the imposition of civil penalties for violations of regulations implementing those provisions. Section 232 authorizes NRC to seek injunctive or other equitable relief for violation of regulatory requirements.

Section 206 of the Energy Reorganization Act authorizes NRC to impose civil penalties for knowing and conscious failures to provide certain safety information to the NRC.

Chapter 18 of the Atomic Energy Act provides for varying levels of criminal penalties (i.e., monetary fines and imprisonment) for willful violations of the Act and regulations or orders issued under sections 65, 161(b), 161(i), or 161(o) of the Act. Section 223 provides that criminal penalties may be imposed on certain individuals employed by firms constructing or supplying basic components of any utilization facility if the individual knowingly and willfully violates NRC requirements such that a basic component could be significantly impaired. Section 235 provides that criminal penalties may be imposed on persons who interfere with inspectors. Section 236 provides that criminal penalties may be imposed on persons who attempt to or cause sabotage at a nuclear facility or to nuclear fuel. Alleged or suspected criminal violations of the Atomic Energy Act are referred to the Department of Justice for appropriate action.

B. Procedural Framework

Subpart B of 10 CFR Part 2 of NRC's regulations sets forth the procedures the NRC uses in exercising its enforcement authority. 10 CFR 2.201 sets forth the procedures for issuing notices of violation.

The procedure to be used in assessing civil penalties is set forth in 10 CFR 2.205. This regulation provides that the appropriate NRC Office Director initiates the civil penalty process by issuing a notice of violation and proposed imposition of a civil penalty. The licensee is provided an opportunity to contest in writing the proposed imposition of a civil penalty. After evaluation of the licensee's response, the Director may mitigate, remit, or impose the civil penalty. An opportunity is provided for a hearing if a civil penalty is imposed.

The procedure for issuing an order to show cause why a license should not be modified, suspended, or revoked or why such other action should not be taken is set forth in 10 CFR 2.202. The mechanism for modifying a license by order is set forth in 10 CFR 2.204. These sections of Part 2 provide an opportunity for a hearing to the affected licensee. However, the NRC is authorized to make orders immediately effective if the public health, safety or interest so requires or, in the case of an order to show cause, if the alleged violation is willful.

III. Severity of Violations

Regulatory requirements[3] have varying degrees of safety, safeguards, or environmental significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process.

Consequently, violations are categorized in terms of five levels of severity to show their relative importance within each of the following eight activity areas:

I. Reactor Operations;
II. Facility Construction;
III. Safeguards;
IV. Health Physics;
V. Transportation;
VI. Fuel Cycle and Materials Operations;
VII. Miscellaneous Matters; and
VIII. Emergency Preparedness.

Licensed activities not directly covered by one of the above listed areas, e.g., export license activities, will be placed in the activity area most suitable in light of the particular violation involved. Within each activity area, Severity Level I has been assigned to violations that are the most significant and Severity Level V violations are the least significant. Severity Level I and II violations are of very significant regulatory concern. In general, violations that are included in these severity categories involve actual or high potential impact on the public. Severity Level III violations are cause for significant concern. Severity Level IV violations are less serious but are of more than minor concern; i.e., if left uncorrected, they could lead to a more serious concern.

[1] Antitrust enforcement matters will be dealt with on a case-by-case basis.

[2] The term "vendor" means a supplier of products or services to be used in an NRC-licensed facility or activity.

[3] The term "requirement" as used in this policy means legally binding requirement such as a statute, regulation, license condition, technical specification, or order.

Severity Level V violations are of minor safety or environmental concern.

Comparisons of significance between activity areas are inappropriate. For example, the immediacy of any hazard to the public associated with Severity Level I violations in Reactor Operations is not directly comparable to that associated with Severity Level I violations in Reactor Construction.

While examples are provided in Supplements I through VIII for determining the appropriate severity level for violations in each of the eight activity areas, the examples are neither exhaustive nor controlling. These examples do not create new requirements. Each is designed to illustrate the significance which the NRC places on a particular type of violation of NRC requirements. Each of the examples in the supplements is predicated on a violation of regulatory requirement.

In each case, the severity of a violation will be characterized at the level best suited to the significance of the particular violation. In some cases, violations may be evaluated in the aggregate and a single severity level assigned for a group of violations.

The severity level of a violation may be increased if the circumstances surrounding the matter involve careless disregard of requirements, deception, or other indications of willfulness. The term "willfulness" as used here embraces a spectrum of violations ranging from deliberate intent to violate or falsify to and including careless disregard for requirements. Willfulness does not include acts which do not rise to the level of careless disregard, e.g., inadvertent clerical errors in a document submitted to the NRC. In determining the specific severity level of a violation involving willfulness, consideration will be given to such factors as the position of the person involved in the violation (e.g., first-line supervisor or senior manager), the significance or any underlying violation, the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness), and the economic advantage, if any, gained as a result of the violation. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

The NRC expects licensees to provide full, complete, timely, and accurate information and reports. Accordingly, unless otherwise categorized in the Supplements, the severity level of a violation involving the failure to make a required report to the NRC will be based upon the significance of and the circumstances surrounding the matter that should have been reported. A licensee will not normally be cited for a failure to report a condition or event unless the licensee was actually aware of the condition or event which it failed to report. However, the severity level of an untimely report, in contrast to no report, may be reduced depending on the circumstances surrounding the matter.

IV. Enforcement Conferences

Whenever the NRC has learned of the existence of a potential violation for which a civil penalty or other escalated enforcement action may be warranted, or recurring nonconformance on the part of a vendor, the NRC will normally hold an enforcement conference with the licensee or vendor prior to taking enforcement action. The NRC may also elect to hold an enforcement conference for other violations, e.g., Severity Level IV violation which, if repeated, could lead to escalated enforcement action. The purpose of the enforcement conference is to: (1) Discuss the violations or nonconformance, their significance and causes, and the licensee's or vendor's corrective actions, (2) determine whether there are any aggravating or mitigating circumstances, and (3) obtain other information which will help determine the appropriate enforcement action.

In addition, during the enforcement conference, the licensee or vendor will be given an opportunity to explain to the NRC what corrective actions (if any) were taken or will be taken following discovery of the potential violation or nonconformance. Licensees or vendors will be told when a meeting is an enforcement conference. Enforcement conferences will not normally be open to the public.

When needed to protect the public health and safety or common defense and security, escalated enforcement action, such as the issuance of an immediately effective order modifying, suspending, or revoking a license, will be taken prior to the enforcement conference. In such cases, an enforcement conference may be held after the escalated enforcement action is taken.

V. Enforcement Actions

This section describes the enforcement sanctions available to NRC and specifies the conditions under which each may be used. The basic sanctions are notices of violation, civil penalties, and orders of various types. Additionally, related administrative mechanisms such as bulletins and confirmatory action letters, notices of nonconformance and notices of deviation are used to supplement the enforcement program. In selecting the enforcement sanctions to be applied, NRC will consider enforcement actions taken by other Federal or State regulatory bodies having concurremt jurisdiction, such as in transportation matters. With very limited exceptions, whenever a violation of NRC requirements is identified, enforcement action is taken. The nature and extent of the enforcement action is intended to reflect the seriousness of the violation involved. For the vast majority of violations, action by an NRC regional office is appropriate in the form of a Notice of Violation requiring a formal response from the recipients describing its corrective actions. In situations involving nonconformance on the part of vendor, a Notice of Nonconformance will be issued. The relatively small number of cases involving elevated enforcement action receives substantial attention by the public, and may have significant impact on the licensee's operation. These elevated enforcement actions include civil penalties; orders modifying, suspending or revoking licenses; or orders to cease and desist from designated activities.

A. Notice of Violation

A notice of violation is a written notice setting forth one or more violations of a legally binding requirement. The notice normally requires the recipient to provide a written statement describing

(1) corrective steps which have been taken and the results achieved;

(2) corrective steps which will be taken to prevent recurrence; and

(3) the date when full compliance will be achieved. NRC may require responses to notices of violation to be under oath. Normally, response, under oath will be required only in connection with civil penalties and orders.

NRC uses the notice of violation as the standard method for formalizing the existence of a violation. A notice of violation is normally the only enforcement action taken, except in cases where the criteria for civil penalties and orders, as set forth in Section V.B and V.C, respectively, are met. In such cases, the notice of violation will be issued in conjunction with the elevated actions.

Because the NRC wants to encourage and support licensee initiative for self-identification and correction of problems, NRC will not generally issue a notice of violation for a violation that meets all of the following tests:

(1) It was identified by the licensee;

(2) It fits in Severity Level IV or V;

(3) It was reported; if required;

(4) It was or will be corrected, including measures to prevent recurrence, within a reasonable time; and

(5) It was not a violation that could reasonably be expected to have been prevented by the licensee's corrective action for a previous violation.

Licensees are not ordinarily cited for violation resulting from matters not within their control, such as equipment failures that were not not avoidable by reasonable licensee quality assurance measures or management controls. Generally, however, licensees are held responsible for the acts of thier employees. Accordingly, this policy should not be construed to excuse personnel errors. Enforcement actions involving individuals, including licensed operators, will be determined on a case-by-case basis and must be approved by the Director of the responsible Program Office.[3]

B. Civil Penalty

A civil penalty is a monetary penalty that may be imposed for violation of: (a) Certain specified licensing provisions of the Atomic Energy Act or supplementary NRC rules or orders, (b) any requirement for which a license may be revoked, or (c) reporting requirements under section 206 of the Energy

[3] Section 234 of the Atomic Energy Act gives the Commission authority to impose civil penalties for violations on "any person" "Person" is broadly defined in Section 11s of the AEA to include individuals, a variety of organizations, and any representatives or agents. This gives the Commission authority to impose civil penalties on employees of licensees or on separate entities when a violation of a requirement directly imposed on them is committed.

Reorganization Act. Civil penalties are designed to emphasize the need for lasting remedial action and to deter future violations.

Generally, civil penalties are imposed for Severity Level I violations, are imposed absent mitigating circumstances for Severity Level II violations, are considered for Severity Level III violations, and may be imposed for Severity Level IV violations that are similar [4] to previous violations for which the licensee did not take effect corrective action.

In applying this guidance for Severity Level IV violations, NRC normally considers civil penalties only for similar Severity Level IV violations that occur after the date of the last inspection or within two years, whichever period is greater.

Civil penalties will normally be assessed for knowing and conscious violations of the reporting requirements of Section 206 of the Energy Reorganization Act, and for any willful violation of any Commission requirement including those at any severity level.

NRC imposes different levels of penalties for different severity level violations and different classes of licensees. Tables 1A and 1B show the base civil penalties for various reactor, fuel cycle, and materials programs. The structure of these tables generally takes into account the gravity of the violation as a primary consideration and the ability to pay as a secondary consideration. Generally, operations involving greater nuclear material inventories and greater potential consequences to the public and licensee employees receive higher civil penalties. Regarding the secondary factor of ability of various classes of licensees to pay the civil penalties, it is not the NRC's intention that the economic impact of a civil penalty be such that it puts a licensee out of business (orders, rather than civil penalties, are used when the intent is to terminate licensed activities) or adversely affects a licensee's ability to safely conduct licensed activities. The deterrent effect of civil penalties is best served when the amounts of such penalties take into account a licensee's "ability to pay." In determining the amounts of civil penalties for licensees for whom the tables do not reflect the ability to pay, NRC will consider as necessary an increase or decrease on a case-by-case basis.

NRC attaches great importance to comprehensive licensee programs for detection, correction, and reporting of problems that may constitute, or lead to, violation of regulatory requirements. This is emphasized by giving credit for effective licensee audit programs when licensees find, correct, and report problems expeditiously and effectively. To encourage licensee self-identification and correction of violations and to avoid potential concealment of problems of safety significance, application of the adjustment factors set forth below may result in no civil penalty being assessed for violations which are identified, reported (if required), and effectively corrected by the licensee.

On the other hand, ineffective licensee programs for problem identification or correction are unacceptable. In cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of $100,000 per violation, per day. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the civil penalty, the lack of such involvement may not be used to mitigate a civil penalty.

Allowance of mitigation could encourage lack of management involvement in licensed activities and a decrease in protection of the public health and safety.

NRC reviews each proposed civil penalty case on its own merits and adjusts the base civil penalty values upward or downward appropriately. Tables 1A and 1B identify the base civil penalty values for different severity levels, activity areas, and classes of licensees. After considering all relevant circumstances, adjustments to these values may be made for the factors described below:

1. Prompt Identification and Reporting

Reduction of up to 50% of the base civil penalty may be given when a licensee identifies the violation and promptly reports the violation to the NRC. In weighing this factor, consideration will be given to, among other things, the length of time the violation existed prior to discovery, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to this factor if the licensee does not take immediate action to correct the problem upon discovery.

2. Corrective Action to Prevent Recurrence

Recognizing that corrective action is always required to meet regulatory requirements, the promptness and extent to which the licensee takes corrective action, including actions to prevent recurrence, may be considered in modifying the civil penalty to be assessed. Unusually prompt and extensive correction action may result in reducing the proposed civil penalty as much as 50% of the base value shown in Table 1. On the other hand, the civil penalty may be increased as much as 50% of the base value if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be given to, among other things, the timeliness of the corrective action, degree of licensee initiative, and comprehensiveness of the corrective action—such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

3. Past Performance

Reduction by as much as 100% of the base civil penalty shown in Table 1 may be given for prior good performance in the general area of concern. On the other hand, the base civil penalty may be increased as much as 100% for prior poor performance in the general area of concern.

In weighing this factor, consideration will be given to, among other things, the effectiveness of previous corrective action for similar problems, overall performance such as Systematic Assessment of Licensee Performance (SALP) evaluations for power reactors, and prior enforcement history including Severity Level IV and V violations in the area of concern. For example, failure to implement previous corrective action for prior similar problems may result in an increase in the civil penalty.

4. Prior Notice of Similar Events

The base civil penalty may be increased as much as 50% for cases where the licensee had prior knowledge of a problem as a result of a licensee audit, or specific NRC or industry notification, and had failed to take effective preventive steps.

5. Multiple Occurrences

The base civil penalty may be increased as much as 50% where multiple examples of a particular violation are identified during the inspection period.

The above factors are additive. However, in no instance will a civil penalty for any one violation exceed $100,000 per day.

The duration of a violation may also be considered in assessing a civil penalty. A greater civil penalty may be imposed if a violation continues for more than a day. For example:

(1) If a licensee is aware of the existence of a condition which results in an ongoing violation and fails to initiate corrective action, each day the condition existed may be considered as a separate violation and, as such, subject to a separate additional civil penalty.

(2) If a licensee is unaware of a condition resulting in a continuing violation, but clearly should have been aware of the condition or had an opportunity to correct the condition but failed to do so, a separate violation and attendant civil penalty may be considered for each day that the licensee clearly should have been aware of the condition or had an opportunity to correct the condition, but failed to do so.

(3) Alternatively, whether or not a licensee is aware or should have been aware of a violation that continues for more than one day, the civil penalty imposed for one violation may be increased to reflect the added significance resulting from the duration of the violation.

The Tables and the mitigating factors determine the civil penalties which may be assessed for each violation. However, to focus on the fundamental underlying causes of a problem for which enforcement action appears to be warranted, the cumulative total for all violations which contributed to or were unavoidable consequences of that problem may be based on the amount shown in the table for a problem of that Severity Level, as adjusted. If an evaluation of such multiple violations shows that more than one fundamental problem is involved, each of which, if viewed independently, could lead to civil penalty action by itself, then separate

[4] The word "similar," as used in this policy, refers to those violations which could have been reasonably expected to have been prevented by the licensee's corrective action for the previous violation.

civil penalties may be assessed for each such fundamental problem. In addition, the failure to make a required report of an event requiring such reporting is considered a separate problem and will normally be assessed a separate civil penalty, if the licensee is aware of the matter that should have been reported.

TABLE 1A.—BASE CIVIL PENALTIES

	Plant operations, construction, health physics and EP	Safeguards	Transportation	
			Greater than type A quantity [1]	Type A quantity or less [2]
a. Power reactors	$100,000	$100,000	$100,000	$5,000
b. Test reactors	10,000	10,000	10,000	2,000
c. Research reactors and critical facilities	5,000	5,000	5,000	1,000
d. Fuel fabricators and industrial processors [3]	25,000	[4] 100,000	25,000	5,000
e. Mills and uranium conversion facilities	10,000		5,000	2,000
f. Industrial users of material [5]	10,000		5,000	2,000
g. Waste disposal licensees	10,000		5,000	2,000
h. Academic or medical institutions [6]	5,000		2,500	1,000
i. Other material licensees	1,000		2,500	1,000

[1] Includes irradiated fuel, high level waste, unirradiated fissile material, and any other quantities requiring Type B packaging.
[2] Includes low specific activity waste (LSA), low level waste, Type A packages, and excepted quantities and articles.
[3] Large firms engaged in manufacturing or distribution of byproduct, source, or special nuclear material.
[4] This amount refers to Category 1 licensees (as defined in 10 CFR 73.2(bb)). Licensed fuel fabricators not authorized to possess Category 1 material have a base penalty amount of $50,000.
[5] Includes industrial radiographers, nuclear pharmacies, and other industrial users.
[6] This applies to nonprofit institutions not otherwise categorized under sections "a" through "g" in this table.

TABLE 1B.—BASE CIVIL PENALTIES

Severity level	Base Civil Penalty amount [1]
I	100
II	80
III	50
IV	15
V	5

[1] Percent of amount listed in table 1A.

C. Orders

An order is a written NRC directive to modify, suspend, or revoke a license; to cease and desist from a given practice or activity; or to take such other action as may be proper (see 10 CFR 2.202 and 2.204). Orders maybe issued as set forth below. Orders may also be issued in lieu of, or in addition to, civil penalties, as appropriate.

(1) License Modification Orders are issued when some change in licensee equipment, procedures, or management controls is necessary.

(2) Suspension Orders may be used:

(a) To remove a threat to the public health and safety, common defense and security, or the environment;

(b) To stop facility construction when: (i) Further work could preclude or significantly hinder the identification or correction of an improperly constructed safety-related system or component, or (ii) the licensee's quality assurance program implementation is not adequate to provide confidence that construction activities are being properly carried out;

(c) When the licensee has not responded adequately to other enforcement action;

(d) When the licensee interferes with the conduct of an inspection or investigation; or

(e) For any reason not mentioned above for which license revocation is legally authorized.

Suspensions may apply to all or part of the licensed activity. Ordinarily, a licensed activity is not suspended (nor is a suspension prolonged) for failure to comply with requirements where such failure is not willful and adequate corrective action has been taken.

(3) Revocation Orders maybe used:

(a) When a licensee is unable or unwilling to comply with NRC requirements,

(b) When a licensee refuses to correct a violation,

(c) When a licensee does not respond to a notice of violation where a response was required,

(d) When a licensee refuses to pay a fee required by 10 CFR Part 170, or

(e) For any other reason for which revocation is authorized under Section 186 of the Atomic Energy Act (e.g., any condition which would warrant refusal of a license on an original application).

(4) Cease and Desist Orders are typicallly used to stop an unauthorized activity that has continued after notification by NRC that such Activity is unauthorized.

Orders are made effective immediately, without prior opportunity for hearing, whenever it is determined that the public health, interests, or safety so requires, or when the order is responding to a violation involving willfulness. Otherwise, a prior opportunity for a hearing on the order is afforded. For cases in which the NRC believes a basis could reasonably exist for not taking the action as proposed, the licensee will ordinarily be afforded an opportunity to show cause why the order should not be issued in the proposed manner.

D. Escalation of Enforcement Sanctions

NRC considers violations of Severity Levels I, II, or III to be serious. If serious violations occur, NRC will, where necessary, issue orders in conjunction with civil penalties to achieve immediate corrective actions and to deter further recurrence of serious violations. NRC carefully considers the circumstances of each case in selecting and applying the sanction(s) appropriate to the case in accordance with the criteria described in Sections V.B and V.C, above.

Examples of enforcement actions that could be taken for similar Severity Level I, II, or III violations are set forth in Table 2. The actual progression to be used in a particular case will depend on the circumstances. However, enforcement sanctions will normally escalate for recurring similar violations.

Normally the progression of enforcement actions for similar violations will be based on violations under a single license. When more that one facility is covered by a single license, the normal progression will be based on similar violations at an individual facility and not on similar violations under the same license. However, it should be noted that under some circumstances, e.g., where there is common control over some facet of facility operations, similar violations may be charged even though the second violation ocurred at a different facility or under a different license. For example, a physical security violation at Unit 2 of a dual unit plant that repeats an earlier violation at Unit 1 might be considered similar.

TABLE 2.—EXAMPLES OF PROGRESSION OF ESCALATED ENFORCEMENT ACTIONS FOR SIMILAR VIOLATIONS IN THE SAME ACTIVITY AREA UNDER THE SAME LICENSE

Severity of violation	Number of similar violations from the date of the last inspection or within the previous 2 years (whichever period is greater)		
	1st	2nd	3rd
I	a+b	a+b+c	d
II	a	a+b	a+b+c
III		a	a+b

a. Civil penalty.

b. Suspension of affected operations until the Office Director is satisfied that there is reasonable assurance that the licensee can operate in compliance with the applicable requirements; or modification of the license, as appropriate.

c. Show cause for modification or revocation of the license, as appropriate.

d. Further action, as appropriate.

E. Related Administrative Actions

In addition to the formal enforcement mechanisms of notices of violation, civil penalties, and orders, NRC also uses administrative mechanisms, such as bulletins, circulars, information notices, generic letters, notices of deviation, notices of nonconformance and confirmatory action letters to supplement its enforcement program. NRC expects licensees and vendors to adhere to any obligations and commitments resulting from these processes and will not hesitate to issue appropriate orders to licensees to make sure that such commitments are met.

(1) Bulletins, Circulars, Information Notices and Generic Letters are written notifications to groups of licensees identifying specific problems and recommending specific actions.

(2) Notices of Deviation are written notices describing a licensee's failure to satisfy a commitment where the commitment involved has not been made a legally binding requirement. A notice of deviation requests a licensee to provide a written explanation or statement describing corrective steps taken

(or planned), the results achieved, and the date when corrective action will be completed.

(3) Confirmatory Action Letters are letters confirming a licensee's or a vendor's agreement to take certain actions to remove significant concerns about health and safety, safeguards, or the environment.

(4) Notices of Nonconformance are written notices describing nonlicensees' failure to meet commitments which have not been made legally binding requirements by NRC. An example is a commitment made in a procurement contract with a licensee as required by 10 CFR Part 50, Appendix B. Notices of Nonconformances request non-licensees to provide written explanations or statements describing corrective steps (taken or planned), the results achieved, the dates when corrective actions will be completed, and measures taken to preclude recurrence.

F. Referrals to Department of Justice

Alleged or suspected criminal violations of the Atomic Energy Act (and of other relevant Federal laws) are referred to the Department of Justice for investigation. Referral to the Department of Justice does not preclude the NRC from taking other enforcement action under this General Statement of Policy. However, such actions will be coordinated with the Department of Justice to the extent practicable.

VI. Public Disclosure of Enforcement Actions

In accordance with 10 CFR 2.790, all enforcement actions and licensees' responses are publicly available for inspection. In addition, press releases are generally issued for civil penalties and orders. In the case of orders and civil penalties related to violations at Severity Level I, II, or III, press releases are issued at the time of the order or the proposed imposition of the civil penalty. Press releases are not normally issued for Notices of Violation.

VII. Responsibilities

The Director, Office of Inspection and Enforcement, as the principal enforcement officer of the NRC, has been delegated the authority to issue notices of violations, civil penalties, and orders.[5] Regional Administrators may also issue notices of violation for Severity Level IV and V violations and may sign notices of violation for Severity Level III violations with no proposed civil penalty and proposed civil penalty actions with the concurrence of the Director, IE. In recognition that the regulation of nuclear activities in many cases does not lend itself to a mechanistic treatment, the Director, IE or the Regional Administrator must exercise judgment and discretion in determining the severity levels of the violations and the appropriate enforcement sanctions, including the decision to impose a civil penalty and the amount of such penalty, after considering the general principles of this statement of policy and the technical significance of the violations and the surrounding circumstances.

The Commission will be provided written notification of all enforcement actions involving civil penalties or orders. The Commission will be consulted prior to taking enforcement action in the following situations (unless the urgency of the situation dictates immediate action):

(1) An action affecting a licensee's operation that requires balancing the public health and safety or common defense and security implications of not operating with the potential radiological or other hazards associated with continued operation.

(2) Proposals to impose civil penalties in amounts greater than 3 times the Severity Level I values shown in Table 1A;

(3) Any proposed enforcement action that involves a Severity Level I violation;

(4) Any enforcement action that involves a finding of a material false statement;

(5) Any action that Office Director believes warrants Commission involvement; or

(6) Any proposed enforcement action on which the Commission asks to be consulted.

VIII. Vendor Enforcement

The Commission's enforcement policy is also applicable to non-licensees (vendors). Vendors of products or services provided for use in nuclear activities are subject to certain requirements designed to ensure that the products or services supplied that could affect safety are of high quality. Through procurement contracts with reactor licensees, vendors are required to have quality assurance programs that meet applicable requirements including 10 CFR Part 50, Appendix B, and 10 CFR Part 71, Subpart H. Vendors of reactor and materials licensees and Part 71 licensees are subject to the requirements of 10 CFR Part 21 regarding reporting of defects in basic components.

The NRC conducts inspections of reactor licensees to determine whether they are ensuring that vendors are meeting their contractual obligations with regard to quality of products or services that could have an adverse effect on safety. As part of the effort of ensuring that licensees fulfill their obligations in this regard, the NRC inspects reactor vendors to determine if they are meeting their obligations. These inspections include examination of the quality assurance programs and their implementation by the vendors through examination of product quality. The NRC may also inspect vendors, including suppliers of Part 71 and materials licensees, to determine whether they are complying with Part 21.

When inspections determine that violations of NRC requirements have occurred, or that vendors have failed to fulfill contractual commitments that could adversely affect the quality of a safety significant product or service, enforcement action will be taken. Notices of Violation and civil penalties will be used, as appropriate, for licensees failures to ensure that their vendors have programs that meet applicable requirements including Part 21. Notices of Violation will be issued for vendors which violate Part 21. Civil penalties will only be imposed against individual directors or responsible officers of a vendor organization who knowingly and consciously fail to provide the notice required by 10 CFR 21.21(b)(1). Notices of Nonconformance will be used for vendors which fail to meet commitments related to NRC activities.

Supplement I—Severity Categories

Reactor Operations

A. Severity I—Violations involving for example:

1. A Safety Limit, as defined in 10 CFR 50.36 and the Technical Specifications, being exceeded;

2. A system [6] designed to prevent or mitigate a serious safety event not being able to perform its intended safety function [7] when actually called upon to work;

3. An accidental criticality; or

4. Release of radioactivity offsite greater than ten (10) times the Technical Specifications limit.[8]

B. Severity II—Violations involving for example:

1. A system designed to prevent or mitigate serious safety events not being able to perform its intended safety function; or

2. Release of radiactivity offsite greater than five (5) times the Technical Specifications limit.

C. Severity III—Violations involving for example:

1. A significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, in the applicable modes, having one high-pressure safety injection pump inoperable for a period in excess of that allowed by the action statement; or

b. In a boiling water reactor, one primary containment isolation valve inoperable for a period in excess of that allowed by the action statement.

2. A system designed to prevent or mitigate a serious safety event not being able to perform its intended function under certain conditions (e.g., safety system not operable unless offsite power is available; materials or components not environmentally qualified);

3. Dereliction of duty on the part of personnel involved in licensed activities;

[5] The Directors of the Offices of Nuclear Reactor Regulation and Nuclear Material Safety and Safeguards have also been delegated similar authority, but it is expected that normal use of this authority by NRR and MMSS will be confined to actions necessary in the interest of public health and safety. The Director, Office of Administration, has been delegated the authority to issue orders where licensees violate Commission regulations by nonpayment of license fees. It is planned to consider the redelegation of some or all of these authorities to the Administrators of the NRC Regional Offices over the next several years.

[6] "System" as used in these supplements, includes administrative and managerial control systems, as well as physical systems.

[7] "Intended safety function" means the total safety function, and is not directed toward a loss of redundancy. For example, considering a BWR's high pressure ECCS capability, the violation must result in complete invalidation of both HPCI and ADS subsystems. A loss of one subsystem does not defeat the intended safety function as long as the other subsystem is operable.

[8] The Technical Specification limit as used in this Supplement (Items A.4, B.2 and C.5) does not apply to the instantaneous release limit.

4. Changes in reactor parameters which cause unanticipated reductions in margins of safety;

5. Release of radiactivity offsite greater than the Technical Specifications limit;

6. Failure to meet the requirements of 10 CFR 50.59 such that a required license amendment was not sought; or

7. Licensee failure to conduct adequate oversight of vendors resulting in the use of products or services which are of defective or indeterminate quality and which have safety significance.

D. Severity IV—Violations involving for example:

1. A less significant violation of a Technical Specification Limiting Condition for Operation where the appropriate Action Statement was not satisfied within the time allotted by the Action Statement, such as:

a. In a pressurized water reactor, a 5% deficiency in the required volume of the condensate storage tank; or

b. In a boiling water reactor, one subsystem of the two independent MSIV leakage control subsystems inoperable.

2. Failure to meet the requirements of 10 CFR 50.59 that does not result in a Severity Level I, II, or III violation;

3. Failure to meet regulatory requirements that have more than minor safety or environmental significance; or

4. Failure to make a required Licensee Event Report.

E. Severity Level V—Violations that have minor safety or environmental significance.

Supplement II—Severity Categories

Part 50 Facility Construction

A. Severity I—Violations involving a structure or system that is completed [9] in such a manner that it would not have satisfied its intended safety related purpose.

B. Severity II—Violations involving for example:

1. A breakdown in the quality assurance program as exemplified by deficiencies in construction QA related to more than one work activity (e.g., structural, piping, electrical or foundations). Such deficiencies normally involve the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits and normally involve multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation; or

2. A structure or system that is completed in such a manner that it could have an adverse effect on the safety of operations.

C. Severity III—Violations involving for example:

1. A deficiency in a licensee quality assurance program for construction related to a single work activity (e.g., structural, piping, electrical, or foundations). Such significant deficiency normally involves the licensee's failure to conduct adequate audits or to take prompt corrective action on the basis of such audits, and normally involves multiple examples of deficient construction or construction of unknown quality due to inadequate program implementation;

2. Failure to confirm the design safety requirements of a structure or system as a result of inadequate preoperational test program implementation; or

3. Failure to make a required 10 CFR 50.55(e) report.

D. Severity IV—Violations involving failure to meet regulatory requirements including one or more Quality Assurance Criterion not amounting to Severity Level I, II, or III violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement III—Severity Categories

Safeguards

A. Severity I—Violations involving for example:

1. An act of radiological sabotage or actual theft, loss, or diversion of a formula quantity of strategic special nuclear material [10] (SSNM);

2. Actual entry of an unauthorized individual into a vital area or material access area from outside the protected area (i.e., penetration of both barriers) that was not detected at the time of entry; or

3. Failure to promptly report knowledge of an actual or attempted theft or diversion of SSNM or an act of radiological sabotage.

B. Severity II—Violations involving for example:

1. Actual theft, loss or diversion of special nuclear material (SNM) of moderate strategic significance;[11]

2. Failure to control access such that all three elements of access control (barrier, monitoring, and response) at the protected area or vital area are inadequate or two of three elements are inadequate in both the protected and vital area;

3. Failure to implement approved compensatory measures when the central and secondary alarm stations are inoperable;

4. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of a formula quantity of SNM from areas of authorized use or storage; or

5. Failure to use established transportation security systems designed or used to prevent the theft, loss, or diversion of a formula quantity of SNM or acts of radiological sabotage.

C. Severity III—Violations involving for example:

1. Failure to control access such that two of the three elements of access control at the vital area or protected area barrier are inadequate;

2. Failure to control access to a transport vehicle or the SNM being transported that does not constitute a Severity I or II violation;

3. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of SNM of moderate strategic significance from areas of authorized use or storage;

4. Failure to implement approved compensatory measures when the central (or secondary) alarm station is inoperable;

5. Failure to conduct a proper search at the access control point that results in introduction to the site of firearms, explosives, incendiary devices, or other items which could be used for industrial sabotage; or

6. Failure to properly secure or protect classified or other sensitive safeguards information which would significantly assist an individual in an act of radiological sabotage or theft of special nuclear material.

D. Severity IV—Violations involving for example:

1. Failure to establish or maintain safeguards systems designed or used to prevent or detect the unauthorized removal of SNM of low strategic significance [12] from areas of authorized use or storage;

2. Failure to implement 10 CFR Parts 25 and 95 and information addressed under Section 142 of the Act, and the NRC approved security plan relevant to those parts;

3. Failure to control access to a vital area or material access area from inside the protected area or failure to control access to the protected area in that one of the three elements of access control is inadequate;

4. Failure to properly secure or protect classified or other sensitive safeguards information which would not significantly assist an individual in an act of radiological sabotage or theft of special nuclear material; or

5. Other violations, such as failure to follow an approved security plan, that have more than minor safeguards significance.

E. Severity V—Violations that have minor safeguards significance.

Supplement IV—Severity Categories

Health Physics 10 CFR Part 20 [13]

A. Severity I—Violations involving for example:

1. Single exposure of a worker in excess of 25 rems of radiation to the whole body, 150 rems to the skin of the whole body, or 375 rems to the feet, ankles, hands, or forearms;

2. Annual whole body exposure of a member of the public in excess of 2.5 rems of radiation;

3. Release of radioactive material to an unrestricted area in excess of ten times the limits of 10 CFR 20.106;

4. Disposal of licensed material in quantities or concentrations in excess of ten times the limits of 10 CFR 20.303; or

5. Exposure of a worker in restricted areas of ten times the limits of 10 CFR 20.103.

B. Severity II—Violations involving for example:

1. Single exposure of a worker in excess of 5 rems of radiation to the whole body, 30 rems to the skin of the whole body or 75 rems to the feet, ankles, hands or forearms;

2. Annual whole body exposure of a member of the public in excess of 0.5 rems of radiation;

[9] "Completed" means completion of construction including review and acceptance by the construction QA organization.

[10] See 10 CFR 73.2(bb)

[11] See 10 CFR 73.2(x)

[12] See 10 CFR 73.2(y)

[13] Personnel overexposures and associated violations, incurred during a life saving effort, will be treated on a case-by-case basis.

3. Release of radioactive material to an unrestricted area in excess of five times the limits of 10 CFR 20.106;

4. Failure to make an immediate notification as required by 10 CFR 20.403(a)(1) and 10 CFR 20.403(a)(2);

5. Disposal of licensed material in quantities or concentrations in excess of five times the limits of 10 CFR 20.303; or

6. Exposure of a worker in restricted areas in excess of five times the limits of 10 CFR 20.103.

C. Severity III—Violations involving for example:

1. Single exposure of a worker in excess of 3 rems of radiation to the whole body, 7.5 rems to the skin of the whole body, or 16.75 rems to the feet, ankles, hands or forearms;

2. A radiation level in an unrestricted area such that an individual could receive greater than 100 millirem in a one hour period or 500 millirem in any seven consecutive days;

3. Failure to make a 24-hour notification as required by 10 CFR 20.403(b) or an immediate notification required by 10 CFR 20.402(a);

4. Substantial potential for an exposure or release in excess of 10 CFR Part 20 whether or not such exposure or release occurs (e.g., entry into high radiation areas, such as under reactor vessels or in the vicinity of exposed radiographic sources, without having performed an adequate survey, operation of a radiation facility with a nonfunctioning interlock system);

5. Release of radioactive material to an unrestricted area in excess of the limits of 10 CFR 20.106;

6. Improper disposal of licensed material not covered in Severity Level I or II;

7. Exposure of a worker in restricted areas in excess of the limits of 10 CFR 20.103;

8. Release for unrestricted use of contaminated or radioactive material or equipment which poses a realistic potential for significant exposure to members of the public, or which reflects a programmatic (rather than isolated) weakness in the radiation control program;

9. Cumulative worker exposure above regulatory limits when such cumulative exposure reflects a programmatic, rather than an isolated weakness in radiation protection;

10. Conduct of licensee activities by a technically unqualified person; or

11. Significant failure to control licensed material.

D. Severity IV—Violations involving for example:

1. Exposures in excess of the limits of 10 CFR 20.101 not constituting Severity Level I, II, or III violations;

2. A radiation level in an unrestricted area such that an individual could receive greater than 2 millirem in a one-hour period or 100 millirem in any seven consecutive days;

3. Failure to make a 30-day notification required by 10 CFR 20.405;

4. Failure to make a followup written report as required by 10 CFR 20.402(b), 20.408, and 20.409; or

5. Any other matter that has more than minor safety or enviromental significance.

E. Severity V—Violations that have minor safety or enviromental significance.

Supplement V—Severity Categories

Transportation [14]

A. Severity I—Violations of NRC transportation requirements involving for example:

1. Annual whole body radiation exposure of a member of the public in excess of 0.5 rems of radiation; or

2. Breach of package integrity resulting in surface contamination or external radiation levels in excess of ten times the NRC limits.

B. Severity II—Violations of NRC transportation requirements involving for example:

1. Breach of package integrity resulting in surface contamination or external radiation levels in excess of NRC requirements;

2. Surface contamination or external radiation levels in excess of five times NRC limits that did not result from a breach of package integity; or

3. Failure to make required initial notifications associated with Severity Level I or II violations.

C. Severity III—Violations of NRC transportation requirements involving for example:

1. Breach of package integrity;

2. Surface contamination or external radiation levels in excess of, but less than a factor of five above NRC requirements, that did not result from a breach of package integrity;

3. Any noncompliance with labelling, placarding, shipping paper, packaging, loading, or other requirements that could reasonably result in the following:

a. Improper identification of the type, quantity, or form of material;

b. Failure of the carrier or recipient to exercise adequate controls; or

c. Substantial potential for personnel exposure or contamination, or improper transfer of material; or

4. Failure to make required initial notification associated with Severity Level III violations.

D. Severity IV—Violations of NRC transportation requirements involving for example:

1. Package selection or preparation requirements which do not result in a breach of package integrity or surface contamination or external radiation levels in excess of NRC requirements; or

2. Other violations that have more than minor safety or environmental significance.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement VI—Severity Categories

Fuel Cycle and Materials Operations

A. Severity I—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed ten times the limits specified in the license;

2. A system designed to prevent or mitigate a serious safety event not being operable when actually required to perform its design function; or

3. A nuclear criticality accident.

B. Severity II—Violations involving for example:

1. Radiation levels, contamination levels, or releases that exceed five times the limits specified in the license; or

2. A system designed to prevent or mitigate a serious safety event being inoperable.

C. Severity III—Violations involving for example:

1. Failure to control access to licensed materials for radiation purposes as specified by NRC requirements;

2. Possession or use of unauthorized equipment or materials in the conduct of licensee activities which degrades safety;

3. Use of radioactive material on humans where such use is not authorized;

4. Conduct of licensed activities by a technically unqualified person;

5. Radiation levels, contamination levels, or releases that exceed the limits specified in the license; or

6. Medical therapeutic misadministrations.

D. Severity IV—Violations involving for example:

1. Failure to maintain patients hospitalized who have cobalt-60, cesium-137, or iridium-192 implants or to conduct required leakage or contamination tests, or to use properly calibrated equipment;

2. Other violations that have more than minor safety or environmental significance; or

3. Failure to report medical diagnostic misadministrations.

E. Severity V—Violations that have minor safety or environmental significance.

Supplement VII—Severity Categories

Miscellaneous Matters

A. Severity I—Violations involving for example:

1. A Material False Statement (MFS)[15] in which the statement made was deliberately false;

2. Falsification of records which NRC requires be kept of significant information in which the records were deliberately falsified by or with the knowledge of management;

3. A knowing and intentional failure to provide the notice required by Part 21; or

4. Action by senior corporate management in violation of Section 210 of the ERA against an employee.

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[14] Some transportation requirements are applied to more than one licensee involved in the same activity such as a shipper (10 CFR 73.20) and a carrier (10 CFR 70.20a). When a violation of such a requirement occurs, enforcement action will be directed against the responsible licensee which, under the circumstances of the case, may be one or more of the licensees involved.

[15] In essence, a Material False Statement is a statement that is false by omission or commission and is relevant to the regulatory process. As can be seen in the examples, in determining the specific severity level of a violation involving material false statements or falsification of records, consideration will be given to such factors as the position of the person involved in the violation (e.g., first line supervisor or senior manager), the significance of the information involved, and the intent of the violator (i.e., negligence not amounting to careless disregard, careless disregard, or deliberateness). The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of the violation.

B. Severity II—Violations involving for example:

1. A MFS or a reporting failure, involving information which, had it been available to the NRC and accurate at the time the information should have been submitted, would have resulted in regulatory action or would likely have resulted in NRC seeking further information;

2. A MFS in which the false statement was made with careless disregard;

3. Deliberate falsification or records which NRC requires be kept involving significant information;

4. Action by plant management above first-line supervision in violation of section 210 of the ERA against an employee; or

5. A failure to provide the notice required by Part 21.

C. Severity III—Violations involving for example:

1. A MFS not amounting to a Severity Level I or II violation.

2. Deliberate falsification, or falsification by or with the knowledge of management, of records which the NRC requires be kept that did not involve significant information.

3. Action by first-line supervision in violation of section 210 of the ERA against an employee; or

4. Inadequate review or failure to review such that, if an appropriate review had been made as required, a Part 21 report would have been made.

D. Severity IV—Violations involving for example:

1. Inadequate review or failure to review under Part 21 or other procedural violations associated with Part 21 with more than minor safety significance;

2. A false statement caused by an inadvertent clerical or similar error involving information which, had it been available to NRC and accurate at the time the information should have been submitted, would probably not have resulted in regulatory action or NRC seeking additional information; or

E. Severity V—Violations of minor procedural requirements of Part 21.

Supplement VIII—Severity Categories

Emergency Preparedness

A. Severity I—Violations involving for example:

In a general emergency, licensee failure to promptly: (1) Correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff).

B. Severity II—Violations involving for example:

1. In a site area emergency, licensee failure to promptly: (1) Correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement more than one emergency planning standard involving assessment or notification.

C. Severity III—Violations involving for example:

1. In an alert, licensee failure to promptly: (1) Correctly classify the event, (2) make required notifications to responsible Federal, State, and local agencies, or (3) respond to the event (e.g., assess actual or potential offsite consequences, activate emergency response facilities, and augment shift staff); or

2. Licensee failure to meet or implement one emergency planning standard involving assessment or notification.

D. Severity IV—Violations involving for example:

Licensee failure to meet or implement any emergency planning standard or requirement not directly related to assessment and notification.

E. Severity V—Violations that have minor safety or environmental significance.

Dated at Washington, D.C., this 14th day of November 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 27598 Filed 11-19-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject to Certification; Monensin-Mineral Granules

AGENCY: Food and Drug Administration; HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Farmers Friend Mineral Co., providing for use of monensin-mineral granules in pasture cattle. The supplement expands the class of pasture cattle to include dairy and beef replacement heifers.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Taylor, Center for Veterinary Medicine (HFV-126), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Farmers Friend Mineral Co., Inc., 1048 East Main St., Louisville, KY 40206, has submitted a supplement to NADA 119-823 for monensin-mineral granules. The NADA was previously approved for increased rate of weight gain in slaughter, stocker, and feeder cattle weighing more than 400 pounds on pasture. The supplement adds dairy and beef replacement heifers to the class of pasture cattle for which the drug is labeled for use. The supplement is approved and the regulations are amended to reflect the approval. Elanco Products Co. has authorized use of data in NADA 95-735 and NADA 38-878 to support approval of NADA 119-823.

This is a Category II Supplement (42 FR 64367; December 23, 1977), which does not require reevaluation of the underlying safety and effectiveness data in the original approval. This determination is based on the fact that the use of the product is being extended to immature cattle intended for breeding purposes so that tissue residues would not be expected and the product's effectiveness has been previously established in other pasture cattle of the same weight.

Approval of this supplement is an administrative action that did not require generation of new effectiveness or safety data. Therefore, a freedom of information summary (pursuant to 21 CFR 514.11(e)(2)(ii) is not required.

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs, Oral use.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 520.1448b [Amended]

2. In § 520.1448b *Monensin-mineral granules* by removing the first sentence of paragraph (d)(3) and inserting in its place "Medicated mineral granules to be fed free choice to pasture cattle (slaughter, stocker, feeder, and dairy and beef replacement heifers) weighing more than 400 pounds."

Dated: November 13, 1985.

Marvin A. Norcross,

Acting Associate Director for New Animal Drug Evaluation.

[FR Doc. 85-27609 Filed 11-19-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 232 and 242

[Docket No. R-85-1234; FR-1806]

Refinancing of HUD-Insured Hospital Mortgages

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

ACTION: Final rule.

SUMMARY: The Department is amending its regulations governing the insurance of mortgages for hospitals. Under this rule, HUD will be able to insure a mortgage given to refinance an existing HUD-insured mortgage covering a hospital. Insurance coverage will, however, be subject to limitations related to the new mortgage's principal amount, term and debt service provisions. The rule will also correct a technical defect in the refinancing provisions applicable to HUD-insured nursing homes and intermediate care facilities.

EFFECTIVE DATE: Upon expiration of the first period of 30 calendar days of continuous session of Congress after publication, but not before further notice of the effective date is published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: James L. Hamernick, Director, Office of Insured Multifamily Housing Development, Room 6128, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC. 20410-5000, telephone (202) 755-5720. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On June 24, 1985, HUD published a notice of proposed rule making to apply the provisions of section 223(a)(7) of the National Housing Act (the Act) to hospital-related mortgages insured under section 242 of the Act. Section 223(a)(7) authorizes the Department to insure a mortgage that is given to refinance an existing mortgage insured under the Act.

The proposed rule included several limitations designed to ensure that any refinancing would result in reduced debt service payments for a mortgagor without increasing HUD's insurance liability. These limitations are as follows:

(1) The principal amount of the mortgage could not exceed the lesser of (a) the original principal amount of the existing mortgage or (b) the sum of the unpaid principal balance of the existing mortgage and loan closing charges associated with the refinancing mortgage and costs of improvements, upgrading or additions required to be made to the property.

(2) The mortgagor's monthly debt service payment could not increase as a result of the refinancing.

(3) In appropriate circumstances, the new mortgage's term could exceed the unexpired balance of the existing mortgage by up to 12 years.

In addition, HUD proposed the technical revisions to existing rules in 24 CFR Part 232 related to refinanced mortgages, making clear their application to nursing homes and intermediate care facilities.

The Department did not receive any comments in response to its notice of proposed rulemaking. Accordingly, the rule is now being adopted as final without any revision.

Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC. 20410-5000.

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

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 6010), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule will generally apply to HUD-insured hospitals, most of which are not small entities, and will make Federal mortgage insurance available to hospitals seeking to refinance existing insured mortgages.

This rule was listed as item number 827 in the Department's Semiannual Agenda of Regulations published on October 29, 1985 (50 FR 44166, 44188), under Executive Order 12291 and the Regulatory Flexibility Act.

The hospital mortgage insurance program is listed in the Catalog of Federal Domestic Assistance as program number 14.128. The insurance program for nursing homes and intermediate care facilities is listed in the Catalog as program number 14.129.

List of Subjects

24 CFR Part 232

Fire prevention, Health facilities, Loan programs, Health, Loan programs: Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 242

Hospitals, Mortgage Insurance.

Accordingly, the Department amends 24 CFR Parts 232 and 242 as follows:

PART 232—NURSING HOMES AND INTERMEDIATE CARE FACILITIES MORTGAGE INSURANCE

1. The authority citation for 24 CFR Part 232 continues to read as follows:

Authority: Secs. 211, 232, National Housing Act (12 U.S.C. 1715b, 1715w); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. By revising § 232.41 to read as follows:

§ 232.41 Eligibility of miscellaneous type mortgages.

A mortgage covering a facility having 20 or more beds shall be eligible for insurance under this subpart if it meets the requirements of § 207.31(b) and (c) of this chapter, as well as the requirements of this subpart.

3. By revising § 232.42 to read as follows:

§ 232.42 Eligibility of refinanced mortgages.

A mortgage given to refinance an existing insured mortgage covering a facility having 20 or more beds may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act if it meets the requirements of

§ 207.32(a) through (c) of this chapter, as well as the requirements of this subpart.

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

4. The authority citation for 24 CFR Part 242 is revised to read as set forth below and any authority citation following any section in Part 242 is removed:

Authority: Secs. 211, 223(f), 242, National Housing Act (12 U.S.C. 1715b, 1715n(f), 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

5. By adding a new § 242.96 to read as follows:

§ 242.96 Eligibility of refinancing transactions.

A mortgage given to refinance an existing insured mortgage covering a hospital may be insured under this subpart pursuant to section 223(a)(7) of the National Housing Act. Insurance of the new, refinancing mortgage shall be subject to the following limitations:

(A) *Principal amount.* The principal amount of the refinancing mortgage shall not exceed the lesser of (1) the original principal amount of the existing insured mortgage, or (2) the unpaid principal amount of the existing insured mortgage, to which may be added loan closing charges associated with the refinancing mortgage, and costs, as determined by the Commissioner, or improvements, upgrading or additions required to be made to the property.

(b) *Debt service rate.* The monthly debt service payment for the refinancing mortgage may not exceed the debt service payment charged for the existing mortgage.

(c) *Mortgage term.* The term of the new mortgage shall not exceed the unexpired term of the existing mortgage, except that the new mortgage may have a term of not more than 12 years in excess of the unexpired term of the existing mortgage in any case in which the Commissioner determines that the insurance of the mortgage for an additional term will inure to the benefit of the General Insurance Fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, and the remaining economic life of the property.

Dated: November 7, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 85-27673 Filed 11-19-85; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 917 to preempt and supersede Kentucky Revised Statute (KRS) 350.060(22). The preempted and superseded provision provided an exemption of "operations involving the crushing screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site" from the requirements of the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program). The Kentucky program was approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The proposal to preempt and supersede the Kentucky provision was announced in the September 17, 1985 Federal Register (50 FR 37699). The comment period closed on October 17, 1985.

After providing an opportunity for public comment on the proposed preemption and supersession, and after careful consideration of the issue, the Director has determined that these provisions are inconsistent with the requirements of SMCRA and has decided to preempt and supersede KRS 350.060(22). The rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement this action. This final rule is being made effective December 1, 1985, to correspond with Kentucky Natural Resources and Environmental Protection Cabinet plans to regulate operations covered by this action. Consistency of the State and Federal standards is required by SMCRA.

EFFECTIVE DATE: December 1, 1985.

FOR FURTHER INFORMATION CONTACT: W.H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504; Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program

On December 30, 1981, Kentucky resubmitted its proposed regulatory program to OSM. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 Federal Register (47 FR 21404-21435). 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 Kentucky program can be found in the May 18, 1982 Federal Register.

II. Background on the Director's Action

On May 26, 1982, Kentucky submitted to OSM pursuant to 30 CFR 732.17, an amendment to the Kentucky program to revise its requirements for regulation of operations involving the crushing, screening or loading of coal. The amendment, in Senate Bill 218, consisted of an addition to Kentucky Revised Statute (KRS) 350.060 of paragraph 22 to read: "All operations involving the crushing, screening, or loading of coal which do not separate coal from its impurities, and which are not located at or near the mine site, shall be exempt from requirements of this chapter."

On September 17, 1985, OSM announced the disapproval of the amendment in the Federal Register (50 FR 37656). By separate notice on the same date, OSM also proposed to preempt and supersede KRS 350.060(22) for reasons which were outlined in the disapproval notice and in the proposal notice (50 FR 37699).

III. Director's Findings

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede KRS 350.060(22). The Director is taking this action because he has determined that the Kentucky provision KRS 350.060(22) is inconsistent with section 701(28) of SMCRA and less effective than 30 CFR 700.5 and 701.5 based on the reasons cited under "Director's Findings" in the notice of final rulemaking disapproving the amendment (September 17, 1985, 50 FR 37656). This action will not require that mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site be regulated.

IV. Public Comments

Comments were submitted on behalf of the Kentucky Coal Association.

The commenter opposed OSM's action to preempt and supersede the

Kentucky provision, and questioned the legality of this action. The commenter said that if OSM is appealing the court decision (Round I of *In Re: Permanent Surface Mining Regulation Litigation II* (D.C.C. 1984) on tipple and preparation plant jurisdiction, then the pressure to promulgate new Federal rules is less. The commenter stated that Kentucky cannot change its law prior to the 1986 legislative session and that the Kentucky Coal Association would not oppose such legislative change at that time. The commenter said, however, that the Assocation opposes OSM's current action.

Whether the court decision in Round I of *In Re: Permanent Surface Mining Regulation Litigation II* (D.D.C. 1984) is appealed, the ruling of the court now stands. OSM has issued proposed and interim final rules to implement the court's decision on this matter (50 FR 28180 and 50 FR 28186, July 10, 1985) and will proceed accordingly. Also, in a Judgment and Order filed August 20, 1985, the United States District Court for the Eastern District of Kentucky in *Sierra Club, Cumberland Chapter, et al. v. James G. Watt, et al.*, ordered the Secretary of the Interior and the State of Kentucky to revise Kentucky's program and comply with the court's Opinion and Order within 90 days. (The Order has since been amended to extend the time for compliance to December 1, 1985.) One of the program issues included in the Opinion and Order was the regulation of coal crushing facilities that did not wash or screen coal. The Opinion and Order also discussed the District Court decision in the *In re: Permanent Surface Mining Regulation Litigation II*, Round I decision and the federal defendant's acknowledgement that the regulations must be changed to reflect that court's ruling.

In a **Federal Register** notice announcing disapproval of the Kentucky provision at KRS 350.060(22), the Director found the provision to be inconsistent with the SMCRA definition of "surface coal mining operations" at section 701(28). (50 FR 37656). Therefore, the Director is preempting and superseding the Kentucky provision.

V. Director's Decision

The Director, based on the reasons cited in "Director's Findings" in the September 17, 1985 **Federal Register** (50 FR 37656), is preempting and superseding KRS 350.060(22) which reads as follows:

(22) All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter.

This action will not require that Kentucky regulate mere loading facilities that are not engaged in the physical processing of coal which are not located at or near the mine site. However, this action does remove any legal bar to Kentucky's ability to regulate processing facilities. This preemption and supersession requires Kentucky to operate and enforce its approved program as if the preempted and superseded provision did not exist.

VI. 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 section 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 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 917

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

Dated: November 14, 1985.

James W. Workman,

Deputy Director, Office of Surface Mining.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

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

2. 30 CFR Part 917 is amended to add § 917.13 to read as follows:

§ 917.13 State statutory and regulatory provisions set aside.

(a) The following provision of Kentucky Revised Statute at KRS 350.060(22) is inconsistent with section 701(28) of the Surface Mining Control and Reclamation Act of 1977 and is hereby set aside effective December 1, 1985:

"(22) All operations involving the crushing, screening, or loading of coal which do not separate the coal from its impurities, and which are not located at or near the mine site, shall be exempt from the requirements of this chapter."

(b) [Reserved]

[FR Doc. 85-27685 Filed 11-19-85; 8:45 am]

BILLING CODE 4310-05-M

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30 CFR Part 917

Approval of Permanent Program Amendments From the Commonwealth of Kentucky 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 program amendments submitted by Kentucky as modifications to the State's permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were submitted on August 29, 1985. The amendments pertain to inspector authority to write Orders for Cessation and Immediate Compliance; hearing officer's discretion to deny intervention to certain parties; alternative enforcement actions; and, the definition of "substantial legal and financial commitments".

Except for the amendment pertaining to alternative enforcement, these amendments respond to a Judgment and Order issued on August 20, 1985, by the United States District Court for the Eastern District of Kentucky at Frankfort, in the case entitled *Sierra Club, Cumberland Chapter, et al., vs. James G. Watt, et al.*

After providing for public comment and conducting a thorough review of the program amendments, the Director has determined that the amendments meet the requirements of SMCRA and the Federal regulations and is approving

these amendments. The Federal rules at 30 CFR Part 917 codifying decisions concerning the Kentucky program are being amended to implement this action.

This final rule is being made effective immediately to expedite the State program amendment process and encourage States to conform their program with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: W. H. Tipton, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504. Telephone: (606) 233-7327.

SUPPLEMENTARY INFORMATION:

I. Background

On December 30, 1981, Kentucky resubmitted its proposal regulatory program to OSM. The Kentucky program was conditionally approved by the Secretary of the Interior subject to the correction of 12 minor deficiencies. The approval was effective upon publication of the notice of conditional approval in the May 18, 1982 Federal Register (47 FR 21404-21435). 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 Kentucky program can be found in the May 18, 1982 Federal Register.

II. Submission of Program Amendments

On August 29, 1985, Kentucky submitted program amendments to modify requirements pertaining to: Inspector authority to write Orders for Cessation and Immediate Compliance; the hearing officer's discretion to deny intervention where the petitioner's interest is adequately represented by existing parties; alternative enforcement actions to be taken under certain circumstances; and the definition of "substantial legal and financial commitments."

Except for changes pertaining to alternative enforcement actions, the amendments respond to three requirements in the Judgment and Order issued August 20, 1985, in the case entitled *Sierra Club, Cumberland Chapter, et al., vs. James G. Watt, et al.* (E.D. Ky., 1985).

Kentucky submitted the proposed program amendments on August 29, 1985. OSM published a notice in the Federal Register on September 13, 1985 (50 FR 37382), announcing receipt of the amendments and inviting public comment on their adequacy. The public comment period ended October 15, 1985. The public hearing scheduled for October 8, 1985, was not held, because no one requested an opportunity to testify.

III. Director's Findings

The Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the program amendments submitted by Kentucky on August 29, 1985, meet the requirements of SMCRA and 30 CFR Chapter VII. Specifically:

1. The Director finds that the amendment in paragraph D of section II of the Kentucky State program plan entitled "Field Enforcement Procedures" renders the paragraph consistent with section 521(a)(2) of SMCRA and no less effective than the Federal rule 30 CFR 843.11(a). The Kentucky amendment deletes the qualifications applied to inspectors empowered to issue Orders for Cessation and Immediate Compliance, so that all inspectors and other qualified personnel have authority to issue such orders immediately, consistent with Federal requirements.

2. Kentucky has amended 405 KAR 7:090, section 12(3) to delete the introductory clause "unless the petitioner's interest is adequately represented by existing parties," so that the section requires the hearing officer to grant intervention where the petitioner: had a statutory right to initiate the proceeding in which he wishes to intervene; or, has an interest which is or may be adversely affected by the outcome of the proceeding. The Director finds this amended language no less effective than the Federal rules in 43 CFR 4.1110(c) which require that the administrative law judge or the Board (of Surface Mining and Reclamation Appeals in the Office of Hearings and Appeals) shall grant intervention in such cases.

3. Kentucky has amended 405 KAR 7:090 section 11(2)(a) to add the language "pursuant to KRS 350.028(4), 350.990(3), 350.990(4), or 350.990(9)" to the requirement that the cabinet take appropriate action, if the permittee has not abated a violation within thirty days following the prescribed abatement period. The added language references alternative enforcement actions contained in the Kentucky Revised Statute (KRS). The Federal counterpart rule, 30 CFR 845.15(b)(2) similarly references alternative enforcement actions set forth in the Federal statute.

The Federal rule at 30 CFR 840.13(c) requires that the procedural requirements of State programs relating to criminal and civil penalty provisions and enforcement provisions shall be the same as or similar to those in sections 518 and 521 of SMCRA, and consistent with 30 CFR 843 and 845. The Director finds that the requirements of amended 405 KAR 7:090 section 11(2)(a) are consistent with 30 CFR 845.15(b)(2); and that the referenced provisions in KRS 350.028(4) (referring to civil penalties and revocation of permits for patterns of violations), KRS 350.990(3) (on civil actions) KRS 350.990(4) (fine or imprisonment for willful violation), and KRS 350.990(9) (corporate violations), are similar to sections 521(a)(4), 521(c), 518(e) and 518(f) of SMCRA, respectively.

4. The Director finds that the minor editorial changes made in 405 KAR 7:090 do not substantially alter the rules and therefore finds the changes acceptable.

5. Kentucky has amended the definition of "substantial legal and financial commitments" in 405 KAR 24:030 to require the existence of a long term coal contract and to further clarify the requirements of the definition. Kentucky has stated that the rule is amended also "to more fully reflect the current Federal definition at 30 CFR 762.5, and to comply with the Secretary of Interior's interpretation regarding 'existing mines' as discussed in the July 15, 1985 Memorandum Opinion in Flannery Round III."

The Kentucky rule deletes certain language found in the Federal rule at 30 CFR 762.5, which states that an example of a mine in which substantial legal and financial commitments have been made would be an existing mine not actually producing coal but in a substantial stage of pre-production development. The Kentucky rule deletes this language to reflect the Secretary's statement in connection with litigation during Round III of *In Re: Permanent Surface Mining Regulation Litigation (II)* (D.D.C. 1985), that the reference to existing mines in the Federal definition of substantial legal and financial commitments is only an example of such commitment. In the court decision in the Round III proceedings, the definition was remanded to the Secretary for the narrow purpose of clarifying his position that an existing mine is not necessary for "substantial legal and financial commitments." Kentucky's rule reflects the Secretary's stated position in deleting the narrow example. Kentucky's rule adds clarifying language to its definition to establish specific tests for qualifying "commitments". Kentucky has added at 405 KAR 24:030 section 2(2)(a) the following descriptions

of capital intensive activities which would qualify, along with "significant investments," as substantial legal and financial commitments:

(1) Improvement or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations in the petitioned area;

(2) Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations in the petitioned area; and

(3) Exploration, mapping, surveying, and geological work, as well as expenditures of engineering and legal fees, associated with acquisition of the property or preparation of an application to conduct surface coal mining and reclamation operations in the petitioned area.

The Director finds that these provisions are consistent with the Federal definition and that the Kentucky definition of substantial legal and financial commitments is no less effective than the Federal definition in 30 CFR 762.5.

IV. Public Comments

Comments were received from Thomas J. FitzGerald, Director of the Kentucky Governmental Accountability Project, Kentucky Resources Council, on behalf of the Council.

The commenter supported revisions to 405 KAR 7:090 section 11(2)(a) for clarifying that "appropriate action" is to be construed consistent with its meaning in 30 CFR 845.15(b)(2). The commenter said, however, that the reference in the rule to KRS 350.028(4) must be clarified to show that it is not intended that "mere imposition of civil penalties after the 30-day cessation order period lapses, will satisfy the 'appropriate action' requirement, but rather that after that 30-day period, the action described in the latter portion of KRS 350.028(4) may be taken . . . where appropriate."

As discussed in Finding #3 the Kentucky rule provides civil and criminal penalty provisions and enforcement provisions which are similar to those in sections 518 and 521 of SMCRA and consistent with 30 CFR Parts 843 and 845. The Director believes the Kentucky rule is clearly stated and that it provides for implementation of alternative enforcement actions consistent with the Federal requirements.

The commenter supports the change to 405 KAR 7:090 section 12(3) concerning petitioners' rights to intervene. The commenter supports the revision to the definition of "substantial legal and financial commitments" and the deletion of language that impeded some inspectors from issuing immediate cessation orders in imminent danger situations. The commenter said, however, that approval of the change concerning inspector issuance of immediate cessation orders must be contingent on a commitment by the State regulatory authority that all field inspectors would have the power and duty to issue cessation orders immediately in imminent danger situations.

The Kentucky amended language clearly provides that "the authority to issue *Orders for Cessation and Immediate Compliance* will be delegated by the Commissioner of the Bureau of Surface Mining and Reclamation and Enforcement to all inspectors and other qualified personnel." Therefore, OSM believes that the commitment the commenter requests is contained in the program language.

V. Director's Decision

The Director, based on the above findings, is approving the Kentucky program amendments as submitted on August 29, 1985.

The Federal rules at 30 CFR Part 917 are being amended to implement the Director's decision.

VI. 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, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require 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 917

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

Dated: November 13, 1985.

James W. Workman,

Deputy Director, Office of Surface Mining.

PART 917—KENTUCKY

30 CFR Part 917 is amended as follows:

1. The authority citation for Part 917 continues to read as follows:

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

2. 30 CFR 917.15 is amended by adding a new paragraph (m) as follows:

§ 917.15 Approval of regulatory program amendments.

* * * * *

(m) The following amendments submitted to OSM on August 29, 1985, are approved effective November 20, 1985 provided that they are adopted in the form submitted to OSM: revisions to paragraph D of "Field Enforcement Procedures" in section II of the State program plan; revisions to the Kentucky Administrative Regulations in 405 KAR 7:090 section 11(2)(a) and 405 KAR 7:090 section 12(3); editorial revisions in 405 KAR 7:090; and revisions to 405 KAR 24:030 to amend the definition of "substantial legal and financial commitments."

[FR Doc. 85–27686 Filed 11–19–85; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 518

[Army Reg 340–17]

Release of Information and Records From Army Files

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: As the result of Army Staff reorganizations, the Department of the Army is amending its rule for administering the Freedom of Information Act by revising certain of its Initial Denial Authorities' areas of responsibilities.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. William A. Walker, Office of the Assistant Chief of Staff for Information Management, Department of the Army, Attn: DAIM-PSP-A, Washington, DC 20310-0700; telephone (202) 694-0422.

SUPPLEMENTARY INFORMATION: This amendment changes responsibilities in the office of the Assistant Chief of Staff for Information Management, the Adjutant General and the Chief, Army Reserve. The rule is not a "major rule" as defined by Executive Order 12291. Therefore, no regulatory impact analysis has been prepared. The Department of the Army certifies that this document will not have an impact on a significant number of small entities under the Regulatory Flexibility Act (5 U.S.C. et seq.). Therefore, no regulatory flexibility analysis has been prepared. The rule has no collection of information requirements and therefore does not require the approval of OMB under 44 U.S.C. 3501 et. seq.

List of Subjects in 32 CFR Part 518

Freedom of Information.

Dated: November 14, 1985.

John O. Roach,

Department of the Army Liaison Officer with the Federal Register.

PART 518—[AMENDED]

32 CFR Part 518 is amended to read as follows:

1. The authority for Part 518 continues to read:

Authority: 5 U.S.C. 4552.

Subpart E—Release and Processing Procedures

2. 32 CFR 518.15 is amended by revising paragraphs (a)(4)(viii), (ix) and (xvi) to read as follows:

§ 518.15 Initial determinations.

(a) * * *

(4) * * *

(viii) The Assistant Chief of Staff for Information Management is authorized to act on requests for records relating to information management, including automation, telecommunications, records management, publications and printing, visual information, libraries, and when two or more IDAs are involved.

* * * * *

(ix) The Adjutant General is authorized to act on requests for records pertaining to the US Army and Joint Environmental Support Group activities, Armed Forces courier services, Heraldic activities, and the Military Postal services.

* * * * *

(xvi) The Chief, Army Reserve is authorized to act on requests for all personnel and medical records of retired, separated, and reserve component military personnel, and all US Army Reserve (USAR) records, unless such records clearly fall within another IDA's responsibility. This includes records relating to USAR plans, policies and operations; changes in the organizational status of USAR units; mobilization and demobilization policies; active duty tours; and the Individual Mobilization Augmentation Program.

* * * * *

[FR Doc. 85-27523 Filed 11-19-85; 8:45 am]

BILLING CODE 3710-08-M

32 CFR Part 644

Real Estate Handbook

AGENCY: Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: This document changes the Real Estate Handbook of the Corps of Engineers from an Engineer pamphlet to an Engineer Regulation. This action is necessary to change all references in 32 CFR Part 644 as the Real Estate Engineer Regulation. Those parts of the handbook published in Part 644 of title 32, Code of Federal Regulations, explain policies and procedures of the Corps of Engineers relating to real estate used for military and civil works purposes. Currently, the Corps of Engineers has been reviewing its engineering pamphlet series and for administrative purposes it was necessary to upgrade the real estate pamphlet to a real estate regulation.

EFFECTIVE DATE: November 20, 1985.

ADDRESS: Directorate of Real Estate, Office of the Chief of Engineers, Casimir Pulaski Bldg., 20 Mass. Ave., NW., Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon M. Piscacek, Directorate of Real Estate, (202) 272-0522.

PART 644—[AMENDED]

1. The authority citation for Part 644 continues to read:

Authority: 5 U.S.C. 301; 10 U.S.C. 3012.

2. Everywhere the Real Estate Handbook, Engineer Pamphlet 405-1-2, appears in 32 CFR 644, it should read, Engineer Regulation 405-1-12.

3. Everywhere that ER 405-1-2 appears in Part 644 of Title 32, Code of Federal Regulations, it should now read ER 405-1-12.

John O. Roach II,

Department of the Army Liaison with the Federal Register.

[FR Doc. 85-27524 Filed 11-19-85; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-2926-1]

Approval and Promulgation of Implementation Plans Massachusetts; Certification of No Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is codifying the certification that no Natural Gas/Gasoline Processing Plant sources or Synthetic Organic Chemical Manufacturing Industry Air Oxidation Processing sources are located in the Commonwealth of Massachusetts. The intended effect of this action is to provide this information in 40 CFR Part 52.

EFFECTIVE DATE: This action will be effective January 21, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Comments may be mailed to Louis F. Gitto, Director, Air Management Division, Room 2313, JFK Federal Building, Boston, MA 02203. Copies of the submittal and EPA's evaluation are available for public inspection during normal business hours at the Environmental Protection Agency, Room 2313, JFK Federal Bldg., Boston, MA 02203; and Department of Environmental Quality Engineering, Division of Air Quality Control, One Winter Street, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Lorenzo Thantu (617) 223-4871; FTS 223-4871.

SUPPLEMENTARY INFORMATION: EPA requires states with areas which could not attain the National Ambient Air Quality Standard for ozone by 1982 to apply Reasonably Available Control Technology (RACT) to sources of volatile organic compounds (VOCs) covered by Control Technique Guidelines (CTGs). EPA has published two CTGs which define RACT for Natural Gas/Gasoline Processing Plants and Air Oxidation Processes in the Synthetic Organic Chemical

Manufacturing Industry (SOCMI). The Massachusetts Department of Environmental Quality Engineering has certified by letters, dated June 26, 1985 and August 13, 1985, that no sources in these categories are located within the State. EPA is accepting the DEQE's certification and codifying the information at 40 CFR 52.1168.

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

Final action: EPA is codifying at 40 CFR 52.1168, certifications that no Natural Gas/Gasoline Processing Plant and SOCMI Air Oxidation sources are located in the Commonwealth of Massachusetts.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by 60 days from today. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: November 8, 1985.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart W—Massachusetts

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

Authority: 42 U.S.C. 7401–7642.

2. Part 52 is amended by revising § 52.1168 to read as follows:

§ 52.1168 Certification of no sources

On June 26, 1985 and August 13, 1985, Bruce K. Maillet, Acting Director, Division of Air Quality Control, Department of Environmental Quality Engineering, submitted a certification that the Commonwealth of Massachusetts has no sources within the State which are covered by the following Control Technique Guidelines:

(a) Natural Gas/Gasoline Processing Plants.

(b) Air Oxidation Processes in the Synthetic Organic Chemical Manufacturing Industry.

[FR Doc. 85-27681 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 60

[A-3-FRL-2924-1; Docket No. AM700DC]

Air Pollution; New Source Performance Standards Delegation of Authority to the District of Columbia, Department of Consumer and Regulatory Affairs

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: Section 111(c) of the Clean Air Act permits EPA to delegate to the States the authority to implement and enforce the standards set out in 40 CFR Part 60, Standards of Performance for New Stationary Sources (NSPS).

The Mayor of the District of Columbia requested EPA to delegate, to the District of Columbia's Department of Consumer and Regulatory Affairs (DCRA), the authority to implement and enforce the NSPS in the District. EPA granted the request on September 5, 1985. The District now has the authority to implement and enforce NSPS regulations for: Fossil Fuel Fired Steam Generators built after August 17, 1971 (Subpart D), Incinerators (Subpart E), Asphalt Concrete Plants (Subpart I), Sewage Treatment Plants (Subpart O), Electric Steam Generating Units built after September 18, 1978 (Subpart Da), Stationary Gas Turbines (Subpart GG), and Storage Vessels for Petroleum Liquids built after May 18, 1973 (Subpart Ka).

The District will enforce all the above subparts as set forth in 40 CFR Part 60, July 1, 1982 edition.

EFFECTIVE DATE: July 5, 1985.

ADDRESS: Applications and reports required under all NSPS source categories to which EPA has delegated the authority to the District of Columbia DCRA to implement and enforce should be addressed to the District of Columbia, Department of Consumer and Regulatory Affairs, 5000 Overlook Avenue SW., Washington, DC 20032, in addition to EPA, Region III.

Copies of the delegation and accompanying documents are available for inspection during normal business hours at the District of Columbia DCRA address given above or at the following office: U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Patricia Gaughan (3AM11). Telephone: (215) 597–8239.

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

SUPPLEMENTARY INFORMATION: In a letter of June 21, 1985 to EPA, the Mayor of the District of Columbia requested delegation of the authority to implement and enforce the New Source Performance Standards as set forth in 40 CFR Part 60, July 1, 1982 edition. EPA reviewed the request and decided to approve it since: (1) None of the seven applicable NSPS source categories had been significantly revised since the July 1, 1982 edition of the CFR had been published, and (2) the District was determined to have the necessary resources to effectively implement and enforce the NSPS.

Therefore, on September 5, 1985, the following letter delegating authority to implement and enforce NSPS, was sent to the Mayor of the District of Columbia:

Honorable Marion Barry Jr.,
Mayor, District of Columbia, District Building, 1350 Pennsylvania Avenue N.W., Washington, DC 20004.

Dear Mayor Barry: This is in response to your letter of June 21, 1985, to James M. Seif, Regional Administrator, requesting delegation of authority for implementation and enforcement of existing New Source Performance Standards (NSPS).

We have reviewed the pertinent laws and regulations of the District of Columbia's Department of Consumer and Regulatory Affairs (DCRA) and have determined that the DCRA has the resources to implement and enforce the NSPS program. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (EPA) hereby grants delegation of authority to the DCRA to implement and enforce the NSPS as follows:

Authority for all sources located or to be located in the District of Columbia subject to the NSPS promulgated in 40 CFR Part 60, July 1, 1982 edition.

This delegation is based upon the following conditions and exceptions.

1. This delegation replaces the Memorandum of Understanding between EPA and the DCRA of September 30, 1982.

2. Certain provisions of the NSPS regulations allow only the Administrator to take further standard setting actions. Such provisions cannot be delegated and are as follows:

a. Alternative means of emission limitations in the Clean Air Act Section 111(h)(3) which is codified in 40 CFR 60.11a and 60.484.

b. Innovative technology waivers in the Clean Air Act Section 111(j).

c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(b).

d. Approval of equivalent and alternate test methods in 40 CFR 60.8(b) (2) and (3).

e. Establishment of alternate opacity standards in 40 CFR 60.11(e).

f. Issuance of commercial demonstration permits under 40 CFR 60.45a.

g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a)(3) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).

h. The authority to make applicability determinations pertaining to sources subject to the NSPS. The DCRA may refer to the Compendium of Applicability determinations issued by EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the EPA Compendium must be referred to EPA for determination. Also, any correspondence from the DCRA based on the Compendium must be sent to EPA to maintain National consistency.

3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the DCRA must notify EPA, Region III in accordance with the reporting procedures referred to in item 6 of the conditions and exceptions:

a. Waiver of a performance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.8(b)(1).

b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).

c. Approval of shorter sampling times or smaller sampling volumes under 40 CFR 60.46 (b) or (d).

4. Enforcement of the NSPS regulations in the District of Columbia will be the primary responsibility of the DCRA. Pursuant to Section 111(c)(2) of the Clean Air Act, 42 U.S.C. 7411(c)(2), EPA retains authority to enforce any NSPS standard whenever such enforcement is deemed by the EPA to be necessary to carry out the purposes of the Clean Air Act. Where the DCRA determines that such enforcement is not feasible and so notifies EPA, or where the DCRA acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority, pursuant to Section 113 of the Clean Air Act, as amended, with respect to sources within the District of Columbia subject to NSPS regulations.

5. The DCRA will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (40 CFR Part 60). Should the DCRA grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to Section 113 of the Clean Air Act. The granting of such variances by the DCRA shall also constitute grounds for revocation of delegation by EPA.

6. The DCRA and EPA Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a DCRA interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the DCRA. This system of communication will insure that both agencies are informed on (a) the current compliance status of subject sources in the District of Columbia (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and, (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR 60.4 requiring sources to make submissions to the EPA are met by sending such submission to the DCRA, in addition to EPA Region III.

7. If at any time there is a conflict between a DCRA regulation and a Federal regulation, 40 CFR Part 60, the Federal regulation must be applied if it is more stringent than that of the DCRA. If the DCRA does not have the authority to enforce the more stringent Federal regulations, they shall notify EPA in writing as soon as possible, so that this portion of the delegation may be revoked.

8. The DCRA will utilize the methods in 40 CFR Part 60 in performing source tests pursuant to this regulation.

9. From time to time when appropriate, the DCRA will revise its NSPS regulations to include the provisions of Federal amendments and newly promulgated regulations for NSPS pollutant source categories.

10. If the Director of the Air Management Division, or equivalent, determines that a DCRA program for enforcing or implementing the NSPS regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DCRA.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS regulations by sources located in the District of Columbia will be submitted to the DCRA in addition to EPA, Region III. Any original reports which have been or may be received by EPA Region III will be promptly transmitted to the DCRA.

Since this delegation is effective immediately, there is no requirement that the DCRA notify EPA of its acceptance. Unless EPA receives from the DCRA written notice of objections within ten (10) days of receipt of this letter, the DCRA will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

Effective immediately all applications, reports, and other correspondence required under the NSPS for Fossil Fuel Fired Steam Generators built after August 17, 1971 (D), Incinerators (E), Asphalt Concrete Plants (I), Sewage Treatment Plants (O), Electric Steam Generating Units built after September 18, 1978 (Da), Stationary Gas Turbines (GG), and Storage Vessels for Petroleum Liquids built after May 18, 1973(Ka) should be sent to the District of Columbia DCRA (address above) in addition to the EPA, Region III Office in Philadelphia.

This action delegates only the NSPS source categories mentioned above to the District of Columbia. A new request for delegation will be required for any NSPS standard not mentioned above.

List of Subjects in 40 CFR Part 60

Air pollution control, Sewage disposal, Petroleum, Electric power plants, Paving and roofing material.

Dated: October 21, 1985.

Stanley L. Laskowski,

Acting Regional Administrator.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 74(c).

2. In § 60.4, Paragraph (b) is amended by adding paragraph (J) to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(J) District of Columbia, Department of Consumer and Regulatory Affairs, 5000 Overlook Avenue SW., Washington, DC 20032.

* * * * *

[FR Doc. 85-27193 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 62

[A-3-FRL-2920-4; EPA Docket Nos. AM203PA, AM204PA]

Approval of State Plans for Designated Facilities and Pollutants

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Regulations promulgated under the provisions of section 111(d) of the Clean Air Act, as amended, require States to submit plans to control emissions of "Designated Pollutants" from "Designated Facilities." If no "Designated Facility" exists within a State, that State is required to submit a letter (which is called a negative declaration) to EPA. Allegheny County, Pennsylvania has submitted a negative declaration to EPA certifying that there are no existing kraft pulp mills in the County subject to the requirements of Subpart B of 40 CFR Part 60.

The City of Philadelphia has certified that there are no kraft pulp mills, sulfuric acid plants, or phosphate fertilizer plants existing in the City subject to the same requirements.

Therefore, EPA approves these negative declarations and is publishing them as rules under Part 62 of the Code of Federal Regulations.

DATES: This action will be effective January 21, 1986 unless adverse or critical comments are received within 30 days.

ADDRESSES: Comments may be submitted to Glenn Hanson, Chief, PA/WV Section at the EPA, Region III address listed below. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Programs Branch, 841 Chestnut Building, Philadelphia, PA 19107. Attn: Patricia Gaughan

Allegheny County Bureau of Air Pollution Control, 301 Thirty-Ninth Street, Pittsburgh, PA 15201. Attn: Ronald J. Chleboski

City of Philadelphia Air Management Services, 500 S. Broad Street, Philadelphia, PA 19146. Attn: William Reilly

FOR FURTHER INFORMATION CONTACT: Michael Giuranna (3AM11), PA/WV Section at the EPA, Region III address above, or telephone (215) 597-9189.

SUPPLEMENTARY INFORMATION: Pursuant to section 111(d) of the Clean Air Act, as amended, EPA promulgated regulations at 40 CFR Part 60, which require States to submit plans to control emissions of "designated pollutants" from "designateo facilities." EPA is responsible for designating the facilities and pollutants for which States must develop plans. The pollutants which have been designated for control under section 111(d) are *not* those for which ambient air quality standards have been established under section 109 of the Act (referred to as "criteria" pollutants) nor are they listed as hazardous pollutants under section 112. Section 111(d) requires control of certain pollutants at existing sources whenever standards of performance have been established under section 111(b) for those pollutants from new sources of the same type.

EPA's actions in determining approval, disapproval, and promulgation of State plans must be made public. Final guideline documents specifying emission guidelines and time for compliance were published in September, 1977, for Control of Sulfuric Acid Mist Emissions (EPA-450/2-77-019); in August, 1979, for Control of Fluoride Emissions (EPA-450/2-78-049b); and in March, 1979, for Control of Total Reduced Sulfur (TRS) Emissions (EPA-450/2-78-003b). State plans were required by October 31, 1978 for the control of sulfuric acid mist from sulfuric acid production plants, by February 22, 1980 for the control of TRS emissions from existing kraft pulp mills, and by December 1, 1977 for fluoride emissions from phosphate fertilizer plants. In the event a State does not have a particular "designated facility" located in that State, a letter must be submitted indicating this to EPA. These letters are called "negative declarations."

The City of Philadelphia submitted negative declarations to the EPA, Region III office advising that there are no existing sulfuric acid production plants, no existing kraft pulp mills and no existing phosphate fertilizer plants subject to the requirements of Subpart B of 40 CFR Part 60 in the City. The Allegheny County, Pennsylvania Bureau of Air Pollution Control has certified that there are no facilities which must be regulated under the guidelines for the control of kraft pulp mills.

By submitting negative declarations as stated above, Pennsylvania has fulfilled its responsibility for submitting State plans for control of designated pollutants from existing facilities as required by 40 CFR 60.23, in the source categories specified, for the areas specified.

The Administrator has decided to approve these negative declarations under Subparts NN and XX since the submittals meet the requirements of section 111(d) of the Clean Air Act and 40 CFR Part 60, Subpart B, "Adoption and Submittal of State Plans for designated facilities."

The Office of Management a..d Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Under 5 U.S.C. section 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities.

This action becomes a final rule sixty days after publication of this notice unless adverse or critical comments are received within 30 days. In the event that such comments are timely received, the rule can become final only after publication as a final rule following EPA's consideration of such comments.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

List of Subjects in 40 CFR Part 62

Air pollution control, Fluoride, Sulfur, Administrative practice and procedure, Intergovernmental relations, Reporting and recordkeeping requirements, Phosphate.

Dated: October 31, 1985.

Lee M. Thomas,

Administrator.

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

Part 62 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 62.9600 is amended by adding paragraph (c) as follows:

Fluoride Emissions From Phosphate Fertilizer Plants

§ 62.9600 Identification of Plan—Negative Declaration.

* * * * *

(c) The City of Philadelphia Air Management Services submitted on February 22, 1985, a letter certifying that there are no existing phosphate fertilizer plants in the City subject to Part 60, Subpart B of this chapter.

3. Section 62.9601 is amended by adding paragraph (c) as follows:

Sulfuric Acid Mist Emissions From Existing Sulfuric Acid Plants

§ 62.9601 Identification of plan.

* * * * *

(c) The City of Philadelphia Air Management Services submitted, on February 22, 1985, a letter certifying that there are no existing sulfuric acid plants in the City subject to Part 60, Subpart B of this chapter.

4. Section 62.9610 is added as follows:

Total Reduced Sulfur Emissions From Existing Kraft Pulp Mills

§ 62.9610 Identification of plan—negative declaration.

(a) The Allegheny County Bureau of Air Pollution Control submitted a letter on February 14, 1985, certifying that there are no kraft pulp mills in the County subject to Part 60, Subpart B of this chapter.

(b) The City of Philadelphia Air Management Services submitted a letter on February 22, 1985, certifying that there are no kraft pulp mills in the City subject to Part 60, Subpart B of this chapter.

[FR Doc. 85-27386 Filed 11-19-85; 8:45 am]
BILLING CODE 6560-50-M

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40 CFR Part 81

[A-9-FRL-2921-2]

Designation of Areas for Air Quality Planning Purposes; Redesignation To Attainment for Carbon Monoxide of a Portion of the Fresno-Clovis Metropolitan Area, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's notice approves the redesignation to attainment for carbon monoxide of the portion of the Fresno-Clovis Metropolitan Area in California outside of the Fresno Urbanized Area. EPA is taking this action since the area has no violations for carbon monoxide and satisfied the other redesignation criteria. The intended effect is to update the attainment status for carbon monoxide.

DATE: This action will be effective on January 21, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such notice may be submitted to James C. Breitlow at the EPA Regional Office address listed below.

ADDRESSES: Copies of EPA's technical support document for this action are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco.

FOR FURTHER INFORMATION CONTACT: James C. Breitlow, Chief, State Implementation Plan Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641 FTS: 454-7641.

SUPPLEMENTARY INFORMATION:

Background

At the request of the State of California, EPA promulgated attainment status designations for all of California and designated Fresno County as a nonattainment area for carbon monoxide on March 3, 1978 (43 FR 8970). EPA redesignated Fresno County, except for the Fresno-Clovis Metropolitan Area, to attainment for carbon monoxide on August 11, 1980 (45 FR 53147). The State of California submitted a request to redesignate a portion of the Fresno-Clovis Metropolitan Area to attainment on April 9, 1985. The remaining portion of the Fresno-Clovis Metropolitan Area, termed the Fresno Urbanized Area was requested to be retained as a nonattainment area.

The proposed boundary between the Fresno Urbanized Area and the Fresno-Clovis Metropolitan Area is as follows:

1. Beginning at the point where State Route 99 (SR 99) intersects the boundary of Fresno and Madera Counties;
2. thence easterly along the boundary of Fresno and Madera Counties to its intersection with State Route 41 (SR 41);
3. thence southerly along SR 41 to its intersection with East Audubon Drive;
4. thence easterly along East Audubon Drive to its intersection with the Friant Expressway;
5. thence northeasterly along the Friant Expressway to its intersection with Old Friant Road;
6. thence easterly along Copper Avenue to its intersection with North Maple Avenue;
7. thence southerly along North Maple Avenue to its intersection with East Herndon Avenue;
8. thence easterly along East Herndon Avenue to its intersection with North Temperance Avenue;
9. thence southerly along North Temperance Avenue to its intersection with East Ashlan Avenue;
10. thence easterly along East Ashlan Avenue to its intersection with North Locan Avenue;
11. thence southerly along North Locan Avenue to its intersection with East Shields Avenue;
12. thence westerly along East Shields Avenue to its intersection with North Temperance Avenue;
13. thence southerly along North Temperance Avenue and its continuance South Temperance Avenue to its intersection with East North Avenue;
14. thence westerly along East North Avenue to its intersection with South Willow Avenue;
15. thence southerly along South Willow Avenue to its intersection with East Central Avenue;
16. thence westerly along East Central Avenue to its intersection with South Cedar Avenue;
17. thence northerly along South Cedar Avenue to its intersection with East North Avenue;
18. thence westerly along East North Avenue and its continuance West North Avenue to its intersection with Cornelia Avenue;
19. thence northerly along Cornelia Avenue and its continuance North Cornelia Avenue to its intersection with West Ashlan Avenue;
20. thence westerly along West Ashlan Avenue to its intersection with North Polk Avenue;
21. thence northerly along North Polk Avenue to its intersection with West Shaw Avenue;
22. thence easterly along West Shaw Avenue to its intersection with SR 99;
23. thence northwesterly along SR 99 to its intersection with the Fresno and Madera County boundary, the point of beginning.

There are several criteria concerning redesignation of a nonattainment area to attainment for carbon monoxide based on EPA policy.

First, in general, the attainment area cannot have had a measured or modeled violation during the most recent two years.

Second, there is a minimum size criterion for redesignation of a portion of a nonattainment area. The urban core area is the minimum size nonattainment area allowable.

This core area can be either: (a) An urbanized area in the nonattainment area, as defined by the U.S. Bureau of the Census, which contributes significantly to measured or modeled violations, or (b) the commercial and residential areas near the measured or modeled violations, if an urbanized area does not exist.

Third, when there is an absence of data and few sources are located in the rural area outside the urban core, EPA does not expect these sources to contribute to measured hot spot violations within the urban core or to cause violations in their immediate areas. In such cases, Regional policy allows redesignation to attainment/unclassified without further data.

Evaluation

EPA finds that the redesignation of that area outside of the Fresno Urbanized Area to attainment for

carbon monoxide complies with applicable criteria based on these considerations:

(a) A temporary special purpose monitoring site recorded no violations in an expected high concentration area downwind during four months in 1983,

(b) the proposed attainment area is not a part of a U.S. Bureau of Census contiguous urbanized area,

(c) the rural nature of the area leads EPA to believe that no violation has or would occur, and

(d) sources in the area do not contribute significantly to measured or modeled violation in the urban core.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received the public is advised that this action will be effective January 21, 1986.

Final Action

EPA approves the redesignation since the proposed attainment area has satisfied EPA policy and section 107 of the Clean Air Act.

Regulatory Process

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

Under section 307(b)(1), of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 21, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8704).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 30, 1985.

Lee M. Thomas,

Administrator.

PART 81—[AMENDED]

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

Subpart C—Section 107 Attainment Status Designations

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

2. In § 81.305 the attainment status designation table for carbon monoxide is amended by revising the entries for "Fresno County", under the "San Joaquin Valley Air Basin (SJVAB)" to read as follows:

§ 81.305 California.

CALIFORNIA—CO

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
* * * * * * *		
San Joaquin Valley Air Basin (SJVAB):		
Fresno County:		
(within Fresno Urbanized Area [1])	X	
Fresno County:		
(outside Fresno Urbanized Area [1])		X
* * * * * * *		

[1] For a description of Fresno Urbanized Area, please see publication date.

[FR Doc. 85–26813 Filed 11–19–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[SW–9–FRL–2926–3]

Arizona; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Arizona's application for final authorization.

SUMMARY: The State of Arizona has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Arizona's application and has reached a final determination that Arizona's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program, in lieu of the federal hazardous waste program in its jurisdiction, subject to the limitations imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final Authorization for Arizona shall be effective at 1:00 p.m. on December 4, 1985.

FOR FURTHER INFORMATION CONTACT: Philip Bobel, Chief, Waste Programs Branch, U.S. EPA Region 9, 215 Fremont Street, San Francisco, CA 94105 (415) 974–8119 (FTS: 454–8119).

SUPPLEMENTARY INFORMATION:

I. Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other State programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA. 42 U.S.C. 6926(b)).

On October 31, 1984, Arizona submitted a complete application for final authorization. On March 20, 1985, EPA published a tentative decision announcing its intent to grant Arizona final authorization. Further background information on EPA's tentative decision to grant final authorization appears at 50 FR 11186, March 20, 1985.

In addition to announcing its tentative determination, EPA announced the availability of the application for public comment and the dates of public hearings on the application. The public hearings were held in Phoenix on April 18, 1985 and Tucson on April 19, 1985.

II. Response to Public Comments

On March 20, 1985, (50 FR 11186), a notice was published in the **Federal Register** inviting the public to offer

comments at public hearings to be conducted by Region 9 in Phoenix, on April 1, 1985 and in Tucson, on April 2, 1985, on EPA's tentative decision to grant the State of Arizona final authorization. This notice also invited the public to submit written comments on the Arizona application by April 2, 1985.

On April 16, 1985, (50 FR 14945), EPA published a notice in the Federal Register, to correct the dates for the public hearings and the public comment period. The public hearings were scheduled for and took place on April 18, 1985 in Phoenix, and April 19, 1985 in Tucson. The public comment period was extended to April 19, 1985.

In addition, EPA published the notice of determination, the locations of where copies of the State's application were available, and notice of the public hearings in a sufficient number of newspapers of general circulation to ensure state-wide coverage. Further, EPA mailed these notices to persons on the State and EPA mailing lists. Approximately one week prior to the public hearings, EPA again contacted the major newspapers in Arizona.

The public hearing held in Phoenix was attended by forty-two people. Oral comments were made by five people, one of whom followed up with written comments. There were thirteen people at the Tucson public hearing, one of whom made a comment which was unrelated to authorization. A total of six written comments were submitted to EPA. Four commenters were in support of authorization, although some people requested that authorization be delayed until the problems discussed below were resolved. All of these comments were reviewed and considered by Region 9 in reaching a decision on the Arizona application for final authorization.

The authorization process was delayed, in part to allow for further review of Arizona's program and to implement corrective actions designed to rectify problems recognized by EPA during its review of the Arizona program.

Prior to publishing its tentative determination to authorize Arizona, EPA conducted a Capability Assessment of the State program, evaluating its strengths and weaknesses. A number of issues were identified which needed resolution. A corrective action plan designed to resolve these issues was prepared jointly by EPA and the State. The State has made good progress toward resolving these issues. To allow for further review of the program and implementation of some of the corrective actions, the official authorization timeframe was extended. Since the tentative determination, EPA conducted further review of the State program and developed a Supplementary Capability Assessment. This latter evaluation summarizes changes made to the Arizona program in response to previously identified issues and identifies some new issues which must be resolved. To insure that changes are made, a Letter of Intent, listing corrective actions and schedules, was developed and signed by EPA and the State. In addition, EPA will maintain oversight of the Arizona program and will address other issues that may come up through administration of the Federal grant to the State. The Capability Assessment, Supplemental Capability Assessment, and Letter of Intent are available to the public. Copies may be obtained from EPA Headquarters, EPA Region 9, and ADHS.

Arizona's hazardous waste program is more stringent than the Federal program in the following ways: (1) The State hazardous waste regulations require that the regulated community submit annual, rather than biennial reports; (2) Recyclers are required to submit annual reports; (3) Small quantity generators may be required to submit reports; and (4) The regulated community is required to submit copies of signed manifests to ADHS monthly.

Significant public comments which have a bearing on final authorization and EPA's responses are summarized below.

Comment—Four (4) people requested that authorization be delayed until ADHS demonstrates that it is capable of performing adequately. One (1) commenter added that the decision should be reopened for public comment at the time a final decision is made.

Response—One commenter was concerned that the ADHS had a poor inspections record. EPA delayed final authorization in Arizona to insure that sufficient inspections were conducted in fiscal year (FY) 1985. EPA established a weekly inspection schedule and closely monitored the State's performance. Arizona exceeded this inspection schedule.

Based on a review of Arizona's application for final authorization and program capabilities, EPA has determined that ADHS operates an adequate RCRA program. However, ADHS and EPA are currently working together to further improve Arizona's hazardous waste program by increasing staff training, conducting a greater number of inspections, and expediting compliance efforts. EPA has already noted improvements in the Arizona hazardous waste program, as reflected in the revised Corrective Action Plan. Even after authorization, this close working relationship will be maintained. In addition, EPA will maintain strong oversight of the State program through the Federal grant process which requires periodic evaluations of State performance and which will provide the support and incentives needed to upgrade ADHS' RCRA program.

Comment—ADHS is understaffed and lacks State funding because Arizona legislators systematically sabotage ADHS. They do this upon the request of the Arizona Chamber of Commerce, mining attorneys and other unidentified entities. If Arizona obtains final authorization, the Chamber of Commerce (representing industry) and legislators will render ADHS harmless to industry.

Response—Even after authorization, EPA will continue to maintain an oversight role in Arizona to ensure that the goals of RCRA are being met. If ADHS becomes unable to operate an acceptable RCRA program, EPA may revoke authorization.

Comment—The staff responsible for maintaining the hazardous waste program in Arizona does not have enough expertise and is not provided enough training.

Response—Based on EPA's review of Arizona's program, the staff people are competent to perform the functions required to maintain a RCRA program. In addition, since the date of the tentative determination, training needs have been identified. EPA is working closely with the State to help provide training designed to meet some of those needs, as well as information about other courses that are available. EPA feels that the State is currently making an adequate effort to procure training for State staff.

Comment—One commenter expressed concern that the State legislature does not support environmental programs and that once EPA grants authorization the legislature will cut hazardous waste program funding. This commenter suggested that prior to authorization the ADHS should demonstrate adequate funding capabilities and the State government should express its commitment to the State hazardous waste program.

Response—ADHS currently has adequate funding to operate an acceptable hazardous waste program. Arizon'a application for final authorization projects staffing needs to maintain the program described in the application for the next three years, and assuming that EPA funding remains the same, those staffing needs would be met. In addition, the State legislature

has provided funding for a number of new positions in the hazardous waste program, which indicates its support for the program.

Comment—ADHS has indicated that it lacks resources and has to set priorities for its work, and is therefore unable to take on special projects suggested by the commenter.

Response—EPA provides funds through a grant to help meet Arizona's resource needs. As a first priority, these funds are intended to support a basic RCRA program. The basic RCRA program includes responsibility for issuing permits to hazardous waste facilities, performing inspections and initiating appropriate enforcement actions at regulated facilities. Other projects would be considered if extra resources are available.

Comment—The number of facility inspections performed by the State is too low, and inspection priorities are misguided.

Response—At the time of the tentative determination there was concern about the State's ability to conduct an adequate number of inspections. Since that time, consistent with EPA grant guidance, EPA and the State negotiated an inspection schedule for the remainder of fiscal year (FY) 85. EPA closely tracked Arizona's performance with respect to this schedule, and found that Arizona exceeded this schedule. The State has shown that it considers its inspections commitment a high priority, and EPA expects the State to fulfill its commitment in FY 86. EPA's review of Arizona's program has not identified any problems with inspection priorities. The State considers EPA guidance when deciding which facilities to inspect. To insure that EPA inspection priorities are addressed in FY 86, EPA and the State will negotiate a list of facilities to be inspected during the year, as well as quarterly schedules to complete those inspections.

Comment—One commenter was concerned that ADHS's inspection priorities were misguided. Specifically this commenter stated: (a) ADHS returns Part A permit applications without first conducting a field investigation; (b) ADHS' Inspections Unit does not incorporate EPA RCRA Background Documents; and (c) ADHS does not routinely conduct follow-up inspections at facilities which are subjects of compliance actions.

Response—(a) Many unregulated facilities mistakenly filed Part A permit applications. Although each facility withdrawing a Part A permit application should be inspected, both EPA and ADHS place a high priority on inspecting facilities which pose a significant impact on human health and the environment. When these criteria apply to facilities which request Part A application withdrawals, the ADHS Permits Unit requests that a high priority inspection be conducted.

(b) EPA Background Documents provide guidance on implementing the regulations. There is no requirement that these documents be incorporated into State programs, and therefore this does not impact EPA's decision to grant a State final authorization.

(c) Many regulatory violations involve inadequately developed plans and other documents. ADHS can conduct in-house review of the materials to establish that the facility is in compliance with the applicable regulation. Where an inspection is needed to determine compliance, it is ADHS's policy to conduct a follow-up inspection.

Comment—ADHS deceived the public at the April 18, 1985 hearing by implying that two new State positions would be for inspectors, when ADHS planned to use those two positions for response to complaints.

Response—It is important that a regulatory agency maintain trained staff who are available to respond to complaints. In the past, this service was provided by the inspectors. With the addition of the two new positions in the Inspections Unit, the inspectors are able to devote their full time to conducting inspections. Hence, EPA believes the overall effectiveness of the Inspections Unit is improved.

Comment—ADHS compliance actions are inappropriate. A company was operating as a TSD with no ID number. The Compliance Unit has not acted, and delayed the Part B permit process for that facility.

Response—EPA is paying close attention to State activities with respect to this facility and is working with the State to assure that appropriate compliance action is taken.

Comment—ADHS policy on enforcement of generators storing in excess of 90 days is inconsistent with EPA's policy, and results in an economic gain to the company in violation. In addition, these cases are very low on ADHS' priority list for enforcement follow-up.

Response—ADHS attempts to achieve compliance in the most timely and efficient manner. In many cases where a generator has stored waste past the 90-day limit, the Department can obtain compliance by sending the generator a warning letter, ordering him to comply with the regulations. The Department believes that formal enforcement actions, which are resource intensive, should be and are used to deal with recalcitrant violators and for cases which pose direct threats to public health and safety.

Comment—The ADHS enforcement policy for enforcing facilities operating as TSD's which have withdrawn their Part A applications is inadequate.

Response—EPA has investigated the status of the two cases referred to by the commenter. One has been cited by the Compliance Unit, and the other has not yet been referred for compliance action.

Comment—The Compliance Unit makes erroneous interpretations of the regulations.

Response—Based on file reviews and discussions with the Compliance Unit, EPA believes the compliance staff has a good understanding of the regulations. Procedures have been developed to coordinate complicated regulatory decisions with EPA.

Comment—Compliance personnel do not incorporate EPA RCRA Background Documents and do not meet Congressional and EPA intent in enforcement actons by reading preambles in the **Federal Register** and Background Documents.

Response—There is no requirement that Background Documents be incorporated into State programs, and this has no direct impact on authorization. However, it is important to note that ADHS compliance personnel utilize Background Documents and preambles to regulations to understand EPA's intent. Citations are based on the regulations themselves.

Comment—Compliance Unit's interpretation of drums in poor condition is inadequate.

Response—ADHS consistently cites drums in poor condition as violations and requires documentation by the company that the problem has been corrected. EPA finds the judgment of the Compliance Unit with respect to drums to be adequate.

Comment—Compliance Unit does not consider it a violation to allow cars to park in drum storage areas and within fifty feet of ignitable waste.

Response—The regulations do not prohibit parked cars in drum storage areas or within fifty feet of ignitable waste.

Comment—ADHS Compliance Unit exercises poor judgment when determining whether a fence is adequate.

Response—EPA has no specific regulation or policy governing fences. State and Federal regulations require that hazardous waste management facilities provide adequate security systems. EPA has found that the

Compliance Unit exercises proper judgement with respect to security systems.

Comment—The Compliance Unit does not always review materials submitted in response to an enforcement action.

Response—The Compliance Unit has had to set priorities. Accordingly, some compliance submittal reviews have had to be put off. EPA is working with ADHS to provide training to new Compliance Officers to increase the overall efficiency of the Compliance Unit.

Comment—When subsequent inspections find a facility in continuing violation, the Compliance Unit inappropriately assigns a low priority to those cases.

Response—EPA reviews have shown that the Compliance Unit has used acceptable judgment when it was necessary to set case priorities. The cases referred to by the commenter were researched and EPA determined that ADHS took appropriate compliance actions.

Comment—Although enforcement talk is tough, no enforcement actions are issued.

Response—The Compliance Monitoring and Enforcement Logs submitted to EPA indicate that ADHS initiates an adequate number of enforcement actions.

Comment—Frequently ADHS grants extensions of time for compliance to facilities. Sometimes these extensions are for years.

Response—EPA has reviewed the status of ADHS enforcement cases in which extensions of time for compliance have been granted, and has concluded that ADHS has acted reasonably in these cases. EPA will continue to monitor the timeliness of State enforcement actions to ensure that unreasonable extensions are not granted. If necessary, EPA may take direct enforcement action.

Comment—Information on the number of inspections conducted and compliance actions initiated and completed was not provided when requested by a commenter. This commenter was informed that ADHS did not have such information available.

Response—This information is recorded on Compliance and Inspection Logs which are submitted periodically to EPA. The information is available to the public.

Comment—In the five years ADHS has had a hazardous waste permit program, there have been three facility permits issued. There have been no facility permits denied.

Response—The RCRA permit process is slow for EPA as well as State agencies, due to the policy of obtaining full compliance with the regulations before issuing a permit. This process can delay permit issuance for months. Based on EPA review, the Arizona permit program adequately meets the requirements for final authorization.

Comment—Support from the State Attorney General's Office is inadequate.

Response—Legal counsel is available through the Environmental Unit of the Attorney General's Office. Procedures have been developed for timely review of enforcement cases by the Attorney General's Office and for formal referral of cases where civil or criminal penalties are indicated. The referral process is described in Arizona's official application and referenced in the State/EPA Enforcement Agreement. The Attorney General's Office has agreed to meet very short timeframes for review of several recent high priority enforcement cases. EPA will maintain oversight of State enforcement actions to assure that such actions are appropriate and timely. EPA reserves the right to take independent action, as set forth in the State/EPA Enforcement Agreement.

Comment—ADHS' reporting activities are irregular and late.

Response—Since the date of the tentative determination, the State has acquired the capability to do direct computer input of some required statistics. This has significantly improved State performance on regular and timely reporting.

Comment—The State Annual Report Form utilized by ADHS does not meet the level of detail required by either State regulations or Federal requirements for the biennial report.

Response—A revised form, which meets State and Federal information requirements, has been concurred on by ADHS staff and must be transmitted to management for approval. The form will be made final in time to distribute to facilities for the next reporting period.

Comment—State laboratory procedures and equipment are inappropriate for testing under RCRA.

Response—Based on EPA's review of the State program, proper procedures and equipment are used for RCRA analysis. Contract laboratories are used for tests which the State laboratory is unable to perform. However, EPA will conduct a follow-up evaluation of State lab procedures to ensure that they are correct.

Comment—Adequate procedures, mechanisms and equipment have not been provided to the staff to maintain confidentiality of business confidential information.

Response—A system to maintain confidential information is being implemented as part of the Action Plan for final authorization. The procedures have been developed and are undergoing internal review at this time. A staff position has been identified to maintain confidential files. In the meantime, a locking filing cabinet has been designated to store confidential files.

Comment—Arizona doesn't have a mechanism to quickly update State regulations when Federal regulations change. All Federal regulations should be adopted, including those which relax the stringency of requirements, to relieve the economic burden on the regulated community.

Response—In response to public concern, EPA has asked the State to implement an accelerated schedule for promulgating regulations where necessary to maintain compliance with the Federal program. To maintain authorization, the State has one year to make required regulatory changes, with a six month extension if a demonstration that a good faith effort to meet the one year deadline is made. It appears that the State will be able to meet these deadlines. The only future changes EPA requires States to make in order to maintain authorization for the base RCRA program are those which increase the stringency of the Federal program. Concerns about whether Arizona should adopt less stringent Federal program changes do not have a bearing on authorization.

Comment—The Arizona program must be modified to comply with Federal program changes which occur during the time period between submission of the official application and authorization on the program. Based on information presented at the public hearing, the regulations needed to conform to these interim changes in Federal law will not be in place by the target date for final authorization.

Response—The State of Arizona currently has all necessary regulations in effect.

Comment—To ease the economic burden to the regulated community, all Federal regulation changes should be adopted, including those that are less stringent, such as the satellite accumulation rule. Companies which spend money to comply with more stringent regulations will be competing with companies in surrounding states with less extensive requirements.

Response—The RCRA regulations were specifically designed to allow States the option to operate programs which are more stringent than the Federal program. Concerns about whether Arizona should adopt or maintain regulations more stringent than

comparable Federal regulations should be addressed to the State.

Comment—Arizona has not adopted the Uniform Manifest rule. This implies that ADHS is indifferent to the regulatory burden of having to comply with myriad environmental regulations.

Response—ADHS is currently in the process of adopting regulations which include the Uniform Manifest Rule. Despite this delay in adopting this regulation, the rule is effective nationwide under the U.S. Department of Transportation regulations.

III. Decision

After reviewing the public comments and the changes the State has made to its application and program since the tentative decision, I conclude that Arizona's application for final authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Arizona is granted final authorization to operate its hazardous waste program subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984). This means that Arizona now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program. Arizona also has primary enforcement responsibility, although EPA retains the right to conduct inspections and request information under section 3007 of RCRA, to take enforcement actions under sections 3008, 3013 and 7003 of RCRA, and to enforce certain provisions of State law.

Prior to the Hazardous and Solid Waste Amendments (HSWA), a State with final authorization would have administered its hazardous waste program entirely in lieu of the EPA. EPA's regulation no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Arizona after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. If the HSWA-related provisions are more stringent than Arizona's, EPA will administer and enforce the portions of the HSWA in Arizona until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once Arizona is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Arizona is not being authorized now for any requirement implementing the HSWA. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement. Any State requirement that is more stringent than a HSWA provision remains in effect. For example, if Arizona had more specific requirements for treatment facilities, they must comply with the more stringent State requirements.

EPA has issued three RCRA permits in Arizona. In accordance with the Memorandum of Agreement negotiated between EPA and the State, EPA will administer these permits until they expire or are terminated.

Arizona is not authorized by the Federal government to operate the RCRA program on Indian Lands. This authority remains with EPA.

Compliance With Executive Order 12291

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

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Arizona's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR 271

Administrative practice and procedure, Confidential business, information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Dated: November 1, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85–27678 Filed 11–19–85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 271

[SW-7-FRL-2926-4]

Missouri Decision on Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Application of Missouri for Final Authorization.

SUMMARY: Missouri has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Missouri's application and has reached a final determination that its hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State to operate its program in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: This authorization shall be promulgated for purposes of judicial review at 1:00 p.m. eastern time December 4, 1985. This approval shall become effective December 4, 1985.

FOR FURTHER INFORMATION CONTACT: Chet McLaughlin, Chief, State Programs Section, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, (913) 236–2852.

SUPPLEMENTARY INFORMATION: Section 3006 of RCRA allows the Environmental Protection Agency to authorize State hazardous waste programs to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other state programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6226(b)).

On July 19, 1985, Missouri submitted an official application to obtain final authorization to administer the RCRA program. On September 25, 1985, EPA published a tentative decision announcing its intent to grant Missouri final authorization. Along with the tentative determination EPA announced

the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held, as scheduled, on October 28, 1985.

No written public comments were received by the Regional Office. At the hearing, representatives of two industry groups spoke in support of final authorization. The two industry groups which commented were the St. Louis Regional Commerce and Growth Association, and the Associated Industries of Missouri. No other comments were presented at the hearing.

The Missouri program does not include jurisdiction over Indian Lands because there are no Indian Lands in Missouri.

Final authorization is hereby granted to Missouri to operate its hazardous waste management program in lieu of the federal program subject to the limitation on its authority by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984). Missouri now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program. Missouri also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste amendments (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the EPA. EPA's regulations no longer applied in the authorized State, and EPA could not issue permits for any facilities the State was authorized to permit.

Now, however, under section 3006(g) of RCRA, 42 U.S.C. 6226(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time as they take effect in non-authorized States. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Missouri. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. Where HSWA related provisions are in effect, EPA will administer and enforce those provisions in Missouri until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that are will operate in lieu of Federal program. Until that time the State will assist EPA's implementation of the HSWA under a Cooperative Agreement. Missouri is not being authorized today for any requirement implementing the HSWA. The Federal HSWA requirements that are more stringent than the States' program will apply in Missouri. Any State requirement that is more stringent that a Federal HSWA provision will also remain in effect.

EPA has published **Federal Register** notice that explains in detail the HSWA and its effect on authorized States. Refer to 50 FR 28702-28755, July 15, 1985.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify this authorization will not have a significant economic impact on a substantial number of small entities. The authorization effectively suspends the applicability of certain Federal regulations in favor of Missouri's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: November 12, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85-27677 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 61

[CC Docket No. 83-1145; Phase I; FCC 85-598]

Clarification of Allocation Plan Orders; Access and Divestiture Related Tariffs Investigation

AGENCY: Federal Communications Commission.

ACTION: Memorandum Opinion and Order denying petitions for reconsideration and granting in part petitions for clarification of the Commission's *Allocation Order*.

SUMMARY: The Commission determined in the *Allocation Order* that the routing of all default traffic to AT&T was an unreasonable and discriminatory practice. It prescribed instead a uniform allocation plan and ordered to local exchange carriers to file revisions to their interstate tariffs to reflect the prescribed plan. Four parties filed petitions for reconsideration of the *Allocation Order*. In an Order released August 20, 1985, the Chief, Common Carrier Bureau granted petitions filed by a number of local exchange carriers requesting waiver of various sections of the plan. Four petitions for reconsideration, waiver or clarification of the Bureau's *Waiver Order* were subsequently filed. The Commission's Order disposes of all of these petitions. The Order reaffirms the Commission's prior determination that letters of agency are essential to dispute resolution, but modifies the letter of agency requirement to permit interexchange carriers to submit service orders for end users supported by certification that the carrier has on file, or has taken reasonable steps to obtain, signed letters of agency. The Order also directs that customers may not be charged for changes in their selection of an interexchange carrier if made prior to end office conversion.

EFFECTIVE DATE: November 14, 1985.

FOR FURTHER INFORMATION CONTACT: Pat McQuie Nagle, 1919 M St NW, Washington D.C. 20554. (202) 632-6917.

Memorandum Opinion and Order

In the matter of Investigation of Access and Divestiture Related Tariffs, Petitions for Reconsideration and Clarification of Allocation Plan Orders (CC Docket No. 83-1145, Phase I).

Adopted: November 7, 1985.

Released: November 14, 1985.

By the Commission:

I. Background

1. Most of the former Bell Operating Companies (BOCs) elected to implement equal access requirements imposed by the *Modification of Final Judgment* (MFJ) [1] by assigning subscribers who did not designate a primary interexchange carrier to the American Telephone and Telegraph Company (AT&T). In our *Allocation Order* [2] we concluded that routing all default traffic [3] to AT&T is an unreasonable and discriminatory practice that violates the Communications Act of 1934, 47 U.S.C. 151 *et. seq.* We prescribed a uniform allocation plan effective May 31, 1985 in order to remedy that violation. We also ordered the local exchange carriers (LECs) to file revisions to their interstate tariffs to reflect the prescribed allocation plan.

2. The *Allocation Order* provided that any LEC that found itself unable to comply with the allocation plan or that believed that a modified approach could achieve the goals of the Order could file a petition for waiver of the Order. *Id.* at para. 31. On June 27, 1985, the Bell Atlantic telephone companies (Bell Atlantic),[4] The BellSouth Corporation (BellSouth), the NYNEX telephone companies (NYNEX), Pacific Bell (Pacific), the Mountain States Telephone and Telegraph Company (Mountain Bell) and the Pacific Northwest Bell Telephone company (PNB) filed petitions for waiver of the *Allocation Order*. US Telecom, Inc. (US Telecom), MCI Telecommunications Corporation (MCI), Satellite Business Systems (SBS), and GTE Sprint Communications Corporation (GTE Sprint) subsequently filed petitions for reconsideration of the *Allocation Order*.[5] In an order released August 20, 1985, the Chief, Common Carrier Bureau, granted in large part the waivers requested by Bell Atlantic, BellSouth, NYNEX, Pacific, and Mountain Bell.[6] The Bureau also issued a Public Notice on August 28, 1985, clarifying the application of the *Waiver Order*.[7] Five petitions for reconsideration, waiver, or clarification of the *Waiver Order* and the Public Notice have been filed.[8]

3. The questions raised in the petitions for reconsideration, waiver, or clarification of the Bureau's *Waiver Order* are closely related to the questions raised in the petitions for reconsideration of our *Allocation Order*. Therefore, we have decided that all of these petitions should be considered together. This Order will address those petitions.

II. The Waiver Order Petitions

A. Grant of the Waiver Petitions

4. The waiver petitions proposed modifications in a number of the procedures prescribed in the *Allocation Order*, including those conerning the placement of IXCs on the ballot, the treatment of multi-line accounts, the processing of IXC-submitted lists, reduction in the period allowed for return of the ballot, and the disposition of discrepancies regarding a customer's choice of an IXC. It is the Bureau's treatment of requests to use modified approaches in resolving customer choice discrepancies which had generated the most concern on the part of petititoners.

5. The allocation plan prescribed by this Commission required that when both a ballot and an IXC order are received for one customer, and the designated primary IXC does not match on both documents, the ballot takes precedence and the LEC must process the choice shown on the ballot. *Allocation Order*, App. B at para. 23. Bell Atlantic, Pacific, Mountain Bell and NYNEX requested waivers to permit implementation of modified approaches in the disposition of such cases. *See Waiver Order* at paras. 15–20. Bell Atlantic proposed to continue its existing practice whereby IXCs indicate on their order whether a presubscribed customer has been informed of the charge to change IXCs and has agreed to the charge. Bell Atlantic processes such annotated orders and charges the customer for the change. NYNEX sought to give equal weight to all presubscription orders and to resolve conflicts on the basis of authorization dates, processing the order with the latest date. Pacific also proposed to process the order with the latest date; when two IXC orders showed the same date, Pacific proposed that the list processed first would take precedence. Mountain Bell requested permission to contact the customer directly to resolve the dispute.

6. The Bureau, in its analysis of these petitions to permit varied approaches to dispute resolution, noted that the concept of authorization date was central to three of the requests. *Waiver Order* at para. 21. The Bureau recognized that several parties had raised objections to reliance on authorization dates to resolve disputes because of the possibility that dates could be manipulated, but concluded that the letter of agency (LOA) requirement offered protection against potential abuses. The Bureau stated that "the potential for error or abuse [in processing customer orders] is diminished when an IXC obtains letters of agency. Such documents, together with prompt notification to all affected parties, should facilitate dispute resolution." *Waiver Order* at para. 21. The Bureau also recognized, however, that end users who make verbal commitments to use an interexchange carrier's services might not return signed authorizations promptly. The *Waiver Order* therefore permitted the carriers to institute flexible dispute resolution procedures subject to modified letter of agency guidelines.[9] After release of the

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[1] United States v. American Telephone and Telegraph, 552, F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 103 S. Ct. 1240 (1983).

[2] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Memorandum Opinion and Order, FCC 85–293, released June 12, 1985, 50 FR 25982 (June 24, 1985) (*Allocation Order*); *reconsideration pending*, 50 FR 32300 (Aug. 9, 1985).

[3] Default traffic refers to the interexchange telephone calls of any customer who, by the time equal access is available, has failed to make a selection of an interchange carrier (IXC). *See Allocation Order* at para. 1 n.3.

[4] The Bell Atlantic companies include the Bell Telephone Company of Pennsylvania, the four Chesapeake and Potomac Telephone Companies, the Diamond State Telephone Company and the New Jersey Bell Telephone Company.

[5] US Telecom, Inc. Petition for Partial Reconsideration, CC Docket No. 83–1145, Phase I, filed June 28, 1985 (US Telecom Petition); MCI Telecommunications Corporation Petition for Reconsideration, CC Docket No. 83–1145, Phase I, filed July 24, 1985 (MCI Petition); Satellite Business Systems Petition for Reconsideration, CC Docket No. 83–1145, Phase I, filed July 24, 1985 (SBS Petition); GTE Sprint Communications Corporation Petition for Partial Reconsideration, CC Docket No. 83–1145, Phase I, filed July 25, 1985 (GTE Sprint Petition).

[6] Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83–1145, Allocation Plan Waivers and Tariffs, Mimeo No. 6524, released Aug. 20, 1985, 50 FR 38200 (Sept. 20, 1985) (*Waiver Order*).

[7] Clarification of Scope of Allocation Plan Waivers, Public Notice No. 6745, released Aug. 28, 1985 (Notice).

[8] Petition for Clarification of Pacific Bell, CC Docket No. 83–1145, Phase I, filed Aug. 30, 1985 (Pacific Petition); Southwestern Bell Telephone Company Petition for Waiver or, in the Alternative, Petition for Extension of Time for Compliance, CC Docket No. 83–1145, Phase I, filed Aug. 30, 1985 (Southwestern Petition); Petition for the Ameritech Companies for Further Clarification of, or For Relief From, the Common Carrier Bureau's Presubscription Conflict Guidelines of August 20, 1985, CC Docket No. 83–1145, Phase I, filed Sept. 13, 1985 (Ameritech Petition); BellSouth Corporation Petition for Reconsideration or, in the Alternative, Petition for Partial Waiver, CC Docket No. 83–1145, Phase I, filed Sept. 19, 1985 (BellSouth Petition); Satellite Business Systems Petition for Reconsideration, CC Docket No. 83–1145, Phase I, filed Oct. 21, 1985.

[9] The guidelines provide that:

"[1] The IXCs are requried to certify at the time they submit end usee lists to the LECs that they have on file, or have taken reasonable steps designed to obtain, signed letters of agency or confirmations of choice from the end user. The IXCs are not required to submit letters of agency when submitting their end user lists to the LECs, but

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Waiver Order, the Bureau received a number of inquiries regarding the applicability of the waivers, and subsequently issued a Public Notice designed to clarify the scope of the *Waiver Order*. *See* note 6, *supra*.

7. The Notice stated that, while the waivers were particular to the carriers requesting them, other carriers seeking to modify their allocation procedures within the limits granted other LECs could do so by filing revisions to the applicable sections of their tariffs, or, where appropriate, should file with the Commission descriptions of any relevant changes to their operational plans. The Notice also stated that "the guidelines for dispute resolution programs set forth in para. 21 and the change charge provisions defined in para. 41 of the *Waiver Order* are applicable to all LECs and their tariffs must be revised to reflect the requirements established in those paragraphs." Notice, *supra*, at para. 2. This statement has proved a source of considerable confusion and is the focus of the petitions for clarification or waiver referenced above at note 7.

B. Petitions for Clarification of Waiver Order

8. Ameritech, BellSouth and Southwestern request Commission approval for continued use of their existing conflict resolution procedures, which give the ballot priority in the event of conflict. Ameritech reports that it sends a second ballot in all cases of conflict to confirm the end user's final choice and that it also honors all business office contacts initiated by end users who wish to revoke an earlier ballot, or to change a prior order placed with an interexchange carrier. Ameritech Petition at iii. Ameritech is primarily concerned with the third guideline, which requires the LEC to process an IXC-submitted order if the IXC certifies that it has on file a signed letter of agency with a signature date subsequent to that on the ballot. Ameritech interprets the guideline to require it to store the signature date of every ballot or order as it is received, and asserts that such storage would require burdensome revisions in its mechanized systems. Ameritech Petition at 6–7. Ameritech also states, however, that it could comply with the guidelines if they are interpreted to require the IXC to make the date comparison rather than require that dates be stored in the Ameritech companies' systems. Amefitech Petition at 5.

9. BellSouth's procedures also give ballots precedence over any order other than a subsequent, direct customer contact with the LEC business office. BellSouth gives ballots this priority both prior to end office conversion and for a 180-day period thereafter. When BellSouth receives two or more IXC orders for an end user for whom there is no returned ballot, its business office contacts the customer directly to resolve the conflict. The IXCs involved in conflicts are notified by a weekly mechanized add/disconnnect report. BellSouth Petition at 4. Customers are informed on their next regular bill of the IXC recorded as their selection. BellSouth asserts that the guidelines would impose additional administrative burdens on it. The company also objects that the third guideline allows no charge for a change in IXCs and asks that, at a minimum, the language be "clarified so that end users are charged after end office conversion for a mere change in their already designated PIC." [10] BellSouth Petition at 7. BellSouth also is concerned that the fourth guideline "apparently" precludes the LEC from contacting the customer when there is no ballot and when no IXC is able to produce written authorization for an order. *Id.*

10. Southwestern states that its customer choice discrepancy procedures incorporate the requirements set forth in Appendix B, para. 23 of the *Allocation Order*. Southwestern Petition at 4. Southwestern asserts that it has requested no waivers, and that the imposition of new guidelines on all LECs by Pulbic Notice abruptly changed the premises upon which the Commission's requirement of an allocation plan were based and violated due process. Southwestern Petition at 7. Southwestern states that customers can change their choice of IXCs by contacting the business office and that, prior to end office conversion, Southwestern does not charge the customer for such a change.

11. The guidelines set forth in the *Waiver Order* were designed to allow the LECs flexibility in deposing of customer disputes, while ensuring that all parties received timely reports of conflicts. They are properly applicable to the LECs which had requested waivers and to other carriers which chose to adopt similar modifications to their disput resolution procedures. Their application to petitioners, however, would require revision of allocation plans specifically developed by the petitioners to comport with our *Allocation Order*. Moreover, we have concluded that the procedures used by petitioners (which are summarized in paras. 7–9 *supra*), represent sufficient mechanisms for resolving conflicts, and that petitioners might be forced to incur unnecessary expenses if they were required to alter these conflict resolution procedures. We will therefore grant the petitions of Ameritech, BellSouth, and Southwestern to continue to give the ballot priority in resolving customer choice discrepancies. These companies are not obligated to incorporate guidelines insofar as they were designed to facilitate alternative approaches to dispute resolution.[11] The Bureau's letter of agency guideline, however, to which none of the petitioners object, is relevant in our resolution of the petitions for reconsideration of the *Allocation Order*, *infra*.

C. Application of the Change Charge

12. Pacific requests clarification of par. 41 of the *Waiver Order* which directs local exchange carriers to file revisions to their allocation tariffs to contain, *inter alia*, a provision which states that "after the conversion date, end users will be charged for any change . . ." Pacific Petition at 1. This provision, as Pacific observes, limits the application of the change charge to those customers who request a change after conversion date and differs from the *Allocation Order*, which provided that change charges could be billed to customers who changed their primary

should maintain the confirmations or letters on file for use in dispute resolution. IXCs should request written confirmations of choice from their customers no later than the date of submission of their first bill to the customer; (2) When the LEC identifies a conflict between a ballot and an IXC list, or between lists submitted by two or more IXCs, the LEC must notify, within 10 days, all affected IXCs via a conflict report; (3) If, upon receipt of a conflict report, the IXC certifies to the LEC that it has on file a signed letter of agency with a date subsequent to that on the ballot, that IXC becomss the primary IXC for that end user and no change charge is assessed to either the IXC or the end user; and (4) In a conflict, if the IXC is unable to obtain a letter of agency signed by the end user, the ballot controls."

Waiver Order at para. 21.

[10] "PIC" is an acronym for "primary interexchange carrier."

[11] In granting these petitions, however, we take no position regarding the sufficiency of petitioners' procedures for notifying the IXCs of conflicts. We note that two LECs object to the guideline requiring notification to the IXCs within 10 days. Southwestern Petition at 8; BellSouth Petition at 6. Notification of IXCs is not a new requirement imposed by the Waiver Order. We had previously directed the LECs to notify IXCs of conflicts. *See Allocation Order*, App. B at para. 23. The *Waiver Order* merely added a deadline for the provision of such notice. While we will not impose this deadline on the LECs which have not requested waivers, we remind carriers that all LECs must provide expeditious notice of conflicts to the IXCs. We will leave resolution of any problems concerning conflict notification to our complaint processs.

IXC selection after making an initial choice. *See Allocation Order*, App. B, paras. 10, 22, 27. Pacific seeks an interpretation which would make the change charge applicable to customers who, prior to equal access office conversion, request changes to the initial presubscription choice. Pacific Petition at 2.

13. The Bureau, in the course of considering the various approaches to dispute resolution proposed by the parties, became increasingly aware of the possibility of customer confusion. Several LECs, including Southwestern and the Ameritech companies, had also recognized this potential and had decided that customers who revised their IXC selections prior to end office conversion could do so free of a service charge. The change charge guideline was developed in this context. It obviated the need for the LEC to decide whether a conflict resulted from a mistake on the part of the carrier or from the end user's change of mind. The guideline protected the consumer's interest while permitting the companies requesting waivers to proceed with their modified conflict resolution procedures. Pacific requested and received a waiver permitting it to use modified dispute resolution procedures which relied on the customer authorization date, rather than on the ballot. The guidelines set forth by the Bureau are, as discussed above at para. 10, properly applicable to Pacific's implementation of its revised procedures. We therefore deny Pacific's requested clarification. In addition, in light of the reports of consumer confusion which the Commission has received since the release of the *Allocation Order*, we conclude that this guideline should be applied to all LECs. It provides, in effect, a grace period for end users, and appears to impose no great burden on the LECs. End users who change their IXC selection prior to end office conversion should not be charged for such changes.

II. Petitions for Reconsideration of the Allocation Order

14. Petitions for reconsideration of the *Allocation Order* focus on three areas of concern: (1) The requirement that IXCs have signed letters of agency from customers before submitting orders to the LEC, (2) the priority assigned to the signed ballot in cases of conflicting orders for service, and (3) the requirements for, and timing of, allocation.

A. Letters of Agency

15. The *Allocation Order* provides that IXCs may submit presubscription orders on behalf of customers only if they are "supported by a statement signed by the customer" (letters of agency or "LOAs") and a certification to that effect from the IXC. *Allocation Order*, App. B, §§ 10, 11. MCI asserts that the signature requirement is disruptive to "established industry practice" whereby carriers accept telephone orders from their customers. MCI Petition at 13.[12] MCI requests that signed LOAs not be required if an IXC uses verification procedures that could serve as the "functional equivalent" of signed LOAs. MCI Petition at 15. MCI suggests that such procedures might include the IXC's own records regarding customer contact, follow-up telephone calls by a separate verification organization outside the IXC's sales organization, or a subsequent confirmation letter mailed to the customer. *Id.* MCI also suggests that if the signed LOA requirement is retained, it should also be applied to the LECs when they accept orders from customers. US Telecom requests an amendment of paragraph 10 of Appendix B of the *Allocation Order* to permit the IXC to sign the letter of agency "on behalf of the customer." US Telecom Petition at 4.

16. This Commission's LOA prescription is supported by NYNEX, Pacific, Southwestern, and Teltec Saving Communications Co. (Teltec). NYNEX argues that "[w]ithout a written LOA signed by the customer, the Commission's goals of facilitation of dispute resolution, minimization of customer confusion, and the protection of both the local exchange companies and the interexchange companies from customer misunderstandings, cannot be achieved."[13] Teltec states that it "obtains written orders from its customers and finds this practice to be a matter of sound business, not an obstacle to securing customers.[14] Pacific argues that the LEC "as the party responsible for carrying out the order, needs verification of an order that was not placed directly with it."[15] Pacific also opposes MCI's request that the LECs be required to obtain signed order verification if the signature requirement is retained for the IXCs. *Id.*

17. The Bureau's evaluation of the role of the LOA, discussed above at para. 6, accurately reflects the concerns which led to our establishment of the LOA requirement in the *Allocation Order*. The Bureau's guideline (1) for obtaining LOAs also represents a reasonable accomodation with the IXCs' needs for flexibility in marketing.[16] We conclude that such an approach is preferable to the modifications requested by US Telecom and MCI, and we therefore deny their petitions to permit "other verification procedures" or LOAs signed by the carrier to substitute for letters of agency signed by the end user.[17] We will permit, however, the same latitude regarding the timing of LOAs provided in the Bureau's *Waiver Order*. The IXCs are required to certify at the time they submit end user lists to the LECs that they have on file, or have instituted reasonable steps designed to obtain, signed letters of agency or confirmations of choice from the end user. The IXCs should maintain such signed customer authorizations on file for use in dispute resolution.

B. Priority for Ballots

18. GTE Sprint, SBS, and MCI also request reconsideration of our requirement that the LECs process the choice shown on the ballot when both a ballot and an IXC order are received for one customer, and the designated primary IXC does not match on both documents. *Allocation Order*, App. B at para. 23. GTE Sprint argues that this requirement may deprive a customer of a later, better-informed choice.[18] GTE Sprint requests that we replace the ballot priority with a requirement that the LEC must process the latest indication of customer choice (whether ballot or letter of agency). GTE Sprint Petition at 2. SBS also opposes assigning priority to the ballot, asserting that the

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[12] AT&T made similar claims in a Petition for Clarification of the Allocation Order filed July 12, 1985. AT&T's request to use voice recordings or other forms of electronic signature as a substitute for the LOA was denied by the Bureau. Waiver Order at para. 9. We concur in the Bureau's evaluation of AT&T's proposal.

[13] NYNEX Telephone Companies Opposition to Petitions for Reconsideration, CC Docket No. 83-1145, Phase. I. filed Aug. 26, 1985 at 3 (NYNEX Opposition). *See also* Opposition of Southwestern Bell Telephone Company, CC Docket No. 83-1145, Phase I. filed Aug. 26, 1985 at 5 (Southwestern Opposition).

[14] Teltec Saving Communications Co. Opposition to Petition for Clarification and Petition for Partial Reconsideration, CC Docket No. 83-1145, Phase I, filed July 25, 1985 at 5 (Teltec Opposition).

[15] Opposition of Pacific Bell, CC Docket No. 83-1145, Phase I, filed Aug. 26, 1985 at 2.

[16] *See* note 8, *supra*.

[17] We also conclude that MCI has failed to provide any basis for its proposal that LECs also be required to obtain signed order verifications from customers. We therefore deny MCI's request that the LOA requirement be imposed on the LECs as well as the IXCs.

[18] Petition for Partial Reconsideration of GTE Sprint Communications Corporation, CC Docket No. 83-1145, Phase, I. filed July 25, 1985 at 3 (GTE Sprint Petition).

best way to determine with certainty the end user's true choice in the case of a conflict is to require the LEC to advise the end user in writing and await subsequent clarification.[19] MCI argues that customers should not be "locked into" selections made on the ballot, asserts that there are a number of "acceptable methods" for resolution of presubscription conflicts, and requests that the Commission modify the Order to permit local exchange companies to apply the method most compatible with their order processing systems and the interests of their customers.[20] MCI also requests modification of the requirement that customers for whom conflicting carrier-submitted orders are received be placed in the allocation "pool." MCI suggests that such conflicts be resolved in favor of the latest customer contract date submitted by a carrier. *Id.*

19. Southwestern opposes the above requests and urges the Commission to retain the rule that the ballot controls in all cases of a conflict between a ballot and a carrier-submitted order.[21] Southwestern argues that customers are free to change their previous selections of IXCs by contacting the LEC business office directly. Southwestern asserts that SBS' proposal that LECs resolve all conflicts through written contact with customers would create serious problems in equal access implementation, and would be confusing to the customer. BellSouth also opposes SBS' proposal to limit the LECs to written contacts in dispute resolution, asserting that a verbal contact can be effected more quickly and at less expense than a written one.[22] Both LECs argue that the LECs have no interest in the end user's choice of IXC, and thus have no incentive to mislead or influence a customer in a verbal contact.

20. GTE Sprint, SBS and MCI imply that consumers cannot change their IXC selection unless ballot priority is eliminated.[23] As Ameritech, BellSouth, and Southwestern observe, however, end users are not "locked into" the choice indicated on the ballot but are free to change their selection of IXC by simply contacting the LEC business office.[24] Ballot priority is designed to protect, rather than to limit, consumer choice during a period of vigorous marketing activity by the interexchange industry. LECs which demonstrated that alternative methods of dispute resolution could provide similar protection for end users were granted permission to use those methods in the *Waiver Order*. *See* paras. 5 and 6, *supra*.[25] We conclude that the public interest would not be served by prescribing new dispute resolution procedures at this time. We therefore deny these petitions to modify ballot priority for LECs which have not sought waivers. IXCs are free to continue their telemarketing activities, and to inform end users that they may change any previous selection by calling or writing the LEC business offices. We trust that the IXCs' marketing efforts will be more than adequate to inform end users of their opportunities to modify ballot choices.[26]

C. Retroactive and Post Conversion Allocation

21. GTE Sprint requests reconsideration of our decision not to require retroactive allocation. *See Allocation Order*, App. B, para. 25. It also requests that the Commission require that allocation take place 40 days after end office conversion. GTE Sprint Petition at 4, 7. GTE Sprint argues that later allocation would afford end users who failed to select an IXC "an opportunity" to place "trial" intercity calls by making all long distance calls by dialing the carriers' 10XXX codes. *Id.* GTE Sprint's first request is opposed by the New York Department of Public Service (NYDPS) and by AT&T. The NYDPS states that there is relatively little public benefit to be gained by retroactive allocation and that any small benefit must be weighed against the cost to the LECs and the potential for customer confusion.[27] Southwestern opposes GTE Sprint's request for post conversion allocation and "supports the flexibility incorporated in the Commission's Order" which allows each LEC to decide when allocation is to take place.[28]

22. GTE Sprint has furnished no arguments other than those we previously considered in deciding not to impose retroactive allocation. Nor are we convinced that the public would be well-served by a mandatory postponement of allocation until the post-conversion period. Consumers allocated to an IXC remain free to test the services of other IXCs by dialing the 10XXX codes. We therefore deny GTE Sprint's petitions for modification of the Order in regard to retroactive allocation and the timing of allocation.

23. MCI requests elimination of the requirement that customers appearing on more than one IXC list be tentatively assigned an allocated carrier and notified of the conflict on a second ballot.[29] MCI suggests that we instead require that each LEC process conflicting orders according to its own dispute resolution procedures. The permissions granted previously in the *Waiver Order* to Bell Atlantic, Pacific Bell, NYNEX and Mountain Bell allow those companies to dispose of both IXC/IXC and IXC/ballot conflicts using modified procedures. We continue to believe that tentative allocation and notification by ballot is a simple and efficient method of resolving conflicts. Therefore, except in cases where a LEC requested and received permission in the *Waiver Order* for a modification to its dispute resolution procedures, we will retain the requirement that customers appearing on more than one IXC list be placed in the allocation pool and notified by a second ballot of the conflict. Such a procedure affords consumers both timely notice and ample opportunity to select another IXC if they are dissatisfied with the tentative assignment.

D. Allocation Reporting Requirements

24. SBS proposes that the Commission require that LECs: (1) Report end user designations to IXCs within one week of

[19] Satellite Business Systems Petition for Reconsideration, CC Docket No. 83-1145, Phase I, filed July 24, 1985 at 4 (SBS Petition). SBS reiterates this request in its Petition for Reconsideration of the *Waiver Order*, CC Docket No. 83-1145, Phase I, filed October 23, 1985.

[20] MCI Telecommunications Corporation Petition for Partial Reconsideration, CC Docket No. 83-1145, Phase I, filed July 25, 1985 at ii (MCI Petition).

[21] Southwestern Opposition at 2.

[22] Opposition of the BellSouth Companies to Petitions for Reconsideration, CC Docket No. 83-1145, Phase I, filed Aug. 26, 1985 at 4 (BellSouth Opposition).

[23] GTE Sprint argues, for example, that "a customer would be 'locked into' the choice made by ballot regardless of whether or not this choice reflected an informed decision or, indeed, regardless of whether or not the choice was the result of error or misunderstanding." GTE Sprint Petition at 3.

[24] Ameritech also provides a second ballot to each end user involved in a conflict. Submission of such a second ballot to end users provides both timely notice of the conflict to the customer and an efficient method by which the customer can notify the business office of any requested change in IXC designation.

[25] Mountain Bell requested a waiver permitting it to contact the end user immediately, presumably by phone, to resolve disputes. The waiver was granted on condition that Mountain Bell also immediately notifies all IXCs involved in the selection dispute. The Bureau reasoned that immediate contact with the end user not only rendered timely assistance to consumers but also might assist the carrier in identifying procedural or mechanical causes of duplicate listings. We agree with the Bureau's conclusion and therefore reject SBS' suggested prohibition against such customer contact.

[26] We also deny SBS' related Petition for Reconsideration of the *Waiver Order*. *See* n. 19, *supra*.

[27] Letter from New York Department of Public Service to the Commission, CC Docket No. 83-1145, Phase I, filed Aug. 22, 1985.

[28] Opposition of Southwestern Bell Telephone Company to Petitions for Reconsideration, CC Docket No. 83-1145, Phase I, filed Aug. 26, 1985.

[29] *See* Allocation Order, App. B, para. 23.

receiving that information, (2) provide reports reflecting end user choices on a weekly basis prior to end office cutover, and, (3) report that information in either a standard format such as that adopted by the EDP Committee of the Network Operations Forum (NOF),[30] or "in an alternative format that is adequately explained to the IXCs." SBS Petition at 6. LECs are currently required to provide the IXCs with a minimum of three reports, identifying customers who have designated the IXC as their primary long distance carrier. *Allocation Order*, App. B, para. 28. SBS argues that these reporting requirements are inadequate to remedy the problems SBS has encountered in connection with end office cutovers. SBS reports that it often receives presubscription order information from the LECs too close to the end office cutover date to enable SBS to process the order in time for cutover. SBS Petition at 6. SBS also alleges that customer choice information provided by some LECs has been either incomplete or unintelligible, and that LECs in one region send customer information in two different formats, creating confusion. SBS Petition at 7.

25. BellSouth, NYNEX, and Southwestern oppose SBS' proposal.[31] Each opponent states that it provides more frequent reports than are required by the *Allocation Order*, but opposes further Commission prescription regarding timing or format. BellSouth suggests that we might require that order information be submitted by the LECs to the IXCs within "a reasonable time." BellSouth Opposition at 3. NYNEX argues that further reporting requirements will necessitate the expenditure of additional money and resources. Southwestern states that it currently supplies weekly reports to the IXCs and plans to implement a modified version of the standard format proposed by NOF.

26. Interchange carrier reports of recurrent problems in obtaining timely, comprehensive and comprehensible presubscription order information from the LECs indicate that the reporting process may be deficient.[32] We do not believe, however, that deficiencies in current reporting procedures will be remedied by the imposition of additional reporting requirements. We support the efforts of the telecommunications industry, such as those of NOF, to establish for itself standards governing the exchange of records. Such groups can develop prototypes which the LECs can adapt to their own data bases, as Southwestern reports it has done. Preliminary reports from the IXCs also indicate that certain LECs appear to have made substantial progress in resolving reporting deficiencies. We are reluctant to interpose new reporting requirements in the face of such progress. We therefore deny SBS' petition to modify the reporting requirements. We also direct the Common Carrier Bureau to monitor the LEC's compliance with the reporting requirements set forth in the *Allocation Order* and to recommend modifications if continued deficiencies are identified.

IV. Ordering Clauses

27. Accordingly, It is ordered that the petitions for reconsideration of the *Allocation Order* filed by US Telecom, Inc., MCI Telecommunications Corporation, Satellite Business Systems and GTE Sprint Communications Corporation are denied.

28. It is further ordered that the Petition for Waiver of the *Waiver Order* filed by Southwestern Bell Telephone Company is granted to the extent described herein and is otherwise denied.

29. It is further ordered that the Petition for Clarification of the Common Carrier Bureau's Conflict Guidelines filed by the Ameritech Companies is granted to the extent described herein and is otherwise denied.

30. It is further ordered that the Petition for Reconsideration of the *Waiver Order* filed by the BellSouth Corporation is granted to the extent described herein and is otherwise denied.

31. It is further ordered that the Petition for Clarification of the *Waiver Order* filed by Pacific Bell is denied.

32. It is further ordered that the Petition for Reconsideration of the *Waiver Order* filed by Satellite Business Systems is denied.

33. It is further ordered that the interstate access tariffs of any local exchange carriers that impose a change charge prior to end office conversion be revised to reflect the guidelines set forth in this Order.

34. It is further ordered that §§ 61.58, 61.59 and 61.74 of the Commission's Rules, 47 CFR 61.58, 61.59, 61.74, are waived for the purposes of implementing this Order.

35. It is further ordered that the Order is effective upon the date of release.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-27632 Filed 11-19-85; 8:45 am]

BILLING CODE 6712-01-M

[30] The EDP Committee of the Network Operations Forum is an industry group established to develop standards for the exchange of records between IXCs and LECs. *See* SBS Petition at note 2.

[31] Opposition of the BellSouth Companies to Petitions for Reconsideration, CC Docket No. 83-1145, Phase I, filed Aug. 26, 1985 at 2 (BellSouth Opposition); Southwestern Opposition at 4; NYNEX Telephone Companies' Opposition to Petitions for Reconsideration, CC Docket No. 83-1145, Phase I, filed Aug. 26, 1985 at 4 (NYNEX Opposition).

[32] *See, e.g.*, MCI's Report to the Department of Justice on RBOC Compliance with Equal Access, filed Aug. 16, 1985 in United States v. Western Electric Co., Civil Action No. 82-0192 (D.D.C.).

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47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286; FCC 85-529]

MTS and WATS Market Structure; Decision and Order

AGENCY: Federal Communications Commission.

ACTION: Decision and Order.

SUMMARY: THE FCC adopts the Federal-State Joint Board recommendation that the Florida Public Service Commission be asked to revise its proposal for implementation of an experimental unified interstate and intrastate access charge tariff to recover costs for all interexchange use of the local network. The FCC adopts the Joint Board's recommendation that experimental access charge tariffs should: (1) Not recover more costs from interexchange carriers than the FCC plan: (2) Satisfy the four basic objectives established in the *MTS and WATS Market Structure* proceeding; (3) Be consistent with the FCC's basic policy in support of a level playing field for toll competition; and (4) Provide information sufficient to permit a complete analysis. The FCC also endorses the Joint Board recommendation that Florida work closely with the Joint Board staff to develop a revised proposal. This decision will facilitate the filing of a revised experimental tariff proposal by Florida. It is intended to foster the development of sound experimental access charge tariff proposals.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Lee O'Connell or Claudia Pabo at (202) 632-6363.

SUPPLEMENTARY INFORMATION:

Decision and Order

In the matter of MTS and WATS Market Structure: amendment of Part 67 of the Commission rules and establishment of a Joint Board; CC Docket No. 78-72 and CC Docket No. 80-286.

Adopted: September 30, 1985.

Released: October 8, 1985.

By the Commission.

I. Introduction

A. Summary

1. The Commission hereby adopts the Federal-State Joint Board's recommendation that the Florida Public Service Commission be asked to revise its proposal for implementation of an experimental unified interstate and intrastate access charge tariff.[1] We endorse the Joint Board's recommendation that Florida work closely with the Joint Board staff to develop a revised proposal. To assist in this effort, the Federal staff will be available to respond fully to any questions raised by the Florida staff.

B. Background

1. Florida Plan

2. The Joint Board's recommendation was prepared in response to a Petition [2] filed by the Florida Public Service Commission seeking authority to implement a comprehensive unified interstate and intrastate access charge tariff in Florida on an experimental basis. The proposal provides for a unified set of federal/state access charge tariffs to recover the costs for all interexchange use of the local network. Instead of implementating residential or business subscriber line charges to recover a portion of NTS costs, the Florida proposal contains provisions for bulk-discount and contract access charge rates for large volume and users and customers with specialized needs. Any revenue shortfalls created by these anti-bypass measures would be offset by higher rates for basic and optional exchange services. Florida argues that this approach would allow a more highly targeted response to the threat of bypass than implementation of subscriber line charges.

3. As part of its plan, Florida proposes a three-year phase-out of Florida telephone company participation in National Exchange Carrier Association (NECA) pooling arrangements.[3] At the end of the three year transition period, Florida telephone companies would recover their own NTS costs, with access charges based on their specific costs and markets. The Florida plan and its supporting cost data are also based on an interstate allocation factor of 25 percent for NTS costs instead of the frozen interstate Subscriber Plant Factor (SPF) which currently average 38.9 percent on a statewide basis in Florida.

4. The Florida plan would establish Equal Access Exchange Areas (EAEAs) for the implementation of equal access.[4] The plan provides for a single point of presence (POP) for interexchange carriers with distance insensitive local transport charges and a 50 percent discount for non-premium interexchange traffic.[5] All default traffic would be routed to AT&T under the Florida plan.

5. Florida's proposed access charge rate structure would include time-of-day discounts on originating switched access and, once equal access becomes generally available, on terminating switched access. In connection with the time-of-day discounts, Florida proposes a busy hour minutes of capacity charge (BHMOC) in its unified tariff in order to recover revenue requirements not recovered through other access charge elements. Under the Florida proposal, resellers would pay Feature Group A rates for their line-side connections used in conjunction with the resale of WATS.[6] In addition, the Florida plan contains unbundled special access rates set at levels designed to produce the same revenues previously received under interim contracts.[7]

2. Joint Board Recommendation

6. The Joint Board found that the Florida plan would impose additional cost burdens on telephone subscribers in other states due to the fact that it would recover more non-traffic sensitive costs from the interexchange carriers than the FCC plan does. The Joint Board also expressed concern about a number of provisions in the Florida plan that affect the competitive standing of the other common carriers (OCCs). In addition, the Joint Board concluded that certain aspects of the plan need to be described in further detail to allow an informed analysis of the proposal. The Joint Board recommended that the Commission ask Florida to revise its present plant to eliminate the additional cost burden that it would impose on telephone subscribers in other states. The Joint Board also concluded that the revised plan should satisfy the Commission's long-standing competitive goals and the objectives set out in the *MTS and WATS Market Structure* proceeding, CC Docket No. 78-72. It stated that the revised plan should include a detailed description of all aspects of the proposal as well as data clearly demonstrating that it does not place additional revenue recovery burdens on subscribers in other states. Finally, the Joint Board recommended that Florida work with the Joint Board staff in reformulating its plan.

II. Discussion

7. The Commission hereby adopts, as its own, the Joint Board's recommendations concerning the Florida plan and the reasoning in support of them. We join in the Joint Board's conclusion that Florida's experimental access charge plan as presently formulated would impose additional cost burdens (estimated to be approximately $129 million) on telephone subscribers in other states. Florida's proposed withdrawal from the NECA common line pool has no net effect on the cost burdens on toll users in other states as long as Florida companies continue to recover the same proportion of their NTS costs from the interexchange carriers.[8] As the Joint Board observed, however, other aspects of Florida's plan have the net effect of recovering a higher portion of switched access costs from interexchange carriers than the FCC access charge plan.[9] As

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[1] *Recommended Decision and Order, MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, 50 FR 31751 (August 6, 1985).

[2] Petition for Authority to Implement an Experimental Unified Interstate and Intrastate Access Charge Tariff for the State of Florida, *MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, filed by the Florida Public Service Commission, November 9, 1984.

[3] Florida estimates that Florida telephone companies will receive approximately $254 million more in revenues from the NECA common line pool than they contribute during the 1984-85 access charge year.

[4] An EAEA is a geographic area within which a local exchange carrier has the duty of providing equal access from and to all subscribers as soon as economically feasible.

[5] The 50 percent discount reflects a weighted average of the current Florida intrastate discount of 35 percent for non-premium access and the current interstate discount of 55 percent.

[6] Under the current FCC rate structure, resellers pay the local business rate for their line-side connections for customer access and WATS rates for the long-distance service that they resell.

[7] For a more detailed description of the Florida proposal see the Joint Board's *Recommended Decision and Order*, 50 FR 31751 at paras. 3-8 (August 6, 1985).

[8] If Florida telephone companies withdraw from participation in the NECA common line pool, their above-average interstate NTS revenue requirements would no longer be averaged with the lower costs of other states through the NECA pool. Instead, local telephone companies in Florida would charge the interexchange carriers switched access rates in excess of the NECA average. The higher Florida specific switched access charges would then be averaged with the NECA charges in the development of AT&T's nationwide average toll rates. Unless AT&T placed a surcharge on interstate toll rates for service to and from Florida, subscribers in other states would continue to pay higher toll rates designed to recover Florida's above-average interstate switched access revenue requirement.

[9] For further discussion of this point see the Joint Board's *Recommended Decision and Order*, at para. 15.

the Joint Board stated, data filed by Florida indicates that implementation of its plan would produce a 1986 calendar year increase of approximately $129 million in interexchange carrier toll revenue requirements, with recovery of this amount through higher nationwide toll rates. The existing FCC access charge plan would recover this $129 million directly from customers in Florida through subscriber line charges.

8. Given these findings, we urge the Florida Public Service Commission to reevaluate and modify its proposal. We agree with the Joint Board that any revised plan must show how the costs involved are to be recovered and demonstrate that the plan does not impose additional cost burdens on subscribers in other states by shifting an increased portion of NTS revenue requirements to the interexchange carriers. We wish to emphasize that, at a minimum, experimental access tariffs cannot be allowed to recover more NTS costs from the interexchange carriers than the FCC access charge plan. We also emphasize that experimental tariffs must satisfy all four of the basic goals enunciated by the Commission in the *MTS and WATS Market Structure* proceeding: (1) Continued assurance of universal service; (2) Prevention of uneconomic bypass; (3) Elimination of unlawfully discriminatory or preferential rates; and (4) Encouragement of network efficiency.[10] Experimental tariff proposals which meet only certain of these goals are not adequate.

9. We also agree with the Joint Board that certain of the provisions contained in the Florida plan differ from FCC access charge provisions in ways that affect the competitive posture of the OCCs. These include measures which impose substantially greater access costs on WATS resellers, a lower non-premium access discount for the OCCs, the BHMOC charge to be paid by the interexchange carriers, and the special access provisions. Florida would also route all default traffic to AT&T in contrast to the FCC plan for allocating such traffic among the interexchange carriers. In addition, as the Joint Board notes, the Florida plan's proposal for bulk-discount and contract access charge rates may provide an incentive for heavy toll users to consolidate all of their traffic with one long distance carrier, or fail to include OCC traffic using non-premium access facilities in the discount mechanism. Although certain of these measures may, after further study, prove to be acceptable, we emphasize that the Commission is committed to the establishment of a level playing field for interstate toll competition. We view basic competitive fairness as a baseline for the development of experimental tariffs and cannot endorse any proposals which do not meet these standards.

10. Finally, as the Joint Board found, further explanation of certain provisions in the Florida plan, as well as information regarding the costs to be recovered through the various access charge rate elements, is needed to allow a complete analysis of the Florida proposal. Among the matters requiring clarification are Florida's intrastate program for assisting telephone companies which serve high-cost areas,[11] the EAEA approach and its implications for implementing equal access, and Florida's proposal for combatting bypass through volume discount and contract access charge rates.

11. We strongly endorse the Joint Board's recommendation that Florida work closely with the Joint Board staff in developing a revised experimental tariff proposal. We believe that the specific, technical issues raised by the Florida proposal can best be dealt with through close coordination between Florida and the Joint Board staff. To facilitate this process, the Federal staff will be available to respond fully to any questions raised by the Florida staff.

III. Ordering Clauses

12. Accordingly, it is ordered, That the Florida Petition is denied without prejudice to the development and filing of a revised experimental tariff proposal.[12]

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-27414 Filed 11-19-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 84-874]

Implement the 1900-2000 kHz Frequency Band in Radiolocation Service

AGENCY: Federal Communication Commission.

ACTION: Final rule; Correction.

SUMMARY: The Report and Order of PR Docket No. 84-874, 50 FR 46048, November 6, 1985, concerning implementation of the 1900-2000 kHz frequency band in radiolocation service contained several incorrect dates. This document corrects these dates in both the text and the Appendix of the item.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90 and 97

Private Land Mobile Radio Services, Radiolocation Services, Radio.

Erratum

In the matter of amendment of Parts 90 of the Commission's Rules to Implement thge 1900-2000 kHz Frequency Band in the Radiolocation Service [PR Docket No. 84-874].

Released: November 8, 1985.

1. On October 31, 1985 a *Report and Order* (FCC 85-574) was released in the above-captioned proceeding. In paragraph 15 of the *Report and Order*, the Commission discusses dates on which applications for radiolocation systems in the 1900-2000 kHz band will be accepted. While all of the dates in that paragraph except one are correct, the dates indicated in the adopted rules appended to the *Report and Order* do not correspond with those in the text and are not correct. Additionally, as stated in paragraph 25, wideband systems can be authorized immediately in the 1900-2000 kHz band and need not wait until the dates indicated for existing and new radiolocation systems.

2. Accordingly, the *Report and Order* is corrected as follows:

a. The last two sentences in paragraph 15 on page 46050 are corrected to read:

Licensees now operating solely in the 1705-1715 kHz portion of the 1605-1715 kHz band will not be displaced and may continue operations under existing authorizations. These licensees will be eligible for frequencies in the 1900-2000 kHz band on July 1, 1988.

§ 90.103 [Corrected]

b. In the *Appendix*, § 90.103(c) (27), (29), and (30) are corrected to read as follows:

(c) * * *

(27) Notwithstanding the bandwidth limitations otherwise set forth in this section of the rules, wideband systems desiring to operate in this band may use such bandwidth as is necessary for proper operation of the system provided that the field strength does not exceed

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[10] *Memorandum Opinion and Order*, CC Docket No. 78-72, 97 FCC 2d 834, 836 (1984).

[11] It is not clear exactly which companies would receive assistance or how much they would receive.

[12] This action is taken pursuant to sections 1, 4(i) and (j), 201, 202, 203, 205, 218, 221(c), 403 and 410 of the Communications Act, 47 U.S.C. 151, 154(i) and (j), 201, 202, 203, 205, 218, 221(c), 403 and 410.

120 microvolts per meter per square root Hertz (120 uv/m/Hz½) at 1 mile. Such wideband operations shall be authorized on a secondary basis to stations operating within otherwise applicable technical standards. Applications for wideband systems in this band will be accepted beginning December 15, 1985.

* * * * *

(29) Beginning July 1, 1987, licensees of existing systems authorized frequencies in the 1605–1705 kHz portion of this band may request modification of their authorizations to change frequencies to the 1900–2000 kHz band.

(30) Until July 1, 1988, this band will be available only for licensees of existing systems operating in the 1605–1705 kHz portion of the 1605–1715 kHz band requesting modification of their authorizations to change frequencies to this band and for licensees of wideband systems. On July 1, 1988, requests for new station authorizations in this band will be accepted and, if necessary, will be subject to the random selection procedures outlined in § 1.972 of the Commission's Rules.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85–27630 Filed 11–19–85; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1241

[No. 38590]

Revision to Railroad Annual Report Form R–1

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Interstate Commerce Commission is eliminating 20 schedules from Annual Report Form R–1. The Final Rule, served March 11, 1982 (47 FR 10041, March 9, 1982) eliminated certain annual report schedules in Railroad Annual Report Form R–1 (Form R–1). On judicial review, the United States Court of Appeals for the District of Columbia Circuit found that the Commission failed to give adequate notice that the proposed elimination of schedules was to be done in reliance upon a previously announced general policy of limiting periodic reports to information frequently and regularly used by the Commission. After reopening this proceeding for further comment on the Interstate Commerce Commission's elimination of 20 schedules and its general policy of limiting periodic reports to information regularly and frequently used by the Commission, the Commission has decided to eliminate the 20 schedules.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Brian Holmes, (202) 275–7448.

SUPPLEMENTARY INFORMATION: By Supplemental Notice of Proposed Rulemaking in No. 38590, *Revision to Railroad Annual Report Form R–1*, (50 FR 18891, May 3, 1985) served May 2, 1985, the Commission reopened this proceeding to rectify certain procedural inadequacies found by the reviewing court. In the decision served March 11, 1982, (47 FR 10041, March 9, 1982) 365 I.C.C. 552 (1982), the Commission eliminated 20 schedules. On judicial review, the United States Court of Appeals for the District of Columbia Circuit noted that the Commission based the proposed elimination of schedules upon a previously announced general policy of limiting periodic reports to information regularly and frequently used by the Commission. *Simmons* v. *ICC*, 757 F.2d 296 (D.C. Cir. 1985). The court found that interested parties were not "accorded the statutorily required opportunity to tell the Commission why the regular and frequent use principle is in their view a bad idea." Id. at 300. The reopening of this proceeding has provided interested parties an opportunity to comment on these issues.

Patrick W. Simmons, Illinois Legislative Director for the United Transportation Union, opposes the proposed deletion of any of the schedules at issue. First, Mr. Simmons contends that the Commission's 1979 policy statement embodying the "regular-and-frequent-[Commission]-use" standard for reporting requirements is an unwarranted departure from prior practice. Relying principally on judicial decisions and ICC annual reports from the period 1893–1935, Mr. Simmons claims that 49 U.S.C. 11145 (former 49 U.S.C. 20(1)–(1)) is intended to promote the reporting of information for the public, not just for the Commission's use.[1]

The short answer to Mr. Simmons' claim concerning the Commission's alleged obligation to gather and publish information solely for the public is that it already has been rejected by the reviewing court. *Simmons, supra*, 757 F.2d at 297–98. The court discussed most of the authorities relied upon by Mr. Simmons and found them unpersuasive. As the court found, "[t]hey do *not* establish as the Commission's view (and we need not resolve whether such a view would be valid) that usefulness to the public is alone a sufficient justification for requiring information." 757 F.2d at 298 (emphasis in original). Thus, there can be no unexplained "departure" from a past statutory interpretation that, according to the reviewing court, never existed.

The court did find inadequate our discussion of our reasons for not allowing "public usefulness" of information to be a self-sufficient basis for mandatory carrier reports. 757 F.2d at 298. Additionally, we had failed, in the court's view, to accord the proper opportunity for comment on the "regular-and-frequent-use" standard embodied in the 1979 policy statement. *Id.* at 299–300. Of course, we have now invited such comment in the reopened proceeding.[2]

1. The Merits of the Regular-and-Frequent-Use Standard

Turning to the test of "regular-and-frequent" Commission use as a standard for evaluating reporting requirements, we find ample support for relying upon the level of Commission use as an indicator of the need for mandatory regular reports. First, as to the statutory framework governing our evaluation of reporting, the "regular and frequent use" test for maintaining reporting requirements "is not contrary to statutory command, incompatible with

[1] We note that virtually all of the cited statements of the Commission and the courts were made when federal securities regulation and the attendant disclosure requirements were virtually nonexistent. As discussed, *infra*, the subsequent expansion of Securities and Exchange disclosure requirements has in many instances superseded the ICC's role as a disseminator of information to the public.

[2] The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (IBT) has commented only on the supposed inadequacies of our procedures. First, IBT claims that we did not solicit comments on the "wisdom" of the "regular and frequent use" standard. On the contrary, we explicitly presented that policy for comment (50 Fed Reg. 18892). Moreover, as reflected in the comments received, all other parties seem to have clearly understood that the regular-and-frequent-use standard is, in the court's phrase, "on the table." 757 F.2d at 300.

Second, IBT claims that the Commission may properly solicit comments "only" in a "separate proceeding of general applicability." We detect no such directive in the reviewing court's opinion, and IBT offers no authority to support its sweeping assertion. Our notice in the Federal Register gave full and fair notice to the public at large that we would be examining the issue of the "regular-and-frequent-use" standard in this *rulemaking* proceeding and the other comments reflect that our reopening order was so understood.

other Commission policies, or directed at goals beyond the Commission's jurisdiction." *Simmons, supra*, 757 F.2d at 299. Rather, this is "an area of judgment well within the agency's assigned discretion." *Id.*, citing 49 U.S.C. 11145(b)(1). Hence we approach the comments submitted to us in search of any persuasive basis for exercising our discretion to retain the identified schedules or follow an analytical approach other than "regular-and-frequent use."

Mr. Simmons attacks the "regular-and-frequent-use" standard as lacking a legitimate basis, because it represents a "change in . . . administration of a statute" without explanation. We have already observed that the reviewing court rejected the premise of this analysis.

Mr. Simmons' only other argument on the merits of our analytical test is that the articulation of the principle in the 1979 policy statement was not truly reflective of the views of either the Commission's Data Task Force or the public at large. We consider both points moot. Even if the Data Task Force report provided no support "or limiting carriers" paperwork burdens that result from seldom-used reports, we would consider the "regular-and-frequent-use" approach soundly based. First, the National Rail Transportation Policy urges the Commission to "minimiz[e] the burden on rail carriers of developing and maintaining the capability of providing [cost] information." 49 U.S.C. 10101a(14). As the reviewing court observed, this "surely suggests a more general concern with reducing regulatory burdens attendant upon information-reporting requirements." *Simmons, supra*, 757 F.2d at 299.[3] Similarly, there is a more general federal policy of minimizing paperwork, embodied in the Paperwork Reduction Act of 1980, 44 U.S.C. 3501. See *Simmons, supra*, 757 F.2d at 299, confirming that the regular-and-frequent-use standard "furthers" this more general policy.[4]

We likewise consider moot Mr. Simmons' claim that the 1979 policy statement and the antecedent Data Task Force report did not reflect adequate consideration of the public's views. Assuming that to be true, it is quite irrelevant now, in light of our reopening of this proceeding and our recent express solicitation of comments on the "regular-and-frequent-use" principle.

The Brotherhood of Locomotive Engineers (BLE) questions the soundness of the "regular-and-frequent-use" standard because of an asserted disparity between the "complete disclosure" required of labor organizations and other groups on the one hand and rail carriers on the other. Although admitting that reporting requirements "overburden . . . everybody," BLE nevertheless urges us to inflict an equally heavy load on rail carriers. The short answer to the contention is that we are an agency of limited jurisdiction, not an arbiter of all disparities in the American economy. Inflicting reporting requirements so as to equalize pain among different sectors of the economy would be wasteful, destructive and clearly beyond our jurisdiction. BLE refers to "other applicable federal law" (unidentified) as the source of many information-gathering burdens upon non-railroad sectors of the economy. We suggest that the agencies administering the other regulatory schemes are the best avenue for redress by BLE. Surely it is preferable to seek equality of burdens at a low level of paperwork rather than at an arbitrarily high one.

Charles M. Rice, publisher of *Management Compensation Railroads*, urges use of a public or non-Commission-use standard for reporting requirements because of the role of "chance" in making "seemingly unimportant" information available to persons throughout the economy. We do not believe that such an existential approach to regulatory data collection is warranted or indeed responsible. In light of the statutory directives to reduce paperwork (identified by the reviewing court), we could not properly impose or continue a data-collection requirement on the mere chance that it will be put to use by a member of the public. Indeed, the few number of comments in this reopened proceeding would seem to confirm that this is a less than consuming issue among the public and that the odds of Mr. Rice's theory producing any breakthrough elsewhere in the ecomomy are extra-ordinarily low.

The Association of American Railroads (AAR) supports the "regular-and-frequent use" standard for evaluating reporting requirements, as a means of promoting efficient and cost-effective rail operations and as an appropriate exercise of the Commission's authority in furtherance of the Paperwork Reduction Act and the National Transportation Policy. AAR expects the elimination of reporting requirements under this standard to result in substantial savings of time and expense by rail carriers.

Based upon the comments received, the opinion of the reviewing court, and our own analysis of the governing statute, we will adopt and apply the "regular-and-frequent-use" standard in evaluating whether to retain the schedules proposed [5] for deletion.

2. Specific Deletions

Only two of the twenty proposed deletions have been specifically opposed on the merits by any commenting parties—Schedule 325 (Property Used in Other than Carrier Operations) and Schedule 900 (Compensation of Officers, Directors, Etc.). We discuss these schedules below. As to all schedules included in our proposal, AAR supports their elimination. Since deletion of eighteen of the twenty schedules is unopposed and we are persuaded that these schedules are not regularly and frequently used by the agency in the execution of its statutory responsibilities, these eighteen schedules will be eliminated.

A. Schedule 325

BLE urges retention of this schedule, because it assertedly informs the Commission and the public whether a rail carrier is "diverting" assets for non-rail purposes and "investment speculation." AAR points out, however, that most railroads have not filed Schedule 325 for some time, because they do not meet the threshold requirement that gross value of non-carrier-operations property exceed five percent of total assets or that net non-carrier-operations profit exceed ten percent of ordinary income. Moreover, AAR argues, Schedules 200 and 210 reveal that less than *one* percent of Class I carriers' total assets and less the *three* percent of net profit are devoted to non-carrier operations. In any event, the

[3] In view of the court's confirmation that Section 10101a(14) supports a policy of reducing reporting requirements, we attach little weight to Mr. Simmons' assertion that this provision "negates" the regular-and-frequent-use standard.

[4] Mr. Simmons again disagrees with the court, asserting that the Paperwork Reduction Act is intended primarily to benefit individuals and small businesses. We do not agree that the Act should be so narrowly read. The obvious underlying thrust of the law is to rid the economy of the burden of wasteful and unproductive federal "pencil-pushing" requirements. We see no reason why even large rail carriers should be excluded from the benefits of that policy.

[5] In our notice reopening this proceeding, we referred to the deletions as a proposed action, even though the reviewing court's mandate reversing our earlier deletion decision had been stayed. See *Simmons, supra*, 757 F.2d at 300. The mandate issued on June 12, 1985. Hence our earlier deletions have been rescinded. As a practical matter, carriers will not have to increase or decrease the level of data reported until the next round of reports falls due.

aggregate figures are available in the carrier's balance sheet and income statement (Schedules 200 and 210). In these circumstances, we conclude that Schedule 325 is largely redundant and is not likely to be regularly and frequently used by the Commission.

B. Schedule 900

The schedule, which lists management compensation is the principal focus of the comments opposing the proposed deletions. Mr. Rice argues that the Commission has not needed to review salary data on a regular basis in the past because private parties have performed such analyses based on the information contained in Schedule 900. In his view, publication of this data in Schedule 900 thus has a "prophylactic" effect. Mr. Simmons, however, asserts that there is a "public outcry" over current executive compensation levels. BLE, on the other hand, asserts that it is unfair for railroad executive compensation to become "secret" as a result of the deletion of Schedule 900.

We find these claims of present or future "secrecy" of executive salaries without Schedule 900 to be unpersuasive. Schedule 900 has been deleted from the annual reports beginning with the first ones due after our 1982 decision. Yet the ready availability of salary data from other public sources for the period up through 1985 is demonstrated by the comments of the very parties opposing deletion. BLE, while calling executive salaries "secret" is able to list five major railroad executives' names and salaries from the April 29, 1985, issue of *U.S. News & World Report*. Mr. Simmons relies upon the same source, as well as other business publications. To us, this vividly illustrates the correctness of AAR's opposing argument—that virtually all of the information contained in Schedule 900 is available through Securities and Exchange Commission filings and other wage statistics. Thus, assuming (without deciding) that there is some public need for the information extraneous to the administration of the Interstate Commerce Act, it is obvious that the need can be and is in fact met by other sources of information. In these circumstances, we see no reason to continue to require the filing of Schedule 900, an item which is not routinely used by the Commission. [6] Moreover, as with the information contained in all of the deleted schedules, we retain the authority to require salary data on a case-by-case basis. 49 U.S.C. 11145.

[6] We find no merit in Mr. Simmons' claim that we are somehow reneging on a "pledge" made in 1965, assertedly to continue publishing salary data in annual reports *ad infinitum*. Much has changed since then (the Staggers Act and Paperwork Reduction Act being obvious examples), and we have publicly announced and considered comments on the proposed changes. We find neither any past commitment to continue publication indefinitely nor any violation of such an undertaking.

Regulatory Flexibility Act

This rule will not have a significant impact on a substantial number of small entities. Because this proceeding relates to only the larger Class I railroads, we perceive no likely impact on smaller railroads who are not required to file reports. The usefulness to small businesses of the information formerly required to be reported is doubtful and, as we have discussed, an insufficient reason to retain those reporting requirements.

This action will not have a significant impact on the human environment or energy conservation.

List of subjects in 49 CFR Part 1241

Railroads, Reporting requirements.

This rule is issued under the authority of 49 U.S.C. 11145 and 5 U.S.C. 553.

Decided: October 30, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred in the result.

James H. Bayne,

Secretary.

[FR Doc. 85-27640 Filed 11-19-85; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 50, No. 224
Wednesday, November 20, 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.

FEDERAL ELECTION COMMISSION

11 CFR Part 7

[Notice 1985-12]

Standards of Conduct for Agency Employees

Correction

In FR Doc. 85-24906 beginning on page 42553 in the issue of Monday, October 21, 1985, make the following corrections:

1. On page 42553, second column, third complete paragraph, seventh line, "Commissioner" should read "Commissioners".

§ 7.12 [Corrected]

2. On page 42558, first column, in § 7.12, third line, insert the following after the word "organizations": "shall avoid activities on behalf of those associations or organizations".

§ 7.15 [Corrected]

3. On page 42558, second column, in § 7.15(d), in the last line of the paragraph, insert ")" at the end.

§ 7.18 [Corrected]

4. On page 4259, first column, in § 7.18(a), seventh line, "of" should read "or".

§ 7.25 [Corrected]

5. On page 42560, first column, in § 7.25(a), third line, "investigation" should read "investigative".

§ 7.33 [Corrected]

6. On page 42561, second column, in § 7.33(a), fifth line, "ot" should read "to".

BILLING CODE 1505-01-M

FEDERAL RESERVE SYSTEM

[Docket No. R-0558]

12 CFR Part 210

Regulation J; Proposals To Reduce Federal Reserve Float

AGENCY: Federal Reserve System.

ACTION: Proposed rule; request for comment.

SUMMARY: The Board is requesting comments on proposals that would: (1) Amend Subpart A of the Board's Regulation J, 12 CFR Part 210, which governs the collection of checks and other items, to require paying banks that close voluntarily on days that are banking days for their Reserve Banks to pay on such days for cash items that Reserve Banks make available to them on such days; (2) modify the procedures used by Reserve Banks to recover the value of float generated in automated clearing house ("ACH") operations due to nonstandard holiday closings; (3) reduce financial risks to the Federal Reserve by changing procedures in handling ACH credit transactions on days that the originator is closed; and (4) establish a uniform holiday schedule to be followed by the Reserve Banks.

DATE: Comments must be submitted by December 30, 1985.

ADDRESSES: Comments, which should refer to Docket No. R-0558, may be mailed to the Board of Governors of the Federal Reserve System, 20th & C Sts., NW., Washington, DC 20551, attention: Mr. William W. Wiles, Secretary. Comments may also be delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m. except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

FOR FURTHER INFORMATION CONTACT: Florence M. Young, Adviser (202-452-3955) or William S. Brown, Manager (202-452-3760) Division of Federal Reserve Bank Operations; Joseph R. Alexander, Attorney, Legal Division (202-452-2489); or Joy W. O'Connell, Telecommunications Device for the Deaf (202-452-3244).

SUPPLEMENTARY INFORMATION:

Background

The Federal Reserve has made continuing efforts to reduce float in the payments system. Such float arises in the check collection process when a sender receives credit for a deposited check before the Federal Reserve is able to obtain payment from the paying bank, for example, if the paying bank is closed on a day presentment would normally be made. Similarly, in ACH transactions, float may be created if a party to a transaction is closed on the date a transaction is to be settled. In such cases, the Federal Reserve may not be able to debit the appropriate account at the same time credit is passed.[1]

In both check and ACH transactions, some float is generated as a result of nonstandard holidays (state or local holidays not observed on a regional or national basis). On two previous occasions, the Board has considered the issue of nonstandard holiday float in check services. *See* 48 FR 20802 (1983); 49 FR 4196 (1984). Most recently, the Board decided to permit Reserve Banks to defer credit to senders for cash items drawn on institutions that are closed on nonstandard holidays where operationally feasible. The value of any nonstandard holiday float remaining is added to the cost base for the check collection service. Similar procedures have been adopted for ACH services. These procedures have enabled the Federal Reserve to keep nonstandard holiday float to relatively low levels.[2] Recent events, however, indicate that these procedures may not be fully effective in the future, and, in the case of ACH services, may expose the Federal Reserve to financial risk.

Check Collection

Changes in banking structure have created the potential for an increase in nonstandard holiday float. For example, the Delaware State Bank Commissioner permits banks located in that state to close on any day they choose provided that they provide the public with

[1] In ACH transactions, credits and debits resulting from the same transaction would normally be posted on the same day. In credit transactions, the originator's account is debited and the receiver's account is credited; these entries are generally treated as final. In a debit transaction, the originator's account is credited and the receiver's account is debited; these entries are generally treated as provisional.

[2] In check services, a daily average float of approximately $15 million results from nonstandard holidays. In ACH services, nonstandard holidays cause a daily average float of approximately $2.0 million

advance notice. Banks with affiliates located in other states may take advantage of this fact to close on days their out-of-state affiliates are closed regardless of whether other banks in Delaware are closed on that day and regardless of whether the Philadelphia Reserve Bank is observing the holiday. This situation creates the potential for substantial increases in nonstandard holiday float. Cases like this are likely to increase as interstate banking becomes more prevalent.

Current procedures for deferring credit to senders for cash items drawn on banks observing nonstandard holidays are generally limited to those instances where all banks in a state are closed.[3] Where only one or a few institutions are closed, Reserve Banks cannot defer credit to the senders, and in such instances a substantial amount of float could be generated that would have to be added to the cost base for check collection services. The Board believes that it is not equitable to require all users of Federal Reserve check collection services to bear the costs of float generated by institutions that voluntarily choose to close on days when most other banks are open for business.

When the Board last considered a Regulation J amendment to charge banks for checks made available to them on nonstandard holidays on which they are closed, the Board decided not to go forward with the proposal in part because it agreed with commenters that it would be unfair to charge for those nonstandard holidays that state or local law require institutions to close. Because it was unclear which nonstandard holidays were mandatory and which were permissive, the Board elected to treat all nonstandard holidays as mandatory and not charge paying banks for cash items made available to them on such days.

Although the Board still believes that it is not appropriate to charge paying banks for checks made available to them on days that the law requires them to be closed, changing conditions have led the Board to reconsider its 1984 decision to treat all nonstandard holidays as mandatory. Accordingly, the Board proposes that Regulation J be amended to allow Reserve Banks to charge paying banks for checks and other cash items made available to them on any day that is a banking day for the Reserve Bank [4] and that the law of the place where the paying bank is located allows the bank to remain open. If local law requires a paying bank to close on a day that its Reserve Bank is open, the Board proposes that the holiday be treated as mandatory and the paying bank not be charged for items made available on such days. In such cases, Reserve Banks will defer credit to senders where possible; otherwise the value of the float will be added to the cost base for the check collection service.

This provision is not intended to require paying banks to pay for items on days that they are closed because of weather or other emergencies. Section 210.14 provides relief under such conditions provided the bank exercises such diligence as the circumstances require.

The Board has compiled a preliminary list of state holidays that it believes are mandatory, and specifically seeks comment on whether these holidays should be considered mandatory holidays and whether additional holidays should also be considered mandatory.

MANDATORY NONSTANDARD HOLIDAYS

[Preliminary List]

Holiday	State in which mandatorily observed
Good Friday	Connecticut, Maryland, Hawaii.
Lincoln's Birthday (February 12).	Kansas, Connecticut.
February 3rd (Presidents' Day).	Wisconsin.
March 26 (Kuhio Day)	Hawaii.
June 11 (Kamehameha Day)	Hawaii.
July 24 (Pioneer Day)	Utah.
August 16 (Admission Day)	Hawaii.
October 31 (Nevada Day)	Nevada.

In addition to the above, Mardi Gras may also be mandatory in many southern Louisiana parishes and municipalities.

ACH

Nonstandard Holidays: The current procedures for recovering nonstandard holiday float place the entire burden of the recovery on originators of ACH transactions. The National Automated Clearing House Association ("NACHA") has indicated to the Board that it is often difficult for originators to pass float costs back to their customers, and that the current procedures could therefore discourage small and medium size institutions from beginning to originate ACH transactions. Accordingly, NACHA requested a change to the procedures for recovering ACH float arising because one of the parties to the transaction (originator, receiver, or Reserve Bank) is closed. Under this proposal such float would be treated as follows:

PROCEDURES FOR ELIMINATING OR PRICING ACH FLOAT ARISING FROM DEPOSITORY INSTITUTION CLOSINGS AND RESERVE BANK HOLIDAYS

Type of transaction	Midweek closing	Depository institution nonstandard holiday	Reserve bank holiday
Credit origination	Debit originator's account on preceding business day. Compensate for early debit with as-of-adjustment. Reject nighttime next day credit transactions.	Debit originator's account on preceding business day. Compensate for early debit with as-of-adjustment. Reject nighttime nextday credit transactions.	Debit originator's account on preceding business day. Compensate for early debit with as-of-adjustment. Reject nighttime nextday credit transactions
Credit receipt	Credit receiver's account as though institution were open.	Credit receiver's account as though institution were open.	Compensate originator for credit float caused by the receiving Reserve office's holiday with as-of adjustments.
Debit originator	Credit originator's account as though institution were open.	Credit originator's account as though institution were open.	Compensate originate for credit float with an as-of adjustment.
Debit receipt	Debit receiver's account as though institution were open or assess cost of float through explicit charge or as-of adjustment.	Debit receiver's account as though institution were open or assess cost of float through explicit charge or as-of adjustment.	Defer transaction to the originator until the next open business day for the receiving Reserve office.

[3] A nine digit number inscribed on checks is used to sort checks to paying banks. Collecting institutions often use only the first four digits of this number for sorting checks that are sent to the Federal Reserve. In many cases, these four digits will identify institutions in a particular state. Therefore, institutions uniformly observing nonstandard holidays in a particular state can be readily identified and credit for checks drawn on such institutions can be deferred.

[4] The Board is also proposing for comment that Reserve Banks follow a uniform holiday schedule. See *infra*.

The Board believes that the proposal may be a more equitable means of addressing ACH float, and is requesting comment on whether it should be adopted.

Financial Risk: When ACH credit transactions are processed, funds flow from the originator of the transaction to the receiver. As a result, when an originator of a credit transaction is closed on the settlement date, float is created because funds are credited to the account of the receiving institution and the originator's account is not charged. Under current procedures, the originator is charged on the next banking day and the value of float is recovered through an as-of adjustment or an explict fee.

Because ACH credit transactions are generally treated by the Reserve Banks as final payments on the settlement date, the current procedures for recovering this float could expose the Federal Reserve to a possible loss should there be insufficient funds in the originating institution's reserve or clearing account on the banking day following the settlement date. To address this problem, the Board is proposing that institutions originating credit transactions for settlement on a day that they or their local Federal Reserve office will be closed be debited on the preceding banking day and be compensated for the early debit by means of an as-of adjustment.

Reserve Bank Holiday Schedule

Several commenters to previous proposals on midweek closing and nonstandard holiday float have recommended that the Federal Reserve should observe a standard holiday schedule. These commenters indicated that a standard holiday schedule would reduce the number of occasions when one Federal Reserve office was open and another closed, and, therefore, would reduce the uncertainty as to whether they would or would not be credited for their deposits. The Federal Reserve agrees with these sentiments and is planning to adopt a uniform holiday schedule for all Reserve Banks beginning in 1987. That schedule is as follows:

All Saturdays,
All Sundays,
New Year's Day (January 1),
Martin Luther King's Birthday (third Monday in January),
Washington's Birthday (third Monday in February),
Memorial Day (last Monday in May),
Independence Day (July 4),
Labor Day (first Monday in September),
Columbus Day (second Monday in October),
Veterans' Day (November 11),
Thanksgiving Day (fourth Thursday in November), and
Christmas Day (December 25).

If a fixed holiday (such as Christmas) falls on a Saturday, the holiday will be observed on the previous Friday; if it falls on a Sunday, it will be observed on the following Monday.

Because this is a change in service arrangements that could have significant longer-run effects on the nation's payments system, the Board is requesting public comment on the proposed standard holiday schedule.

The Board does not anticipate that any of these proposals will result in any significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Part 210

Banks, Banking, Federal Reserve System.

PART 210—[AMENDED]

Pursuant to its authority under § 13 of the Federal Reserve Act, 12 U.S.C. 342, section 16 of the Federal Reserve Act, 12 U.S.C 248(o) and 360, section 11(i) of the Federal Reserve Act, 12 U.S.C. 248(i), and other provisions of law, the Board hereby proposes to amend 12 CFR Part 210 as follows:

1. The authority citation for Part 210 continues to read as follows:

Authority: Federal Reserve Act, sec. 13, 12 U.S.C. 342; sec. 11(i), 12 U.S.C. 248(i), sec. 16, 12 U.S.C. 248(o) and 360, and sec. 19(f), 12 U.S.C. 464.

2. The last sentence of § 210.9(a)(2) is revised to read as follows:

§ 210.9 Payment.

* * * * *

(a) * * *

(2) * * * A paying bank that closes voluntarily on a day that is a banking day for the Reserve Bank shall either pay on that day by the close of the Reserve Bank's banking day for cash items that the Reserve Bank makes available to the paying bank on that day, or compensate the Reserve Bank for the value of the float associated with the items in accordance with procedures provided in its Reserve Bank's operating circular; in such circumstances, the paying bank is not considered to receive the item until its next banking day.

* * * * *

By Order of the Board of Governors of the Federal Reserve System, November 15, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-27710 Filed 11-19-85; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 225

[Reg. Y Docket No. R-0557]

Capital Maintenance; Perpetual Debt as Primary Capital

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: Capital adequacy is one of the critical factors the Board of Governors of the Federal Reserve System is required to analyze in taking action on various types of applications, such as mergers and acquisitions by bank holding companies, and in the conduct of the Board's various supervisory activities related to the safety and soundness of individual banks and bank holding companies and the banking system. In April 1985, the Board announced revised Guidelines for required and appropriate levels of capital for bank holding companies and state chartered banks that are members of the Federal Reserve System. (50 FR 16057 (1985)) At that time the Board announced it would continue to study the issue of whether to consider treating "perpetual debt" as a form of primary capital. The Board has decided to seek public comment on this issue, and to that end has proposed to amend its Capital Adequacy Guidelines to include as primary capital perpetual debt securities issued by state member banks and bank holding companies, provided these perpetual debt securities meet certain criteria. The Board also proposes to limit the combined amount of mandatory convertible instruments, perpetual preferred stock and perpetual debt that could qualify as primary capital in order to ensure that common stock remains the dominant component of primary capital.

DATE: Comments must be received by January 17, 1986.

ADDRESS: All comments, which should refer to Docket No. R-0557, should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue, NW., Washington, D.C. 20551, or should be delivered to the Office of the Secretary, Room 2200, Eccles Building, 20th and Constitution Avenue, NW., between the hours of 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room 1122, Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Anthony G. Cornyn, Assistant Director, Division of Banking Supervision and Regulation (202/452-3354), James E.

Scott, Senior Attorney, Legal Division (202-452-3513), or Joy W. O'Connell, Telecommunication Device for the Deaf (202-452-3244), Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION:

Background

In announcing its revised Capital Adequacy Guidelines, 50 FR 16057, 16064 (1985), the Board deferred for further study the issue of whether to treat perpetual debt securities as primary capital for purposes of the Guidelines. Since that time there has been a continued interest in the issue. Beginning in May 1985, several banking organizations located in the United Kingdom issued perpetual debt notes that qualified as primary capital under guidelines adopted by the Bank of England. In June, the Canadian Inspector General of Banks issued a statement that would permit debentures with a minimum maturity of 99 years to qualify as "base" (primary) capital. At least one Canadian bank has issued qualifying perpetual debt. No United States banking institutions have issued perpetual debt securities. However, some such institutions have expressed interest in doing so pending a determination of the instrument's capital status.

Purpose of the Proposed Rulemaking

In November, 1983 Congress enacted the International Lending Supervision Act of 1983 (12 U.S.C. 3901 *et seq.*) which directed that the federal banking agencies ". . . shall cause banking institutions to achieve and maintain adequate capital by establishing minimum levels of capital for such banking institutions and by such other methods as the appropriate Federal banking agency deems appropriate." (Section 908, 12 U.S.C. 3907) Pursuant to this authority and the authority contained in the Bank Holding Company Act, the Federal Reserve Act, and the Financial Institutions Supervisory Act of 1966, the Board has adopted Capital Adequacy Guidelines that establish minimum and appropriate capital levels for state member banks and bank holding companies. These minimum and appropriate levels of capital are designed to protect the banking institutions from unforeseen adversity, to provide additional loan loss absorption capability, to furnish additional protection to depositors and creditors, and to allow banking institutions to take advantage of opportunities for sound growth.

The Board is proposing this amendment to its Capital Adequacy Guidelines in an attempt to provide state member banks and bank holding companies the flexibility of an additional capital instrument to attain minimum and adequate levels of primary capital. It appears that perpetual debt, if properly structured, might provide some of the traditional protections for the issuing banking organizations provided by other capital instruments. At the same time, however, perpetual debt could not perform these functions to the same degree as common equity.

When compared with common equity, the limitations of perpetual debt as a capital instrument are limitations shared in varying degrees by mandatory convertible securities and perpetual preferred stock. Therefore, the Board proposes to limit the combined amount of mandatory convertible instruments, perpetual debt, and perpetual preferred stock that could qualify as primary capital to 33⅓ percent of total primary capital excluding these three instruments. Thus, a banking institution with $100 in total primary capital could have no more than $25 in the form of mandatory convertible securities, perpetual preferred stock, and perpetual debt, since total primary capital excluding these three types of instruments would be $75.

Proposed Criteria for Perpetual Debt

Perpetual debt securities may qualify as primary capital to the extent that the securities possess the same characteristics and provide the same protections as equity. A perpetual debt instrument that is subject to acceleration in the event of nonpayment of interest would not provide the protections of equity. Such an instrument would lack permanence, would be unavailable to absorb losses of the issuer except in liquidation, and would increase financial risk. The Board, therefore, has proposed to consider perpetual debt securities as primary capital if those securities meet certain conditions that would address the shortcomings listed above.

The Board proposes that perpetual debt be treated as primary capital provided it meets the following criteria:

1. The instrument must be unsecured and, if issued by a state member bank, the instrument must also be subordinated to the claims of depositors.

2. The instrument may not provide the noteholder with any right to demand repayment of principal except in the event of bankruptcy, insolvency, or reorganization.

3. The issue may be redeemed only with the approval of the Federal Reserve System.

4. The instrument must contain a provision that allows the issuer to reduce and defer interest payments on the perpetual debt in the event, and at the same time, that dividends on any common or preferred stock have been reduced, deferred or eliminated.

5. If issued by a bank holding company or a state member bank, the instrument must convert automatically to common or perpetual preferred stock of the issuer in the event that the issuer's retained earnings and surplus accounts become negative. If issued by a nonbank subsidiary of a bank holding company or a subsidiary of a state member bank, the instrument must convert automatically to common or preferred stock of the issuer's parent company in the event that the retained earnings and surplus accounts of the issuer's parent company become negative.

Treatment of Perpetual Preferred Stock

The Board believes that common equity should remain the dominant component of primary capital for all state member banks and bank holding companies. To that end, the Board proposes to limit the amount of primary capital that may be comprised of mandatory convertible securities, perpetual preferred stock, and perpetual debt. The Board has previously limited the amount of mandatory convertible securities that may be included in primary capital to 20 percent of total primary capital, exclusive of such securities. The Board now proposes to limit also the amount of perpetual debt securities and perpetual preferred stock that may be included in primary capital. A state member bank or bank holding company would be permitted to include a composite of mandatory convertible securities, perpetual preferred stock and perpetual debt as primary capital only in an amount equal to 33⅓ percent of total primary capital excluding such instruments.

Since the proposed composite limitation could have the effect of limiting the amount of perpetual preferred stock that an issuing state member bank or bank holding company may include as primary capital, the Board proposes that all perpetual preferred stock issued prior to the date of publication of this notice in the **Federal Register** that otherwise qualifies as primary capital would retain that primary capital status should this proposed ruled be adopted. This "grandfather" provision would seek to avoid penalizing any institution that acted in good faith on the basis of the existing Guidelines.

The Board is attempting to set the proposed limit on the subject instruments low enough to ensure that common equity remains the dominant component of primary capital and yet high enough to enable banking organizations to use perpetual debt to satisfy a meaningful portion of their primary capital requirements. The Board recognizes that the limitation would have a greater impact on larger banking institutions than on smaller institutions, since the former tend to have more mandatory convertible and perpetual prefered securities. The Board is seeking comment on the appropriate limit.

Issues for Specific Comment

The Board requests comment on the following issues that it believes are raised by the proposed rulemaking.

1. Whether perpetual preferred debt instruments can be structured so as to provide the basic protections and safeguards that instruments of primary capital are designed to achieve, and thus whether perpetual debt should be given primary capital status.

2. Whether the specific conditions proposed by the Board provide an adequate basis for consideration of perpetual debt as akin to equity and whether they are sufficient to justify treatment of perpetual debt instruments as primary capital. Whether the individual conditions are necessary or could be modified while achieving the intended purposes and whether additional conditions should be imposed.

3. Whether the Board should limit the percentage of primary capital that may be composed of instruments other than common equity and whether the limit proposed is appropriate. Whether the grandfathering of perpetual preferred stock issued prior to publication for comment of this proposed rule is appropriate.

4. Whether there is sufficient interest in perpetual debt instruments structured to comply with the proposed conditions and limitations so as to justify, on a practical basis, issuing a final rule at this time.

Regulatory Flexibility Analysis Act

The Board certifies that the adoption of these proposals is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Board proposes to amend its Capital Adequacy Guidelines to provide more flexibility in meeting the previously required minimum capital standards through the use of an additional capital instrument. The Board has determined that the limits imposed on perpetual preferred stock will generally not affect smaller state member banks and bank holding companies, which have not historically issued significant amounts of such stock.

The proposal does not duplicate, overlap or conflict with any existing federal laws and regulations governing state member banks and bank holding companies.

List of Subjects in 12 CFR Part 225

Banks, banking; Federal Reserve System; Holding Companies, Capital Adequacy; State Member Banks.

Pursuant to the Board's authority under the International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3907, 3909; section 5(b) of the Bank Holding Company Act (BHC Act), 12 U.S.C. 1844(b); the Financial Institutions Supervisory Act of 1966 (FIS Act), 12 U.S.C. 1818; and sections 9 and 11(a) of the Federal Reserve Act (12 U.S.C. §§ 248, 324, 329), the Board hereby proposes to amend its Capital Adequacy Guidelines for bank holding companies and state member banks, Appendix A of the Board's Regulation Y, 12 CFR Part, 225, as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

12 CFR Part 225 is proposed to be amended as follows:

1. The authority citation for 12 CFR Part 225 continues to read as follows:

Authority: 12 U.S.C. 1844(b), 3106, 3108, 1817(j)(13), 1818(b); and Pub. L. 98-181, Title IX.

2. Appendix A is revised to read as follows:

Appendix A—Capital Adequacy Guidelines for Bank Holding Companies and State Member Banks

Definition of Capital To Be Used in Determining Capital Adequacy of Bank Holding Companies and State Member Banks

Primary Capital Components [1]

The components of primary capital are:

—Common stocks,
—Perpetual preferred stock (preferred stock that does not have a stated maturity date and that may not be redeemed at the option of the holder),
—Surplus (excluding surplus relating to limited-life preferred stock),
—Undivided profits,
—Contingency and other capital reserves,
—Mandatory convertible instruments,
—Allowance for possible loan and lease losses (exclusive of allocated transfer risk reserves),
—Minority interest in equity accounts of consolidated subsidiaries,
—Perpetual debt instruments [2]

Criteria for Determining the Capital Status of Perpetual Debt Instruments of Bank Holding Companies and State Member Banks

1. The instrument must be unsecured and, if issued by a state member bank, the instrument must also be subordinated to the claims of depositors.

2. The instrument may not provide the noteholder with any right to demand repayment of principal except in the event of bankruptcy, insolvency, or reorganization.

3. The issue may be redeemed only with the approval of the Federal Reserve System.

4. The instrument must contain a provision that allows the issuer to reduce and defer interest payments on the perpetual debt in the event, and at the same time, that dividends on any common or preferred stock have been reduced, deferred or eliminated.

5. If issued by a bank holding company or a state member bank, the instrument must convert automatically to common or perpetual preferred stock of the issuer in the event that the issuer's retained earnings and surplus accounts become negative. If issued by a nonbank subsidiary of a bank holding company or a subsidiary of a state member bank, the instrument must convert automatically to common or preferred stock of the issuer's parent company in the event that the retained earnings and surplus accounts of the issuer's parent company become negative.

6. The maximum amount of such perpetual debt, when considered together with mandatory convertible securities and perpetual preferred stock, that may be counted as primary capital is limited to 33⅓ percent of such primary capital, exclusive of these three instruments. [Note that a similar 20 percent limit on mandatory convertible securities shall remain ineffect.]

By order of the Board of Governors of the Federal Reserve System, November 14, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-27611, Filed 11-19-85; 8:45 am]

BILLING CODE 6210-01-M

[1] The maximum composite amount of mandatory convertible securities, perpetual debt and perpetual preferred stock that may be counted as primary capital is limited to 33⅓ percent of primary capital, exclusive of these types of instruments. No perpetual preferred stock issued prior to November 20, 1985, [prior to the publication of the proposal to adopt this 33⅓ percent limit] shall forfeit its status as primary capital as a result of adoption of this provision. (Amounts outstanding in excess of the 33⅓ percent limitation may be counted as secondary capital provided they meet the requirements of secondary capital instruments.)

[2] See the definitional section below that lists the criteria for perpetual debt instruments to qualify as primary capital.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-85-9]

Petitions for Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, January 21, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on November 13, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24738	U.S. Air, Inc.	*Description of petition:* If the FAA amends its current policy on (1) the trading of operating slots at one high density airport for slots at another airport, or (2) the trading of high density airport slots on other than a one-for-one basis, the policy be amended by the issuance of rulemaking. *Regulations affected:* 14 CFR Part 93, Subpart K
24793	Empire Airlines, Inc.	*Description of petition:* To exempt petitioner from the rule limiting the use of computer airline slots at LaGuardia Airport to aircraft having a maximum certificated seating capacity of less than 56. *Regulations affected:* 14 CFR 93.123(c)
23672	Flight Resources, Inc.	*Description of petition:* To include a subsection which states that the endorsement "Holder does not meet the experience requirements of ICAO for an Instrument Rating" must be entered on the pilot certificate of a person who does not meet the experience requirements in Section 2.13.1.2 of Annex 1, ICAO Convention for the issue of an instrument rating. *Regulations affected:* 14 CFR 61.65.

[FR Doc. 85-27603 Filed 11-19-85; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Ch. I

[Summary Notice No. PR-85-10]

Petitions For Rulemaking; Summary of Petitions Received and Dispositions of Petitions Denied or Withdrawn

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking and of dispositions of petitions denied or withdrawn.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion of omission of information in the summary is intended to affect the legal status of any petition or its final dispositon.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before, January 21, 1986.

ADDRESSES: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ————, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB-10A), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on November 13, 1985.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR RULEMAKING

Docket No.	Petitioner	Description of the petition
24744	Aircraft Owners & Pilots Association AOPA	*Description of petition:* To raise the altitude below which no aircraft may operate at more than 250 knots indicated airspeed from 10,000 feet to 12,500 feet MSL.

PETITIONS FOR RULEMAKING—Continued

Docket No.	Petitioner	Description of the petition
		Regulations affected: 14 CFR 91.70(a). *Petitioner's reason for rule:* 1. The intent of Federal Aviation Administrations' (FAA) Order 7110.22C (Keep-em-high) was to minimize the time that general aviation aircraft and high performance aircraft would occupy the same airspace. Today, the procedure is not in general practice. "Heavies" are cleared to descend below 10,000 feet 30 to 60 miles away from high traffic terminals and penetrate terminal airspace from the side rather than from the top. This increases the amount of time that general aviation and air carrier aircraft mix prior to entering terminal controlled airspace obviating the intent and value of the order. 2. Recent FAA near midair collision (NMAC) studies state "the number of general aviation conflicts with general aviation operators and between general aviation and air carriers have shown the largest decline since——." (sic) We believe that raising the altitude below which aircraft can not exceed 250 knots will reduce the number of reported NMACs involving air carrier and perhaps military aircraft further. 3. High speed aircraft will be segregated from slower traffic until descent into terminal areas is assured. 4. Air safety would be enhanced because operations at speeds exceeding 250 knots would be accomplished in airspace where existing rules require all aircraft to have operating Mode C transponders and where FAA provides significant ATC service. Airline representatives have long maintained that this would enhance their ability to "see-and-avoid."

[FR Doc. 85-27602 Filed 11-19-85; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors, and Disability Insurance Benefits Unlimited Reopening for Insured Status

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: We propose to clarify our regulations on when a determination or decision that a claimant did not have the necessary quarters of coverage for insured status under title II of the Social Security Act may be reopened and revised. It has long been our policy to permit unlimited reopening of this determination or decison only in certain situations. On August 5, 1980, we published new regulations (45 FR 52078) which restated in simpler language our rules governing this policy to make them easier for the public to read and understand. These new regulations have been interpreted by one court and some individuals to permit reopening in situations other than those originally included in the regulations. By making clarifying revisions, we hope to be able to eliminate such interpretations of the regulations which provide for unlimited reopening of an unfavorable determination or decision concerning an individual's insured status. In addition, the proposed regulations on unlimited reopening for insured status reflect a requirement concerning the evidence of earnings establishing insured status which has been part of our long-standing policy in this area, but which was not specifically expressed in our regulations.

The proposed regulatory changes affect current 20 CFR 404.988.

DATE: Your comments will be considered if we receive them no later than January 21, 1986.

ADDRESSES: Comments should be submitted in writing to the Acting Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3-B-4 Operations Building, 6401 Security Boulevard, Baltimore 21235, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3-B-4 Operations, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7452.

SUPPLEMENTARY INFORMATION:

Background and Proposed Regulations

A worker who wants to collect benefits or establish a period of disability under title II of the Social Security Act (the Act) must have insured status. Insured Status is acquired by working for a certain amount of time at a job or jobs which are covered under Social Security and, thus, paying Social Security taxes. The number of quarters of coverage needed for insured status varies depending on such factors as the date of birth and date of disability onset. The worker's covered earnings are credited to his or her earnings record which is maintained by the Social Security Administration.

We propose to clarify our regulations on when a determination or decision that a claimant did not have the necessary quarters of coverage for insured status under title II of the Act may be reopened and revised. It has long been our policy that a determination or decision which finds that a claimant did not have the necessary quarters of coverage for insured status at the time of the determination or decision, may be reopened and revised at any time only in certain situations where certain provisions of the Act permit a correction in the earnings credited to the individual's earnings record and where the evidence of the earnings was in the possession the Railroad Retirement Board (RRB) or in our possession prior to the date of notice of disallowance or denial. Prior to August 5, 1980, the regulations governing the policy (20 CFR 404.957(c)(7)(1980)) made specific references to the particular sections of the Act which permit certain corrections in an individual's earnings record at any time, and which, under our policy, provide the grounds for unlimited reopening and revision of an unfavorable determination or decision concerning insured status. However, on August 5, 1980, we published new regulations in the Federal Register (45 FR 52075-52110) which restated our rules in simpler language to make them clearer and easier for the public to use. The new regulations (20 CFR 404.988(c)(7)) do not contain specific references to the particular sections of the Act concerning the correction of earnings records which, under our long-standing policy, represent the only situations where unlimited reopening to give insured status is permitted based on the correction of an earnings record. Subsequently, these new regulations have been interpreted by one court and some individuals to permit reopening in situations other than those originally included in the regulations. By making clarifying revisions, we hope to be able to eliminate such interpretations. In addition, it has been a long-standing policy (although not previously stated in the regulations) that in order for

unlimited reopening to apply in these situations, the evidence of earnings establishing insured status must have been in the possession of the RRB or in our possession prior to the date of the notice of disallowance or denial. We are proposing to add this long-standing policy to the regulations in order to have the regulations reflect our policy.

The Social Security Act has no provisions on reopening and revising determinations and decisions that affect an individual's rights under title II of the Act. Our existing regulations which provide for reopening and revising determinations and decisions within specified time limits (or at any time with regard to certain matters) are based on general rulemaking authority granted the Secretary under the Act. We believe that we and the individual to whom the determination or decision applies should be able to rely on its correctness and, at some point, the finality of the determination or decision. Therefore, current regulations provide that when a determination or decision is made with respect to entitlement to, eligibility for, the amount of, or the actual payment of benefits under title II of the Act, it is generally final and binding upon us and the individual unless there is a timely appeal. However, there are special circumstances set out in current regulations which permit reopening and revising of a determination or decision which is otherwise final.

Under our regulations (20 CFR 404.988), a determination or decision we make about a person's rights under title II of the Social Security Act may be reopened (1) within 12 months of the date of the notice of the initial determination for any reason, (2) within 4 years of the date of that notice if we find good cause as defined in our regulations, or (3) at any time under certain exceptions spelled out in the regulations.

Section 205(c)(5) of the Act lists 10 situations under which earnings may be credited to an earnings record after the expiration of the time limitation of 3 years, 3 months and 15 days, which applies to the correction of earnings records under section 205(c) of the Act. It has been our long-established policy that a determination or decision which finds that a claimant did not have the necessary quarters of coverage for insured status at the time of the determination or decision, may be reopened at any time only where earnings (which would have given the individual an insured status at the time of the determination or decision) may be credited under section 205(c)(5)(C) (to correct errors apparent on the face of the earnings record), or section 205(c)(5)(D) (to enter items transferred by the Railroad Retirement Board (RRB) which were credited under the Railroad Retirement Act when they should have been credited under the Social Security Act), or section 205(c)(5)(G) (to correct errors made in the allocation of wages or self-employment income to individuals or periods), and the evidence of the earnings was in the possession of the RRB or in our possession at the time of the determination or decision. We made these exceptions to the 4-year time period for reopening a determination or decision (20 CFR 404.988(b)) because they represent situations in which the unfavorable determination or decision was due solely to our (or the RRB's) mishandling of the evidence of the individual's earnings. We permit unlimited reopening in these situations so as not to penalize the claimant for an error we or the RRB made in the handling of his or her claim.

If, more than 4 years after the date of the notice of the initial determination that a claimant did not have the necessary quarters of coverage for insured status, new evidence is received which establishes additional earnings for insured status, we will credit the earnings record with these additional earnings if permitted under any of the 10 categories in section 205(c)(5) of the Act. However, we will not reopen the previous determination or decision because of our long-established and accepted policy that the claimant has the responsibility to present the evidence necessary to establish that he or she qualifies for benefits. Since the previous determination or decision will not be reopened in these situations, the claimant has to file a new application to receive benefits.

We plan to clarify the regulations by making specific references to those sections of the Act concerning the correction of earnings records which, under our policy, provide the bases for unlimited reopening of an unfavorable determination or decision concerning insured status. Also, while not explicit in the regulations prior to August 5, 1980, we are revising our regulations to reflect our current policy and policy prior to August 5, 1980, that the evidence of earnings establishing insured status must have been in the possession of the Railroad Retirement Board or in our possession at the time of the determination or decision.

Regulatory Procedures

Executive Order No. 12291—These proposed regulations do not meet any of the criteria for a major regulation because they result in negligible program and administrative costs and savings. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act—These proposed regulations impose no additional reporting/recordkeeping requirements requiring OMB clearance.

Regulation Flexibility Act—These regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities because these rules only affect individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program Nos. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13.804 Social Security—Survivors Insurance.)

List of Subjects in 20 CFR Part 404

Administrative Practice and Procedure; Death Benefits, Disabled, Old-Age, Survivors, and Disability Insurance.

Dated: August 19, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: October 24, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

Part 404 of 20 CFR is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart J of Part 404 continues to read as follows:

Authority: Secs. 205 and 1102, Social Security Act, sec. 5 of Reorganization Plan No. 1 of 1953, 53 Stat. 1368, 49 Stat. 647 (42 U.S.C. 405 and 1302)

2. Paragraph (c)(7) of § 404.988 is revised to read as follows:

§ 404.988 Conditions for reopening.

* * * * * * * * *

(c) * * *

(7) It finds that the claimant did not have insured status, but earnings were later credited to his or her earnings record to correct errors apparent on the face of the earnings record (Section 205(c)(5)(c) of the Act), to enter items transferred by the Railroad Retirement Board, which were credited under the Railroad Retirement Act when they should have been credited to the claimant's Social Security earnings record (§ 205(c)(5)(D) of the Act), or to correct errors made in the allocation of wages or self-employment income to individuals or periods (§ 205(c)(5)(G) of the Act), which would have given him or her insured status at the time of the

determination or decision if the earnings had been credited to his or her earnings record at that time, and the evidence of these earnings was in our possession or the possession of the Railroad Retirement Board at the time of the determination or decision:

* * * * * * *

[FR Doc. 85-27697 Filed 11-19-85; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 730

[Docket No. 84N-0044]

Modification of Voluntary Filing of Cosmetic Product Experiences

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to change, from semiannually to annually, the frequency with which voluntary reports of cosmetic product experiences are to be submitted to the agency and to delete a redundant item from one reporting form. The proposed changes will reduce the burdens involved in submitting these reports to the agency without significantly affecting the quality of the reports.

DATES: Written comments by January 21, 1986. FDA is proposing that the effective date of any final rule based on this proposal be 30 days after its date of publication in the **Federal Register.**

ADDRESS: Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Raymond L. Decker, Jr., Center for Food Safety and Applied Nutrition (HFF-444), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-1094.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 17, 1973 (38 FR 28914), FDA, in response to a petition from the Cosmetic, Toiletry and Fragrance Association, Inc. (CTFA), promulgated regulations for the voluntary filing of cosmetic product experiences. FDA recodified these regulations (21 CFR Part 730) in 1974 (39 FR 10054, 10062; March 15, 1974).

These regulations provide for the semiannual reporting of the number of adverse reactions to cosmetic products reported by consumers. FDA requests that manufacturers, packers, and distributors of cosmetic products file both a Form FDA 2704 (formerly FD-2704; Cosmetic product Experience Report), which on a product-by-product basis sets forth the number of experiences reported to the firm concerning a particular product, and a Form FDA 2706 (formerly FD-2706; Summary Report of Cosmetic Product Experience by Product Categories), which summarizes the estimated number of units distributed and the number of experiences reported for product category marketed by the firm. See 21 CFR 730.1.

The regulations also provide that each Form FDA 2704 and FDA 2706 include the full address of the firm that is submitting the report.

In early 1984, CTFA recommended in a letter to FDA that the reporting period for the summary report of cosmetic product experiences (Form FDA 2706) be changed from 6 months to 1 year to reduce the reporting burden and to stimulate greater participation in this program. In response, FDA advised CTFA that it would propose to amend its regulations to provide for the annual filing of both Forms FDA 2704 and FDA 2706 to reduce the reporting burden even further and to avoid confusion as to when these forms are to be filed by participants.

FDA is now proposing to make these changes. The voluntary cosmetic experience reporting program is designed to provide FDA with statistical information on consumer-perceived adverse reactions to cosmetics. Changing the reporting period from semiannually to annually will not affect the usefulness of the program to FDA. In addition, FDA hopes that these changes will encourage additional participation in the program.

FDA also has reviewed the reporting forms themselves to determine if there were any additional steps that the agency could take to encourage participation without affecting the quality of the reported data. FDA believes that disclosure of the full address of the reporting firm on each cosmetic product experience report (Form FDA 2704) is redundant and unnecessary. Because cosmetic product experience reports are always filed together with a summary report, the reporting firm's address need only be stated on the summary report (Form FDA 2706). Therefore, FDA is proposing to revise § 730.4(a)(1) to delete the reference to the address of the reporting firm.

The agency is also proposing to simplify § 730.3. Rather than listing two separate addresses, FDA is making it clear that the forms may be obtained from, and that the completed forms should be mailed or delivered to, the Division of Cosmetics Technology. The forms are no longer available at FDA district offices.

The agency will revise Forms FDA 2704 and FDA 2706 to reflect the proposed changes and deletions.

The agency has determined under 21 CFR 25.24(a)(11) (April 26, 1985; 50 FR 16636) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

In accordance with Executive Order 12291, FDA has carefully analyzed the economic effects of this proposal and has determined that the final rule, if promulgated, will not be a major rule as defined by the Order.

FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this proposed rule would have on small entities including small businesses and has determined that no significant impact on a substantial number of small entities will derive from this action.

Interested persons may, on or before January 21, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 730

Confidentiality of reports, Voluntary filing of cosemetic product experiences.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 730 be amended as follows:

PART 730—VOLUNTARY FILING OF COSMETIC PRODUCT EXPERIENCES

1. The authority citation for 21 CFR Part 730 continues to read as follows:

Authority: Secs. 201(n), 301, 601, 602, 701(a), 52 Stat. 1041-1043 as amended, 1054 as amended, 1055 (21 U.S.C. 321(n), 331, 361, 362, 371(a)); 21 CFR 5.10.

2. By revising § 730.2 to read as follows:

§ 730.2 Time for filing.

(a) Reportable experiences should be reported on an annual basis, for the

period January through December, not later than 60 days after the close of the reporting period.

(b) A summary report of cosmetic product experience by product categories should be filed on an annual basis, for the period January through December, not later than 60 days after the close of the reporting period.

3. By revising § 730.3 to read as follows:

§ 730.3 How and where to file.

Form FDA 2704 (Cosmetic Product Experience Report) and Form FDA 2706 (Summary Report of Cosmetic Product Experience by Product Categories) are obtainable from, and the completed forms should be mailed or delivered to, Cosmetic Product Experience Report, Division of Cosmetics Technology (HFF-444), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

4. In § 730.4 by revising paragraph (a)(1) to read as follows:

§ 730.4 Information requested.

(a) * * *

(1) The name of the person (manufacturer, packer, or distributor) designated on the label of the cosmetic product.

* * * * *

Dated: October 25, 1985.

Joseph P. Nile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-27610 Filed 11-19-85; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[OW-10-FRL-2925-8]

Alaska Oil and Gas Conservation Commission; Underground Injection Control Primacy Application

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Comment Period and of Public Hearing..

SUMMARY: The purpose of this notice is to announce that: (1) The Environmental Protection Agency (EPA) has received a complete application from the Alaska Oil and Gas Conservation Commission requesting primary enforcement responsibility for the Underground Injection Control (UIC) Program; (2) the application is now available for inspection and copying; (3) public comments are requested; and (4) a public hearing will be held.

The proposed comment period and public hearing will provide EPA the breadth of information and public opinion necessary to approve, disapprove, or approve in part and disapprove in part the application of the Alaska Oil and Gas Conservation Commission to regulate Class II injection wells.

DATES: The public comment period closes December 27, 1985. The Public Hearing will be held on December 19, 1985, from 6:45 p.m. to 10:00 p.m. Requests to present oral testimony should be filed by December 9, 1985. If sufficient public interest in holding the hearing is not expressed by December 9, 1985, EPA intends to forego the hearing.

Requests for a public hearing should include the following information:

(1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the UIC program and of information that the requesting person intends to submit at such hearing; and,

(3) The signature of the individual making the request, or if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

If the hearing is cancelled, those persons having expressed interest in attending the hearing will be notified of the cancellation either by phone or letter. Others should contact EPA in Seattle at (206) 442-1846 to confirm the date and time.

ADDRESSES: Comments and/or requests to testify at the hearing should be mailed to Harold Scott, M/S 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the application and pertinent material are available during normal business hours at the following locations:

Environmental Protection Agency, Region X (Library), 1200 Sixth Avenue, Seattle, Washington 98101

Environmental Protection Agency, Alaska Operations Office, Room E 556, New Federal Building, 701 C Street, Anchorage, Alaska

The hearing will be held at the New Federal Building, Rooms C-121 and C-122, 701 C St., Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Harold Scott, M/S 409, Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, PH: (206) 442-1846 or (FTS) 399-1846. Comments should also be sent to this address.

SUPPLEMENTARY INFORMATION: The application from the Alaska Oil and Gas Conservation Commission is for the regulation of all Class II injection wells in the State, except for those on Indian lands, which are regulated by EPA. The application includes a description of the State Underground Injection Control program, copies of all applicable statutes and rules, a statement of legal authority and a proposed Memorandum of Agreement between the Alaska Oil and Gas Conservation Commission and the Region X Office of the Environmental Protection Agency.

The terms listed below comprise a complete listing of the thesaurus terms associated with 40 CFR Part 147, which sets forth the requirements for a State requesting the authority to operate its own permit program of which the Underground Injection Control Program is a part. These terms may not all apply to this particular notice.

List of Subjects in 40 CFR Part 147

Indian-lands, Reporting and recordkeeping, Intergovernmental relations, Penalties, Confidential business information, Water supply, Incorporation by reference.

Authority: 42 U.S.C. 300h-1, 300h-1, 300h-2, 300i, 300j-4, 300j-6, 300j-9, 6912 and 6924 to 69309.

Dated: November 12, 1985

William B. Hedeman,

Acting Assistant Administrator

[FR Doc. 85-27679 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 180

[PP 4E3139/P375; PH-FRL 2925-3]

Pesticide Tolerance for Hexakis[2-Methyl-2-Phenylpropyl]Distannoxane

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that a tolerance be established for the combined residues of the insecticide hexakis[2-methyl-2-phenylpropyl] distannoxane in or on the raw agricultural commodity cucumbers. The proposed regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 4E3139,

P375], must be received on or before December 20, 1985.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C.

In person, bring coments to: Rm 236 CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a 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. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-3199).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 4E3139 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Stations of California and Ohio and the United States Department of Agriculture.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide hexakis[2-methyl-2-phenylproply] distannoxane and its organotin metabolites calculated as hexakis[2-methyl-2-phenylpropyl] distannoxane in or on the raw agricultural commodity cucumbers at 3.0 parts per million (ppm) The petition was later amended to propose a tolerance of 4.0 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerance is sought. The toxicological data considered in support of the proposed tolerance include a 2-year dog feeding study with a no-observed effect level (NOEL) of 5 milligram (mg)/kilogram (kg) for systemic effects; a 2-year rat feeding/oncogenicity study with a NOEL of 100 ppm equivalent to 5 mg/kg for systemic effects and negative for oncogenic effects at all levels tested (50, 100, 300, and 600 ppm, equivalent to 2.5, 5, 15 and 30 mg/kg of body weight (bw) respectively); an 18-month mouse oncogenicity study which was negative for oncogenic effects at all levels tested (50, 100, 300, and 600 ppm, equivalent to 7.5, 15, 45, and 90 mg/kg of bw, respectively); a multigeneration reproduction study in the rat with a NOEL of 100 ppm for reproductive effects (equivalent to 5 mg/kg bw); mutagenicity assays which were negative for mutagenic effects; and rat and rabbit teratology studies which were negative for teratogenic effects at 60 and 5 mg/kg, respectively.

The acceptable daily intake (ADI), based on the 2-year rat feeding study (NOEL of 0.5 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 2.1429 mg/day; the current action will increase the TMRC by 0.02024 mg/day (0.94 percent). Published tolerances utilize 71.43 percent of the ADI; the current action will utilize an additional 0.68 percent.

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography using an electron capture detector, is available for enforcement purposes. Since no significant feed items are involved, there should be no resulting secondary residues in meat, milk, poultry, and eggs resulting from this use. There are presently no actions pending against the continued registration of this chemical.

Based on the information considered by the Agency, the tolerance would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 4E3139/P375]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR24950).

List of Subjects in 40 CFR Part 180

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

Dated: November 4, 1985.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, it is proposed that 40 CFR 180.362 be amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.362 is amended by adding and alphabetically inserting the raw agricultural commodity cucumbers to read as follows:

§ 180.362 Hexakis(2-methly-2-phenylpropyl)distannoxane; tolerances for residues.

* * * * *

Commodities	Parts per million
Cucumbers	4.0

[FR Doc. 85-27519 Filed 11-19-85; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 261

[SW-FRL-2926-2]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste (Denial Proposal)

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA) today is proposing to deny the petitions submitted by sixty-seven petitioners to exclude their waste from the hazardous waste lists. This action responds to delisting petitions submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 265, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific basis" from the hazardous waste lists. Our basis for denying these petitions is that all of these petitions are incomplete (*i.e.*, the Agency does not have sufficient information to determine the hazardous (or nonhazardous) nature of the waste). The effect of this action, if promulgated, would be to deny the exclusion of certain wastes generated at particular facilities from listing as hazardous wastes under 40 CFR 261; thus, all the petitioned wastes would still be considered hazardous.

DATES: EPA will accept public comments on our tentative decision to deny these petitions until December 20, 1985. Any person may request a hearing on the decision to deny these petitions by filing a request with Eileen B. Claussen, whose address appears below, by December 5, 1985. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Comments should be sent to the Docket Clerk, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Requests for a hearing should be addressed to Eileen B. Claussen, Director, Characterization and Assessment Division, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Communications should identify the regulatory docket number "Section 3001—Delisting Petitions (6)".

The public docket for these petitions (including the information that was requested but never submitted) is located in Room S-212, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for public viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information, contact Mr. James A. Poppiti, Office of Solid Waste (WH-562B), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-8551.

SUPPLEMENTARY INFORMATION:

Background

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from nonspecific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit any of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11(a)(2) or 261.11(a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility, which meets the listing description, may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To be excluded, petitioners must show that a waste generated at their facility does not meet any of the criteria under which the waste was listed. (See 40 CFR 260.22(a) and the background documents for the listed waste.) In addition, the Hazardous and Solid Waste Amendments of 1984 (HSWA) require the Agency to consider factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.[1]

In evaluating these petitions, the Agency first determines whether the waste (for which the petition was submitted) is nonhazardous based on the criteria for which the waste was originally listed. If the Agency believes that the waste is still hazardous, it will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the criteria for which the waste was listed, it will then evaluate the waste with respect to any other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous.

Throughout the course of the Agency's review of a petition, additional or supplemental information other than that which was included in the initial submission is normally required to enable the Agency to conduct a complete and informed evaluation of the petition. This information is generally requested from the petitioning facility through written correspondence. This additional information serves the primary purpose of filling in information gaps so that a decision can be made on the hazardous or nonhazardous nature of the petitioned wastes. The acquisition and analysis of this additional information by the Agency is necessary before a tentative determination (*i.e.*, a proposal to exclude or deny exclusion) can be made on the petitioned wastes.

Basis for Denying Exclusion Petitions

The Agency has experienced lengthy delays in receiving the additional information requested from petitioning facilities. Most of this additional information has been requested because of the Hazardous and Solid Waste Amendments (*i.e.*, the Agency now must consider all factors, if there is a reasonable basis to believe that such factors could cause the waste to be hazardous). Such delays have disrupted the continuity of the petition review process and have created a backlog of petitions awaiting review. In fact, many persons have commented to the Agency that they believe the "delisting process" is nonexistent. This is not the case; much of the delay in processing these petitions has been caused by the slowness of petitioners in submitting the

[1] In addition, residues from the treatment, storage, or disposal of listed hazardous wastes are eligible for exclusion. The substantive standard for delisting these wastes is the same as for excluding the listed wastes.

additional information. For example, in some instances the Agency has been waiting for years for petitioners to submit the additional information and still the requested information has not been submitted. We do agree with the commenters, however, that due to these long time delays, the delisting process appears to take much too long and appears to be inefficient.

To mitigate the problems that have been created by this situation, the Agency has decided that if a complete petition is not submitted within a reasonable period of time from the date that EPA first requests the additional information, the Agency will propose to deny the petition, as incomplete. The Agency today is proposing to deny the exclusion petitions submitted by sixty-seven facilities, since they have failed to provide the additional information requested within a reasonable period of time.

In all of these cases, the Agency has made a number of requests for information from these facilities. The Agency made at least two written requests for information indicating the specific type of information the petitioner was to supply in order for the Agency to complete its evaluation. In addition, the Agency published a notice in the **Federal Register** of its intent to collect this information (49 FR 4802–4803, February 8, 1984). More specifically:

- These facilities were initially notified in late 1983 or early 1984 that both Houses of Congress were considering bills that would require EPA to revise its petition review procedure to consider other factors (including additional constituents) before a decision was made to delist a waste. Since both bills were likely to place time limitations on the Agency to process these petitions, we strongly recommended that the petitioners provide the additional information as soon as possible so that the Agency had sufficient time to process the petition;
- The Agency then published a notice in the **Federal Register** on February 8, 1984 (See 49 FR 4802–4803) explaining its basis for requesting the information and what information was required.
- These facilities were again notified on November 26, 1984 that they still had outstanding requests for information. At that time, the Agency again indicated the specific type of information that was needed from each petitioner. The Agency further explained in that notification that RCRA had been amended and that the information requested in 1983 and 1984 was now *required* to process their petitions.

In all cases, the Agency has not heard from these petitioners in over a year; in many cases, it has been almost two years. The Agency believes that we have given these petitioners an adequate period of time to provide this information. Since the necessary information has not been submitted, we are proposing to deny these petitions, as incomplete.

In addition, the Agency is giving notice to all petitioners that the Agency will continue to deny other exclusion petitions (as incomplete) if those petitioners do not submit the requested information within a reasonable period of time. Based on our experience, we believe that most petitioners should be able to submit any required additional information within a year from the date of EPA's request. In making this decision, the Agency considered the time it takes to (1) obtain representative samples and (2) analyze the samples. Most petitioners are able to collect representative samples of their waste within one month. Due to cold weather, however, many facilities are not able to sample during winter months. The Agency, therefore, believes that six months is adequate for the collection of representative samples.

The Agency's experience with analysis times during its delisting spot check program indicates that all necessary analyses and reports can be made within six months. The Agency therefore believes that one year for providing additional information is reasonable.

Promulgation of Today's Proposal

Since the Agency is proposing to deny these petitions as incomplete, the Agency intends to make final today's tentative decisions to deny these petitions, unless the petitioner provides the necessary information during the comment period (*i.e.*, the Agency then has a complete petition).

Petitioners

EPA today proposed to deny the following exclusion requests:

Petitioners No.	Petitioners name
0142	General Electric Company, Columbia, MD.
0198	Amoco Oil Company, Whiting, IN.
0207	Amoco Oil Company, Sugar Creek, MO.
0227	Plateau Incorporated, Roosevelt, UT.
0234	Randa/ Textron, Cincinnati, OH.
0238	Amoco Oil Company, Casper, WY.
0241	Monroe Auto Equipment, Hartwell, GA.
0260	Heekin Can/Diamond International Corp., Cincinnati, OH
0261	Texaco USA, Port Neches, TX.
0268	W.H. Pfarrer Co., Inc. (formerly Tri-City Platers) Walton, IN.
0295	Plah Saco Lowell Corporation, Easley SC.
0301	AC Spark Plug, Flint, MI.
0303	Roberston Incorporated, Springfield, OH.
0315	Digital Equipment Corporation Dd. Puerto Rico, San German, PR.
0317	Lindau Chemicals, Inc. Columbia, SC.
0318	Sperry Univac, Bristol, TN.
0329	Mobay Chemical Corporation, New Martinsville, W.Va.
0339	Olin Corporation, Niagara Falls, NY.
0342	Arco Petroleum Products Co. Houston, TX.
0345	Combustion Engineering, Incorporated, Norcross, GA.
0349	Hess Oil Virgin Island Corporation, St Croix, VI.
0350	General Motors Corporation, McCook, MI.
0353	Dow Chemical Company, Indianapolis, IN.
0354	General Motors Corporation, Ypsilanti, MI.
0355	Exxon Company, USA Billings, MT.
0360	Raybestos Manhattan, North Charleston, SC.
0370	General Motors Corporation, Warren, OH.
0372	General Motors Corporation, Atlanta, GA.
0373	Merch & Co., Inc., Elkton, VA.
0377	Merch & Co., Inc., Elkton, VA.
0382	Sun Refining and Marketing Company, Toledo, OH.
0383	Koch Refining Company, Corpus Christi, TX.
0385	Ashland Petroleum Company, Canton, OH.
0388	Chevrolet Flint Manufacturing Complex, Flint, MI.
0397	Beech Aircraft Corp., Boulder, CO.
0398	U.S. Brass, Plano, TX.
0403	General Electric Protective Device, Inc., Humacoa, PR.
0407	Navajo Refining Company, Artesia, NM.
0412	Chem-Clear, Chicago, IL.
0417	SK Handtool Corporation (formerly Dresser Industries), Definance, OH.
0418	Franklin Electric, Jacksonville, AR.
0421	Exxon Company, USA, Billings, MT.
0426	Sigmor Refining Company, Three Rivers, TX.
0433	Cleaners Hanger Company, Jacksonville, FL.
0436	La Valley Industrial Plastics, Inc., Vancouver, WA.
0441	Murphey Oil Corporation, Superior, WI.
0447	Conoco Incorporated, Commerce City, CO.
0448	Universal Nolin, Conway, AR.
0452	Martin Electronics, Incorporated, Perry, FL.
0453	Texaco Incorporated, El Paso, TX.
0456	Standard Oil Company, Lima, OH.
0466	Brunswick Corporation, Stillwater, OK.
0469	Standard Oil Company, Oregon, OH.
0480	Eaton Corporation, Athens, AL.
0481	Husky Oil Company, Cheyenne, WY.
0483	Perfection Plating Company, Elk Grove Village, IL.
0484	General Motors Corporation, Detroit, MI.

Petitioners No.	Petitioners name
0486	Union Oil Company of California, Nederland, TX.
0487	Husky Oil Company, Cody, WY.
0493	American Petrofina Company of Texas, Port Arthur, TX.
0503	Yabucoa Sun Oil Company, Yabucoa, PR.
0525	Teletype Corporation, Little Rock, AR.
0530	La Gloria Oil and Gas Company, Tyler, TX.
0533	Stanley Tools, Fowlerville, MI.
0546	Kawneer Company Inc., Springdale, AR.
0551	Texas Instruments, Incorporated, Houston, TX.
0552	Chevron U.S.A., Inc., Kenai, AK.

Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This proposal, which would deny the exclusion petitions submitted by certain facilities, is not major. It would not increase the existing overall costs and economic impact of EPA's hazardous waste management system. These wastes simply would remain subject to the hazardous waste regulations.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an Agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities, since its effect will not increase the overall costs of EPA's hazardous waste regulations. Accordingly, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities.

This regulation, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 261

Hazardous waste, Recycling.

Dated: November 13, 1985.

J. Winston Porter,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 85–27680 Filed 11–19–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 716

P-Tert-Butylbenzoic Acid, P-Tert-Butyltoluene, P-Tert-Butylbenzaldehyde; Proposed Reporting and Recordkeeping Requirements and Health and Safety Data Reporting

Correction

In FR Doc. 85–26616 beginning on page 46309 in the issue of Thursday, November 7, 1985, make the following correction on page 46315: In the second column, in § 716.17(a)(14), in the first line, delete "December 23, 1985".

BILLING CODE 1505–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 67

[CC Docket No. 78–72; CC Docket No. 80–286]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Recommendation to the Commission.

SUMMARY: In general terms, the Federal-State Joint Board recommends: (1) That equal access costs be defined, for separations purposes, to include only initial incremental presubscription costs, and initial incremental expenditures for hardware and software related directly to the provision of equal access which would not be required to upgrade the switching capabilities of the office involved absent the provision of equal access; (2) that equal access costs, as defined above, be allocated between the interstate and intrastate and jurisdictions on the basis of relative equal access minutes of use; and 93) that expenditures for network reconfiguration be allocated pursuant to the existing separations procedures. The Joint Board further recommends that the equal access category be limited to the costs of converting offices which serve competitive interexchange carriers or with regards to which there has been a bona fide request for conversion to equal access. This recommendation will facilitate Commission action adopting appropriate separations procedures for the allocation of costs associated with implementing equal access to the local exchange and network reconfiguration. Appropriate separations procedures will ensure that these costs are recovered from the approriate state and interstate subscribers.

ADDRESS: Federal Communication Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Susan Lee O'Connell or Claudia Pabo at (202) 632–6363.

In the matter of MTS and WATS market structure, amendment of Part 67 of the commission's rules and establishment of a joint board (CC Docket No. 78–72, CC Docket No. 80–286).

Recommended Decision and Order

Adopted: July 12, 1985.
Released: October 8, 1985.
By the Federal-State Joint Board.

I. Introduction

1. The Federal-State Joint Board hereby presents its recommendations concerning the separations treatment of equal access and network reconfiguration costs. In general terms, we recommend: (1) that equal access costs be defined, for separations purposes, to include only initial incremental presubscription costs,[1] and initial incremental expenditures for hardware and software related directly to the provision of equal access which would not be required to upgrade the switching capabilities of the office involved absent the provision of equal access; (2) that equal access costs, as defined above, be allocated between the interestate and intrastate jurisdictions on the basis of relative equal access minutes of use; and (3) that expenditures for network reconfiguration be allocated pursuant to the existing separations procedures. We further recommend that the equal access category be limited to the costs of converting offices which serve competitive interexchange carriers or where there has been a bona fide request for conversion to equal access.

II. Background

2. The expenditures for implementation of equal access and network reconfiguration can be traced to the *Modification of Final Judgment (MFJ)* in *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).[2] After

[1] Initial presubscription costs associated with conversion of end offices to equal access will be included in the equal access cost category. Subsequent presubscription costs will not. *See* footnote 39, *infra*. Expenditures for equal access related software and hardware not associated with the initial conversion to equal access will also be excluded from the separate equal access category.

[2] The MFJ imposes certain equal access requirements on the Bell Operating Companies (BOCs). GTE is required to implement equal access pursuant to a consent decree entered into with the Department of Justice to settle an antitrust

Continued

presentation of most of the AT&T defense during the trial, the parties announced on January 8, 1982, that they had reached agreement on a proposed Consent Decree,[3] which provided for a major restructuring of the Bell System. Section I of the Decree provided for the separation within the BOCs of all facilities, personnel and books of account relating to "exchange telecommunications" or "exchange access functions" and those relating to other functions (*e.g.*, interexchange functions and the provision of customer premises equipment to the public). Ownership of the separated portions of the BOCs providing exchange telecommunications and access services was to be transferred from AT&T to the shareholders of AT&T.[4]

3. Section II of the Decree imposed various requirements on the divested operating companies. One of the most important of these was the requirement that each operating company provide, to all interexchange carriers, exchange access on an unbundled, tariffed basis that is "equal in type, quality and price to that provided to AT&T and its affiliates." [5] The Decree established a schedule for the implementation of equal access, providing that it must be available at end offices serving one-third of the BOC exchange access lines by September 1, 1985, and must be furnished at all end offices "upon bona fide request" by an interexchange carrier by September 1, 1986.[6]

4. The Consent Decree requirement that AT&T and the BOCs separate personnel, assets, and facilities relating to exchange functions from those relating to interexchange and other functions necessitated a determination of boundaries for each exchange area. Since the Decree definition of "exchange" was somewhat different from the traditional regulatory definition, the parties and the court referred to these Decree-defined areas as "Local Access and Transport Areas" or "LATAs". In October 1982, AT&T and the BOCs filed an application with the court for approval of the proposed LATAs.[7] In an April 20, 1983, opinion, the court tentatively approved the division of all Bell territory in the United States into "Local Access and Transport Areas" [8] which marked the boundaris beyond which a Bell Operating Company could not carry telephone traffic.[9]

5. In an opinion dated July 8, 1983, the court ruled on the remaining issues with respect to the plan of reorganization, including three primary questions relating to equal access: (1) What does "equal" mean; (2) which switches should be used for access arrangements; and (3) how should the Operating Companies recover the costs of implementing equal access and reconfiguring the local networks to conform to LATA boundaries? [10] First, the court accepted the Operating Companies' definition of equal access as access whose overall quality in a particular area is equal within a reasonable range to that which is applicable to all carriers, stating that it would not insist on absolute technical equality.[11] The court also assigned the Bell System's assets according to the function they performed.[12] In addition, the court stated that although the primary responsibility for offering equal access lay with the BOCs, AT&T had a significant responsibility to ensure that the BOCs were left in a position to do so. In part because the BOCs would have to undertake substantial new construction to implement equal access, the court required AT&T to guarantee recovery of equal access costs and network reconfiguration costs [13] related to altering the local networks to conform to the LATA boundaries. The court required that the Operating Companies keep records to isolate those expenses incurred solely for equal access and network reconfiguration.

6. AT&T subsequently asked for partial reconsideration of the court's July 8, 1983 opinion, requesting that it delete the requirement that AT&T guarantee recovery of the BOCs' costs of providing equal access and reconfiguring the network to conform to the LATAs. The court denied AT&T's request to delete the requirement altogether, but stated that AT&T's guarantee obligation would be discharged to the extent that: (1) The Operating Companies fail annually to file carrier access tariffs designed to recoup any then unrecovered equal access and network reconfiguration costs by January 1, 1994; or (2) any regulatory commission by its failure to permit such tariffs to take effect or its regulatory requirements for depreciation of equal access and network reconfiguration investment causes any portion of the investment not be to recognized as a cost of ratemaking in periods prior to January 1, 1994. The court also made it clear that, to the extent network reconfiguration costs relate to the BOCs' provision of other services, such as intraLATA toll, the BOCs would be required to include such costs in tariffs for those services, and any costs thus recovered would count toward the reimbursement of the BOCs' cost of network reconfiguration.[14]

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challenge related to its acquisition of Sprint. *United States* v. *GTE Corp.*, 603 F. Supp. 730 (D.D.C. 1984). Other independent telephone companies are required to implement equal access in certain end offices pursuant to an FCC *Order in MTS and WATS Market Structure*, CC Docket No. 78-72, Phase III, *Report and Order*, 50 Fed. Reg. 13547 (April 19, 1985).

[3] The Decree, as amended, is reprinted in the District Court's opinion entering the Decree, 552 F. Supp. at 226.

[4] The Decree provided that after divestiture, AT&T would be prohibited from acquiring the stock or assets of any BOC. (For purposes of the Decre, the BOCs include only the wholly-owned operating companies. AT&T was not required to divest its holdings in Cincinnati Bell Telephone Co. or Southern New England Telephone Co.).

[5] 552 F. Supp. at 232-3.

[6] *Id.*

[7] The proposal provided for the establishment of 197 LATAs. A number of states were configured as one LATA, while fifteen LATAs were proposed for the state of Texas.

[8] *U.S.* v. *Western Electric Co., Inc.*, 569 F. Supp. 990 (D.D.C. 1983).

[9] The court noted that the major issue raised by interested persons had been the relative size of the proposed LATAs. The court concluded that small LATAs would tend to favor interexchange carriers because the BOCs, which cannot provide interLATA service, would be confined to serving smaller areas. Large LATAs, on the other hand, would benefit both the BOCs (because they would have a larger service area) and, to some extent, the interexchange carriers (because they would need to establish fewer points of presence). In large part, because of concerns over the viability of the BOCs after divestiture, the court rejected the argument that the LATAs were too large and should be reconfigured to be coextensive with local calling areas. At that time, the court expressed concern that with the establishment of large LATAs the BOCs might block competition for intraLATA service through discriminatory access provisions. The court noted that several intervenors argued that it would be impossible for competition to develop for this intraLATA traffic if the interexchange carriers were not guaranteed equal access with respect thereto. In order to open intraLATA toll markets to competition, the court decided to require the BOCs to provide equal access for intraLATA services provided competition is authorized in this area by state regulatory authorities. The Court explicitly stated that while the BOCs could not provide interLATA services, the interexchange carriers were not prohibited from engaging in intraLATA services.

[10] *U.S.* v. *Western Electric Co., Inc.*, 569 F. Supp. 1057 (D.D.C.), *aff'd sub nom., California* v. *United States*, 104 S. Ct. 542 (1983).

[11] *Id.* at 1063 (D.D.C. 1983).

[12] Those assets performing exchange and exchange access functions were assigned to the BOCs. Those performing interexchange functions were assigned to AT&T and its affiliates. In most cases the assignment to AT&T included the state of the art No. 4 ESS switches. For the 20 percent of the Bell Systems assets that performed multiple functions, providing both exchange and interexchange services, the court accepted a government proposed predeminant use test.

[13] The court stated that AT&T will be responsible for reimbursing the Operating Companies in the amount of any remaining deficit by January 1, 1994, with a preliminary accounting to take place at the close of the construction program or January 1, 1988, whichever is earlier, 569 F. Supp. at 1068, 1126.

[14] 569 F. Supp. at 1124-28.

7. On March 1, 1983, AT&T and certain Bell Operating Companies filed a consolidated application for authorization under Sections 214 and 310(d) of the Communications Act, 47 U.S.C. 214 & 310(d), for transfers of facilities necessary to implement the MFJ. [15] On December 13, 1983, the Commission conditionally granted the consolidated application. *Memorandum Opinion, Order and Authorization, AT&T Co. (Divestiture Section 214 Order)*, 96 FCC 2d 18 (1983), *modified*, 98 FCC 2d 141 (1984). In its *Order*, the Commission concluded that divestiture, as implemented by the transfers of facilities set forth in the application, was likely to be in the public interest.[16] The Commission conditioned the grant of the application upon AT&T and the regional Bell holding companies filing certain information and periodic reports with the Commission.[17]

8. On January 30 and 31, 1984, AT&T and the BOCs, respectively, filed with the court their proposed accounting systems for isolating equal access and network reconfiguration costs and determining whether they have been recovered.[18] The BOCs had previously presented their accounting plan (which relied on the use of a single account to record all equal access costs) to the Chief, Common Carrier Bureau, requesting FCC concurrence in the plan.[19] The Commission's Common Carrier Bureau provided interested parties with an opportunity to comment on the BOC's proposed accounting plan.[20] In a September 24, 1984, letter to Bell Communications Research, the Chief, Common Carrier Bureau, stated that the Commission could not approve the proposed BOC accounting plan unless it was modified to address a number of concerns related to departure from normal Commission accounting practices and procedures. The letter also stated that the BOC's objectives could be accomplished by using subaccounts of the normal operating plant and expense accounts and by establishing an appropriate allocation factor to separate these costs between the interstate and intrastate jurisdictions. The letter proposed that an interim allocation factor based on "toll minutes of use" be used until the Joint Board established a permanent allocation factor.

9. On December 18, 1984, New York Telephone and New England Telephone (NYNEX) filed tariff revisions providing for a new rate element to recover equal access and network reconfiguration costs. After reviewing the pleadings filed in response to the proposed tariffs and meeting with Common Carrier Bureau staff members, NYNEX modified its original tariff filing. The revised tariff provisions provided for a flat monthly charge per access line, amortization of equal access costs over an eight-year period, with the unamortized portion to earn no more than a 12.75 percent rate of return, removal of network reconfiguration costs from the revenue requirement, and interim measures for the allocation of equal access costs based on toll minutes of use. On February 14, 1985, the Common Carrier Bureau allowed the tariffs to become effective, but, due to the inadequacy of the cost support materials, imposed an accounting order and instituted an investigation.[21] On March 27, 1985, the Bureau allowed a Bell Atlantic tariff for the recovery of equal access costs to go into effect,[22] subject to an accounting order. Investigation of the Bell Atlantic filing was consolidated with that of the similar NYNEX tariff filing in CC Docket No. 85-93. The Bureau subsequently granted waivers allowing additional exchange carriers to file tariff provisions consistent with the requirements established in the NYNEX and Bell Atlantic *Orders*.[23] The Bureau imposed

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[15] The application divided the estimated facility-related costs of diverstuture into two categories: (1) Costs incurred for the provision of equal access; and (2) costs incurred for network reconfiguration. The costs that were estimated in the application as necessary for implementing the equal access provisions of the MFJ were based on the operating companies' plans for equal access as of early 1983. These estimates for costs associated with the provision of equal access included the costs of: (1) deploying additional carrier access features such as dialing and signaling capabilities; (2) upgrading existing tandem switching systems and installing new tandems; (3) installing additional trunking; and (4) equipping end office and access tandems with call recording capability. Of the costs so identified, the majority stemmed from the reconfiguration and reprogramming of existing switches to provide the OCCs with the special features that were then available only to AT&T and the intrastate toll operations of the BOCs, the upgrading of tandem switches, the installation of new tandem switches and the addition of trunking facilities. In their discussion of these equal access related costs, the applicants stated that a "substantial portion" (estimated at over a billion dollars) of these costs would have been incurred even without the Consent Decree. The applicants explained that prior to the Decree, AT&T had planned and begun projects designed to provide the OCCs with improved interconnection.

[16] The Commission stated that competition was likely to increase as a result of diverstiture, and that this would lead to generally lower prices for ratepayers, increased technological advances, an increase in the type and number of services available, and an industry structure that is more responsive to consumer needs. 96 FCC 2d at 47-8.

In the *Diverstiture Section 214 Order*, the Commission also considered the costs of implementing diverstiture and found that certain administrative costs had little relationship to the provision of common carrier service and appeared to provide no direct benefit to ratepayers. The Commission conditioned the grant upon the companies including any divestiture-related administrative costs in Account 323, Miscellaneous Income Charges, a "below-the-line" account. The Commission expressed particular concern about the costs incurred for network reconfiguration, and conditioned the grant of the consolidated application upon the carriers including network reconfiguration costs in Account 103, Miscellaneous Physical Property, or Account 323, Miscellaneous Income Charges, but expressly stated that the carriers would be allowed to seek to justify the inclusion of these costs in their interstate rates.

After divestiture occured on January 1, 1984, AT&T and all of the BOCs sought reconsideration and deletion of the conditions requiring that the companies identify any divestiture-related administrative and network reconfiguration costs and include them in Account 323, or Account 103. The Commission modified the rate related conditions to require that the companies separately identify administrative and network reconfiguration costs and submit quarterly reports to the Commission detailing the costs incurred. The Commission also concluded that it would be more appropriate to determine whether to allow recovery of the administrative and network reconfiguration costs from ratepayers through the tariff process. *Memorandum Opinion and Order, AT&T Co.*, 98 FCC 2d 141 (1984).

[17] The reports included the following information: (1) Copies of equal access plans which the operating companies were required to file with the Department of Justice pursuant to Section II (c) of the MFJ; (2) estimates of the cost of implementing the plans, the cost of implementing any other plan considered, and an analysis of why the plan was chosen; and (3) for any new facility to be used for the provision of equal access, information on whether the facility will be used for any other purpose, a description of such other purpose and an estimate of the percentage of the facility's capacity that will be used for equal access purposes. The Commission also required each operating company to file semi-annual reports beginning in 1985 on the progress made in providing equal access, including a detailed analysis of the number, location and type of offices from which which equal interconnection is available and the costs actually incurred to plan and implement equal access.

[18] The BOCs and AT&T were not able to reach agreement regarding the cost elements to be included in these procedures and filed their proposals after the original deadline of January 1, 1984. AT&T Memorandum Concerning the Accounting Method for Identifying and Tracking the Recovery of Network Reconfiguration Costs, at page 2, dated January 30, 1984. Memorandum of the Bell Operating Companies Concerning Procedures for Identifying and Accounting for Equal Access and Network Reconfiguration Costs, at page 1, footnote 3, dated January 31, 1984. *United States V. AT&T, No. 82-0192 (D.D.C)*.

[19] The account proposed by the BOCs was Account 139, "Other Deferred Charges." See Letter from A.G. Collins, Jr., Vice-President, Central Services Organization (now Bell Communications Research) to Jack D. Smith, Chief, Common Carrier Bureau (December 23, 1983).

[20] Public Notice, "Accounting Plan for Equal Access and Network Reconfiguration Costs and Revenues," Mimeo No. 2414 (February 14, 1984).

[21] *Order, New England and New York Telephone Companies*, Mimeo No. 2636, released February 20, 1985.

[22] *Order, Chesapeake and Potomac Telephone Companies, New Jersey Telephone Company, and Bell Telephone Company of Pennsylvania*, Mimeo No. 3575, released April 3, 1985.

[23] On May 31, 1985, the Commission allowed tariff revisions filed by BellSouth to become

Continued

an accounting order on each of the carriers filing separate equal access cost recovery elements and stated that it would address the specific issues raised by these tariff filings in the investigation to take place in CC Docket No. 85-93 after Commission action on the Joint Board recommendation concerning the separations treatment of equal access costs.

III. Comments on Equal Access and Network Reconfiguration

10. On April 11, 1984, the Joint Board issued an *Order Inviting Comments* requesting comments on a number of separations issues including the allocation of equal access and network reconfiguration costs (EANR).[24] In that *Order*, we also asked the Bell Operating Companies and other exchange carriers to provide us with estimates of the equal access and network reconfiguration costs which they expected to incur, broken out to show the amount for each relevant separations category. Sixteen parties filed comments or replies in response to the *Order Inviting Comments*. Most of the parties commenting on the equal access and network reconfiguration methodology advocated some form of relative use as the fundamental separations principle. The BOCs, the independent local exchange companies and the state commissions generally supported an allocation factor based on access minutes of use,[25] with none of these costs apportioned to local exchange operations.CP National and the Kentucky Public Service Commission argued that all of these costs should be allocated to the interstate jurisdiction unless intrastate competition is permitted. AT&T argued that the expenditures incurred to implement equal access and reconfigure the BOCs' networks would benefit both interstate and intrastate services, including intraLATA toll and exchange services. AT&T supported the allocation of equal access costs on the basis of toll minutes of use,[26] with the allocation of network reconfiguration costs based on existing separations procedures.

11. Subsequently, a number of parties filed out-of-period supplemental comments on the equal access and network reconfiguration issues before the Joint Board. Southwestern Bell, and Pacific and Nevada Bell (Pacific) filed supplemental comments on December 21, 1984, as did BellSouth on January 18, 1985, addressing certain changed factual circumstances related to the jurisdictional allocation of equal access costs,[27] but they continued to support relative access minutes of use as the allocation factor. On January 4, 1985, AT&T filed an opposition in which it disputed the desirability of allocating these costs based on relative access minutes of use. Southwestern Bell, Pacific, and NYNEX filed replies to the opposition to which Bell Atlantic replied. On February 7, 1985, Bell Atlantic filed a petition concerning the recovery of EANR costs, and, at the same time, filed supplemental comments on the separations treatment of EANR costs. AT&T filed an opposition to which Bell Atlantic replied. Southwestern Bell also filed reply commentr supporting Bell Atlantic. On March 8, 1985, the Vermont Public Service Board filed supplemental comments on the jurisdictional separations treatment of equal access costs in which it reviewed cost estimates for the conversion of Vermont's largest exchange, and urged adoption of relative access minutes of use as the proper allocation factor.[28]

12. The Joint Board subsequently concluded that additional comments and data were necessary before it could make recommendations to the Commission in this area. Accordingly, we issued an *Order* on March 25, 1985, asking interested parties to comment on the definition and the appropriate separations treatment for equal access and network reconfiguration costs. Among other things, we asked the filing parties to specify the expenditures which should be included in these EA and NR categories and the costs which should be treated as normal telephone company expenditures.[29]

13. Twenty-seven parties filed comments in response to the Joint Board Order.[30] Almost all of the parties continued to express support for the separate identification and allocation of equal access and network reconfiguration costs. There were substantial differences of opinion, however, concerning the inclusion of certain expenditures in the equal access cost category. In general terms, the exchange carriers, state commissions and consumer groups favored a more expansive definition of equal access costs other than AT&T and the OCCs. In addition, there continued to be disagreement concerning the allocation factor to be used in separating equal access and network reconfiguration costs between the jurisdictions. The exchange carriers, state commissions and consumer groups generally supported the allocation of equal access costs based on relative access minutes of use, with the allocation of network reconfiguration costs based on relative access minutes or relative toll minutes of use. In general, AT&T and the OCCs supported the allocation of equal access costs based on relative toll minutes of use with network reconfiguration costs allocated on the basis of existing separations procedures.

14. The Bell Operating Companies argued that the Joint Board should accept the definitions of equal access and network reconfiguration costs proposed by the BOCs to the District

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effective. *Order, Southern Bell and South Central Bell Telephone Companies*, Mimeo No. 5016, released June 11, 1985. On June 28, 1985, the Commission allowed tariff revisions filed by Mountain Bell to become effective. *Order, Mountain Bell Telephone Company*, Mimeo No. 5548, released July 3, 1985. On July 31, 1985, the Bureau allowed tariff revisions filed by Southwestern Bell to become effective. *Order, Southwestern Bell Telephone Company*, Mimeo No. 6158, released August 6, 1985. The Bureau also granted the necessary waivers to permit Southwestern Bell, Mountain Bell, Pacific Northwest Bell, Cincinnati Bell, BellSouth, and Ameritech to file separate equal access cost recovery rate elements in the pending 1985 Annual Access Charge Tariffs, scheduled to become effective October 1, 1985. *See Memorandum Opinion and Order, Petitions for Waiver Concerning 1985 Annual Access Tariff Filings*, Mimeo No. 5007, released June 7, 1985.

[24] CC Docket No. 80-286, 49 FR 18746 (May 2, 1984).

[25] Under this approach, the allocation of equal access and network reconfiguration costs would be based on the relative jurisdictional ratio of interstate access minutes of use to total access minutes of use. Access minutes of use would include the total originating and terminating access minutes of use for the following: (1) Interstate corridor traffic; (2) interstate interLATA traffic; (3) intrastate interLATA traffic; and (4) intrastate intraLATA traffic, excluding BOC intraLATA traffic.

[26] Under this approach, equal access would be allocated based upon the relative jurisdictional ratio of interstate toll minutes of use to total toll minutes of use. Toll minutes of use would include: (1) Interstate corridor traffic; (2) interstate interLATA traffic; (3) intrastate interLATA traffic; and (4) intrastate intraLATA toll traffic, including BOC intraLATA toll minutes of use.

[27] The purpose of this filing was to correct the record to reflect the new EANR accounting plan filed by the parties in response to a Commission directive. *See* para. 8, *supra*.

[28] These filings were accompanied by motions for acceptance of supplemental comments. We hereby grant these motions.

[29] *Recommended Interim Order and Request for Comments, MTS and WATS Market Structure and Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, 50 FR 14729 (April 15, 1985). The Joint Board staff subsequently issued a supplemental data request seeking information on the amount of equal access operating expenses in certain specified categories. Letter to the Seven Regional Bell Operating Companies from Ronald Choura, Chairman, Federal-State Joint Board Staff, dated June 12, 1985.

[30] NYNEX and Anchorage Telephone Utility filed their comments one day after the filing date along with motions for acceptance of late filed pleadings. We hereby grant these motions.

Court. The BOCs stated that these definitions include costs, both direct and indirect, that are incurred to provide equal access capabilities and reconfigure the network.[31] US West advocated the definitions of EANR costs found in the Network Implementation Guidelines developed by Bell Communications Research (BCR), stating that these guidelines provide a detailed framework for identifying and tracking EANR costs. NYNEX argued that the EANR category should include, among other things, advancement costs which represent a quantification of the financial costs of advancing the replacement of facilities. NYNEX also argued that EANR costs should include both initial and recurring right-to-use (RTU) software fees for five years since the ongoing software maintenance fees are not "optional" if the BOCs are to avoid service interruptions caused by failure of the generic software programs. NYNEX also argued that all EANR costs incurred before January 1, 1984 and after January 1, 1989 should be included in the EANR definition, and be subject to the guarantee. BellSouth stated that presubscription costs should be treated like other EANR costs because they are a direct result of the conversion of end offices to equal access. Ameritech and Soutwestern Bell emphasized that the District Court has not yet ruled on disputes concerning which EANR expenditures are subject go the gurantee. They argued that the BOCs would face potentially inconsistent obligations if the Joint Board or the Commission adopted EANR definitions before the District Court acts. Therefore, Ameritech and Southwestern Bell proposed use of a broad definition of EANR costs in conjunction with an accounting and refund order, stating that this would protect all affected parties. Ameritech also argued that it would not have a fair opportunity to recover its expenses under the amortization provisions contained in the Joint Board's data request. Southwestern Bell stated that, although the amortization of equal access expenses as provided for in the Joint Board's data request evens out the annual revenue requirements, it also significantly increases the total amount to be recovered, thereby exacerbating the threat of bypass.

15. The independent exchange carriers, with the exception of GTE Corp. (GTE), supported the separate identification and allocation of EANR costs. Southern New England Telephone Company (SNET) generally agreed with the BOCs that items such as overhead costs, financing costs, presubscription expenditures and other relevant costs should be included in the equal access category and recovered from the carriers which benefit from equal access. SNET also emphasized that procedures for the booking or identification of these costs should not be administratively burdensome. It opposed Commission prescription of a separate subaccount structure at this time.

16. In contrast the the views of the other independent telephone companies, GTE argued that EANR costs should not be separately identified and allocated pursuant to revised separations procedures. In support of this position, it emphasized the difficulty of distinguishing equal access costs from the other costs of meeting network demands, stating that not even the manufacturer can accurately divide the cost of a new software package used in implementing equal access between the various applications it supports.

17. The Michigan Public Service Commission Staff (Michigan) stated that expenditures for equal access and network reconfiguration can be properly identified and recorded in subaccounts that separate them from the costs of central office expansion or modernization. Michigan also took the position that incremental intraLATA equal access costs can be separated from other equal access costs. Michigan stated that a portion of a presubscription costs, particularly the costs of advertising, are beneficial to the local exchange company, and should not be included in the EA category. Michigan argued that normal depreciation rates should be used for all EANR capital expenditures since a faster write-off period would place an undue burden on the interexchange carriers and their customers. Michigan also supported the amortization of EANR expenses in order to minimize the upward pressure on rates.

18. The New York State Department of Public Service (New York) argued that the equal access cost category should include all incremental exchange carrier costs over and above normal operating requirements associated with the provision of equal access, including the cost of early replacement of facilities. The Vermont Public Service Board (Vermont) argued that all expenditures for the implementation of equal access are incremental costs specifically required to accommodate multiple interexchange carriers. Vermont took the position that none of these costs should be treated as normal telephone company expenditures. The Wyoming Public Service Commission (Wyoming) urged use of the EANR cost definition developed by Bell Communications Research, stating that this definition excludes EANR costs associated with intraLATA services. As a result, Wyoming argued that none of the separately identified EANR costs should be assigned to intraLATA services. The Office of Consumer's Counsel, State of Ohio (OCCO) stated that the EANR definition should be as explicit as possible and apply to all local exchange carriers.

19. AT&T argued that any revised separations procedures should apply only to the BOC EANR costs eligible for the cost recovery guarantee. It stated that the guarantee is limited by its terms to those EANR cost categories identified in AT&T's Consolidated Section 214 Application. AT&T identified the cost categories that it and the BOCs have agreed are eligible for the guarantee, and stated that these costs may appropriately be included in the EANR category for separations purposes. These costs include the development and deployment of: (1) Initial equal access features in conforming end offices; (2) equal access tandem capability in existing and new switching systems; and (3) network operations systems that are required by the installation of the equal access features. AT&T opposed inclusion of the following additional costs in the equal access category for purposes of the guarantee or special separations treatment: (1) Presubscription costs; (2) general administrative costs; (3) costs related to the replacement of facilities leased under the Shared Network Facilities Agreement (SNFA); (4) ongoing software support fees; (5) previously planned expenditures; (6) "advancement costs"; and (7) certain pre-divestiture costs.

20. AT&T argued that the BOC proposal for inclusion of these costs in the EANR category should be rejected. At the outset, AT&T stated that the disputed costs are clearly ineligible for the guarantee, noting that it expected the District Court to confirm its view in this regard. AT&T also argued that waiting for court resolution of these issues before the Joint Board acts will leave equal access costs subject to existing separations procedures. Finally, AT&T pointed out that applying any of the proposed new separations factors to an excessively broad pool of costs would needlessly increase the existing overallocation of central office costs to

[31] According to the BOCs, these costs fall into the following categories: (1) Investment incurred for end offices and tandems converted to equal access; (2) expenses related to capital based on appropriate relationships to associated investments; and (3) financing costs.

the interstate jurisdiction. AT&T stated that limiting the definition of EANR costs to the categories agreed upon by AT&T and the BOCs would avoid the need for refunds and be preferable to an accounting and refund order.

21. MCI Telecommunications Corp. (MCI) argued that the EANR cost category should be limited to expenditures that fall within one of the specific subcategories listed in the Divestiture Section 214 Application or are within the general court definition of equal access. MCI emphasized that the Commission should include only costs that are recognized under traditional ratemaking principles. In this regard, it opposed the inclusion of advancement costs, stating that this would result in double recovery. MCI also argued that the EANR cost category should not include expenditures that would have occurred absent the *MFJ*, and asked that the local exchange carriers be required to certify that the costs involved would not have been incurred absent the equal access provisions of the *MFJ*. MCI also argued that AT&T is charging the BOCs excessive right-to-use fees. It took the position that the full amount of these charges should not be included in revenue requirements.

22. The Competitive Telecommunications Association, ITT Communications Services, Inc. and Satellite Business Systems (The Joint Parties) stated that only incremental costs directly related to the implementation of equal access should be included in a separate cost category. The Joint Parties argued that fixed overhead and labor costs that would have been incurred irrespective of equal success implementation such as expenditures for network modernization or growth should be excluded. The International Communications Association (ICA) argued that the amount of costs to be included in the EANR category should be clearly defined before the question of how to allocate these costs is considered. ICA argued that the Commission should require the exchange carriers to file the underlying justification for their EANR cost levels and allow interested parties an opportunity to examine and challenge these submissions in an evidentiary proceeding.

23. The seven regional Bell holding companies, the state commissions, consumer representatives and the independent telephone companies, with the exception of GTE, supported the allocation of equal access costs based on relative access minutes of use, a formulation that reflects only AT&T, OCC and BOC interstate corridor minutes of use. In support of this position, they argued that the implementation of equal access benefits these carriers exclusively and that the cost of these facilities should be allocated based on actual usage. Michigan argued that use of an allocation factor based on toll minutes underassigns equal access costs to the interstate jurisdiction. It stated that the problem with the use of toll minutes is most evident in the case of single LATA states where all equal access costs should be assigned to the interstate jurisdiction unless there is intrastate competition. Vermont argued that the difficulties involved in properly isolating incremental equal access costs should not be used as a justification for the choice of a non-representative allocation factor. Centel stated that EA costs should be recovered exclusively from the interexchange carriers, with no allocation to intraLATA toll services unless intraLATA competition exists and is enhanced by the EA capability. Continental Telecom, Inc. (Contel) argued that the costs of providing equal access should not be borne by exchange or interexchange carriers that do not benefit from that service. It advocated jurisdictional assignment on the basis of relative Feature Group D access minutes of use, *i.e.*, access usage in end offices that have been converted to equal access. Southwestern Bell argued, however, that use of Feature Group D minutes might produce distorted results in the early stages of equal access implementation, because access conversions are not occurring uniformly throughout all study areas.

24. Most of the BOCs and the independent exchange carriers also favored allocation of network reconfiguration costs based on access minutes of use. Ameritech, Michigan and the People of the State of California and the Public Utilities Commission of California (California), however, aruged that separating network reconfiguration costs based on relative toll minutes of use would better reflect usage of these facilities. Southwestern Bell stated that access minutes of use would be the most appropriate allocation factor for network reconfiguration costs, but stated that given the relatively small amount of NR costs and their non-recurring nature, it would be best to use access minutes or the current separations procedures.

25. GTE argued that the current separations and access rules represent a fair and reasonable accommodation between the various interested parties, stating that those advocating modification of the present procedures should bear a heavy burden of persuasion. GTA took the position that the record does not demonstrate the existence of any special factors or circumstances warranting this departure. Therefore, it supported application of the existing separations procedures to both equal access and network reconfiguration costs.

26. AT&T, MCI, the Joint Parties (the Competitive Telecommunications Association, ITT Communications and SBS) and ICA (International Communications Association) supported relative toll minutes of use as the allocation factor for equal access costs. AT&T argued that usage is the relevant criterion for separations purposes and that an allocation factor based on toll minutes of use would properly reflect the fact that many of the expenditures made to implement equal access support all types of toll traffic. AT&T strongly opposed the contention that the interLATA carriers are the sole beneficiaries of equal access. AT&T stated that use of a benefit analysis, although inappropriate, would lead to the conclusion that toll minutes of use is the appropriate allocation factor. However, AT&T noted that the use of relative access minutes as the allocation factor might be acceptable if an initial allocation of costs was made to isolate expenditures attributable to the implementation of equal access, assuming the separations results were subject to audit or verification.

27. The Joint Parties supported the allocation of equal access costs on the basis of premium toll minutes of use. They took the position that non-premium toll minutes should be excluded since Feature Group A and B customers are connected, at least in the vast majority of cases, to offices that have not been converted to equal access, and in many cases will not be converted in the foreseeable future. The Joint Parties also argued that interexchange carrier Feature Group C and D premium minutes of use and BOC premium interaLATA toll minutes should be used instead of billed toll minutes.

28. AT&T, the Joint Parties and ICA supported the allocation of network reconfiguration costs pursuant to current separations procedures. AT&T stated that the reconfigured network will be used to provide exchange access for interstate and intrastate interLATA services, as well as intraLATA toll and local exchange service. AT&T also argued that in light of the relatively small dollar amounts involved, the assignment of network reconfiguration costs to all of the BOC services

supported by these expenditures would not burden ratepayers. MCI argued that network reconfiguration costs should be separated based on toll minutes of use, excluding OCC usage. It took the position that the OCCs should not bear any network reconfiguration costs.

IV. Discussion

A. Summary

29. The Joint Board recommends that the Commission adopt the following provisions for the categorization and separation of equal access and network reconfiguration costs. At the outset, we recommend that the Commission distinguish betwen expenditures incurred to provide equal access and those incurred to reconfigure the telephone network. The equal access category should be defined to include initial incremental presubscription costs and initial incremental expenditures for hardware and software related directly to the provision of equal access which would not be required to upgrade the switching capabilities of the office involved absent the provison of equal access. We also recommend that the equal access category be limited to the costs of converting offices which serve competitive interexchange carriers or where there has been a bona fide request for conversion to equal access. Equal access costs, including presubscription costs, should be allocated on the basis of relative equal access minutes of use, excluding BOC intraLATA toll traffic. We recommend that network reconfiguration costs continue to be allocated on the basis of existing separations procedures. We recommend treating all equal access and network reconfiguration costs, including independent telephone company equal access expenditures,[32] pursuant to the same procedures.

B. Network Reconfiguration

30. As previously stated, we recommend that network reconfiguration (NR) costs be allocated pursuant to the existing Part 67 rules. We believe that this is appropriate since the facilities involved are used in the provision of local exhange, intrastate toll and interstate toll service. The NR costs associated with implementation of the MFJ [33] should benefit the telecommunications industry and consumers through the development of a more efficient and competitive telecommunications market. As a result, we conclude that application of the current separations procedures will allocate these costs in a manner consistent with their usage for interstate and intrastate services.[34] Although these costs must be separately identified for purposes of the guarantee, we recommend that they continue to be recorded in the normally applicable accounts.

C. Equal Access

1. Definition

31. We recommend that the Commission adopt revised separations procedures for locating equal access costs between the jurisdictions.[35] These expenditures are related primarily to the provision of access services, and we are concerned that under existing separations procedures, the majority of expenditures incurred for the implementation of equal access will be allocated to the intrastate jurisdiction, even though the facilities involved are used predominantly for the provision of interstate services. As the first step in this process, we recommend that the Commission define equal access costs (for separations purposes) [36] to include only initial incremental presubscription costs, and initial incremental expenditures for hardware and software related directly to the provision of equal access, which would not be required to upgrade the switching capability of the office involved absent the provision of equal access. We also recommend limiting this category to such costs incurred in response to a bona fide request for equal access or to implement equal access in an end office which serves competitive interexchange carriers. Absent competition or a bona fide request for equal access there would appear to be no legitimate reason to implement equal access, and any such costs should be excluded from the equal access category. Certain other costs, however, should not be included in the equal access cost category. These include: (1) Tandem switches that provide a connection for equal access traffic; [37] (2) the financial cost of advancing projects in order to implement equal access; (3) ongoing or continuing software maintenance costs related to the new software generic; and (4) expenses incurred prior to the date of divestiture, January 1, 1984.

32. While the definition set out above serves as a general guideline for determining whether particular expenditures should be included in the equal access cost category, we believe that further discussion of the treatment of certain costs which are subject to dispute is necessary. The Bell Operating Companies have provided the Joint Board with a considerable amount of actual and projected investment and expense data broken out by separations category or account concerning the costs they have incurred or will incur to

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[32] In the case of the independent telephone companies, intrastate toll service provided by the independent local exchange telephone company would be excluded. Intrastate toll service provided by long distance carriers affiliated with the local exchange company would be included.

[33] The costs to be included in this category are related to the investment and expense incurred in connection with structurally conforming the predivestiture AT&T network to the LATA boundaries. For the BOCs this includes, among other things, rerouting existing interLATA end office (Class 5 to Class 5) and toll connect (Class 5 and Class 4) traffic. For AT&T this includes, among other things, those costs incurred to add transmission capacity between AT&T points of presence in order to accommodate traffic carried by the BOCs before divestiture which is now carried by AT&T.

[34] The amounts involved are also relatively small. In its filing with the District Court prior to divestiture, AT&T estimated that it would cost the BOCs $73 million to reconfigure their networks. 569 F. Supp. at 1066. In the Consolidated Section 214 Application, it was estimated that total network reconfiguration expenditures would be $279 million through 1987. The network reconfiguration estimate for 1984 was $46 million. Consolidated Application at p. 53. Subsequent reports filed with the Commission by AT&T and the BOCs show that total network reconfiguration costs for all companies were only $25 million in 1984. The data filed with the Joint Board in response to our data request indicates a total projected network reconfiguration revenue requirement of only $62 million for the years 1983–1990.

[35] The costs involved in the implementation of equal access will be substantial. In a May 23, 1983 Memorandum to the District Court, AT&T estimated that the Operating Companies would spend $2.47 billion to provide equal access. 569 F. Supp. at 1066. In the Consolidated Section 214 application, it was estimated that equal access expenditures for the period 1983–87 would be $2.86 billion. Recent estimates suggest that the total cost of the implementation of equal access by the BOCs may be somewhat less than these earlier estimates. For example, in the Consolidated Section 214 application it was estimated that the BOCs would incur $413 million in equal access costs in 1984. The BOCs' actual equal access costs were only $334 million in 1984. The data concerning EANR revenue requirements (rather than expenditures) filed with the Joint Board in response to our data request, using the methodology underlying the NYNEX tariff filing, and the BOCs' characterization of equal access costs, indicate total BOC revenue requirements for the years 1984–1990 of approximately $1.7 billion. The yearly breakdown is as follows: $132 million in 1984; $230 million in 1985; $333 million in 1986; $274 million in 1987; $209 million in 1988; $267 million in 1989; and $212 million in 1990. [US West only submitted information for the years 1984–86].

[36] We emphasize, however, that our recommendations apply only to the separations treatment of equal access costs. The question of what costs are included in the AT&T equal access cost guarantee is not before us. That matter will be decided by the District Court.

[37] In certain instances, the equal access feature will be installed in the tandem office instead of in the local end offices served by the tandem. In such cases, the principles which we have established for the treatment of end offices would apply.

implement the equal access provisions of the Decree. Among other things, the local companies will incur substantial capital costs for the new switching equipment required to provide the equal access function. It is clear that the equal access catetory should include the initial incremental cost of hardware related directly to the provision of equal access which would not be required to upgrade the switching capabilities of the office involved absent the provision of equal access. An example of this would be the costs associated with the replacement of an electro-mechanical central office switch with a more modern switch in order to provide equal access in that exchange. The fact that the new switch is to provide equal access features will necessitate hardware expenditures which would not be required simply to upgrade the switching capabilities of the office involved. This would be true regardless of whether this was a previously planned conversion. We conclude, however, that the remaining hardware should be excluded from the equal access category even though the conversion took place as a result of the equal access requirement. This is due to the fact that the enhanced capabilities of the new switch will benefit all services, providing dial tone, as well as switching local traffic, state toll and interstate toll. Under our recommendation, only the incremental hardware expenditures necessitated by the provision of equal access which would not be required to improve the office's switching capabilities absent equal access could be claimed as a capital cost to be included in the equal access category.

33. We do not believe that advancement costs associated with accelerating the schedule for upgrading local switches should be included in the equal access cost category. Upgrading the central office switch in advance of the previously scheduled conversion date will increase the local company's capital charges. However, segregating these incremental capital charges from other capital expenses and attributing a portion of them to the equal access category would be virtually impossible under existing accounting procedures. The new, modern switch will handle all traffic more efficiently and therefore the incremental capital costs associated with advancing the implementation date should be allocated pursuant to the existing separations procedures. The so-called "advancement costs" associated with the expenditure of funds earlier than otherwise planned would also be excluded from the equal access category since advancing the conversion dates benefits all services. There is also no need to recognize these costs separately since the local exchange carriers will recover their capital costs through the inclusion of capital expenditures in the rate base.

34. The local exchange carriers will also install new tandem switches in order to implement equal access. These tandem switches will handle equal access traffic as well as other toll traffic and local traffic. For separations purposes, tandem offices are classified as Category 2, Central Office Equipment, and apportioned based on the relative number of minutes of use at each location. Therefore, the existing separations will properly assign the costs of tandem switches between the interstate and state jurisdictions according to relative use. As a result, it is unnecessary to allocate any portion of new tandem offices to a separate equal access category. As previously noted,[38] there are certain instances where the equal access feature will be installed in the tandem office rather than in the local end offices served by the tandem. The principles which we have established for the treatment of end offices should apply in these cases.

35. The implementation of equal access for interexchange carriers also requires the installation of a new generic software program in many cases. The equal access cost category should include the initial, incremental cost of this software related directly to the provision of equal access which would not be required to upgrade the switching capabilities of the office involved absent the provision of equal access. The corresponding portion of the cost of the initial two-year software warranty should also be included. It is imperative that the exchange carriers be able to identify, isolate and correct unforeseen problems with the new generic program quickly and efficiently. The two year warranty for the new software should provide a sufficient period of time to address any major problems associated with the equal access feature. The cost of ongoing, annual payments for a general software maintenance contract, however, should not be included in the equal access cost category because they are not sufficiently related to the initial implementation of equal access. The maintenance contract provides for optional software support after the expiration of the two year warranty, and covers the entire generic program, not merely the equal access features of the generic. In addition, the maintenance contracts appear to provide for the addition of new features to the software introduced by the manufacturer.

36. Presubscription expenditures associated with the implementation of equal access represent a large portion of the equal access costs charged to operating expense. These expenditures relate to the balloting process for selecting an interexchange carrier, and the costs of implementing the customer's choice, including making appropriate changes in commercial records, revenue accounting records, central office routing, and connections to the selected carriers. We believe that the one-time, incremental costs of the initial presubscription process associated with conversion to equal access should be included in the equal access cost category.[39]

37. We also recommend that the initial incremental administrative costs incurred by the exchange carriers that are specifically related soley to the implementation of equal access be included in the equal access category. This would include, for example, the salaries of personnel working exclusively or primarily on the implementation of equal access as well as the cost of pensions, payroll taxes and other directly associated personnel costs. Other administrative costs, however, such as office space and equipment, and salaries for employees not working primarily on the implementation of equal access, among other things, are not to be included in the equal access cost category. These costs are related more directly to ongoing operations than to the implementation of equal access and would have been incurred in any event. These expenses not included in the equal access cost category would continue to be separated based on existing Part 67 procedures.

38. We also recommend exclusion of equal access related expenses incurred by the BOCs prior to divestiture. Divestiture occurred on January 1, 1984, and any equal access-related expenses incurred before that date should have been recovered pursuant to the then

[38] *See* footnote. 37, *supra.*

[39] Subsequent presubscription costs will not be included in the equal access cost category. They will be included in the appropriate account and separated according to the existing separations procedures. For example, the Joint Board has sought comment on a proposal for a separate presubscription category within Account 645, Local Commercial Expenses. This category would include local commercial office costs associated with the presubscription process subsequent to conversion. *See Recommended Interim Order and Request for Comments*, 50 FR 14729 (April 15, 1985); *Order Inviting Further Comments*, 50 FR 31749 (August 6, 1985).

existing cost allocation and recovery mechanisms. It would not be appropriate to include them in the equal access cost category we recommend here.

2. Accounting Treatment

39. We also believe that the FCC should implement accounting procedures which recognize that the equipment and software costs incurred to implement equal access will benefit both present and future telephone subscribers. In order to ensure that present ratepayers are not required to finance the provision of service to future consumers, we recommend that the Commission adopt a permanent accounting plan that applies existing depreciation lives to capital investment and provides for amoritization of software costs and other expenses over an extended period of time. Adoption of such measures will ensure that present ratepayers do not bear a disproportionate share of the cost of implementing equal access.[40]

3. Separations Procedures for Equal Access Costs

40. The proper definition of and accounting treatment for equal access costs alone will not ensure the proper recovery of these costs. As previously stated, we do not believe that the existing separations procedures properly allocate these costs between the state and interstate jurisdictions. We are recommending a limited definition of equal access costs which will include initial incremental presubscription costs and certain hardware and software costs related directly to the provision of equal access as opposed to other network functions. Given this limited definition, we believe that the equal access costs should be allocated between the jurisdictions based on relative state and interstate equal access traffic. This would include interstate interLATA equal access traffic and intrastate interLATA equal access traffic. Where competition is permitted on an intraLATA basis, AT&T and OCC intraLATA equal access usage would also be included. Local exchange traffic and BOC intraLATA toll traffic would be excluded, but BOC interstate corridor toll traffic would be included.[41] We recommend that relative equal access usage be measured on the basis of billed equal access minutes since the BOCs will already have this information for billing purposes.

41. The use of relative equal access minutes as the allocation factor will assign a very high percentage of these costs to the interstate jurisdiction. However, the limited definition of equal access set out above excludes hardware and software expenditures which will generally upgrade the telephone network, benefiting all services. In light of this, an allocation factor which divides equal access costs based on relative equal access traffic is reasonable and fair. Non-equal access costs which benefit all services will continue to be allocated according to existing separations procedures. Although the inclusion of costs in the equal access category will require careful scrutiny, we are confident that the distinction which we have proposed can be implemented successfully.

D. Independent Telephone Companies

42. We recommend that the definition of equal access costs and the proposed separations procedures and accounting rules apply to expenditures by the independent telephone companies as well as the BOCs. We do not find any basis for differentiating between equal access costs incurred by GTE pursuant to the *GTE Consent Decree* and the remaining independents pursuant to the Commission's *Order* in CC Docket No. 78-72, Phase III, and the equal access costs incurred by the BOCs. Allocating the independent telephone companies' equal access costs according to the existing separations procedures would require that a large portion of these costs be recovered from local exchange and state toll services. For the reasons set out above, we do not believe that this is reasonable in the case of the BOCs or the independent telephone companies.

V. Ordering Clauses

43. Accordingly, the Joint Board recommends, that the Commission adopt the procedures for the categorization, accounting treatment and allocation of equal access and network reconfiguration costs set out above and in the proposed revisions to Part 67 of the Commission's rules contained in Attachment A.[42]

Federal Communications Commission.

William J. Tricarico,

Secretary.

1. Amend the Table of Contents of Part 67 by adding the following at the end of Subpart B—Telephone Property:

Equal Access Equipment

Sec.
67.193 Equal Access Equipment

2. Amend the Table of Contents of Part 67 by adding the following at the end of Subpart D—Operating Expenses and Taxes:

Equal Access Expenses

Sec.
67.421 Equal Access Expenses

3. Add the following new § 67.193:

Equal Access Equipment

§ 67.193 Equal Access Equipment.

(a) Equal access investment includes only initial incremental expenditures for hardware and other equipment related directly to the provision of equal access which would not be required to upgrade the capabilities of the office involved absent the provision of equal access. Equal access investment is limited to such expenditures for converting central offices which serve competitive interexchange carriers or where there has been a bona fide request for conversion to equal access.

(b) Equal access investment is first segregated from all other amounts in the primary accounts.

(c) The equal access investment determined in this manner is allocated between the jurisdictions on the basis of relative state and interstate equal access traffic including interstate interLATA equal access traffic, intrastate interLATA equal access traffic, and BOC interstate corridor toll traffic as well as AT&T and OCC intraLATA equal access usage. Local exchange traffic and BOC intraLATA toll traffic is excluded. In the case of independent telephone companies, intrastate toll service provided by the independent local exchange company is excluded in determining intrastate usage, but intrastate toll service provided by long distance carriers affiliated with the local exchange company is included.

4. Add the following new § 67.421:

[40] As of December 31, 1984, 125 central or tandem offices were offering equal access. It is estimated that these offices service approximately 4 million of the approximately 90 million access lines nationwide. Slightly in excess of 50 percent of the BOCs' lines are expected to be converted to equal access by the end of 1985. The information provided in the Consolidated Section 214 Application estimated that the greatest portion of equal access expenditures would occur in 1985 and 1986. The data provided to the Joint Board indicates that the revenues requirement impact will be largest in 1986. See footnote 35, *supra*.

[41] Incremental costs associated with the introduction of intraLATA equal access at some later date as required by the *MFJ*, should be separately identified, and assigned to the state jurisdiction.

[42] This recommendation is adopted pursuant to sections 4 (i) and (j), 221 and 410 of the Communications Act, as amended, 47 U.S.C. 154 (i) and (j), 221 and 410.

Equal Access Expenses

§ 67.421 Equal Access Expenses.

(a) Equal access expenses include only initial incremental presubscription costs, and other initial incremental expenditures related directly to the provision of equal access, which would not be required to upgrade the capabilities of the office involved absent the provision of equal access. Equal access expenses are limited to such expenditures for converting central offices which serve competitive interexchange carriers or where there has been a bona fide request for conversion to equal access.

(b) Equal access expenses are first segregated from all other expenses in the primary accounts.

(c) Equal access expenses are allocated between the jurisdictions on the same basis as equal access investment.

5. Add the following definition to the Glossary:

Equal access costs—include only initial incremental presubscription costs and initial incremental expenditures for hardware and software related directly to the provision of equal access which would not be required to upgrade the switching capabilities of the office involved absent the provision of equal access.

[FR Doc. 85-27413 Filed 11-19-85; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 67

[CC Docket No. 78-72; CC Docket No. 80-286]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Recommendation to the Commission.

SUMMARY: The Federal-State Joint Board recommends that: (1) The jurisdictional separations treatment of Centrex/CO lines remain unchanged; (2) the end user charge for embedded Centrex/CO lines be increased to $3.00 per line effective June 1, 1986, in conjunction with a clarification of the distinction between new and embedded Centrex/CO lines; (3) closed end WATS access lines be directly assigned to the appropriate jurisdiction effective June 1, 1986; (4) the CPE phase-out remain unchanged; (5) telephone company owned terminal equipment be treated like other office equipment; and (6) the costs of coinless public pay telephones owned by local exchange companies or the interexchange carriers be allocated on the basis of relative toll minutes of use. This recommendation will facilitate Commission action on the foregoing issues. The proposed changes will allocate costs between the state and interstate jurisdictions in a manner which more closely reflects cost causation.

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

FOR FURTHER INFORMATION CONTACT: Susan Lee O'Connell or Claude Pabo at (202) 632-6363.

Recommended Decision and Order

In the matter of MTS and WATS Market Structure amendment of Part 67 of the Commission's rules and establishment of a Joint Board; CC Docket No. 78-72, CC Docket No. 80-286.

Adopted: July 12, 1985.
Released: October 8, 1985.

By the Federal-State Joint Board.

I. Introduction

1. The Federal-State Joint Board hereby presents its recommendations concerning the following issues: (1) Centrex-CO service; (2) direct assignment of WATS closed end access lines; (3) expansion of the customer premises equipment (CPE) phase-out to include additional CPE related costs; and (4) miscellaneous issues concerning the separations treatment of: (a) terminal equipment used by telephone companies in their internal operations; and (b) coinless public telephones.[1] In general terms, the Joint Board makes the following recommendations: (1) The jurisdictional separations treatment of Centrex/CO lines should remain unchanged, but the end user charge for embedded Centrex/CO lines should be increased to $3.00 per line effective June 1, 1986, in conjunction with a clarification of the distinction between new and embedded Centrex/CO lines; (2) closed end WATS access lines should be directly assigned to the appropriate jurisdiction effective June 1, 1986; (3) the CPE phase-out should remain unchanged; (4) telephone company owned terminal equipment should be treated like other office equipment; and (5) the costs of coinless public pay telephones owned by local exchange companies or the interexchange carriers should be allocated on the basis of relative toll minutes of use.

II. Centrex/CO

A. Background

2. Centrex/CO service is offered by local telephone companies pursuant to state tariffs as an alternative to the use of a Private Branch Exchange (PBX) on the customer's premises. In the case of Centrex/CO service, a portion of the central office switch acts much like a PBX, performing various functions such as switching intercom calls, providing conference calling, and accessing the local and toll switched network. Centrex/CO service requires a separate line or its equivalent between the central office and each telephone station on the subscriber's premise. When a PBX is used, the stations on the subscriber's premise are connected to the PBX and the PBX in turn is connected to the telephone company central office employing substantially fewer lines than Centrex/CO service would require.

3. The *Third Report and Order* in CC Docket No. 78-72, *MTS and WATS Market Structures*,[2] established subscriber line charges as a means of recovering the interstate allocation of local loop costs. Although the Commission did not specifically address Centrex/CO service, the implication

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[1] On April 11, 1984, the Joint Board adopted an *Order Inviting Comments* that requested comments on these issues. *Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, 49 FR 18746 (May 2, 1984). This *Order* also requested comments on separations procedures for equal access network reconfiguration costs, refinement of the provisions for assistance to telephone companies with high non-traffic sensitive costs and the separations procedures for central office equipment. The Joint Board made recommendations concerning adjustments in the provisions for high cost assistance at its November 15, 1984, meeting. *Recommended Decision and Order, MTS and WATS Market Structure* and *Amendment of Part 67 of the Commission's Rules*, CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984). The Commission adopted these recommendations at its meeting on December 19, 1984. *Decision and Order*, CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984). The Commission adopted these recommendations at its meeting on December 19, 1984. *Decision and Order*, CC Docket Nos. 78-72 and 80-286, 50 FR 939 (January 8, 1985). On June 19, 1985, the Joint Board requested preliminary comments concerning the existing separations procedures for central office equipment (COE) and interexchange plant costs. CC Docket No. 80-286, *Order Inviting Comments*, 50 FR 31747 (August 6, 1985). We are not making recommendations on the separations treatment of central office equipment at this time. Our recommendations concerning equal access network reconfiguration costs are contained in a separate item. *Recommended Decision and Order*, CC Docket Nos. 78-72 and 80-286, — FR — ( ).

[2] 93 FCC 2d 241, *recon.*, 97 FCC 2d 682 (1983) (*First Reconsideration Order*), *aff'd and remanded in part sub nom. Nat'l Ass'n of Regulatory Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S. Ct. 1224, 1225 (1985), *further recon.*, 97 FCC 2d 834 (1984) (*Second Reconsideration Order*), *further recon.*, 50 FR 18,249 (Apr. 30, 1985), *petitions for review pending sub nom. U.S. Telephone, Inc. v. FCC*, No. 84-1115 (D.C. Cir., filed Mar. 23, 1984).

was that Centrex/CO lines would be treated like any other jointly used local loop. In the *First Reconsideration Order*,[3] in CC Docket No. 78-72, the Commission states that, as a matter of principle, Centrex/CO lines should be treated like other jointly used local access lines. The Commission found, however, that customer decisions concerning use of a PBX in lieu of Centrex/CO service could be distorted by the existing pricing of Centrex/CO service at the state level.[4] The Commission concluded that a multi-year transition was necessary for implementation of subscriber line charges applicable to "embedded" Centrex/CO lines in place or on order as of July 27, 1983, to allow intrastate rate adjustments or other changes which would provide Centrex/CO service with a reasonable opportunity to compete. Accordingly, the Commission provided that "embedded" Centrex/CO lines would be assessed a monthly subscriber line charge equal to that for residential users.

4. In its *First Reconsideration Order*, the Commission also stated:

> Adjustments in intrastate rates that are either designed to preserve Centrex/CO service or to reflect a reapportionment of investment among remaining customers could have an adverse effect upon residential customers if state regulators choose to make upward adjustments in residential local exchange service rates. It should be possible to make any adjustments that might be required without affecting rates that residential customers pay. We shall, however, attempt to ascertain the magnitude of the problem and the likely response of state regulators as part of our monitoring effort and will consider alternative remedies such as separations changes if it appears that state regulators are unable to avoid adverse effects upon residential customers. We are asking the Docket 80-286 Joint Board to assist us in identifying the nature and magnitude of any stranded investment problem and we shall ask that the Joint Board develop recommended solutions that state commissions or this Commission could adopt to prevent an adverse effect upon residential local exchange service rates.
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> 97 FCC 2d at 701

5. In the *Second Reconsideration Order* in CC Docket 78-72[5] the Commission decided that subscriber line charges for residential and single line business customers should be deferred until June 1, 1985.[6] The Commission, however, retained the $6.00 per month maximum charge for multi-line business subscribers. The Commission also retained an initial monthly charge of $2.00 per line for "embedded" Centrex-CO lines in place or on order as of July 27, 1983. The Commission stated that charges for subsequent years will be established in supplemental proceedings, but added that it did not anticipate that the charge for "embedded" Centrex/CO lines would exceed $3.00 in the June 1985 through May 1986 access period.

6. In its April 1984, *Order Inviting Comments*,[7] the Joint Board requested comments on the nature and magnitude of any indirect effects on local exchange rates due to the subscriber line charge for Centrex/CO service, and asked for recommendations on how to alleviate any possible adverse effects. The Joint Board also asked all interested telephone companies to file information concerning Centrex/CO investment. Fifteen parties filed comments or replies concerning these issues.

B. Comments

7. Ameritech supported changes in the existing separations procedures for Centrex/CO lines. It argued that the existing jurisdictional separations procedures fail to recognize that Centrex/CO lines serve two discrete functions. Ameritech stated that, like business access lines and PBX trunk lines, Centrex lines provide access to the public switched network, but emphasized that Centrex lines are also used for intrasystem (intercom) services. Ameritech argued that the jurisdictional separations procedures applicable to Centrex/CO lines should be revised to recognize Centrex's intercom capabilities and competitive reality, as well as to accommodate the Communications Act's division of regulatory authority between the states and the federal government. Ameritech argued that intercom traffic falls within the exclusive regulatory province of state commissions, taking the position that intercom costs should be directly assigned to the intrastate jurisdiction. Ameritech stated that treating the intercom portion of Centrex line costs as ordinary access line costs creates a distinction between PBX service and Centrex Service under the subscriber line charge plan which undermines the competitive viability of Centrex. It also argued that due to existing rate relationships in many states, the additional burden imposed on Centrex/CO service by the access charge plan cannot be offset to any meaningful extent through adjustments in intrastate Centrex rates. Ameritech argued that this will result in abandonment of Centrex/CO service in favor of PBX systems, with a resulting adverse impact on local ratepayers due to idled investment and lost revenues.

8. Ameritech, Bell Atlantic, Southwestern Bell and the International Communications Association (ICA) stated that the Commission should classify a portion of the lines in each Centrex/CO system as non-traffic sensitive (NTS) subscriber common lines for jurisdictional separations purposes, using PBX trunk equivalency ratios. The costs associated with these lines would be allocated between the intrastate and interstate jurisdictions on the basis of the existing separations procedures. The remaining Centrex lines would be classified as intercom lines and the total unseparated cost of those lines would be directly assigned to the intrastate jurisdiction. The subscriber line charge would apply only to the lines treated as NTS subscriber common lines. Ameritech argued that this treatment would: (1) Promote efficient utilization of the network by minimizing premature discontinuation of Centrex/CO service; (2) align the allocation of Centrex/CO costs with the traditional division of state and federal jurisdictional authority; and (3) guard against unnecessary adverse pressures on universal service.

9. NYNEX, BellSouth, Pacific Telesis and US. West opposed separations changes for Centrex/CO service. NYNEX pointed out that the separations changes proposed by Ameritech (involving application of the PBX trunk equivalency ratio to derive the number of NTS subscriber lines for jurisdictional separations purposes) would increase intrastate revenue requirements due to the direct intrastate assignment of the "intercom" lines. NYNEX stated that this change in intrastate revenue requirements and the accompanying upward pressure on intrastate rates is not necessary to maintain the viability

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[3] 97 FCC 682 (1983).

[4] This conclusion was based on a number of filings which argued that intrastate Centrex/CO rates were set to exceed the associated intrastate costs in order to generate a subsidy for residential local exchange service.

[5] 97 FCC 2d 834 (1984).

[6] On November 15, 1984, the Joint Board recommended implementation of a $1.00 per month subscriber line charge for residential and single line business customers effective June 1, 1985. *Recommended Decision and Order*, CC Docket Nos. 78-72 and 80-286, 49 FR 48325 (December 12, 1984). At the same time, the Joint Board recommended that the $2.00 per line charge for embedded Centrex lines be retained until it completed its study of subscriber line charges for Centrex/CO service. On December 19, 1984, the Commission adopted the Joint Board recommendations. *Decision and Order, 50 FR 939 (January 8, 1985). The $1.00 subscriber line charge for residential and single line business subscribers went into effect on June 1, 1985, with an increase to $2.00 per month in June 1986.*

[7] CC Docket No. 80-286, 49 FR 18748 (May 2, 1984).

of Centrex/CO service. NYNEX argued that application of the residential subscriber line charge to all Centrex/CO lines as a transition mechanism would maintain the viability of this service by giving the states an opportunity to adjust current intrastate Centrex/CO rates. Pacific Telesis argued that usage studies should be performed to determine the level of interstate usage for Centrex lines and other multi-line business lines, with the Part 69 end user revenue requirement recovered from the subscriber line charge for each, based upon the relative interstate usage per loop. US West argued that the Centrex/CO issue is predominately a rate-making issue, not a separations issue, and stated that the Joint Board should support offsetting rate adjustments at the state level to mitigate any problems.

10. The New York Public Service Commission opposed a change in jurisdictional separations, stating that the only viable solution would be FCC modification of the subscriber line charge plan to mitigate its competitive impact. The District of Columbia Public Service Commission stated that the Centrex/CO issue involves a rate structure problem, not a separations problem, and argued that reconsideration of the subscriber line charge treatment of Centrex/CO service is necessary. The Kentucky Public Service Commission argued that subscriber line charges should be applied to Centrex/CO lines on the basis of the number of network access registers in service rather than the number of lines.

11. The United States Telephone Association (USTA) stated that the jurisdictional separations and access charge treatment of Centrex/CO service should be compatible. USTA argued that if application of subscriber line charges to Centrex/CO service causes a significant loss of customers, the Commission will have to address the problem of "stranded investment" put in place for Centex/CO service. GTE supported the current jurisdictional separations treatment of Centrex/CO costs, arguing that the need for special separations treatment had not been demonstrated.

12. The North American Telecommunications Association (NATA) argued that the costs of jointly used Centrex/CO loops should be allocated between the jurisdictions on the same basis as other jointly used loops. NATA stated that special separations provisions for Centrex/CO lines, designed to allocate a lesser percentage of these loop costs to the interstate jurisdiction, would be unreasonably discriminatory in violation of section 202(a) of the Act. NATA also argued that shifting coss from Centrex/CO service would yield artificially low rates, enabling Centrex to compete unfairly against PBXs.

13. Rochester Telephone Company (Rochester) argued that concerns about stranded Centrex/CO investment could be substantially alleviated by allocating all NTS plant to the intrastate jurisdiction. Rochester argued that the states can deal effectively with the recovery of NTS investment for Centrex/CO service by developing flexible rate structures that reflect the cost efficiencies that Centrex/CO service can offer subscribers. Rochester stated that dual jurisdiction over NTS costs associated with Centrex/CO service impedes administrative efficiency because the states must respond to the Commission's rate structure decisions, and cannot develop flexible Centrex/CO rate structure policies tailored to the needs of individual companies.

C. Discussion

14. The Joint Board recommends continued application of existing separations procedures for the allocation of Centrex/CO loop costs. As previously mentioned, a number of parties suggested use of a PBX trunk equivalency formula for separations purposes. Under this approach, a PBX trunk equivalency ratio would be applied to the actual number of Centrex/CO lines to calculate an equivalent number of PBX trunks. The cost of the remaining Centrex lines would be assigned to the intrastate jurisdiction. We do not believe that this approach is desirable. Special separations procedures to recognize the intercom usage of Centrex/CO lines would be inconsistent with the Commission's adoption of a basic twenty-five percent interstate allocation factor for non-traffic sensitive costs applicable to all local lines regardless of usage. In addition, the PBX trunk equivalency approach would transfer a substantial portion of the cost of providing Centrex/CO service from the interstate to the intrastate jurisdiction. We do not see how this would solve any of the potential problems, cited in the comments, related to the implementation of subscriber line charges for Centrex/CO service. A number of parties took the position that a separations change was not necessary, but argued that the Commission should modify its subscriber line charge plan to mitigate its competitive impact on Centrex/CO service. One of these parties applying the residential subscriber line charge to Centrex/CO lines as a transition mechanism to maintain the viability of the service.

15. In our November 15, 1984, *Recommended Decision and Order*, we proposed that the $2.00 monthly charge for embedded Centrex lines be retained until we completed this review of the impact of subscriber line charges on Centrex service. Based on the comments filed in this proceeding, we recommend that the Commission retain the distinction between new and embedded Centrex/CO lines in order to allow time for intrastate rate adjustments. We also recommend a clarification of this distinction to specify that subscriber moves or rearrangements of embedded Centrex/CO lines for the existing Centrex/CO service and service features at a single location are not to result in a reclassification of those lines as new. In addition, we recommend that the Commission continue to apply the multi-line business charge to new Centrex lines, and increase the charge for embedded Centrex lines to $3.00 per month or the full multi-line business subscriber line charge, whichever is less, beginning June 1, 1986. The comments and data presently before us in this proceeding do not demonstrate a need for other changes in the jurisdictional separations and access charge rules applicable to Centrex/CO service.

16. The Commission originally established different rules for computing subscriber line charges for residential and business customers. Subsequently, the Commission concluded that a distinction between new and embedded Centrex/CO lines was necessary since application of the full $6.00 maximum multi-line business charge to embedded Centrex/CO lines in service or on order as of July 27, 1983, would create an undue risk that customers would abandon this service for PBXs before the state commissions had an opportunity to adjust intrastate rate structures to allow Centrex/CO service to compete effectively with PBXs. A $2.00 monthly subscriber line charge for embedded Centrex/CO lines became effective May 25, 1984. The maximum $6.00 multi-line business subscriber line charge applies to new Centrex/CO lines. We believe that sufficient time has elapsed to allow state regulators to adjust intrastate rates. Accordingly, we recommend that the subscriber line charge for embedded Centrex/CO lines be increased to $3.00 per month or the full multi-line business subscriber line charge, whichever is less, effective June 1, 1986. We believe that there must be a gradual transition to application of the full multi-line

business subscriber line charge to embedded Centrex/CO lines. The $3.00 monthly charge which we are recommending for embedded Centrex/CO lines will still amount to only one-half the maximum multi-line charge that has been in effect over a year, and represents only a $1.00 increase over the previous $2.00 charge for embedded Centrex/CO lines. However, we recommend that the Commission consider waiving this increase in the case of any local telephone company which can show that this additional $1.00 charge for embedded Centrex/CO lines will cause significant stranded investment.

17. As previously indicated, we believe that clarification of the distinction between new and embedded Centrex/CO lines is appropriate in-conjunction with this increase in the charge applicable to embedded Centrex/CO lines. In particular, we conclude that rearrangements or changes in the configuration of Centrex/CO lines by a single organization at a single discrete location should not result in a reclassification of embedded lines as new lines (and the consequent imposition of the full multi-line business subscriber line charge) if the total number of lines and the Centrex/CO service offering and the Centrex features subscribed to at that location remain the same. Accordingly, we recommend that the Commission provide that Centrex/CO lines continue to be treated as embedded under the Commission's subscriber line charge plan in these circumstances. However, we do not believe that the Commission should require retroactive application of this approach to Centrex/CO lines that have already been reclassified as new lines due to the expense and administrative burdens involved in determining how this approach would have applied to rearrangements and changes which have already taken place, and the fact that the charges for all Centrex/CO lines can be expected to rise to the level of the full multi-line business charge eventually. If the local telephone company has applied this distinction to past rearrangements and changes, the Centrex/CO lines involved should continue to be treated as embedded absent other changes.

III. Closed End WATS Access Lines

A. Background

18. Wide Area Telecommunications Service (WATS) is a switched message service in which the originating or terminating local loop is dedicated exclusively to that service instead of being jointly used for toll and local service. In the case of OUTWATS, the originating local loop is used exclusively for that service. The terminating loop is dedicated in the case of INWATS (800 Service). Separate access lines are also used for interstate and intrastate WATS. In the *Third Report and Order* in CC Docket No. 78-72, *MTS and WATS Market Structure*, the Commission included interstate closed end WATS access lines with private lines in the Special Access Category.[8] The Joint Board subsequently recommended changes in the jurisdictional separations procedures to provide for direct assignment of WATS closed end access lines to the state or federal jurisdiction.[9] This would have replaced the existing procedures under which the cost of WATS access lines are allocated between the jurisdictions on the same basis as jointly used local exchange subscriber loops. In reviewing the Joint Board recommendation, the Commission concluded that, in principle, direct assignment of closed end WATS accesss lines was the most rational method of allocating these costs, but decided to retain the existing separations treatment of WATS access lines pending further study of this matter by this Joint Board.[10] The Commission also modified the Part 69 treatment of WATS access lines to make it consistent with the decision to continue treating WATS lines like other subscriber lines for separations purposes pending further study.[11]

19. In the April 11, 1984, *Order Inviting Comments*,[12] the Joint Board requested comments concerning the competitive marketplace effect of direct assignment, and possible transition mechanisms to allow the movement to direct assignment with minimal marketplace distortions. We also asked for comments on any other regulatory changes which would facilitate direct assignment of closed end WATS access lines without producing adverse effects. Finally, we requested that parties address the question of whether a separate allocation factor should be adopted for the costs associated with toll terminal lines, a class of subscriber lines used exclusively for toll service.

[8] 93 FCC 2d at 314-15.

[9] *Second Recommended Decision and Order*, CC Docket No. 80-286, 48 FR 46554 (October 13, 1984), at paras. 81 and 82.

[10] *Decision and Order*, CC Docket No. 80-286, 96 FCC 2d 781 (1984).

[11] *Second Reconsideration Order*, CC Docket No. 78-72, 97 FCC 2d 834 (1984).

[12] CC Docket No. 80-286, 49 FR 18746 (May 2, 1984).

B. Comments

20. The seven regional Bell holding companies, Central Telephone Company (Centel), Continental Telecom (Contel), GTE Telephone Corp. (GTE), Rochester, Southern New England Telephone Company (SNET), United Telephone System, Inc., and USTA supported direct assignment of closed and WATS access lines. A number of these parties also urged immediate implementation of this change. Rochester stated that it would not oppose a three year transition to direct assignment. Contel supported a transition period corresponding to the period for the implementation of equal access. NYNEX stated that implementation of direct assignment must be scheduled to allow timely revision of the interstate tariffs to reflect the revenue requirement shift. BellSouth supported direct assignment, stating that if the Joint Board and the Commission conclude that distortions in the competitive marketplace will result, these problems can be minimized through modification of the Interim Cost Allocation Manual. Pacific, Rochester and Southwestern Bell stated that Part 69 of the Commission's rules should be revised to make the special access rates applicable to closed end WATS access lines in order to align the recovery of WATS costs with the separations treatment. AT&T stated that WATS closed end access lines are dedicated to the provision of service in a single jurisdiction and should be directly assigned. AT&T argued that any other assignment would be arbitrary and lead to uneconomic pricing.

21. The New York Public Service Commission (New York) supported the direct assignment of WATS closed end access lines. New York argued that the Commission's deferral of direct assignment of WATS access lines was predicated on a misplaced fear that direct assignment would result in price changes and possible marketplace distortions. New York took the position that direct assignment of WATS closed end access lines is an appropriate refinement of the separations process, but stated that it need not have rate design implications. The Kentucky Public Service Commission (Kentucky) supported direct assignment of WATS closed end access lines, but stated that this change should be implemented gradually, perhaps to coincide with the conversion to equal access, and should be preceded by an analysis of the impact on intrastate and interstate revenue requirements. The D.C. Public Service Commission and the staff of the Pennsylvania Public Utility Commission

(Pennsylvania) also supported direct assignment. Pennsylvania expressed interest in a transition period.

22. The Ad Hoc Telecommunications Users Committee (Ad Hoc), the International Communications Association (ICA), and National Data Corporation supported direct assignment of WATS closed end access lines. Ad Hoc and ICA also stated that they would support a transition period to direct assignment for existing WATS access lines if it is considered necessary. National Data added that Part 69 of the Commission's rules should be revised to reinstate the application of special access charges to closed end WATS access lines.

23. MCI Telecommunications Corporation (MCI) did not oppose the direct assignment of closed end WATS access lines. However, MCI argued that direct assignment should be accompanied by an adjustment in the frozen interstate Subscriber Plant Factor (SPF) (currently used to allocate non-traffic sensitive costs) to exclude the effect of WATS closed end usage.[13] MCI argued that failure to do this would result in a double assignment of costs to interstate ratepayers, with MTS users paying a disproportionate amount of these costs. MCI stated that the net effect of a consistent policy for direct assignment of WATS closed end access lines would be a shift of approximately $1 billion in costs to the intrastate jurisdiction. It argued that because of the adverse impact that such an approach could have on intrastate rates, the Commission should adopt a six year transition to phase-in the direct assignment of WATS and phase-out the effect of WATS usage on frozen SPF.

24. United States Transmission Systems, Inc. (USTS) agreed, in principle, that WATS closed end access lines should be directly assigned to the relevant jurisdiction. USTS stated, however, that the exchange carriers presently provide AT&T with significant service features for WATS which are not available to other interexchange carriers. USTS argued that until those service features are made available to all interexchange carriers, the present allocation of WATS closed ends should be continued as a proxy for establishing a differential rate for premium WATS access received by AT&T. Satellite Business Systems (SBS) opposed direct assignment of closed end WATS access lines. It argued that AT&T's access for WATS is superior to that provided to the OCC's because screening and blocking functions are provided to AT&T for WATS access, whereas the OCCs must use dedicated facilities. SBS argued that MTS and WATS loops should be subject to the same separations procedures since the form of access provided to AT&T for WATS is virtually the same as the type of access provided for MTS.

25. The Rural Electrification Administration (REA) opposed direct assignment of WATS closed end access lines. It stated that separate treatment of high-volume customers or services could lower the local exchange companies' toll revenues, requiring that these revenues be made up from other sources. REA also argued that changes in Part 69 would be necessary in conjunction with direct assignment to ensure that WATS service pays its share of the cost of maintaining the efficiency and financial viability of rural telephone companies and cooperative.

26. BellSouth and Pacific supported allocation of toll terminal lines on the basis of relative toll usage. Bell Atlantic argued that there is no need to revise the separations procedures for toll terminal lines since they are currently classified as trunks and allocated based on toll minutes of use. US West argued that there are not enough toll terminal lines in existence to justify adoption of a separate allocation factor. AT&T stated that no changes in Part 67 are necessary since the existing rules appear to deal adequately with "toll terminal lines" even though they are not separately addressed. Kentucky supported the adoption of specific provisions to govern the allocation of toll terminal lines.

C. Discussion

27. After further study of this matter, the Joint Board again recommends direct assignment of closed end WATS access lines to the appropriate jurisdiction. As stated above, the Joint Board previously recommended direct assignment of WATS closed end access lines and the Commission agreed in principle with our recommendation, although it found that there was a need for further Joint Board study of this question to determine how to implement such an approach without adverse effects. Due to the fact that toll terminal lines are used exclusively for toll services, we are recommending that they be allocated based on relative minutes of use.

28. Direct assignment of closed end WATS access lines is logical since these facilities are dedicated to use for either intrastate or interstate WATS service. None of the commenting parties offered any evidence that the direct assignment of WATS closed and access lines is an unsound separations treatment. To the contrary, the vast majority of the commenting parties endorsed direct assignment as logical and consistent with the principle of actual use. We do not find the arguments in opposition to direct assignment based on competitive considerations persuassive, particularly in light of the fact that we are recommending further proceedings to consider the need for adjustments in other areas in conjunction with direct assignment.

29. The Joint Board cannot agree with MCI's proposal that frozen SPF be adjusted to exclude usage attributable to WATS service. As a result of the Commission's decision to freeze the SPF factor at the 1981 annual average level for each study area,[14] SPF ceased to reflect network usage. Adoption of the basic twenty-five percent interstate allocation factor to replace SPF as the factor applicable to most NTS costs further removes the allocation of NTS costs from network usage levels. The decision to set the basic allocation factors at twenty-five percent was a conscious attempt to approximate the existing nationwide average SPF, and minimize the aggregate amount of change involved in moving from SPF to a flat allocation. However, at this point, we do not believe that attempting to adjust the twenty-five percent basic allocation factor (in conjunction with the direct assignment of WATS access lines) to exclude toll usage attributable to WATS would represent an improvement in the jurisdictional separations procedures.

30. The record presently before us does not allow a determination of what, if any, adjustments should be made in other areas in conjunction with the direct assignment of WATS closed and access lines. As a result, we recommend that the Commission establish June 1, 1986, as the effective date for this change to allow the Commission adequate time in which to consider possible adjustments related to time of day pricing for switched access services or revisions in the Interim Cost Allocation Manual to mitigate possible adverse effects on the existing interstate rate structure.[15] We also recommend

[13] A transition from frozen SPF, which averages 28 percent on a nationwide basis, to a flat interstate allocation factor of 25 percent plus high cost assistance will begin January 1, 1986. Section 67.124 of the Commission's Rules, 47 CFR 67.124 (1984).

[14] *Decision and Order*, CC Docket No. 80-286, 89 FCC 2d 1 (1982), *reconsideration denied*, 91 FCC 2d 558 (1982), *aff'd sub nom. MCI Telecommunications Corp. v. FCC*, 750 F.2d 135 (D.C. Cir. 1984).

[15] If further proceedings cannot be completed in time for direct assignment of WATS closed end access lines and any other accompanying changes to be reflected in the access charge tariffs by June 1, 1986, this date may have to be extended. We also

Continued

that the Part 67 changes concerning the separations treatment of the toll terminal lines become effective on that date.

IV. Customer Premises Equipment

A. Background

31. In the *First Recommended Decision and Order* in CC Docket No. 80-286,[16] the Joint Board recommended that customer premises equipment (CPE) be phased out of the separations process over a five year period in light of the Commission's decision to detariff CPE.[17] This approach was designed to ease possible effects on local rates resulting from the deregulation of CPE in light of the fact that CPE revenues appeared to exceed costs and allow lower local exchange rates. The Commission adopted the Joint Board's recommendation with a number of technical modifications.[18]

32. Under the CPE phase-out plan, a base amount of embedded CPE investment and related expenses, reserves and taxes, as of December 31, 1982, was identified by each local carrier. The CPE base amount included the CPE book costs in Accounts 231 and 234 and the expenses associated with such book costs, *i.e.*, the repairs of station equipment and CPE depreciation, among other things.[19] Beginning January 1, 1983, the base amount was to be reduced one-sixtieth per month over a five year period.

33. Certain CPE-related expenses were not included in the CPE phase-out plan, however. For example, local telephone companies incur expenses in the station handling process when subscribers move from one address to another. In addition, a portion of the commercial expenses related to the operation of telephone stores, and the handling of CPE orders in the local telephone company business office are related to the provision of CPE. The Commission declined to include these costs in the CPE phase-out.[20] If these CPE-related expenses were fully recovered in the intrastate jurisdiction, the revenues generated by the interstate allocation of a portion of these costs could have been used to keep the rates for other intrastate services lower than they otherwise would be. In the case of the BOCs, any such interstate contribution related to those costs would have disappeared with divestiture and the transfer of the embedded base CPE to AT&T.

34. In the *Order Inviting Comments*, we requested comments on whether there was a need to expand the scope of the CPE phase-out plan previously adopted by the Commission. We also requested information that would allow us to determine whether the decision not to include costs associated with subscriber moves and rearrangements, as well as commercial expenses, in the CPE phase-out could contribute to sudden increases in intrastate revenue requirements.[21]

B. Comments

35. AT&T and USTS opposed expansion of the CPE phase-out plan. AT&T argued that the CPE phase-out plan was not intended to be used as an arbitrary subsidization mechanism to direct interstate revenues to local exchange carriers. AT&T stated that the CPE phase-out plan was designed to serve as a temporary and transitional support mechanism to ensure that consumers receive the benefits of a competitive terminal equipment marketplace without sudden and burdensome rate increases. AT&T took the position that the Joint Board should consider reduction or elimination of the CPE phase-out.

36. The seven regional Bell holding companies opposed expansion of the CPE phase-out plan. Bell Atlantic argued that an expansion of the phase-out would perpetuate a subsidy for intrastate services without concomitant benefits. BellSouth and Southwestern Bell stated that expanding the phase-out at this point would complicate an already difficult regulatory mechanism. US West stated that the existing CPE phase-out plan represents a carefully tailored compromise solution, arguing that modification of the plan at this time would create unwarranted impediments to competition. NYNEX, Pacific Telesis and Pacific Northwest Bell also opposed expansion of the CPE phase-out plan to include additional costs.

37. Centel, Contel, CP National, GTE and United also opposed expansion of the CPE phase-out plan. United specifically stated that it does not believe that the magnitude of the costs involved warrants adoption of a transition plan. USTA stated that the FCC should consider this a closed subject. Rochester and the Independent Alliance, however, supported expansion of the CPE phase-out plan. Rochester argued that a gradual phase-out of these additional costs over a three year period beginning January 1, 1985, would be appropriate. The Independent Alliance proposed a plan that included commercial expenses and the costs associated with subscriber moves in the frozen CPE base amount.

38. Ad Hoc opposed any change in the existing plan. It stated that the *Order Inviting Comments* contained an implicit assumption that intrastate tariffs had previously enabled the exchange carriers to recover one hundred percent of these costs with the interstate settlements providing a contribution to local exchange. Ad Hoc argued that this assumption is not demonstrably correct, and took the position that the Joint Board should not attempt to resolve these questions of fact. Ad Hoc stated that, absent this assumption, the proposal to expand the CPE phase-out is nothing more than an attempt to perpetuate use of the jurisdictional separations process as a broad form of local subsidy. Ad Hoc also argued that use of Part 67 as a transitional mechanism for recovering these costs could disadvantage other CPE suppliers

39. The Kentucky PSC and the New York PSC supported expansion of the CPE phase-out plan to include station handling costs and commercial expenses associated with CPE. New York stated that since 1981, when the FCC changed station connection accounting procedures, New York has increased station connection charges to cover the full cost of providing these

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note that questions related to the rate and rate structure disparities between WATS and MTS are currently before the Commission in a separate proceeding. *American Telephone and Telegraph Company (WATS Investigation)*, CC Docket No. 80-765, 91 FCC 2d 238 (1982). Our recommendation concerning the direct assignment of WATS closed end access lines in no way prejudges the outcome of that proceeding.

[16] 46 FR 63344 (December 31, 1981).

[17] *Final Decision, Amendment of § 64.702 of the Commission's Rules (Second Computer Inquiry)*, Docket No. 20828, 77 FCC 2d 384 (1980), *reconsideration*, 84 FCC 2d 50 (1980), *further reconsideration*, 88 FCC 2d 512 (1981), *aff'd sub nom., CCIA v. FCC*, 693 F.2d 198 (D.C. Cir. 1982) *cert. denied*, 103 S. Ct. 2109 (1983).

[18] *Amendment of Part 67 of the Commission's Rules*, CC Docket No. 80-286, 89 FCC 2d 1 (1982).

[19] The Common Carrier Bureau issued a letter of interpretation specifying the other costs to be included. Letter from Gary M. Epstein, Chief, Common Carrier Bureau to W.R. McGeary, Director of Settlements, United States Independent Telephone Association, November 26, 1982.

[20] The letter of interpretation also specified that certain other costs were not to be included in the phase-out. *Id.*

[21] In the *Order Inviting Comments* we also stated that the Commission's decision to allow the provision of intrasystem wiring associated with PBXs and key systems by entities other than telephone companies may have reduced telephone company revenues in these areas. *Proposals for New and Revised Classes of MTS and WATS*, Docket No. 19528, 67 FCC 2d 1255 (1978), *reconsideration*, 70 FCC 2d 1800 (1979); *see also Modifications to the Uniform System of Accounts*, CC Docket No. 82-681, 48 FR 50534 (November 2, 1983). State and federal decisions to allow subscribers to provide their own inside wiring may also affect telephone company revenues. *See Amendment of Part 68*, CC Docket No. 81-216, 97 FCC 2d 527 (1984), *modified*, 50 FR 29384 (July 19, 1985).

services. New York stated that it has applied the interstate contribution associated with these services to offset local service rates. New York stated that a significant portion of the interstate contribution was lost with divestiture, and it recommended expanding the "frozen" maintenance base to include the cost of "moves and changes" in Account 605, with this additional component set at actual 1983 levels and phased-out over 5 years beginning January 1, 1985. The staff of the Pennsylvania PUC favored retention of the current five year CPE phase-out plan.

C. Discussion

40. The Joint Board recommends that the Commisson retain the existing CPE phase-out plan. The original decision to remove CPE from the separations process gradually over a five year period was based on the conclusion that, in many states, CPE was priced at full cost in the intrastate jurisdiction. As a result, the interstate allocation of CPE-related costs provided revenues that could be used to cover other intrastate costs. The CPE phase-out was intended to serve as a reasonable transition mechanism that would allow state regulators and the industry to adjust to the new environment for the provision of CPE without imposing hardships on consumers in the form of rate increases. There is nothing in the record before us to suggest that the CPE phase-out plan has not successfully served its intended purpose, and we do not recommend expansion of the CPE phase out to include additional related costs.

41. The Joint board staff requested information from the major exchange carriers concerning commercial and additional maintenance expenses attributable to CPE. The limited cost data submitted in response to this request does not allow a determination of whether these additional CPE-related expenses generated an interstate contribution. The majority of the commenting parties, including the interexchange carriers, the seven regional Bell holding companies, and the independent telephone companies, with the exception of Rochester Telephone and the Independent Alliance, also opposed an expansion of the CPE phase-out plan. In support of their position, these parties cited the relatively small amount of costs involved, the administrative burdens associated with identifying these costs and adding them to the declining CPE base, possible impediments to competition, and the need to target any further subsidization of local service. The New York PSC was the only party to state directly that station handling costs and commercial expenses associated with CPE generated and interstate contribution to reduce rates for local services. In New York, most of this contribution was lost with divestiture on January 1, 1984, and any resulting intrastate rate adjustment should have taken place already. In light of these considerations, we conclude that modification of the CPE phase-out plan cannot be justified on the basis of information now before us. Absent specific allegations of harm, we believe that the Joint Board should not devote its limited resources to further study of this matter [22] due to the many other issues involving the allocation of Central Office Equipment and Interexchange Plant which are still before us for resolution.

V. Miscellaneous

A. Background

42. On October 6, 1983, the Commission adopted a *Report and Order* amending provisions of the Uniform Systems of Accounts (USOA) contained in Part 31 of the Commission's rules in order to make the accounting rules consistent with previous Commission decisions concerning the detariffing of CPE [23] and the expensing of inside wiring.[24] Among other things, the Commission established new accounting classifications and procedures for coinless public telephones, and company-used station apparatus, key systems, and private branch exchanges. The Commission stated that the costs associated with coinless public telephones were to be recorded in subaccounts of Account 235,"Public Telephone Equipment" and Account 607 "Repairs of Public Telephone Equipment." The *Order* also established a new Account 262, "Other Communications Equipment," to record the costs of terminal equipment used by telephone companies in the course of their business operations. These costs were formerly recorded in Account 231, "Station Apparatus," and Account 234, "Large Private Branch Exchanges."

43. Our *Order Inviting Comments* requested comments on the proper allocation factor for the costs associated with coinless public telephones [25] consistent with their treatment in the access charge rules.[26] We stated that a number of interexchange carriers had recently established or proposed coinless public telephones to be located in places such as airports where a high volume of toll calling originates. Although these pay telephones are expected to be used almost exclusively for intrastate and interstate toll service, the current separations procedures would allocate these costs on the same basis as other NTS plants such as local loops.[27] We also asked for comments on the allocation of terminal equipment used by the telephone companies in their internal business operations to be recorded in the newley created Account 262. These costs had previously been recorded in Accounts 231 and 234 and allocated on the basis of SPF.[28]

B. Summary of Comments

1. Coinless Public Telephones

44. AT&T, Ameritech, Centel, Contel, CP National and the Kentucky Public Service Commission supported the allocation of the costs of coinless public telephones on the basis of relative interstate and intrastate minutes of use over such facilities. AT&T stated that these telephones are predominately used for toll service, and that their costs are recovered through usage based toll charges. AT&T also argued that this equipment can be separated according to relative use without creating a conflict with the access charge rules since the access rules concern the local exchange carrier's recovery of costs related to local facilities used by the interexchange carriers, and not the recovery of costs associated with

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[22] Any telephone companies which believe that the exclusion of these additional CPE related costs from the phase-out will injure them, are free to supplement the record on this issue.

[23] See note 17, *supra*.

[24] *See First Report and Order*, CC Docket 79-105, *Expensing of Inside Wiring*, 85 FCC 2d 818 (1981); *Further Notice of Inquiry, Deregulation of Inside Wiring*, 88 FCC 2d 886 (1981); *Further Notice of Proposed Rulemaking*, 50 FR 13991 (April 9, 1985).

[25] The Commission recently re-examined its previous decision to exclude pay telephones from CPE deregulated under the *Second Computer Inquiry*. The Commission found that the type of pay telephones provided by AT&T and the BOCs should continue to be treated as a communications service subject to regulation. *Memorandum Opinion and Order*, Tonka Tools, Inc. and Southern Merchandise Corp., 50 FR 24694 (June 12, 1985).

[26] The Commission established a separate NTS category for pay telephones in its *Third Report and Order* in CC Docket No. 78-72, 93 FCC 2d at 280.

[27] The FCC Common Carrier Bureau Accounting and Audits Division has advised AT&T to allocate its coinless pay telephones based on relative usage pening further action by the Joint Board and the Commission. Letter from Gerald P. Vaughan, Chief, Accounting and Audits Division to T.J. Berry, Jr., Executive Assistant, American Telephone and Telegraph Co., dated May 9, 1984.

[28] *Amendment of Part 67*, 49 FR 7934 at note 22 (March 2, 1984). The FCC Common Carrier Bureau Accounting and Audits Division has directed telephone companies to allocate the costs in Account 262 on the same basis as furniture and office equipment pending further Joint Board and Commission action. Letter from Gerald P. Vaughan, Chief, Accounting and Audits Division to Charles W. Boeching, Foster Associates, Inc., dated May 9 1984.

equipment owned by the interexchange carriers.

45. United stated that, in principle, the cost of coinless public telephones should be allocated on the basis of relative state and interstate toll usage. It stated that measuring the actual usage of coinless telephones would be costly and impractical, however, and suggested that these costs be allocated on the basis of the company's overall relative intrastate and interstate toll usage of a transitional period until implementation of equal access makes the measurement of actual use practicable. The State of New York Department of Public Service also supported relative use in principle, but argued that this approach is administratively infeasible at present. As a result, New York recommended that the existing separations methodology be retained.

46. Bell Atlantic, GTE, Southwestern Bell, NYNEX and USTA supported the continued use of frozen SPF. Bell Atlantic argued that the investment in coinless pay telephones is relatively small and does not justify the use of the resources that would be necessary to develop a more accurate allocation factor. GTE argued that this public telephone equipment is non-traffic sensitive and should be apportioned among the operations on the basis of the twenty-five percent flat allocation factor for most other NTS plant. NYNEX argued that reclassification of this plant does not change its function and therefore should not affect the method of assignment. USTA stated that there are and will continue to be many locations where coinless public telephones will be used for local measured service as well as toll calling. It argued that the costs involved in making usage studies to provide a more precise allocation factor are not justified, and recommended continued use of SPF.

47. BellSouth argued that the ideal allocation factor for coinless public telephones would be relative intrastate and interstate sent-collect revenues from those telephones. BellSouth stated that it is not able to obtain this information, however. It suggested that the next best alternative would be to allocate these costs on the basis of relative sent-collect revenues from all public telephones.

2. Terminal Equipment Used by Telephone Companies

48. AT&T, the BOCs, Centel, Contel, GTE, United, USTA and the New York Public Service Commission stated that the cost of official telephones recorded in Account 262 should be separated on the same basis as other office equipment, *i.e.*, the wage portion of maintenance, traffic, commercial and revenue accounting expenses, excluding the wage porton of maintenance expense related to general office space. These parties argued that the investment in this equipment and the associated expenses like office furniture and other equipment are part of the company's cost of internal business operations.

49. CP National and Southern New England Telephone Company argued that this equipment should continue to be apportioned based on frozen SPF. CP National argued that the additional costs associated with performing new studies and revising allocation procedures applicable to this equipment would be excessive, and that the present procedures should continue to be used. SNET argued that the allocation procedures for this equipment should not be changed since the purpose and use of the equipment remains unchanged despite the new accounting treatment. Rochester argued that this equipment should be allocated based on the interstate assignment of the total investment in land, buildings, COE, and outside plant.

50. Kentucky argued that this type of equipment should be allocated based on a study of the relative intrastate and interstate minutes of use for each piece of equipment. Kentucky recognized that this would be impractical, however, and suggested that this equipment be divided into several different categories with a separate usage based allocation factor for each category.

C. Discussion

1. Coinless Public Telephones

51. Since coinless public telephones operate only on a collect or credit card basis, it appears that they will be used almost entirely for toll services.[29] In light of this, we conclude that the allocation of the costs associated with AT&T and local exchange carrier coinless public telephones[30] should be based on relative toll usage of this equipment. A number of parties have raised concerns, however, about administrative burdens involved in measuring usage of these telephones. This is a legitimate concern, particularly since the costs in these accounts are relatively minor. As a result, we recommend that the Commission allow use of the study area's relative intrastate and interstate toll minutes of use where specific measures of use on coinless public telephone equipment would not be practical.

2. Terminal Equipment Used by Telephone Companies

52. The investment and associated expenses for telephone terminal equipment used in the company's internal operations is a basic cost of doing business similar to office furniture and other office equipment. Accordingly, we conclude that these costs should also be allocated on the basis of the wage oprtion of maintenance, traffic, commercial and revenue accounting expenses excluding the wage portion of maintenance expense related to general office space.

VI. Ordering Clauses

53. Accoudingly, the Joint Board recommends, That the Commission adopt the proposed revisions to Part 67 and Part 69 of the Commission's rules contained in Attachments A and B.[31]

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

1. Amend § 67.122(a)(3) to read as follows June 1, 1986:

(3)—Subscriber Line Outside Plant Excluding Wideband—Category 1.3—This category includes outside plant between local central offices and subscriber premises used for message telephone, TWX subscriber lines, for private line local channels and for circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service. This category also includes outside plant between local central offices and public telephones.

2. Amend § 67.124(c) to read as follows June 1, 1986:

(c) Exchange Trunk Outside Plant (Wideband and Non-Wideband)—Category 1.2—The cost of the exchange outside plant assignable to this category in the study area is separately identified for the following subsidiary categories:

Category 1.21 Trunk plant used exclusively for exchange message services.

Category 1.22 Trunk plant used exclusively for toll message services, excluding WATS closed and access, or jointly for exchange and toll message

[29] In many states a local call placed on a collect or credit-card basis is charged at the toll rate and recorded as toll revenue.

[30] *See* note 25, *supra*.

[31] This recommendation is adopted pursuant to sections 4 (i) and (j), 201, 202, 203, 205, 218, 221, 403, and 410 of the Communications Act, as amended, in 47 U.S.C. 154 (i) and (j), 201, 202, 203, 205, 218, 221, 403 and 410.

services, excluding WATS closed and access service.

Category 1.23 Trunk plant used for TWX access lines.

Category 1.24 Trunk plant used exclusively for interstate private line services and interstate WATS service.

Category 1.25 Trunk plant used exclusively for state private line services and state WATS service.

* * * * *

3. Amend § 67.124(d) to read as follows June 1, 1986:

(d) Subscriber Line Outside Plant Excluding Wideband—Category 1.3—The first step in apportioning the cost of the subscriber line outside plant among the operations is the determination of an average cost per working loop. This average cost per working loop is determined by dividing the total cost of subscriber line outside plant assigned Category 1.3 in the study area by the sum of the working loops described in subcategories 1.31, 1.32, 1.33, 1.34, and 1.35. The cost of the subscriber line outside plant assigned Category 1.3 is further assigned to the following subsidiary categories and apportioned in accordance with §§ 67.124(d)(1)–67.124(d)(4).

Category 1.31—Subscriber line outside plant used exclusively for state private line services and state WATS closed end access service.

Category 1.32—Subscriber line outside plant used exclusively for interstate private line services and interstate WATS closed end access service.

Category 1.33—Subscriber line outside plant used jointly for exchange service and toll message services, excluding WATS closed end access.

Category 1.34—Subscriber line outside plant used for TWX service.

Category 1.35—Subscriber line outside plant used exclusively for toll message services, excluding WATS closed end access service.

(1) * * * * * The cost of subscriber line outside plant assigned Category 1.35 for the study area is determined in the same manner as the plant assigned Category 1.34, and apportioned between state toll and interstate toll on the basis of the relative number of minutes of use of this plant in the study area.

(2) The average subscriber line outside plant cost per loop determined in § 67.124(d) is applied to the counts of working loops used in furnishing state and interstate private line local channels (excluding wideband) and state and interstate WATS closed end access lines, and the amounts so determined are assigned to categories 1.31 and 1.32 and are assigned directly to the appropriate operations.

(3) The cost of subscriber line outside plant assigned Category 1.33 is determined by subtracting amounts assigned Category 1.34, TWX service, Category 1.35, subscriber line outside plant used exclusively for toll message services excluding WATS closed end access service, and Categories 1.31 and 1.32 private line and WATS closed end access service in § 67.124(d)(1) and 67.124(d)(2) from the total cost assigned Category 1.3 in the study area.

* * * * *

(7) Limit on Change in Interstate Allocation

* * * * *

(ii) * * * * * For this purpose, WATS closed end access lines shall be included in OSP Category 1.33 when comparing the interstate allocation for 1985 and 1986. WATS closed end access lines shall be excluded from OSP Category 1.33 when comparing the interstate allocation for 1986 and 1987.

* * * * *

4. Amend § 67.126 to read as follows June 1, 1985:

* * * * *

(1) The cost of host/remote message outside plant excluding WATS closed end access lines for the study area is apportioned on the basis of the relative number of study area minutes-of-use miles applicable to such facilities.

(2) The cost of host/remote message outside plant used for WATS closed end access for the study area is directly assigned to the appropriate jurisdiction.

5. Amend § 67.140(i) to read as follows June 1, 1986:

(i) * * * * * on the basis of the assignment of host/remote message outside plant.

6. Amend § 67.151(a)(2) to read as follows:

(2) The first step in the separation of station equipment is the aggregation of station connections in Accounts 232 and 234 (other than inside wiring provided for private line services and public telephone equipment) from all other investment. This plant is apportioned between the state and interstate operations on the same basis as OSP Category 1.33 described in § 67.124(d)(4) through § 67.124(d)(7).

7. Amend § 67.151(a)(2) to read as follows June 1, 1986:

(2) The first step in the separation of station equipment is the segregation of station connections in Accounts 232 and 234 (other than inside wiring provided for private line services or WATS closed end success service, and public telephone equipment) from all other investment. This plant is apportioned between the state and interstate operations on the same basis as OSP Category 1.33 described in § 67.124(d)(4) through § 67.124(d)(7).

8. Amend § 67.151(b) to read as follows:

(b) The next step is the assignment of the remaining plant to the six categories listed below and the determination of the cost of the plant so assigned. The basic procedures followed in making the assignments and cost determinations are: the identification of the units of station equipment installed on customers' premises assignable to Categories 1, 2, 3, 4, and 5; determination of the related costs in these categories by the application of an appropriation average unit cost to the units so indentified; and the assignment of the remaining station equipment cost of Category 6.

* * * * *

9. Amend § 67.151(b)(1) to read as follows June 1, 1986:

(1) Identification of the units of station equipment installed on customers' premises is accomplished by the use of plant, accounting and engineering records supplemented by the field inventories, where necessary. Where the numbers of units to be identified are large, sampling methods may be employed. Under such circumstances, however, the costs of telephone and miscellaneous telephone station apparatus in Account 231 and telephone and miscellaneous telephone station connections in Account 232 are assigned to Category 2 by applying to these costs in the study area the ratio of (i) the number of exchange loops used for telephone private line services and WATS closed end access service to (ii) the number of message telephone subscriber lines and exchange loops used for telephone private line services and WATS closed end access service, combined.

10. Amend § 67.151(b)(3) by substituting the term Category 6 for Category 5.

11. Amend § 67.151(b)(3) to read as follows June 1, 1986:

(3) Only that station equipment provided under special service tariffs or associated with WATS closed end access lines (e.g., special terminating equipment, trunk circuit equipment, idle circuit terminations, signaling equipment, telephone sets, keys, key sets and turrets which are used for the termination of special service circuits) is assigned to the special service categories. Correspondingly, station equipment used jointly for both special services, telephone services, or WATS closed end access service and message telephone services excluding WATS closed end access (e.g., telephone keys,

key sets, order turrets, private branch exchange switchboards which are used for the termination of both private lines or WATS closed end access lines and exchange lines) and provided under other than special service tariffs is assigned to Category 6.

12. Amend the existing § 67.152 by substituting "Category 6" for "Category 5," in existing § 67.152(e), redesignating existing § 67.152(e) as § 67.152(f), and adding the following new § 67.152(e):

(e) Coinless Public Telephone Equipment—Category 5—This category includes the cost of coinless public telephone equipment contained in Account 235 used exclusively, or virtually exclusively, for toll service as well as the associated station connections. The cost of this coinless public telephone equipment, and the associated wiring in the study area, are apportioned between the state and interstate operations on the basis of the relative toll minutes of use of this equipment in the study area. Relative toll minutes of use for the entire study area may be used if calculation of the equipment-specific allocation factor would not be practical.

13. Amend the first sentence of § 67.153(b) by deleting the word "five."

14. Amend § 67.161 to read as follows:

67.161 Furniture and Office Equipment—Account 261: Other Communications Equipment—Account 262

* * * * *

(c) The cost of the other furniture and office equipment in Account 261 and the cost of other communications equipment in Account 262 is apportioned among the operations on the basis of the separation of the wage portion of maintenance, traffic, commercial and revenue accounting expenses excluding the wage portion of maintenance expense related to general office space.

15. Amend § 67.313(b)(2) to read as follows June 1, 1986:

(2) Expense in this classification is segregated among (i) message services, excluding WATS closed end access; (ii) private line and WATS closed end access service; (iii) TWX; and (iv) wideband services, on the basis of the relative number of working subscriber loops provided for each of these services. In cases where substantial numbers of private line, WATS closed end access lines, TWX or wideband service loops are provided, and where either the analyses in § 67.313(a) or analyses of trouble reports on private line, WATS closed end access lines, TWX and wideband services indicate that the exchange circuit plant testing expense per loop associated with any of such services is significantly different from the corresponding expense per loop associated with message services, excluding WATS closed end access, appropriate weighting factors are applied to the counts of loops used for private line, WATS closed end access, TWX and wideband services. These weighting factors are based on periodic analyses of accounting or other records for a representative period.

16. Amend § 67.313(b)(3) to read as follows June 1, 1986:

(3) Subscriber line and service order testing expense assigned message telephone, excluding WATS closed end access service, is apportioned between state and interstate operations on the same basis as that used for the apportionment of the cost of OSP Category 1.33.

17. Amend § 67.313(b)(5) to read as follows June 1, 1986:

(5) Exchange circuit plant testing expense assigned private line services and WATS closed end access service is apportioned among the operations on the basis of the relative number of working loops (weighted if appropriate) used in furnishing state private line services, state WATS closed end access service, interstate private line services, and interstate WATS closed end access service.

18. Amend § 67.313(c)(4) to read as follows June 1, 1986:

(4) The expense of testing all other inter-office circuit plant is further segregated among exchange trunk plant, interexchange circuit plant, and host/remote message circuit plant on the basis of the relative number of circuit miles provided for each of these classifications in the study area. In cases where substantial numbers of circuit miles are provided for TWX service, private line services (other than wideband special services), WATS closed end access service, or exchange trunks, and where analyses of trouble reports on other records indicate that the testing expense associated with any of these classifications is significantly different from the corresponding expense per circuit mile associated with message interexchange service, excluding WATS closed end access circuit miles, appropriate weighting factors are applied to the counts of circuit miles for individual classifications to recognize this difference in testing expense. These weighting factors are based on periodic studies of charges to Account 603 for interoffice circuit plant testing during a representative period.

19. Amend § 67.313(c)(5) to read as follows June 1, 1986:

(5) The interexchange circuit trunk testing expense is further segregated among message telephone excluding WATS closed end access, TWX, private line and WATS closed end access services on this basis of the relative number of interexchange circuit miles (weighted, if appropriate) provided for each of these services in the study area.

(i) Interexchange circuit plant testing expense assigned message telephone excluding WATS closed end access is apportioned between state and interstate operations on the basis of the relative number of interexchange message telephone circuit miles, excluding WATS closed end access circuit miles, in the study area assigned to each operation. Jointly used ciruit miles are apportioned between state and interstate operations on the basis of conversation-minute-miles.

* * * * *

(iii) Interexchange circuit plant testing expense assigned private line and WATS closed end access services are apportioned between state and interstate operations on the basis of the relative number of interexchange private line and WATS closed end access circuit miles (weighted, if appropriate) in the study area assigned each operation.

20. Amend § 67.313(c)(6) to read as follows June 1, 1986:

(6) * * * * * on the basis of the assignment of host/remote message outside plant.

21. Amend §§ 67.611(a)(1)–(4) June 1, 1986 by deleting the words "(in both cases excluding the investment associated with WATS access lines)."

22. Amend § 67.611(a)(8) to read as follows June 1, 1986:

(8) The number of working subscriber line outside loops used jointly for non-wideband exchange and message telephone service, excluding WATS closed end access and TWX service, but including subscriber line outside plant associated with pay telephone (OSP Category 1.33). This figure shall be calculated as of December 31st of the year preceding each June filing.

23. Amend §§ 67.621(a)(1)–(4) June 1, 1986, by deleting the words "(in both cases excluding investment associated with WATS access lines)," "(in both cases excluding plant associated with WATS access lines)" and "(in both cases excluding amounts associated with WATS access lines)" each time they appear.

24. Amend the definition of Message Service in Subpart C, Glossary, to read as follows June 1, 1986:

Message service or message toll service—Switched service furnished to the general public (as distinguished from

private line service). Except as otherwise provided, this includes exchange switched services and all switched services provided by interexchange carriers and completed by a local telephone company's access service, e.g., MTS, WATS, Execunet, open end FX and CCSA/ONALS.

Appendix B

1. Amend § 69.202(c) to read as follows:

(c) * * * * * Effective June 1, 1986, each such line shall be assessed a charge that is the lesser of the charge computed pursuant to paragraph 69.104(d) or $3.

[FR Doc. 85-27411 Filed 11-19-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[RM-4863; FCC 85-600]

Stations at Spacings Below the Minimum Separations

AGENCY: Federal Communications Commission.

ACTION: Denial of Proposal.

SUMMARY: This action denies a petition for rule making to amend the Commission's rules to require notification to other affected short spaced FM stations when a "grandfathered" FM station applies for a change in facilities or transmitter site pursuant to § 73.213 of the Rules. This action was taken in response to a Petition for Rule Making filed by WRAL-FM, Inc.

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

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Memorandum Opinion and Order

In the matter of amendment of § 73.213, relating to stations at spacings below the Minimum separations (RM-4863).

Adopted: November 12, 1985.
Released: November 14, 1985.

By the Commission.

1. The Commission has before it a petition filed by WRAL-FM, Inc. ("petitioner") proposing an amendment to § 73.213 of the Commission's Rules to require notification to affected stations by an existing short spaced FM station when it applies for a change in facilities.[1] Formal comments were filed by Press Broadcasting Company ("Press") and the National Association of Broadcasters ("NAB") in support of the proposal.

2. The petitioner argues that a change in facilities or transmitter site which shortens substandard spacings could have the effect of modifying the license of affected stations, citing *Western Broadcasting Co. v Federal Communications Commission*, 674 F. 2d 44 (D.C. Cir. 1982). Petitioner further alleges that pursuant to Section 316 of the Communications Act of 1934, as amended, notification is required before any such change in facilities or transmitter site can be made. The petitioner suggests that appropriate notice could be accomplished by having the applicant serve a copy of the application on any other affected licensee.

3. The Commission already provides public notices of filings of applications for such changes in facilities, although those notices may not be as extensive as the petitioner would desire. Thus, the petitioner's proposal would impose an increased burden on applicants that would be redundant to existing procedures of the Commission. Further, in the Commission's *Fourth Report and Order* in Docket 14184, 3 R.R. 2d 1571 at 1580 (1964), the Commission addressed the matter of permitting existing short spaced FM stations to increase their facilities and stated ". . . we believe a method which is simple, would not require prior agreement among stations affected, would not destroy existing service (at least within the 1mV/m contour) . . . is to be the preferred method." Thus the provisions of § 73.213 have been designed so that a modification of another station's license would not occur. Accordingly the Commission found there was no need for special advance notice.

4. The *Western* case cited by petitioner involved the grant of an application of a short-spaced station to change its transmitter location, effective radiated power, and antenna height. The Commission rejected a petition to deny without conducting a full evidentiary hearing. On appeal, the court held that the petitioner's allegations that interference within its 1mV/m contour could be increased entitled that licensee to a full evidentiary hearing pursuant to section 316 in order to determine whether a modification of license would, in fact, result. Congressional concern about the potential impact of the *Western* ruling led it to amend section 316 specifically to reverse that decision. Accordingly, it provided the Commission with discretion to determine, based on the circumstances of each situation, whether the public hearing required by section 316 could be satisfied by written pleadings instead of by oral argument. H. Rep. No. 98-356, 98th Cong., 1st Sess. 16 (1983). However, neither the *Western* court nor Congress addressed the section 316 notice requirement or implied that such notice must be supplied for changes not affecting another station's 1mV/m contour. Thus, we believe that petitioner's reliance on *Western* to support its notice proposal is misplaced.

5. Accordingly, it is Ordered, that the Petition for Rule Making filed by WRAL-FM, Inc. is denied.

6. For further information contact D. David Weston, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-27629 Filed 11-19-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Public Notice of this petition was given on October 5, 1984.

DEPARTMENT OF DEFENSE

48 CFR Part 231

Department of Defense Federal Acquisition Regulation Supplement Travel Costs

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comments.

SUMMARY: The Defense Acquisition Regulatory Council is considering a proposed rule regarding Travel Costs for incorporation at DFARS 31.205-46(a) to supplement FAR 31.205-46.

DATE: Comments on the proposed rule should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before December 20, 1985, to be considered in the formulation of the final rule. Please cite DAR Case 85-230 in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSDRE(M&RS), Room 3D139, The Pentagon, Washington, DC 20301-3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697-7268.

SUPPLEMENTARY INFORMATION:

A. Background

The Defense Acquisition Regulatory Council proposes to add DFARS section 231.205-46(a) to state that costs of

lodging, subsistence, and incidental expenses incurred by contractor personnel in areas inside the continental 48 states that exceed the average daily subsistence costs for various localities within the United States as periodically determined by the Administrator of General Services pursuant to section 5707(b)(1) of title 5, U.S.C., shall be considered to be not reasonble and unallowable. The average daily subsistence costs can be found in the current General Services Administration report of May 1985 entitled "Investigation of Average Daily Subsistence Costs Incurred During Travel Within the Conterminous United States." Costs of lodging, subsistence, and incidental expenses incurred by contractor personnel outside the continental 48 states that exceed the maximum per diem rates set forth in Appendix A of Volume 2 of the Joint Travel Regulations shall be considered to be not reasonable and unallowable.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], this rule does not appear to have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The proposed rule does not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR Part 231

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Proposed Amendments to 48 CFR Part 231

1. The authority for 48 CFR Part 231 continues to read as follows:

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

PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Section 231.205–46 is added to read as follows:

231.205 Selected costs.

* * * * *

231.205–46 Travel costs.

(a) For Department of Defense contracts, costs of lodging, subsistence, and incidental expenses incurred by contractor personnel in areas inside the continental 48 states that exceed the average daily subsistence costs for various localities within the United States as periodically determined by the Administrator of General Services pursuant to section 5707(b)(1) of title 5, U.S.C., shall be considered to be not reasonable and unallowable. Costs of lodging, subsistence, and incidental expenses incurred by contractor personnel outside the continental 48 states that exceed the maximum per diem rates set forth in Appendix A of Volume 2 of the Joint Travel Regulations shall be considered to be not reasonable and unallowable. A per diem paid to employees in lieu of actual costs or payments to employees based on a combination of per diem and actual costs that exceed the amounts determined by the Administrator of General Services or set forth in the Joint Travel Regulations as appropriate shall be considered to be not reasonable and unallowable.

[FR Doc. 85–27601 Filed 11–19–85; 8:45 am]

BILLING CODE 3810–01–M

Notices

Federal Register
Vol. 50, No. 224
Wednesday, November 20, 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 AGRICULTURE

Forms Under Review by Office of Management and Budget

November 15, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following informations:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Revision

Agricultural Marketing Service

Organges and Grapefruit Grown in Lower Rio Grande Valley in Texas-Marketing Order 906.
Committee forms used, not agency report forms
Recordkeeping; On occasion; Annually
Farms; Businesses or other for-profit; Small businesses or organizations; 710 responses; 168 hours; not applicable under 3504(h)
William J. Doyle, (202) 447–5975

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 85–27705 Filed 11–19–85; 8:45 am]

BILLING CODE 3410–01–M

Intent To Award a Cooperative Agreement; University of California, Irvine

AGENCY: USDA/Office of International Cooperation and Development.

Activity: Cooperative Agreement for a study of possible financial reforms to promote economic and rural development in developing countries; Availability of funds for FY 1986.

USD's Office of International Cooperation and Development announces the availability of funds in FY 1986 for a cooperative agreement with the University of California, Irvine (UCI) in conducting research to determine the reforms necessary in developing country financial markets to promote efficiency of resource allocation through the public sector. The study is designed to provide recommendations to the Agency for International Development for: (a) Promoting financial development; (b) improving domestic financial policies; and (c) incorporating financial sector impact analyses into donor assisted projects.

Assistance will be provided only to UCI which has the requisite resources as well as faculty who have performed preliminary research in the field of financial markets and development. In addition, the UCI faculty has the professional experience and the close working relationships with colleagues in collaborating countries which are needed to assure cooperation, enabling the research to be carried out in a timely and effective manner. Therefore, this is not a formal request for applications. It is expected that approximately $49,900 will be available in FY 1986. It is anticipated that the cooperative agreement will be funded for a budget period of 12 months. Funding estimates outlined above may vary and are subject to change.

Information may be obtained from: John Hyslop, Technical Assistance Officer, Office of International Cooperation and Development, U.S. Department of Agriculture.

Charle A. Rooney,

Acting Assistant Administrator for Administration.

November 15, 1985.

[FR Doc. 85–27670 Filed 11–19–85; 8:45 am]

BILLING CODE 3410–DP–M

Intent To Award a Cooperative Agreement; University of Maryland

AGENCY: Office of International Cooperation and Development, USDA.

Activity: Cooperative Agreement to work collaboratively with a university to integrate research and provision of technical assistance and training for international development management over a three to four year period.

The Office of International Cooperation and Development announces the availability of funds beginning Fiscal Year 1986 for a cooperative agreement with the International Development Management Center (IDMC), Office of International Programs, Agriculture and Life Sciences Division, University of Maryland at College Park. The purpose of the relationship is to collaboratively carry out three interlocking functions: (1) Provide technical assistance to improve program management in the developing countries at the request of and in collaboration with USAID Missions and AID Bureaus; (2) learn from the technical assistance experience of project collaborators and others as well as the literature on development and record such learning; and (3) disseminate these learnings to academic personnel and practitioners in develoment agencies in the United States and abroad. Because the joint activities are oriented toward learning, each of the collaborating organizations will be increasing the capability of their staff and cadre and strengthening their institutions while building improved

development management technology. For the collaborating university strengthening will take the form of integrating resultant learning and an international focus into curriculum development, contributing toward opportunities for faculty and student research and hands-on experience, and improving and expanding services in the international development arena. For the Office of International Cooperation and Development, the cooperative agreement will provide a broader base of technical assistance experience on which learning can be based, and access to the specialists of various disciplines of the collaborating univeristy, using similar frameworks for management improvement. This activity is authorized under the Performance Management Project #936-5317 funded by the Agency for International Development, Science and Technology Bureau, Office of Rural and Institutional Development.

Assistance will be provided only to IDMC which has been collaborating with the Development Program Management Center under this project since 1982. This collaboration has included commissioning some of the papers which form the foundation for future project work, providing technical assistance and training to ongoing Performance Management field projects, and participating in development, applications and refinement of management methodologies applied and tested under the project. IDMC has ongoing management development projects in developing countries combined with an in-house action research program and dissemination agenda. IDMC has demonstrated a capability to train and facilitate task oriented groups with project assignments, using effective experiential approaches in a learning by doing mode. IDMC has a program for and a reputation in developint new management technologies and strengthening management development institutions. IDMC is providing training in development management with an agriculture focus to other universities. IDMC has experience in training in agricultural research management. IDMC has been able to mobilize personnel at short notice to take advantage of opportunities and has been available for frequent consultations on project work.

The combination of orientation, program, skills and abilities described above, and which characterize IDMC, is essential to perform work under the Performance Management Project. No other university can satisfy these requirements.

Based on the above, this is not a formal request for applications. It is estimated that approximately $400,000 will be available for Fiscal Year 1986 to support this work. Yearly amounts will vary and are subject to change. It is anticipated that the cooperative agreement will be funded over a budget period of 36-48 months.

Information may be obtained from: Morris Solomon, Coordinator, Development Program Management Center, Office of International Cooperation and Development, U.S. Department of Agriculture.

Charle A. Rooney,

Acting Assistant Administrator for Administration.

[FR Doc. 85-27669 Filed 11-19-85; 8:45 am]

BILLING CODE 3410-DP-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-479-501]

Certain Steel Wire Nails From Yugoslavia; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain steel wire nails (wire nails) from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend liquidation of all entries of the subject merchandise as described in the "Suspension of Liquidation" section of this notice. If this investigation proceeds normally, we will make a final determination by January 27, 1986.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: John Brinkman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3965.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based upon our investigation, we have preliminarily determined that wire nails from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) (19 U.S.C. 1673(b)) of the Tariff Act of 1930, as amended (the Act). The margin preliminarily found for all companies investigated is listed in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by January 27, 1986.

Case History

On June 5, 1985, we received a petition in proper form filed by Atlantic Steel Company, Atlas Steel & Wire Corporation, Continental Steel Corporation, Davis-Walker Corporation, Dickson Weatherproof Nail Company, Florida Wire & Nail Company, Keystone Steel & Wire Company, Northwestern Steel & Wire Company, Virginia Wire & Fabric Company, and Wire Products Company. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Yugoslavia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act and that these imports materially injure, or threaten material injury to, a United States industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and intitiated such an investigation on June 25, 1985 (50 FR 27479). On July 22, 1985, the ITC determined that there is a reasonable indication that imports of wire nails from Yugoslavia materially injure, or threaten material injury to, a U.S. industry (50 FR 31057).

On July 30, 1985, a questionnaire was presented to counsel for Zelezsarna Jesenice and a questionnaire sent via certified mail to Brako Kosulcevi. On August 6, counsel for Zelezarna Jesenice requested that the deadline for the receipt of their response to our antidumping duty questionnaire be extended until September 30, 1985. The Department advised them that, due to statutory deadlines, they would only be allowed a two-week extension until September 13, 1985. On September 12, counsel for Zelezarna Jesenice advised the Department it would also represent the second respondent in this investigation, Brako Kosulcevi, and again asked for a two-week extension of the deadline for both questionnaire responses. The Department advised them that the responses would be considered untimely and that we could not guarantee that we would use information submitted after the due date.

On October 4, 1985, Brako Kosulcevi and Zelezarna Jesenice submitted formal responses to our antidumping duty questionnaire. The responses contained numerous deficiencies which made it virtually impossible to make our fair value comparisons. These deficiencies include the following: the lack of sufficient product descriptions upon which to base appropriate comparison groupings; the lack of suggested such or similar merchandise groupings; the lack of information upon which to base adjustments for differences in merchandise; and insufficient detail relating to claims for packing costs, credit expenses, and other claimed adjustments. Because the responses were not received in a timely fashion, there was insufficient time in which to correct the outstanding deficiencies prior to our preliminary determination. We have requested additional information from respondents to correct these deficiencies.

Scope of Investigation

The products covered by this investigation are one-piece steel wire nails as currently provided for in the *Tariff Schedules of the United States* (TSUS) under item numbers 646.25 and 646.26, and similar steel wire nails of one-piece construction, whether at, over or under .065 inch in diameter as currently provided for in item number 646.3040; two-piece steel wire nails currently provided for in item 646.32; and steel wire nails with lead heads currently provided for in item number 646.36.

Fair Value Comparison

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price, based on the best information available, with the foreign market value, also based on best information available. We used best information available as required by section 776(b) of the Act for the reasons explained in the "Case History" section of this notice.

United States Price

We calculated the purchase price of certain steel wire nails, as provided in section 772 of the Act, on the basis of U.S. pricing information provided in the petition. This price represents offers for sale in the United States to unrelated purchasers of wire nails, reduced by estimated costs of importation, as provided in section 772(d)(2) of the Act.

Foreign Market Value

We calculated foreign market value as provided in section 773 of the Act. The best information available for calculating foreign market value was information concerning U.S. domestic producers' material and fabrication costs provided in the petition and Yugoslav labor rates from the *1983 Yearbook of Labor Statistics*, adjusted for inflation. To calculate constructed value, we then added the statutory minimums for general expenses and profit.

Verification

As provided in section 776(a) of the Act, we will verify all data used in reaching the final determination in this investigation.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of wire nails from Yugoslavia that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. The suspension of liquidation will remain in effect until further notice.

Manufacture/sellers/exporters	Weighted-average margin percentage (percent)
Brako Kosulcevi	84.76
Zelezarna Jesenice	84.76
All Others	84.76

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination, or 45 days after we make our final determination.

Public Comment

In accordance with § 353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on December 13, 1985, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individauls who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B099, at the above address within 10 days of this notice's publication. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by December 6, 1985. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act. (19 U.S.C. 1673b(f)).

Dated: November 12, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-27706 Filed 11-19-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-517-501]

Preliminary Affirmative Countervailing Duty Determination; Carbon Steel Wire Rod From Saudi Arabia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod. The estimated net bounty or grant is 10.52 percent *ad valorem* for all manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod.

We are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from Saudi Arabia that are entered, or

withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond on such entries in the amount of the estimated net bounty or grant.

If this investigation proceeds normally, we will make our final determination on or before January 27, 1986.

EFFECTIVE DATE: November 20, 1985.

FOR FURTHER INFORMATION CONTACT: Jack Davies or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–1785 or (202) 377–2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

Based on our investigation, we preliminarily determine that there is reason to believe or suspect that certain benefits which constitute bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod. For purposes of this investigation, the following programs are found to confer bounties or grants:

- Government Loan to Hadeed
- Government Provision of Equipment for Hadeed

We preliminarily determine the estimated net bounty or grant to be 10.52 percent *ad valorem* for all manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod.

Case History

On June 12, 1985, we received a petition in proper form from Atlantic Steel Company, Georgetown Steel Corporation, North Star Steel Texas, Inc., and Raritan River Steel Company filed on behalf of the U.S. industry producing carbon steel wire rod. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod receive bounties or grants within the meaning of section 303 of the Act.

We found that the petition contained sufficient grounds for initiating a countervailing duty investigation, and on July 2, 1985, we initiated the investigation (50 FR 28231). We stated that we expected to issue our preliminary determination by September 5, 1985.

Since Saudi Arabia is not a "country under the Agreement" within the meaning of section 701(b) of the Act, sections 303(a)(1) and 383(b) apply to this investigation. Accordingly, petitioners are not required to allege that, and the U.S. International Trade Commission is not required to determine whether, imports of the subject merchandise from Saudi Arabia materially injure, or threaten material injury to, a U.S. industry.

On July 12, 1985, we presented a questionnaire to the Embassy of Saudi Arabia in Washington, D.C. and requested that the response be submitted by August 12. We presented a supplemental questionnaire on August 19 and requested a response by October 1.

On August 6, we determined that this case is extraordinarily complicated due to the complexity of the alleged subsidy practices and the novelty of the issues presented; we also determined that the government of Saudi Arabia and other parties concerned were cooperating with this investigation. Therefore, we postponed our preliminary countervailing duty determination until not later than November 12 (50 FR 32751).

On October 1, we received responses to our questionnaires from the government of Saudi Arabia and the Saudi Iron and Steel Company (Hadeed).

Scope of Investigation

For purposes of this investigation the term carbon steel wire rod covers a coiled, semi-finished, hot-rolled carbon steel product of approximately round solid cross section, not under 0.20 inch nor over 0.74 inch in diameter, tempered or not tempered, treated or not treated, not manufactured or partly manufactured, and valued over or under 4 cents per pound. Wire rod is currently classifiable under items 607.14, 607.17, 607.22, and 607.23 of the *Tariff Schedules of the United States* (TSUS).

Analysis of Programs

Through out this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Detemination and Countervailing Duty Order," which was published in the April 26, 1984, issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits under a program, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses, of course, are subject to verification. If a response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a bounty or grant in the final determination.

For purposes of this preliminary determination, the period for which we are measuring bounties or grants (the review period) is the 1984 company fiscal year (January 1—December 31, 1984). Based upon our analysis of the petition and the responses submitted by the government of Saudi Arabia and Hadeed to our questionnaires, we preliminarily determine the following:

I. Programs Preliminarily Determined To Confer Bounties or Grants

We preliminarily determine that bounties or grants are being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod under the following programs.

A. Government Loan to Hadeed

Although not specifically alleged by petitioners, evidence in the petition indicated that Hadeed might have received loans on terms inconsistent with commercial considerations from the Saudi Industrial Development Fund (SIDF) or from other government agencies.

In its response, Hadeed reported that it had not received any loans from SIDF but had received a loan from the Public Investment Fund (PIF). The PIF loan was part of the initial investment package for constructing Hadeed's direct reduction plant, steel making plant, and rolling mill at Jubail. The amount of the PIF loan comprised 60 percent of the total capitalization of Hadeed.

Repayment of the principal on Hadeed's PIF loan will begin in 1989, 5.5 years after the October 1983 startup of production at Hadeed. After the startup, the service charge on the loan varies according to the rate of return on investment in a given fiscal year. Hadeed did not make a profit during the review period and therefore did not pay any service charge on the PIF loan in that period.

The PIF was established in 1971 to provide loans for major projects such as those undertaken by Saudia Airlines PETROMIN, and the Saudi Basic Industries Corporation (SABIC), an

investment holding company jointly owned by the Saudi government and private investors. We preliminarily determine that PIF loans are provided to a specific enterprise or industry, or group of enterprises or industries. Therefore, the PIF loan taken out by Hadeed is countervailable to the extent that it has been made on terms inconsistent with commercial considerations.

The Saudi government provides long-term loans through a variety of sources. Among them are the SIDF, the Saudi Arabian Agricultural Bank, the Real Estate Fund, and the Credit Fund for Contractors. The SIDF, established in 1974, extends long-term loans for the establishment and expansion of manufacturing and industrial projects in the private sector and for electricity projects. During the first ten years of its operations, the SIDF provided loans for 843 projects in numerous industrial sectors including consumer products, chemical products, cement, building materials, and engineered products. According to an article entitled "Domestic Financing: Saudi Arabia" in *Financing Foreign Operations* (Business International Corporation, August 1985), the SIDF can fund up to 50 percent of a project's total capital requirement and usually charges an annual service fee of 2 percent.

Because SIDF loans are not limited to a specific enterprise or industry, or a group of enterprises or industries, but rather are available to a wide variety of industries, we believe they provide the appropriate commercial benchmark. Accordingly, we have compared the terms of the SIDF loans to the terms of the PIF loan taken out by Hadeed. On this basis, we preliminarily determine that the PIF loan is on terms inconsistent with commercial considerations.

To calculate the benefit to Hadeed, we multiplied the total amount of PIF funds drawn down as of the end of the review period by a benchmark rate reflecting the lower eligibility level for SIDF loans (50 percent as compared to the 60 percent Hadeed borrowed from the PIF). The benchmark was constructed by combining the commission that would be paid on an SIDF loan with the commission that would be charged on a commercial loan, each element weighted to reflect the amount of financing from each of the two sources. The resulting benefit for the review period was divided by the value of Hadeed's sales for the review period to arrive at an estimated net bounty or grant of 9.51 percent *ad valorem*.

B. Government Provision of Equipment to Hadeed

Petitioners alleged that the government of Saudi Arabia, through the Royal Commission for Jubail and Yanbu, provides infrastructure benefits, such as roads, ports, low-cost utilities, training centers, and plant sites, to specific enterprises and industries located in Jubail and Yanbu.

As discussed in section II.B below, we have preliminarily determined that the provision of basic infrastructure does not confer a bounty or grant when the following three conditions are met: (1) The government does not limit who can move into the area where the infrastructure has been built, (2) the infrastructure that has been built is used by more than a specific enterprise or industry or group thereof, and (3) those that locate there have equal access or receive the benefits of the infrastructure on equal terms. While we have preliminarily determined that the basic infrastructure is not countervailable, we must also examine whether the government has provided any specific benefits in Jubail to the carbon steel wire rod industry.

According to the response, the government built a bulk ship unloader and conveyor belt system for Hadeed. This system, which was built exclusively for Hadeed's use, unloads iron ore at the Jubail port and transports it to Hadeed's mill. The ship unloading and conveyor system was leased exclusively to Hadeed under a lease/purchase agreement concluded with the Royal Commission in 1982. Under the terms of the lease/purchase agreement, Hadeed must make annual payments over 20 years to cover the cost of the system as well as a commission fee. Such a lease/purchase agreement can be characterized as a long-term loan because the transaction amounts to a loan covering the cost of the equipment plus borrowing charges. Because the government provided this loan only to Hadeed, we preliminarily determine that it is limited to a specific enterprise.

In order to determine whether this loan was provided on terms inconsistent with commercial considerations, we compared the terms of the lease to the benchmark rate explained in section I.A above, except that the benchmark was reweighted to account for the different levels of eligibility. The commission fee charged on the loan equals the rate charged on SIDF loans; however, this commission fee applies to 100 percent of the value of the system while SIDF loans cover only 50 percent of the total project cost. Comparing this benchmark to the terms of this loan, we preliminarily determine that the lease/purchase agreement for financing the bulk ship unloader and conveyor system was provided on terms inconsistent with commercial considerations.

In order to calculate the benefit to Hadeed under this arrangement, we estimated the amount of the installments outstanding on the lease during the review period and multiplied this estimate by the difference between the lease commission fee and the benchmark rate. The resulting benefit for the review period was divided by the value of Hadeed's sales during the review period to arrive at an estimated net bounty or grant of 1.01 percent *ad valorem*.

II. Programs Preliminarily Determined Not To Confer Bounties or Grants

We preliminarily determine that bounties or grants are not being provided to manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod under the following programs.

A. Government Equity Infusions in Hadeed

Petitioners alleged that the government of Saudi Arabia, through the Saudi Basic Industries Corporation (SABIC), provided equity to Hadeed on terms inconsistent with commercial considerations. Petitioners contended that the lack of commercial viability of the steel mill investment is demonstrated by the fact that SABIC assumed a 90 percent equity participation share in Hadeed, whereas SABIC's joint venture projects are usually structured with 50 percent SABIC equity and 50 percent foreign equity. In Hadeed's case, petitioners argued that no foreign investor was willing to assume a 50 percent equity share because such an investment would not have been commercially sound.

We have consistently held that government provision of equity does not *per se* confer a subsidy. Government equity infusions bestow countervailable benefits only when they occur on terms inconsistent with commercial considerations. When there is no market-determined price for equity, it is necessary to determine whether the company is a reasonable commercial investment. Since there are no market determined prices for equity in Hadeed, we must determine whether Hadeed is equityworthy.

In previous investigations where past experience of a company is of little utility in assessing future performance, such as situations involving the

construction and startup of a newly established company or a major restructuring or expansion program, we recognized that the factors considered and the relative weight placed on such factors may differ from the analysis of an established enterprise. In particular, since historical operating and financial data are not available for a newly established company, we place greater reliance on analysis of feasibility and market studies, which are usually the only information available to investors at the time the new company was formed.

To make our equityworthiness determination in this investigation, we have examined feasibility studies prepared independently by the World Bank as well as feasibility studies done by SABIC and Korf Stahl, the two principals in the Hadeed joint venture agreement. In our assessment of these studies, we have analyzed the underlying assumptions, the projections of financial and operating performance, and the conclusions and recommendations of the studies. The World Bank studies describe the market conditions for the billets, wire rod, and reinforcing bars and make projections of sales, income, and profitability based on the market conditions. The World Bank studies, made at the time the joint venture was established, indicate that Hadeed was a commercially reasonable investment. Based on our analysis of the independent feasibility studies of the World Bank, we preliminarily determine that Hadeed has been equityworthy since its inception in 1979.

B. Basic Infrastructure in Jubail and Yanbu

Petitioners alleged that the government of Saudi Arabia, through the Royal Commission for Jubail and Yanbu, provides infrastructure benefits, such as roads, ports, low-cost utilities, training centers, and plant sites, to specific enterprises and industries located in Jubail and Yanbu.

According to the response, the government of Saudi Arabia as part of its development strategy has built basic infrastructure in Jubail, including an airport, roads, a railroad, electrical power, potable and sea water services, a waste disposal system, telecommunications, industrial parks, a hospital, a port, and various other facilities for public use. The same basic infrastructure has been built by the government in other parts of the country as well.

We have consistently held that government activities such as these constitute bounties or grants only when they are limited to a specific enterprise or industry, or a group of enterprises or industries. Moreover, we have held that where limitations on use do not result from government activities, but instead result from the inherent characteristics of the good or service being provided, the government action does not confer a countervailable bounty or grant.

Basic infrastructure facilities are, by their very nature, available for use only by companies and individuals located in the vicinity of such facilities. Roads, ports, and training centers established in a given location obviously benefit those located in that area more than they benefit firms and individuals located in other areas. Nevertheless, this does not mean that those located in close proximity to the infrastructure are receiving countervailable bounties or grants. Accordingly, the provision of basic infrastructure does not confer a countervailable bounty or grant when the following three conditions are met: (1) The government does not limit who can move into the area where the infrastructure has been built, (2) the infrastructure that has been built is used by more than a specific enterprise or industry or group thereof, and (3) those that locate there have equal access or receive the benefits of the infrastructure on equal terms.

In its response, the government of Saudi Arabia replied that it has not limited entry to Jubail to a specific enterprise or industry or group of enterprises or industries. Approximately 40 industrial facilities have been or are being established in Jubail, including a crude oil refinery, lube oil blending plant, a sulfur plant, petrochemical plants, methanol plants, a fertilizer plant, an ammonia plant, a steel drum and tank plant, a terephthalate plant, a polymer compounding plant, and various plants for producing plastic products. There are also over 75 smaller manufacturing and commercial enterprises in Jubail, including a wide variety of businesses and service companies. Moreover, the basic infrastructure (airports, roads, and public facilities, for example) is used by everyone located in Jubail. Finally, the infrastructure which the government of Saudi Arabia has constructed in Jubail is available on equal terms for use by all companies and industries located in Jubail. Because restrictions on the use of this infrastructure stem from the inherent nature of the facilities and not from any activity or action of the government of Saudi Arabia and because the infrastructure is used by a wide variety of industries, we preliminarily determine that the benefits are not limited to a specific enterprise or industry or a group of enterprises or industries within the meaning of section 771(5)(B) of the Act.

We also preliminarily determine that the basic infrastructure built by the government in Jubail is not countervailable as a regional bounty or grant. When a government decides to build industrial cities or industrial estates or any other type of infrastructure, the government activity is necessarily limited to those sites. To treat this activity as a regional bounty or grant would not be reasonable. Under such logic, the government would have to develop every square foot of the country equally or undertake no development at all in order to avoid providing regional bounties or grants. We cannot accept this interpretation. Insofar as the government does not limit which industries can locate in these areas, and does not apply different criteria for using the infrastructure in one area than in another, than there is no governmental limitation to companies in specific regions. The only limitation is due again to the inherent characteristics of the infrastructure.

In Saudi Arabia, the government has built infrastructure for a number of industrial centers. There are two industrial cities, Jubail and Yanbu, as well as industrial estates outside the major cities in the Kingdom. According to the response, the government does not limit the types of industries which can locate in these industrial centers. Nor is there any information on the record to indicate that the government has established or applied different criteria for using the basic infrastructure in one industrial center than in another. Therefore, we preliminarily determine that the provision of basic infrastructure in Jubail is not limited to a enterprise or industry or a group of enterprises or industries in a specific region.

C. Special Benefits to the Manufacturing Sector in Saudi Arabia

Petitioners alleged that the "manufacturing sector" in Saudi Arabia represents a "group of industries" targeted for development and provided with special incentives under the Law for the Protection and Encouragement of National Industries in the Kingdom of Saudi Arabia. These special incentives include: duty exemptions on imports of machinery, tools, equipment, spare parts, raw materials, and packaging; land at nominal rent for factories and employee housing; and provision of water, electricity, and gas at very low rates.

In its response, Hadeed states that it has applied for and received duty exemptions on spare parts and

consumables in 1984. Duty exemptions granted by the government are discussed below in section IV.

Hadeed reported that the rental rate on land paid to the Royal Commisson on Jubail and Yanbu is the standard rental rate charged by the government to all industries in industrial partks throughout Saudi Arabia. Hadeed also reported that it has received no discounts or rebates on water or electricity in 1984 and that the water and electrical rates charged to Hadeed in 1984 were the standard rates available to all industrial users in Jubail. With respect to gas, Hadeed is serviced by the Master Gas System which serves cities in the Eastern, Central, and Western Provinces. Hadeed pays the same rate for gas as all other companies serviced by the Master Gas System.

The provision of land, water, electricity and gas, like the building of infrastructure facilities (see section II.B "Basic Infrastructure in Jubail and Yanbu"), cannot be considered countervailable unless the government limits which industries can locate on the land or use the water, electricity and gas, or unless the government establishes criteria for using the land or using these services which are not neutral in application, but rather based on industry or regional preferences.

According to the response, the government owns and rents land to industrial users in a number of industrial centers. All users in these centers, including Hadeed, pay the same standard rental rate. Furthermore, the response indicates that Hadeed pays the standard rate charged to all industrial users of the water, electricity and gas systems. Therefore, we preliminarily determine that the provision of land, water, electicity and gas does not confer a bounty or grant because it is not limited to a specific enterprise or industry or group of enterprises or industries, or to companies in specific regions.

III. Program Preliminarily Determined Not To Be Used

In accordance with our practice of accepting for our preliminary determination a response to an allegation which denies the receipt of benefits under a program where we have no persuasive evidence showing the response to be incorrect, we preliminarily determine, subject to verification, that manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod did not use the following programs which were listed in our notice of initiation.

A. Special Benefits to Joint Ventures in Saudi Arabia

Petitioners alleged that Hadeed, a 90 percent Saudi-owned joint venture, enjoys benefits under the Foreign Capital Investment Code and the Saudi Arabian Tenders Regulations which are not available to other joint venture enterprises with lower percentages of Saudi ownership. Petitioners submit that various equity "participation" levels define "groups of industries." The alleged benefits consist of income tax holidays, government procurement preferences, exemptions from posting of tender and performance bonds, and exemptions from payment retentions.

According to the response, the income tax holidays are only available to the foreign partner in a joint venture having at least 25 percent Saudi equity participation. Hadeed reported that during its startup period, the company had no profits on which the foreign partner, Korf Stahl, could claim the tax holiday. Hadeed also stated in its response that it does not sell to the government and thus has not received any government procurement contracts. Finally, the government of Saudi Arabia stated in its response that there is no exemption from tender or performance bonds available to any company or group of companies in Saudi Arabia.

IV. Program for Which Additional Information Is Needed

A. Duty Exemptions Under the Law for the Protection and Encouragement of National Industry

In its response, the government of Saudi Arabia reported that Articles 4 and 5 of the Law for the Protection and Encouragement of National Industry provide for duty exemptions on imports of machines, tools, equipment, spare parts, packing products, raw materials, and semi-processed raw materials. Any manufacturing or industrial firm may apply to the Minority of Industry and Electricity for approval of duty exemptions, and exemptions are freely granted according to the government response.

Hadeed reported that it had applied for duty exemptions on its 1984 imports of spare parts and consumables under these provisions. According to Hadeed, since 1973 imports of all raw materials and all essential consumer goods have been duty free under Saudi tariff schedules.

Based on the informaton provided in the responses, duty exemptions for the products described in Articles 4 and 5 of the Law for the Protection and Encouragement of National Industry appear to be obtainable by all manufacturing and industrial concerns with Saudi Arabia merely by filing an application. During verification, we intend to seek further information on the review and approval processes for such requests.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of carbon steel wire rod from Saudi Arabia which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated *ad valorem* rate. The estimated net bounty or grant is 10.52 percent *a valorem* for all manufacturers, producers, or exporters in Saudi Arabia of carbon steel wire rod. This suspension will remain in effect until further notice.

Public Comment

In accordance with § 355.35 of our regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on December 20, 1985, at the U.S. Department of Commerce, Room 1414, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of the publication of this notice.

Request for a hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by December 17, 1985. Oral presentations will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within 10 days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

November 12, 1985.

[FR Doc. 85-27707 Filed 11-19-85; 8:45 am]

BILLING CODE 3510-DS-M

Computer Systems Technical Advisory Committee; Closed Meeting

November 15, 1985.

A meeting of the Computer Systems Technical Advisory Committee will be held December 10, 1985, 2:30 p.m., the Herbert C. Hoover Building, Room 3408, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee will continue December 12, in Room 6802 in the Herbert C. Hoover building, 1:30 p.m. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5 (c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c) (1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is availabe for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–27695 Filed 11–19–85; 8:45 am]

BILLING CODE 3510–DT–M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

November 15, 1985.

A meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held December 10, 1985, 9:30 a.m.–12:00 p.m., Herbert C. Hoover Building, Room 1092, 14th Street and Constitution Avenue, NW., Washington, DC. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

General Session

1. Opening remarks by the Subcommittee Chairman.

2. Presentation of papers or comments by the public.

3. a. Subcommittee proposals for changes to Service Supply License.

b. Subcommittee proposals for simplification of 1565A.

c. Subcommittee proposals for changes in the GTE.

d. Subcommittee proposals for changes of GLV limits.

e. Subcommittee proposals for changes to the amendment form.

f. Report on other Licensing Procedures Subcommittee assignments.

4. Action items underway.

5. Action items due at next meeting.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes contact Margaret A. Cornejo, (202) 377–2583.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–27696 Filed 11–19–85; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

ANAVAR Asociacion; Receipt of Application for General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. fishery conservation zone during 1986 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the regulations thereunder.

ANAVAR Asociacion, Puerto Pesquero, Vigo, Spain has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 20 pinnipeds and 20 cetaceans in the North Atlantic Ocean.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC.

Interested parties may submit written views on this application within 30 days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

Dated: November 15, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science & Technology, National Marine Fisheries Service.

[FR Doc. 85–27688 Filed 11–19–85; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA Commerce.

The North Pacific Fishery Management Council and its advisory bodies will convene public meetings, December 8–13, 1985, in Anchorage, AK, at the Anchorage Westward Hilton Hotel, as follows:

Council

On December 10, at 9 a.m., the Council will make final decisions on groundfish harvest levels for 1986, and their apportionments to U.S. and foreign fisheries. They also will consider whether to accept an offer from the Secretary of Commerce to publish a date of September 26, 1985, or other cutoff date, for any further credit for entry into the sablefish hook and longline fishery in the Gulf of Alaska should there be a limited access system developed for that fishery. The Council will review foreign allocations, vessel permits and joint venture operations for 1986, and consider industry solutions to the bycatch of king crab in joint venture trawl operations. There will be reports on domestic and foreign fisheries and Coast Guard enforcement activities, advisory panel appointments for the coming year will be announced, and the Council will review action for reauthorization of the Magnuson Fishery Conservation and Management Act. A closed session (not open to the public) will be convened to discuss personnel matters. If necessary, the Council's meeting may continue into Saturday, December 14.

Permit Review Committee

The Council's Committee will convene on Sunday, December 8, at 1 p.m., to review foreign allocations, vessel permits and joint venture applications for 1986. This public meeting will probably continue into December 9.

Scientific and Statistical Committee (SSC) and Advisory Panel (AP)

The Council's SSC will convene on Sunday, December 8, at 11 a.m., and the Council's AP will convene on December 9, at 9 a.m. Other plan team, committee and workgroup meetings may be held on short notice during the week. For further information contact Jim H. Branson, Executive Director, North Pacific Fishery Management Council, 411 West Fourth Avenue, Box 103136, Anchorage, AK 99510; telephone (907) 274–4563.

Dated: November 15, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology.

[FR Doc. 85–27687 Filed 11–19–85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Restraint Limit for Certain Man-Made Fiber Textiles Produced or Manufactured in Thailand

November 15, 1985.

The Chairman of the Committee for the implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 20, 1985. For further information contact Jane Corwin, International Trade Specialist Office of Textiles and Apparel, U.S. Department of Commerce (202) 377–4212.

Background

On September 20,, 1985 a notice was published in the **Federal Register** (50 FR 38514) which established a restraint level of 1,314,657 pounds for cotton polyester yarn in T.S.U.S.A. numbers 300.6026 and 300.6028, produced or manufactured in Thailand and exported during the ninety-day period which began on August 30, 1985 and extends through November 27, 1986. Because of an improperly charged amount, the level for this category has been filled. In the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct 1,166,400 pounds from the amount charged to the ninety-day level. In addition, 162,000 pounds of import charges which were not available when the import control level was implemented on September 26, 1985, are being charged. These charges account for imports exported during the aforementioned ninety-day period and imported during the period which began on August 30, 1985 and extended through September 25, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers were published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the implementation of Textiles Agreements.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitiate implementation of the Bilaternal Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, and August 8, 1983 Between the Governments of the United States and Thailand, I request that, effective on November 20, 1985, you deduct 1,166,400 pounds from imports charged to the restraint level established for Category 301pt. (only T.S.U.S.A. numbers 300.6026 and 300.6028) in the directive of September 17, 1985, produced or manufactured in Thailand and exported during the ninety-day period which began on August 30, 1985 and extends through November 27, 1985.

Also effective on November 20, 1985, you are to charge 162,000 to the ninety-day level. These charges are for goods exported during that period and imported during the period which began on August 30, 1985 and extended through September 25, 1985.

The Committee for the Implemenation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a)(1).

Sincerely,

Walter C. Lenhan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85–27694 Filed 11–19–85; 8:45 am]

BILLING CODE 3510-DR-M

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 85–1–84JD]

Declaration of Controversy Concerning Distribution of 1984 Jukebox Royalty Fees

In accordance with 17 U.S.C. 116(c)(3), the Copyright Royalty Tribunal (Tribunal) declares the existence of a controversy, effective December 2, 1985, concerning the distribution of royalty fees paid for 1984 performances of certain musical works by means of coin-operated phonorecord players (jukeboxes).

The Tribunal has been informed by ASCAP, BMI and SESAC, Inc. (A/B/S) of a partial agreement concerning the distribution of the 1984 jukebox fees. The Tribunal has also been informed that Italian Book Company has reached settlement with A/B/S and has withdrawn its claim. The other claimant, ACEMLA, has not entered into a settlement with A/B/S.

The Tribunal directs all claimants to submit any evidence to be considered by the Tribunal in the distribution of the jukebox royalty fees before May 15, 1986. Such evidence shall be addressed to the Chairman, Copyright Royalty Tribunal, 1111 20th Street NW., Suite 450, Washington, D.C. 20036

Dated: November 15, 1985.

Edward W. Ray,

Acting Chairman.

[FR Doc. 85–27616 Filed 11–19–85; 8:45 am]

BILLING CODE 1410-09-M

[Docket No. 85–1–84JD]

Order Granting Partial Distribution of 1984 Jukebox Royalty Fees

On November 8, 1985, ASCAP, BMI, and SESAC, Inc. (A/B/S) filed a motion for distribution of 95% of the 1984 jukebox fund. A/B/S has filed a joint claim for 100% of the jukebox fund. ACEMLA has filed a claim for 10% of the jukebox fund. A/B/S argues that although it appears that 10% of the fund is in controversy, the Tribunal should distribute 95% of the jukebox fund, A/B/S asserting that, based on previous jukebox proceedings, retaining 5% would be more than sufficient to resolve ACEMLA's claim. ACEMLA filed an opposition to distribution of 95%. ACEMLA believes, based on the growth in their catalogue of music it represents, that it has filed a reasonable claim for 10%.

The Tribunal will make a distribution of 90% of the jukebox fund on December 19, 1985 to A/B/S. Although noting that "wildly inflated claims" could "frustrate" a partial distribution, as suggested by A/B/S, the Tribunal has found no basis here to make that finding.

FOR FURTHER INFORMATION CONTACT: Edward W. Ray, Acting Chairman, Copyright Royalty Tribunal, 1120 20th Street NW., Suite 450, Washington, D.C. 20036, (202) 653–5175.

Dated: November 15, 1985.

Edward W. Ray,

Acting Chairman.

[FR Doc. 85-27615, Filed 11-19-85; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group A (Mainly Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 0900, Wednesday, 18 December 1985.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Harold Summer, AGED Secretariat, 201 Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave, electronic warfare devices, millimeter wave devices, and passive devices. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92-463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: November 15, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-27703 Filed 11-19-85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Semi-Conductor Dependency; Meetings

ACTION: Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Semi-Conductor Dependency will meet in closed session on 16 December 1985 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. This Task Force will evaluate Semi-Conductor Dependency. The Task Force's mission is threefold. First, is the assessment of ongoing and future DoD foreign dependency in the field of semi-conductors used in U.S. military systems; second is a concurrent evaluation of the impact any dependency has on the DoD's ability to execute its military mission; thirdly, the Task Force will examine the current and projected adequacy of domestic sources to supply the semi-conductor needs of operational and production military systems; whether or not domestic sources are essential; and if they are, whether or not these sources must be operational during peacetime.

Based upon this study, the Task Force will determine what, if any, actions must be undertaken to assure an adequate supply of semi-conductors for use in defense systems.

Anyone with expertise on the subject willing to contribute substantial material for the Task Force's consideration should contact either Mr. Maynard, Executive Secretary (202) 697-9216 or Col. Derrah, Military Assistant, (202) 695-4157.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

November 15, 1985.

[FR Doc. 85-27704 Filed 11-19-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 18 December 1985.

Times of Meeting: 0900-1200 hours.

Place: Pentagon 2E715B, Washington, D.C. 20310.

Agenda: The Army Science Board Steering Committee will meet for the purpose of discussing past and future Army Science Board business. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-27671 Filed 11-19-85; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Educational Media Research, Production, Distribution and Training

AGENCY: Department of Education.

ACTION: Notice of final annual funding priority for fiscal year 1986.

SUMMARY: The Secretary announces an annual funding priority for the Educational Media Research, Production, Distribution and Training program. This priority for Fiscal Year 1986 is for projects that are designed to provide information on the impact and use of captioned materials with hearing impaired individuals and those with handicapping conditions other than hearing impairment.

EFFECTIVE DATE: This notice of final annual funding priority will take effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this notice of final annual funding priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Chief, Captioning and Adaptation branch, Special Education programs, Department of Education, 330 C Street SW. (Switzer Building, Room 3511-M/S2313), Washington, DC 20202. Telephone: (202) 732-1172.

SUPPLEMENTARY INFORMATION: The Educational Media, Research,

Production, Distribution, and Training program, authorized by sections 651 and 652 of Part F of the Education of the Handicapped Act, provides financial assistance to profit and non-profit public and private agencies, organizations, and institutions for the purpose of: (a) Conducting research on the use of educational media for handicapped persons; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly involved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

The Department has, since 1959, provided captioned films for deaf children and adults, and, more recently, has provided for the closed captioning of many television programs. While the provision of captions was initially and primarily intended for hearing impaired persons, the Department is aware of increasing reports of potential and actual benefits received by persons with handicapping conditions other than deafness. Pilot information on classroom use of captioned materials with hearing children who have reading difficulties shows improvements related to such skills as sight vocabulary, prediction skills, locating skills, and comprehension/oral fluency. The simultaneous presentation of visual and auditory information afforded by captioned films and video materials for the learning disabled population has been identified as being of potential benefit, but actual demonstrations and evaluations have not as yet been subjected to analyses, nor has the field opted to undertake such studies under existing discretionary research funding authority.

This priority reflects the recognition of the potential for enhanced learning and educational growth among children who are hearing impaired and those with other handicapping conditions who are systematically exposed to captioned materials, and the need to document the nature and extent of such growth among these populations.

Summary of Comments and Responses

A notice of proposed annual funding priority was published in the Federal Register on July 31, 1985 at 50 FR 31000. The public was given thirty days in which to comment. No comments were received.

Priority

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(b)(2) and 75.105(c)(3)(i), and subject to available funds, the Secretary gives an absolute preference to each applicant which provides satisfactory assurance that the recipient will use funds made available for these projects to conduct any of the following activities: (a) Determination of the impact of captioned materials for specific subject matter areas that are used in instructional programs with persons who are hearing impaired and with persons who have handicapping conditions other than deafness; (b) studies that provide information on the nature and extent of incidental learning that occurs as a result of exposure to captioned materials in hearing impaired child and adult audiences; (c) identification of the effect of exposure to captioned materials on changes in reading and language comprehension scores in children with various handicapping conditions; or (d) clarification of the extent to which captions provide for or assist in the learning of social and cultural concepts by hearing impaired children in both school and home environments.

(20 U.S.C. 1424)

(Catalog of Federal Domestic Assistance No. 84.026; Educational Media Research, Production, Distribution, and Training)

Dated: November 15, 1985.

William J. Bennett,

Secretary of Education

[FR Doc. 85-27674 Filed 11-19-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services; Training Personnel for the Education of the Handicapped; Final Annual Funding Priority

AGENCY: Department of Education.

ACTION: Notice of Final Annual Funding Priority.

SUMMARY: The Secretary issues an annual priority for the Training Personnel for the Education of the Handicapped—Preparation of Regular Educators

EFFECTIVE DATE: This final funding priority will take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Dr. Max Mueller Division of Personnel Preparation Special Education Programs, Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511—M/S 2313), Washington, DC 20202, Telephone (202) 732-1068.

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 Final Funding Priority, however, addresses awards for Fiscal Years 1986 only under Section 632 of the Act which limits eligible applicants to State educational agencies. 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 will 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 preservice and inservice training of regular educators, including supervisors and administrators, to assist with the identification and delivery of special education and related services to children with learning disabilities, and other handicapping conditions. The objective of these projects is to develop personnel training programs for regular educators which will facilitate the Statewide delivery of comprehensive educational services to learning disabled and other handicapped 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 and other handicapped children and youth. Projects will also provide training designed to improve the accuracy of the identification of learning disabled and other handicapped children. The content and scope of the training models is limited only by a focus on State-wide efforts to improve identification of learning disabled and other handicapped children, and by emphasis on innovative approaches to serving this population through improved training of

regular educators. 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.

This notice of an annual priority is necessary to allow for the implementation of the OSERS' initiative on regular education. This initiative addresses the need to improve the quality of education for learning disabled and other handicapped children and youth in the least restrictive environment, *see* 34 CFR 300.550–300.556, and train regular education personnel in the skills, techniques, and strategies that will assist them in addressing the educational needs of children with mild learning problems who are referred to special education programs.

Summary of Comments and Responses

A notice of proposed annual funding priority was published in the **Federal Register** on July 18, 1985 (50 FR 29250) for Training Personnel for the Education of the Handicapped program. A total of nine communications were received in response to the Notice of Proposed Rulemaking. Five of the nine commenters strongly endorsed the proposed priority as written. One of these supporters also suggested additional priorities for consideration. . These suggestions will be considered in future planning, but are not relevant to this announcement. The other comments and the Department's responses are summarized below:

Comment: One commenter suggested that training of administrators be included under this priority.

Response: A change has been made. The intent of the priority was to include training of regular teachers, supervisors, and administrators. The language had been changed to clarify this intent.

Comment. One commenter suggested that the priority appeared to be limited to preservice training, and recommended that inservice also be permitted.

Response: A change has been made. The Secretary did not intend that this priority be limited to preservice training. The language has been changed to clarify this point.

Comment. One commenter, supported generally by three others, suggested that the focus on learning disabilities was too narrow.

Response: A change has been made. While integration of handicapped children is especially prevalent in the area of learning disabilities, the commenter makes a reasonable point that regular teachers need to serve a wider range of handicapped children. The language of the priority statement has been modified to emphasize learning disabilities but permit consideration of other handicapping conditions.

Comment: One commenter questioned the Department's authority to support training of regular educational personnel under Section 632 of the Education of the Handicapped Act, and recommended that this priority be thoroughly reviewed to ensure that it is consistent with congressional intent.*Response:* No change has been made. The term "teachers of handicapped children" in section 632, as opposed to "special education teachers" in section 631, is interpreted to include regular teachers, and their supervisors. Inasmuch as many handicapped children are integrated into regular education programs for at least part of their instruction, many regular educators are also teachers of handicapped children.

Comment: One commenter suggested that limited available funding should be directed to training of special educators—not extended to an additional priority area. Three additional commenters expressed general support of this position.

Response: No change has been made. The Department is concerned with the appropriate education of all handicapped children, not just those who must be placed in special education classes with special education teachers. Since most handicapped children are educated in regular classes, a priority in this area is necessary in order to address the needs of these children.

Comment: One commenter, with general support of three additional commenters, objected to the limitation on eligible applicants to State educational agencies.

Response: No change has been made. Training of regular education personnel is not authorized except under section 632. Thus, the Department cannot address this issue without the State educational agency limitation. In addition, the need for State-wide coordination of these activities requires central involvement of the State education agency. The commenter should note that States are permitted to provide this training either directly or through grants to institutions of higher education.

Comment: One commenter complained that the priority failed to emphasize the importance of interdisciplinary approaches to appropriate programming.

Response: No change has been made. The Secretary agrees with the point that many disciplines contribute to optimal educational programming for handicapped children. As stated, the priority does not exclude projects that would involve training of regular educators as part of an interdisciplinary team. We do not believe that a special emphasis on these approaches would contribute significantly toward clarifying the priority.

Comment: One commenter suggested that reference to children who have learning problems but are not handicapped to deleted because such children do not fall within the purview of the Education of the Handicapped Act.

Response: No change has been made. The reference to children with learning problems does not extend the purview of the program. This reference only indicates possible ancillary benefits of training regular educators. This information may be valuable to potential applicants to explain the context of projects under this priority. Therefore, the language is retained.

(20 U.S.C. 1432)

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: November 15, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-27675 Filed 11-19-85; 8:45 am]

BILLING CODE 4000-01-M

National Institute of Handicapped Research, Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for research fellowships for fiscal year 1986.

SUMMARY: The Secretary of Education proposes funding priorities for research fellowships to be supported by the National Institute of Handicapped Research (NIHR) in fiscal year 1986. In the past, NIHR has funded some fellowships without specifying priority areas, as well as a number of fellowships based on announced priorities. The regulations provide that the Secretary may set priorities when there are critical areas to be addressed. The Secretary has determined that research fellows are needed in the following priority areas: utilization of rehabilitation technology; rehabilitation research training and utilization; medical rehabilitation finance policy; rehabilitation information technology; rehabilitation service statistics; and mental retardation research.

Authority for the fellowship program of NIHR is contained in section 202(d) of the Rehabilitation Act of 1973, as amended by Pub. L. 95-602 and by Pub. L. 98-221.

DATE: Interested persons are invited to submit comments or suggestions regarding the proposed priorities on or before the December 20, 1985.

ADDRESSES: All written comments and suggestions should be sent to Betty Jo Berland, National Institute of Handicapped Research, Department of Education, 400 Maryland Avenue SW., Room 3070, Mail Stop 2305, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute of Handicapped Research. Telephone (202) 732-1139; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services. Requests for application forms should be made to Rheable Edwards, National Institute of Handicapped Research. Telephone (202) 732-1200.

SUPPLEMENTARY INFORMATION: The purpose of this program is to build research capacity and also to allow the Secretary to obtain the benefits of research conducted by highly qualified individuals. This research has a direct bearing on the development of programs, methods, procedures, and devices to assist in the provision of rehabilitative services to individuals.

NIHR fellowship regulations in 34 CFR Part 356, (46 FR 45312, September 10, 1981, as amended June 18, 1984 at 49 FR 24978), authorize the Secretary to establish priorities for fellowships by reserving funds to support fellowships in particular areas.

NIHR invites public comment on the merits of the proposed priorities, both individually and collectively, including suggested modifications to the proposed priorities. Comments can include factors which support the importance of a priority to handicapped individuals and other interested parties.

This notice does not solicit application proposals or concept papers. The final priorities will be selected on the basis of public comment, the availability of funds, and any other relevant Departmental considerations. These final priorities will be announced in a notice published in the **Federal Register**. That notice will also solicit fellowship applications and set the closing date.

The following six proposed priorities represent areas in which NIHR proposes to support research and related activities through special fellowships. The publication of these proposed priorities does not bind the United States Department of Education to fund fellowships in any or all of these research areas. Funding of particular fellowships depends on both the availability of funds and on responses to this notice.

Proposed Priorities

NIHR proposes to accept applications for fellowships in the following priority areas only:

• Fellow in Utilization of Rehabilitation Technology

There have been significant advances in the development of technology to enhance communication, mobility, independent living, employment, and education for disabled individuals. However, there are indications that many disabled individuals are not obtaining the maximum possible benefits of existing technology due to deficits in the systems for publicizing, distributing, and financing rehabilitative technology, aids, and devices, and in the integration of technology into the total rehabilitation service delivery system.

A fellow in this area would—

• Review the various funding resources which finance the purchase and maintenance of technological devices as well as the support services necessary to achieve full use of technology (including various significant Federal, State, voluntary, and private funding sources);

• Analyze various financing options and the long-and-short-term cost implications of each;

• Analyze the techniques and effects of publicizing technological devices for rehabilitation; and

• Review the frequency and adequacy of distribution and financing of various types of technology and determine whether certain categories of technology or types of devices require special efforts to assure more adequate distribution (e.g., so-called "orphan technologies").

• *Fellow in Rehabilitation Research Training and Utilization.*

There is a substantial mass of new knowledge in the area of rehabilitation regularly generated by research efforts, including those funded by NIHR through the Research and Training Centers (RTCs) and the Rehabilitation Engineering Centers (RECs). However, preliminary observations suggest that research accomplishment could have more impact if there were improved efforts at dissemination of information and training of relevant audiences in the utilization of research results.

A fellow in this area would—

• Assess the "state-of-the-art" in information dissemination in the rehabilitation research field, including a survey of the practices and products developed for information dissemination in the RTCs and RECs as leaders in the rehabilitation research field;

• Review current training programs designed to prepare service practitioners and other relevant audiences to use new knowledge and techniques developed through research; such a review would discover the types of audiences involved, levels, funding sources, length and intensity of training, and the knowledge bases from which curricula are developed;

• Assess the extent of collaboration among various training providers, such as RTCs and RECs, in such areas as the development of training agenda, information sharing, and shared curriculum development; and

• Develop one or more models for improved information dissemination and training procedures in major research centers, including methods of staffing, planning, materials development, audience identification, targeting audiences, and self-assessment.

• *Fellow in Medical Rehabilitation Finance Policy.*

Mechanisms and sources of payment for restorative rehabilitation services in this country are diverse and complex. The multiplicity of Federal payment and reimbursement programs, as well as statutory, policy, and procedural variations in implementing Federally-authorized programs at the State and local level are not clearly understood. In addition, there are State and private sector sources of funding for rehabilitation hospital and restorative services, but it is unclear what services are covered, who pays for which rehabilitation services, and what mechanisms of payment are used. Recent developments in payment mechanisms for medical services, such as the emergence of health maintenance organizations (HMOs), the development of Medicare's Prospective Payment System (PPS), and the continuing evolution of Preferred Provider Organizations and other competition-promoting service financing strategies seems to be fostering the proliferation of medical rehabilitation facilities. Some suggest that this apparent trend is due to the temporary exclusion of medical rehabilitation services from Medicare's PPS and its cost reduction implications. This phenomenon, however, is not well-documented or well-explained, nor are the implications clear for the availability and quality of services. The rehabilitation community should be developing new models for the deployment of funds for rehabilitative services and also defining policy issues

in which a better understanding is needed.

A fellow in this area would—

• Identify and assess Federal and State sources of payment and reimbursement for medical rehabilitation facilities and services, and describe the major private sector sources of payment and reimbursement for restorative rehabilitation services, including private health insurance, voluntary agencies, and corporate self-insurance; and

• Develop one or more models for planning for the most effective use of funds through current sources for the purchase of medical rehabilitation services.

• *Fellow in Rehabilitation Information Technology.*

In recent years there has been a proliferation of new technologies to support rapid and efficient exchange of information and communication among geographically and administratively diverse agencies. New technologies include computers, electronic mail, teleconferencing, database systems, computer-assisted training progams, and computerized assessment systems. Preliminary observation suggests that there are vast differences in the extent to which State rehabilitation agencies understand and use these technologies to support both management and service activities, including rehabilitation counseling, training, research, information sharing, assessment, job placement, and management systems.

A fellow in this area would—

• Review the use of information technologies in State rehabilitation agencies and NIHR grantees;

• Determine the patterns, frequency, and formats of information needed by State agency personnel and NIHR grantees to facilitate the performance of their tasks;

• Develop a model to assess the cost-effectiveness of these technologies in State rehabilitation agencies and NIHR grantees; and

• Propose new methods to increase or refine the volume of useful information which can be exchanged among State agencies, and between State agencies and information providers, such as NIHR grantees, and methods by which automated programs can be used by the rehabilitation counselor to improve "hand-on" serivces.

• *Fellow in Rehabilitation Service Statistics.*

There are not adequate data about the volume and type of rehabilitation serivces typically required for inpatient restoration and rehabilitation for individuals with disabilities other than spinal cord injury. Such data would be valuable in planning the deployment of resources to study, understand, and improve rehabilitation processes for individuals with these disabilities.

A fellow in this area would—

• Evaluate data from rehabilitation hospitals, rehabilitation units in general hospitals, and secondary sources such as prior studies;

• Assess the adequacy of disability categories used, and the adequacy of data on length of stay, costs, and other elements;

• Review prior studies of these issues for adequacy of methodology, availability of data and access to data sources, and findings;

• Discuss the literature and trends in duration and cost of treatment and other relationships evident in the data;

• Determine analyses which can be conducted to yield information on service delivery patterns and costs as related to diagnostic categories; and

• Propose models for future collection and coordination of data on rehabilitation service units.

• Fellow In Mental Retardation Research

In the past decade there have been major improvements in the range of opportunities available to mentally retarded individuals. Preliminary observations indicate that these developments have resulted at least in part from advances in knowledge in several areas: techniques of habilitation/rehabilitation to enhance learning and improve behavior in individuals; information to improve service delivery mechanisms and patterns; and information leading to policy adjustments such as deinstitutionalization and mainstreaming. NIHR is interested in facilitating the development of new knowledge to support further expansion of options and achievements in habilitation/rehabilitation for mentally retarded individuals. However, future planning must be based on a thorough understanding of current knowledge in rehabilitation techniques, service delivery models, and policy considerations.

A fellow in this area would—

• Review the state-of-the-art in research in areas of mental retardation related to techniques of rehabilitation intervention; effective patterns of service delivery; and policy options;

• Assess the knowledge needs to effect further improvements in opportunities for this disability category;

• Assess the adequacy of the current state of research methodology and other resources to undertake improvements in the knowledge base; and

• Suggest a reseach agenda for the next five years, including options for various goals and levels of effort.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these priorities. Written comments and recommendations may be sent to the address given at the beginning of this document. All comments received on or before December 20, 1985 will be considered before the Secretary issues final priorities. All comments submitted in response to these proposed priorities will be available for public inspection during and after the comment period in Room 3070, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 761a, 762)

(Catalog of Federal Domestic Assistance No. 84.133, National Institute of Handicapped Research)

Dated: November 15, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-27841 Filed 11-19-85; 8:45 am]

BILLING CODE 4000-01-M

Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals

AGENCY: Department of Education.

ACTION: Notice of proposed funding priorities for Fiscal Year 1986.

SUMMARY: The Secretary proposes annual funding priorities for grants for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severely Disabled Individuals. The Secretary proposes four priorities to direct funds to the areas of greatest need during Fiscal Year 1986. The proposed priorites would support applications which propose to: (a) Include effective strategies to support transition from school to work for persons with severe learning disabilities, (b) demonstrate the best practices known today to overcome barriers to employment of persons with traumatic head injuries, (c) demonstrate alternative employment opportunities for individuals who have been in sheltered employment three or more years, and (d) emphasize the matching of the abilities of handicapped workers with neuro-muscular disabilities with jobs requiring minimal or no motor

skills. These priorites will ensure wide and effective use of program funds.

DATES: Comments must be received on or before December 20, 1985.

ADDRESSES: All written comments and suggestions should be sent to Dr. James W. Moss, Associate Commissioner, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Room 3030, Mary E. Switzer Building, Department of Education, 400 Maryland Avenue, SW., MS 3212, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Robert Jones, Telephone: (202) 732–1345.

SUPPLEMENTARY INFORMATION: Grants for Special Projects and Demonstrations for Providing Vocational Rehabilitation Services to Severly Disabled Individuals are authorized by Section 311(a)(1) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 777a(a)(1)). Program regulations are established at 34 CFR Part 373. The purpose of the Special Projects and Demonstrations for the Severly Disabled program is to establish programs which hold promise of expanding or improving vocational rehabilitation and other rehabilitation services to disabled persons (especially those with the most severe disabilities), irrespective of age or vocational potential.

Eligible Applicants

States and public or other nonprofit agencies and organizations are eligible to apply for grants under this program. Applicants may apply for project support for up to 36 months.

Funds Available

Although final action on the Fiscal Year 1986 appropriation has not as yet been taken, the Department requested $91,635,000 for this program in Fiscal Year 1986 (excluding spinal cord injury projects). Of this amount, it is estimated that $2,900,000 will be available for new projects in Fiscal Year 1986, to be divided equally among four priority categories and a fifth category for applications for other severely disabled projects which do not fall under any of the four priorities. An estimated 25 new projects will be awarded at an average project award of about $115,000.

Proposed Priorities

In accordance with Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary proposes to give absolute preference as described in the subsequent subsection entitled, "Projects to be Funded," to applications submitted in Fiscal Year 1986 in response to one of several priorities to be established.

All applications will be evaluated according to criteria which appear in program regulations at 34 CFR 373.30. Proposed priorites are:

Priority 1: Learning Disabled

Projects supported under this priority must include effective strategies to support transition from school to work for persons with severe learning disabilities. The Special Projects Program of the rehabilitation Services Administration has previously supported demonstrations in the area of learning disability. The National Institute of Handicapped Research currently supports a Research and Training Center with a focus on learning disabilities plus occasional field initiated research projects in this same area. As a result, there should be an adequate research and demonstration base for the generation of new program approaches that will lead to successful employment of individuals with severe learning disabilities. The intent of this priority is to solicit applications which propose projects that would provide practical field testing of new methods coming from research and demonstrations and disseminate tested training and placement practices to encourage their adoption by others. Since time lost between leaving school and entering employment can be detrimental to disabled individuals, it is particulary important that proposed projects focus on individuals recently completing their formal education.

Priority 2: Traumatic Head Injuries

Persons who suffer traumatic head injuries often have severe problems obtaining and maintaining employment. According to information released by the National Institute of Handicapped Research, from 400,000 to 600,000 persons each year suffer severe traumatic head injury. Of these, from 30,000 to 50,000 per year are left with disabilities so severe as to preclude return to a normal life. Although such indiviudals may vary significantly in the manifestation of their disability, they frequently have severe learning impairmants coupled with loss of short term memory and limited attention span. The intent of this priority is to solicit applications which propose projects that would demonstrate the best practices known today to overcome these barriers to employment and, in so doing, would document those approaches which appear to work best with individuals with various behavioral characteristics.

Priority 3: Alternatives to Restricted, Segregated Employment

In most states there are severely disabled individuals in shelterd employment who have been there for many years because this was the only work opportunity available to them. Often these individuals have been institutionalized for some period of their lives, and therefore, this is the only work experience they have had. The purpose of this priority is to solicit applications which will demonstrate alternative employment opportunities for individuals who have been in sheltered employment three years or more, but who can become productive in less restrictive and less segregated environments if given the opportunity. Applicants may elect to demonstrate innovative employment models or base their proposed programs on knowledge already available in the areas of transitional or supported employment. Applications submitted under this priority must be designed to be more cost effective than continued sheltered employment.

Priority 4: Neuro-Muscular Disabilities

A continuing concern of the Secretary is the insufficient number of competitive employment opportunities for handicapped individuals whose disabilities cause severe motor control problems. While motor skills are essential in some occupations, there are other occupations which can be managed without motor skills or where the need for such skills can be minimized. Applications are solicited under this priority which will emphasize the matching of handicapped workers's abilities with jobs requiring minimal or no motor skills. Applicants must propose a program that includes vocational evaluation; counseling; guidance; training, if needed, by the project or other community resources; placement; and follow along services as needed. In addition, it is critical that the applicant include strategies for outreach to potential employers, providing them with informational and educational assistance, and identifying employment opporunities for disabled individuals participating in the program.

Projects To Be Funded

Applications for new projects under this program will be awarded funds in Fiscal Year 1986 to the extent available for each of the categories listed below, as follows: Awards under priority 1

(Learning Disabled) will be made for up to 20% of the money available for new projects; Awards under priority 2 (Traumatic Head Injured) will be made for up to 20% of the money available for new projects; Awards under priority 3 (Alternatives to Restricted, Segregated Employment) will be made for up to 20% of the money avaiable for new projects; Awards under priority 4 (Neuro-Muscular Disabilities) will be made for up to 20% of the money available for new projects; and Awards for other severely disabled projects which do not fall under any of the four priorities will be made for up to 20% of the money available for new projects.

Each applicant will be responsible for designating the priority category that applies to the project. If more than one priority applies, the applicant is to choose the priority it consideres most suitable. Should the Department determine that the priority category designated by the applicant is inappropriate, the applicant will be contacted. In the event there is an insufficient number of successful project applications to make up the 20% of available funds to be awarded in the specific priority category, the balance of available funds for the priority catergory will be applied equally to the other categories.

Invitation To Comment

Interested persons are invited to submit comments ard recommendations regarding the proposed priorities. Written comments and recommendations sent to the address given at the beginning of this document will be considered before the Secretary issues final priorities. All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 3030 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.

(29 U.S.C. 777a(a)(1))

(Catalog of Federal Domestic Assistance No. 84.128 Special Projects and Demonstrations Providing Rehabilitation Services to the Severely Disabled)

Dated: November 15, 1985.

William J. Bennett,

Secretary of Education.

(FR Doc. 85-27642 Filed 11-19-85; 8:45 am)

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 85-22-NG]

Natural Gas Imports; NESP Supply Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Application to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 2, 1985, of an application from NESP Supply Corp. (Supco), a corporation wholly-owned in equal shares by Algonquin Gas Transmission Company (Algonquin), Texas Eastern Transmission Corporation (Texas Eastern), and Transcontinental Gas Pipe Line Corporation (Transco), to import approximately 162,000 Mcf of Canadian natural gas per day from the offshore Venture project area in the vicinity of Sable Island, Nova Scotia. The imported volumes are to be purchased from Petro-Canada Inc. (Petro-Canada), Texaco Canada Resources Ltd. (Texaco), and Nova Scotia Resources (Ventures) Limited (NSRVL) in amounts of approximately 90,000, 42,000 and 30,000 Mcf per day, respectively, over a period of 20 years beginning on the date of first regular delivery. The gas imported for Supco's account will be resold immediately to pipelines and distributor customers located in the U.S. Northeast and Mid-Atlantic regions. It is now anticipated that facilities will be ready for testing during a run-in period commencing on May 1, 1990.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene or notices of intervention, and written comments are invited.

DATE: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m. on December 20, 1985.

FOR FURTHER INFORMATION CONTACT:

Robert M. Stronach (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-098, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9622

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: The Venture project area producers, made up of the three Supco suppliers, Petro-Canada, Texaco, and NSRVL, plus Canterra Energy Ltd. (Canterra) and Mobil Oil Canada Ltd. (Mobil), developed the offshore Venture area in the vicinity of Sable Island, Nova Scotia. The Venture area has currently estimated recoverable reserves of approximately 2.5 trillion cubic feet of natural gas and anticipated total average daily deliverability of natural gas for export of 300,000 Mcf. The three Supco suppliers have a 54 percent interest in the project which entitles them to export 162,000 Mcf of Canadian natural gas per day, while Canterra has a 2 percent interest and Mobil a 44 percent interest, equal to export entitlements of 6,000 and 132,000 Mcf per day, respectively.

Supco's application contained copies of natural gas sales agreements with Petro-Canada and NSRVL for the importation of a total of 120,000 Mcf per day, 90,000 from Petro-Canada and 30,000 from NSRVL, and stated that it is in the process of finalizing a similar agreement with Texaco for an additional 42,000 Mcf per day. Each agreement allows Supco to purchase additional daily quantities that may be available, but the suppliers are not required to deliver gas in excess of 115 percent of Supco's then-effective daily contract levels. Deliveries to Supco are expected to start on May 1, 1990, at the beginning of the run-in period, and to continue for a 20-year period from the date of first regular delivery.

The agreements with the suppliers provide that the annual volumes of imported gas be split in equal shares between the pipeline companies which own Supco (Algonquin, Texas Eastern, and Transco) and distribution companies in the Northeastern and Mid-Atlantic states. The annual contract quantity is currently estimated to be approximately 49 Bcf, and 50 percent of this volume would be available to the distributor customers on a firm basis to meet winter market demand, with 50 percent available to the Supco owners as alternate gas suppliers during summer months when distributor customers may not be purchasing any or all of the import quantities. The distributor customers are not identified and Supco's application does not indicate that any contracts have been signed with these prospective customers. The contracts also contain minimum take provisions which require Supco to take 50 percent of the daily

contract quantity during the months of October through April and 50 percent of the daily contract quantity, on an average daily basis, each month during May through September in order to ensure efficient operation of the suppliers' gas processing plant.

The agreements with its suppliers also provide that Supco shall take or pay for at least 70 percent of the annual contract quantity allocated to pipelines and 90 percent of the annual contract quantity allocated to distributors. If in any contract year Supco has paid for gas not taken, the make-up provisions allow it to take such gas during the next four contract years if the annual take-or-pay volume of gas has been met for that particular contract year. If Supco has been unable to make up all gas paid for but not taken during the four contract years prior to expiration of the 20-year term, the agreements are to be extended for one year to enable it to recover the remaining unrecovered gas. At the end of the one-year extension, Supco will receive a refund equal to the money paid for unrecovered gas, if any, less the price of gas made available to Supco during the extension period but which it refused to take. The contracts establish adjustable pricing provisions with a single commodity price. Separate initial base prices at the U.S.-Canada border are established for pipeline gas and distributor gas which are to be adjusted monthly by pricing formulae in accordance with changes in the price of competitive fuel oils in the areas where the gas will be consumed. The initial base prices, determined in late 1983 and early 1984, were $3.30 (U.S.) per MMBtu for pipeline gas and $4.74 (U.S.) per MMBtu for pipeline gas and $4.74 (U.S.) per MMBtu for distributor gas. For September 1985, the adjusted price was $2.89 per MMBtu for pipeline gas and $4.33 per MMBtu for distributor gas, resulting in an average price of $3.61 per MMBtu if pipelines and distributors take the same quantity. Supco or the suppliers may request that the pricing methodology be renegotiated at any time during the term of the agreement, but not more than once a year, if the prices are not competitive in the markets served.

Supco will not own or operate any natural gas facilities to import the Canadian gas. The gas delivered by the suppliers will be received by the New England States Pipeline Company (NESP) for Supco's account. NESP is a general partnership comprised of AGT Gateway Corp., A.G. New England States Inc., Texas Eastern New England, Inc. and Transco-New England Pipeline Company which are affiliates of Algonquin, NOVA, an Alberta corporation, Texas Eastern, and Transco, respectively. NESP will construct and operate the pipeline facilities from the U.S.-Canada border at Calais, Maine, to a proposed point of interconnection with existing facilities of Algonquin in Massachusetts. Supco states that the potential environmental impact of the proposed NESP facilities will be evaluated when an application is filed with the FERC seeking authorization to construct and operate those facilities.

In support of its application, Supco states that natural gas from the Venture project area represents a secure, reliable, long-term source of supply that will offset an anticipated decline in domestic production from committed reserves. Supco anticipates that gas purchased by distributor customers will be resold as high priority, winter service, and proposes that these customers, up to their annual contract quantity, will have first call on deliveries of imported gas any day of the year. Supco states that the price of Canadian supplies will be competitive with alternative energy supplies and will remain responsive to changes in market conditions throughout the term of the agreements with its suppliers. Moreover, Supco states that the agreements will provide the needed flexibility to meet the daily and seasonal demand for natural gas in the Northeastern and Mid-Atlantic states, that there is a demonstrated need for the proposed import of Canadian gas on a long-term basis, and that the Venture project area gas represents a significant new source which will be available to meet this need.

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to invervene or notice of intervention, as applicable, and written comments. Any perosn wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. They must be filed no later than 4:30 p.m., December 20, 1985.

A decision will be made on the basis of the information now in the record supplemented by comments filed in response to this notice. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, conference or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Supco's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 8, 1985.

Robert L. Davies,

Acting Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-27708 Filed 11-19-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Proposed Form EIA-846, Manufacturing Energy Consumption Survey

AGENCY: Office of Energy Markets and End Use, Energy Information Administration, Department of Energy.

ACTION: Notice of intent to conduct a pilot test.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) has received clearance from the Office of Management and Budget (OMB) to conduct a pilot test of Form EIA-846, the manufacturing Energy Consumption Survey (MECS). The pilot test will be conducted with a sample of approximately 100 manufacturing establishments. The questionnaires will be mailed to the selected establishments by no later than November 18, 1985. A copy of the revised data collection form and instructions are presented in this notice (copy reproduced following this notice). These materials have been revised in accordance with comments received from OMB.

FOR FURTHER INFORMATION CONTACT: John L. Preston (202) 252-1128, Office of Energy Markets and End Use, Energy Information Administration, EI-652, Room 1F-093, Mail Stop 1H-053, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: On October 18, 1985, the EIA received approval from OMB to conduct a pilot test of the MECS, Form EIA-846 and instructions. The purpose of this pilot test is to determine whether the questionnaire and instructions are complete and understandable to potential respondents prior to conducting a full-scale survey in 1986. The questionnaire and instructions to be tested are identical to those which are being considered for the full-scale survey except that the pilot survey will collect data for calendar year 1984 and the full-scale survey will collect data for 1985. The full-scale survey proposal will require a separate clearance from OMB.

The pilot survey will be conducted for EIA by the Survey Research Laboratory (SRL) of the University of Illinois. The forms will be mailed to a sample of 100 manufacturing establishments (or their corporate headquarters) on or before November 18, 1985. Participation in this pilot survey is mandatory for the selected establishments. The questionnaires are to be returned to SRL postmarked no later than December 18, 1985. All respondents will be debriefed on methodological isues.

The resulting data will be used only for testing purposes and, for that reason, the EIA has developed a special masking procedure to assure confidentiality of the pilot study data.

Respondents will be permitted to multiply or divide each submitted value by a uniform factor known only to them. This procedure will disguise the true values while allowing respondents to the pilot survey to logically work through the questionnaire. In addition to these procedures, respondents, if they wish, also may elect to claim exemption from public disclosoure under the Freedom of Information Act in accordance with the instructions provided on the first page of the questionnaire.

Issued in Washington, DC, November 8, 1985.

Dr. H. A. Merklein,

Administrator, Energy Information Administration.

Provisions for Confidentiality

Because this is a pilot survey, the results will be used only to determine whether the questionnaire and instructions are understandable to the respondent. It is only necessary that you work through the questionnaire using data which are internally consistent. True consumption data are not necessary for this pilot test. Therefore, in order to keep your energy data confidential, you are permitted to disguise them by multiplying or dividing each entry in the questionnaire by a single uniform factor known only to you.

It is important that you use the same constant factor for each numerical entry you make on this questionnaire. Otherwise, the data you submit will not be internally consistent, and will not help us to determine whether the questionnaire and instructions are clear. You should not indicate that you have elected to follow this procedure, nor should you divulge the factor you have chosen.

In addition to, or in place of this procedure you may, if you wish, claim exemption from disclosure under the Freedom of Information Act by following the directions at the top of the first page of the questionnaire. The full-scale survey will be conducted (subject to OMB approval) in 1986, with the Bureau of the Census serving as the collection agent. The information submitted to the Bureau will remain confidential under the provisions of title 13, section 9 of the U.S. Code.

General Instructions for the Manufacturing Energy Consumption Survey

A. Who Should Report?

This survey is mandatory under the Federal Energy Administration Act of 1974, P.L. 93-275. A report is required from each establishment selected for the survey. No substitutions are permitted. Failure to respond may result in criminal fines, civil penalties, and other sanctions are provided by law.

B. When is the report due?

The questionnaire should be returned no later than 30 days after you receive it. Please use the enclosed return envelope. If it has been misplaced, send the questionnaire to: (address will be supplied when form is mailed).

C. How Is A Manufacturing Establishment Defined?

A manufacturing establishment is an economic unit at a single physical location where the mechanical or chemical transformation of materials or substances into new products is performed. These operations are generally conducted in facilities described as plants, factories, or mills and characteristically use power driven machines and material-handling equipment. The assembly of components of manufactured products is also considered manufacturing. Also included is the blending of materials such as lubricating oil, plastics, resins, or liquors.

D. Suppose there are two or more establishments at the same physical location. Which should respond?

If it is not clear which establishment has been selected for this survey, call (telephone number will be supplied when form is mailed) for further instructions.

E. What Activities Should Be Included?

Include all activities conducted within the establishment, e.g., manufacturing, fabricating, processing and assembly; maintenance of plant and equipment; receiving, shipping, warehousing and storage; research; recordkeeping; health, safety, cafeteria, and other services.

If an establishment operates as a single economic unit, but produces several lines of products, the report should cover the activities of the entire facility.

F. What Period Should The Report Cover?

Data should be reported for the calendar year 1984. If your records are maintained on a fiscal year basis which does not coincide with the calendar year, but which ends between November 1 and February 28 inclusive, fiscal year data may be substituted. If your fiscal year ends between March 1 and October 31 inclusive, reasonable estimates for calendar year 1984 data will be acceptable.

If the selected establishment was acquired or sold during 1984, the report data should cover the period of operation by your company only.

G. May Estimates Be Provided Rather Than Actual Data?

Actual data should be provided when available and obtainable. In the even that such records are not maintained or are not readily available, reasonable estimates may be substituted.

H. How will the information submitted on this questionnaire be kept confidential?

For the purposes of this pilot survey, you may disguise your data by multiplying or dividing each entry on the questionnaire by a single uniform factor known only to you. In addition to, or in place of this procedure you may, if you wish, claim exemption under the Freedom of Information Act in accordance with the instructions provided on the cover sheet of the questionnaire.

Instructions for Section I—Combustible Energy Sources

General Instructions

Energy sources used in manufacturing can be divided into two groups: combustible (capable of being burned), and noncombustible (such as electricity, steam, and hot water). The purpose of section I is to obtain data on 1984 fuel consumption, feedstock use, and related data for the combustible energy sources. Similar data for nomcombustible energy sources will be collected in section II. Examples of combustible energy sources are given below.

Energy sources commonly purchased or produced for use as fuels or feedstocks (and reporting units) include:

- natural gas (1,000 cu. ft.)
- coal (bituminous, anthracite, lignite) (short tons)
- coal coke (including breeze) (short tons)
- crude oil (barrels, 42 gallons)
- gasoline (1,000 gallons)
- distillate oil (#1, #2, or #4 fuel oil and diesel) (barrels, 42 gallons)
- residual oil (#5 or #6 fuel oil and navy special) (barrels, 42 gallons)
- propane, butane, LPG (1,000 pounds)
- roundwood (i.e., wood cut specifically for use as a fuel) (MMBtu)
- Other

Combustible energy sources commonly produced as byproducts of manufacturing processes (and reporting units) include:

- blast furnace gas (million Btu)
- coke oven gas (million Btu)
- hydrogen (million Btu)
- still gas (million Btu)
- petroleum coke (barrels, 42 gallons)
- other waste gases (million Btu)
- wood chips, bark and wood waste (50% moisture basis) (million Btu)
- pulping/black liquor (bone dry basis) (short tons)
- waste oils and tars (barrels, 42 gallons)
- other

Specific Instructions

Column 1: Six energy sources have already been preprinted in Column 1. These are: natural gas, crude oil, residual and distillate fuel oil, motor gasoline, and LPG. From the above lists of combustible energy sources, determine which additional ones were available for use at this establishment during 1984.

Enter the names of the energy sources in the spaces provided in column 1. Use continuation sheets if more space is required. All such energy sources should be listed in column 1 with the following exception. Any energy source whose sole means of supply to the establishment in 1984 was as a byproduct should be entered in column 1 *provided that* some or all of it was consumed as a fuel onsite during 1984. For example, if the only supply of ethane at an establishment in 1984 was as a byproduct, and it was all subsequently used as a feedstock, and/or sold, it should not be listed in column 1. However, if some of the ethane was consumed as a fuel onsite, it should be reported. If ethane was also purchased and/or transferred in, it should be listed in column 1 regardless of its subsequent use.

After you have listed the energy sources in column 1, please provide the following information for each listed source. Enter a zero for any quantities that do not apply.

Column 2: Enter the unit of measurement for reporting each energy source listed in Column 1. The units of measurement provided on the above list of combustible energy sources should be used if possible; if you use a different unit of measurement, and no straightforward conversion is possible, enter your units of measure. Alternatively, you may report all quantities in British thermal units (Btu) if you prefer. In any case, *specify the unit of measurement you have selected.*

Column 3: For each listed energy source, enter the quantity that was delivered to this establishment site in 1984 as a result of a purchase agreement. Include only those quantities that were delivered in 1984, regardless of when payment was made. Exclude any energy sources that were transferred or produced onsite, or for which payment was made in-kind.

Column 4: Enter the total expenditures for the purchased quantities reported in Column 3. Include all expenditures regardless of when payment actually was made.

Column 5: Enter the total quantities that were:

1. produced by this establishment as a byproduct of its manufacturing activities, or
2. produced from captive (onsite) mines and wells in 1984.

Column 6: Enter the quantity that was consumed as a fuel on this site for the production of heat, steam, power, or generated electricity. There are two ways in which the entries for this column can be derived. The most direct approach consists of "process/equipment" accounting. This approach requires that records of the actual consumption of each energy source be available, or that these quantities be estimatable based on the output of the equipment. For example, a manufacturing plant may keep specific records of the quantities of fuels actually burned. Alternatively, it may be possible to estimate these quantities based upon, for example, the amount of steam produced.

The second approach is an "input-output" accounting approach. This method consists of estimating the total consumption of a fuel based upon the following accounting identity:

Inputs		Outputs
Opening stocks 1984 purchases Transfers in + Onsite production	equal	Closing stocks 1984 sales Transfers out Fuel consumption + Feedstock consumption

The respondent should select the approach that is most suitable and least burdensome.

Column 7: Enter the quantity that was consumed as a feedstock, raw material, additive, or ingredient on this establishment site.

Column 8: Enter the total storage capacity onsite as of December 31, 1985.

Include any capacity that is dedicated or leased for storage of energy sources owned by other establishments. Report the shell capacity, i.e., the full capacity of storage tanks.

Column 9: This item is for methodological evaluation. Please complete it *strictly* in accordance with the following instruction which accompanied the 1981 Annual Survey of Manufacturers, Form MA-100 (mu), conducted by the Bureau of the Census:

Report the quantity of each purchased energy source consumed during 1984. A purchased energy source is considered to be a substance that was purchased or transferred from outside of the defined boundaries of the establishment in which it was consumed, for the production of heat, power, or generated electricity. Conversely, any fuel substance that is both produced and consumed within the same establishment, such as coal converted to coke, is not considered a purchased energy source, but instead, a raw material which is not to be reported.

Instructions for Section II—Noncombustible Energy Sources

General Instructions

The purpose of Section II is to collect 1984 consumption and production data for noncombustible energy sources, in particular electricity and steam. Other noncombustible energy sources, such as hot water, should be included by using or duplicating the steam subsection on the questionanire.

Specific Instructions—Electricity

Item 1a—Enter the quantity of electricity that was delivered to this establishment site in 1984 as a result of a purchase agreement. Include only those quantities that were delivered in 1984, regardless of when payment was made. Exclude any amounts that were transferred or produced onsite, or for which payment was made in-kind.

Item 1b—Enter the total expenditures for the purchased quantities reported in item 1a. Include all expenditures regardless of when payment actually was made.

Item 2—Record all other inputs of electricity from outside the establishment that were not reported in item 1.

Item 3—For purposes of this item, electrical cogeneration is defined as the production of electric energy and another form of useful energy (such as heat or steam) through the sequential use of energy. Report electricity cogenerated from all energy sources, including renewable sources.

Item 4—Report all electricity generated directly as the sole product of a renewable energy source. Any produced as part of a cogeneration process should be reported in item 3. Electricity generated from geothermal steam which is then itself used, should be included in item 3.

Item 5—Self-explanatory.

Item 6—For purposes of this item, utilities are companies that are engaged primarily in producing and/or delivering electricity.

Item 7—Report all dispositions of electricity not covered in item 6.

Specific Instructions—Steam

Item 1a—Enter the quantity of steam that was delivered to this establishment site in 1984 as a result of a purchase agreement. Include only those quantities that were delivered in 1984, regardless of when payment was made. Exclude any amounts that were transferred or produced onsite, or for which payment was made in-kind.

Item 1b—Enter the total expenditures for the purchased quantities reported in item 1a. Include all expenditures regardless of when payment actually was made.

Item 2—Report all quantities of steam brought in from outside the establishment other than that reported in item 1.

Item 3—Self-explanatory.

Item 4—Self-explanatory.

Instructions for Section III—Fuel Switching

General Instructions

The purpose of this section is to provide estimates of your establishment's capability to switch consumption between petroleum-based fuels and other fuels without permanent disruption of your production schedule. *All replacement amounts entered in this section should be based on your production schedule and total fuel consumption at your establishment during 1984.*

Answer each question in section III for both "Technical Switching Capability" and "Practical Switching Capability" as defined below.

Note.—Crude oil, residual oil, and distillate will be collectively referred to in the instructions as "oil".

Technical Switching Capability (questionnaire column 1)

Technical capability is your ability to switch into and out of oil given your existing physical plant with, at most, only minor adjustments to combusters and without permanently disrupting your production schedule. Technical switching capability is present when:

- Combusters are already capable of burning a variable mixture of two or more fuels simultaneously.
- Combusters can use, or can be converted to use within 30 days with only minor adjustments, one or more alternative fuels.
- Two or more separate combusters can be used more or less intensively to alter overall fuel mix while maintaining production.

Note that technical capability is *not* limited by practical constraints.

Practical Switching Capability (questionnaire columns 2 and 3)

Practical capability is your ability to switch into and out of oil while limited by practical constraints such as:

- Government environmental restrictions;
- Binding fuel contracts in place; or
- Supplies of alternative fuels cannot be established within 30 days of the decision to switch.

In column 3 please indicate, in order of importance, the reasons for any practical limitations to fuel switching. Possible reasons for observed differences between technical and practical switching ability are listed at the end of section III.

Specific Instructions

Item 1—Report the total amount of oil, consumed in 1984, that could have been replaced by alternate fuels. The alternate fuels need not have been actually consumed in 1984, but technical switching capability from oil (as defined above) must have been present.

Item 2—Report the amount of oil consumed in 1984 that could have been replaced by each alternate fuel. The amount reported for each fuel must be no more than the amount reported in Item 1. The sum of the amounts for all fuels reported in Item 2 may be greater than the total reported in Item 1 if multiple-fired combusters are present at the establishment.

Item 3—Report the maximum amount of your actual total consumption in 1984 that could have been consumed as oil, that is, if you had consumed oil to the maximum extent possible. Oil need not have been actually consumed in 1984, but technical switching capability to oil must have been present.

BILLING CODE 6450-01-M

FORM EIA-846

UNITED STATES
DEPARTMENT OF ENERGY
ENERGY INFORMATION ADMINISTRATION

FORM APPROVED
OMB NUMBER: 1905-0166
FORM EXPIRES: 04/30/86

1985 Manufacturing Energy Consumption Survey - PILOT TEST

This report is mandatory under the Federal Energy Administration Act of 1974, P.L. 93-275. Failure to respond may result in criminal fines, civil penalties and other sanctions as provided by law.

The information reported on these forms may be (i) exempt from disclosure to the public under the exemption for trade secrets and confidential commercial information specified in the Freedom of Information Act, 5 U.S.C. 552 (b) (4) (FOIA), or (ii) prohibited from public release by 18 U.S.C. 1905. However, before the determination can be made that particular information is within the coverage of either of these statutory provisions, the person submitting the information must make a showing, satisfactory to the Department of Energy, concerning its confidential nature. Therefore, respondents wishing to claim such exemption must state specifically (on an element-by-element basis, if possible), in a letter accompanying submission of this form, why they consider the information concerned to be a trade secret or other proprietary information, whether such information is customarily treated as confidential information by these companies and the industry, and the type of competitive harm that would result from disclosure of the information. In accordance with the provisions of 10 CFR 1004.11, DOE's Freedom of Information Act Regulations, DOE will determine whether the information submitted should be withheld from public disclosure if DOE receives the responses but does not receive a request with substantive justification that the information submitted should not be released to the public. DOE may assume that the respondent does not object to disclosure to the public of any information submitted by it on the forms.

1. Name and physical location of establishment.

NAME

NUMBER AND STREET

CITY, TOWN, VILLAGE, ETC.

COUNTY STATE ZIP

MAIL LABEL

(Please correct any error in name and mail address on label, including ZIP Code.)

Note: For purposes of this pilot study, respondents are permitted to disguise their numerical entries on the questionnaire by multiplying or dividing them by an undisclosed factor. See enclosed instructions for details.

Name of Energy Source (Combustible Fuels and Feedstocks) <1>	Units Used for Reporting <2>	Enter the quantity of purchased energy sources delivered to the establishment in 1984. (include purchases from all sources) <3>	Enter the cost, including delivery charges, of the amount in column <3>. <4>	Enter the quantity of energy sources produced onsite. (i.e., byproducts from use of feedstocks or raw materials, or captive mines or wells) <5>	Enter the Quantity Consumed as a Fuel in 1984. <6>	Enter the Quantity Consumed as a Feedstock in 1984. <7>	Enter the Storage Capacity (shell) <8>	Enter the Quantity Consumed as a Fuel in 1984. (according to Census definition) <9>
Natural Gas								
Crude Oil								
Residual								
Distillate								
Motor Gasoline								
LPG								

SECTION II - NON-COMBUSTIBLE ENERGY SOURCES

Electricity

1a. During 1984, how much electricity was purchased from utilities or other firms, and delivered to the establishment? Quantity: _____ Megawatthours

1b. What was the total cost of this purchased electricity? $_____,_____,_____

2. During 1984, how much electricity was transferred from outside establishments and delivered to the establishment? Do not include the purchases recorded in ITEM 1a. Quantity: _____ Megawatthours

3. During 1984, how much electricity was generated onsite by cogeneration? Quantity: _____ Megawatthours

4. During 1984, how much electricity was generated onsite from renewable sources?
   a. from Solar Quantity: _____ Megawatthours
   b. from Wind Quantity: _____ Megawatthours
   c. from other renewable sources Quantity: _____ Megawatthours

5. During 1984, how much electricity was generated onsite by conventional generation and other processes besides cogeneration or renewable sources? Quantity: _____ Megawatthours

6. During 1984, how much electricity was sold to utilities? Include both sales and transfers for credit. Quantity: _____ Megawatthours

7. During 1984, how much electricity was transferred to other establishments? Do not include amounts reported in ITEM 6. Quantity: _____ Megawatthours

Steam

1a. During 1984, how much steam was purchased from utilities, dealers, or other firms, and delivered to the establishment? Quantity: _____ Million Btus

1b. What was the total cost of this purchased steam? $_____,_____,_____

2. During 1984, how much steam was transferred from outside establishments and delivered to the establishment? Do not include the purchases recorded in ITEM 1a. Quantity: _____ Million Btus

3. During 1984, how much steam was generated onsite from renewable sources?
   a. from Solar Quantity: _____ Million Btus
   b. from other renewable sources Quantity: _____ Million Btus

4. During 1984, how much steam was sold or transferred to another establishment? Quantity: _____ Million Btus

SECTION III - FUEL SWITCHING WITH RESPECT TO CRUDE OIL OR OIL PRODUCTS

This section deals with your ability to substitute alternate fuels for oil, and your ability to substitute oil for other fuels. Indicate the change in volume of oil that you could accommodate, given your 1984 total consumption and operating conditions. "Fuel switching capability" is defined as your ability to vary your oil consumption by making use of existing multiple-fuel capabilities with, at most, minor adjustments in your physical plant. Read the instructions concerning the definitions of "Technical" and "Practical" ability to switch fuels before proceeding with this section.

	Technical switching capability (barrels) <a>	Practical switching capability (barrels) <b>	Practical limitations to switching (if columns <a> and <b> differ) ** <c>
(1) How much of the oil you consumed in 1984 could have been replaced by alternate fuels?	_____ bbl	_____ bbl	[ ][ ][ ][ ]
(2) How much of the oil you consumed in 1984 could have been replaced by:			
natural gas.....	_____ bbl	_____ bbl	
other fuel(s) (specify):			
_____.....	_____ bbl	_____ bbl	
_____.....	_____ bbl	_____ bbl	
_____.....	_____ bbl	_____ bbl	
(May add to more than total in (1))			
(3) Of your total 1984 energy consumption, what is the maximum that could have been in the form of oil?	_____ bbl	_____ bbl	[ ][ ][ ][ ]

** Reasons for the difference between technical capability to switch and practical capability to switch (column <c>).

1> Federal government environmental restriction(s).
2> State/Local government environmental restriction(s).
3> Binding contract in place.
4> Restrictions under the Powerplant and Industrial Fuel Use Act of 1978.
5> Fuel supply cannot be established within 30 days of the decision to switch.

Other (specify):
6> _____
7> _____
8> _____
9> _____

SECTION IV - REMARKS

SECTION V - CONTACT PERSON

Name of person to contact regarding this report		Telephone--->	Area code	Number	Extension
Name of company		Address (Number and street, city, State, ZIP code)			
Period covered--->	From: Mo. | Day | Year	To: Mo. | Day | Year	Signature of authorized person	Title	Date

[FR Doc. 85-27633 Filed 11-19-85; 8:45 am]
BILLING CODE 6450-01-C

Federal Energy Regulatory Commission

[Docket No. RP82-125-017]

Tennessee Gas Pipeline Co.; Rate Filing

November 15, 1985.

Take notice that on November 8, 1985, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing the following revised tariff sheets:

Original Volume No. 1
- Substitute Twelfth Revised Sheet No. 20
- Seventeenth Revised Sheet No. 21
- Substitute Eleventh Revised Sheet No. 22

Sixth Revised Volume No. 2
- Substitute Third Revised Sheet No. 2AA
- Substitute Fifth Revised Sheet No. 2BB
- Substitute Fourth Revised Sheet No. 2CC
- Substitute First Revised Sheet No. 2DD

The tariff sheets are to be effective November 1, 1985. The revised tariff sheets reflect rates consistent with the Commission's disposition in Opinion Nos. 240 and 240-A of issues regarding (1) the appropriate allowance for negative salvage, (2) advertising expenses, (3) allocation of Tenneco Inc. A & G expenses and (4) TAPCO expenses. The revised tariff sheets are filed in accord with the Stipulation and Agreement (November 29, 1983) in the referenced proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27664 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-10-M

[Docket No. CP81-358-001]

Transcontinental Gas Pipe Line Corp.; Proposed Change in FERC Gas Tariff

November 12, 1985.

Take notice that on November 5, 1985, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Original Volume No. 2:

Tariff sheet	Proposed effective date
First Revised Sheet Nos. 2328 through 2341	Oct. 4, 1985.
Revised Original Sheet No. 2328-A	Do.
First Revised Sheet No. 2328-A	Oct. 6, 1985.

Transco states that the subject tariff sheets reflect revisions to Transco's Rate Schedule X-235, which is a transportation agreement between Transco and United Gas Pipe Line Company (United), dated November 25, 1980, as amended April 2, 1982, and authorized by the Commission in a certificate issued in Transco Docket No. CP81-358 on August 27, 1981. In the amendatory agreement dated April 2, 1982, Transco and United agreed to revise their transportation arrangement to add new points of delivery to United within Transco's production area at the existing points of interconnection between Transco and United located at (1) Gibson, Terrebonne Parish, Louisiana, (2) Victoria County, Texas, and (3) Vinton, Calcasieu Parish, Louisiana. On June 7, 1985, Transco filed a Petition to Amend Certificate in the aforementioned proceeding to obtain authorization for the additions, and the April 2, 1982 amendatory agreement was included therein as Amended Exhibit P. On October 4, 1985, the Commission issued an order in Docket No. CP81-358-002 authorizing the additional points of delivery. Transco states that the purpose of the instant tariff filing is to include the three new points of delivery and to reflect Transco's currently effective transportation charges applicable to the subject transportation arrangement.

A copy of the instant filing has been served upon United.

Transco proposes that the revised tariff sheets, with the exception of First Revised Sheet No. 2328-A, be made effective October 4, 1985, the date on which the revised service commenced. Transco requests that First Revised Sheet No. 2328-A, which is being filed to include the charge currently applicable to Transco's deliveries to United under the subject transportation agreement at the originally certificated Pike County, Mississippi point of delivery within zone 1 of Transco's market area, be made effective on October 6, 1985 to correspond to the effective date of such charge as approved in Docket No. RP85-196.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 19, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27665 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-61-000, et al.]

Batten Kill Hydro Associates, et al. (Middle Greenwich Hydropower Project); Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

November 13, 1985.

Comment Date

Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Batten Kill Hydro Associates (Middle Greenwich Hydropower Project)

[Docket No. QF86-61-000]

On October 22, 1985, Batten Kill Hydro Associates (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 400 kilowatt hydroelectric facility is located in Washington County, New York.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves

only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

2. Beckett Paper Company

[Docket No. QF86-57-000]

On October 21, 1985, Beckett Paper Company (Applicant), a wholly owned division of Hammermill Paper Company of 1540 East Lake Road, Erie, Pennsylvania 16533 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the existing Hammermill's Beckett Paper Company Division paper mill in the City of Hamilton, Butler County, Ohio. The facility will consist of a combustion turbine-generator and a supplemental natural gas-fired heat recovery boiler (HRB). The steam from the HRB will be used for paper drying requirements in the paper mill. The power production capacity of the facility will be 8.9 MW. The primary energy source will be natural gas (95%) and liquid petroleum gas and/or #2 Distillate Fuel Oil (5%). No electric utility or electric utility holding company will have any ownership interest in the facility. Installation and operation of the facility will commence in 1988.

3. Beverly Enterprises, Inc. (Southern Division)

[Docket No. QF86-170-000]

On October 31, 1985, Beverly Enterprises, Inc. (Applicant), P.O. Box 4400, Jackson, Mississippi 39216 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitute a complete filing.

The proposed topping-cycle cogeneration facility will be located at Park Lake Health Care Center, 1700 Monroe Avenue, P.O. Box 1388, Winter Park, Florida 32790. The facility will consist of a Waukesha internal combustion engine/generator, an absorption chiller/heater and a domestic hot water heat exchanger. The heat energy from engine exhaust and jacket water coolent will be used for absorption chiller and heating needs at the nursing home. The power production capacity of the facility will be 71 kW. The primary energy source will be natural gas. No electric utility or electric utility holding company will have any ownership interest in the facility. The construction of the facility is expected to begin in December 1985.

4. Harp Energy, Inc.

[Docket No. QF86-93-000]

On October 29, 1985, Harp Energy, Inc. (Applicant), of No. 4 Embarcadero, Suite 2160, San Francisco, California 94111 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located on a site within the Barry Holding Company Lease in Kern County, California. The facility will consist of a natural gas fired combustion turbine-generator and waste heat boiler producing steam. The power production capacity will be 3.5 megawatts. The steam will be used for enhanced oil recovery. Installation will begin in April 1986.

5. Locks Hydro Associates

[Docket No. QF86-91-000]

On October 28, 1985, Locks Hydro Associates c/o Greenwood Ironworks, (Applicant), of 420 Grove Avenue, Petersburg, Virginia 23803 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,025 kilowatt hydroelectric facility is located on the Appomattox River near the Town of Petersburg, in Dinwiddie and Chesterfield Counties, Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

6. Pan Pacific Hydro (Cherry Flat Project)

[Docket No. QF86-96-000]

On October 29, 1985, Pan Pacific Hydro (Applicant), of 215 Main Street, Weaverville, California 96093 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,200 kilowatt hydro electric facility is located in Cherry Flat on Stuart's Fork of Trinity River, in Trinity County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

7. Pan Pacific Hydro (Stoney Creek Project)

[Docket No. QF86-99-000]

On October 29, 1985, Pan Pacific Hydro (Applicant), of 215 Main Street, Weaverville, California 96093 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 350 kilowatt hydro electric facility is located on Stoney Creek in Trinity County, California.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

8. Synergics, Inc. (Harvell Hydropower Project)

[Docket No. QF86-62-000]

On October 22, 1985, Synergics, Inc. (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403

submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 850 kilowatt hydroelectric facility is located on the Appomattox River near the City of Petersburg, in Dinwiddie County, Virginia.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

9. Synergics, Inc. (Nockamixon Hydropower Project)

[Docket No. QF86-63-000]

On October 22, 1985, Synergics, Inc. (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,480 kilowatt hydroelectric facility is located on the Tohickon River near the Towns of Bedminster and Nockamixon, in Bucks County, Pennsylvania.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

10. Synergics, Inc. (Carlyle Dam Hydropower Project)

[Docket No. QF86-64-000]

On October 22, 1985, Synergics, Inc. (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 8 megawatt hydroelectric facility is located on the Kaskaskia River near the Town of Carlyle, in Clinton County, Illinois.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

11. Synergics, Inc. (Albion Hydropower Project)

[Docket No. QF86-65-000]

On October 22, 1985, Synergics, Inc. (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 900 kilowatt hydroelectric facility is located on the Blackstone River near the Town of Lincoln, in Providence County, Rhode Island.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

12. Synergics, Inc. (Georgetown Hydropower Project)

[Docket No. QF86-66-000]

On October 22, 1985, Synergics, Inc. (Applicant), of 410 Severn Avenue, Suite 409, Annapolis, Maryland 21403 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 700 kilowatt hydroelectric facility is located on the C & O Canal off the Potomac River near Georgetown in the City of Washington, D.C.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

13. Tultex Corporation

[Docket No. QF86-59-000]

On October 22, 1985, Tultex Corporation (Applicant), of P.O. Box 5191, Martinsville, Virginia 24115 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,320 kilowatt hydroelectric facility is located in Rockingham County, North Carolina.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

14. Tultex Corporation

[Docket No. QF86-60-000]

On October 22, 1985, Tultex Corporation (Applicant), of P.O. Box 5191, Martinsville, Virginia 24115 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 1,320 kilowatt hydroelectric facility is located in Rockingham County, North Carolina.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such

applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

15. Urban Waste Disposal, Inc.

[Docket No. QF86-56-000]

On October 21, 1985, Urban Waste Disposal, Inc. (Applicant), of 225 Park Avenue, New York, New York 10017 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located at 6600 S.E. 58th Avenue, Ocala, Florida. It will utilize methane gas generated from the Baseline Landfill and hot gasses generated from the pyrolysis in incoming waste to feed gas turbine engine generators to produce electricity. Four gas turbine engine-generator units will be phased in over a period of time. The initial facility will utilize one unit and will produce approximately .83 megawatts of electricity. It is estimated that 3.31 megawatts will be produced when the facility is fully operational.

16. Whitefield Power & Light Associates—New Hampshire

[Docket No. QF84-444-002]

On October 21, 1985, Whitefield Power & Light Associates (Applicant), of Leavitt Road, Pittsfield, New Hampshire 03263 submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 13.8 MW facility located on Airport Road in Whitefield Industrial Park in Whitefield, New Hampshire, will generate electric power from biomass in the form of wood chips, bark and fines as a primary energy source. The project power is expected to be sold to Public Service Company of New Hampshire. The Applicant owns no other facility located within one mile of the proposed facility. No electric utility or electric utility holding company has any ownership interest in the facility.

17. Wormser Engineering, Inc. and Martin Energy, Inc.

[Docket Nos. QF86-87-000 QF86-87-001]

On October 28, 1985, Wormser Engineering, Inc. and Martin Energy, Inc. (Applicants), of 225 Merrimac Street, Woburn, Massachusetts 01801 submitted for filing an application for certification of a facility as a qualifying small power production and cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility or topping-cycle cogeneration facility will be located at 291 Milton Road in North Rochester, New Hampshire. The facility will consist of a steam generator and an extraction/condensing steam turbine-generator. The extracted steam will be used for process heating of the fiber products and for space heating. The net power production capacity of the facility will be 18 MW. The primary energy source will be coal or wood chips, bark and fines or petroleum coke or anthracite culm. No electric utility, electric utility holding company will have any ownership interest in the facility. There are no facilities located within one mile of the facility which will use same energy source and which are owned by the Applicant.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27655, Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-77-000, et al.]

Cogenic Energy Systems, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.

November 12, 1985.

Comment date

Thirty days from publication in the Federal Register, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Cogenic Energy Systems, Inc.

[Docket No. QF86-77-000]

On October 24, 1985, Cogenic Energy Systems (Applicant), of 9353 Activity Road, Suite D, San Diego, California 92126, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Holiday Inn/Embarcadero, San Diego, California and consists of three internal combustion engine generator units and waste heat recovery equipment. The net electric power production is 300 kW. The primary source of energy is natural gas.

2. Cogenic Energy Systems, Inc.

[Docket No. QF86-79-000]

On October 25, 1985, Cogenic Energy Systems, Inc. (Applicant), of 9353 Activity Road, Suite D, San Diego, California 92126, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Holiday Inn/Harbor View, San Diego, California and consists of one internal combustion engine generator unit and waste heat recovery equipment. The net electric power production is 100 kW. The primary source of energy is natural gas.

3. Cogenic Energy Systems, Inc.

[Docket No. QF86-80-000]

On October 25, 1985, Cogenic Energy Systems, Inc. (Applicant), of 9353 Activity Road, Suite D, San Diego, California 92126, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the

Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Santa Barbara County Hospital, Santa Barbara, California and consists of one internal combustion engine generator unit and waste heat recovery equipment. The net electric power production is 350 kW. The primary source of energy is natural gas.

4. Cogenic Energy Systems, Inc.—Rosewood Retirement Home

[Docket No. QF86-84-000]

On October 28, 1985, Cogenic Energy Systems, Inc. (Applicant), of 9353 Activity Road, Suite D, San Diego, California submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be installed at the Rosewood Retirement Home, 1301 New Stine Road, Bakersfield, California 93309. The facility will consist of an internal combustion engine-generator fueled by natural gas with waste heat recovery from both jacket water and exhaust gases. The electric power production capacity will be 238 kilowatts. Installation will begin in February 1986.

5. Cogenic Energy Systems, Inc.—Consolidated Film Industries

[Docket No. QF86-85-000]

On October 28, 1985, Cogenic Energy Systems, Inc. (Applicant), of 9353 Activity Road, Suite D, San Diego, California 92126 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be installed at Consolidated Film Industries, 959 North Seward Street, Hollywood, California 90038. The facility will consist of an internal combustion engine-generator fueled by natural gas with waste heat recovery from both jacket water and exhaust gases. The electric power production capacity will be 1,270 kilowatts. Installation will begin in November 1985.

6. Cogenic Energy Systems, Inc.—Anaheim Memorial Hospital

[Docket No. QF86-86-000]

On October 28, 1985, Cogenic Energy Systems, Inc. (Applicant), of 9353 Activity Road, Suite D, San Diego, California 92126 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be installed at Anaheim Memorial Hospital, 111 West La Palma, Anaheim, California 92803. The facility will consist of an internal combustion engine-generator fueled by natural gas with waste heat recovery from both jacket water and exhaust gases. The electric power production capacity will be 958 kilowatts. Installation will begin in November 1985.

7. Beaver Wood Joint Venture

[Docket No. QF82-127-001]

On September 17, 1985, Beaver Wood Joint Venture (Applicant), of 324 Harlow Street, Bangor, Maine 04401 (c/o Alternative Energy, Inc.) submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is located in Chester, Maine and consists of an indirect-fired gas turbine power cycle combined with an exhaust-fired steam cycle. The electric power production capacity is 16.9 MW. The primary source of energy is biomass in the form of wood.

8. Bridgewater Steam Power Co.

[Docket No. QF86-53-000]

On October 21, 1985, Bridgewater Steam Power Co. (Applicant), of RFD 3, Box 188, Laconia, New Hampshire 03246 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility is located at U.S. Route 3, Bridgewater, New Hampshire. The primary energy source is biomass in the form of wood chips. The electric power production capacity is 15 megawatts. There is no planned usage of natural gas, oil or coal by the facility.

9. Indeck Energy Services, Inc.

[Docket No. QF86-39-000]

On October 15, 1985, Indeck Energy Services, Inc. (Applicant), of 1111 S. Willis Avenue, Wheeling, Illinois 60090, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has ben made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Turners Falls, Massachusetts 01376, adjacent to the Strathmore Paper Company. The facility will consist of one coal-fired boiler, a steam turbine and necessary auxiliary equipment. The facility will provide process steam for the Strathmore Paper Company. The maximum electric power production will be 12 MW.

10. International Cogeneration Corporation

[Docket No. QF86-74-000]

On October 24, 1985, International Cogeneration Corporation (Applicant), of 320 Walnut Street, Suite 105, Philadelphia, Pennsylvania 19106 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at the Seaview Condominium, Longport, New Jersey. The facility consists of a reciprocating engine generator and waste heat recovery equipment. The net electric power production capacity is 59 kw. The primary energy source of the facility will be natural gas.

The application for commission certification of qualifying status of a cogeneration facility includes a request for exemption from incremental pricing for the natural gas used at the facility.

11. International Cogeneration Corporation

[Docket No. QF86-75-000]

On October 24, 1985, International Cogeneration Corporation (Applicant), of 320 Walnut Street, Suite 105, Philadelphia, Pennsylvania 19106 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located at Lakeland Hills YMCA, 100 Fanny Road, Mountain Lakes, New Jersey 07046. The facility consists of a reciprocating engine generator and waste heat recovery equipment. The net electric power production capacity is 59 kw. The primary energy source of the facility will be natural gas.

The application for commission certification of qualifying status of a cogeneration facility includes a request for exemption from incremental pricing for the natural gas used at the facility.

12. Lithium Corporation

[Docket No. QF86-94-000]

On October 29, 1985, Lithium Corporation of America (Applicant), of 449 North Cox Road Gastonia, North Carolina 28053 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Bessemer City, Manufacturing Plant, Hwy. NC 161, Bessemer City, North Carolina 28016. The facility will contain one stoker-fired boiler and a steam turbine-generator set. Exhaust steam will be used for process at the Bessemer City Chemical Manufacturing Plant. The primary energy source will be coal. The net electric power production capacity will be 5.5 megawatts. The facility is expected to start commercial operation in August 1986.

13. Sycamore Cogeneration Company

[Docket No. QF86-51-000]

On October 21, 1985, Sycamore Cogeneration Company (Applicant), of Box 5197-X, Bakersfield, California 93388 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle cogeneration facility will be located in the Kern River oil field near Bakersfield, Kern County, California. The facility will consist of four combustion turbine-generator sets and four heat recovery boilers (HRB). The steam from the HRB will be used for thermally enhanced oil recovery. The electric power production capacity of the facility will be 300 MW. The primary energy source will be natural gas, backed up by low sulphur distillate fuel oil. 50% of the ownership interest is held by Western Sierra Energy Company which is a wholly owned subsidiary of Southern California Edison Company, an electric utility Company. The installation of the facility will begin in February 1986 with a scheduled start-up date of June 1987.

14. Wagner & Brown

[Docket No. QF86-50-000]

On October 28, 1985, Wagner & Brown (Applicant), of Suite 1100 The Summit, 300 N. Marienfeld, P.O. Box 1714, Midland, Texas 79702 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitues a complete filing.

The topping-cycle cogeneration facility is located 17 miles west of Sterling City, Texas and consist of two reciprocating engine generator units, waste heat recovery equipment, and water desalination equipment. The electric power production capacity is 2 MW. The primary source of energy is natural gas.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27654 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures; Key Oil Co., Inc.

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 to adversely affected parties $81,016 gained as a result of a consent order which the DOE entered into with Key Oil Company, Inc., a reseller-retailer of petroleum products located in Tuscaloosa, Alabama. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

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 Indpendence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to case number HEF-0105.

FOR FURTHER INFORMATION CONTACT: Nancy L. Kestenbaum, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

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 sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $81,016 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Key Oil Company, Inc. (Key, Inc.). The funds were provided to the DOE by Key, Inc. to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal price regulations with respect to its sales of refined petroleum prodacts during the period March 1, 1979, through December 31, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who purchased motor gasoline from Key, Inc. In order to obtain a refund, a claimant will be required to submit a schedule of its monthly purchases from Key, Inc. and to demonstrate that it was injured by Key, Inc.'s pricing practices. Applicants must submit specific documentation regarding the date, place, and Volume of product purchased, whether the increased costs were absorbed by the claimant or passed through to other purchasers, and the extent of any injury alleged to have

been suffered. An applicant claiming $5,000 or less, however, will be required to document only its purchase volumes.

Applications for refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

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. All comments received in this proceeding will be available for public inspection between 1:00 and 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, DC 20585.

Dated: November 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Key Oil Company, Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0105.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Key Oil Company, Inc. (Key, Inc.).

I. Background

Key, Inc. is a "reseller-retailer" of motor gasoline as that term was defined in 10 CFR 212.31 and is located in Tuscaloosa, Alabama. A DOE audit of Key, Inc.'s records revealed possible violations of the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart F. The audit alleged that between March 1, 1979 and December 31, 1979, Key, Inc. overcharged its customers by $69,650.94 in its sales of motor gasoline.

In order to settle all claims and disputes as to the firm's sales of motor gasoline during the audit period, Key, Inc. and the DOE entered into a consent order on September 18, 1981. The consent order refers to ERA's allegations of overcharges, but notes that there was no finding that violations occurred. The consent order also states that Key, Inc. does not audit to any violations of the regulations.

Under the terms of the consent order, Key, Inc. was required to deposit $69,650.94, plus installment interest into an interest bearing escrow account for ultimate distribution by the DOE. The first payment was received on October 1, 1980 and the last on July 13, 1984.[1]

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing 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 identify readily those persons who might have been injured by alleged overcharges or to ascertain readily the amount of any such injury. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), *and Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by Key, Inc. pricing practices during the consent order period March 1, 1979 through December 31, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributd in a second-stage proceeding. *See, e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Key, Inc. refund proceeding, we proposed to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Key, Inc.'s alleged overcharges. As we have done in many prior refund cases, we propose to adopt certain presumptions, which will be used to help determine the level of a purchaser's injury.

The use of presumptions in refund cases is specifically authorized by applicable DOE procedural regulations. The presumptions we plan to adopt in this case are used to permit claimants to participate in the refund process at a reasonable cost, and will enable OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

First, we plan to adopt a presumption that the allleged overcharges were dispersed evenly among all sales of products made during the consent order period. In the past, we have referred to a refund process that uses this presumption as a volumetric system. Second, we propose to adopt a presumption of injury with respect to small claims. Third, we plan to adopt a presumption that spot purchasers were not injured by the alleged overcharges. As a separate matter, we are making a proposed finding that ultimate consumers of Key, Inc. products were injured by Key, Inc.'s pricing practices.

The pro rata, or volumetric, refund presumption assumes that alleged overcharges by a consent order firm were spead equally over all gallons of product marketed by that 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. This presumption is rebuttable, however. A claimant which believes that it suffered a disproportionate share of the alleged overcharges may submit evidence proving this claim in order to receive a larger refund. *See, e.g., Sid Richardson Carbon and Gasoline Co. and Richardson Products Co./Siouxl and Propane Co.*, 12 DOE ¶ 85,504 (1984), and cases cited therein at 88,164.

Under the volumetric system we plan to adopt, a claimant will be eligible to receive a refund equal to the number of gallons purchased from Key, Inc. times the volumetric factor. The volumetric factor is the average per gallon refund and in this case equals $.0288 per gallon.[2] In addition, successful

[1] The total consent order payment including installment interest amounted to $81,016. We have used this figure as the principal amount. As of October 31, 1985, the escrow account contained $113,198 including accrued interest.

[2] This figure is derived by dividing the $81,016 principal amount by the 2,808,541 gallons of products sold by Key, Inc. during the consent order period.

claimants will receive a proportionate share of the accrued interest.

The second presumption we plan to use is that purchasers of Key, Inc.'s products seeking small refunds were injured by Key, Inc.'s pricing practices. There are a number of bases for such a presumption. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). Firms which will be eligible for refunds were in the chain of distribution where the alleged overcharges occurred and therefore experienced some impact of the alleged overcharges. In order to support a specific claim of injury, a firm would have to compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive. With small claims, the cost to the firm of gathering the necessary information and the cost to OHA of analyzing it could easily exceed both the expected refund and the benefits from any additional precision. Consequently, without some simplified procedures, some injured parties would be effectively denied an opportunity to receive a refund. This presumption eliminates the need for a claimant to submit and OHA to analyze extensive, detailed proof of what resulted from the initial impact of the alleged overcharges.

Under the small-claims presumption, a claimant that is a reseller or retailer will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a certain level. Several factors determine the value of this threshold. One is the concern that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case, where the refund amount is fairly low, $5,000 is a reasonable value for the threshold. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984); *Office of Special Counsel*, 11 DOE ¶ 85,226 (1984) (*Conoco*), and cases cited therein.

Unlike threshold claimants, an applicant which claims a refund in excess of $5,000 will be required to document its injury. A reseller will be required to demonstrate that it maintained a "bank" of unrecovered product costs in order to show that it did not pass along the alleged overcharges to its own customers.[3] In addition, a reseller claimant must show that market conditions would not permit it to pass through those increased costs. *See e.g., Triton Oil and Gas Corporation/Cities Service Company*, 12 DOE ¶ 85,107 (1984); *Tenneco Oil Company/Mid-Continent Systems, Inc.*, 10 DOE ¶ 85,009 (1982).

We propose that retailer claimants be subject to a different requirement for demonstrating injury than that outlined above for reseller applicants. We believe a modification of the injury requirement for retailers is justified because during most of the Key, Inc. consent order period, specifically from July 16, 1979 to December 31, 1979, retailers of motor gasoline were not required to compute MLSPs with reference to May 15, 1973 selling prices and increased costs. *See* 10 CFR 212.93; 45 FR 29546 (1980). Instead, effective July 16, 1979, a retailer was required to calculate its MLSP under a fixed-margin approach set forth in the new rule. Unrecouped increased product costs could no longer be banked for later recovery. *Id.*

We note that retailer applicants in other refund proceedings are generally unable to claim refunds above the threshold amount if they lack a showing of banks of unrecouped product costs, since banks tend to prove that a firm absorbed rather than passed through its increased product costs. However, for the purposes of this proceeding, we propose that retailers which lack banks subsequent to July 16, 1979 may still file a claim for a refund for that period which exceeds the small claim threshold.[4] Retailers should, however, submit bank calculations from March 1, 1979 through July 16, 1979. In addition, like resellers, they must show that market conditions prevented them from recovering those increased costs. Indicators of a competitive disadvantage include a detailed description of lowered profit margins, decreased market shares, or depressed sales volumes.[5]

If a reseller or retailer made only spot purchases, we propose that it should not receive a refund since it is unlikely to have experienced injury. This is true because

> [t]hose customers tend to have considerable discretion in where and when to make purchases and would therefore not have made spot market purchases of [the firm's product] at increased prices unless they were able to pass through the full amount of [the firm's] quoted selling price at the time of purchase to their own customers.

Vickers, 8 DOE at 85,396–97. The same principles apply in this case. Accordingly, we propose that resellers and retailers which made only spot purchases from Key, Inc. not receive refunds unless they present evidence which rebuts this presumption and establishes the extent to which they experienced injury.

As noted, we are proposing a finding that end user—or ultimate consumer—purchasers whose business operations are unrelated to the petroleum industry were injured by the alleged overcharges settled in the consent order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order 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 alleged 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*, 10 DOE ¶ 85,072 (1983) (*PVM*); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209, and cases cited therein.[6] Therefore, to prove injury, ultimate consumers must document only their purchase volumes.

In addition, we propose that firms whose prices for goods and services are regulated by a governmental agency or by the terms of a cooperative agreement not be required to demonstrate that they absorbed the alleged motor gasoline overcharges. In the case of regulated firms, *e.g.*, public utilities, any overchargees incurred as a result of Key, Inc.'s alleged violations of the DOE regulations would routinely be passed through to the firms' customers. Similarly, any refunds received by such firms would be reflected in the rates they were allowed to charge their

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[3] This injury requirement reflects the nature of the petroleum price regulations in effect beginning on August 19, 1973, and ending on July 16, 1979 for retailers, and on May 1, 1980 for resellers. Under the original rules, a reseller or retailer of motor gasoline was required to calculate its maximum lawful selling price (MLSP) by summing its selling price on May 15, 1973 with increased costs incurred since that time. A firm which was unable to charge its MLSP in a particular month could "bank" any unrecovered increased product costs, so that those costs could be recouped in a later month, if possible. *See* 10 CFR 212.93; 45 FR 29546 (1980).

[4] The cost bank requirement has been relaxed in other instances regarding the change in the pricing regulations for motor gasoline. *See* Tenneco Oil Company/United Fuels Corporation, 10 DOE ¶ 85,005 at 88,017 n.1 (1982) (Tenneco).

[5] Resellers or retailers who claim a refund in excess of $5,000 but who cannot establish that they did not pass through the price increases will be eligible for a refund of up to the $5,000 threshold, without being required to submit further evidence of injury. Firms potentially eligible for greater refunds may choose to limit their claims to $5,000. *See* Vickers, 8 DOE at 85,396. *See also* Office of Enforcement, 10 DOE ¶ 85,029 at 88,122 (1982) [Ada].

[6] If a firm is both a spot purchaser and an ultimate consumer, it will be treated as an ultimate consumer and will not be required to make any showing of injury beyond that required of other ultimate consumers.

customers. Refunds to agricultural cooperatives would likewise directly influence the prices charged to their member customers. Consequently, we propose adding such firms to the class of claimants that are not required to show that they did not pass through to their customers cost increases resulting from alleged overcharges. *See, e.g., Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,244 (1982) (*Pennzoil*). Instead, those firms should provide with their application a full explanation of the manner in which refunds would be passed through to their customers and how the appropriate regulatory body or membership group will be advised of the applicant's receipt of any refund money. Sales by cooperatives to nonmembers, however, will be treated the same as sales by any other reseller.

As in previous cases, only claims for at least $15 will be processed. We have found through our experience in prior refund cases that the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds should file an Application for Refund pursuant to 10 CFR 205.283. In its application, a claimant must include a schedule, broken down by product, of its monthly purchases from Key, Inc. Applicants should also provide all relevant information necessary to support their claim in accordance with the presumptions stated above. A claimant must also state whether it has previously received a refund, from any source, with respect to the alleged overcharges underlying these proceedings. Each applicant must also state whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should either state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. Finally, an applicant should report whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any changes in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Key Oil Company, Inc. pursuant to the consent order executed on September 18, 1981, will be distributed in accordance with the foregoing decision.

[FR Doc. 85-27636 Filed 11-19-85; 8:45 am]
BILLING CODE 6450-01-M

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 to adversely affected parties $75,102.50 obtained as a result of a consent order which the DOE entered into with Power Pak Company, Inc., a wholesale purchaser reseller located in Houston, Texas. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of the 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, DC 20585. All comments should conspicuously display a reference to case number HEF-0155.

FOR FURTHER INFORMATION CONTACT: Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6602.

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 sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $75,102.50 plus accrued interest obtained by the DOE under the terms of a consent order entered into with Power Pak Company, Inc. (Power Pak). The funds were provided to the DOE by Power Pak to settle all claims and disputes between the firm and the DOE regarding the manner in which the firm applied the federal allocation regulations with respect to its sales of motor gasoline during the period August 1, 1979, through December 31, 1979.

OHA proposes that a two-stage refund process be followed. In the first stage, OHA has tentatively determined that a portion of the consent order funds should be distributed to firms and individuals who were unable to purchase their adjusted base period allocations of motor gasoline from Power Pak during the consent order period. In order to obtain a refund, each claimant will be required to submit enough information to demonstrate that it was injured by Power Pak's alleged allocation violations. The specific requirements for proving injury are set forth in the following Proposed Decision and Order. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Some residual funds may remain after all meritorious first-stage claims have been satisfied. OHA invites interested parties to submit their views concerning alternative methods of distributing any remaining funds in a subsequent proceeding.

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. All comments received in these proceedings will be available for public inspection between 1:00 and 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, DC 20585.

Dated: November 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Petitioner: Power Pak Co., Inc.
Date of Filing: October 13, 1983.
Case Number: HEF-0155.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Power Pak Co., Inc.

I. Background

Power Pak is a "wholesale purchaser reseller" of refined petroleum products as that term was defined in 10 CFR § 211.51 and is located in Houston, Texas. A DOE audit of Power Pak's records revealed possible violations of the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, Subparts A and F. The DOE alleged that between August 1, 1979, and December 31, 1979, Power Pak failed to supply certain of its base period customers with their adjusted based period allocations of motor gasoline.

In order to settle all claims and disputes between Power Pak and the DOE regarding the firm's sales of motor gasoline during the period covered by the audit, Power Pak and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of allocation infractions, but notes that there was no finding that violations occurred. Additionally, the consent order states that Power Pak does not admit that it violated the regulations.

Under the terms of the consent order, Power Pak was required, in a series of installments, to deposit $66,201, plus interest, into an interest-bearing escrow account for ultimate distribution by the DOE. Power Pak made its final payment on August 19, 1983.[1]

[1] Power Pak paid $75,102.50 including installment interest into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Power Pak account stood at $101,664.95 as of October 31, 1985.

II. Proposed Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing 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 identify readily those persons who likely were injured by alleged regulatory violations or to ascertain readily the amount of such persons' injuries. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by Power Pak's allocation practices during the consent order period August 1, 1979, through December 31, 1979. If any funds remain after all meritorious first-stage claims have been paid, they may be distributed in a second-stage proceeding. *See e.g., Office of Special Counsel*, 10 DOE ¶ 85,048 (1982) (*Amoco*).

A. Refunds to Identifiable Purchasers

In the first stage of the Power Pak refund proceeding, we propose to distribute the funds currently in escrow to claimants who demonstrate that they were injured by Power Pak's alleged allocation violations. Many potential claimants are listed in Appendices 1 and 2.[2] According to the information contained in the ERA audit files, all of these firms purchased less than their adjusted base period allocation entitlements for at least one of the months during the consent order period. However, since there could be a variety of reasons for why a particular firm purchased less than its monthly allocation of motor gasoline, in all likelihood only some of the firms listed in Appendices 1 and 2 will actually claim that they were subjected to and injured by the alleged allocation violations. In order to assess those claims, we propose to adopt certain presumptions.

The two presumptions we plan to adopt in this case are used to enable OHA to consider refund applications in the most efficient and equitable way possible in view of the limited resources available. First, we plan to adopt a presumption that a claimant was not injured by the alleged allocation violations unless it took some contemporaneous action to mitigate its injury. In addition, we plan to adopt a presumption than an applicant was not injured if it purchased all of its allocated products during the consent order period.

The basis of the contemporaneous mitigation presumption is that any firm that was injured by an alleged allocation violation would have been more immediately aware of its injury than a firm whose purported injury was due to price overcharges whose effect could be marginal. Therefore, we would expect that a party which was injured by a supply disruption of an allocated product would immediately seek redress by (1) filing a complaint with or otherwise notifying the appropriate agency officials, *see* 10 CFR 205.201(a)(d), or (2) filing a private lawsuit under section 210 of the Economic Stabilization Act, or (3) taking some other action to mitigate its injury. This, we have concluded that while imposing this limitation woud tend to prevent spurious claims and promote speed and efficiency in processing applications for refund, it would present no impediment to parties who were actually injured by Power Pak's alleged allocation violations. Accordingly, we will presume that a party which had not taken some action to mitigate the effects of alleged allocation violations by Power Pak prior to the date of the consent order does not have a meritorious claim. *See Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,202 (1982) (*Tenneco*), and *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,243 (1982) (Pennzoil).

Secondly, we propose to adopt a presumption that if, during the course of the entire consent order period, a claimant received aggregate volumes of motor gasoline at least equal to its adjusted base allocation for that period, it was not injured by Power Pak's alleged failure to supply correct volumes during certain months. We believe that this presumption is justified in order to limit eligibility for refunds to only those firms that were most adversely affected by Power Pak's alleged allocation violations. *Aztex Energy Company*, 12 DOE ¶ 85,116 at 88,356 (1984).

Each applicant should submit enough information to demonstrate that its claim is not spurious, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, we will consider a number of equitable factors such as, for example, whether the alleged

[2] Appendix 1 lists potential applicants for which we have complete addresses. In addition to publishing this Proposed Decision and Order in the Federal Register, we will contact these customers directly. Since we have no addresses for the potential claimants listed in Appendix 2, we will accept information regarding the present locations of these purchasers for a period of 90 days following publication of a final Decision and Order in this proceeding.

violation had a significant deleterious impact on the claimant, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action. *Tenneco*, 9 DOE at 85,207; *Pennzoil*, 9 DOE at 85,246. In accordance with our prior decisions, claimants who make a reasonable demonstration of an allocation violation may receive a refund based on the net profits lost as a result of the failure to receive the allocated products. *Aztex Energy Company*, 12 DOE at 88,356 (1984).

As in previous cases, only claims for at least $15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

B. Applications for Refund

Any purchaser claiming a portion of the consent order funds will be required to file an Application for Refunds pursuant to 10 CFR 205.283. In its application, a claimant must include:

(1) A description of any actions taken prior to the September 1, 1981 consent order date by which it attempted to mitigate the injury, resulting from Power Pak's alleged allocation violations;

(2) Its adjusted base period allocation of motor gasoline from each of its suppliers for each month of the consent order period;

(3) Its actual purchases of motor gasoline from each supplier during each month of the consent order period;

(4) A description of its efforts to locate alternative supplies of motor gasoline; and

(5) A computation of lost net profits sustained as a result of Power Pak's alleged allocation violations.

A claimant must also state:

(6) Whether it has previously received a refund, from any source, with respect to the alleged allocation violations underlying these proceedings;

(7) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they they do not claim a refund; and

(8) Whether it is or has been involved as a party in DOE enforcement or private, section 210 actions. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d).

C. Distribution of Remaining Consent Order Funds

In the event that money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed. We encourage the submission by interested parties of proposals which address alternative methods of distributing any remaining funds.

It is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Power Pak Co., Inc. pursuant to the consent order executed on September 1, 1981, will be distributed in accordance with the foregoing decision.

Appendix 1.—Potential Claimants

Bear Creek Tire & Auto, 5608 Highway 6 North, Houston, TX 77084
Condo Oil & Gas Co., 3419 Mercer, Houston, TX 77027
Clarke Bottling Co., 1 Clarke Drive, Conroe, TX 77301
Community Grocery, 1485 West, New Caney, TX 77357
Corner Food Store #4, 706 Greens Road, Houston, TX 77060
Corner Food Store #5, 10028 Bissonnet, Houston, TX 77036
Corner Food Store #6, 5103 F M 1960 Rd. E, Houston, TX 77073
Eiflex Research and Exploration, P.O. Box 73108, Houston, TX 77090
Four M Market, 3001 F M 1266, League City, TX 77573
Growing Concern, 6021 Winsome, Houston, TX 77057
Gullo-Haas Toyota, 8335 North Freeway, Houston, TX 77068
H&M Food Mart, 3599 Spring Stuebner Rd., Spring, TX 77379
Handy Man, Inc., 6215 Frazier, S., Conroe, TX 77301
Leland Lincoln Mercury, 9645 North Freeway, Houston, TX 77037
Oil Chemical, 505 Hadley, Houston, TX 77002
Reneau Roofing, 1014 Gatecrest Drive, Houston, TX 77032
Sunny's #25, 9514 Richmond Ave., Houston, TX 77063
Tomball Conoco, 1335 W. Main, Tomball, TX 77350
Wanda Petroleum, P.O. Box 45896, Houston, TX 77045
Webb's Grocery & Feed, 33042 F M 2978, Magnolia, TX 77355
World Trade, P.O. Box 60398, Houston, TX 77060

Appendix 2.—Potential Claimants, No Address Available

Alright Parking	Crosley #2
Bargain Barn	De Montrond Buick
Bellville	Express Stop #2
Big Fulton	Fowler's
Big Tin Barn	Friendswood
Budget	Frizzell Pontiac
Charles Way	Fulton Car Wash
Corner Food Store #1	Galveston #2
Corner Food Store #2	Harvey's
Corner Food Store #3	Herman Miller
Crosley #1	Home Telephone
Huntsville Freeway	Plains Machinery
I-10 (#202)	Porter Fina
J.H.J. Venture	Post Oak
Lake Conroe Forest	Roadrunner C/W
Luke Johnson Ford	S & M Food
MPG Oil	Sam Montgomery
Margin Drive-in	Scarborough's
Martinez Conoco	Sunny's #1
Martin's	Tanner's
Max Mahaffrey	W. Columbia
McCarty's	Western C/W
National Precast	Willis
Park Place	3-75

[FR Doc. 85-27635 Filed 11-19-85; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of September 30 Through October 4, 1985

During the week of September 30 through October 4, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Robert J. Grix, 10/1/85, HFA-0306

Robert J. Grix filed an Appeal from a denial by the Manager of the DOE Nevada Operations Office of a Request for Information which Mr. Grix had submitted under the Freedom of Information Act (the FOIA). In responding to Mr. Grix's request, the Manager identified and released one responsive document. Mr. Grix claimed that because only one document was identified, DOE's search was inadequate. In considering the Appeal, the DOE found that the search conducted by DOE was adequate and that no additional documents exist concerning Mr. Grix's possible exposure to radiation in connection with his military service during 1951 and 1953-55. The Appeal was therefore denied.

Remedial Order

Erickson Refining Corporation, 10/4/85, HRO-0300

The Attorney General of Texas objected to a Proposed Remedial Order which the Washington D.C., Office of Enforcement Programs of the Economic Regulatory Administration (ERA) issued to Erickson Refining Corporation (Erickson) on May 30, 1985. Erickson did not object to the Proposed Remedial Order, in which the ERA found that Erickson violated provisions of the entitlements program and should refund $218,183.16 plus accrued interest to the DOE. Texas objected that the PRO contained no provision for distribution of the refunds through 10 CFR Part 205, Subpart V. The DOE modified the Proposed Remedial Order to provide for a Subpart V proceeding and issued it as a final Remedial Order.

Implementation of Special Refund Procedures

Quaker State Oil Refining Corp., 10/1/85, HEF-0219

The DOE issued a Decision and Order setting forth procedures to be used for the distribution of $4,800,000 received as a result of a consent order entered into with Quaker State Oil Refining Corp. on September 3, 1982. The fund will be available to customers who purchased Quaker State refined petroleum products during the consent order period, January 1, 1973 to January 28, 1981, and who can demonstrate that they were injured by Quaker State's alleged pricing practices. However, the DOE adopted certain presumptions and determined that applicants requesting refunds of $5,000 or less and end-users would not be required to provide any further evidence of injury. Detailed procedures for filing refund applications are discussed in the Decision.

Refund Applications

Amber Refining Inc., et al., 10/2/85, RF171-1 through RF171-17

Pursuant to a OHA order implementing Departmental policy issued on June 21, 1985, 50 FR 27402 (1965), 17 firms filed claims for entitlement exception relief payments. The June 21 order stated that outstanding entitlement exception relief receive orders shall be funded with entitlements period crude oil miscertification overcharges collected by the DOE in enforcement proceedings. In this Decision and Order, the OHA found that of the 17 applicants, 14 firms have finally adjudicated exception receive orders. The OHA determined the amounts that each of the 14 firms should receive by "netting" any outstanding entitlement purchase obligations against the receive order claims, and ordered those amounts to be held in an interest-earning escrow account for each of the firms, pending the outcome of litigation concerning the Entitlements Program, *Texaco Inc.* v. *DOE*, Nos. 3-44 through 3-49 (Temp. Emer. Ct. App. 1985). The OHA found that the remaining three applicants do not have net claims for entitlements exception relief. Therefore, the OHA denied their request.

Bob's Oil Company; Bob's Oil Company/May's Grocery, et al., 10/4/85, HOF-0592, RF39-1, RF39-2, RF39-3

The DOE issued a Decision and Order concerning three Applications for Refund filed by resellers of motor gasoline purchased from Bob's Oil Company. These three applicants were the firms identified by the ERA audit as allegedly overcharged by Bob's. In accordance with *Bob's Oil Co.*, 12 DOE ¶85,024 (1984), two of the applicants were granted refunds based upon the amount that the ERA audit indicated they had been overcharged. The third applicant stated in its application that it purchased only 28 percent of the amount of gasoline indicated by the ERA's records. Accordingly, it was granted a refund of 28 percent of the amount indicated by the audit.

Since no other persons had filed refund applications, the DOE also established second stage refund procedures. The DOE found that funds remaining in the Bob's consent order fund should be distributed to the State of South Dakota and the Pine Ridge Indian Reservation, where the gasoline had been sold, for use in DOE approved energy related projects.

C.C Dillon Co./ E.L. Thomas Enterprises, Inc., 10/1/85, RF148-4

The DOE issued a Decision and Order concerning an Application for Refund filed by E.L. Thomas Enterprises, Inc., a reseller of motor gasoline purchased from C.C. Dillon Company. Thomas requested a refund of $9,200, a prorated portion of the alleged overcharges to the firm, but was unable to make a sufficient showing of injury to merit a refund over the $5,000 threshold level established in the Dillon special refund proceeding. Accordingly, the DOE determined that Thomas should receive a refund equal to the $5,000 threshold amount, plus $931 interest.

Cosby Oil Co./Auto Mat Oil Co., World Oil Co., 10/1/85, RF170-5, RF170-6

The DOE issued a Decision and Order concerning Applications for Refund filed by Auto Mat Oil Company and World Oil Company, two resellers of motor gasoline purchased from Cosby Oil Company. Each applicant requested a refund below the $5,000 threshold level. In accordance with the procedures established in the Cosby Special Refund Proceeding, the Decision determined that each applicant should receive a refund based on a prorated portion of the alleged overcharges to the applicant. The total amount of refunds approved in this Decision was $10,015 ($5,452 principal plus $4,563 interest).

Gulf Oil Corporation/Mintzer Petroleum Corp., 9/30/85, RF40-422, RF40-423, RF40-2176

The DOE issued a Decision and Order concerning Applications for Refund filed by Mintzer Petroleum Corp. and King Fuels. Mintzer and King Fuels applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). These cases concerned a disputed refund. Mintzer had sold part of its business to King Fuels after the end of the consent order period, and King Fuels claimed that it had purchased the right to receive the refund. Mintzer, however, argued that it had retained the right to receive the refund. Mintzer demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the evidence, the DOE concluded that Mintzer should received the refund. Accordingly, Mintzer's application was granted, and King Fuels' claim was denied. The refund granted in this decision totals $39,343.

McCarty Oil Co., Inc./Watkins Oil Co., Inc., 10/1/85, RF-143-11

The DOE issued a Decision and Order concerning an Application for Refund filed by Watkins Oil Co., Inc., a purchaser of motor gasoline from McCarty Oil., Inc. Watkins sought a portion of the settlement fund obtained by the DOE through a consent order entered into with McCarty. Although Watkins was a spot purchaser, the firm submitted evidence showing that it had been forced to sell the gasoline at a loss. Watkins was therefore able to rebut the presumption that spot purchasers were not injured, and was granted a total refund of $2,054.74.

The Parade Company/Peoples Gas Light and Coke Company, 10/1/85, RF74-0002

Peoples Gas Light and Coke Company (Peoples) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into by the agency and The Parade Company (Parade). Peoples purchased propane from Wanda Petroleum, an identified purchaser of Parade natural gas liquid products (NGLPs). However, Peoples was unable to demonstrate that the propane it purchased from Wanda, or even some portion thereof, originated with the consent order firm. Therefore, the DOE was unable to conclude that any of the propane that Peoples purchased from Wanda was covered by the Parade consent order. Accordingly, the DOE denied Peoples' Application for Refund.

Standard Oil Company (Indiana) G.W. Seeley Petroleum Inc., 10/4/85, RF21-12398 RF21-12399

The Department of Energy issued a Decision and Order concerning the Applications for Refund filed by G. W. Seeley Petroleum, Inc., a wholesaler of motor gasoline and middle distillates sold by Standard Oil Company (Indiana), commonly known as Amoco. The firm applied for a refund based upon the presumption of injury and volumetric formula outlined in *Office of Special Counsel* 10 DOE ¶ 85,048 (1982). The DOE concluded that based upon the total volume of its Amoco motor gasoline and middle distillate purchases, Seeley should receive a refund of $667, including $519 principal and $148 interest.

Warren Holding Company/Lehigh Oil Company, 10/4/85, RF169-0007

The DOE issued a Decision and Order concerning an Application for Refund filed by Lehigh Oil Company, a reseller of Warren Holding Company fuel oil. Lehigh submitted information certifying that it maintained banks of unrecouped product costs as well as information showing proof of injury by the alleged overcharges. In considering this application, the DOE concluded that Lehigh should receive a refund of $80,850 based upon the adjusted volume of its Warren fuel oil purchases.

Dismissals

Name and Case No.

Arch Mineral Corp.—RF40-2579
Butane Power & Equipment Company—RF47-1
O.K. Oil & Gas, Inc.—HRO-0296
Verifine Dairy Products Co.—RF40-477

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy*

Guidelines, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 6, 1985.

[FR Doc. 85-27634 Filed 11-19-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER85-775-000]

Central Vermont Public Service Corp., Order Accepting for Filing and Suspending Rates, Noting Intervention, Denying Motion To Reject, Denying Waiver, and Establishing Hearing Procedures

Issued: November 13, 1985.

On September 19, 1985, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a proposed transmission tariff to replace individual transmission agreements with seven customers.[1] The proposed tariff reflects a two-step rate increase for transmission and distribution services. The proposed Phase A rates would increase revenues by approximately $50,329 (6.0 percent) and the Phase B rates would increase revenues by an additional $51,733, or a total increase of approximately $102,062 (12.2 percent).

Under the proposed tariff, annual updating of transmission charges will be performed on a more current basis than under the individual agreements. The current agreements provide that the rates are updated, by filing with the Commission, effective November 1 of each year, to incorporate the costs experienced by Central Vermont in the most recent year (based on the company's Form No. 1 data). Under the proposed tariff, charges will be based on estimated costs for the current calendar year with a true-up at the end of the year to reflect actual cost. The tariff specifies the general framework for rate determinations, including a stated return on equity.

Central Vermont proposes that Phase A be made effective on November 1, 1985, and that Phase B become effective on November 2, 1985. The company requests waiver of the notice requirement so that service may begin on the termination date of the superseded contracts. In the event that waiver is denied, Central Vermont requests effective dates of November 18 and 19, 1985, for Phases A and B, respectively.

Notice of Central Vermont's filing was published in the Federal Register [2] with responses due on or before October 4, 1985. A timely motion to intervene was filed by the Vermont Electric Cooperative, Inc., Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Park Water and Light Department, Rochester Electric Light and Power Company, and Allied Power and Light Company (Intervenors).

Intervenors request rejection of the filing, arguing that it automatically adjusts the return on common equity and that the Commission has expressed a policy against automatic adjustment provisions which track only selected cost components. Intervenors also state that the proposed formula rate provides for true-up of the estimated billings at the end of the year to reflect actual costs and that this billing adjustment could result in unlawful retroactive rate increases. In addition, Intervnors contend that Central Vermont's filing lacks sufficient backup data and other support for the rate of return on common equity.

If not rejected, Intervenors request that the Commission suspend Central Vermont's transmission tariff for five months and institute a hearing. They raise various issues, including: (1) Return on common equity; (2) a 500 kW load growth cap on specific delivery points; (3) a provision of the tariff which allows Central Vermont to terminate service on two years' written notice; (4) a requirement that departing systems pay any unamortized cost of Central Vermont delivery points; and (5) the inclusion of the Highgate transmission line in rate base. Finally, Intervenors argue that Central Vermont has not justified its requested waiver of the 60-day notice requirement.

On October 22, 1985, Central Vermont filed an untimely response to Intervenors' pleading.[3] While not opposing the motion to intervene, Central Vermont disputes Intervenors' objections to the filing.

Discussion

Pursuant to Rule 214 of our rules of practice and procedure (18 CFR 385.214), the timely intervention by Intervenors serves to make them parties to this proceeding.

Our review indicates that Central Vermont's filing substantially complies with our regulations and reveals no basis on which to reflect the submittal in whole or part. Contrary to Intervenors' assertions that the proposed tariff automatically adjusts the return on common equity, Central Vermont is not proposing an automatic increase in its return on common equity. Rather, § 2.2(d)(ii) of the proposed tariff specifies fixed returns on common equity for both Phase A and Phase B. The return on common equity can only be changed by a filing pursuant to Part 35 of the Commission's regulations. Furthermore, Central Vermont's proposal does not adjust for selected cost components, as suggested by Intervenors. Rather, the annual rate determination (both estimated and true-up) will reflect a comprehensive adjustment for all cost components. In any event, Central Vermont's annual true-up will be filed with the Commission, and will be subject to suspension and investigation, if warranted. Therefore, the rate redetermination procedure does not operate as a formula rate without Commission review. Similarly, the use of an estimated billing procedure with a subsequent true-up does not constitute an impermissible retroactive increase simply because the true-up may require additional payments. The customer is on notice, by the clear terms of the rate schedule, that billings are preliminary in nature and will be subject to final adjustment. Moreover, the timing and precise nature of the final adjustment is specified. This is not a situation where the company is attempting, without contractual foundation or prior notice, to collect certain past costs from a customer.

November 1, 1985 is the termination date permitted by the present agreements, providing that Central Vermont has given notice of intent to terminate by May 1, 1985. While Central Vermont has fulfilled its contractual obligation as to prior notice, this does not relieve Central Vermont of its obligation to comply with the statutory notice requirements. Central Vermont has provided no reason for its failure to file at least 60 days prior to its requested effective date. Accordingly, we shall deny Central Vermont's request for waiver of the notice requirement.

Our review of Central Vermont's filing and the pleadings indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

[1] See attachment for rate schedule designations and a list of customers.

[2] 50 FR 40442 (1985).

[3] Central Vermont also filed an unopposed motion for an extension of time to file its answer.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in *West Texas*, we would generally impose a maximum suspension. Here, our examination suggests that the Phase A rates may not yield substantially excessive revenues, but that the Phase B rates may be substantially excessive. Therefore, we shall suspend the Phase A rates for one day, to become effective, subject to refund, on November 20, 1985,[4] and we shall suspend the Phase B rates for five months, to become effective on April 19, 1986, subject to refund.

The Commission orders:

(A) Intervenors' motion to reject Central Vermont's filing is hereby denied.

(B) Central Vermont's request for waiver of the 60-day notice requirement is hereby denied.

(C) Central Vermont's submittal is hereby accepted for filing; the Phase A rates are suspended for one day from 60 days after filing, to become effective, subject to refund, on November 20, 1985, and the Phase B rates are suspended for five months from 60 days after filing, to become effective, subject to refund, on April 19, 1986.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of Central Vermont's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) Subdocket –000 in Docket No. ER85–775 is hereby terminated and Docket No. ER85–775–001 is assigned to the evidentiary hearing ordered herein.

(H) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission. Commissioners Trabandt and Naeve voted present.

Lois D. Cashell,

Acting Secretary.

[4] Central Vermont's alternative effective date of November 18, 1985, for Phase A, falls one day short of the required 60-day notice.

Central Vermont Public Service Corporation—Docket No. ER85–775–000

Rate Schedule Designations

Designation	Description
(1) FERC Electric Tariff, Original Volume No. 3 Original Sheet Nos. 1 through 22.	
(2) Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 3 (Supersedes Rate Schedule FPC No. 89).	Service agreement.
(3) Supplement No. 1 to Service Agreement No. 1 under FERC Electric Tariff, Original Volume No. 3.	Points of delivery.
(4) Service Agreement No. 2 under FERC Electric Tariff, Original Volume No. 3 (Supersedes Rate Schedule FPC No. 93).	Service agreement.
(5) Supplement No. 1 to Service Agreement No. 2 under FERC Electric Tariff, Original Volume No. 3.	Points of delivery.
(6) Service Agreement No. 3 under FERC Electric Tariff, Original Volume No. 3 (Supersedes Rate Schedule FERC No. 97).	Service agreement.
(7) Supplement No. 1 to Service Agreement No. 3 under FERC Electric Tariff, Original Volume No. 3.	Points of delivery.
(8) Service Agreement No. 4 under FERC Electric Tariff, Original Volume No. 3 (Supersedes Rate Schedule FERC No. 107).	Service agreement.
(9) Supplement No. 1 to Service Agreement No. 4 under FERC Electric Tariff, Original Volume No. 3.	Points of delivery.
(10) Service Agreement No. 5 under FERC Electric Tariff, Original Volume No. 3 (Supersedes Rate Schedule FERC No. 110).	Service agreement.
(11) Supplement No. 1 to Service Agreement No. 5 under FERC Electric Tariff, Original Volume No. 3.	Points of delivery.
(12) Service Agreement No. 6 under FERC Electric Tariff, Original Volume No. 3 (Supersedes Rate Schedule FERC No. 101).	Service agreement.
(13) Supplement No. 1 to Service Agreement No. 6 under FERC Electric Tariff, Original Volume No. 3.	Points of delivery.
(14) Service Agreement No. 7 under FERC Electric Tariff, Original Volume No. 3 (Supersedes Rate Schedule FERC No. 102).	Service agreement.
(15) Supplement No. 1 to Service Agreement No. 7 under FERC Electric Tariff, Original Volume No. 3.	Points of delivery.

Tariff Customers

(1) Vermont Electric Cooperatives, Inc.
(2) Village of Lyndonville
(3) Village of Ludlow Electric Light Department
(4) Village of Johnson Water and Light Department
(5) Village of Hyde Park Water and Light Department
(6) Allied Power and Light Company
(7) Rochester Electric Light and Power Company.

[FR Doc. 85-27656 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-58-007]

El Paso Natural Gas Co.; Compliance Filing

November 15, 1985.

Take notice that on November 12, 1985, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act, the following tariff sheets to its FERC Gas Tariff:

Tariff volume	Tariff sheet
First Revised Volume No. 1.	First Revised Sheet No. 350
Original Volume No. 1–A.	First Revised Sheet No. 208
Third Revised Volume No. 2.	Sixteenth Revised Sheet No. 1–D.2
Original Volume No. 2A.	Fifth Revised Sheet No. 14–MM

El Paso states that the tendered tariff sheets, submitted in compliance with Article IV of the Stipulation and Agreement in Settlement of Rate Proceedings approved by Commission letter order dated August 14, 1985 issued in this proceeding, set forth the manner in which El Paso will allocate the available capacity of its system. El Paso further states that the allocation procedure may be subject to change depending on any election made by EL Paso under the Commission's Order No. 436 issued October 9, 1985 at Docket No. RM85–1–000.

El Paso requests that the tendered tariff sheets be accepted and permitted to become effective thirty (30) days after the date of filing.

El Paso states that copies of the filing have been served upon all parties of record in Docket No. RP85–58–000, *et al.*, and, otherwise, upon all of its interstate pipeline system customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before November 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27657 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-3072-003, et al.]

Exxon Corp., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

November 13, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 26, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27658 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-3072-003, Oct. 15, 1985	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Tennessee Gas Pipeline Company, District 4 Area Fields, Brooks County, Texas.	(1)	14.73
G-3076-000, Oct. 15, 1985	do	Tennessee Gas Pipeline Company, Mariposa Field, Brooks County, Texas.	(1)	14.73
G-7642-013, D, Nov. 4, 1985	Mobile Oil Corporation, Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	Northern Natural Gas Company, Hugoton Field, Stevens County, Kansas.	(2)	
G-8324-000, Sept. 30, 1985	Phillips Petroleum Company, 336 HS&L Bldg., Bartlesville, Okla 74004.	Northern Natural Gas Company, Benedum Plant, Upton County, Texas.	(3)	14.73
G-8739-001, D, Oct. 28, 1985	do	Northern Natural Gas Company, North Hutchinson Field, Hutchinson County, Texas.	(2)	
G-11742-016, D, Oct. 16, 1985	Mobil Oil Corporation	Northwest Central Pipeline Corporation, Hugoton Field, Stevens County, Kansas.	(2)	
G-15434-000, D, Nov. 4, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Kansas-Nebraska Natural Gas Company, Hugoton Field, Hamilton County, Kansas.	(4)	
CI-61-1819-000, D, Nov. 1, 1985	do	Panhandle Eastern Pipe Line Company, Mocane-Laverne Gas Area, Beaver County, Oklahoma.	(5)	
CI-62-1111-001, D, Nov. 1, 1985	do	ANR Pipeline Comapny, Mocane-Laverne Gas Area, Harper County, Oklahoma.	(5)	
CI-62-1412-002, D, Nov. 4, 1985	do	Oklahoma Natural Gas Company, Ringwood Field, Major County, Oklahoma.	(6)	
CI-62-1412-003, D, Nov. 4, 1985	do	Ringwood Gathering Company, Ringwood Field, Major County, Oklahoma.	(6)	
CI-65-1327-000, D, Nov. 1, 1985	do	ANR Pipeline Company, Mocane-Laverne Gas Area, Harper County, Oklahoma.	(5)	
CI-67-41-001, D, Oct. 28, 1985	do	Northern Natural Gas Company, Mocane-Laverne Gas Area, Ellis County, Oklahoma.	(10)	
CI-67-818-002, D, Oct. 9, 1985	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Transwestern Pipeline Company, Gomez Field, Pecos County, Texas.	(11)	
CI-67-1779-000, D, Nov. 4, 1985	Mobil Oil Exploration & Producing Southeast Inc., Agent for The Superior Oil Company, Nine Greeneway Plaza, Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company, North Sunrise Field, Terrebonne Parish, Louisiana.	(12)	
CI-68-800-000, D, Nov. 4, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Natural Gas Pipeline Company of America, Larf MH2 RA SUA, Well S-4, Lacassine Field, Cameron Parish, Louisiana.	(13)	
CI-72-344-003, Oct. 15, 1985	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Tennessee Gas Pipeline Company, District 4 and Hoyser Area, Various Counties, Texas.	(1)	
CI-73-876-001, D, Oct. 28, 1985	Sun Exploration & Production Co	Trunkline Gas Company, West Cameron Block 639 Field, Offshore Louisiana.	(14)	
CI-73-879-001, D, Oct. 28, 1985	do	Trunkline Gas Company, Vermilion Block 320, A, Offshore Louisiana.	(14)	
CI-73-880-001, D, Oct. 28, 1985	do	Trunkline Gas Company, East Cameron Block 338, Offshore Louisiana.	(14)	
CI-75-255-000, D, Nov. 1, 1985	do	Northern Natural Gas Company, Mocane-Laverne Gas Area, Beaver County, Oklahoma.	(10)	
CI-77-854-002, D, Oct. 7, 1985	Sonat Exploration Company, P.O. Box 1513, Houston, Texas 77251-1513.	Transcontinental Gas Pipe Line Corporation, Ship Shoal Block 29 "E" Platform, Offshore Louisiana.	(15)	
CI-78-864-003, E, Nov. 5, 1985	Conoco Inc. (Succ. to Shell Offshore Inc.), P.O. Box 2197, Houston, Texas 77252.	Tennessee Gas Pipeline Company, East Cameron Block 96, Offshore Louisiana.	(16)	14.73
CI-80-20-001, E, Nov. 5, 1985	do	Transcontinental Gas Pipe Line Corporation, West Cameron Block 65, Offshore Louisiana.	(17)	14.73
CI-80-27-001, E, Nov. 5, 1985	do	Florida Gas Transmission Company, West Cameron Block 65, Offshore Louisiana.	(17)	14.73
CI-80-361-001, E, Nov. 5, 1985	do	Tennessee Gas Pipeline Company, West Cameron Block 65, Offshore Louisiana.	(17)	14.73

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI-81-21-002, E, Nov. 5, 1985	do	Florida Gas Transmission Company, West Cameron Block 65, Offshore Louisiana.	[17]	14.73
CI-81-250-003, D, Oct. 28, 1985	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Transcontinental Gas Pipe Line Corporation, Galveston Area, Blocks A-131 and A-157, A-126 and A-156, Offshore Texas.	[18]	
CI-86-6-000, B, Oct. 10, 1985	El Grande Pipeline Corp	Northwest Central Pipeline Corporation, NW Crawford Field, Roger Mills County, Oklahoma.	[19]	
CI-86-15-000 (G-11953), B, Oct. 10, 1985.	Mobil Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	Trunkline Gas Company, Clear Creek Field, Allen & Beauregard Parishes, Louisiana.	[20]	
CI-86-16-000, B, Oct. 8, 1985	C.&V.C., Inc., Energy Plaza, 3636 No. Causeway Boulevard, Metairie, La. 70002.	Transcontinental Gas Pipe line Corporation, Bear Field, Beauregard Parish, Louisiana.	[20]	
CI-86-17-000 (CI75-485), B, Oct. 7, 1985.	Coastal Oil & Gas Corporation, *et al.*, Nine Greenway Plaza, Houston, Texas 77046.	Colorado Interstate Gas Company, Spearhead Ranch Field, Converse County, Wyoming.	[21]	
CI-86-20-000, C, Oct. 15, 1985	CNG Producing Co Canal Place One—Suite 3100 New Orleans, La. 70130.	Consolidated Gas Transmission Corporation, High Island Block A-571, Offshore Texas.	[22]	14.73
CI-86-21-000, E, Oct. 15, 1985	Terra Resources, Inc. (Succ. In Interest to Goodstein, Inc.) P.O. Box 2329, Tulsa, Okla. 74101.	Arkansas Louisiana Gas Company, William B. Culver A-127 Survey Carthage (Travis Peak) Field, Panola County, Texas.	[23]	14.73
CI-86-23-000 (CI76-366), B, Oct. 17, 1985.	Exxon Corporation, P.O. Box 2180, Houston, Texas 77252-2180.	Colorado Interstate Gas Company, Bear Creek Field, Converse County, Wyoming.	[24]	
CI-86-24-000 (CI60-355), B, Oct. 17, 1985.	John D. Caruthers, Jr. (Succ. In Interest to G. H. Vaughn, Jr., *et al.*), 1325 American Tower, 401 Market Street Shreveport, La. 71101.	Texas Gas Transmission Corporation, West Lisbon Field, Claiborne Parish, Louisiana.	[25]	
CI-86-25-000, B, Oct. 17, 1985	F. J. Muller, P.O. Drawer 1270, Crowley, La. 70526	Transcontinental Gas Pipe Line Corporation, Gueydan Field, Vermilion Parish, Louisiana.	[26]	
CI-86-28-000, F, Oct. 21, 1985	Exxon Corporation (Succ. Inc Interesto to Murphy Oil, U.S.A., Inc. & Odeco Oil & Gas Co.), P.O. Box 2180, Houston, Texas 77252-2180.	Natural Gas Pipeline Company of America, High Island Block 129, Offshore Texas.	[27]	14.73
CI-86-29-000, B, Oct. 21, 1985	Tenngasco Exchange Corporation, P.O. Box 2511, Houston, Texas 77001.	THC Pipeline Company, Matagorda Island Block 700, Offshore Texas.	[28]	
CI-86-30-000, F, Oct. 21, 1985	TXO Production Corp. (Partial Succ. in Interest to Sun Exploration & Production Co.) First City Center, LB 10 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Arkansas Louisiana Gas Company, Athens Field, Claiborne Parish , Louisiana	[29]	14.73
CI-86-31-000, F, Oct. 22, 1985	Exxon Corporation (Succ. in Interest to Superior Oil Company), P.O. Box 2180, Houston, Texas 77252-2180.	Transwestern Pipeline Company, Horseshoe Bend Unit, Eddy County, New Mexico.	[30]	14.73
CI-86-32-000, A, Oct. 22, 1985	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Bridgeline Gas Distribution Company, South Marsh Island Block 238 and 239, Offshore Louisiana.	[31]	14.73
CI-86-37-000 (CI76-767), B, Oct. 28, 1985.	Texaco Producing Inc., P.O. Box 52332, Houston, Texas 77052.	Transco Gas Supply Company, High Island Block 137 (OCS-G-3234), Offshore Texas.	[32]	
CI-86-44-000 (CI64-482), B, Oct. 31, 1985.	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Northern Natural Gas Company, Mocane Field, Beaver County, Oklahoma.	[33]	
CI-86-47-000 (CI63-869), B, Oct. 31, 1985.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Transcontinental Gas Pipe Line Corporation, North Thibodaux Field, LaFourche Parish, Louisiana.	[34]	

[1] Applicant is filing for an additional delivery point.
[2] To release gas for irrigation fuel.
[3] The Ivy A #4 has been re-completed in the Cherokee Formation and reclassified as a gas well. The purchaser, Northern Natural Gas Company does not desire to purchase the gas from the Cherokee formation and has executed a temporary release agreement.
[4] Sold Property No. 722100, Tebo Unit, to J.D. and Marja Kenworthy.
[5] Sale of Sun Property No. 890048, Underwood #1, to Van W. Giffert.
[6] Sale of Sun Property No. 543274, Harper Unit, to Van W. Giffert.
[7] Sold Property No. 878318, Scannell and Property No. 878319, Scannell "A" to Timberwolf Energy Company.
[8] Sold Property No. 878334, Scannell "B", to Ronny G. Altman.
[9] Sale of Sun's interest in the Preston Unit and J.B. Gibson "B" Unit to Van W. Giffert.
[10] Sale of Catesby Operating Unit 2-W3 located in Sec. 11-T23N-R25W, Ellis County, Oklahoma to Van W. Giffert.
[11] Uneconomical.
[12] By Partial Releases dated 6-19-67, 6-23-67 and 2-8-71, Superior surrendered its interest in a portion of this acreage.
[13] Well incapable of commercial production without reworking operations and Natural Gas Pipeline's refusal to participate in the NGPA Section 107 Enhancement procedures is an election to abandon the reserves.
[14] Sun has elected to take its reserved gas which amounts to 10% of Sun's interest in gas produced from dedicated leases in accordance with Section 5 of Article IV of its contract as amended.
[15] Sale of Sun Property No. 808019 to Cities Service Oil and gas Corporation.
[16] Non-productive acreage, the reserves are depleted, wells have been plugged and abandoned, and no further production is planned.
[17] Effective 10-1-85, Conoco acquired the interest previously held by Shell Offshore Inc.
[18] Federal Lease OCS-G-2347 (Block A-157, Galveston Area, South Addition), was released on 12-14-83.
[19] The wells supplying gas depleted to their economic limit and have been plugged.
[20] Depletion of reserves.
[21] Due to depletion of the reservoir, the only well that ever produced under this certificate, the Allemand #1, has ceased to produce, and has been plugged and abandoned. The dedicated leases have expired under their own terms and have reverted back to the lessors. No gas has been sold since September 1983.
[22] Applicant is filing under Gas Purchase Contract dated 5-29-80 as amended for additional acreage and adding a delivery point.
[23] Goodstein, Inc., conveyed all of its right, title and interest to Terra Resources, Inc., pursuant to that certain Purchase Agreement and Assignment, effective 3-1-84.
[24] The Allemand #1 well, the only well under the 12-15-75 contract has been plugged and abandoned on 9-14-84. The available supply of gas available for sale has been depleted, and the purchaser, Colorado Interstate Gas Company, has agreed to cancel the contract and release the acreage.
[25] All gas wells producing under Gas Purchase Contract 12-10-56 have been depleted.
[26] Gas Production has ceased and no further development is planned. Pipe Line Purchaser wishes to remove its facilities previously used to receive gas from the now depleted well.
[27] Applicant is filing under Gas Purchase Contract dated 3-27-69. By Agreement of Sale & Purchase dated 6-27-85, Exxon acquired certain acreage from Murphy Oil, U.S.A. Inc. & Odeco Oil & Gas Company.
[28] The short-term contract under which Tenngasco Exchange Corporation (TGX), purchased the subject gas has expired. TGX entered into its purchase and sales contracts and initiated service upon the misrepresentation that the gas was not subject to the Natural Gas Act.
[29] By Assignment effective 12-1-83, Applicant acquired from Sun Exploration & Production Company partial interest in certain leases to certain acreage.
[30] By assignment dated 11-27-84, Exxon acquired certain acreage from Superior Oil Company.
[31] Applicant is filing under Gas Sales & Purchase contract dated 10-17-85.
[32] Federal Lease OCS-G-3234 (High Island Block 137) was released on 11-2-82.
[33] Well plugged and abandoned and Cities' released the acreage.
[34] All producing wells have ceased production and their corresponding leases have been surrendered.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-27658 Filed 11-19-85; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP 86-129-000]

Gas Gathering Corp.; Application

November 13, 1985.

Take notice that on November 1, 1985, Gas Gathering Corporation (GGC) filed in Docket No. CP86-129-000 an application pursuant to section 7 of the Natural Gas Act, section 311 of the Natural Gas Policy Act of 1978, and Part 284 of the Regulations of the Commission for a blanket certificate of public convenience and necessity authorizing GGC to transport natural gas on behalf of others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

GGC proposes to charge an interim rate equal to the gathering charge component of GGC's currently effective Rate Schedule X-2, for non-discriminatory services rendered pursuant to the authority requested. GGC indicates that the proposed rate is a volumetric rate established in Docket No. RP84-79-000 and is fully applicable to blanket transportation services under the previously effective Part 284 regulations.

GGC also indicates that on October 11, 1985, it filed a new Rate Schedule T-1 to its First Revised Volume No. 1 of its FERC Gas Tariff under which GGC would undertake transportation pursuant to the revised Part 284 regulations. GGC states that the rate provided under the proposed Rate Schedule T-1 is the same as the iterim rate. GGC also indicates it would file revised tariff sheets to be effective no later than July 1, 1986, if the proposed rate schedule does not comply with Subpart A of Part 284 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natual Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecesary for GGC to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27659 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8703-001]

Mega Renewables; Surrender of Preliminary Permit

November 13, 1985.

Take notice that Mega Renewables, Permittee for the proposed Nevada State Supply Conduit Project No. 8703, has requested that its preliminary permit be terminated. The preliminary permit was issued on April 12, 1985, and would have expired on October 31, 1986. The project would have been located on Nevada State Supply Conduit Carson in City County, Nevada.

The Permittee filed the request on October 15, 1985, and the preliminary permit for Project No. 8703 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27660 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-27-002]

North Penn Gas Co.; Proposed Changes in FERC Gas Tariff

November 15, 1985.

Take notice that North Penn Gas Company (North Penn) of November 8, 1985, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1 pursuant to its PGA Clause for rates to be effective September 1, 1985.

On August 9, 1985, North Penn filed its semi-annual PGA filing in Docket No. TA-85-2-27-000 and requested a waiver of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations as may be deemed necessary to permit North Penn to reflect the most current pipeline supplier rates available (either increased or decreased) and to change its purchase pattern to reflect the lowest cost possible as the result of changes in supplier rates in any compliance filing required in this proceeding.

The Commission's order of August 26, 1985 in the above docket accepted North Penn's filing subject to filing revised rates to reflect any revision in its pipeline suppliers' rates, and to state separately on the tariff sheet the take-or-pay surcharge included in the filing.

This tariff sheet, which complies with the Commission's order, contains a decrease of 38.698¢ per Mcf to the rates approved for effectiveness July 1, 1985 in Seventy-Seventh Revised Sheet No. PGA-1.

North Penn has included in this filing the out-of-cycle PGA rate changes filed by Tennessee Gas Pipeline Company (Tennessee) that became effective September 9, 1985 and October 18, 1985, both of which were approved by the Commission.

This filing also reflects changes in North Penn's gas purchase patterns due to the termination of all Special Marketing Programs as at October 31, 1985, and the abandonment by Tennessee of its sales service to North Penn under Tennessee's SO Rate Schedule, all of which have Commission approval.

North Penn requests waiver of any of the Commission's Rules and Regulations necessary to permit this filing to become effective as proposed.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commisison's rules of practice and procedure (18 CFR 385.211.

385.214). All such motions or protests should be filed on or before November 22, 1985. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 85-27661 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-64-000]

Northwest Central Pipeline Corp.; Request Under Blanket Authorization

November 13, 1985.

Take notice that on October 24, 1985, Northwest Central Pipeline Corporation (Northwest Central), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP86-64-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to abandon by reclaim measuring, regulating and appurtenant facilities and to construct and operate measuring, regulating and appurtenant facilities to serve The Kansas Power and Light Company at the Formosa town border station in Jewell County, Kansas, under the certificate and abandonment authorization issued in Docket No. CP82-479-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northwest Central states that the existing facilities are obsolete and proposes to replace and relocate the facilities approximately 450 feet east. Relocating the facilities would allow for much easier access, it is stated. The cost to reclaim is $1,630 with an estimated salvage value of $1,320 and the estimated cost of construction is $12,320, it is stated.

Northwest Central states that this change is not prohibited by an existing tariff. Northwest Central does not anticipate any increased deliveries through the proposed new facilities at this time.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27662 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8579-001]

Rocky Mountain Hydro; Surrender of Preliminary Permit

November 13, 1985.

Take notice that Rocky Mountain Hydro, Permittee for the Crooked River Project No. 8579, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 8579 was issued on September 27, 1985, and would have expired on August 31, 1988. The project would have been located on the Crooked River in Crook County, Oregon.

The Permittee filed the request on October 16, 1985, and the preliminary permit for Project No. 8579 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided applications involving this project site, to the extend provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27663 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-7-29-000, 001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 15, 1985.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on 11-1-85, tendered for filing Third Substitute Thirty-Sixth Revised Sheet No. 12 and Substitute Thirty-Seventh Revised Sheet No. 12 to its FERC Gas Tariff Second Revised Volume No. 1. The proposed effective dates of these sheets are September 1, 1985 and November 1, 1985, respectively. The revised tariff sheets reflect a storage "tracking" rate decrease effective September 1, 1985 in accordance with section 26 of Transco's General Terms and Conditions. Section 26 provides for, among other things, changes in rates for storage service rendered under Transco's Rate Schedule S-2 to reflect changes in charges by Texas Eastern Transmission Corporation (Texas Eastern) under Texas Eastern's Rate Schedule X-28.

As a result of Texas Eastern's filing of September 11, 1985 in Docket No. RP85-177, proposed effective September 1, 1985, Transco will decrease its demand charge and demand charge adjustment in Rate Schedule S-2 in order to flow through to Transco's customers a decrease of approximately $32,000 annually from the amount included in Transco's filing of August 9, 1985.

Transco states that copies of the filing are being mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before 11-22-85. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-27666 Filed 11-19-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-171-000]

Valley Gas Transmission, Inc.; Application

November 13, 1985.

Take notice that on November 1, 1985, Valley Gas Transmission, Inc., (Applicant), 601 Northwest Loop 410, San Antonio, Texas 78216, filed in Docket No. CP86-171-000 an application pursuant to section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing transportation of natural gas on behalf of others, all as more fully set forth in the application

which is on file with the Commission and open to public inspection.

Applicant states that it intends to transport natural gas on behalf of all shippers and elects to become a transporter under the terms and conditions of the Commission's Order No. 436, issued October 9, 1985, in Docket No. RM85–1–000. Applicant states that it accepts and would comply with the conditions in paragraph (c) of § 284.221 of the Commission's Regulations which paragraph refers to Subpart A of Part 284 of the Commission's Regulations. Applicant notes that its currently effective rate for transportation (Rate Schedule T–1) is a one-part rate of file with the Commission for transportation under Part 284 which conforms, it is said, with the requirements of interim rates prescribed by § 284.7(b)(1) of the Commission's Regulations. Applicant further states that it intends to file new transportation rates to be effective no later than July 1, 1986, in compliance with the provisions of § 284.(7)(b)(2) of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 27, 1985, file with the Federal Energy Regualtory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the National Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission or its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–27667 Filed 11–19–85; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 2374–000]

Watervliet Paper Co.; Proposed Acceptance of Surrender of License

November 13, 1985.

On March 3, 1965, a minor license was issued to the Hammermill Paper Company (Hammermill) for the constructed Paw Paw Project No. 2374,[1] located on the Paw Paw River in the City of Watervliet, Berrien County, Michigan. On July 18, 1975, the license was tansferred to Watervliet Paper Company,[2] a corporation created by Hammermill to receive the license. The license has a termination date of December 31, 1990.

The 300 kW project ceased operation in November 1968. At the time of the license transfer in 1975, Watervliet indicated that it wished to surrender the license for the Paw Paw Project after the transfer was finalized. In approving the transfer, the Commission required the new licensee (Watervliet) to file, within three months, either a plan and schedule for repair of the project works, or an application for surrender of the license. On August 20, 1975, Watervliet applied to the Commission to surrender its license. The application was rejected on December 29, 1980, because Watervliet failed to correct certain deficiencies. Although the licensee has expressed an intent to surrender its license, it has not filed another application for surrender.

Article 8 of the license for Project No. 2374 provides:

> If the Licensee shall cause or suffer essential project property to be removed or destroyed or to become unfit for use without replacement, or shall abandon or discontinue good faith operation of the project for a period of three years, or refuse or neglect to comply with the terms of the license and the lawful orders of the Commission mailed to the record address of the Licensee or its agent, the Commission will deem it to be the intent of the Licensee to surrender the license, and not less than 90 days after public notice may in its discretion terminate the license.

[1] 33 F.P.C. 390 (1965).

[2] 54 F.P.C. 231 (1975).

The Commission's regulations on implied surrender, 18 CFR 6.4 (1984), also apply to this project and are substantially the same as Article 8.

We believe that the facts in this case indicate an implied agreement to surrender the license pursuant to Article 8 of the license and section 6.4 of the regulations. Operation of the project ceased more than sixteen years ago, and the licensee does not intend to reactivate the project. In addition, as further evidence of agreement to surrender, Watervliet itself has written to the Commission staff, suggesting that the Commission terminate its license pursuant to Article 8. Accordingly, the Comisison gives notice that it proposes to accept Watervliet's surrender of the license for Project No. 2374.

Watervliet is coordinating with the Michigan Department of Natural Resources (DNR) on plans to remove and/or bypass the dams and restore the Paw Paw River to its natural flow. The DNR is the state agency that implements Michigan's environmental programs, including dam safety. The DNR has written to the Commission stating that it does ot object to Watervliet's surrender of the license. Therefore, we see no reason at this time to impose any conditions on the surrender with respect to disposition of the project works. Nor does Watervliet owe annual charges, since the project is located on its property, not on Federal lands.

Any person may submit comments, a protest, or a motion to intervene in accordance wth the Commission's rules of practice and procedure, 18 CFR 385.210 385.211 or 385.214 (1984). In determining what action is appropriate, the Commission will consider all timely filed comments, protests, and motions to intervene, but only those who file a motion to intervene may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before February 18, 1985, by the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. All filings should reference Project No. 2374.

By direction of the Commission. Commissioners Trabandt and Naeve voted present.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 85–27668 Filed 11–19–85; 8:45 am]

BILLING CODE 6717–01–M

Western Area Power Administration

Final Allocations of Contingent Capacity and Associated Energy From the Boulder Canyon Project Uprating Program

AGENCY: Western Area Power Administration, Department of Energy.

ACTION: Adoption of Final Allocations of Contingent Capacity and Associated Energy from the Boulder Canyon Project Uprating Program.

SUMMARY: The Western Area Power Administration's (Western) Boulder City Area Office published the Proposed Allocations of Contingent Capacity and Associated Energy from the Boulder Canyon Project Uprating Program (Proposed Allocations) in the Federal Register on June 13, 1985 (50 FR 24829), and requested comments to be submitted on or before July 15, 1985. In addition, a public comment forum on the Proposed Allocations was held in Las Vegas, Nevada, on July 1, 1985. Western has reviewed and considered each comment received. The "Supplementary Information" section which follows provides Western's responses to all the major comments, criticisms, and alternatives offered. After review of the comments, Western determined that no new information existed that would warrant any change in the Proposed Allocations of the power from the Boulder Canyon Project Uprating Program (Uprating Program). Western believes that the Proposed Allocations are to eligible preference entities that do not have a significant amount of Federal power, and are therefore equitable. The Proposed Allocations are accordingly adopted as final. Based upon the final allocations contained herein, Western will initiate contract negotiations for contingent capacity and associated energy (power) available June 1, 1987, from the Boulder Canyon Project Uprating Program.

DATES: These final allocations of contingent capacity and associate energy are effective 30 days from the date of this notice.

ADDRESS: For further information concerning these final allocations, contact: Mr. Thomas A. Hine, Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200, Boulder City, NV 89005, (702) 293–8800.

SUPPLEMENTARY INFORMATION: The final allocations of contingent capacity and associated energy from the Boulder Canyon Project Uprating Program are made in accordance with the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 *et seq.*), the Federal power marketing authorities contained in Reclamation laws (43 U.S.C. 371 *et seq.* and all acts amendatory thereof or supplementary thereto), and the acts specifically applicable to the Boulder Canyon Project. The Hoover Power Plant Act of 1984 (98 Stat. 1333) (Hoover Power Plant Act) and the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" (Conformed Marketing Criteria) published in the Federal Register on December 28, 1984 (49 FR 50582), form the basis for the allocations. Section 105(a)(1)(B) of the Hoover Power Plant Act provides the specific amount of contingent capacity and associated energy to be allocated within each of the States of Arizona, California, and Nevada.

Discussion of Comments Received

Several comments on the proposed allocations were received by the Boulder City Area Office. Western has reviewed and considered each comment. Western's responses to the major comments, criticisms, and alternatives offered are as follows:

San Diego Gas and Electric (SDG&E), an investor-owned utility, filed an application for power available from the Boulder City Area Projects on March 14, 1985. The SDG&E application was two-fold in nature, in that SDG&E requested power on its own behalf as an investor-owned utility, and on behalf of certain municipalities within its service territory. SDG&E was not selected to receive any power because it was an investor-owned utility, and as such was not a preference entity. An investor-owned utility is not a preference entity under section 5 of the Boulder Canyon Project Act or other Reclamation law. SDG&E submitted written comments on the allocation process on May 28, 1985, and July 3, 1985. SDG&E also made oral comments at the July 1, 1985, comment forum. Three other entities also submitted written comments in support of the SDG&E application.

SDG&E, in support of its application for power on its own behalf, relies heavily on selected portions of the Department of Energy Organization Act of 1977. In particular, SDG&E contends that these select portions of this act override pre-existing Reclamation law. Another investor-owned utility, Utah Power and Light, has made a similar application and raised the same issues as SDG&E in another marketing plan being developed within Western. A detailed discussion of this issue is contained in the Federal Register at 49 FR 34900. While the Utah Power and Light application was evaluated in light of the Reclamation Project Act of 1939, as opposed to the preference provisions of the Boulder Canyon Project Act, as amended, the discussion is relevant here. It states in part.

> Western agrees that Congress declared, as a general purpose of the Department of Energy (DOE), that "the productive capacity of private enterprise shall be utilized" in the development of DOE policies. However, both section 302 and section 641 of the the DOE Organization Act specifically act to transfer the power marketing functions of the Bureau of Reclamation, including the legislative authorities upon which those functions were based, to the Western Area Power Administration. Included within those transferred authorities are the preference provisions of reclamation law. Western believes that 42 U.S.C. 7152 and 7251 are more specific in their focus than the congressional statements of departmental purpose cited by UP&L. The legislative history of the DOE Organization Act confirms this interpretation. See, e.g., Department of Energy Organization Act: Hearings on S. 826 and S. 591 Before the Senate Committee on Governmental Affairs, 95th Cong., 1st sess. 179, 520 (1977).
>
> Utah Power & Light also comments that virtually all of the preference clause precedent cited by the public power community existed prior to the creation of the Department of Energy. Western agrees that much preference clause precedent does antedate 1977. Older precedent often exists when laws have been in effect for decades, especially when the precedent is longstanding and consistent. However, this does not mean that preference clause precedent lost its value upon passage of the DOE Act.
>
> To the contrary, courts have recognized the continuing applicability of the standards set forth in reclamation law, even after the passage of the DOE Act. Illustrative is the following excerpt relating specifically to CRSP power from the case of Colorado River Energy Distributors Association v. Lewis, 516 F. Supp. 926, 929 (D.D.C. 1981):
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> "In 1977 the Bureau of Reclamation's power marketing functions were transferred to the Secretary of Energy, acting through a new power marketing administration under section 302(a) (1) and (3) of the DOE Act, 42 U.S.C. section 7152(a) (1) and (3). The Act established WAPA as the new power marketing administration. The DOE Act did not change the standards set by the Reclamation Project Act of 1939 relating to the marketing of CRSP power under section 9(c)."

Western believes this rationable is applicable to the SDG&E application.

This conclusion is further supported by the legislative history of the recently enacted Hoover Power Plant Act, which specifically provides much of the statutory authority for an allocation process under which SDG&E seeks power. During the legislative process, Congressman Bates of California offfered this amendment to what is now

section 105 of the Hoover Power Plant Act:

(D) Notwithstanding the provisions of subparagraphs B and C, contracts for capacity and associated energy generated at Hoover Dam as a result of the uprating program shall be offered to public and private power entities not presently served by the Boulder Canyon Project Act as specified in this subparagraph. In allocating the uprated power, preference shall first be given to those entities in those states eligible for expenditures from the Reclamation Fund (43 USC 391) serving large residential loads without regard to whether these entities own their own transmission and distribution facilities. Preference shall also be given to entities serving those areas where the retail electric rate for residential use is higher than the average for the state in which the entity of its major service area is located. As a condition for receiving the uprated power, the entity shall be required to certify that the power received will be resold at cost. 130 Cong. Rec. H3335 (May 3, 1984).

In discussion of his amendment, Congressman Bates offered the following clarifications.

This amendment is slightly different than the amendment which was printed in the CONGRESSIONAL RECORD on May 1st.

The Bates-Hunter amendment affects only new or upgraded power in section 205 of H.R. 4275. This upgraded power, 503,000 kilowatts, will be available when the Hoover Dam is upgraded.

This amendment would make available this new power to both private and public utilities in the 17 reclamation States which were excluded from this power in the 1928 Boulder Canyon Project Act. The amendment will save consumers money. In the case of San Diego, residents could save from $26 million to $43 million per year if this amendment is adopted.

The Hoover Dam power sells for less than one-half cent per kilowatt. San Diego Gas & Electric Co. pays 6 cents a kilowatt-hour for the electricity it currently buys from Arizona and New Mexico. By the time this energy reached San Diego, residents must pay an average of $76 per month, the highest rate in the Southwest and the second highest rate in the Nation.

I think the key provision that we are attempting to deal with has to do with the preference clause, which does not allow private utilities without the ability to directly distribute the power to have access to it. Nevada Power Co. has a lot of the power and is a private utility.

Since 1930, power entities in California, Idaho, Wyoming, Arizona, and Nevada have been eligible for this power. The electricity has been sold at bargain prices. In the first 45 years, the price of energy averaged below 1½ mills per kilowatt-hour, or less than 0.15 per kilowatt-hour. So although the Western Area Power Administration continues to give preference to government agencies and public utilities, there are private utilities such as Nevada Power that have the benefit of obtaining cheap power for 50 years.

San Diego Gas and Electric attempted to recover some of Hoover's power, and they were told Western is mandated by reclamation law to recognize preference in the sale of Federal power and preference is given to public bodies, cooperatives, State and Federal Governments, and municipalities. Needless to say, most of this power is gone.

Unlike the previous amendment, which I think went to the fundamental issue of national energy policy, we are simply asking of the new power that becomes available, that San Diego Gas and Electric be able to bid on that and receive some of that power. 130 Cong. Rec. H3335 (May 3, 1984).

Congressman Bates' amendment was rejected. 130 Cong. Rec. H3336. Western concludes that the Congress considered and rejected the possibility of SDG&E directly obtaining any of this power as an exception to existing Reclamation law regarding preference. Therefore, it is inappropriate for Western to do administratively what the Congress clearly declined to do.

SDG&E also applied for power on behalf of certain municipalities located within its service territory. None of these municipalities own and/or operate a utility system. SDG&E sought the power for distribution to consumers through SDG&E's existing transmission system and operating under contractual arrangements between SDG&E and the municipalities. Such an arrangement will obligate SDG&E to perform necessary administrative functions, including metering, accounting, billing and collection, and other electric service requirements. SDG&E states that they will perform these obligations at cost. This methodology was also considered and rejected by Congress during the legislative process for the Hoover Power Plant Act. Congressman Hunter of California offered the following amendment and discussion regarding this point:

(D) Notwithstanding the provisions of subparagraphs (B) and (C), contracts for 10 Megawatts of the California share of capacity and associated energy generated at Hoover Dam as a result of the uprating program shall be offered to public and private power entities not presently served by the Hoover Powerplant as specified in this subparagraph. In allocating 10 Megawatts of the uprated power, preference shall be given to entities servicing those areas where the retail electric rate for residential use is higher than the average for the state in which the entity, or its major service is located, without regard to whether these entities own their own transmission and distribution facilities. As a condition for receiving the uprated power, the entity shall be required to certify that the power received will be resold at cost plus distribution costs. The remaining California share of the uprated power shall be allocated proportionately to California entities which would be entitled to receive such power under existing law as amended by this Act.

* * * * *

Mr. HUNTER. Mr. Chairman, I appreciate being allowed to offer this amendment. I will make it very brief. This amendment deals with the problem that we have again in California and I know the gentleman from California (Mr. Bates) and the gentleman from California (Mr. Lowery) and the gentleman from California (Mr. Packard) have been contributing to this effort. This amendment deals with the fact that in California generally speaking private entities, like San Diego Gas & Electric, and many others throughout the State, are not allowed to participate in Hoover power simply because the original enacting legislation back in the thirties set the preference only to public entities.

I realize that a system has been built up, that deals have essentially been executed and everybody knows what their share of the pie is going to be, including a number of California communities.

So this amendment would cut down the scale of the attempt that was made in several other amendments to open the bill up to some degree. There would be no effect whatsoever on the State of Arizona, on the State of Nevada, or any other State except California, and the only effect of the bill is this. Essentially upgrading our power and we are going to be producing some 500 extra megawatts because of the upgrading in power. Of those 500 extra megawatts, about 127 of them will go to California and these communities, Anaheim, Banning, Colton, Riverside, Azusa, Pasadena, Glendale, and Burbank, under the negotiations that have been undertaken will participate and will receive and split up those 127 megawatts; so all that we are asking in this amendment is to take 10 of those 127 megawatts and allow those 10 to be applied for by entities throughout the State, whether they are public or private, who happen to have high rates for energy. For example, in San Diego it is now 11 cents a kilowatthour. Many of our senior citizens are in very difficult shape, are paying a lot of money for energy. Other parts of the State have very high energy costs.

So this would only take about 5 percent of that upgraded power, 10 megawatts, and make it available to those entities in the State that have high energy costs. The remaining 117 megawatts for the State of California would be divided with exactly the same apportionment as has already been entered into; so that means, for example, if one of these cities, Anaheim, Banning, Colton or Riverside, was going to receive maybe 9⅛ megawatts, they might receive 8.5 megawatts instead, or 8.7 megawatts. They will not have a drastic reduction. Nobody will be eliminated, but it will give these communities with every high power costs a chance to participate.

I would ask the chairman of the committee if he would comment on this amendment. 130 Cong. Rec. H3338 (May 3, 1984).

Congressman Udall of Arizona, speaking against the Hunter Amendment, noted that:

The suggestion the gentleman makes does not bother me: you take a small bit here and a little bit there and add up to a small block

for San Diego; *but this again would destroy the preference clause . . .* (emphasis added) 130 Cong. Rec. H3338 (May 3, 1984).

The Hunter Amendment, like the Bates Amendment before it, was rejected by the House.

It is abundantly clear that the concept of preference in the allocation of Federal power remains part of the law. The recent enactment of the Hoover Power Plant Act confirms this longstanding public policy. Further, Western believes that a municipality within the purview of relevant precedent must be "ready, willing, and able" to receive a direct allocation of Federal power. Included in this requisite is the concept that the municipality must have utility responsibility. This fact is clearly demonstrated by the legislative process surrounding the previously discussed Hunter Amendment. Western concludes that the SDG&E application on behalf of certain municipalities does not meet the measure of this fundamental allocation yardstick.

The application and comments, both written and oral, provided by SDG&E, as well as the comments of the entities in support of SDG&E's position, do not raise any new issues other than those raised in the vigorous legislative process surrounding the Hoover Power Plant Act. For this reason, Western believes that the comments of SDG&E are not persuasive. Further, it would be inappropriate for Western to attempt to accomplish administratively certain actions which the Congress specifically considered, debated, and rejected as inappropriate and destructive of established Reclamation law during the legislative process surrounding the enactment of the Hoover Power Plant Act, which directly bears on this allocation process. The intitial rejection of SDG&E's application for Federal power was and is the appropriate decision under relevant law and precedent.

2. The Regents of the University of California (University) submitted an application to Western for power from the Uprating Program on March 14, 1985. The University's application was on behalf of its constituent campuses in Los Angeles and Irvine. The University was not selected to receive power from the Boulder Canyon Project Uprating Program because its application was submitted by the University in its capacity as a consitutionally autonomous State university system and not in the sovereign capacity of the State of California and, as such, is not entitled to special preference contained in section 617d of the Boulder Canyon Project Act, 43 U.S.C. 617d. Further, the University does not have electrical utility responsibility in accordance with the laws of the State of California and, as such, is not considered to be an electrical utility. The University submitted oral comments on this matter at the July 1, 1985, public comment forum and submitted additional written comments on July 15, 1985.

In submitting comments, the University has raised three major points concerning Western's failure to select the University as an allottee of Federal power from the Boulder Canyon Project Uprating Program. One, that the University is entitled to the special preference for States contained in the Boulder Canyon Project Act (43 U.S.C. 617 *et seq.*). Two, in the alternative, that the University is entitled to receive an allocation of Federal power from the Boulder Canyon Project Uprating Program as a political subdivision of a State. Three, any policy of electric utility responsibility regarding Federal power allocations in this matter is inappropriate, but in any event, the University does have electric utility responsibility.

First, regarding the special preference under the Boulder Canyon Project Act, Western does not agree with the University's position. The Boulder Canyon Project Act addresses preference stating:

> In case of conflicting applications, if any, such conflicts shall be resolved by the said Secretary, after hearing, with due regard to the public interest, and in conformity with the policy expressed in the Federal Power Act as to conflicting applications for permits and licenses, except that preference to applicants for the use of water and appurtenant works and privileges necessary for the generation and distribution of hydroelectric energy, or for delivery at the switchboard of the hydroelectric plant, shall be given, first, to a State for the generation or puchase of electric energy for use in that State, and the States of Arizona, California, and Nevada shall be given equal opportunity as such applicants. 43 U.S.C. 617d.

States, when applying for Federal power for use within the State, have a special preference superior to any other applicants. In addition to the special preference for States, preference must be resolved in accordance with the provisions of the Federal Power Act. The relevant portion of the Federal Power Act states:

> (a) In issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 808 of this title the Commission shall give preference to applications therefor by States and municipalities, provided the plans for the same are deemed by the Commission equally well adapted, or shall within a reasonable time to be fixed by the Commission be made equally well adapted, to conserve and utilize in the public interest the water resources of the region; and as between other applicants, the Commission may give preference to the applicant the plans of which it finds and determines are best adapted to develop, conserve, and utilize in the public interest the water resources of the region, if it be satisfied as to the ability of the applicant to carry out such plans. 16 U.S.C. 800.

The Federal Power Act definition of municipalities is restricted to entities in the power business (16 U.S.C. 796(7)). The Boulder Canyon Project preference is therefore first granted to States, with Arizona, California, and Nevada given equal preference among State applicants, and then to municipalities as defined in the Federal Power Act. Under these criteria, Western believes that the University does not qualify as a preference entity.

The University is an agency of the State of California. The California Legislature stated this fact as follows:

> State agency means every state office, department, division, bureau, board, commission, superior court, court of appeal, the Supreme Court, the California State University, the University of California, and the Legislature. California Government Code 3202(b).

The University, like several of the entities enumerated above, is a creation of the California Constitution (Article IX, section 9). As a constitutional State agency, the University was given a limited charter, the administration of a public trust (Article IX, section 9(a)). Its power and duties are defined in the following manner:

> The Regents of the University of California shall be vested with the legal title and the management and disposition of the property of the University and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct; provided, however, that sales of university real property shall be subject to such competitive bidding procedures as may be provided by statute. Said corporation shall also have all the powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued, to issue a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise. The Regents shall receive all funds derived from the sale of lands pursuant to the act of Congress of July 2, 1862, and any subsequent acts amendatory thereof. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any

department of the university on account of race, religion, ethnic heritage, or sex. Art. IX, section 9(f).

In essence, the University is to carry out the public trust of operating the State's university education system. Western agrees that the University has broad, general powers and discretion in carrying out this public trust obligation. However, the University cannot act for and obligate the State of California in the sovereign capacity of the State in matters outside its public trust. Such powers are constitutionally vested with the legislature and the governor as follows:

> The supreme executive power of this State is vested in the Governor. The Governor shall see that the law is faithfully executed. (Article V, section 1.)
>
> . . . . . .
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> The legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum. (Article IV, section 1.)

Therefore, Western concludes that the University lacks authority to act in the sovereign capacity of the State of California in matters of general interest to the State, and which clearly fall outside the parameters of the limited public trust to be administered by the Regents of the University of California. An example of such a limitation is expressed by the California Legislature in the California Education Code, section 92470, which states:

> The regents shall issue revenue bonds in the name of the regents and as obligations of the regents, but neither the principal of, nor interest on, any bond issued or sold pursuant to this chapter shall be or become a lien, charge, or liability against this state. . . .

Clearly, the University cannot obligate the State, it can only obligate the Regents. The University cannot even issue revenue bonds in the name of the State, which is a clear denial of State sovereign capacity to the University.

Since the University lacks authority to act in the sovereign capacity of the State in matters such as the allocation of Federal power, the University cannot avail itself of the special preference for Federal power contained in section 5 of the Boulder Canyon Project Act. Nor has the University argued that the California State legislature has designated it as the State's contracting agent for Hoover power. Therefore, status as a "State agency" is not enough to qualify for this special preference.

The University also asserted that it is qualified to receive Uprating Program power as a political subdivision of the State of California. Western concludes that this assertion is in error since, as discussed earlier, the Federal Power Act grants preference only to municipal entities in the power business. The University is not affirmatively chartered to be in the power business under the California State Constitution. Therefore, the University is not entitled to any preference consideration as a political subdivision. The Boulder Canyon Project Act does contain authority for contracting with political subdivisions, but this authority is separate and distinct from preference. Section 617d states:

> The Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for . . . generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam. . . . 43 U.S.C. 617d.

This grant of contracting authority is not a preference, nor can this grant of authority supersede the preference requirements contained in this same section of the law. Western believes it could contract with the University in the event that proper preference entities did not subscribe for all of the available power and the public interest supported such an action. However, this is not the case at hand.

The University also asserted that a policy of "electric utility responsibility" is inappropriate in this matter. Western believes that a policy of electric utility responsibility for use in the allocation of Boulder Canyon Project power is consistent with congressional intent and totally within the confines of administrative discretion granted by the applicable law in this matter. See City of Santa Clara v. Andrus, 572 F. 2d 660, 667, 676 cert. denied 439 U.S. 859 (1978).

Along these same lines the University did claim to have electric utility responsibility contrary to Western's statement in the June 13, 1985, **Federal Register** notice (50 FR 24829). The University contends it possesses utility status concerning certain entities which the University has allowed to locate on its campus facilities. The University fails to cite any law or regulation which requires it to serve this type of load or to meet growth in the load. One commenter, in response to the oral comments by the University on this point, noted that:

> The University of California filed an application and suggested in its oral comments on July 1 that it had electrical utility responsibility due to the fact that it served various components of University campuses including hospitals, student housing and the like.
>
> There are a number of significant legal and practical difficulties with the University's application. First, the State legislature has not authorized the University to make an application for power from the Uprating Program. Nor is the University authorized to apply on behalf of the State. Moreover, the State has not authorized the University to discharge a utility responsibility. Second, we can find no constitutional, statutory or administrative authority in California which permits the University to operate its own public utility. Nor has it received authority from the California Public Utilities Commission to operate as a public utility. Third, the University is a retail customer. For example, the Irvine campus of the University does not take power under a FERC approved rate schedule as required by the Colton case (FPC v. Southern California Edison Co., 376 U.S. 205 (1964)). The Irvine campus receives electrical service from Southern California Edison Company under rates approved by the California Public Utilities Commission for retail consumers.
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> Fourth, the University does not in fact operate a public utility nor does it have electric utility responsibility. It is an electric consumer not unlike any university or large electric consumer who may have distribution lines within its own facilities to supply power for various purposes. The representative of the University stated that the University separately billed the various constituent parts of a University campus. However, it is clear that this is a budgeting mechanism only, which the University has adopted to determine the amount of electricity which its constituent parts utilize. The various activities which the University described are in fact owned and operated by the University and are part of the University. Accordingly, the University has no electric utility responsibility for independent and unrelated electrical consumers.
>
> The University is itself nothing more than an electrical consumer. As an example, at the Riverside campus of the University, the City of Riverside serves the University at different locations (from the main campus) and through separate meters at each location. Thus, the City of Riverside provides the distribution of electricity to the constituent parts of the campus, not the University.

Western finds this analysis persuasive. Given that the University did not submit anything factually to the contrary, Western concludes that the University does not have electric utility responsibility.

Western has determined that the University is not a proper preference entity under the legislation pertaining to the Boulder Canyon Project. All of the available power from the Boulder Canyon Project Uprating Program has been allocated to proper preference entities. Therefore, the University was not selected to receive any of the available power and Western's action will remain unchanged.

3. George Air Force Base and the Department of the Navy, Naval Public Works Center, applied for but were not selected to receive any power from the

Boulder Canyon Project Uprating Program. These entities were not selected because the Hoover Power Plant Act requires that the uprating program be undertaken with funds advanced by non-Federal purchasers, and neither of these Federal entities are preference entities for Boulder Canyon Project resources. The Department of the Air Force (Air Force), on behalf of George Air Force Base, and the Department of the Navy (Navy) took exception to the Proposed Allocations in both oral and written comments to Western.

Preference for Boulder Canyon Project resources is determined in accordance with section 5 of the Boulder Canyon Project Act. The previous discussion has established that section 5 grants a preference first to the States of Arizona, California, and Nevada. These States all have equal preference status under 43 U.S.C. 617d. After these three States, preference is given to municipalities as defined in the Federal Power Act. 16 U.S.C. 791 *et. seq.* Federal agencies do not qualify as preference entities under the provisions of section 5 of the Boulder Canyon Project Act and the incorporated provisions of the Federal Power Act. The Air Force and the Navy are Federal agencies and as such were found not to be preference entities for Boulder Canyon Project resources.

In addition, the Air Force and the Navy both claimed preference status in this matter pursuant to the Reclamation Project Act of 1939, 43 U.S.C. 485th(c). Both entities cited a past administrative determination by Western acknowledging their preference status under the Reclamation Project Act of 1939. This prior administrative determination appeared in the **Federal Register** at 48 FR 20872, 20879 (May 9, 1983). The preference status of any entity under the 1939 act is not applicable to the allocation of Boulder Canyon Project resources. Section 18 of the 1939 act specifically stated this conclusion as follows:

> Nothing in this Act shall be construed to amend the Boulder Canyon Project Act (45 Stat. 1057), as amended. (53 Stat. 1187, 1198)

Given that the 1939 act cannot, by its own terms, amended any of the provisions of the Boulder Canyon Project Act, such as the preference provisions of 43 U.S.C. 617d, Western found that these Federal entities do not have preference status for the allocation of Boulder Canyon Project resources.

The Air Force and the Navy also alleged in their comments a "superior" preference for Federal entities for Boulder Canyon Project resources pursuant to section 5 of the Boulder Canyon Project Act that incorporates by reference certain provisions of the Federal Power Act concerning preference. The Federal agencies base this claim on a partial reading of sections 4(e) and 7(b) of the Federal Power Act stating:

> . . . That in case the Commission shall find that any Government dam may be advantageously used by the United States for public purposes in addition to navigation, no license therefor shall be issued until two years after it shall have reported to Congress the facts and conditions relating thereto. . . . Section 4(e).
>
> Whenever, in the judgment of the Commission, the development of any water resources for public purposes should be undertaken by the United States itself, the Commission shall not approve any application for any project affecting such development, but shall cause to be made such examinations, surveys, reports, plans, and estimates of the cost of the proposed development as it may find necessary, and shall submit its findings to Congress with such recommendations as it may find appropriate concerning such development. Section 7(b).

Western does not believe this standard of development, or advantageous use by the United States, is applicable to the allocation of Boulder Canyon Project resources. This standard is only applicable to determine what entity will develop and use a particular water project site. In the case of the Boulder Canyon Project, the decision was made by Congress that the United States would in fact develop this project. The Boulder Canyon Project Act is quite clear on this point, stating:

> The title to said dam, reservoir, plant, and incidental works shall forever remain in the United States. . . . Section 6.

Therefore, the claim of a superior preference by these entities is inappropriate here. But, even if the cited provisions had application hereto, the claim would fail. Both entities focus on the provisions denying an application or license in the event development or advantageous use by the United States is found. The key, which both entities have not addressed, is the statutory process by which the determination of development or advantageous use by the United States is achieved. The thrust of the Federal Power Act is that a statutorily responsible Federal agency shall find and determine that development or advantageous use by the United States is warranted. This finding and determination is within the sole discretion of the responsible Federal agency. There appears to be no law to apply to this discretionary decision. Consequently, if there is no determination or finding of development or advtageous use by the United States by the responsible Federal agency, the matter of Federal priority becomes moot. An additional point that was overlooked by these two agencies is the fact that the final decision of a Federal priority lies with the Congress and not with the responsible Federal agency. By law, the responsible Federal agency for the allocation of Boulder Canyon Project resources is Western. The applicable laws are the Department of Energy Organization Act of 1977, the Boulder Canyon Project Act, and all acts amendatory thereof or supplementary thereto.

Western, as the responsible Federal agency, has made no finding or determination of advantageous use by the United States to extend any priority to the Air Force and the Navy for allocation of the Boulder Canyon Project uprated resources. Therefore, preference for these Federal resources shall be determined in accordance with the provisions of section 5 of the Boulder Canyon Project Act. The result complies with the intent of Congress as set forth in the recently enacted Hoover Power Plant Act, concerning the allocation of this resource by Western.

The Air Force and the Navy have also taken exception to the determination that Federal agencies are precluded from receiving any of this uprating resource by the terms of the Hoover Power Plant Act of 1984. The Hoover Power Plant Act is the statutory authority for the uprating of the Boulder Canyon Project. The Hoover Power Plant Act, section 105, defines uprating program participation as follows:

> (d) The uprating program authorized under section 101(a) of this Act shall be undertaken with funds advanced under contracts made with the Secretary of the Interior by non-Federal purchasers prescribed in subsection (a)(1)(B) of this section. Funding provided by non-Federal purchasers shall be advanced to the Secretary of the Interior pursuant to the terms and conditions of such contracts.
>
> (e) Notwithstanding any other provisions of the law, funds advanced by non-Federal purchasers for use in the uprating program shall be deposited in the Colorado River Dam Fund and shall be available for the uprating program.

The issue of financing of the uprating project was the subject of considerable debate in the Congress during the legislative process surrounding the Hoover Power Plant Act. Congressman Udall noted that:

> There has been considerable discussion over the financing of the uprating program. The bill now provides that funds may be advanced by the power purchasers, or appropriated by the Federal Government. Today, I will offer an amendment that deletes

the authorization for Federal funds and says, instead, that funds shall be advanced by the purchasers. This 100 percent of the costs. The power purchasers have agreed to this financing arrangement, they are capable of raising the moneys, and they will enter into contracts with the United States to advance costs. The contracts will provide for the repayment of the advanced funds, plus interest, from revenues generated by the uprated generators. 130 Cong. Rec. H3308 (May 3, 1984).

Congressman Udall did in fact offer the amendment to Title II and further stated that the amendment would provide:

. . . That the Hoover uprating program shall be undertaken with funds advanced by the power purchasers. The amendment eliminates the authorization for Federal funds for that program. It will be 100 percent, up front from the power customers. The parties to the Hoover settlement are able to do this, they always intended to advance the funds, and this amendment makes that advance a requirement of the program. 130 Cong. Rec. H3318 (May 3, 1984).

This amendment was agreed to by the Congress and is so reflected in the Hoover power Plant Act. Significant in Congressman Udall's remarks is his use of the term "the purchasers" and "the Power purchasers" when referring to the entities that would fund the uprating and receive a part of the uprated resource. Nowhere in his remarks does he imply that there will be some purchasers of this resource who will not provide advance funding. The intent clearly is that non-Federal entities must fund the uprating project and in return for such advance funding these entities shall receive uprated resources. Congressman Udall also discussed the type of entity that the Hoover Power Plant Act intended to be a participant in the uprating, stating:

. . . The bill authorizes the renovation of the existing generators at Hoover through an uprating program. The uprating will provide an additional 500 MW of power. This power will be allocated roughly equally among the three States.

In order to spread the benefits of Hoover power to more customers, the bill provides that California's share of the uprating (about 127 MW), may not be sold to customers that now receive 20 MW or more. That means that city of Los Angeles and MWD will not be able to buy the new power. Instead, WAPA will market it to preference entities in California. Several municipalities, including Anaheim, Banning, Colton, Azusa, and Riverside have applied to WAPA for this power. 130 Cong. Rec. H3308 (May 3, 1984).

Only non-Federal purchasers may advance funds for carrying out the uprating program. The Air Force and the Navy both agree that Federal funds may not be used to uprate the existing units of this project. The Air Force and the Navy both maintain that advance funding is not essential to receiving an allocation of the uprating resource from a Federal agency, the basis of their position apparently being the use of the term "non-Federal purchaser" in the Hoover Power Plant Act. Somehow, they contend that the use of this term implies that Federal consumer entities will be able to receive a share of a resource that has been paid for entirely without appropriated funds. Western believes this inappropriately denies benefits to those entities funding the Uprating Program and is contrary to the intent of Congress regarding this uprated resource.

In light of the above, Western is convinced that the claim by the Air Force and Navy of uprating participation by implication is not supported by law or fact. Federal agencies are not preference entities for Boulder Canyon Project resources and are precluded by statute from participating in the uprating program. The nonselection of the Air Force and the Navy is, in effect, mandated by law and, as such, cannot be changed or amended.

The Air Force and the Navy also claim that uprating resources are required to be allocated to them pursuant to the "with due regard to public interest" standard contained in seciton 5 of the Boulder Canyon Project Act for resolving conflicting applications. The underlying premise of this claim is that an allocation of uprated resources to these two Federal agencies would benefit all taxpayers in the United States rather than just a smaller number of citizens of some municipality. In essence, the argument is that sheer numbers dictate that Western allocate to these two Federal agencies. Congress itself rejected this sheer numbers concept when it enacted section 5 of the Boulder Canyon Project Act, granting equal status to the States of Arizona, California, and Nevada. In 1928, as today, these three States varied greatly in sheer numbers of people living within their State boundaries. Yet Congress granted each State equal status under 43 U.S.C. 617d, a clear rejection of the concept that population shall control the allocation process. If sheer numbers cannot control among conflicting preference applications, then certainly it cannot serve as a vehicle whereby a nonpreference entity is permitted to displace a preference entity in the allocation process. It is Western's belief that the claim of the Air Force and the Navy regarding public interest and conflicting applications lacks any legal substance or merit.

The Air Force and Navy claim that an allocation to a military installation best serves the interests of conservation and therefore, such an allocation is required. Western believes this claim lacks merit in light of title II of the Hoover Power Plant Act. In title II, Congress provides specific requirements concerning conservation for Western and all contractors selected to receive any Boulder Canyon Project resources. Since Congress has provided for conservation as a provision of power contracts, Western believes the conservation claim raised by these two Federal agencies lacks substance.

Based on the above discussion, Western believes the proposed nonselection of the Air Force and Navy to receive an allocation of this uprating resources was appropriate. The comments, oral and written, have not raised any considerations that warrant changing or amending the proposed decision not to allocate to these two Federal agencies. Therefore, the decision not to select either the Air Force or the Navy shall not be changed or amended.

4. The Colorado River Commission of Nevada (CRC) took exception to provisions in the proposed allocations in both oral and written comments to Western.

First, CRC took exception to that portion of the proposed allocations which states:

The availability of the allocated contingent capacity and associated energy is predicated upon successful completion of the Uprating Program . . . . In the event that any part of the Uprating Program is not completed, or the capacity output is not sufficient to meet the allocated capacity or energy, the total amount of contingent capacity and associated energy initially allocated to contractors will be reduced on a proportional basis. 50 FR 24830 (June 13, 1985).

CRC offers the argument that the entitlement of firm energy deliveries to Schedule B contractors may not be conditioned on the status of the Uprating Program. Western agrees with CRC's argument and has rewritten the language in question.

Second, CRC submitted comments taking exception to that portion of the proposed allocations which states:

In the event that a potential contractor fails to place power under contract in accordance with the terms and conditions offered by the United States or fails to provide contributed funds to the Department of the Interior, Bureau of Reclamation, for the Uprating Program within a reasonable time as determined by the United States, the amounts of power allocated to such potential contractor will be subject to reallocation pursuant to the Conformed Marketing Criteria. 50 FR 24830 (June 13, 1985).

It appears CRC's exception to the above provision is threefold in nature. First, CRC questions the authority of the United States to offer contracts "in accordance with terms and conditions offered by the United States." Second, the authority of the United States to determine a failure to provide contributed funds within a reasonable time as determined by the United States is questioned. Last, the authority of the United States to reallocate subsequent to a failure to place power under contract or a failure to provide contributed funds within a reasonable time is of concern. After reviewing CRC's comments and the applicable law, Western believes the law does not support CRC's position.

The starting point in this matter is the Boulder Canyon Project Act, as recently amended by the Hoover Power Plant Act. Section 103 of the Hoover Power Plant Act states:

(b) *Except as amended by this Act, the Boulder Canyon Project Act of 1928 (45 Stat. 1057, as amended, 43 U.S.C. 617 et seq.), as amended and supplemental, shall remain in full force and effect.* (emphasis added)

The Boulder Canyon Project Act remains in full force and effect to date. Regarding terms and conditions for contracting for Boulder Canyon Project power, this act states:

The Secretary of the Interior is hereby authorized, under such general regulations as he may prescribe, to contract for the . . . generation of electrical energy and delivery at the switchboard to States, municipal corporations, political subdivisions, and private corporations of electrical energy generated at said dam. . . .

* * * * *

General and uniform regulations shall be prescribed by the said Secretary for the awarding of contracts for the sale and delivery of electrical energy, and for renewals under subsection (b) of this section. . . . 43 U.S.C. 617d.

The key here is the authority to contract "under such general regulations as he may prescribe." The Secretary has the authority to prescribe regulations which are tantamount to terms and conditions. In fact, the Secretary must prescribe uniform regulations. Neither of the above-cited portions of law were in any way amended or repealed by the Hoover Power Plant Act. In addition, the Secretary of Energy, acting by and through the Administrator of Western, has prescribed general and uniform regulations for the awarding or renewing of contracts for the sale and delivery of power from the Boulder Canyon Project in the General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects, (48 FR 20872) (May 9, 1983), thereafter conformed to law as Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects (49 FR 50582) (December 28, 1984). The Hoover Plant Act also sheds light on the authority of the United States regarding uprating contracts. Section 105(a)(1)(B) states:

Provided, however, That in the case of Arizona and Nevada, such contracts shall be offered to the Arizona Power Authority and the Colorado River Commission of Nevada, respectively, as the agency specified by State law as the agent of such State for purchasing power from the Boulder Canyon project: *Provided further,* That in the case of California, no such contract under this subparagraph (B) shall be offered to any purchaser who is offered a contract for capacity exceeding 20,000 kilowatts under subparagraph (A) of this paragraph.

Significant here is the requisite that contracts shall be offered. The directive is one of "offer" and not one of "shall be negotiated." The United States shall offer a contract and certainly any contract so offered must contain terms and conditions of the sale. The Secretary has the general authority to decide what terms and conditions any contract for the sale of Hoover power should contain. Arizona v. California, 373 U.S. 546, 580. Nowhere in the Hoover Power Plant Act is there contained any explicit directive of "shall negotiate." Certainly, the United States intends to offer a contract to CRC as the law requires. The terms and conditions will be subject to good faith negotiations. If CRC fails to place the power under contract in accordance with terms and conditions offered by the United States, then the power allocated to CRC will be subject to reallocation in accordance with regulations in effect prior to the Hoover Power Plant Act of 1984 and left unchanged by Congress.

Failure by a contractor or a potential contractor to advance funds for the uprating project within a reasonable time, as determined by the United States, will subject the power allocated to such entity to reallocation in accordance with the Conformed Criteria. This result is consistent with other portions of the law applicable to the Hoover resources. The Boulder Canyon Project Act, 43 U.S.C. 617d(c), states:

The rights covered by such preference shall be contracted for by such State within six months after notice by the Secretary of the Interior and to be paid for on the same terms and conditions as may be provided in other similar contracts made by said Secretary: *Provided, however,* That no application of a State or a political subdivision for an allocation of water for power purposes or of electrical energy shall be denied or another application in conflict therewith be granted on the ground that the bond issue of such State or political subdivision necessary to enable the applicant to utilize such water and appurtenance works and privileges necessary for the generation and distribution of hydroelectric energy or the electrical energy applied for, has not been authorized or marketed, until after a reasonable time, to be determined by the said Secretary, has been given to such applicant to have such bond issue authorized and marketed.

Western finds significance in the provision for a statutory grace period of a reasonable time, to be determined by the Secretary. The reasonableness of the amount of time is solely within the discretion of the United States. Given this precedent, Western believes that the position of CRC is not supported.

The Criteria of May 9, 1983, contained specific language detailing a reallocation procedure for power from the Boulder Canyon Project. The Criteria stated:

In the event that a contractor or potential contractor fails to place power under contract within a reasonable period, as specified by the United States and in accordance with the terms and conditions offered by the United States, or fails to provide contributed funds, the amounts of power released by such failure will be reallocated in the following order:

1. Preference entities within the Boulder City marketing area;
2. Preference entities in adjacent Federal marketing areas; and
3. Nonpreference entities in the Boulder City marketing area. (48 FR 20872, 20885).

Thus, the reallocation procedure was first established as a matter of record in 1983. The reallocation procedure was part and parcel of mandated uniform general regulations prescribed in accordance with section 5 of the Boulder Canyon Project Act. These Criteria of 1983 were subsequently the subject of congressional review and modification in 1984. The Hoover Power Plant Act so states in section 105(a)(3):

Subdivision E of the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects" published in the Federal Register May 9, 1983, (48 Federal Register commencing at 20881), hereinafter referred to as the "Criteria" or as the "Regulations" shall be deemed to have been modified to conform to this section. The Secretary of Energy shall cause to be included in the Federal Register a notice conforming the text of said Regulations to such modifications.

Review of the Hoover Power Plant Act shows the act did not modify the reallocation procedures. Consequently, the Conformed Criteria of 1984 were published and effective with a procedure for reallocation of power in defined instances that was unchanged

from the 1983 criteria. 49 FR 50588 (December 28, 1984).

CRC's whole claim regarding the reallocation procedure is based on the assertion that the Hoover Power Plant Act did not specifically allow for such action. The fallacy is that there was no need for the Hoover Power Plant Act to make such a delineation. The authority for reallocation already existed in law and regulation.

There was no need for Congress to recreate what already existed. Congress recognized pre-existing authority and interpretative regulations and allowed the authority and regulations to stand, unchanged on this subject. Therefore, Western believes the reallocation procedures, as published, remain valid and binding regarding the uprating program. CRC's comments on this issue, accordingly, will not be adopted.

5. The city of Needles (Needles) submitted an application to Western for Federal power on March 11, 1985. Needles was not selected for power from the Boulder Canyon Project Uprating Program because Needles has a larger percentage of their load served by Federal resources than the other entities under consideration. Needles submitted oral comments on the reallocation at the July 1, 1985, public comment forum and submitted additional written comments on July 12, 1985.

Needles, in support of its application, claims that an additional power allocation to Needles is justified because the city has been damaged by the dams on the Colorado River.

The comments submitted by Needles did not include information that was not originally considered when the Proposed Allocations were published. Under the discretionary authority of the Secretary of Energy, Needles was not selected for an allocation. In view of the public interest, the power allocation was given to other preference entities who have a small part or none of their load served from Federal resources. While Western is sympathetic to Needles' situation, no allocation is warranted by this fact.

Allocation

The final allocations of contingent capacity and associated energy are shown in the following allocation table. The availability of the allocated contingent capacity is predicated upon the successful completion of the Uprating Program which will be constructed in stages by the Bureau of Reclamation. The Uprating Program is currently scheduled to be completed in 1992. Power deliveries will vary during the construction period depending upon the actual capacity generated. The power contracts will become effective on June 1, 1987, and will contain an estimated schedule for power deliveries from the Uprating Program as each phase of the Uprating Program is completed. In the event that any part of the Uprating Program is not completed, or the capacity output is not sufficient to meet the allocated capacity, the total amount of contingent capacity initially allocated to contractors will be reduced on a proportional basis.

The allocated energy is not predicated upon the successful completion of the Uprating Program. The allocated energy will be available beginning June 1, 1987. Whenever actual generation at the Hoover Power Plant in any year of operation (less deliveries thereof to Arizona required by its first priority under Schedule C of section 105(a)(C) of the Hoover Power Plant Act whenever actual generation is in excess of 4,501.001 million kilowatthours) is less than 4,527.001 million kilowatthours, such deficiency shall be borne by the holders of contracts under said Schedule A and Schedule B in the ratio that the sum of the quantities of firm energy bears to the total firm commitment. At the request of any such contractors, Western will purchase energy to meet that contractor's deficiency at such contractor's expense.

In the event that a potential contractor fails to place power under contract in accordance with the terms and conditions offered by the United States or fails to provide contributed funds to the Department of the Interior, Bureau of Reclamation, for the Uprating Program within a reasonable time, as determined by the United States, the amounts of power allocated to such potential contractor will be subject to reallocation pursuant to Conformed Marketing Criteria.

ALLOCATION

State	Contingent capacity (kW)	Firm energy (thousands of kWh)		
		Summer	Winter	Total
Arizona				
Arizona Power Authority	188,000	148,000	64,000	212,000
Nevada				
Colorado River Commission	188,000	288,000	124,000	412,000
California				
City of Anaheim	40,000	36,255	15,745	52,000
City of Azusa	4,000	3,486	1,514	5,000
City of Banning	2,000	1,394	606	2,000
City of Burbank	15,000	3,794	1,648	5,442
City of Colton	3,000	2,789	1,211	4,000
City of Glendale	2,000	2,894	1,257	4,151
City of Pasadena	9,000	2,525	1,096	3,621
City of Riverside	30,000	27,191	11,809	39,000
City of Vernon	22,000	19,522	8,478	28,000
Total California	127,000	99,850	43,364	143,214
Total	503,000	535,850	231,364	767,214

Executive Order 12291

The Department of Energy has determined that this is not a major rule because it does not meet the criteria of section 1(b) of Executive Order 12291 (46 FR 13193) dated February 17, 1981. Western has an exemption from sections 3, 4, and 7 of Executive Order 12291.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et. seq.*) each agency, when required to publish a notice of public rule, shall prepare for public comment, an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. In this instance the final allocations relate to electric services provided by Western. Under section 601(b) of the Regulatory Flexibility Act of 1980, services are not considered "rules", within the meaning of the Act; therefore, Western believes that no flexibility analysis is required.

National Environmental Policy Act

Pursuant to the National Environmental Policy Act of 1969, and the Department of Energy regulations published in the **Federal Register** on February 23, 1982, (47 FR 7976), as amended, Western evaluated the potential for environmental impact of the General Consolidated Power Marketing Criteria or Regulations for the Boulder City Area Projects (Environmental Assessment No. DOE-EA-204). On May 2, 1983, the Department of Energy executed a Finding of No Significant Impact for that proposal. Allocation Criteria for the Boulder Canyon Project Uprating Program were addressed in the Criteria.

The Criteria Environmental Assessmental Assessment addressed the impact of the offer of additional power from the the Uprating Program. Western made a determination based upon environmental considerations of the final Criteria that this action is not a significant action in the context of the National Environmental Policy Act, and that it will not lead to any significant environmental impacts.

Additional Information

The following materials relative to the allocation of Boulder Canyon Project power are available for inspection at the Boulder City Area Office:

1. Applications received requesting power from the Boulder Canyon Project Uprating Program.
2. **Federal Register** notice (48 FR 20872) dated May 9, 1983, publishing the "General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."
3. **Federal Register** notice (49 FR 50582) dated December 28, 1984, publishing the "Conformed General Consolidated Power Marketing Criteria or Regulations for Boulder City Area Projects."
4. **Federal Register** notice (50 FR 2717) dated January 18, 1985, publishing the "Request for Applications for Power from Boulder City Area Projects."
5. **Federal Register** notice (50 FR 24829) dated June 13, 1985, publishing the "Proposed Allocations of Contingent Capacity and Associated Energy from the Boulder Canyon Project Uprating Program."
6. Reporter's Transcript of Proceedings, Public comment Forum for Proposed Allocations of Contingent Capacity and Associated Energy from the Boulder Canyon Project Uprating Program, July 1, 1985.
7. Written comments received on the proposed allocation as follows:

(a) Letter from Major Robert A. Bersak, Department of the Air Force, dated July 1, 1985.

(b) Letter from Mr. Alan R. Watts, Rourke and Woodruff, dated July 11, 1985.

(c) Letter from Mr. Edward Weinberg, Duncan, Weinberg and Miller, P.C., dated July 11, 1985.

(d) Letter from Mr. Jack L. Stonehocker, Colorado River Commission, dated July 1, 1985.

(e) Letter from Mr. Thomas J. Vargo, Department of the Navy, dated July 12, 1985.

(f) Letter from Mr. David B. Daniel, City of Needles, dated July 12, 1985.

(g) Letters from Mr. J. C. Holcombe, San Diego Gas and Electric, dated July 3, 1985, and July 19, 1985.

(h) Letter from Mr. Richard J. Huff, San Diego Association of Governments, dated July 10, 1985.

(i) Letter from Mr. Harry K. Winters, University of California, dated July 15, 1985.

Issued at Golden, Colorado, November 7, 1985.

William H. Clagett,

Administrator.

[FR Doc. 85-27637 Filed 11-15-85; 3:10 pm]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 5G3274/T502, PP 5G3263/T503; FRL-2923-3

Oxyfluorfen; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for the combined residues of the herbicide oxyfluorfen and its metabolites in or on certain raw agricultural commodities. These temporary tolerances were requested by Rohm and Haas Co.

DATE: These temporary tolerances expire October 16, 1986 and October 31, 1986.

FOR FURTHER INFORMATION CONTACT:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1830)

SUPPLEMENTARY INFORMATION: Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105, has requested in pesticide petitions PP 5G3274 and PP 5G3263 the establishment of temporary tolerances for the combined residues of the herbicide oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene) and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities tomatoes at 0.05 part per million (ppm), and alfalfa at 0.1 ppm.

These temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of experimental use permits 707-EUP-112 and 707-EUP-110, which are being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of temporary tolerances will protect the public health. Therefore, the temporary tolerances have been established on the condition that the pesticide be used in accordance with the experimental use permits and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permits.

2. Rohm and Haas Co. must immediately notifiy the EPA of any findings from the experimental uses that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

The tolerance for tomatoes at 0.05 ppm expires October 16, 1986, and the tolerance for alfalfa at 0.1 ppm expires October 31, 1986. Residues not in excess of these amounts remaining in or on the raw agricultural commodities after these expiration dates will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permits and temporary tolerances. These tolerances may be revoked if the experimental use permits are revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 610-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: November 4, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-27018 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

[PP 5G3240/T504; FRL-2923-2]

Oxyfluorfen; Extension of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended temporary tolerances for the combined residues of the herbicide oxyfluorfen and its metabolites containing the diphenyl ether linkage in or on certain raw agricultural commodities.

DATES: These temporary tolerances expire December 31, 1986.

FOR FURTHER INFORMATION:

By mail: Richard Mountfort, Product Manager (PM) 23, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 237, CM # 2, 1921 Jefferson Davis Highway, Arlington, VA. (703-557-1830)

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 7, 1985 (50 FR 31920), announcing the establishment of temporary tolerances for the combined residues of the herbicide oxyfluorfen (2-chloro-1-(3-ethoxy-4-nitrophenoxy)-4-(trifluoromethyl)benzene) and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodities broccoli, cabbage, and cauliflower at 0.05 part per million (ppm). These tolerances were issued in response to pesticide petition PP 5G3240, submitted by Rohm and Haas Co., Independence Mall West, Philadelphia, PA 19105.

These temporary tolerances have been extended to permit the continued marketing of the raw agricultural commodities named above when treated in accordance with the provisions of experimental use permit 707-EUP-108, which is being extended under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95-396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of these temporary tolerances will protect the public health. Therefore, the temporary tolerances have been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rohm and Haas Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These tolerances expire December 31, 1986. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerances. These tolerances may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-534, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981, (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

Dated: November 4, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-27019 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

[OOP-30244A; FRL-2924-7]

Pet Chemicals Inc.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces Agency approval of an application submitted by Pet Chemicals., to register the pesticide product Linalool Technical containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: William Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 211, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-2600)

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of August 22, 1984 (49 FR 33327), which announced that Pet Chemicals Inc., PO Box 660656, Miami, FL 33166, had submitted an application to conditionally register the pesticide product Linalool Technical, an insecticide containing the active ingredient linalool at 92.5 percent; an active ingredient not included in any perviously registered product.

The application was approved on October 3, 1985 as Linalool Technical for manufacturing use only. The product was assigned EPA Registration No. 4758-150.

The Agency has considered all required data on the risks associated with the proposed use of linalool and information on social, economic, and environmental benefits to be drived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agnecy was able to make basic health and safety determinations which show that use of linalool, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on linalool.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (TS-767C), Environmental Protection Agency, Registration Support and

Emergency Response Branch, 401 M St., SW., Washington, D.C. 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. CM#2, Arlington, VA 22202 (703-557-3262). Request for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, D.C. 20460.

Such requests should: (1) identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: November 5, 1985.

Steven Schatzow,

Director, Office of Pesticide Programs.

[FR Doc. 85-27384 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30230A PH-FRL 2925-6]

MAAG Agrochemicals; Conditional Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by MAAG Agrochemicals to register the pesticide products LOGIC Fire Ant Bait and Fenoxycarb Technical, which contain an active ingredient not included in any previously registered products, pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT:

By mail: Timothy A. Gardner, Product Manager (PM), 17, Registration Division (TS-767C), Office of Pesticide Programs, 401 M. St., SW., Washington, DC 20460

Office location and telephone number: Rm. 244, TS-767C, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-2690)

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 30, 1983 (48 FR 44905), which announced that MAAG Agrochemicals, Kings Highway, P.O. Box X, Vero Beach, FL 32960, had submitted applications to register the pesticide products "LOGIC Fire Ant Bait" and "Fenoxycarb Technical" containing the active ingredient fenoxycarb (ethyl[2-(4-phnoxyphenoxy)ethyl] carbamant) at 1.0 and 94.0 percent, respectively, whose active ingredient is not included in any previously registered products.

The applications were approved on October 2, 1985, for LOGIC Fire Ant Bait (EPA Registration No. 35977-4) and Fenoxycarb Technical (EPA Registration No. 35977-5) for use as an insect growth regulator on turf, lawns, and other nonagricultural land such as parks, golf courses, and airport turfs.

The Agency has considered all required data on the risks associated with the proposed uses of fenoxycarb carbamant and information of social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of fenoxycarb, when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

Fenoxycarb qualifies as a section 3(c)(7)(C) registration based on submission of a nearly complete data base, a finding of no unreasonable adverse effects, and a finding that registration is in the public interest. The public interest finding is based on the chemical's relatively low toxicity and its effectiveness in fire ant control. It will also fill the void of those efficacious alternative pesticides that have already been cancelled because of the environmental hazard they present. The only study still to be submitted is a soil photolysis study, which is not typically required of a surface-applied formulation. The study is being required in this instance because vegetation may shield the product from sunlight. Because this data gap is minor, and because the registrant could not have been expected to know of the data requirement, the chemical is being conditionally registered at this time. The soil photolysis study must be submitted by the manufacturer to the Agency, reviewed, and found acceptable before an unconditional registration will be granted. The data are required to be submitted to the Agency by February 6, 1986.

More detailed information on this registration is contained in a Chemical Fact Sheet on fenoxycarb.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the Registration Division (TS-767C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St. SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 236, CM ±2, Arlington, VA 22202 (703-557-3262). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St. SW., Washington, DC 20460.

Such request should identify the product's name and registration number and specify the data or information desired.

(7 U.S.C. 136)

Dated: October 29, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-27516 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-426; PH-FRC 2925-7]

Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a pesticide petition relating to the establishment of a tolerance for certain pesticide chemicals in or on a certain commodity.

ADDRESS: By mail, submit comments identified by the document control number [PF-426] and the petition number, attention Product Manager (PM-23), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs,

Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CB#2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Information submitted as a 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. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail:

Richard Mountfort, (PM-23), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Rm. 237, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1830)

SUPPLEMENTARY INFORMATION: EPA has received a food additive petition (FAP) 6H5478 from DOW Chemical U.S.A., Agricultural Products Department, P.O. Box 1706, Midland, MI 48640 proposing to amend 21 CFR Part 193 by establishing a regulation permitting residues of the herbicide 3,6-dichloro-2-pyridinecarboxylic acid in or on milling fractions (except flour) of barely, oats and wheat at 12 parts per million (ppm).

The proposed analytical method for determining residues is gas chromatography.

Authority: 21 U.S.C. 346.

Dated: November 13, 1985.

Douglas D. Campt,

Director Registration Division, Office of Pesticide Programs.

[FR Doc. 85-27515 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00218 PH-FRL 2925-5]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, December 9, and Tuesday, December 10, 1985, beginning at 8:30 a.m. each day and ending prior to 12 noon on December 10, 1985.

ADDRESS: The meeting will be held at: Hyatt Regency—Crystal City, 2799 Jefferson Davis Highway, Arlington, VA, (703-486-1234).

FOR FURTHER INFORMATION CONTACT: By mail, Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7096).

SUPPLEMENTARY INFORMATION: This will be the twenty-second meeting of the full Group. The tentative agenda thus far includes the following topics:

1. Action items from the July 1985 meeting of the SFIREG.
2. Regional reports.
3. Working Committee reports.
4. Other topics which may arise.

Dated: November 12, 1985.

Susan H. Sherman,

Acting Director, Office of Pesticide Programs.

[FR Doc. 85-27517 Filed 11-19-85; 8:45 am]

BILLING CODE 6560-50-M

[A-9-FRL-2095-6]

Extension of the Suspension of the Arizona State Implementation Plan Sulfur Dioxide Emission Standards for Phelps Dodge Corporation, Douglas, Arizona; Section 119 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of Suspension of the Arizona State Implementation Plan Emission Limitations for Sulfur Dioxide; Notice of Administrative Action.

SUMMARY: Under section 119 of the Clean Air Act, the Administrator may issue a nonferrous smelter located at Douglas, Arizona, thereby suspending its sulfur order (NSO) to an eligible nonferrous smelter. An NSO suspends certain otherwise applicable SIP requirements for sulfur dioxide (SO_2) until not later than January 1, 1988. The regulations implementing section 119 provide for a ninety day suspension of the emission limitations upon receipt by the issuing agency of a substantially complete application. The regulations further provide for extension of a suspension by EPA for good cause.

On May 15, 1985, Phelps Dodge submitted a substantially complete NSO application to EPA for its smelter dioxide SIP emission limitations until August 13, 1985. EPA received a request dated July 29, 1985 from Phelps Dodge Corporation for an extension of the suspension until EPA completes action on the application. EPA finds that there is good cause to extend the suspension of the Arizona SIP emission limitations for an additional ninety days from the expiration date of the previous suspension. Therefore, in accordance with 40 CFR 57.202(b), EPA is extending the suspension until November 12, 1985.

FOR FURTHER INFORMATION CONTACT: David Howekamp at (415) 974-8201.

Background: Section 119 of the Clean Air Act permits the issuance of a "nonferrous smelter order" (NSO) to a nonferrous smelter if no constant control method which would enable it to meet the applicable SO_2 SIP emission limitations has been adequately demonstrated to be reasonably available (as determined by the Administrator taking into account the cost of compliance, non-air quality health and environmental impact, and energy considerations). An NSO may temporarily defer the SIP requirements for compliance with the SO_2 stack emission limitations and schedules for installation of the pollution control equipment necessary to meet those limitations. An NSO may also temporarily defer compliance with any other SIP requirements which are integrally related to such requirements and which would be pointless to enforce in light of the deferral. (See 50 FR 6434).

On February 15, 1985, EPA promulgated regulations to implement the NSO program. 50 FR 6434 (February 15, 1985) (to be codified at 40 CFR Part 57). The NSO regulations set forth the minimum requirements for an NSO, and the procedures a smelter owner must follow in applying for an NSO.

An NSO may be issued either by the applicable State agency or by EPA. To initiate the NSO process, a smelter owner must submit to the issuing agency (i.e., the agency to which the application is made) a notice of intent to apply for an NSO and an agreement to supply the agency with any required information. Upon the receipt of this notice and agreement by the issuing agency, the applicable SIP emission limitations for sulfur dioxide and the related SIP requirements are suspended for sixty days.

Further, 40 CFR 57.202(b) provides that if the smelter owner submits a

substantially complete application within the initial sixty day period, the suspension of the SIP emission limitation for sulfur dioxide and the related requirements will continue until the issuing agency issues or declines to issue an NSO or until ninety days after the date the issuing agency receives the substantially complete application, whichever occurs sooner. However, if the issuing agency has not issued or declined to issue an NSO within the ninety day period, EPA may extend the suspension for good cause.

Phelps Dodge initiated the NSO application process by submitting the EPA and the State of Arizona a notice of intent to apply for an NSO and an agreement to supply the requisite information, by letter dated March 14, 1985. On May 15, 1985, Phelps Dodge submitted its application to EPA. While the Agency has requested Phelps Dodge to supplement its application and may ask for additional supplementary information, the May 15, 1985 submittal was deemed substantially complete for purposes of § 57.202(b) and thus extended the suspension for 90 days, until August 13, 1985.

Administrative Action

Based on EPA's review to date of Phelps Dodge's application for an NSO, the Agency has found that the application is substantially complete and that Phelps Dodge has responded to EPA's request for supplementary information. EPA has not yet completed its review of Phelps Dodge's NSO application and supplementary information. After EPA reviews the application, it will propose action on the application and solicit public comment before taking final action. Based on these considerations, the Agency believes that it is unlikely that it can complete its action on Phelps Dodge's application earlier than ninety days after the date of expiration of the previous suspension. Accordingly, EPA concludes that good cause exists for extending the suspension to ninety days from the expiration of the previous extension, or November 12, 1985. It should be noted that under the existing SIP the Phelps Dodge smelter is not required to actually achieve the emission limitations for sulfur dioxide in the Arizona SIP until January 14, 1986.

This extension should not be construed as reflecting any conclusion on the merits of Phelps Dodge's application. It is simply a procedural action to extend the suspension while the application is being considered by EPA.

Lee M. Thomas,
Administrator.
October 10, 1985.

[FR Doc. 85-26816 Filed 11-19-85; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010467-001.
Title: Latin American Common Carrier Charter Agreement.
Parties:
Compania Chilena de Navigation Interoceania, S.A.
Compania Peruana de Vapores
Compania Sud Americana de Vapores, S.A.
Lykes Bros. Steamship Co., Inc.
Transportes Navieros Equatorianos
United States Lines (S.A.) Inc.
Synopsis: The proposed amendment would modify the agreement to (1) authorize charter authority on an intermodel basis to/from inland and coastal points in the United States; (2) delete the currently effective termination date of June 30, 1987; (3) make certain nonsubstantive changes to the agreement; and (4) restate the agreement to conform with the Commission's format, organization and content requirements.

Agreement No.: 217-010612-003.
Title: Linabol-CSAV Vessel/Space Charter.
Parties:
Compania Sud Americana de Vapores
Lineas Navieras Bolivianas
Synopsis: The proposed amendment would modify the agreement to limit the exclusively clause to the trade between the United States Atlantic and Gulf Coasts and U.S. ports located on the Great Lakes and ports on the West Coast of South America, for cargo moving to and from the Republic of Bolivia. The parties have requested a shortened review period.

Agreement No.: 203-010851.
Title: Advisory Commission Study Agreement.
Parties:
American President Lines, Ltd.
Sea-Land Service, Inc.
Waterman Steamship Corporation
Lykes Bros. Steamship Co., Inc.
United States Lines, Inc.
Farrell Lines, Inc.
Prudential Lines, Inc.
Barber Blue Sea Line
Associated Container Transportation (Australia) Ltd.
Hamburg-Sudamerikanische Dampffarts-Gesellschaft Eggert & Amsinck
A.P. Moller-Maersk Line
Hapag-Lloyd A.B.
East Asiatic Company Ltd. A/S
Mitsui O.S.K. Lines, Ltd.
Blue Star Line Limited
Intercontinental Transport (ICT) B.V.
Torm Lines
Overseas Containers Limited
NedLloyd Lijnen, B.V.
Synopsis: The proposed agreement would establish a cooperative working arrangement between the parties in the trades between United States ports and points and foreign ports or points and foreign-to-foreign ocean shipping trades. It would permit the parties to collect, exchange, analyze, study and make recommendations on all types and kinds of data pertaining to international ocean shipping. The parties have requested a shortened review period.

Agreement No.: 203-010852.
Title: Three Lines' Discussion Agreement in the Far East-U.S. Atlantic Coast Trades.
Parties:
Nippon Yusen Kaisha
Mitsui O.S.K. Lines, Ltd.
Yamashita-Shinnihon Steamship Co., Ltd.
Synopsis: The proposed agreement would establish a cooperative working arrangement between the parties in the trade between the Far East and U.S. Atlantic Coast ports, and inland and coastal points via such ports. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 15, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-27689, Filed 11-19-85; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Applicants; JEBCO International et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718 and 46 CFR Part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573.

J.E. Bowlby, Inc., dba JEBCO International, 268 Green Village Road, Green Village, NJ 07935. Officer: Jay E. Bowlby, Jr., President

Lucile A. Battle, dba Galt Services, 8713 First Avenue, Suite 702D, Silver Spring, MD 20910

Dated: November 15, 1985.

By the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-27690 Filed 11-19-85; 8:45 am]

BILLING CODE 6730-01-M

[Agreement No. 217-010601-005]

Neptune Orient Lines, Ltd., Orient Overseas Container Line, Inc., Yamashita-Shinnihon Steamship Co., Ltd., and Kawasaki Kisen Kaisha, Ltd.; Sailing Agreement; Erratum

The **Federal Register** Notice of October 28, 1985 (Vol. 50, No. 208, page 43606) inadvertently omitted Yamashita-Shinnihon Steamship Co., Ltd. as a party to the agreement and from the title of the agreement.

By Order of the Federal Maritime Commission.

Dated: November 15, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-27691 Filed 11-19-85; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Louisiana Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight 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 December 2, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Louisiana Bancshares, Inc.*, Baton Rouge, Louisiana; to acquire Terre Agency, Inc., Houma, Louisiana, and thereby engage in acting as agent with respect to insurance limited to assuring repayment of the outstanding balance due on a specific extension of credit by a bank holding company or its subsidiary in the event of the death or disability or of the debtor, pursuant to section 4(c)(8)(A) of the Act. Applicant also proposed to engage in acting as agent in the sale of the credit life insurance, which was previously approved for sale by this subsidiary on or before May 1, 1982, including sales of such insurance at new locations in the State in which the principal place of business of the bank holding company is located, in an adjoining state thereto and in any State or States in which such insurance was sold by this subsidiary on May 1, 1982, pursuant to section 4(c)(8)(D)(i) of the Act. These activities would be limited to the state of Louisiana.

Board of Governors of the Federal Reserve System, November 14, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-27612 Filed 11-19-95; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Authorization for Foreign Currency Operations

In accordance with the Committee's rules regarding availability of information, notice is given that at its meeting on October 1, 1985, paragraph 1D of the Committee's authorization for foreign currency operations was amended to read as follows:

1D. To maintain an overall open position in all foreign currencies not exceeding $10.0 billion. For this purpose, the overall open position in all foreign currencies is defined as the sum (disregarding signs) of net positions in individual currencies. The net position in a single foreign currency is defined as holdings of balances in that currency, plus outstanding contracts for future receipt, minus outstanding contracts for future delivery of that currency, i.e., as the sum of these elements with due regard to sign.

By order of the Federal Open Market Committee, November 14, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85-27613 Filed 11-19-85; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of October 1, 1985

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Policy Directive issued at its meeting held on October 1, 1985.[1]

[1] The Record of policy actions of the Committee for the meeting of October 1, 1985, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, DC 20551.

The following domestic policy directive was issued to the Federal Reserve Bank of New York:

The information reviewed at this meeting suggests that economic activity expanded in the third quarter at a moderately faster rate than in the first half of the year. In August, industrial production increased somewhat. Total retail sales rose considerably, boosted by a surge in auto sales. Housing starts, while increasing in August, were still no higher than their average level in the second quarter. Incoming information generally suggested a leveling of business capital spending. The merchandise trade deficit in July and August averaged somewhat less than in the second quarter as a drop in imports was partly offset by a slight decline in exports. Total nonfarm payroll employment rose somewhat more in August than in most other recent months. The civilian unemployment rate fell from 7.3 percent in July—its level since February—to 7.0 percent in August. Broad measures of prices and wages appear to be rising at rates close to or somewhat below those recorded earlier in the year.

Following the Committee's meeting on August 20, the trade-weighted value of the dollar against major foreign currencies appreciated through mid-September. The dollar subsequently declined sharply, especially after the announcement on September 22 by the Finance Ministers and Central Bank Governors of the G–5 countries that exchange rates have not fully reflected economic fundamentals.

M1 growth surged in August, reflecting exceptional strength in interest-bearing checkable deposits and relatively rapid expansion in other components; data for the first half of September suggest slower but still substantial expansion. Reflecting the surge in M1, M2 accelerated in August, and M3 also strengthening somewhat. Expansion in total domestic nonfinancial debt has remained relatively rapid. Most market interest rates have changed little on balance since the August meeting of the Committee.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives the Committee at the July meeting reaffirmed ranges for the year of 6 to 9 percent for M2 and 6 to 9½ percent for M3. The associated range for total domestic nonfinancial debt was reaffirmed at 9 to 12 percent. With respect to M1, the base was moved forward to the second quarter of 1985 and a range was established at an annual growth rate of 3 to 8 percent. The range takes account of expectations of a return of velocity growth toward more usual patterns, following the sharp decline in velocity during the first half of the year, while also recognizing a higher degree of uncertainty regarding that behavior. The appropriateness of the new range will continue to be reexamined in the light of evidence with respect to economic and financial developments including developments in foreign exchange markets. More generally, the Committee agreed that growth in the aggregates may be in the upper parts of their ranges, depending on continuing developments with respect to velocity and provided that inflationary pressures remain subdued.

For 1986 the Committee agreed on tentative ranges of monetary growth, measured from the fourth quarter of 1985 to the fourth quarter of 1986, of 4 to 7 percent for M1, 6 to 9 percent for M2, and 6 to 9 percent for M3. The associated range for growth in total domestic nonfinancial debt was provisionally set at 8 to 11 percent for 1986. With respect to M1 particularly, the Committee recognized that uncertainties surrounding recent behavior of velocity would require careful reappraisal of the target range at the beginning of 1986. Moreover, in establishing ranges for next year, the Committee also recognized that account would need to be taken of experience with institutional and depositor behavior in response to the completion of deposit rate deregulation early in the year.

In the implementation of policy for the immediate future, the Committee seeks to maintain the degree of pressure on reserve positions sought in recent weeks. This action is expected to be consistent with growth in M2 and M3 over the period from September to December at annual rates of about 6 to 7 percent. A marked slowing of M1 growth over the period to an annual rate of around 6 to 7 percent is also anticipated; slower growth over the next three months would be acceptable in the context of satisfactory economic performance, given recent very rapid growth in M1. Somewhat greater or lesser reserve restraint would be acceptable depending on behavior of the aggregates, taking account of appraisals of the strength of the business expansion, developments in foreign exchange markets, progress against inflation, and conditions in domestic and international credit markets. The Chairman may call for Committee's consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, November 14, 1985.

Stephen H. Axilrod,

Secretary.

[FR Doc. 85–27614, Filed 11–19–85; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I) announcement is made of the following national advisory bodies scheduled to assembly during the month of December 1985.

National Advisory Mental Health Council

December 2–3; 9:00 a.m., National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20982

Open

Contact: Rachel Driver, Parklawn Building, Room 9–105, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1216

Purpose: The National Advisory Mental Health Council advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug, Abuse, and Mental Health Administration, and Administration, National Institute of Mental Health, regarding policies and programs of the Department in the field of mental health. The Council reviews applications for grants-in-aid relating to research and training in the field of mental health and makes recommendations to the Secretary with respect to approval of applications for, and amount of, these grants.

Agenda: From 9:00 a.m.–5:00 p.m., December 2, and from 9:00 a.m.–12:00 noon, December 3, the meeting will be open for discussion of NIMH policy issues and will include current administrative, legislative and program developments. Attendance by the public will be limited to space available. The December meeting of the Council is solely a policy meeting and no grant applications will be reviewed.

Mental Health Small Grant Review Committee

December 5–7, 1:30 p.m.
The Canterbury Hotel, 1733 N St, NW., Washington, DC 20036
Open—December 5: 1:30–2:30 p.m.
Closed—Otherwise
Contact: Barbara McCracken, Parklawn Buiilding, Room 9–95, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4843

Purpose: The Committee is charged with the initial review of applications for research in all disciplines pertaining to alcohol, drug abuse, and mental health for support of research in the areas of psychology, psychiatry, and the behavioral and biological sciences, with recommendations to the National Advisory Mental Health Council, the National Advisory Council on Alochol Abuse and Alcoholism, and the National Advisory Council on Drug Abuse.

Agenda: From 1:30–2:30 p.m., December 5, the meeting will be open for discussion of administrative announcements and program

developments. Otherwise, the Committee will be performing initial review of applications for assistance and will not be open to the public in accordance with the determination by the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, pursuant to the provisions of 5 U.S.C. 552b(6), and Section 10(d) of Pub. L. 92-463 (5 U.S.C. Appendix I).

Substantive information may be obtained from the contact persons listed above. Summaries of the meetings and rosters of committee members may be obtained from Ms. Helen Garrett, Committee Management Officer, Room 17C-26, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4333.

Dated: November 14, 1985.

Robin I. Kawazoe,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85-27607 Filed 11-19-85; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

Human Diploid Cell Measles Vaccine and Vaccination of Infants Under 9 Months of Age; Open Meeting

The Division of Immunization, Center for Prevention Services (CPS), Centers for Disease Control (CDC), Atlanta, Georgia, will sponsor a meeting to discuss the human diploid cell measles vaccine and vaccination of infants less than 9 months of age.

The meeting will be open to the public for observation and participation, limited only by the space available.

Date: November 21-22, 1985

Time: 8:30 a.m.-5:00 p.m.

Place: Centers for Disease Control, Classroom 2, Building 2, 1600 Clifton Road, N.E., Atlanta, Georgia 30333

Additional information may be obtained from:

Lauri Markowitz, M.D., Medical Epidemiologist, Surveillance, Investigations, and Research Branch, Division of Immunization, CPS, CDC, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Telephone: FTS: 236-1860; Commercial: (404) 329-1860

Dated November 13, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85-27731 Filed 11-19-85; 8:45 am]

BILLING CODE 4160-18-M

Office of Human Development Services

[Program Announcement No. HDS-13655-851]

FY 1986 Grants to Indian Tribes for Supportive and Nutritional Services for Older Indians

AGENCY: Office of Human Development Services, HHS.

ACTION: Supplemental announcement of opportunity for Indian tribes to apply for grants for supportive and nutritional services under title VI of the Older Americans Act.

SUMMARY: The Administration on Aging (AoA) announces that applications will be accepted from new applicants (other than current grantees) for grants under Title VI of the Older Americans Act. The new applicants must be tribal organizations of federally recognized Indian Tribes which: 1) Represent from 60 to 74 individuals age 60 or over; or 2) represent 75 or more individuals age 60 or over who are members of a Tribe which received Federal recognition at a date which would have prevented it from applying under the April 10, 1984 announcement. This announcement supplements the Program Announcement of April 10, 1984 which restricted applicants to tribal organizations of federally recognized tribes which represented 75 or more Indians age 60 or over.

FOR FURTHER INFORMATION CONTACT: Mr. Michio Suzuki, Associate Commissioner, Office of State and Tribal Programs, Administration on Aging, Office of Human Development Services, Department of Health and Human Services, North Building, Room 4737, 330 Independence Avenue SW., Washington, DC 20201; telephone number (202) 245-0011.

DATE: The closing date for receipt of new applications is February 28, 1986.

SUPPLEMENTARY INFORMATION

1. Program Purpose and Background

The purpose of the Title VI program is to promote the delivery of supportive and nutritional services for older Indians on or near reservations comparable to the services provided through the State and Area Agencies on Aging under Title III of the Act.

These services include congregate and home-delivered meals, information and referral services, transportation, chore services and other supportive services which contribute to the welfare of older Indians. Funds may also be used for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers. Title VI as added to the Older Americans Act by the Amendments of 1978, and final regulations were published in the **Federal Register** July 18, 1980. Regulations have been revised and were published as Interim Final Rules in the **Federal Register** of April 1, 1985 (50 FR 12942) with an effective date of May 1, 1985. The Interim Final Rules were confirmed as final with no changes on October 11, 1985 (50 FR 41514).

The Older Americans Act Amendments of 1984 (Public Law 98-459), signed October 9, 1984, reduced from 75 to 60 the number of Indians age 60 or over which a tribal organization of a federally recognized Tribe must represent in order to be eligible to apply for a grant under Title VI of the Older Americans Act. This announcement reflects that change by providing tribal organizations which represent between 60 to 74 older Indians an opportunity to apply for Title VI funds. In addition, the announcement recognizes that some Tribes with large numbers of older Indians may have received Federal recognition recently, that is, at a date after which it would have been possible for them to apply under the April 10, 1984 announcement. This announcement therefore also provides an opportunity for those tribal organizations of Tribes which subsequently received Federal recognition to apply, even if the tribal organization represents 75 or more older Indians. Since this announcement is a supplement to the April 10, 1984 announcement, applications are restricted to those tribal organizations which were ineligible to apply under the earlier announcement. Our aim is that future program announcements will provide an opportunity for all tribal organizations representing 60 elders age 60 or over to apply.

For complete information in preparing the application the reader should consult the regulations published most recently in 50 **Federal Register** 12942-12959 (1985) to be codified at 45 CFR Part 1328 and the statute, Title VI of the Older Americans Act, as amended by Pub. L. No. 98-459 October 9, 1984.

2. Available Funds

This announcement is made based on an estimate that $7,500,000 will be appropriated for Fiscal Year 1986. The funds actually available will be used for grants effective in Fiscal Year 1986 for any successful applications resulting from his announcement and for continuation grants for the current 125 grantees at various times during the year.

AoA expects the new awards to be between $40,000 and $50,000, depending

on the number of new approved projects and the approved continuation grants of current projects.

There are no tribal financial matching requirements.

3. Eligibility of a Tribal Organization To Receive a Grant

To be eligible to receive a grant, a tribal organization must represent a federally recognized Indian Tribe and meet the three requirements in section 602(a) of the Older Americans Act:

A. Age of Older Indians

The tribal organization must represent at least 60 individuals who have attained 60 years of age or older. (Note: Two or more Tribes may form a consortium to meet the requirement of representing at least 60 individuals age 60 or over). In order to meet this requirement, the application must indicate the number of members of the grantee Tribe and may indicate the number of members of any other federally recognized Tribes, age 60 or over, who live in the proposed Title VI service area.

B. Ability to Deliver Services

The tribal organization must demonstrate the ability to deliver supportive and nutrition services. In order to meet this requirement, the application must include a description of the Tribe's past experience in, or future plans for, the delivery of supportive and nutrition services.

C. Non-Overlapping Between Titles III and VI of the Older Americans Act

The applicant must assure that individuals to be served by the tribal organization will not receive services under Title III for the period for which application under this Title is made.

4. Application Process

Submission of Applications: One (1) signed original and two (2) copies of the application including all attachments must be submitted, that is, postmarked or hand-delivered (by 5:30 P.M.) no later than Friday, February 28, 1986 to the Department of Health and Human Services, Office of Human Development Services, Grants and Contracts Management Division, Room 345–F, Hubert Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, Attention: William J. McCarron.

Deadlines: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date at a place specified in the program announcement, or

2. Sent on or before the deadline date and received by the granting agency in time to be considered during the competitive review and evaluation process. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in the above paragraph of this section are considered late applications. HDS shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: Only HDS may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if HDS does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

5. Content of the Application

A tribal organization wishing to apply must file an application in accordance with Title VI of the Older Americans Act and Title 45 Part 1328 of the Code of Federal Regulations; copies of these references and other application requirements will be included in the application kit.

Section 604(a) of the Older Americans Act requires that, prior to submission of a Title VI application, each applicant evaluate the need for social and nutrition services among the older Indians who will be served by the tribal organization. Applicants must include in their application the results of this evaluation of needs (needs assessment), and the methods which will be used to assure that Title VI funds will be used with maximum efficiency and effectiveness in meeting needs. Budget requests must clearly reflect the information presented in this description. Funding levels for approved projects will be determined after consideration is given to the information described above as well as the number of Indians over age 60 in the proposed Title VI service area.

The application must include the following information:

I. Objectives and Need for This Assistance
II. Results or Benefits Expected
III. Approach-Description and Method of Delivery for Each Service
  (A) Nutrition
  (B) Information and Referral
  (C) Other Optional Services as noted in 1328.13
IV. Geographic Location
V. Additional Applicable Information
  (A) Oler Indians in the Title VI Service Area
  (B) Tribal Resolution
  (C) Title VI Program Assurances

Tribal organizations located within a particular State and Planning and Service Area(s) are requested to notify the appropriate State and Area Agency(ies) on Aging of their intent to apply for funds under this Announcement. If the tribal organization is successful in the competition for an award, it will be necessary for the tribal organization to notify these agencies of the receipt of the award.

6. Action on Applications

The anticipated effective date of new approved projects will be sometime in Fiscal Year 1986. Budget periods will be for one year; project periods will be for three years. AoA expects the new awards will be between $40,000 and $50,000, depending on the number of approved projects.

Awards will be made through the issuance of a Notice of Financial Assistance Awarded from the Office of Human Development Services. This Notice will set forth the amount of funds awarded, the terms and conditions of the grant, the budget period for which support is given, and the project period.

In carrying out the requirements of Title VI with respect to tribal eligibility, AoA intends to fund all applications which meet the requirements of the law and regulations.

This program is *not* covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," or 45 CFR Part 100, "Intergovernmental Review of Health and Human Services Programs and Activities."

Dated: November 14, 1985.

Carol Fraser Fisk,

Acting Commissioner on Aging.

Dated: November 14, 1985.

Dorcas R. Hardy,

Assistant Secretary for Human Development Services.

[FR Doc. 85–27639 Filed 11–19–85; 8:45 am]

BILLING CODE 4130–01–M

National Institutes of Health

Board of Scientific Counselors; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, on December 2, 3, and 4. The meeting will be held in Conference

Room 428, Building 5, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD

The meeting will be open to the public on December 2 from 8:30 a.m. until 12:30 p.m. During this open session, the permanent staff of the Laboratory of Biology of Viruses, the Laboratory of Molecular Microbiology, and the Laboratory of Viral Diseases will present and discuss their immediate past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting of the Board will be closed to the public on December 2 from 1:30 p.m. until recess, on December 3 from 8:00 a.m. until recess and on December 4 from 8:00 a.m. until adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lynn Trible, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A–32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–5717, will provide summaries of the meeting and rosters of the Board members.

Dr. Gordon D. Wallace, Acting Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, Room 11C103, telephone (301) 496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13–301, National Institutes of Health)

Dated: November 7, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–27617 Filed 11–19–85; 8:45 am]

BILLING CODE 4140–01–M

Board of Scientific Counselors, NIDR; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Dental Research (NIDR), on December 4–6, 1985, in Conference Room 117, Building 30, National Institutes of Health, Bethesda, Maryland. The meeting will be open to the public from 9:00 a.m. to recess on December 4 and from 9:00 a.m. to 12:00 Noon on December 5, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 1:00 p.m. to recess on December 5 and from 9:00 a.m. to adjournment on December 6 for the review, discussion, and evaluation of individual programs and projects conducted by the NIDR, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Abner Notkins, Director of Intramural research, NIDR, NIH, Building 30, Room 132, Bethesda, MD 20892 (telephone 301 496–1483) will provide summary of the meeting, roster of committee members and substantive program information.

Dated: November 7, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–27618 Filed 11–19–85; 8:45 am]

BILLING CODE 4140–01–M

Cardiology Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cardiology Advisory Committee, National Heart, Lung, and Blood Institute, January 13–14, 1986, Building 31C, Conference Room 8, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:00 a.m. on January 13 to adjournment on January 14. Attendance by the public will be limited to space available. Topics for discussion will include a review of the research programs relevant to the Cardiology area and consideration of future needs and opportunities.

Ms. Terry Bellicha, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Room 4A21, Building 31, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Eugene R. Passamani, M.D., Associate Director for Cardiology, Division of Heart and Vascular Diseases, National Heart, Lung, and Blood Institute, Room 320, Federal Building, Bethesda, Maryland 20892, telephone (301) 496–5421, will furnish substantive program information upon request.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–27619 Filed 11–19–85; 8:45 am]

BILLING CODE 4140–01–M

Clinical Applications and Prevention Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Applications and Prevention Advisory Committee, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute, National Institutes of Health, January 15–16, 1986. The meeting will be held in Conference Room 4 (A Wing), Building 31, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on January 15 from 9:00 a.m. to recess and from 8:30 a.m. to adjournment on January 16 to discuss new initiatives, program policies and issues. Attendance by the public is limited to space available.

Ms. Terry Bellicha, Chief, Public Inquiry Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of committee members upon request. Dr. William Friedwald, Executive Secretary of the Committee, Federal Building, Room 212, Bethesda, Maryland 20892, phone (301) 496–2533, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research, National Institutes of Health)

Dated: November 12, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–27620 Filed 11–19–85; 8:45 am]

BILLING CODE 4140–01–M

Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, December 16, Building 31, Conference Room 7, Bethesda, Maryland 20892. This

meeting will be open to the public on December 16, from 8:00 A.M. to 8:30 A.M. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on December 16 from 8:30 A.M. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892, (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892, (301/496-7575) will provide program information.

Dated: November 7, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-27622 Filed 11-19-85; 8:45 am]

BILLING CODE 4140-01-M

Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, January 6-7, Building 31, Conference Room 10, Bethesda, Maryland 20892. This meeting will be open to the public on January 6-7, from 8:00 A.M. to 8:30 A.M. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 6-7 from 8:30 A.M. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7575) will provide program information.

Dated: November 7, 1985.

Betty J. Beveridge

Committee Management Officer, NIH.

[FR Doc. 85-27623 Filed 11-19-85; 8:45 am]

BILLING CODE 4140-01-M

Developmental Therapeutics Contracts Review Committee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Developmental Therapeutics Contracts Review Committee, National Cancer Institute, National Institutes of Health, January 27-28, Linden Hill Hotel & Racquet Club, Forest Hills Conference Room, Bethesda, Maryland 20814. This meeting will be open to the public on January 27-28, from 8:00 A.M. to 8:30 A.M. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 27-28 from 8:30 A.M. to adjournment for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the proposals, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Kendall G. Powers, Executive Secretary, Developmental Therapeutics Contracts Review Committee, National Cancer Institute, Westwood Building, Room 805, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7575) will provide program information.

Dated: November 7, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-27624 Filed 11-19-85; 8:45 am]

BILLING CODE 4140-01-M

National Cancer Advisory Board and Board Subcommittee; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the National Cancer Advisory Board and its Subcommittees, December 2-4, 1985, National Cancer Institute, Building 31, C Wing, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20892. The Board meeting and the Subcommittee meetings will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will furnish summaries of the meetings and rosters of members, upon request.

Mrs. Barbara S. Bynum, Executive Secretary, National Cancer Advisory Board, National Cancer Institute, Building 31, Room 10A03, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5147) will furnish substantive program information.

Name of Committee: *National Cancer Advisory Board*
Dates of Meeting: December 2-4, 1985
Place of Meeting: Building 31, C Wing, Conference Room 6, National Institutes of Health

Open:
December 2, 8:30 a.m.—recess
December 3, 8:30 a.m.—recess
December 4, 8:00 a.m.—adjournment
Agenda: Report of the Director, National Cancer Institute; Program Reviews, and scientific presentations.

Name of Committee: *Subcommittee on Organ Systems Program*
Date of Meeting: December 1, 1985
Place of Meeting: Building 31, C Wing, Conference Room 8, National Institutes of Health

Open:
December 1, 1:00 p.m.—adjournment
Agenda: To review progress of the Organ Systems Program.

Name of Committee: *Subcommittee on Cancer Control for the Year 2000*

Dates of Meeting: December 1, 1985
Place of Meeting: Building 31, A Wing, Conference Room 3, National Institutes of Health
Open:
December 1, 7:00 p.m.—adjournment
Agenda: To dicuss issues relating to providing second opinions for cancer patients and reporting on the status of the evaluation of the community oncology program.

Dated: November 12, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85-27621 Filed 11-19-85; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-85-1565; FR-2150]

Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Application Deadline for Funds under the CDBG Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1986.

SUMMARY: This Notice sets the deadline dates for filing applications for funds under the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages for Fiscal Year 1986. Applications are required in order to provide HUD with the information necessary to rate the proposed project(s) and to assure HUD that the necessary citizen participation has taken place.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy P. Gonnella, Office of Program Policy Development, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW. Washington, DC 20410, (202) 755-6092. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This Notice sets the deadline dates for submitting applications for the Community Development Block Grant Program for Indian Tribes and Alaskan Native Villages. HUD will use the information furnished in these applications to rate the proposed project(s) and to assure the Department that there has been the necessary citizen participation. These dates apply only to applications submitted by Indian Tribes and Alaskan Native Villages for Fiscal Year 1986.

The field responsibility for the administration of the program is divided among the following offices: Region V Office of Indian Programs (OIP) in Chicago, responsible for all HUD Indian program activities within Regions I–V, plus the State of Iowa; Oklahoma City Office, responsible for all HUD Indian program activities in the State of Arkansas, Texas, Oklahoma, Kansas, Louisiana, and Missouri; Region VIII OIP in Denver, responsible for all HUD Indian program activities in Region VIII, plus the State of Nebraska; Region IX OIP in Phoenix, responsible for all HUD Indian program activities in Region IX, plus the State of New Mexico; Region X OIP in Seattle, responsible for all HUD Indian program activities in Region X, with the exception of the State of Alaska; and the Anchorage Office, responsible for all HUD Indian and Alaskan Native program activities in the State of Alaska.

Applications will be accepted by HUD as of the publication date of this Notice.

FINAL DATES FOR SUBMISSION OF APPLICATIONS

Offices	Applications must be submitted no later than[1]
Region V, OIP	Jan. 24, 1986.
Oklahoma City Office	Feb. 28, 1986.
Region VIII, OIP	Feb. 14, 1986.
Region IX, OIP	Feb. 18, 1986.
Region X, OIP	Dec. 20, 1985.
Anchorage Office	Jan. 21, 1986.

[1]Applications must be received or postmarked no later than the date specified above. Applications received or postmarked after the deadline will not be considered.

Tribes and Villages submitting applications for this program must do so on HUD forms approved by the Office of Management and Budget under OMB Control Number 2506-0043. These forms request information which assures HUD that the necessary citizen participation has taken place. Forms will be provided by the appropriate HUD Field Offices.

Authority: Sec. 107, Housing and Community Development Act of 1974 (42 U.S.C. 5307); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 7, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85-27605 Filed 11-19-85; 8:45 am]

BILLING CODE 4210-29-M

[Docket No. N-85-1566]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgage's One-Time MIP Transmittal
Office: Administration
Form Number: HUD–27001
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 34,000
Status: Reinstatement
Contact: John A. Chin, HUD (202) 755–1857, Robert Fishman, OMB (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 4, 1985.

Proposal: Consumer Complaint Form
Office: Housing
Form number: HUD–1676
Frequency of Submission: On Occasion
Affected public: Individual or Households, Businesses or Other For-Profit, and Small Businesses or Organizations
Estimated burden hours: 250
Status: New
Contact: Roger G. Henderson, HUD, (202) 755–0502, Robert Fishman, OMB, (202) 395–6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 28, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85–27672 Filed 11–19–85; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8449–B2]

Alaska Native Claims Selection; Leisnoi, Inc.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Leisnoi, Inc. for 687.92 acres. The lands involved are in the vicinity of Woody Island, Alaska.

U.S. Survey No. 2539, Alaska, lot 9, situated at the head of Womens Bay on Kodiak Island. Containing 687.92 acres.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Kodiak Daily Mirror. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until December 20, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Ruth Stockie,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–27643 Filed 11–19–84; 8:45 am]

BILLING CODE 4310–JA–M

[F–14952–A]

Alaska Native Claims Selection; Unalakleet Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of section 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971 (ANCSA), 43 U.S.C. 1601, 1613(a), will be issued to Unalakleet Native Corporation for approximately 1.62 acres. The lands involved are in Sec. 3, T. 19 S., R. 11 W., Kateel River Meridian, Alaska.

A notice of the decision will be published once a week for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513. ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision shall have until December 20, 1985, to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal can be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E shall be deemed to have waived their rights.

Joe J. Labay,

Section Chief, Branch of ANCSA Adjudication.

[FR Doc. 85–27644 Filed 11–19–85; 8:45 am]

BILLING CODE 4310–JA–M

National Park Service

Addition of Lands at Redwood National Park

AGENCY: National Park Service, Interior.

ACTION: Addition of lands.

SUMMARY: Section 2 of Pub. L. 90–545, enacted October 2, 1968, which established Redwood National Park, allowed the Secretary of the Interior to modify the boundaries of the park by ". . . giving notice of any changes involved therein by publication of a revised drawing or boundary description in the **Federal Register** and by filing said revision with the officers with whom the original maps were filed . . ."

The following described public lands are adjacent to the park, and the boundaries are hereby modified to include them in Redwood National Park:

Humboldt Meridian, California

T.12N., R. 2 E.,
Sec. 37;
Sec. 38; lots 2, 3, 4, and 5;
Sec. 39; lots 5.

The area described aggregates 122.34 acres.

Inquiries concerning the area within the Redwood National Park, as shown on the map entitled "Additional Lands, Redwood National Park, California" numbered 167–80005–D and dated March 1978, shall be directed to the Director, National Park Service, U.S. Department of the Interior, Washington, DC 20240, or to the Regional Director, Western Regional Office, National Park Service, U.S. Department of the Interior, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102.

Stanley T. Albright,

Acting Director, National Park Service.

[FR Doc. 85–27684 Filed 11–19–85; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–257 (Final)]

Carbon Steel Wire Rod From Portugal

AGENCY: International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On October 25, 1985, the Commission received a letter from counsel on behalf of Atlantic Steel Co., Continental Steel Corp., Georgetown Steel Corp., North Star Steel Texas, Inc., and Raritan River Steel Co., the petitioners in investigation No. 731-TA-257 (Final), withdrawing their petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the antidumping investigation concerning carbon steel wire rod from Portugal is terminated.

EFFECTIVE DATE: November 7, 1985.

FOR FURTHER INFORMATION CONTACT: Rebecca Woodings (202-523-0282), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: November 14, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27720 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-292 through 296 (Preliminary)]

Certain Welded Carbon Steel Pipes and Tubes From the People's Republic of China, the Philippines, and Singapore

AGENCY: International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-292 through 296 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of the following welded carbon steel pipes and tubes which are alleged to be sold in the United States at less than fair value:

Standard pipes and tubes [1] from the People's Republic of China, the Philippines, and Singapore (investigations Nos. 731-TA-292 through 294 (Preliminary))

Heavy-walled rectangular pipes and tubes [2] from Singapore (investigation No. 731-TA-295 (Preliminary))

Light-walled rectangular pipes and tubes [3] from Singapore (investigation No. 731-TA-296 (Preliminary))

As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 30, 1985. For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: November 13, 1985.

FOR FURTHER INFORMATION CONTACT: Abigail Eltzroth (202-523-0289), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to petitions filed on November 13, 1985 by counsel for the Committee on Pipe and Tube Imports.

Participation in the investigations. Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to §201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to an investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on December 6, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Abigail Eltzroth (202-523-0289) not later than December 4, 1985 to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the impostition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before December 10, 1985 a written statement of information pertinent to the subject of the investigations, as provided in §207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the commission in accordance with §201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of §201.6 of the Commission's rules (19 CFR 201.6).

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[1] For purposes of these investigations, the term "standard pipes and tubes" covers welded carbon steel pipes and tubes of circular cross section, 0.375 inch or more but not over 16 inches in outside diameter, provided for in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258, and 610.4925 of the *Tariff Schedules of the United States (Annotated) (TSUSA)*

[2] For purposes of this investigation, the term "heavy-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness not less than 0.156 inch, provided for in item 610.3955 of the *TSUSA*.

[3] For purposes of this investigation, the term "light-walled rectangular pipes and tubes" covers welded carbon steel pipes and tubes of rectangular (including square) cross section, having a wall thickness less than 0.156 inch, provided for in item 610.4928 of the *TSUSA*.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to §207.12 of the Commission's rules (19 CFR 207.12).

Issued: November 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc 85-27722 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-288 (Preliminary)]

Erasable Programmable Read Only Memories From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury [2] by reason of imports from Japan of erasable programmable read only memories (EPROM's), provided for in item 687.74 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 30, 1985, a petition was filed with the Commission and the Department of Commerce by Intel Corp., Santa Clara, CA; Advanced Micro Devices, Inc., Sunnyvale, CA; and National Semiconductor Corp., Santa Clara, CA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of EPROM's from Japan. Accordingly, effective September 30, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-288 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 9, 1985 (50 FR 41230). The conference was held in Washington, DC, on October 21, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 14, 1985. The views of the Commission are contained in USITC Publication 1778 (November 1985), entitled "Erasable Programmable Read Only Memories from Japan: Determination of the Commission in Investigation No. 731-TA-288 (Preliminary) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: November 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27721 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-287 (Preliminary)]

In-Shell Pistachio Nuts From Iran

Determination

On the basis of the record [1] developed in investigation No. 731-TA-287 (Preliminary), the Commission determines, pursuant to section 733b(a) of the Tariff Act of 1930 (19 U.S.C. 1673(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Iran of in-shell pistachio nuts, provided for in item 145.26 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 26, 1985, petitions were filed with the United States International Trade Commission and the U.S. Department of Commerce by counsel for the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms Inc., Kern Pistachio Hulling & Drying Co-Op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duche Nut Co., Inc., alleging that an industry in the United States is materially injured and threatened with material injury by reason of imports from Iran of in-shell pistachio nuts which are alleged to be sold in the United States at LTFV. Accordingly effective September 26, 1985, the Commission instituted preliminary antidumping investigation No. 731-TA-287 (Preliminary).

Notice of the institution of the Commission's investigation was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 3, 1985 (50 FR 40460). The Commission held a public conference in Washington, DC, on October 18, 1985. All persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitteed its determination in this investigation to the Secretary of Commerce on November 12, 1985. The views of the Commission are contained in USITC Publication 1777 (November 1985), entitled "In-Shell Pistachio Nuts from Iran: Determination of the Commission in Investigation No. 731-TA-287 (Preliminary) under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

Issued: November 13, 1985.

By order the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27723 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-218]

Certain Automatic Bowling Machine Printed Circuit Control Boards; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of respondent Richard J. Lynch Company, Inc. based on settlement agreement; termination of investigation.

SUMMARY: The Commission has terminated respondent Richard J. Lynch Company, Inc. (Lynch) based upon its settlement agreement with complainant James C. Hudson d/b/a/ Omega-Tek (Hudson), not upon Hudson's withdrawal of his complaint. The termination of Lynch terminates the investigation.

FOR FURTHER INFORMATION CONTACT: Kristian E. Anderson, Esq., Office of the General Counsel, U.S. International Trade Commission, Washington, D.C. 20436, Telephone 202-523-0074.

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler and Commissioner Seeley Lodwick determine that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly less than fair value imports of EPROM's from Japan.

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

SUPPLEMENTARY INFORMATION:

Background

On August 12, 1985, the presiding administrative law judge (ALJ) granted the motion of complainant Hudson to withdraw his complaint based upon Hudson's settlement agreement with respondent Lynch. The ALJ issued an initial determination (ID) terminating the entire investigation. On September 11, 1985, the Commission decided to review that ID with respect to the termination of the investigation and the termination of respondent Lynch on the basis of the withdrawal of his complaint, and requested comments concerning Lynch's termination in light of the settlement agreement and in light of Commission rule 210.51(b) (19 CFR 210.51(b)). 50 FR 37918. The Commission also decided not to review the termination of the only other respondent, United Bowling Mechanics. 50 FR 38904.

The Commission received comments from complainant Hudson, respondent Lynch, and the Commission investigative attorney (IA). Following the Commission's receipt of these comments, the IA moved to have the investigation remanded to the ALJ in light of those comments. On October 16, 1985, following the IA's motion, complainant Hudson and respondent Lynch filed a joint stipulation. In the stipulation the parties reaffirmed the existence of a settlement agreement. They also requested that the Commission terminate the investigation, and allow the documents they recently submitted to be withdrawn and expunged from the Commission's records.

Statutory Authority

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.51 and 210.56 (19 CFR 210.51 and 210.56).

Public Inspection

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: November 8, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27715 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-217]

Certain Expansion Tanks; Initial Determination Terminating Respondents on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a settlement agreement: Vent-Rite Valve Corp., Emerson-Swan, Inc., Flamco bv, and Internatio-Muller NV.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's intitial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on November 8, 1985.

Copies of the intial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, D.C. 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments

Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: November 12, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27716 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-232]

Certain Glass Firescreens for Fireplaces; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 11, 1985, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Cumberland Valley Metals, Inc., 4535 Harding Road, Suite 200, Nashville, Tennessee 37205, and Niles Mfg. & Finishing, Inc., 465 Walnut Street, Niles, Ohio 44446. A supplement to the complaint was filed on October 28, 1985. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation into the United States of certain glass firescreens for fireplaces, or in their sale, by reason of alleged infringement of the claim of U.S. Letters Patent Des. 266,643. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainants request the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order.

FOR FURTHER INFORMATION CONTACT: Gary L. Kaplan, Esq., or Deborah S. Strauss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1088 and 202-523-1233, respectively.

SUPPLEMENTARY INFORMATION:

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 8, 1985, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain glass firescreens for fireplaces, or in their sale, by reason of alleged infringement of the claim of U.S. Letters Patent Des. 266,643, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are:

Cumberland Valley Metals, Inc. 4535 Harding Road Suite 200 Nashville, Tennessee 37205

Niles Mfg. & Finishing, Inc. 465 Walnut Street Niles, Ohio 44446

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Oliver-MacLeod Ltd. 155 Edward Street Gravenhurst, Ontario, Canada LOC 1GO

Thomas Industries, Inc. 207 East Broadway Louisville, Kentucky 40202

(c) Gary L. Kaplan, Esq., and Deborah S. Strauss, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 210.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: November 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27717 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-233]

Certain Pharmaceutical Closures; Investigation

AGENCY: U.S International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 11, 1985, under section 337 of the Tariff Act of 1930 (19 U.S.C. 137), on behalf of The West Company, Inc., West Bridge Street, Phoenixville, Pennsylvania 19460. Supplements to the complaint were filed on October 29, and November 1, 1985. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain pharmaceutical closures into the United States, or in their sale, by reason of alleged: (1) Infringement of U.S. Trademark Registration No. 1,100,106 for FLIP OFF; and (2) false designation of source in violation of section 43(a) of the Lanham Act. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Steven H. Schwartz, Esq., or Gary Rinkerman, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-4877 and 202-523-1273, respectively.

SUPPLEMENTARY INFORMATION:

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 8, 1985, Ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain pharmaceutical closures into the United States, or in their sale, by reason of alleged (1) infringement of U.S. Trademark Registration No. 1,100,106 for FLIP OFF; and (2) False representation, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

The West Company, Inc. West Bridge Street, Phonenixville, Pennsylvania 19460

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Franz Pohl, Metall-und Kunststoffwarenfabrik GmbH, Hertzstr. 12, Postfach 211038, D-7500 Karlsruhe 21, Federal Republic of Germany

Bridana ApS, Kobenhavnsvej, DK-4600 Koge, Denmark

Tompkins Seals, Inc., 550 Township Line Road, Blue Bell, Pennsylvania 19422

Tompkins Rubber Co., 550 Township Line Road, Blue Bell, Pennsylvania 19422

(c) Steven H. Schwartz, Esq., and Gary Rinkerman, Esq., Officer of Unfair Import Investigations, U.S. International Trade Commission, 701 E. Street, NW., Room 124 and Room 128, respectively, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR § 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: November 13, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27718 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-191]

Certain Stretch Wrapping Apparatus and Components Thereof; Decision Rejecting Respondents' Motion for Modification of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Rejection of respondents' motion for modification of consent order.

SUMMARY: The Commission has rejected the motion of respondents Muller Manufacturing, Ltd., and Muller Packaging Systems, Inc., for modification of the consent order issued in connection with final disposition of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: John Kingery, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-1638. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), the Commission rule 211.57 (19 CFR 211.57).

Respondents filed a motion for modification of consent order on August 18, 1985. Respondents requested an extension of the date for their compliance with the consent order to 10 days after the final nonappealable disposition of their motion for summary judgment filed in a declaratory judgment action in the U.S. District Court for the Northern District of New York. The District Court case concerns the same patent as the one at issue in the Commission's section 337 investigation. The changed conditions of fact or law alleged by respondents in their motion for modification of consent order are based on information learned pursuant to discovery in the District Court case. Complainant and the Commission's investigative attorney filed responses urging rejection of respondents' motion. Respondents filed a reply to these responses.

Copies of all nonconfidential documents filed in the investigation and with respect to the motion for modification of consent order are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW, Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.

Issued: November 8, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-27719 Filed 11-19-85; 8:45 am]

BILLING CODE 7020-02-M

LEGAL SERVICES CORPORATION

Request for Comments on a Grant Award by the Legal Services Corporation to the Drake University School of Law

AGENCY: Legal Services Corporation.

ACTION: The Legal Services Corporation (LSC) announces that it is awarding a grant of $4,000,000 to Drake University School of Law. This grant is being awarded pursuant to Pub L. 99-88, which provides such funds for the establishment of a proverty law center at the Drake University School of Law.

DATE: All comments and recommendations must be received by the Office of Field Services within thirty (30) calendar days of publication of this notice.

FOR FURTHER INFORMATION CONTACT: Legal Services Corporation, Charles T. Moses, Delivery Research Coordinator, Office of Field Services, PDSS, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1837.

SUPPLEMENTARY INFORMATION: The purpose of the grant is to fund a poverty law center at the Drake University School of Law in Des Moines, Iowa, which will provide a legal clinic to supplement the civil legal services of Legal Services Corporation grantees. Further, the Law Center wil conduct continuing legal education courses and seminars to encourage and prepare practicing attorneys for pro bono services. Under the clinical program, no recipient shall receive legal services who would be disqualified by law or regulation from receiving such services from a Legal Services Corporation grantee.

Interested persons are invited to submit written comments and/or recommendations concering this grant action to Charles T. Moses.

James H. Wentzel,

President.

[FR Doc. 85-27709 Filed 11-19-85; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 85-71]

NASA Advisory Council; 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 (NAC) Informal Earth System Sciences Committee (ESSC).

DATE AND TIME: December 12, 1985, 1:30 p.m. to 5:30 p.m., December 13, 1985, 8:30 a.m. to 5:30 p.m.

ADDRESS: Sheraton Palace Hotel, 639 Market Street, Regency Room, San Francisco, California, 94105.

FOR FURTHER INFORMATION CONTACT: Mr. Ray J. Arnold, Code EE, National Aeronautics and Space Administration, Washington, DC 20546 (202) 453-1707.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council, Informal Earth Sciences Committee was formed in October, 1983, to provide advice and counsel to NASA on the future role, responsibilities, and implementation strategies for the Earth Science and Applications program. This committee is chaired by Dr. Francis L. Bretherton and has a total of 17 members.

Type of Meeting: Open

Agenda

December 12, 1985

1:30 p.m.—Review the detailed Scientific Rationale developed in the Overview Document.

5:30 p.m.—Adjourn.

December 13, 1985

8:30 a.m.—Review the detailed Scientific Rationale developed in the Overview Document.

1:00 p.m.—Planning for development of the Implementation Rationale.

5:30 p.m.—Adjourn.

Dated: November 13, 1985.

Richard L. Daniels,

Deputy Director, Logistics Managment and Information Programs Division, Office of Management.

[FR Doc. 85-27604 Filed 11-19-85; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on November 6, 1985 (50 FR 46208), through November 8, 1985.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determined that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By December 20, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with

reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a signficant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *Branch Chief):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the local public document room for the particular facility involved.

Arkansas Power and Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 28, 1985; and August 30, 1985.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) pertaining to the sodium hydroxide addition system. Specifically, TS 4.6.2.2.e, which requires a periodic flow test to ensure that the sodium hydroxide addition system piping is free of obstructions and capable of delivering the required flow of sodium hydroxide solution, would be revised. Under the proposed TS, the testing will be performed at 13 gpm. The current TS requires a flow test at 14 gpm. In addition, the wording of the subject TS would be revised to clarify the purpose of the required surveillance.

Basis for proposed no significant hazards consideration determination: The design of the sodium hydroxide addition systems is discussed in Section 6.2 of the ANO-2 Final Safety Analysis Report (FSAR). There, the system is specified to provide sodium hydroxide solution to the containment spray system at a flow rate of 13 gpm. The design of the system including the required flow rate of sodium hydroxide solution to the containment spray systems was reviewed and approved by the NRC staff in its Safety Evaluation Report (NUREG-0308) of November 1977.

The licensee states in its application that each of the two sodium hydroxide addition pumps is tested and required to produce a flow rate of 13 gpm during a monthly surveillance test in accordance with TS 4.0.5. Therefore, the proposed change would make the system flow test requirement of TS 4.6.2.2.e consistent with the sodium hydroxide addition pump flow rate test requirement of TS 4.0.5 and the design flow requirements of the sodium hydroxide system as described in the ANO-2 FSAR.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include: (i) A purely administrative change to the technical specifications; for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed change appears to be encompassed by this example in that it is an administrative change to achieve consistency throughout the TS and to clarify existing requirements without changing the intent. Therefore, since the application for amendment involves a proposed changed that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 722801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell & Reynolds, 1200 Seventeenth Street, NW., Suite 700, Washington, DC 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: October 12, 1984.

Description of amendment request: The proposed amendments would

change the Unit 1 and Unit 2 Technical Specification (TS) 3/4.8.1, "A.C. Sources" as follows: (1) Separate remedial actions to be taken for inoperability of on-site A.C. power sources from those actions to be taken for inoperability of off-site A.C. power surces; (2) provide clarification regarding testing of automatic start bypass functions for the diesel generators; (3) delete a footnote in TS 3.8.1.1.b.2 that is no longer applicable; (4) reduce the frequency of diesel "generator" cold, fast, starts; (5) change the remedial action requirements for the inoperability of the off-site A.C. power sources; and (6) update the standard for analysis of diesel fuel from ASTM D975–68 to ASTM D975–81.

Basis for proposed no significant hazards consideration determination: At the present time, TS 3.8.1.1 Action a. provides remedial action to be taken in the event that one offsite power circuit or diesel generator becomes inoperable. The licensee has proposed that Action a be divided into two remedial actions, the first being applicable in the event that one offsite power circuit is inoperable. The second action statement, to be designated Action b., would be applicable in the event that a diesel generator becomes inoperable. Subsequent action statements would be redesignated to accommodate the new Action b. Aside from providing clarification by segregating remedial action requirements for off-site power sources from those for a diesel generator, this proposed change has no effect on TS 3.8.1.1. and is administrative in nature.

The licensee has proposed a change to TS 4.8.1.1.2.c.3.c concerning the testing of diesel generator trip signals which are bypassed on a safety injection actuation signal (SIAS). Section 8.4.1.2 of the Calvert Cliffs FSAR contains a list (items a through i) of all protective functions which will trip a diesel generator. A list (items a through e) is also presented which describes those protective functions which will still trip a diesel generator in the event that a SIAS is actuated. A comparison of the two lists provides a third collection of protective functions which are bypassed on SIAS (even though they may be generated, they are not permitted to trip a diesel generator when SIAS is actuated. This list consists of "high jacket coolant temperature" and "low jacket coolant pressure." It should be noted that there are other protective functions, bypassed on SIAS, which are not important under potential accident conditions. These protective functions are "start failure relay" which prevents a diesel start rather than tripping the diesel generator during operation and "loss of field" which is important only when a diesel generator is synchronized to an energized bus during normal operation.

The purpose of TS 4.8.1.1.2.c.3.c is to periodically test all those protective functions which are bypassed on SIAS. The list of protective functions in the TS however represents those trips which are not bypassed under SIAS conditions, preceded by the wording "Verifying that all diesel generator trips, except. . . ." The proposed wording would be, "Verifying that the high jacket coolant temperature and low jacket coolant pressure trips are automatically bypassed on a Safety Injection Actuation Signal." The proposed change to the wording of TS 4.8.1.1.2.c.3.c provides a considerable improvement in clarity in that the list of protective functions to be tested is provided in the TS rather than the list of protective functions not requiring testing. There is no change, however, to the requirements of the TS and thus the change is only administrative in nature.

The licensee has proposed deletion of a footnote to TS 3.8.1.1.b.2 which is no longer applicable. The footnote pertains to a special operability requirement for the fuel oil storage system which permitted the storage tanks to be removed from service for inspection, during the Unit 2, April 1982, refueling outage. This footnote is no longer applicable and its deletion has no effect on TS 3.8.1.1.b.2 and is administrative in nature.

On April 6, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve a significant hazards consideration. One such example, (i), provides for "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the techncial specifications, correction of an error, or a change in nomenclature." As indicated, the separation of remedial actions for off-site and diesel generator power sources, the clarification to the test requirements of TS 4.8.1.1.2.c.3.c, and deletion of the footnote to TS 3.8.1.1.b.2 are administrative changes; therefore, the Commission proposes to determine that these proposed changes to the TS involve no significant hazards considerations.

The licensee has proposed changes to TS 3.8.1.1 to reduce the frequency of diesel generator starts without prior lubrication ("cold fast start") and to eliminate unnecessary testing of the diesel generators when on-site or off-site power sources are inoperable.

The NRC staff has long recognized that diesel generator reliability is a key factor in mitigation of design basis accidents involving loss of off-site powrer. More recently, the NRC staff has been concerned that excessive testing of diesel generators may actually be decreasing the reliability of this equipment at nuclear power facilities. On July 2, 1984, the NRC issued Generic Letter 84–15 (GL 84–15) which calls for licensees to reduce the frequency of diesel generator "cold fast starts" at nuclear power facilities. As part of GL 84–115 , the NRC provided model TS containing the recommended frequency for "cold fast starts" and other types of diesel generator testing. In a partial response to GL 84–15, the licensee concluded that the diesel generators at Calvert Cliffs were being tested at frequencies exceeding those recommended by GL 84–15 and has requested changes to the TS.

At the present time, TS 4.8.1.1.2.a.4 requires the diesel to be started on a monthly basis and accelerate to 900 rpm in less than or equal to 10 seconds. This TS represents the "cold fast start' requirement. The licensee has requested a change to TS 4.8.1.1.2.a.4 to delete the 10-second start requirement and add the following footnote:

> All engine starts for the purpose of this surveillance requirement may be preceded by an engine prelube period and/or other warmup procedure recommended by the manufacturer so that mechanical wear and stress on the diesel engine is minimized.

In addition, the words ". . . with generator voltage and frequency at 4160 + 420 volts and 60 + 1.2 Hz, respectively," would be added to the TS requirements. A new proposed "cold fast start" requirement would be incorporated in new TS 4.8.1.1.2.c and would require the diesel to be started from ambient conditions every 184 days and accelerated to at least 900 rpm in less than or equal to 10 seconds. Subsequent TS would be renumbered to acommodate this new TS. The modified TS 4.8.1.1.2.a and new TS 4.8.1.1.2c are consistent with the model TS in Gl 84–15.

The liceneee has also proposed a change to TS 3.8.1.1 concering the testing of the diesel genertor(s) when other diesel generator(s) and/or off-site power sources are inoperable. At the present time, diesel generator(s) must be started within 1 hour, and restarted at least every 8 hours under the following conditions:

- Inoperability of one off-site power source (Action a)

• Inoperability of one diesel generator (Action b)

• Inoperability of one off-site power source and one diesel generator (Action c)

• Two off-site power sources (Action d)

The licensee has requested that Actions a, b, c and d be changed to reflect the following diesel generator start times:

Action a—Within 24 hours.
Action b—Within 24 hours.
Action c—Within 8 hours.
Action d—Within 8 hours.

The above would only have to be performed if the diesel generator(s) were not already running for Actions a, c, and d. The licensee's proposed TS would result in a longer time before the first diesel generator start and eliminate repetative starts consistent with the model TS in GL 84–15.

By eliminating unnecessary diesel generator testing, especially those requiring "cold fast starts" it is expected that the overall reliability of the diesel generators will be improved; therefore, neither a significant increase in the probability or consequences of accidents previously considered (which credit diesel generator operation) will occur nor will any new or different type of accident be created. Since no changes in diesel generator design or operation are involved, no decrease in any safety margin will occur. Consequently, the Commission proposes to determine that the proposed changes to 3/4.8.1.1, which reduce unnecessary diesel generator testing, involve no significant hazards considerations.

The licensee has requested a change to the Action statements of TS 3.8.1.1 which address the remedial measures to be taken when off-site power sources are inoperable. At the present time, the Limiting Condition for Operation (LCO) references three off-site power sources: two 500 Kv circuits and one 69K circuit. The Action statements, however, are based on two 500 Kv circuits. The licensee has proposed that reference to "500 kv" in the Action statements be deleted so that the Action statements would be applicable to either 500 kv or 69 kv off-site power sources. In addition, the Action statements would be changed as follows:

• Action a, applicable to the inoperability of one off-site power source would be changed to be applicable to two off-site power source.

• Action c, applicable to the inoperability of one off-site power source and one diesel generator would be changed to be applicable to two off-site power sources and one diesel generator.

• Action d, applicable to the inoperability of two off-site power sources would be changed to be applicable to three off-site power sources.

A comparison of Calvert Cliffs TS 3.8.1.1 with the model TS of GL 84–15 indicates that Calvert Cliffs is credited with more off-site power sources in the LCO than are reflected in the Action statement. The licensee's proposed changes to the Action statements would be consistent with the LCO, would provide consistency within the TS, and would not otherwise effect the requirements of TS 3.8.1.1. As indicated previously, changes to the TS that are required to achieve consistency in the TS are administrative in nature and thus, the Commission proposes to determine that the proposed change to the applicability of TS 3.8.1.1, Action statements a, c, and d, involve no significant hazards considerations.

Finally, BG&E has requested a change to TS 4.8.1.1.2.b which requires that diesel fuel oil be tested in accordance with ASTM D975–68. The licensee has requested that a revised standard, ASTM D975–81, be referenced in TS 4.8.1.1.2.b. A comparison of ASTM D975–68 and ASTM D975–81 indicates that no change to diesel generator operation would result from use of the revised standard in TS 4.8.1.1.2.b. Since diesel generator reliability would not be decreased, the probability or consequences of accidents previously considered (which credit diesel generator operation) will not increase. Similarly, since diesel generator operation would not be degraded, no new or different type of accident would be created and existing safety margins would not be reduced. Accordingly, the Commission proposes to determine that the proposed change TS 4.8.1.1.2.b involves no significant hazards considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Edward J. Butcher, Acting.

Commonwealth Edison Company, Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: October 22, 1985.

Description of amendment request: The proposed amendment to Operating License NPF–11 would revise the La Salle Unit 1 Technical Specifications to support the operation of La Salle County Station, Unit 1 at full rated power during the upcoming Cycle 2. The proposed amendment to support this reload changes the Technical Specifications in the following areas: (1) Establishes operating limits for all fuel types for the upcoming Cycle 2 operation; (2) establishes the Average Power Range Monitor setpoints; (3) reflects the replacement of approximately 30 percent of the core with new General Electric (GE) prepressurized barrier fuel assemblies for the upcoming Cycle 2 operation; and (4) modifies the bases section to account for the use of the new GE fuel assemblies.

To support the proposed license amendment for operation of La Salle Unit 1 during Cycle 2, the licensee submitted the following document as attachment to the application: 23A1843, Class 1, June 1985, "Supplemental Reload Licensing Submittal for La Salle County Station Unit 1, Reload 1 (Cycle 2)".

During the first refueling outage 232 GE initial fuel (not pressurized or have barrier) assemblies will be replaced with new prepressurized barrier fuel assemblies.

Basis for proposed no significant hazards consideration determination: The proposed amendment to the La Salle Unit 1 Technical Specifications to support this reload is very similar to Example (iii) provided by the Commission of the types of amendments not likely to involve significant hazards consideration. Example (iii) is an amendment to reflect a core reload where:

(1) No fuel assemblies significantly different from those found previously acceptable to the Commission for a previous core at the facility in question are involved;

(2) No significant changes are made to the acceptance criteria for the Technical Specifications;

(3) The analytical methods used to demonstrate conformance with the Technical Specifications and regulations are not significantly changed; and

(4) The NRC has previously found such methods acceptable.

This reload will consist of 764 assemblies, 532 of which are once burned non-pressurized GE fuel assemblies and 232 of which are new GE prepressurized barrier fuel assemblies. This new fuel bundle design has been approved by the staff; however, a new enrichment will be used in the fuel assemblies for this La Salle Unit 1 reload. This new fuel enrichment has not yet been included in the approved Topical Report, NEDE–24011–P–A, "General Electric Standard

Application for Reactor Fuel." (GESTAR II). However, the licensing of new bundle enrichment has been treated as a non-safety related change to GESTAR II. The information required for review for this enrichment is included in the attachment to the application. This attachment states that this new fuel bundle design with the new enrichment has been analyzed with approved methods. It meets the approved limits of GESTAR II and presents no unreviewed safety question.

Thus, this core reload involves the use of fuel assemblies that are not significantly different from those found previously acceptable to the Commission for a previous core at this facility. The proposed changes to the Technical Specifications reflect new operating limits associated with the fuel to be inserted into the core, are based on the new core physics, and are within the acceptance criteria.

In the analyses supporting this reload, there have been no significant changes in acceptance criteria for the Technical Specifications, and the analysis methods have previously been found acceptable.

The only difference between this reload and Example (iii) provided by the Commission is related to the use of the GE prepressurized barrier fuel which has been approved by the staff. The enrichment used in this fuel has not been included in GE's Topical Report; however, the licensing of a new bundle enrichment has been treated as a non-safety related change to GESTAR II. The analytical results for this new enrichment has been performed with approved methods and meet the approved limits of GESTAR II.

On the basis of the above, the Commission's staff has concluded that the operation of the facility in accordance with the proposed license amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any previously evaluated; or (3) involve a significant reduction in the margin of safety.

Accordingly, the Commission's staff proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348

Attorney for licensee: Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NE., Washington, DC 20036.

NRC Branch Chief: Walter R. Butler.

Duke Power Company, et al, Docket No. 50–413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of amendment request: April 29, 1985.

Description of amendment request: The proposed amendment would revise the Catawba Nuclear Station, Unit 1, Technical Specifications (TS) regarding the Turbine Overspeed Protection System surveillance requirements to increase the test intervals for the high pressure turbine control valves from weekly to monthly, as recommended by General Electric (GE) Technical Information Letter No. 969, dated May 22, 1984.

The changes to the TS surveillance requirements 4.3.4.2 arise as a result of the licensee's implementation of the GE recommendations related to the periodic nuclear turbine steam valve tests. The proposed amendment would change the requirement to cycle each of the four high pressure turbine control valves from once per 7 days to once per 31 days while in Modes 1 and 2 with the turbine operating.

Basis for proposed no significant hazards consideration determination: The staff's current position which requires weekly testing of all turbine valves as stated in Standard Review Plan Section 10.2 "Steam Turbines" was established after extensive discussions with major steam turbine manufacturers, and was based largely on engineering judgment and the recommendations of these manufacturers. In Information Letter No. 969, General Electric, the vendor for the Catawba steam turbine, stated that operating experience on inservice nuclear turbine steam valves shows that operability and reliability will not be significantly affected by increasing the periodic control valve testing from the present weekly to monthly interval. They have also concluded that reduced turbine valve testing on this type of turbine has little or no effect on the probability of turbine missile generation. Thus, lack of a significant number of valve failures, and good operating experience provide a reasonable basis to increase the periodic test interval for the turbine control valves.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). The licensee's request to increase the test interval from weekly to monthly does not match any of these examples. Based on the review of the licensee's submittal, the NRC staff has determined that increasing the test interval does not involve a significant increase in the probability or consequences of an accident previously evaluated because inservice operating experience showed considerably lower valve failure rates than those values upon which the weekly testing was based. The reduced failure rates are due to many design improvements to the nuclear turbine valves and controls, and to early repair of any problem detected during testing. Also, the operating experience showed that valve reliability and testing intervals are no longer the major contributing factors in determining the probability or the consequences of turbine missiles. The overall probability or consequences of a turbine missile generation is, therefore, not significantly increased by increasing the test interval of the valves. For the same reasons and because this change would not affect safety criteria, safety analyses or limiting conditions for operation, this change does not create the possibility of a new or different kind of accident from any accident previously evaluted and does not involve a significant reduction in a margin of safety. Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Attorney for licensee: Mr. William L. Porter, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

NRC Branch Chief: Elinor G. Adensam.

Duke Power Company, Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: July 3, 1985, revising the submittal of August 15, 1984.

Description of amendment request: By letter dated August 15, 1984, (previously noticed on October 24, 1984, 49 FR 42817) the licensee submitted proposed amendments to the Oconee Technical Specifications (TSs). One of the proposed changes in that submittal addressed the Reactor Building (RB) Purge System. Specifically, the proposed amendments indicated Reactor Coolant System (RCS) temperature and pressure of 250°F and 300 psig, respectively, as limits below which the operation of the RB Purge System is allowed. Subsequent review by the licensee has indicated that the maximum RCS pressure for operation of the RB Purge System should be revised to 350 psig based on the

Oconee Unit 1 Net Positive Suction Head (NPSH) curve for RC pump operation. The increased pressure to 350 psig will provide a reasonable operating margin for the pump while operating the purge.

The proposed TSs related to the RB Purge System are based on guidance provided by NRC letter dated July 7, 1981. Specification 3.6.3 is revised to reflect a new Limiting Condition for Operation (LCO) for the RB Purge System. The RB Purge System is required to be isolated whenever the RCS is above 250°F and pressure is above 350 psig. The values of temperature and pressure were provided as 250°F and 300 psig, respectively, in a letter dated May 10, 1983, to NRC,which originally proposed such administrative limits on operation of the RB Purge System. Subsequent review by the licensee has revealed that the maximum pressure limit should be revised to 350 psig based on the Oconee Unit 1 NPSH curve for RC pump operations. This will give a reasonable operating margin for the pumps while operating the purge. In addition to the change in the proposed RCS pressure, this submittal clarifies the Bases.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). Example (ii) of the types of amendments no likely to involve significant hazards considerations is an amendment that constitutes an additional limitation, restriction, or control not presently included in the TSs. Since the current TSs do not have requirements for the RB Purge System, these requested changes to the previously proposed limits on RCS pressure and Bases still institute an additional limitation not presently in the TSs.

Since the application for amendment involves purposed changes that are similar to the example for which no significant hazards consideration exists, the Commission proposes to determine that this action involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michale McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Branch Chief: John F. Stolz.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: September 17, 1985.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to add surveillance and test sections which would explicitly note that the required testing of the control rod drive trip breakers independently confirms the operability of the shunt and undervoltage trip attachments.

The proposed TS changes were submitted in response to a request made by the NRC in a February 11, 1985 letter. This letter transmitted the Safety Evaluation for Generic Letter 83-28, Item 4.3, "Reactor Trip System Reliability—Automatic Actuation of the Shunt Trip Attachment for B&W Plants". In this letter, the licensee was requested to submit changes to the Oconee TSs to explicitly note that testing independently confirms the operability of the shunt and undervoltage trip attachments.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). Example (ii) of the types of amendments not likely to involve significant hazards considerations is a change that constitutes an additional limitation, or control not presently included in the TSs. The proposed amendments have been determined by the licensee to be a more stringent requirement. The proposed amendments would require that TS Table 4.1-1 be revised to specifically note that the shunt and undervoltage trip attachments are independently tested and their operability is verified.

Since the application for amendments involves proposed changes that are similar to an example for which no significant hazards consideration exists, the Commission's staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

NRC Branch Chief: John F. Stolz.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: September 24, 1985.

Description of amendment request: The proposed amendments would revise the Station's common Technical Specifications (TSs) to delete the specification that new fuel shall not exceed an enrichment of 3.5 percent Uranium-235 (U-235). The licensing basis safety analyses are not directly affected by the initial fuel enrichment. Changing the enrichment will affect the core physics parameters; however, variations in the physics parameters will be in accordance with reload design methodology previously accepted by the NRC. The enrichment of new fuel which will be stored in the spent fuel pool is limited by TS 3.8.15. That specification ensures that fuel in the poor will remain sufficiently subcritical under all possible conditions. Therefore, the actual enrichment limit is not changed, only where reference of it is made in the TSs.

These proposed amendments also address an error in section 5.3.1.2. The active fuel assembly height is 142 inches, not 144 inches. These changes will correct that mistake and make the TSs consistent with Oconee's Final Safety Analysis Report (FSAR). The actual dimensions of the fuel will not be changed; only a typographical error will be corrected.

In addition, these amendments will correct a typographical error on TS page 5.3-1, in Reference 2. Table 4.3.1 should be Table 4.3-1. A period will be changed to a hyphen.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). Example (i) of the types of amendments not likely to involve significant hazards considerations applies in this case because the requested amendments involve changes to the TSs which are purely administrative in nature.

Deletion of the reference to initial fuel enrichment in TS 5.3.1.4 is an administrative change. The enrichment limit will no longer be specified in this TS, but will be specified by TS 3.8.15. All fuel that is inserted in the core must first go through the spent fuel pool. TS 3.8.15 limits the enrichment in the pool, which will in turn, limit the initial enrichment in the core. While actual increases in the enrichment level of selected fuel assemblies and/or fuel

rods are capable of reducing certain safety margins, the current amendment request does not address the actual enrichment, but instead simply deletes the specification of the enrichment from TS 5.3.1.4. Any changes in assembly and rod enrichment would of necessity, be included in the reload report accompanying the reload amendment request.

It should also be noted that the fuel enrichment is not what assures the safe operation of the plant. This is done through various safety and operating limits throughout the TSs. For a given cycle, these safety and operating limits throughout the TSs. For a given cucle, these safety and operating limits are established and verified acceptable to the appropriate criteria, in accordance with the NRC approved Reload Design Methodology for Oconee Nuclear Station. Specifically, TS 2.1 assures the fuel cladding integrity is maintained. TS 2.2 assures the reactor collant system integrity is maintained and also prevents the release of significant amounts of fission product activity. TS 2.3 assures there is sufficient fission product activity. TS 2.3 assures instrumentation to provide automatic protective action to prevent any combination of process variables from exceeding a safety limit. TS 3.5.2 assures an acceptable core power distribution during power operation and assures core subcriticality after a reactor trip.

Finally, the Oconee Reload Reports document the acceptance of key physics parameters to the appropriate criteria, the review of each FSAR accident analysis, and assures that the transient evaluation of the reload cycle is bounded by previously accepted analysis.

The amendments would also correct two typographical errors in fuel assembly height and Table 4.3-1. The actual height is not being changed for the fuel assemblies and in Table 4.3-1, a period is being changed to a hyphen for the designation.

Because these amendments fall within the Commission's example (i) of actions being purely administrative in nature and not likely to involve significant hazards considerations, the Commission proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Steet, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington DC 20036.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: November 17, 1981.

Description of amendment request: The proposed change revises the Technical Specifications to increase the allowable controlled leakage rate from 10 gpm to 12 gpm in the reactor coolant system. The leakage increase results from 1 gpm to 1.5 gpm leakage increase for each of four reactor coolant pumps because of changes made to flow stage coils of the pump seals to improve reliability. The leakage flow is through a controlled bleed off line to the injection water supply system.

Basis for proposed no significant hazards consideration determination: The proposed changes do not affect reactor operations or accident analyses and have no radiological consequences. The changes to the reactor coolant pump shaft seals were made in the interest of improved reliability. Also, since the leakage is a controlled bleed off to the injection water supply system, the safety of the plant will not be adversely affected. The amendment does not involve unreviewed safety items. Therefore, because the changes will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety, the Commission proposes to determine that these changes do not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: July 25, 1984.

Description of amendment request: This amendment request supplements those dated April 14, 1983, and December 13, 1983. This supplemental request for Technical Specification (TS) change relates to the addition of new safety-related hydraulic snubbers to Table 3.7-3, and revising the classification of several snubbers to "accessible" or "inaccessible" as applicable.

The original amendment requests also include changes to the Technical specifications (Section 6) including the organization charts, and modification of audit frequencies for the Security Plan, Emergency Plan and Fire Protection Plan to conform to 10 CFR 50.54(f) and 10 CFR 73.40(d). These changes were proviously noticed in the Federal Register on February 24, 1984 (49 FR 7035). Subsequently, minor wording changes were made in the July 24, 1984 submittal; however, these do not affect the substance of the amendment request or the significant hazards consideration determination of the previous notice.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (I48 FR 14870). The examples of actions involving no significant hazards considerations include (i), a purely administrative change to the Technical Specifications; for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

The addition of hydraulic snubbers is being made in accordance with specification 3.7.9.1 which states that snubbers may be added to safety related systems without a prior License Amendment provided that a revision to Table 3.7-3 is included with the next License Amendment request. The snubbers were added to safety related system during Refuel IV and should be included on Table 3.7-3 to reflect the configuration of the plant. The reclassifying of other snubbers is made to update Table 3.7-3 and correctly indicate the accessibility or inaccessibility of these snubbers. The proposed changes are administrative in nature and are encompassed by example (i) above. Therefore the Commission's staff proposes to determine that the application does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R. W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P. O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: March 29, 1985.

Description of amendment request: The proposed amendment would change the Crystal River Unit 3 Technical Specifications (TSs) to require a description of Pressurizer Power Operated Relief Value (PORV) and Safety Valve challenges in the annual report. The change is proposed in response to the Commission's Generic Letter 82–16.

Basis for propopsed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for a no significant hazards consideration determination by providing certain examples (48 FR 14870). One example (ii) of an action not likely to involve a significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the TSs. The addition of a list of all challenges to the PORV and pressurizer safety valves for the annual report would definitely be an added control and as such the change fits example (ii) described above. On this basis, the Commission's staff proposes to determine that the requested action does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: March 29, 1985.

Description of amendment request: The proposed Technical Specification amendment would add a programmatic requirement to the Administrative Controls, Section 6, specifying implementation of a Post-Accident Sampling and Analysis Program. The addition is being made at the request of NRC staff in response to NUREG–0737, Items II.B.3 and II.F.2, and Generic Letter 83–37.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (ii) of an action not likely to involve a significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The addition of a program for Post-Accident Sampling and Automated Isotopic Monitoring Systems is clearly simpilar to this example (ii). Therefore, the Commission's staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, florida 33733.

NRC Branch Chief: John F. Stolz.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: May 28, 1985.

Description of amendment request: The proposed amendment would change the Crystal River Unit 3 Technical Specifications for safety features instrumentation to add operability and surveillance requirements for undervoltage protection. The system will protect the plant from spurious bus trips while providing protection against equipment damage during loss of voltage and sustained degraded grid voltage conditions.

Basis for proposed no significant hazards consideration determination: By letter dated June 6, 1977, the NRC required Florida Power Corporation to compare the design of the Crystal River Unit 3 electrical distribution system with NRC positions contained in that letter. Florida Power Corporation was also required to submit detailed design requirements and proposed Technical Specifications for any modifications needed to meet the NRC positions.

The Commission has provided examples of amendments not likely to involve a significant hazards consideration (48 FR 14870). Examples (ii) relates to a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. This proposed amendment fits this example. The Commission, therefore, proposes to determine that this proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: June 5, 1981, as revised April 5, 1983, July 10, 1984, and October 2, 1985.

Description of amendment request: By letter dated May 8, 1985, the NRC informed the Babcock and Wilcox (B&W) licensees that they may request a license amendment to remove the current reactor vessel material surveillance requirements from the Technical Specifications and request consideration of the NRC-accepted BAW–1543, "Integrated Reactor Vessel Material Surveillance Program" to meet Appendix H of 10 CFR 50.

By this amendment request, the licensee formally requests consideration of their plant in the approved integrated reactor vessel material surveillance program and proposes to delete all reference to reactor vessel material surveillance requirements in the Technical Specifications. However, the licensee is still required to meet Appendix H of 10 CFR 50 and would do this through the approved program in BAW–1543.

This amendment request was originally noticed on October 24, 1984 (49 FR 42823). However, NRC staff action has been delayed while determining a generic position on this request as it affects several plants. The licensee's latest submittal is dated October 2, 1985.

Basis for proposed no significant hazards consideration determination: Deletion of the reactor vessel material surveillance program from the Technical Specifications does not reduce or modify the licensee's requirement to meet Appendix H of 10 CFR 50. After issuance of the requested license amendment, subsequent changes or revisions to the program would be made through revision of BAW—1543 which would require NRC approval as a topical report. If the licensee is affected by program changes, it must request and receive approval for use of the modified

integrated surveillance program for TMI-1 per Section II.C of Appendix H of 10 CFR Part 50. Thus, deleting this requirement from the Technical Specifications is administrative in nature because the requirement still exists per regulations.

The proposed amendment is in the same category as Example (i) of amendments that are not likely to involve significant hazards consideration (48 FR 14870) in that this is an administrative change to how the Reactor Vessel Material Surveillance Program is maintained. Therefore, since the application for amendment involves proposed changes that are similar to an example for which no significant hazards considerations exist, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: John F. Stolz.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 20, 1985.

Description of amendment request: This amendment request would accomplish two functions. First, it would delete a requirement to do a weekly Gross Beta Gamma activity analysis on the secondary coolant and would substitute in its place a requirement to perform an isotopic analysis for dose equivalent I-131 concentration every 72 hours. Along with the change to isotopic analysis, the allowable secondary coolant activity limit is reduced from 1.0 microcuries per cc as I-131 to 0.10 microcuries per cc as Dose Equivalent I-131. Second, the proposed amendment would delete the requirement to determine a Condenser Partition Factor. The Condenser Partition Factor was previously used to demonstrate compliance with a secondary coolant activity level. The activity of the primary system was measured and then by calculation using the Condenser Partition Factor, a secondary coolant activity was determined. However, now there are limits placed directly on the secondary coolant activity which is now determined by direct measurement, and there is no need to calculate the Condenser Partition Factor. This requirement should have been removed from the Technical Specifications when the amendment was issued requiring a direct measurement of secondary coolant activity. Its deletion now has no effect on plant operation.

Basis for proposed no significant hazards consideration determination: The deletion of the Condenser Partition Factor as proposed in this amendment is considered administrative in nature in that it deletes a requirement which no longer serves a useful function as the function has been replaced by another requirement already in the Technical Specifications. This part of the amendment request is similar to Example (i) of amendments that are considered not likely to involve a significant hazards consideration (48 FR 14870), a purely administrative change.

The amendment proposal to replace the weekly Gross Beta Gamma secondary chemistry analysis with an isotopic analysis for dose equivalent I-131 concentration every 72 hours and reduce the allowed activity level constitutes an additional limitation not presently in the Technical Specifications. Therefore this part of the amendment request is similar to Example (ii) of amendments that are considered not likely to involve a significant hazards consideration (48 FR 14870), a change that constitutes an additional limitation, restriction or control not presently in the Technical Specifications.

Since the application for amendment involves proposed changes that are similar to examples for which no significant hazards consideration exists, the Commission's staff proposes to determine that the application involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Attorney for licensee: G.F. Trowbridge, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: John F. Stolz.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: September 24, 1984.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS) regarding the arrangement of a portion of the DAEC plant staffing organization and the supervisory relationship between the DAEC site management and the offsite Nuclear Generation Management.

In the first change, the position of Assistant Plant Superintendent-Technical Support will be eliminated. This position will be separated into two positions—the Plant Services Supervisor and the Technical Services Superintendent. The Support Services Supervisor and the Support Services Personnel will now come under the direction of the Plant Services Supervisor. The Technical Support Supervisor, the Plant Performance Supervisor and their engineers will be under the direction of the Technical Services Superintendent, who will report directly to the Plant Superintendent—Nuclear. The position of Technical Services Superintendent may be utilized to fulfill the license requirements of ANSI N.18.1-1971. The separation of supervision into the areas of Plant Services and Technical Services should enhance the overall efficiency and effectiveness of the plant staffing. Also, the acronym for Senior Licensed Operator (SLO) is being changed to SRO, which stands for Senior Reactor Operator. This will eliminate the confusion between this acronym and the acronym for Single Loop Operation (SLO).

The second change is that the Plant Superintendent-Nuclear will now report to the Manager-Nuclear Division instead of Director-Nuclear Generation. The related plant reporting activities will now also be directed to the Manager-Nuclear Division. This change will reduce communication time and levelize the overall work load between the Manager-Nuclear Division and the Director-Nuclear Generation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

We have reviewed the licensee's request for amendment and find that the proposed amendment:

(1) Does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the licensee proposes to: (a) Reorganize the plant staff to achieve greater efficiency and control and (b) revise the Plant Superintendent's chain of command in such a way as to enhance communication with the upper management and distribute work load; such changes are not likely to increase the probability or consequences of previously evaluated accidents;

(2) Does not create the possibility of a new or different kind of accident because (a) the reorganization will achieve greater efficiency and plant control and (b) the revised Plant Superintendent's chain of command will enhance the communication between the Plant Superintendent and upper management; and

(3) Does not involve a significant reduction in a margin of safety because (a) plant staff reorganization does not affect the margin of safety and (b) the increased communication between the Plant Superintendent and the upper management is not likely to decrease the margin of safety.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue, NW., Washington, DC 20036.

NRC Branch Chief: Domenic B. Vassallo.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: October 7, 1985.

Description of amendment request: The proposed amendment involves changes to the Technical Specifications (TS) that would: (1) Consolidate TS 3.5.F.7 and 3.5.F.8 to eliminate redundancy with respect to work on control rod drive mechanisms, fuel movement and fuel replacement during refueling conditions; (2) eliminate water volume requirements for the spent fuel pool and the refuel cavity but retain water level depth requirements in measured units of feet, and (3) modify Low Pressure Coolant Injection (LPCI)/Core Spray requirements with the reactor in "Refuel Mode" and the refuel cavity flooded to allow the LPCI/Core Spray pumps breakers to be racked out.

Basis for proposed no significant hazards consideration determination: The licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question since the margins of safety are maintained, the probability of occurrence or the consequence of previously analyzed accidents has not been increased, and the probability for a new type of accident not previously evaluated has not been created. The proposed changes to the LPCI/Core Spray are less restrictive than the existing TS in that they allow the 4160 volt supply breakers to be racked out to prevent inadvertent operation of the systems that could result in refuel floor flooding with the reactor in the refuel mode while continuing to require operable systems. However, these proposed changes are more conservative than Standard Technical Specifications (STS) for BWRs in that the STS do not require that the LPCI/Core Spray be operable when the reactor vessel head is removed and the refuel cavity is flooded. The licensee views these proposed changes to be a net improvement in plant safety because the systems are available to perform their intended safety function but precluded from inadvertent actuation that could result in refuel floor flooding. The remaining changes, the licensee has concluded are of a clarifying/administrative nature. The licensee has reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration. The basis for this conclusion is that the criteria of 10 CFR 50.92(c) are not compromised, a conclusion that is suppported by the licensee's determinations made pursuant to 10 CFR 50.59.

In addition, the Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (48 FR 14870, April 6, 1983). The proposed changes (1) and (2) the TS 3.5.F.7 and 3.5.F.8 are enveloped by example (i) of actions not likely to involve a significant hazards consideration. Example (i) involves a purely administrative change to TS; for example, a change to achieve consistency throughout the TS. By combining the partially redundant requirements of TS 3.5.F.7 and 3.5.F.8 and further clarifying the normal conditions of the refuel cavity the resulting specification is more consistent in its contents. Inclusion of a reference to TS 3.10.C in the proposed wording makes the requirement for water level in the refueling cavity consistent with the existing method used by the operator to monitor water level (an indicated level rather than a specified volume) without changing the intent of the specification.

In regard to change (3), the current TS requires at least one LPCI/Core Spray system to be operable in the Refuel Mode with irradiated fuel in the vessel and control rod drive or fuel movement work being performed. The proposed change to modify LPCI/Core Spray requirements during the refuel condition involves a modest relaxation in operability requirements relative to existing TS and is most closely enveloped by example (vi) which involves a change which either may result in some increase to the probability or consequences of a previously analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan. The proposed change represents a net improvement in overall plant safety and reliability. The proposed change would allow an operator to rack out the LPCI/Core Spray pump breakers, with the reactor in the Refuel Mode and the refuel cavity flooded, to prevent an inadvertent injection and possible refuel floor flooding while retaining the ability to quickly return the LPCI/Core Spray system to full operability by racking in the breakers. This change would result in conditions more conservative than the Standard Technical Specifications in that it requires operability or availability of LPCI/Core Spray for operation in the Refuel Mode while the Standard Technical Specifications do not require operability at all.

Based on the information provided by the licensee, the staff proposes to determine that the license amendment request involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Branch Chief: John A. Zwolinski.

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: October 16, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) by adding a definition for "Refuel Condition", and clarifying related sections affected by the added definition.

Basis for proposed no significant hazards consideration determination: The proposed changes define the Refuel Condition and clarify operability requirements of various systems during the Refuel and Shutdown Conditions. In many instances, the proposed changes are editorial in nature in that they remove redundant wording. The licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question, i.e., the margins of safety are maintained, the probability of occurrence or the consequences of a previously analyzed accident have not been increased and the possibility for a new type of accident not previously evaluated has not been created.

The licensee has reviewed the proposed changes in accordance with 10 CFR 50.59 and has concluded that they do not involve a significant hazards consideration. The basis for this conclusion is that the criteria of 10 CFR 50.92(c) are not compromised, a conclusion which is supported by the determinations made pursuant to 10 CFR 50.59.

Additionally, the Commission has provided guidance concerning the application of the standards in 10 CFR 59.92 by providing certain examples (48 FR 14870, April 6, 1983). Example (ii) of actions not likely to involve a significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the TS. The proposed change would require a lower limit for maximum reactor coolant temperature in the newly defined "Refuel Condition", and therefore falls within the envelope of example (ii). The proposed changes in the remaining items of Attachment No. 1 of the licensee's application fall within the envelope of example (i) in that they involve changes to ensure consistency throughout the TS.

Based on the information provided by the licensee, the staff proposes to determine that the license amendment request involves no significant hazards considerations.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Branch Chief: John A. Zwolinski.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of Amendment Request: August 27, 1985 (Reference LAR 85-08).

Description of Amendment Request: The proposed amendment would revise the Diablo Canyon Units 1 and 2 combined Technical Specifications to delete references to the Reactor Coolant Pump (RCP) Breaker Position Trip above the P-8 (35 percent power) permissive interlock in Table 3.3-1 of Technical Specification 3/4.3.1, "Reactor Trip System Instrumentation" and the Bases for Technical Specification 2.2.1, "Reactor Trip System Instrumentation Setpoints."

The changes to Table 3.3-1 and Bases 2.2.1 would result in a modification of the Reactor Trip System which would prevent spurious trips caused by voltage fluctuations on the 120-V ac inverter output or total loss of inverter which translates as an RCP breaker open input to the Solid State Protection System (SSPS). The SSPS LOGIC inputs for reactor trips caused by RCP breaker position are presently a function of power level. Between 10 percent (P-7) and 35 percent power, a minimum two-out-of-four breaker open indications are required before initiating a reactor trip. Above 35 percent power the logic is presently a minimum one-out-of-four requirement. The proposed modifications would extend the two-out-of-four logic for all power levels at or above 10 percent power. This would permit required maintenance and testing inside the control room cabinets and make the reactor protection system and overall plant operation less susceptible to transients initiated by single electrical failures, thus lowering the probability of spurious trips and decreasing thermal cycling of the reactor coolant system (RCS).

Basis for Proposed No Significant Hazards Consideration Determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The reactor trip due to an open RCP breaker is an anticipatory trip for which no credit is taken in the Diablo Canyon accident analyses as described in the FSAR. Rather, the low primary coolant flow signal for each of the four reactor coolant loops is used for these analyses. The proposed change would not affect the logic between P-7 and P-8. The change in the Technical Specifications from a one-out-of-four to a two-out-of-four RCP breaker trip above P-8 would prevent spurious reactor trips caused by voltage fluctuations and would reduce stress to the reactor coolant system due to unnecessary thermal cycling.

The same change to the RCP breaker trip logic as proposed for Diablo Canyon Unites 1 and 2 was previously reviewed and approved by the staff in July 1980 for the similarly designed Westinghouse 4-loop PWR Trojan Plant and the same RCP breaker trip logic was included in the similarly designed Westinghouse 4-loop PWR Byron and Braidwood Plants. The modified anticipatory RCP breaker trip logic and the low primary coolant flow trip logic for Diablo Canyon Units 1 and 2 will be the same as described in FSAR Chapters 7 and 15 for those plants.

The licensee has determined and the NRC staff agrees that the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the RCP breaker anticipatory trip was not considered as a basis in the previous and current evaluation of accidents and does not affect those analyses. The resulting challenges to the reactor system by spurious scrams is considered a detriment to safety.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because there is no change to the plant configuration or change in the function of instrumentation relating to the mitigation of accidents.

(3) Involve a significant reduction in the margin of safety because the safety analysis is based on the low primary coolant flow detection system, not the pump breaker anticipatory trip system. The slight margin of safety achieved by the reactor trip from the RCP breakers is outweighed by the detriment to the

reactor system resulting from spurious scrams caused by the RCP breakers.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Sepcifications involve no significant hazards considerations.

Local Public Document Room Location: California Polytechnical State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorneys for Licensee: Philip A. Crane, Esq., Richard F. Locke, Esq., Pacific Gas and Electrical Company, P.O. Box 7442, San Francisco, California 94120 and to Bruce Norton, Esq., Norton, Burke, Berry and French, P.O. Box 10569, Phoenix, Arizona 95064.

NRC Branch Chief: George W. Knighton.

Pennsylvania Power & Light Company, Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: April 11, 1985 as supplemented on August 15, 1985 and September 11, 1985.

Description of amendment request: The licensee in his April 11, 1985 letter requested changes to the Susquehanna Unit 1 and Unit 2 Technical Specifications which would support long term operation with one recirculation loop out of service (Single Loop Operation (SLO)). These changes incoporate a new SLO Technical Specification, 3.4.1.1.2.a.

The proposed amendment request to support long term SLO would change the Technical Specifications in the following manner: (1) Limits the allowable pump speed during SLO; (2) increases the Minimum Critical Power Ratio (MCPR) Safety Limit by 0.01; (3) establishes appropriate Average Power Range Monitor (APRM) Flow Biased Scram Trip setpoints; (4) revises the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits; and (5) revises the Rod Block Monitor (RBM)/APRM Control Rod Block setpoints. The licensee has additionally included an Applicability section and appropriately revised SURVEILLANCE REQUIREMENTS for long term SLO. The licensee has updated the Bases section to reflect the addition of Technical Specification 3.4.1.1.2.a for SLO.

To support the proposed license amendment, the licensee provided the SUSQUEHANNA SINGLE LOOP OPERATION ANALYSIS, dated JUNE 1984, prepared by GE for PP&L as well as information provided by Exxon. This information was transmitted to the NRC in a letter dated August 15, 1985, from N.W. Curtis (PP&L) to W.R. Butler (NRC).

Basis for Proposed No Significant Hazards Consideration: The licensee in a letter dated September 11, 1985 stated that:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(a) A review of the limiting Anticipated Operational Occurrences (AOOs) was performed by GE to demonstrate adequate margin to the MCPR Safety Limit. A review of the values used in the statistical analysis of the determination of the fuel cladding safety limit was performed. Increased uncertainties for the total core flow and TIP readings resulted in a 0.01 increase in the MCPR Safety Limit. Although the MCPR Safety Limit increased by 0.01, the analysis of the AOOs demonstrated there is enough margin not to increase the MCPR operating limit or the flow dependent MCPR limit. It is concluded that this aspect of single loop operation is bounded by the analysis presently used to find dual loop operation acceptable when remaining within the established and accepted operational limits. When operating with one loop the probability or consequence of an accident previously evaluated has not been increased as long as the licensee operates the plant within the allowable limits (i.e. MCPR limits). The licensee's Technical Specifications require the licensee to operate within these prescribed values.

(b) A review of the LOCA event was performed both by GE and ENC. The analysis of the limiting recirculating pump discharge pipe break, while in SLO, results in a longer (+11 sec) peak node uncovered time. To maintain the same peak clad temperature as in two loop operation, the analysis shows the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) needs to be reduced by a factor of 0.81. Since the same peak clad temperature can be maintained by reducing the MAPLHGR value, the licensee has compensated for this by incorporating into the new proposed SLO Technical Specifications the appropriately reduced MAPLHGR value. In compensating for the increase in peak node uncovered time by reducing the MAPLHGR value, the licensee has not increased the probability or consequences of a previously evaluated accident. The new SLO Technical Specifications ensure that SLO is bounded by the dual loop operation analysis of the limiting recirculating pump discharge pipe break event. The containment response for a Design Basis Accident (DBA) recirculation line break in SLO is bounded by the rated power two-loop operation analysis presented in the FSAR and therefore does not increase the probability or consequence of a previously evaluated accident.

(c) Thermal-hydraulic stability was evaluated for its adequacy with respect to General Design Criteria 12 (10CFR50, Apendix A). It is shown that SLO satisfies this stability criterion. In addition, SSES–1 and SSES–2 Technical Specifications have implemented surveillance requirements for detecting and suppressing power oscillations. These requirements to detect and suppress power oscillations are applicable during SLO. As a result the licensee is required to maintain the acceptable level of thermal hydraulic stability regardless of the number of operating loops, and therefore has not increased the probability or consequences of an accident previously evaluated.

(d) The fuel thermal and mechanical duty of transients occurring during SLO was determined to be bounded by the fuel design basis and is therefor not effected by the number of operating loops. Based on vessel internal vibration, the operating loop pump is limited to 90% of rated speed. GE also performed was vibration analysis and a review of test data taken during SLO on jet pumps with and without restrainer set screw gaps. The results show that on Unit 1, with postulated jet pump gaps, the recirculation pumps can operate up to 80% of rated speed in SLO. This analysis is not applicable to Unit 2 since the jet pump gap problem has been resolved for Unit 2. The licensee has stated that vessel internal vibration can also occur when operating the plant with both recirculation loops if the two loops are not kept within a certain percentage of rated speed with respect to each other. The licensee's current Technical Specifications address this problem by operating the pumps within certain limits of each other, as applicable. For SLO the licensee has determined the percentage of rated speed at which one recirculating pump can operate without having problems with vessel internal vibration. Operation with one loop does not increase the probability or consequences of an accident previously evaluated with regard to vessel internal vibration since the licensee has adequately determined the pump speed limit at which the problem can occur and has incorporated into the proposed SLO Technical Specifications the requirements to stay below this limit.

(e) ENC performed a review of SLO for SSES Unit 1. This analysis will also be applicable to Unit 2 after the Unit 2 first refueling outage. Presently Unit 2 is bounded by the GE analysis. The ENC review centered on the compatibility between ENC 8×8 and GE 8×8 fuel. The review of the two-loop analyses shows comparable results for operational transients between ENC 8×8 and GE 8×8 and somewhat higher MAPLHGR limits with ENC methodology. Consequently, the ENC review shows the GE SLO analysis is conservative for ENC fuel. As a result the GE analysis is bounding for GE fuel and a GE-ENC mixed core. With the implementation of the proposed SLO Technical Specifications, SLO is bounded by the GE dual loop analysis and therefore does not increase the probability of consequences of a previously evaluated accident.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. Although this change allows extended operation in a configuration that was previously allowed only for a limited period, analysis has shown (as described in 1 above) that operation with one recirculation loop out of service is within existing analyses based on the proposed revised Technical Specification requirements.

3. The proposed change does not involve a significant reduction in a margin of safety. The licensee in the analysis provided in their April 11, 1985, August 15, 1985 and September 11, 1985 submittals, has performed a comparison between the existing GE two-loop analysis and the proposed SLO with GE fuel; and between the existing GE two-loop analysis and the proposed SLO with a GE-ENC mixed core. The licensee has found in both cases that the analyses are bounded by the GE and Exxon two-loop analysis when implementing the proposed revised Technical Specifications. The licensee has accomplished this by making a comparison between SLO and dual loop operation and imposing more stringent Technical Specifications in order to remain within the dual loop operation analysis. The revised SLO Technical Specification limits thus maintain dual loop operation margins during SLO and the proposed changes will not result in a significant reduction in margins of safety.

Based on the above discussion the NRC staff agrees with the licensee's findings of no significant hazards consideration associated with the proposed amendment and proposes to determine that the amendment request does not involve a significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Attorney for licensee: Jay Silberg, Esquire; Shaw, Pittman, Potts & Trowbridge, 1800 M Street NW., Washington, DC 20036.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: May 23, 1985.

Description of amendment request: The proposed amendments would: (1) Provide a revised Technical Specifications (TSs) definition of "Alteration of the Reactor Core" (Section 1, Definitions) consistent with the Standard Technical Specifications for Boiling Water Reactors (NUREG-0123, Rev. 3), (2) change the limit of the concentration of hydrogen downstream of the hydrogen recombiners in the offgas system to less than or equal to 4% by volume and delete current TS Section 3.8.C.6.b, (3) revise Section 3.8.C.6.c to require only one hydrogen monitor downstream of the recombiner to be operable during power operation rather than two monitors as is currently required by this Section, and (4) permit operation to continue up to 30 days with less than the required number of hydrogen monitors operable, provided that grab samples are taken and analyzed every four hours during power operation.

Basis for proposed no significant hazards consideration determination: The proposed addition of the words ". . . with the vessel head removed and fuel in the vessel . . ." to the "Alteration of the Reactor Core" definition (Section 1) would provide clarification of the intent of this definition to avoid fuel damage. The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). One of the examples (vi) of actions not likely to involve a significant hazards consideration relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. The above proposed change fits this example. The addition of the proposed words would make the definition of "Alteration of the Reactor Core" less restrictive and, thereby reduce in some way a safety margin. However, the proposed wording is consistent with the staff's Standard Technical Specifications for Boiling Water Reactors (NUREG-0123, Rev. 3) and the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan (SRP 9.1.4 and 9.1.5). The proposed change is thus encompassed by example (vi) of the Commission's guidance.

The changes identified in Items 2, 3, and 4 above would delete and revise certain TSs Sections. These proposed changes would result in less restrictive limiting conditions for operation (LCOs) and surveillance requirements. These proposed changes are the result of the licensee's modifications of the Peach Bottom offgas system. The licensee has upgraded its offgas system by replacing mechanical compressors and the pressurized holdup pipe with a low pressure ambient charcoal delay system at Unit 2. Similar modifications are planned for Unit 3. The older compressed storage delay system (pressurized holdup pipe) was not hydrogen detonation resistant downstream of the mechanical compressors due to high operating pressures. The new system is designed to withstand hydrogen detonation.

The proposed changes identified in Items 2, 3 and 4 above are all directed at the current Peach Bottom TSs which address the older Peach Bottom compressed storage offgas system which was not designed to withstand a hydrogen detonation event. The licensee's proposed changes are consistent with the NRC staff's TSs guidance for systems designed to withstand a hydrogen explosion ("Radiological Effluent Technical Specifications for BWR's," NUREG-0473, Revision 2), such as the upgraded Peach Bottom system.

Standard Review Plan (SRP) 11.3 (Gaseous Effluent Systems) requires the design of gaseous waste management systems either to withstand the effects of a hydrogen explosion, or to have dual gas analyzers with automatic control functions to preclude the formation or buildup of explosive mixtures. The upgraded Peach Bottom offgas system has been designed to withstand the

effects of a hydrogen explosion and clearly falls within all acceptable staff criteria outlined in SRP 11.3, Section II.B.6.a (Systems Designed To Withstand The Effects Of A Hydrogen Explosion). As modified, the licensee indicates that the holdup pipe will operate at essentially atmospheric pressure and since the design pressure of the holdup pipe is 350 psig these values fall within the acceptance criteria of the above cited SRP. Therefore, the staff concludes that the proposed changes are also encompassed by example (vi) of the Commission's guidance.

Accordingly, the Commission proposes to determine that the proposed changes to the TSs involve no significant hazards considerations.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania.

Attorney for licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

NRC Branch Chief: John F. Stolz.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 19, 1985.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to incorporate the new reporting requirements as defined by the Commission in Generic Letter No. 83-43, dated December 19, 1983.

Section 50.72 of Title 10 of the Code of Federal Regulations has been revised and became effective January 1, 1984. A new § 50.73 of Title 10 of the Code of the Federal Regulations has been added and also became effective January 1, 1984. Section 50.72 revises the immediate notification requirements for operating nuclear power reactors. The new § 50.73 provides for a revised Licensee Event Report System.

Paragraph (g) of § 50.73 specifically states that "the requirements contained in this section replace all existing requirements for licensees to report 'Reportable Occurrences' as defined in individual plant Technical Specifications." The definition "Reportable Occurrence" will be replaced by a new term, "Reportable Event." These changes will be made in the current version of Standard Technical Specifications (STS) for all nuclear power reactors and in the Technical Specifications for plants not yet licensed.

The changes relating to the revised reporting requirements are in accordance with 10 CFR 50.72 and 10 CFR 50.73 and with the guidance provided by the Commission in Generic Letter 83-43 and are made at the Commission's request.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples published in the Federal Register on April 6, 1983 (48 FR 14870). Examples of an amendment likely to involve no significant hazards consideration include (vii) a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The staff has reviewed the proposed amendment and finds that the revisions relating to the new reporting requirements fall under the criteria of example (vii) since they are clarifying requirements made by a change in the regulations and made at the request of the Commission. On this basis, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Domenic B. Vassallo.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of amendment request: May 17, 1985 as supplemented August 9, 1985.

Description of amendment request: This notice supersedes a September 25, 1985 notice (50 FR 38921) and corrects the basis for that notice. The changes to the Security Plan revise the table of the management organization to include certain title changes; remove and replace out-of-date document references with current references to the guard training and qualification plan; extend certain construction completion dates which fall due during an outage; to document changes to locations of the perimeter fence; clarify additional upgrades to the intrusion detection/CCTV system, and provide additional details on the special security measures at the condensate polisher building and intake structures.

Basis for proposed no significant hazards consideration determination: Our evaluation of the changes concludes that the licensee has provided equivalent or improved measures for all of the changes and for these reasons we conclude that a no significant hazards consideration finding is appropriate because proposed changes do not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Branch Chief: Steven A. Varga.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: March 18, 1985, as supplemented by letter dated August 2, 1985.

Description of amendment request: The proposed Technical Specification amendment changes the minimum boron concentration in the primary system during refueling from 1850 ppm to 1974 ppm. The existing mimimum boron concentration is based on an evaluation which concluded that if all control rods were withdrawn during refueling while the boron concentration is at least 1850 ppm, Keff would not exceed 0.99. Technical Specification boron limits during refueling are based on maintaining Keff not greater than 0.95 without credit for control rods. The proposed concentration, 1974 ppm, is the boron concentration corresponding to a Keff of 0.95. The proposed change is a conservative measure which eliminates conflicting criteria and ensures that the desired shutdown margin is maintained during refueling.

Basic for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include changes that

constitute an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

The change proposed in the amendment application is encompassed by this example in that a more conservative shutdown margin is assured by the requirement to maintain a higher minimum boron concentration during refueling. Therefore, since the application for amendment involves a proposed change that is similar to an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: April 15, 1985, as modified September 6, 1985.

Description of amendment request: The proposed Technical Specification amendment would modify the periodic testing requirements of the diesel generators. The current Technical Specification requirement includes a test to verify that following a diesel trip of a loaded diesel generator, the diesel would restart automatically and sequentially reenergize the appropriate electrical loads. The proposed amendment would modify the periodic test to open the output breaker of the loaded diesel generator rather than tripping the diesel. The test would then verify that the diesel generator would sequentially reenergize the appropriate electrical loads.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards considered not to involve a significant hazards consideration by providing certain examples (48 FR 14870). One example (vi) is a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method.

The existing Technical Specification requirements were established to comply with NRC criteria to verify the automatic response to interruption of onsite emergency power. The NRC criteria do not specifically require a diesel trip; the criteria specify an interruption of electrical power. In attempting to meet the NRC criteria, the licensee developed a surveillance test which included tripping the diesel as a means to interrupt electrical power. The control circuitry of the Rancho Seco diesel generators, although designed to perform appropriately during an actual loss of power, does not lend itself to the type surveillance test developed by the licensee and incorporated into the existing Technical Specifications. During emergency operation, the diesel control circuitry is designed to bypass normal shutdown signals, as as a result, there is no automatic restart capability built into the system. The surveillance test, as presently described in the Technical Specifications, cannot be performed. The licensee stated that the proposed modified test meets the NRC criteria, as provided for in the Standard Technical Specifications, and is a test which the diesel generator control circuitry is capable of performing.

This is similar to the Commission's example (vi), and for this reason, the Commission proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813.

NRC Branch Chief: John F. Stolz.

Southern California Edison Company et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of amendment request: August 29, 1985, which revises a previous application dated May 23, 1984.

Description of amendment request: On May 23, 1984, Southern California Edison Company (SCE) proposed a license amendment which would incorporate a license condition establishing a plan for managing capital backfits and requiring SCE to maintain current revisions of schedules, to update the schedules semiannually and to submit the revised schedules to the NRC. A proposed determination of no significant hazards consideration for this application was published in the **Federal Register** on July 24, 1984 (49 FR 29921).

On August 29, 1985, SCE submitted a revised application. The revised "Integrated Living Schedule of Backfits" (ILS) differs from the May 23, 1984 application in several areas: (1) The license condition implementing the ILS has been revised by removing certain administrative and reporting requirements which are also contained in the plan and by removing the built-in 2-year expiration date, (2) the San Onofre change Committee is identified in the plan as the source of priority and schedule determinations for licensee-initiated betterment projects; (3) resource allocation between regulatory and betterment projects is no longer specified in the plan; (4) Section VIII of the plan has ben changed to indicate that revisions of the plan may be submitted for NRC approval without going through the license amendment process because the plan itself is not part of the license; and (5) revised schedules for planned modifications have been provided.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (April 6, 1983, 48 FR 14870). Example (ii) of the Commission's guidance involves a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications. The proposed amendment requires the use of a plan for scheduling modifications and notification of scheduling changes. Since the plan does not allow for changes to schedules dictated by regulatory requirements without appropriate NRC approval, the proposed amendment is an additional control over licensee activities and is thus similar to Example (ii) of the Commission's guidance. On this basis, the staff proposes to determine that the revised request would also not involve a significant hazards consideration.

Local Public Document Room location: San Clemente Public Library, 242 Del Mar, San Clemente California 92672.

Attorney for licensee: Charles R. Kocher, Assistant General Counsel, James Beoletto, Esquire, Southern California Edison Company, P. O. Box 800 Rosemead, California 91770.

NRC Branch Chief: John A. Zwolinski.

Southern California Edison Company et al., Docket No. 50-361 and 50-362 San Onofre Nuclear Generating Station, Units No. 2 and 3, San Diego County, California

Date of amendment request: March 7, 1984, April 12, 1985 and August 2, 1985 (Reference PCN-83).

Description of amendment request: The proposed change would revise the administrative controls section of the technical specifications (T.S.) to reflect changes in the SCF organization structure, incorporate new NRC reporting requirements, and provide minor clarification of section 6 requirements. Proposed Change PCN-83 consists of five general types of changes:

(1) Modifications due to NRC Regulatory Changes.

(2) Modifications due to Organization Changes.

(3) Modifications in Nomenclature and Changes to Achieve Consistency Throughout the Technical Specifications.

(4) Additional Limitations.

(5) Administrative Controls Relaxation.

Basis for No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether or not a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments considered not likely to involve significant hazards considerations. Example (i) relates to a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. Example (ii) relates to a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications: for example, a more stringent surveillance requirement. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously analyzed accident or may in some way reduce a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan: for example, a change resulting from the application of a small refinement of a previously used calculational model or design method. Example (vii) relates to a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations. Each of the changes included in the proposed change is similar to one of these examples. On this basis, the NRC staff proposes to determine that these changes do not involve significant hazards considerations. The following is a detailed description of each part of the proposed change and how each is similar to one of the examples provided in 48 FR 14870.

1. *Modifications due to NRC Regulatory Changes* (a) T.S. section 1.26 provides the definition of a REPORTABLE OCCURRENCE. The proposed change would replace REPORTABLE OCCURRENCE with REPORTABLE EVENT consistent with NRC Generic Letter 83-43.

(b) T.S. section 6.5.1.6.b states that the On Site Review Committee (OSRC) shall be responsible for the review of events that require 24-hour written notification of the NRC. The proposed change would require the OSRC to be responsible for the review of all reportable events. This change is consistent with Generic Letter 83-43.

(c) T.S. section 6.5.3.4.g requires that the Nuclear Safety Group (NSG) review all events requiring 24-hour written notification to the Commission. The proposed change would require NSG review of all reportable events. This is consistent with Generic Letter 83-43.

(d) T.S. section 6.6 requires for all reportable occurrences that the Commission shall be notified and/or a report submitted pursuant to the requirements of Specification 6.9. Additionally, each reportable occurrence requiring 24-hour notification to the Commission shall be reviewed by the OSRC and submitted to the NSG and the Manager of Nuclear Operations. The proposed change would change reportable occurrence to reportable events, change the reference of T.S. Section 6.9 to 10 CFR 50.73 and change the Manager, of Nuclear Operations to the Vice President and Site Manager Nuclear Generation Site. This is consistent with Generic Letter 83-43.

(e) T.S. section 6.9.1 would be revised to change the title from "Routine Reports and Reportable Occurrence" to "Routine Reports." This change is consistent with Generic Letter 83-43.

(f) T.S. 6.9.1.11, 6.9.1.12 and 6.9.1.13 provide the requirements for prompt notification with written followup and for thirty-day written reports for all reportable occurrence. The proposed change would delete these sections from the Technical Specifications because these requirements are replaced by 10 CFR 50.72 and 50.73 per Generic Letter 83-43.

(g) The proposed change would revise T.S. section 6.10.1.C to change the reference of reportable occurrence to a reportable event, consistent with Generic Letter 83-43.

(h) Limiting Condition for Operation (LCO) 3.3.3.8 provides the requirements for the radioactive effluent monitoring instrumentation channel operability. An associated action statement (c) specifically states that the provisions of specification 3.0.3, 3.0.4, amd 6.9.1.13.b are not applicable to this specification.

The proposed change would delete the reference to T.S. 6.9.1.13.b because T.S. section 6.9.1.13.b will be deleted from the technical specifications by this proposed change pursuant to Generic Letter 83-43.

(i) LCO 3.3.3.9 provides the requirements for the radioactive gaseous effluent monitoring instrumentation channel operability. An associated action statement (c) specifically states that the provisions of specifications 3.0.3, 3.0.4, and 6.9.1.13.b are not applicable.

The proposed change will remove T.S. section 6.9.1.13.b because this section will be deleted from the technical specifications pursuant to Generic Letter 83-43.

(j) The proposed change would add a new T.S. section 6.9.1.1.12 pursuant to NUREG-0737, Item II.K.3.17 and would require that an annual report be submitted to the Director, Office of Nuclear Reactor Regulator detailing the cumulative outage time for Emergency Core Cooling Systems (ECCS) and components. The report would contain: (1) The ECCS system or component involved; (2) the cause of the outage; (3) the duration of the outage; and (4) the corrective actions taken to prevent recurrence of the ECCS outage. The annual report would also discuss any proposed changes to improve ECCS equipment availability.

(k) LCO 3.4.7 provides the specific activity limits for the primary coolant. An associated action statement (d) requires that with the specific activity above the specified limits, a Reportable Occurrence shall be prepared and submitted to the Commission pursuant to T.S. 6.9.1. The proposed change would revise Reportable Occurrence to Special Report and revise the reference from 6.9.1 to 6.9.2.

(l) LCO 3.11.1.2 provides the limits for dose and dose commitment to an individual from radioactive materials in released liquid effluent. An associated action statement (b) specifically states that the provisions of specification 3.0.3, 3.0.4 and 6.9.1.13.b are not applicable. The proposed change would delete the reference to 6.9.1.13.b because the

current T.S. section 6.9.1.13.b will be deleted from the technical specifications pursuant to Generic Letter 83–43.

(m) LCO 3.12.1 provides the requirements for the radiological monitoring program. An associated action statement (b) states that with the level of radioactivity in an environmental sampling medium exceeding specified levels, prepare and submit to the Commission a Report pursuant to specification 6.9.1.13.

The proposed change would revise Report to Special Report and revise the reference to 6.9.1.13 to 6.9.2 consistent with the proposed changes detailed above.

Each of the proposed changes detailed above bring the technical specifications into compliance with changes in NRC regulatory requirements. Specifically, 10 CFR 50.72 and 50.73 (persuant to Generic Letter 83–43, effective January 1, 1984), and NUREG–0737, Item II.K.3.17. Therefore, these proposed changes are similar to Example (vii) of 48 FR 14870. On this basis, the NRC staff proposes to determine that these changes do not involve a significant hazards consideration.

2. *Modifications due to Organization Changes* (a) The proposed change would revise various sections of the administrative section of the technical specifications to reflect personnel title revisions. The proposed change would:

(1) Change Shift Supervisor to Shift Superintendent

(2) Change Manager, Nuclear Operations to Vice President and Site Manager, Nuclear Generation Site

(3) Change Nuclear Safety Group (NSG) Chairman to NSG Supervisor

(b) In T.S. section 6.2, Figures 6.2–1 and 6.2–2 provide the structure for the off-site and on-site utility organization. The proposed change would revise Figures 6.2–1 and 6.2–2 to reflect the new utility organization structure. The organization would be modified to include the Vice President and Site Manager, Nuclear Generator Site and the Vice President, Nuclear Engineering, Safety and Licensing. Previously, these areas were under one Vice President. A new position, Manager of Nuclear Generation Services, would be responsible for the administration of the design, construction, and operation/maintenance support activities of San Onofre Units 1, 2 and 3. These changes provide increased executive attention and oversight over all nuclear activities.

(c) T.S. section 6.2.3.4 currently requires the Independent Safety Engineering Group (ISEG) to make detailed recommendations for improving plant safety by any means to the Supervisor, Nuclear Safety Group (NSG). The proposed change would replace the Supervisor, NSG with the Manager, Nuclear Safety.

(d) T.S. section 6.2.3.5 currently requires that records of activities performed by the ISEG be prepared, maintained and forwarded each calendar month to the NSG Supervisor. The proposed change would replace the Supervisor, NSG with the Manager, Nuclear Safety.

(e) T.S. section 6.5.1.7.b requires that written notification be provided within 24 hours to the Vice President and Site Manager, Nuclear Generation Site and the Supervisor, NSG of disagreement between the OSRC and the Station Manager. The specification currently states that the Station Manager shall have responsibility for resolution of such disagreements. The proposed change would state that the Vice President and Site Manager, Nuclear Generation Site shall have responsibility for resolution of such disagreements.

(f) T.S. section 6.5.2.1 currently states that the Station Manager shall assure that procedures and programs required by T.S. section 6.8 "Procedures and Programs" and changes thereto shall be prepared by a qualified individual/organization. The proposed change would substitute "Vice President and Site Manager, Nuclear Generation Site" for "Station Manager" and would add the requirement that documentation of these activities be provided to the Nuclear Safety Group.

(g) T.S. section 6.5.2.2 provides the requirements for the preparation of proposed changes to the technical specifications. The proposed change would add the requirement that documentation of technical specification change activities be provided to the Vice President and Site Manager, Nuclear Generation Site and to the Nuclear Safety Group.

(h) T.S. section 6.5.2.3 provides the requirements for review and approval of proposed modifications to unit nuclear safety related structures, systems and components and states that prior to implementation the proposed modifications shall be approved by the Station Manager. The proposed change would revise the specification to require that such proposed modifications be sent to the "Vice President and Site Manager, Nuclear Generation Site" and instead of "Station Manager," and add the require that documentation of these modification activities be provided to the Vice President and Site Manager, Nuclear Generation Site and the Nuclear Safety Group.

(i) T.S. section 6.5.3.6 states that the Nuclear Safety Group shall report to and advise the Manager, Nuclear Engineering and Safety on those areas of responsibility specified in Sections 6.5.3.4 and 6.5.3.5. The proposed change would change "Manager, Nuclear Engineering and Safety" to "Manager, Nuclear Safety."

(j) T.S. section 6.8.2 specifies that each procedure of specification 6.8.1 and changes thereto shall be approved by the Station Manager or by: (1) The Manager, Operations, (2) the Manager, Technical, (3) the Manager, Maintenance, (4) the Deputy Station Manager, or (5) the Manager, Health Physics as previously designated by the Station Manager. The proposed change would revise:

(1) Station Manager to Vice President and Site Manager, Nuclear Generation Site,

(2) Manager, Operations to Station Manager,

(3) Managers, Technical and Maintenance to Manager of Nuclear Generation Services, and

(4) Manager, Health Physics to Cognizant Managers.

(k) T.S. section 6.5.2.4 specifies that the personnel responsible for reviews performed in accordance with T.S. 6.5.2.1, 6.5.2.2 and 6.5.2.3 shall be members of the station supervisory staff, previously designated by the Station Manager to perform such reviews. The proposed change would allow station/site supervisory staff previously designated by the Vice President and Site Manager, Nuclear Generation Site to perform such reviews.

(l) T.S. section 6.5.2.5 specifies that the personnel responsible for review of proposed tests and experiments which affect station nuclear safety and are not addressed in the FSAR or in the technical specifications shall be members of the station management staff previously designated by the Station Manager. The proposed change would allow station/site management staff previously designated by the Vice President and Site Manager, Nuclear Generation Site to perform such reviews.

(m) T.S. section 6.5.2.6 provides the review requirements for the station security program and security program implementing procedures stating that review should be at least once per 12 months and that recommended changes be approved by the Station Manager and transmitted to the Manager of Nuclear Operations and the NSG.

(n) T.S. 6.5.2.7 provides the review requirements for the station emergency plan and implementing procedures stating that review shall be at least once per 12 months and that recommended changes be approved by the Station

Manager and transmitted to the Manager of Nuclear Operations and to the NSG. The proposed change would allow recommended changes to the emergency plan and implementing procedures to be approved by the Station Manager and transmitted to the Vice President and Site Manager, Nuclear Generation Site and to the NSG. The proposed change would also specify that implementing procedures be prepared and reviewed in accordance with T.S. 6.8.

(c) T.S.6.5.2.9 states that changes to the process control program, offsite dose calculation manual and the radwaste treatment systems shall be reviewed by a qualified individual/organization designated by the Station Manager. The proposed change would add that the Station Manager may designate the approval of changes to the offsite dose calculation manual, the process control program and the radwaste treatment systems. The proposed change would also require documentation of these activities to be sent to the Vice President and Site Manager, Nuclear Generation Site and to the Nuclear Safety Group.

Because each of the proposed changes detailed above reflect changes in the on-site and off-site utility organization and in each case the function performed before and after the proposed change is the same, these changes are purely administrative. These proposed changes are similar to Example (i) of 48 FR 14870 and on this basis, the NRC staff proposes to determine that these changes do not involve a significant hazards consideration.

3. *Modifications in Nomenclature and Changes to Achieve Consistency Throughout the Technical Specifications*

(a) T.S. 6.5.3.10 requires that reports documenting each of the activities performed under specifications 6.5.2.1 through 6.5.2.9 shall be maintained and copies provided to the Manager of Nuclear Operations and the Nuclear Safety Group. The proposed change would delete the requirement to provide copies to the Manager of Nuclear Operations and the Nuclear Safety Group but still require copies to be maintained.

(b) T.S. 6.9.1.7 provides, among other items, that the annual radiological environmental operating reports shall include a map of all sampling locations keyed to a table giving distances and directions from one reactor. The proposed change would provide for the use of the site reference point instead of one reactor for the location key.

(c) T.S. 6.9.1.9 currently states that the radioactive effluent release report shall include an assessment of radiation doses to the likely most exposed member of the public. The current acceptable method for calculating the dose contribution from liquid and gaseous effluents are those given the Regulatory Guide 1.109, Rev. 1. The proposed change would allow the dose contribution from liquid and gaseous effluents to be calculated based on the Offsite Dose Calculation Manual.

(d) T.S. 6.9.1.10 provides the requirements for the Monthly Operating Report and states that routine reports of operating statistics, shutdown experience and challenges to the safety valves shall be included in the monthly report. It also states that, a report of any major changes to the radioactive waste treatment systems shall be included in the monthly operating report for the period in which the evaluation was reviewed and accepted in accordance with T.S. 6.5.2. The proposed change would require that only challenges to the pressurizer safety valves instead of all safety valves be included in the monthly operating report. The proposed change would also require that changes to the radioactive waste treatment systems be submitted with the monthly operating report for the period in which the change was made effective.

(e) T.S. 6.9.2 currently states that special reports shall be submitted to the NRC Regional Administrator within the period specified for each report. The proposed change would provide clarification by stating that special reports shall be submitted to the NRC Regional Administrator within the time period specified for each report unless otherwise indicated.

(f) T.S. section 6.10.2.i states that records of quality assurance (QA) activities required by the QA Manual shall be retained for the duration of the Unit Operating License. The proposed change would require retention of records of quality assurance activities not included in section 6.10.1 that are not required by the QA Manual.

(g) T.S. 6.13.2 provides the requirements for the Process Control Program (PCP) and currently states that licensee initiated changes to the PCP shall be submitted to the Commission in the semi-annual Radioactive Effluent Release Report for the period in which the change(s) was made. It also states that a change to the PCP shall become effective upon review and acceptance pursuant to T.S. 6.5.2. The proposed change would clarify the reporting requirement by stating that changes to the PCP be reported in the semi-annual radioactive effluent release report for the period in which the change(s) was made effective. The proposed change would allow a change to the PCP to become effective only upon approval pursuant to T.S. 6.5.9.2.

(h) T.S. 6.14.2 provides the requirements for the Offsite Dose Calculation Manual (ODCM) and currently states for licensee initiated changes to the ODCM, the monthly operating report shall contain documentation of the fact that the change to the ODCM has been reviewed and found acceptable pursuant to T.S. 6.5.2. The current specification also states that a proposed change to the ODCM shall become effective upon review and acceptance pursuant to T.S. 6.5.2. The proposed T.S. change would require documentation of the fact that changes to the ODCM be reviewed and found acceptable pursuant to T.S. 6.5.2.9 and reported in the semiannual operating report. The proposed change would also state that a change to the ODCM would become effective upon approval pursuant to T.S. 6.5.9.2.

(i) T.S. 6.15.1 provides the requirements for licensee initiated changes to the radioactive waste treatment systems and states that any major changes shall be reported to the Commission in the monthly operating report for the period in which the evaluation of the change was performed. The current specification also states that a change to the radioactive waste treatment systems shall become effective upon review and acceptance pursuant to T.S. 6.5.2. The proposed T.S. change would require changes to the radioactive waste treatment systems to be reported in the semiannual operating report for the period in which the change was made effective pursuant to T.S. 6.5.2.9. Additionally, the proposed T.S. change would state that a change to the radioactive waste treatment systems shall become effective upon review and approval pursuant to T.S. 6.5.2.9.

(j) LCO sections 3.7.8.2, 3.11.1.2, 3.11.1.3, 3.11.2.2, 3.11.2.3, 3.11.2.4, 3.11.3, 3.11.4, 3.12.1, 3.12.2 and Surveillance Requirement 4.8.1.1.3 all currently require the submittal of a Special Report to the Commission in lieu of any other required reports when the systems, components or processes associated with the respective LCO fail or are not in compliance with the Technical Specifications. The proposed change would remove the words "in lieu of any other required reports" because the Technical Specifications cannot take exception to any requirements, reporting or otherwise, of the Federal Regulations. This proposed change would remove this potential inconsistency with the Federal Regulations.

(k) LCO 3.8.1.1 surveillance requirement 4.8.1.1.3 provides the

reporting requirements for diesel generator failures and states that all diesel generator failures, valid or non-valid, shall be reported to the Commission pursuant to specification 6.9.1. The proposed change would revise the reference from 6.9.1 to 6.9.1.10.

(l) Surveillance Requirement 4.4.4.5.c requires that the results of steam generator tube inspections which fall into Category C–3 (more than 10% of the total tubes inspected are degraded or more than 1% of the inspected tubes are defective) and require prompt notification of the Commission shall be reported pursuant to Specification 6.9.1, "Routine Reports and Reportable Occurances," prior to resumption of plant operation. The proposed change would require C–3 steam generator inspection results to be reported pursuant to Specification 6.6, "Reportable Event Action," if applicable, prior to resumption of plant operation.

(m) T.S. section 6.8.3.c specifies that temporary changes to the procedures of 6.8.1 may be made provided that the change is documented, reviewed and approved by the Station Manager, or: (1) The Deputy Station Manager, (2) the Manager, Operations, (3) the Manager, Maintenance, (4) the Manager, Technical, or (5) the Manager, Health Physics as previously designated by the Station Manager, within 14 days of implementation. The proposed change would require the temporary procedure change to be documented, reviewed and approved by responsible management, as deliniated in 6.8.2, within 14 days of implementation.

(n) T.S. section 6.8.4.c.(iii) currently states that the secondary water chemistry monitoring program shall include identification of process sampling points, including monitoring the discharge of the condensate pumps for evidence of condenser in-leakage. The proposed change would delete specific identification of the condensate pump discharge from this specification. The sampling of the condensate in the condenser hotwells prior to the condensate pumps is included in the secondary water chemistry monitoring program. Since this is an earlier indication of out of specification chemistry parameters, it is a more conservative condition. Additionally, deleting the specific identification of the condensate pumps achieves consistency throughout the technical specifications as no other sampling points are specifically identified.

Each of the proposed changes detailed above would result in a change in nomenclature or would achieve consistency throughout the Technical Specifications. In each case, the intent of the specification is the same before and after the proposed change. These proposed changes are similar to Example (i) of 48 FR 14870 and on this basis, the NRC staff proposes to determine that these changes do not involve a significant hazards consideration.

4. *Additional Limitations*

(a) T.S. section 6.5.1.5 provides the minimum quorum requirements for the On Site Review Committee (OSRC) necessary for the performance of OSRC responsibility and authority. The current specification states that the Chairman or his designated alternate and four members including alternates are required to form a quorum. The proposed change would state that the Chairman or his designated alternate and one-half the remaining membership including alternates is required for a quorum. There are currently ten OSRC members excluding the Chairman. Because the proposed change would require five OSRC members instead of the current four members to constitute a quorum, this is an additional limitation.

(b) T.S. section 6.8.3.b specifies that temporary changes to procedures of Section 6.8.1 may be made provided that the change is approved by two members of the plant management staff, at least one of whom is an SRO on the affected unit. The proposed change would require the temporary change to be approved by two members of the site/station management staff exercising responsibility in the specific area and unit or units affected by the change, at least one of whom is an SRO. The additional requirement that temporary changes to the procedures of section 6.8.1 be approved by management staff responsible for the affected area is an additional limitation because it prevents all but cognizant management staff from approving temporary changes.

(c) T.S. 6.9.1.9 provides the requirements regarding the preparation of the radioactive effluent release report and states that the annual release summary report may be either in the form of an hour-by-hour listing of wind speed, direction and atmospheric stability and precipitation (if measured) on magnetic tape or in the form of stability. The proposed change would require the addition of joint frequency distributions of wind speed and wind direction if the annual summary is in the form of stability. The proposed change would also allow for retaining this summary of required meteorological data on site in a file that shall be provided to the NRC on request in lieu of submission with the first half year Radioactive Effluent Release Report. Because the proposed change requires additional information to be recorded and stored, this change constitutes an additional limitation.

(d) T.S. Table 6.2–1 provides the requirements for minimum shift crew composition stating the numbers of Shift Supervisors, Senior Reactor Operators, Reactor Operators, Auxiliary Operators and Shift Technical Advisors. The current specification also states that during the absence of the Shift Superintendent from the Control Room Area while the Unit is in Modes 5 or 6, a Senior Reactor Operator (SRO) or Reactor Operator (RO) shall be designated to assume the Control Room Command function. The proposed change would revise the specification to recognize the Shift Superintendent and the Control Room Supervisor as titles of responsible individuals. The proposed change would also require that while the Shift Superintendent is absent from the Control Room Area while the Unit is in Mode 5 or 6 an SRO, if the other unit is in Modes 1, 2, 3 or 4, or an SRO or RO, if the other unit is in Modes 5 or 6, shall be designgated to assume the Control Room Command function. Because the proposed change allows only an SRO and not an RO as currently allowed to assume the Control Room Command function in the absence of the Shift Supervisor if the Unit is in Modes 5 or 6 and the other unit is in Modes 1, 2, 3 or 4, this proposed change is an additional limitation.

Each of the proposed changes detailed above provide new requirements or increase the requirements of the existing specifications. In each case the proposed new specification is more restrictive than the existing specification. These changes are similar to Example (ii) of 48 FR 14870 and on this basis the NRC staff proposes to determine that the above changes do not involve a significant hazards consideration.

5. *Administrative Controls Relaxation*

(a) T.S. Figure 6.2–3 provides the configuration of the Control Room Area. The proposed change would add the Operations Support Office to the Control Room Area. This addition to the defined control room area will allow the Control Room Supervisor to be in the Operations Support Office during normal plant operation instead of in the control room proper as currently required. 10 CFR 50.54(m)(2)(iii) states: "When a nuclear power unit is in an operational mode other than cold shutdown or refueling, as defined by the units technical specifications, each licensee shall have a person holding a senior operators license for the nuclear power unit in the

control room at all times. In addition to this senior operator, a licensed operator or senior operator shall be present at the controls at all times . . ."

The Control Room Supervisor satisfies the requirement to have a senior operator in the control room and provides direction and assessment of the licensed operator activities. He is not required to operate the plant controls which is the function of the operator, nor is he required to "directly supervise the activities of the licensed operator, except during core alteration activities," as described in 10 CFR 50.54(m)(2)(iv). Therefore, the proposed addition of the Operations Support Office to the defined Control Room Area is clearly within all acceptance criteria regarding control room supervision but is a relaxation of the current Technical Specification. Thus, the proposed change is similar to Example (vi) of 48 FR 14870.

(b) The proposed change would add T.S. Section 6.2.2.f to require the development and implementation of administrative procedures to limit the working hours of unit staff in the following job classifications:

(1) Shift Superintendent, Control Room Supervisors, Control Operators, Assistant Control Operators, Nuclear Plant Equipment Operators, Plant Equipment Operators;

(2) Electricians and their first line supervisors;

(3) I&C Technicians, Computer Technicians, Test Technicians and their first line supervisors;

(4) Operational Health Physics Technicians and their first line supervisors;

(5) Boiler and Condenser Mechanics, Machinists, Welders, Crane Operators and their first line supervisors;

(6) Contractor or other Department personnel performing functions identical to those performed by personnel identified in items 1 through 5 above and within the organizational framework of the station.

The addition of this section to the technical specifications would specify the allowable overtime limits for individuals vital for the safety of nuclear plant operations. The proposed change would not specify overtime limits for other plant personnel included in the current specification. This proposed change is a reduction in current requirements. However, because personnel vital for safe plant operations are included, the intent of the original specification is retained. Therefore, this proposed change is similar to Example (vi) of 48 FR 14870.

Each of the proposed changes detailed above provide for a reduction of current requirements, but the results of the change are clearly within all acceptance criteria with respect to the system specified. In each case, the proposed change meets the intent of the existing specification. These changes are similar to Example (vi) of 48 FR 14870 and on this basis the NRC staff proposes to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–361, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of Amendment Request: July 1, 1985 (Reference PCN–189).

Description of Amendment Request: The proposed change would revise Technical Specifications (T.S.) 3/4.5.2, "Emergency Core Cooling Systems (ECCS)," and T.S. 3.3.2, Table 3.3–5 "Engineered Safety Features Actuation System (ESFAS) Instrumentation Response Times." T.S. 3/4.5.2 requires that two independent ECCS subsystems be operable and specifies periodic surveillance tests to verify ECCS operability and defines the actions to be taken when the minimum operability requirements are not met. T.S. 3.3.2 Table 3.3–5 specifies maximum acceptable response times for engineered safety features (ESF) which must be demonstrated during surveillance testing. Verification of response times ensures the ESF equipment will be actuated within the times assumed in the accident analyses. The proposed change will reflect the reinstatement of automatic closure of the ECCS miniflow valves on a recirculation actuation signal (RAS).

The ECCS is designed to mitigate the consequences of a loss of coolant accident (LOCA). On detection of a LOCA, the ECCS is automatically actuated by a safety injection actuation signal (SIAS) and maintains core cooling by pumping water into the reactor coolant system, initially from the refueling water storage tank (RWST). Water spilling from the break in the RCS accumulates on the containment floor. On low level in the RWST, a RAS is generated, realigning the ECCS pumps to take suction from the containment sump, establishing recirculation.

In small break LOCA's RCS pressure may remain higher than the maximum pressure developed by the high pressure safety injection (HPSI) pumps following ECCS actuation. Damage to the HPSI pumps would result after a relatively short period in this condition if a minimum flow is not maintained through the pumps. To prevent HPSI pump damage, minimum flow is guaranteed by the ECCS miniflow lines from the ECCS pump discharge to the RWST. It is desirable to close the ECCS miniflow lines following initiation of recirculation to prevent radioactive water from being pumped from the containment sump to the RWST. The RWST is vented to atmosphere creating a potential release path.

Originally, the ECCS miniflow valves were closed automatically on a RAS generated from low RWST level. Following an event in December, 1982 involving simultaneous SIAS and RAS (i.e., ECCS pumps started and ECCS miniflow valves closed), RAS was removed from the miniflow valves to preclude damage to the ECCS pumps. Currently, closure of the ECCS miniflow valves is manually initiated by the operator. A design change (DCP 6234) is being implemented at San Onofre to restore automatic ECCS miniflow valve closure. With the design change, both low RWST level (RAS) and high containment sump level will be required for automatic closure of the ECCS miniflow valves. Conditioning ECCS miniflow valve closure on RAS and high sump level will preclude an event involving simultaneous SIAS and RAS from damaging the ECCS pumps.

The reflect this design change, the following changes to the technical specifications are proposed:

1. T.S. 3.2.2, Table 3.3–5 specifies response times for ESF equipment. The proposed change would add the ECCS miniflow isolation valves to the equipment included in Table 3.3–5 as actuated by a recirculation actuation signal. A response time of 50.7 seconds specified which includes an allowance for diesel generator starting and load sequencing. A note is added to indicate that the closure of the ECCS miniflow valves on a RAS is conditioned by high containment sump level.

2. T.S. 3/4.5.2 operability and surveillance testing requirements for the ECCS. One of the surveillance tests (T.S. 4.5.2.e.3) requires verification that ECCS miniflow valves close within a specified

period of time (currently 50.7 seconds for Unit 3; 40.7 seconds for Unit 2) upon manual actuation from the control room. The proposed change would require verification that the ECCS miniflow isolation valves close automatically on a RAS test signal coincident with a containment sump level high signal. The required response time is specified in Tab'e 3.3–5.

Basis for Proposed No Significant Hazards Determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazard considerations. Example (ii) relates to a change that constitutes an additional limitation, restriction or control not presently included in the technical specification: for example, a more stringent surveillance requirement.

The current technical specification requires verification that the ECCS miniflow isolation valves close within a specified time (50.7 seconds for Unit 3, 40.7 seconds for Unit 2 following manual actuation. The proposed change will require that the valves close automatically within 50.7 seconds on a RAS coincident with high containment sump level. The proposed requirement to automatically close within 50.7 seconds of RAS is more restrictive since the existing specification does not require automatic closure and does not define a closure time relative to the occurrence of a RAS. Therefore, the proposed change constitutes additional limitations not currently in the technical specifications. Thus, because the proposed change is similar to example (ii) of 48 FR 14870, the NRC staff proposes to determine that it does not involve a significant hazards considerations.

Local Public Document Room Location: San Clemente Library, 242 Avenida Del Mar, San Clemente, California 92672.

Attorney for licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Branch Chief: George W. Knighton

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: October 1, 1985.

Description of amendment request: The amendments would modify the Technical Specifications (TS) to:

(1) Update the Units 1 and 2 Tables of Contents to delete the listings for sections which were deleted in previous amendments.

(2) Correct a reference to the surveillance requirement in the Unit 1 Limiting Safety System Setting specification for the Average Power Range Monitor (APRM). The present references to Section 4.5.B which specify surveillance requirements for the Reactor Protection System Power Monitoring System (RPSPMS), would be replaced by a reference to Section 4.5.L which specifies surveillance requirements for the Reactor Protection System (RPS) and is the correct reference.

(3) Add annual channel functional test requirements for the triaxial peak accelographs to the Units 1, 2 and 3 seismic instrumentation surveillance requirements tables. Limiting conditions for operation (LCO) are specified for these instruments but no surveillance requirements are presently specified.

(4) Correct grammatical and typographical errors in the Unit 3 surveillance requirements for the control rod system. The errors originated in Amendment No. 56. The proposed change would revise the wording to be consistent with Units 1 and 2.

(5) Revise terminology used in the Units 1, 2 and 3 surveillance requirements for the Automatic Depressurization System to be consistent with the associated LCOs. In the surveillance requirement "When . . . more than two" would be changed to "When . . . three of the six."

(6) Correct a reference in the Units 1, 2 and 3 surveillance requirements for coolant chemistry. The presently written surveillance requirement makes a reference to 3.6.B.4 as containing an iodine limit. However, 3.6.B.4 specifies no such limit; the limit is specified in 3.6.B.6. The proposed change would replace "3.6.B.4" in the surveillance requirement with "3.6.B.6."

(7) Correct a typographical error in the Units 1 and 2 coolant chemistry LCOs. "Steam lime" would be changed to "steam line."

(8) Change the Units 1, 2 and 3 references to the lists of safety-related snubbers from "Surveillance Instruction BF SI 4.6.H" to "Surveillance Instruction BF SI 4.6.H–1 and –2." This change would reflect reissued plant procedures.

(9) Revise the Units 1, 2 and 3 LCOs for the pressure suppression chamber water level and temperature to delete a reference to exceptions in Section 3.7.A.2. There are no exceptions specified in 3.7.A.2.

(10) Revise the Unit 2 Table 3.7.A "Primary Containment Isolation Valves" to indicate that air compressor suction valve FCV–64–139 and air compressor discharge valve FCV–64–140 are normally closed and stay closed on an initiating signal. (These valves open only when the air compressor cycles are on and are thus best described as normally closed.) A footnote describing operation of these valves would be deleted. This change would make the Unit 2 TS consistent with Units 1 and 3.

(11) Revise the Unit 2 Table 3.7.D "Air Tested Isolation Valves" to describe valves 90–245B and 90–255 as radiation monitor suction valves. These valves are currently listed in Table 3.7.D as radiation monitor discharge valves. This change would make the valve descriptions consistent with the physical valve arrangement in the radiation monitoring system and with the TS for Units 1 and 3.

(12) Revise the Unit 3 Table 3.7.A to describe Reactor Core Isolation Cooling (RCIC) steam line drain valves FSV–71–6A and FSV–71–6B as normally open and closing on an initiation signal. These valves are presently described as normally closed and staying closed on an initiation signal. The function of the RCIC steam line drain system requires that these valves be normally open. This change would make the Table 3.7.A descriptions consistent with the associated isolation instrumentation and with Units 1 and 2 TS.

(13) Revise the Units 1, 2 and 3 Tables 3.7.E to describe valves 75–57 and 75–58, presently described as "Core spray to auxiliary boiler" as "Suppression chamber drain valves." This change would make the Table 3.7.E descriptions consistent with Table 3.7.A and reflect actual plant nomenclature.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of

a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Except for Item No. 3, the proposed amendments revise nomenclature, correct errors, or eliminate inconsistencies. For Item No. 3, the proposed change will provide additional plant surveillance. No current Limiting Conditions for Operation, surveillance requirements or limiting safety system settings would be affected in a non-conservative manner by the proposed amendments. Because no operability or surveillance requirements for systems, structures or components used to terminate or mitigate accidents would be reduced, the amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated, create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Branch Chief: Domenic B. Vassallo.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of amendment request: August 27, 1984 (Item 2 only), supplemented on August 29, 1985.

Description of amendment request: A portion of the amendment request supersedes an application submitted on June 15, 1983, which was the subject of a notice on November 22, 1983, at 48 FR 52837. The amendment would revise the Technical Specifications to incorporate the requirement for a periodic flow test for the Auxiliary Feedwater System in order to verify the normal flow path from the Auxiliary Feedwater System water source to the steam generators. A similar flow test would be required after any modification or repair and following each extended cold shutdown (greater than 30 days in Mode 5) to the Auxiliary Feedwater System. These tests would ensure the availability of auxiliary feedwater by verification of the proper flow path. The tests, with the exception of automatic pump starts, will be done prior to entering Mode 3. Verifying that each pump starts automatically upon receipt of test signal will be done while in Mode 3 because of insufficient steam supply in Mode 4. The proposed amendment would also require monthly verification that all manual valves in the auxiliary feedwater suction and discharge lines are locked in the proper positions, and would require that an individual be stationed near certain manual valves when conducting certain surveillance tests of the Auxiliary Feedwater System. That individual must maintain communication with the control room while the tests are being conducted to resposition the manual valves if necessary.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (48 FR 14870). The examples of actions involving no significant hazards consideration include actions which involve a change that constitutes an additional limitation, restriction or control not presently included in the Technical Specifications. The proposed changes match this example since these requirements are not presently included in the Technical Specifications. Therefore, the staff proposes to determined that the application does not involve a significant hazards consideration.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: John F. Stolz.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Detroit Edison Company, Docket No. 50–341, Fremi–2, Monroe County, Michigan

Date of amendment request: September 27, 1985.

Description of amendment request: The amendment would revise a number of sections in the Fermi–2 Technical Specifications. Basically, the proposed change to the technical specifications are those required to implement the operation of an alternate system to be used to bring the Fremi–2 facility to a cold shutdown condition in the event of a fire in the plant. While there are existing shutdown systems, they are dependent on equipment in the relay room and the control room. The proposed shutdown system is independent of both the control and relay rooms. It has been evaluated in Supplements 5 and 6 of the staff's Safety Evaluation Report (NUREG–0798).

Date of publication of individual notice in **Federal Register:** November 8, 1985 (50 FR 46523).

Expiration date of individual notice: December 9, 1985.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan, 48161.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: October 17, 1985.

Brief description of amendment: Amendment to Technical Specifications to change Linear Heat Generation Rate Limiting Condition for Operation from a constant value to an axially dependent limit.

Date of publication of individual notice in **Federal Register:** October 31, 1985 (50 FR 45506).

Expiration date of individual notice: December 2, 1985.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450.

Yankee Atomic Electric Company, Docket No. 50–29, Yankee Nuclear Power Station, Frankling County, Massachusetts

Date of amendment request: October 16, 1985.

Description of amendment: The proposed change would modify the Technical Specification (TS) surveillance interval for the second level

(degraded grid voltage) undervoltage protection. The current interval of once per 18 months would be changed to a monthly test interval.

Date of publication of individual notice in Federal Register: October 30, 1985 (50 FR 45181).

Expiration date of individual notice: November 29, 1985.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NRC Branch Chief: John A. Zwolinski.

Notice of Issuance of Amendment to Facility Operating License

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the Federal Register as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Arizona Public Service Company, et al. Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: August 5, 1985.

Brief description of amendment: The amendment permits a one-time exception for approximately 24 hours to the technical specifications involving the reactor coolant system pumps and the atmospheric dump valves, to allow the performance of the Natural Circulation Cooldown Test.

Date of issuance: October 31, 1985.

Effective Date: October 31, 1985.

Amendment No.: 2.

Facility Operating License No. NPF-41: Amendment revised the Technical Specifications.

Dates of initial notice in Federal Register: September 11, 1985 (50 FR 37073). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1985. No significant hazards consideration comments were received.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: July 8, 1985.

Brief description of amendment: The amendments change the Technical Specifications to delete the Service Water Effluent From Augmented Off-Gas Precooler Radioactivity Monitor from Table 3.3.5.8-1 and 4.3.5.8-1. The monitors are no longer necessary as these precoolers have been bypassed.

Date of issuance: November 7, 1985.

Effective date: November 7, 1985.

Amendment Nos.: 93 and 118.

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1985 (50 FR 32789). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, La Salle County Station, Units 1 and 2, La Salle County, Illinois

Date of amendments request: August 19, 1985 as supplemented by letter dated September 5, 1985.

Brief Description of amendments: The amendments to Operating License NPF-11 and Operating License NPF-18 revise the setpoints and setpoint tolerances for the 18 Safety Relief Valves in the Technical Specifications for each of La Salle, Units 1 and 2. The licensee indicated that the present values of setpoints and setpoint tolerances are too restrictive. The General Electric Company (vendor) specifications indicate that the setpoint tolerances can be changed from ±1% to a revised value of +1% to −3% and still be consistent with the specification since La salle Safety Relief Valves ASME nameplate rating is +1%, −3%.

In addition, tow setpoints from the valves are being changed. Presently, the setpoints for each of the 18 SRV are as follows: 4 at 1205 psig, 4 at 1195 psig, 4 at 1185 psig, 4 at 1175 psig, and 2 at 1146 psig. Because of revisions in the General Electric design documents, the last two safety relief values are being changed from 1146 psig to 1150 psig, about a 0.4% increase in the lowest setpoint. This would only have a minor effect on the safety function of these valves, and will also consistent with the setpoints of the General Electric design documents.

Date of issuance: October 31, 1985.

Effective date: October 31, 1985.

Amendment Nos: 28 and 15.

Facility Operating Licenses Nos. NPF-11 and NPF-18 Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 25, 1985 (50 FR 38912). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Commonwealth Edison Company, Docket No. 50-373 La Salle County Station, Unit 1, La Salle County, Illinois

Date of amendment request: July 15, 1985.

Brief Description of amendment request: This amendment would add requirements to the La Salle, Unit 1

Technical Specification for the modification of the automatic depressurization system logic to be added at the first refueling outage. This is in accordance with License Condition 2.C.30 (1)(b).

Date of issuance: November 1, 1985.

Effective date: Upon startup following the first refueling outage.

Amendment No.: 29.

Facility Operating License No. NPF-11: Amendment revised the Technical Specifications.

Date of intitial notice in **Federal Register:** August 28, 1985 (50 FR 34935). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1985.

No significant hazards consideration comments received: None.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: July 19, 1985 superseding the March 10, 1982 submittal.

Brief description of amendment: The amendment provides the Technical Specifications (TS) for the addition of the containment pressure and water level monitoring systems. This installation completes the NUREG-0737 requirements for these items.

Date of issuance: October 29, 1985.

Effective date: October 29, 1985.

Amendment No. 80.

Facility Operating License No. DPR-6. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37077). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: August 16, 1985 as revised September 24, 1985.

Brief description of amendment: The amendment revises the Big Rock Point Technical Specifications to reflect the Reload II fuel design. This design will be incorporated into the fuel reloading for the upcoming fuel cycle.

Date of issuance: November 1, 1985.

Effective date: November 1, 1985.

Amendment No. 81.

Facility Operating License No. DPR-6. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37078) and October 1, 1985 (50 FR 40076). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendment: November 12, 1984 and January 30, 1985.

Brief description of amendment: The amendments change the action statement for the limiting condition for operation and the surveillance requirements for Technical Specifications 3/4.5.1, Cold Leg Injection Accumulators, and 3/4.5.1.2, Upper Head Injection Accumulator System.

Date of issuance: November 1, 1985.

Effective date: November 1, 1985.

Amendment Nos. 47 and 28.

Facility Operating License No. NPF-9 and NPF-17. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 11, 1985 (50 FR 37078 and 37079). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 1, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of application for amendment: May 29, 1985.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to reflect an increase in the required number of nuclear equipment operators in TS Table 6.1-1 in conformance with NUREG-0737, Item I.A.1.3.

Date of issuance: October 31, 1985.

Effective Date: October 31, 1985.

Amendments Nos.: 145, 145, and 142.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 14, 1985 (50 FR 32795). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Duke Power Company, Dockets Nos. 50-269, 50-270, and 50-287, Oconee Nuclear Station, Units Nos. 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: October 8, 1984.

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to reflect the administrative program which will include training of personnel, procedures for sampling and analysis, and provisions for maintenance of sampling and analysis equipment of systems (II.F.1.2 and II.B.3) undertaken as a result of NUREG-0737, TMI Action Plan. These systems include post-accident sampling (II.B.3) and sampling and analysis of plant effluents (II.F.1.2).

Date of issuance: October 31, 1985.

Effective date: October 31, 1985.

Amendments Nos.: 146, 146, and 143.

Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20975). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: August 12, 1985.

Brief description of amendment: The amendment modifies the Technical Specifications related to valves listed in Tables 3.3.7.4-1, 3.6.4-1, and 3.4.3.2-1 and electrical protective devices listed in Tables 3.8.4.1-1 and 3.8.4.2-1.

Date of issuance: November 8, 1985.
Effective date: November 8, 1985.
Amendment No.: 7.
Facility Operating License No. NPF-29. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34944). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1985.
No significant hazards consideration comments received: No
Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond Mississippi 39154.

Pennsylvania Power and Light Company, Docket No 50-387 Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: August 6, 1985.
Brief description of amendment: This amendment changes the Technical Specifications for Susquehanna SES, Unit 1 to correspond with certain design changes to the nitrogen makeup system.
In Licensee Event Report No. 83-114, dated September 13, 1983, PP&L notified the NRC staff of the discovery of a postulated single failure event in the Division II Primary Containment Isolation System (PCIS) logic that could have resulted in the failure to isolate the nitrogen supply line. The PCIS Division II relay provides a closure signal to the outboard isolation valve of the drywell nitrogan supply system and the inboard isolation valve of the containment atmosphere control sample system. The drywell nitrogen supply line taps into the containment atmosphere sample line between the inboard valve and the outboard valve. With the nitrogen makeup system in service, coincident with a loss of coolant accident (LOCA), the PCIS Division II relay could fail in such a manner as to maintain the outboard isolation valve of the drywell nitrogen supply system and the inboard isolation valve of the containment atmosphere control sample system in the open position.
The design changes to correct this deficiency consist of rerouting the drywell and wetwell makeup lines to spare penetrations and installing divisionalized isolation valves. The inboard valves will have Division I power and logic, and the outboard valves will be with Division II.
Table 3.6.3-1 has been changed to ensure that the Technical Specifications properly reflect the installation of the modifications to the nitrogen makeup system. The changes included the addition of two new isolation valves, SV-15738 and SV-15789. Two valves currently listed under the Containment Atmosphere Sample category, SV-15737 and SV-15767, have been deleted and moved to the newly formed category "Nitrogen Makeup", since in the new configuration, they are no longer in the atmosphere sampling lines. The isolation signals for this new category are "B", Reactor Vessel Water Level—Low, Low Level 2; "Y", Drywell Pressure—High; and "R", SGTS Exhaust Radiation—High.
Valves SV-15736B and SV-15776B are now dedicated to the sampling lines. Therefore the "R" isolation signal, SGTS Exhaust Radiation-High, is no longer applicable and has been deleted from the Technical Specification for these valves.
Date of issuance: October 30, 1985.
Effective date: Upon startup following the second refueling outage.
Amendment No.: 50.
Facility Operating License No. NPF-14: Amendment revised the Technical Specification.
Dates of initial notice in **Federal Register:** September 11, 1985 (50 FR 37088). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 30, 1985.
No significant hazards consideration comments were received: No
Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 26, 1985.
Brief description of amendment: The amendment revises the Technical Specifications to reduce testing requirements for the Emergency Diesel Generators in response to NRC Generic Letter 84-15.
Date of issuance: October 29, 1985.
Effective date: October 29, 1985.
Amendment No.: 95.
Facility Operating License No. DPR-59. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** August 28, 1985 (50 FR 34946) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit 1, Fairfield County, South Carolina

Date of application for amendment: March 6, 1985, and amended October 18, 1985.
Brief description of amendment: The amendment modifies Technical Specification 3/4.1.1.2 "Shutdown Margin-Modes 3, 4, and 5" to change the required shutdown margin from at least 2% for modes 3, 4, and 5 to a mode and reactor coolant system boron concentration dependent shutdown margin variable from at least 1% to at least 3.98%.
Date of issuance: November 7, 1985.
Effective date: November 7, 1985.
Amendment No.: 46.
Facility Operating License No. NPF-12. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** April 23, 1985 (50 FR 16014). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 7, 1985.
No significant hazards consideration comments received: No.
Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 15, 1985.
Brief description of amendment: The amendment revises the Technical Specifications to provide an iodine spike limit for the reactor coolant concentration, and to limit the opening of two purge and vent valves (V16-19-7 and V16-19-7a) to 50 degrees while the reactor is operating.
Date of issuance: October 28, 1985.
Effective date: October 28, 1985.
Amendment No.: 91.
Facility Operating License No. DPR-28. Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register:** May 21, 1985 (50 FR 20994) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 28, 1985.
No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Wisconsin Electric Power Company, Docket No. 50-266, Point Beach Nuclear Plant, Unit No. 1, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendment: January 11, 1985.

Brief description of amendment: The amendment deletes the conditions imposed by the Commission's Confirmatory Order for Modification of License dated November 30, 1979 and Order Modifying Confirmatory Order dated January 3, 1980.

Date of issuance: November 4, 1985.

Effective date: November 4, 1985.

Amendment No.: 99.

Facility Operating License No. DPR-24: Amendment revised the Operating License.

Date of initial notice in **Federal Register:** March 27, 1985 (50 FR 12132 at 12167). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 4, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: March 18, 1985, as supplemented May 9 and May 30, 1985.

Brief description of amendment: The amendment modifies the pressurizer safety valve setpoint tolerance to conform to section VIII of the ASME Boiler and Pressure Vessel Code.

Date of issuance: October 31, 1985.

Effective date: October 31, 1985.

Amendment No. 85.

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 31, 1985 (50 FR 31078). The Commission's related evaluation of the amendment is contained in a safety Evaluation dated October 31, 1985.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Notice of Issuance of Amendment to Facility Operating License and Final Determination of no Significant Hazards Consideration and Opportunity for Hearing (Exigent or Emergency Circumstances)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmenal assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) the Application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By December 20, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10. CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be

entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations to the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Branch Chief)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Duke Power Company, et al., Docket No. 50-413, Catawba Nuclear Station, Unit 1, York County, South Carolina

Date of application for amendment: October 18, 1985

Brief description of amendment: The amendment changes the Technical Specifications to extend, by 72 hours, on a one-time basis, the time allowed in Mode 3 with unidentified reactor coolant system leakage greater than 1 GPM, but less than 5 GPM.

Date of issuance: November 1, 1985.

Effective date: October 18, 1985.

Amendment No. 1.

Facility Operating License No. NPF-35. Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated November 1, 1985.

Attorney for licensee: Mr. William L. Porter, Esq., Duke Power Company, P.O. Box 33189, Charlotte, North Carolina 28242.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: November 3, 1985, as supplemented and clarified by letter dated November 5, 1985.

Brief description of amendment: The amendment revises the Technical Specifications to permit operation of the facility on a temporary basis with one isolation condenser cooling system placed continuously out of service.

Date of issuance: November 8, 1985.

Effective date: November 8, 1985.

Amendment No.: 75.

Facility Operating License No. DPR-63: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment and final determination are contained in a Safety Evaluation dated November 8, 1985.

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner & Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

Local Public Document Room location: State University College at Oswego, Penfied Library—Documents, Oswego, New York 13126.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: September 26, 1985.

Brief description of amendment request: This amendment revises the WNP-2 license by modifying the Technical Specifications to change the Surveillance Requirement 4.6.1.8.2 to permit greater leakage through the drywell and suppression chamber purge supply and exhaust isolation valves provided that the valves are secured closed and the total leakage from all valves and penetrations subject to Type B and C testing are less than the maximum specified by the Limiting Conditions for Operation, section 3.6.1.2.b.

Date of issuance: November 1, 1985.

Effective date: September 36, 1985.

Amendment No.: 17.

Facility Operating License No. NPF-21: Amendment revised the Technical Specifications.

Public Comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated November 1, 1985.

Attorney for the licensee: Bishop, Liberman, Cook, Purcell & Reynolds 1200 Seventeenth Street, NW., Washington, DC 20036.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland, this 14th day of November 1985.

For the Nuclear Regulatory Commission.

Edward J. Butcher,

Acting Chief, Operating Reactors Branch #3, Division of Licensing.

[FR Doc. 85-27595 Filed 11-19-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-03137; License No. 37-11258-01, EA 85-98]

Metro Health Center; Order Imposing a Civil Monetary Penalty

I

Metro Health Center, 252 West 11th Street, Erie, Pennsylvania, 16501 (the "licensee") is the holder of License No. 37-11258-01 (the "license") issued by the Nuclear Regulatory Commission (the "Commission" or "NRC") on September 8, 1965, which authorizes the licensee to use licensed materials to perform diagnostic and therapeutic medical procedures. The license expires on December 31, 1987.

II

An NRC safety inspection of the licensee's activities under the license was conducted on August 8, 1985. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated September 16, 1985. The Notice states the nature of the violations, the provisions of the Commission's requirements that the licensee had violated, and the amount of the proposed civil penalty for the violations. Two responses, both dated October 10, 1985, to the Notice of Violation and Proposed Imposition of a Civil Penalty were received from the licensee.

Upon consideration of the answers received, and the statements of fact, explanation, and argument for remission or mitigation of the proposed civil penalty contained therein, the Director, Office of Inspection and Enforcement, has determined, as set forth in the Appendix of this Order, that the penalty proposed in the Notice of Violation and Proposed Imposition of Civil Penalty for the violations should be imposed.

III

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C 2282, Pub. L. 96-295, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay a civil penalty in the amount of Three Thousand Seven Hundred Fifty Dollars ($3,750) within thirty days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Inspection and Enforcement, USNRC, Washington, DC 20555.

IV

The licensee may, within thirty days of the date of this Order, request a hearing. A request for a hearing shall be addressed to the Director, Office of Inspection and Enforcement. A copy of the hearing request shall also be sent to the Executive Legal Director, USNRC, Washington, DC 20555. If a hearing is requested, the Commission will issue an Order designating the time and place of hearing. Upon a failure of the licensee to request a hearing within thirty days of this Order, the provisions of this Order shall be effective without further proceedings and, if payment has not been made by that time, the matter may be referred to the Attorney General for collection. In the event the licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

a. Whether the licensee violated NRC requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty (as corrected in the Appendix), and

b. Whether, on the basis of such violations, this Order should be sustained.

Dated at Bethesda, Maryland, this 14th day of November 1985.

For the Nuclear Regulatory Commission.

James M. Taylor,

Director, Office of Inspection and Enforcement.

Appendix.—Evaluation and Conclusion

On September 16, 1985, a Notice of Violation and Proposed Imposition of Civil Penalty was issued to the licensee for twelve violations of NRC requirements. The licensee responded to the Notice in two letters, both dated October 10, 1985, and indicated that it did not deny that the violations occurred, but requested remission of the proposed penalty, or, at the very least, mitigation of the proposed penalty, if imposed. Provided below are (1) a restatement of each violation; (2) a summary of the licensee's response; and (3) the NRC evaluation of the licensee's response.

Restatement of Violations

An NRC inspection of activities authorized under NRC License No. 37-11258-01 was conducted on August 8, 1985. The particular violations and the associated civil penalty described in the Notice of Violation and Proposed Imposition of Civil Penalty are restated (with a correction to Item B.8) below:

A. 10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that materials not in storage be under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for the purpose of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, during weekends for the time period of June 28, 1985 to August 8, 1985, licensed quantities of technetium-99m/molybdenum-99 contained in nuclear generators were routinely stored in an unlocked portable lead-lined box in an unlocked room in the emergency room center, and during those times, constrant surveillance of the licensed material was not maintained.

B. Condition 17 of License No. 37-11258-01 requires that licensed material be possessed and used in accordance with statements, representations and procedures contained in the application dated August 6, 1982, and appendix O of Regulatory Guide 10.8.

1. Item 10 of the application requires that the licensee possess an operable isotope dose calibrator and that if the activity displayed varies from the stated assay of the standard source by greater than ∓5%, arrangements will be made for the immediate repair or adjustment of the dose calibrator.

Contrary to the above, as of August 8, 1985, the only dose calibrator possessed by the licensee had been functioning erratically for several months and routinely showed variations grater than ∓100% of the stated assay, and as of August 8, 1985, arrangements had not been made for the repair or adjustment of the calibrator.

2. Item 10.B.3.b of the application requires that each day the dose calibrator is used, it be tested for constancy on all isotope settings with a cesium-137 standard.

Contrary to the above,

a. The dose calibrator was used during October 1984, but a constancy check was not performed on the days used;

b. The dose calibrator was used regularly between January 1 to July 1, 1985, but constancy tests were only performed for 16 days during this period; and

c. The dose calibrator was used on July 1, 2, 3, 5, 15, and 30 and on August 7,

1985, but constancy checks were not performed on those days.

3. Item 10.A of the application requires that all survey meters be calibrated annually, and that no survey meter be used beyond the anniversary date of its last successful calibration.

Contrary to the above, as of August 8, 1985, the high level survey meter, a Victoreen 740F, S/N 2207, had not been calibrated since its last successful calibration, June 13, 1984.

4. Item 9 of this application requires that the licensee possess an operable Victoreen CDV–700 low-level survey meter, or its equivalent.

Contrary to the above, from February to June 19, 1985, the licensee did not prossess an operable Victoreen CDV–700 low-level survey meter, or its equivalent.

5. Item 7 of this application requires that the Radiation Safety Committee meet on less than quarterly to conduct its business.

Contrary to the above, between May 1984 and July 30, 1985, the Radiation Safety Committee did not meet.

6. Appendix O, Item 1.b requires the licensee Radiation Safety Committee (RSC) to annually review the entire radiation safety program, including ALARA considerations.

Contrary to the above, the RSC did not meet to review the entire radiation safety program, including ALARA considerations, for the year 1984.

7. Item 17 of this application requires that surveys be performed in accordance with the "Survey Procedures" contained in the application dated August 6, 1982. Item A of "Survey Procedures" requires daily radiation surveys of all elution, preparation and injection areas. Item D of "Survey Procedures" requires weekly G–M meter surveys and contamination wipe tests to be conducted in all laboratory areas.

Contrary to the above,

a. Between February 1985 and August 8, 1985, daily radiation surveys of elution, preparation and injection areas had not been conducted;

b. Between November 30, 1984 and July 31, 1985, weekly G–M meter surveys and wipe tests were not performed in any of the laboratory areas;

c. During the week of July 31, 1985 wipe tests were not performed; and

d. As of August 8, 1985, surveys or wipe tests had not been conducted in the cardiac imaging room where millicurie quantities of technetium-99m are used.

8. Item 15.3 of this application requires that individuals who prepare doses of radiopharmaceuticals monitor their hands after each procedure or before leaving the area.

Contrary to the above, from February to July 1985, Nuclear Medicine technologists routinely failed to conduct personnel monitoring of their hands and clothing after each procedure and before leaving for the day.

9. Item 14 of this application requires that packages containing radioactive material be opened in accordance with the procedures in Appendix F of Regulatory Guide 10.8, Revision 1.

Steps 2.c, 2.d and 2.f of Appendix F require that, when opening packages in which licensed material has been received, the exposure rate 3 feet from the surface of the package, and at the surface, be measured and recorded, and that the external surface of the final source container be wiped with a moistened cotton swab, held with forcepts, and the cotton swab be assayed and the results recorded.

Contrary to the above, for packages received between February through July 1985, none of the procedures specified in Appendix F, Steps 2.c, 2.d and 2.f were followed. In addition, surveys of packages received from August 1–8, 1985 did not include a wipe of the final source container for a contamination check.

10. Item 15 of this application requires that radioactive material be used in accordance with the "General Rules for Safe Use of Radioactive Materials" contained in Appendix G of Regulatory Guide 10.8.

Item 6.a of Appendix G requires that each patient dose be assayed in the dose calibrator prior to administration.

Contrary to the above, on four occasions on March 7 and on three occasions of April 15, 1985, patient does were not assayed in the dose calibrator prior to administration.

C. License Condition 16.B requires the licensee to monitor radioactive trash prior to disposal in the normal trash to demonstrate that radiation levels are at background level.

Contrary to the above, radioactive trash disposed in the normal trash from October 17, 1983 to February 22, 1985 was not monitored prior to disposal to demonstrate that radiation levels were at background level.

Summary of Licensee Response

The licensee states that it does not deny the occurrence of the violations cited in the Notice of Violation and Proposed Imposition of Civil Penalty, and admits that the hospital did not exhibit appropriate management control of the Nuclear Medicine Department. The licensee correctly notes that the requirement cited in Item B.8 was incorrectly described in the Notice as requiring hand monitoring by individuals preparing pharmaceuticals after each procedure and before leaving the area, whereas compliance with either practice alone is acceptable. The citation has been corrected above; however, individuals were not monitoring their hands as required, as the licensee admits and, thus, violation B.8 stands. However, the license requests remission of the proposed civil penalty, or at the very least, mitigation, if a penalty is to be imposed, for the following stated reasons:

- It was not the licensee's intent to willfully and negligently circumvent NRC requirements.
- Although the licensee's consultant had previously identified several of the violations during two previous audits and the violations remained uncorrected, escalation of the civil penalty by 50% for this reason was unjustified because of the extenuating circumstances in that hospital administration was unaware of the consultant's findings. Specifically, the Technical Director of Nuclear Medicine, who was working without direct administrative supervision, was the only individual who received correspondence and reports from consultants, and he chose to act irresponsibly in professing that the program was functioning in an orderly manner.
- Corrective steps have been taken to prevent these violations in the future, including terminating the employment of the Technical Director of Nuclear Medicine.

NRC Evaluation of Licensee Response

The licensee has not provided a sufficient basis for remission or mitigation of the civil penalty. Escalation of the base civil penalty by 50% was appropriate in accordance with section V.B.4 of the NRC Enforcement Policy (10 CFR Part 2, Appendix C) because the licensee had information indicating that problems existed in the Nuclear Medicine Department as a result of the consultant's audits, but the problems were not corrected until after the NRC inspection. If the licensee had promptly responded to the audit findings and corrected the identified deficiencies, a civil penalty may not have been proposed since the NRC encourages self identification and correction of problems.

Although the Technical Director of Nuclear Medicine may have acted irresponsibly, as the licensee claims, in not responding to the consultant's findings, the licensee is responsible for the acts of their employees and therefore must provide adequate control and oversight of their employees to

ensure adherence to requirements. Licensee management admittedly did not exhibit appropriate management control at the hospital. The results of the March 11, 1985 audit were sent to the licensee's Radiation Safety Officer, who is also the Chairman of the Board for the licensee, and no corrective actions were taken. Furthermore, although the hospital administration did, in fact, receive copies of the consultant's second audit in a letter dated June 17, 1985, many of the audit findings, although easily correctable, still existed at the time of the NRC inspection on August 8, 1985. Therefore, corrective actions, although comprehensive, were not prompt and therefore do not provide a basis for mitigation of the penalty.

Finally, the lack of willful intent to violate NRC requirements also does not provide a basis for mitigation of the civil penalty. If the violations were the result of willful actions, the severity level could have been increased in accordance with Section III of the Enforcement Policy, a higher civil penalty could have been proposed, and the responsible individual(s) would have been subject to criminal prosecution. The absence of willfulness does not make the proposed penalty any less appropriate under the Enforcement Policy.

NRC Conclusion

A sufficient basis was not provided for either mitigation or remission of the proposed civil penalty. Therefore, the NRC staff concludes that a civil penalty of $3,750 should be imposed.

[FR Doc. 85-27693 Filed 11-19-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-298]

Nebraska Public Power District; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Nebraska Public Power District (the licensee) to withdraw its August 5, 1980 application for proposed amendment to the Cooper Nuclear Station, located in Nemaha County, Nebraska. The proposed amendment would have revised the provisions in the Technical Specifications to permit reactor operation up to 50% of rated thermal power with one recirculation loop out of service. The Commission issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 15, 1983 (48 FR 41537). By letter dated September 27, 1985, the licensee withdrew its application for the proposed amendment.

For further details with respect to this action, see (1) the application for amendment dated August 5, 1980; (2) the licensee's letter dated September 27, 1985, withdrawing the application for license amendment; and (3) the Commission's letter granting the withdrawal dated October 1985. All of the above documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the Auburn Public Library, 188 15th Street, Auburn, Nebraska 68601.

Dated at Bethesda, Maryland, this 18th day of October 1985.

For the Nuclear Regulatory Commission.

Domenic B. Vassallo,

Chief, Operating Reactors Branch No. 2, Division of Licensing.

[FR Doc. 85-27692 Filed 11-19-85; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 35-23905; 70-7179]

Eastern Utilities Associates, et al.; Proposed Issuance and Sale of Short-Term Notes to Banks and Capital Contribution to a Subsidiary; Exception From Competitive Bidding

November 14, 1985.

Eastern Utilities Associates ("EUA"), P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, and its electric utility subsidiaries, Eastern Edison Company ("Eastern Edison"), 110 Mulberry Street, Brockton, Massachusetts 02403, Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, Massachusetts 02107, and Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, Rhode Island 02865 (collectively, the "Operating Companies"), have filed a declaration with this Commission subject to sections 6, 7, 12(c), and 12(f) of the Public Utility Holding Company Act of 1935 ("Act"), and Rules 45 and 50(a)(2) thereunder.

The Operating Companies propose to issue and sell short-term notes to banks, from time to time during the period from December 27, 1985, to December 29, 1986, in aggregate amounts outstanding at any one time not to exceed $10 million for Eastern Edison, $30 million for Montaup, and $10 million for Blackstone. Each note will be dated the date of issuance and will mature no later than September 30, 1987. Some notes will bear interest at a floating prime rate, have maximum maturities of nine months, and be prepayable at any time without premium. Other notes will bear interest at available money market rates, in all cases less than the prime rate at the time of issuance, will have maximum maturities of nine months, and will not be prepayable. Credit lines with banks are subject in some cases to commitment fees (⅜% of the line of credit) and/or compensating balance requirements (no greater than 10% of the line of credit). With such fees and/or balances, no line of credit would result in an effective cost of borrowing greater than 10.10% based on a prime rate of 9.5%.

The Operating Companies will use the proceeds of the proposed notes, together with other funds available, to: (1) Renew outstanding notes payable to banks as they become due; (2) finance their respective 1986 cash construction expenditures which are currently estimated to be approximately $10,733,000 in the case of Eastern, $14,902,000 in the case of Montaup, and $4,754,000 in the case of Blackstone; (3) provide funds to meet certain sinking fund requirements in the case of Blackstone and Eastern Edison; and (4) provide funds for the prepayment of certain debenture bonds in the case of Montaup.

EUA also requests authorization to make a capital contribution to Blackstone of not in excess of $5,000,000. EUA expects to obtain the funds necessary to make such capital contribution from presently available cash, additional internally generated cash and from the proceeds received from common shares issued under EUA's Dividend Reinvestment and Common Share Purchase Plan and/or to its various employee share purchase plans.

The proposal and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by December 9, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarants at the addresses specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered and will receive a copy of any notice or order issued in this matter. After said date, the

proposal, as filed or as it may be amended may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-27652 Filed 11-19-85; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-14794 (File No. 811-3286)]

Composite AccessFund, Inc.; Application for an Order Declaring That Applicant Has Ceased To Be an Investment Company

November 13, 1985.

Notice is hereby given that Composite AccessFund; Inc. ("Applicant"), W. 601 Riverside, 9th Floor, Spokane, WA 99201, registered under the Investment Company Act of 1940 (the "Act") as an open-end, diversified, management investment company, filed an application on October 31, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the applicable provisions thereof.

According to the application, Applicant was incorporated under Minnesota state law on October 5, 1981, and filed Forms N-8A and N-1 on said date to register an indefinite number of shares of common stock. Applicant states that its registeration became effective on February 23, 1982, and that the initial public offering of its common stock commenced on that date. Applicant further states that on November 19, 1982, its shareholders were advised that the Board of Directors had determinated that Applicant's business should be termined and that no new accounts would be accepted. Thereafter, all Applicant's shares, with the exception of shares held by its sole current shareholder, Washington Mutual Savings Bank ("WMSB"), were liquidated at net asset value of $1 per share.

Applicant further represents that as of September 30, 1985, it had 196,797 shares outstanding and assets of $196,797.90, all of which were invested in a repurchase agreement backed by United States Government securities and an insured savings certificate or account. According to the application, after payment of any expenses related to Applicant's contemplated dissolution under Minnesota state law, Applicant will distribute its remaining assets to WMSB. Applicant states that its debts are nominal and that any expenses incurred in connection with its liquidation will be borne by WMSB.

Applicant states that it is unaware of any current or pending litigation or administrative proceedings, and that it does not propose to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs. According to the application, Applicant's Board of Directors resolved to liquidate Applicant's business and a certificate of dissolution will be filed pursuant to Minnesota state law.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact of law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

John Wheeler,

Secretary

[FR Doc. 85-27713 Filed 11-19-85; 8:45 am]

BILLING CODE 8010-01-M

Electronic Filing, Processing and Information Dissemination System

AGENCY: Securities and Exchange Commission.

ACTION: Announcement of Meeting on Edgar Operational System and Summary of Technical Requirements.

SUMMARY: The Securities and Exchange Commission (SEC) will hold a public meeting on Monday, November 25, 1985 at 2:00 to discuss its plans for the Operational Edgar System. This meeting will focus on the Request for Proposals to be issued for procurement of services for the development and operation of this system.

In July 1985 the Commission issued a preliminary solicitation document (PSD) describing the technical requirements for the operational Edgar system. The Commission has made significant revisions to these requirements. These revisions are summarized below. All interested persons are encouraged to attend the meeting to be held in Room 1C30 of the Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: David Copenhafer (202) 272-3770, Edgar Project Manager, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: On July 1, 1985 the Commission published a Pre-Solicitation Document (PSD) describing the technical and contractual Requirements for its planned Edgar Operational System. Accompanying the PSD was an Executive Summary highlighting the objectives of the system and identifying significant issues related to the development, operation and funding of the Edgar system. Public comment on these specific issues and on any other aspect of the procurement were invited, either in writing or at a public meeting held on July 23, 1985.

In response to the PSD, the Commission received 18 letters of comment. Based upon these and other comments, Commission staff have extensively reviewed all aspects of the system. Many significant changes reflecting public comment have been made. Accordingly, the Commission is summarizing all significant changes from the PSD in this public notice and is offering the opportunity for additional public comment prior to the release of the RFP at a public meeting to be held November 25, 1985. Interested parties are encouraged to attend. The meeting will be held at SEC headquarters at 450 Fifth Street, NW., Washington, DC in Room 1C30 starting at 2:00 P.M.

Summary of Revised Major Requirements

1. *Funding*—The contract will be awarded as a cost-sharing agreement. The Commission will provide funding over the 7 year life of the contract, which will reimburse the contractor for the amortized costs associated with the internal processing system, subject to annual congressional appropriation of funds. The contractor will be responsible for assuming all costs associated with the external receipt and dissemination system. These costs plus a reasonable rate of return will be recoverable through public user fees. The user fees charged by the contractor will be subject to Commission regulation.

2. *Internal System Configuration*—The internal system will support the needs of the full disclosure programs of the Commission's Divisions of Corporation Finance and Investment Management and related document processing function. The system must support approximately 450 workstations directly related to reviewing and processing full disclosure documents. System requirements have been revised so that they may be satisfied with commercially available hardware and software. Image and graphic processing requirements have been deleted until such time as cost-effective technology is available. The Commission-wide office automation requirement also has been deleted. Similarly the on-line data storage requirements have been reduced. On-line storage requirements will be adopted for specific types or categories of filings. The storage requirement will be roughly comparable to one year of all documents.

3. *External Receipt System*—The requirement that the receipt system must support substantially any filer system transmission has been eliminated. The contractor will be permitted to propose a limited set of standardized transmission protocols and may rely upon commercial public data networks (PDN) for transmission and receipt for buffering peak processing requirements.

4. *Dissemination Requirements*—The requirement to offer real-time simultaneous dissemination of the entire data base to all wholesale subscribers has been eliminated. Instead offerors in their proposal are required to specify all dissemination services to be offered. Type, range and proposed cost of public services offered will be a significant evaluation criteria. The types of services and the fees for services will be regulated by the Commission. Offerors may propose either land-based or broadcast transmission dissemination systems, or a combination.

5. *Filer Phase-In and Filing Requirements*—Filer phase-in will be accomplished according to a three year schedule adopted by the Commission in consultation with the contractor. Phase-in may reflect industry type, company size or dissemination market interest. Filers will also be be required to submit in digital form textual material incorporated by reference from documents that cannot be transmitted electronically, for example the Annual Report to Shareholders.

6. *Data Tagging*—Each bidder must propose an approach to data tagging. As a minimum the Commission anticipates that certain elements of financial information, currently required to be disclosed, will be tagged. It is anticipated that, as a minimum, these elements will include: (i) Net sales or operating revenues; (ii) income tax expense; (iii) income or loss from continuing operations; (iv) net income; (v) net income per shares; (vi) current assets; (vii) total assets; (viii) current liabilities; (ix) long term obligations including redeemable preferred stock; (x) shareholders equity.

The Commission acknowledges that current solutions may be basic in approach or utility and intends to continue to use its best efforts to assist in refining what is expected to be an evolutionary product.

7. *Unchanged Requirements*—Several requirements specified in the PSD are not altered. Among those that elicited public comment are the following.

—The standard workstation must provide 132 character video screens.
—The contractor must provide initial support for a receipt, store and forward system to accommodate state securities commission. However, once established, the system will be fully supported or operated by the states and/or their agent.
—The length of the contract will be seven years with two options each for two years.

John Wheeler,

Secretary.

November 15, 1985.

[FR Doc. 85-27714 Filed 11-19-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7035]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; CalMat Co., Common Stock, $1.00 Par Value

November 14, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The issuer considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the New York Stock Exchange and the American Stock Exchange. The issuer does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before December 5, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85-27649, Filed 11-19-85; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-14445]

Application and Opportunity for Hearing; Citicorp

November 13, 1985.

Notice is hereby given that Citicorp (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 that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and a Pooling and Servicing Agreement (the "Agreement") dated as of September 1, 1985 under which certificates evidencing interests in a pool of mortgage loans have been issued, 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 the Trust Company from acting as Trustee under either of such indentures or the 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 it shall within ninety days after ascertaining that it has such a conflicting interest either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under

which securities of an obligor upon the indenture securities are outstanding. However, under clause (ii) of subsection (1), there may be excluded from the operation of the subsection another indenture under which other securities of the same obligor are outstanding, if the issuer shall have sustained the burden of proving, on application to the Commission and after opportunity for hearing thereon, that trusteeship under both 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 from acting as trustee under one of such indentures.

The Applicant alleges that:

(1) The Trust Company currently is acting as Trustee under four indentures in which the Applicant is the obligor. The indenture dated as of February 15, 1972 involved the issuance of Floating Rate Notes due 1989, the indenture dated as of March 15, 1977 involved the issuance of various series of unsecured and unsubordinated Notes, the indenture dated as of August 25, 1977 involved the issuance of Rising-Rate Notes, Series A and the indenture dated as of April 21, 1980 involved the issuance of various series of unsecured subordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statements Nos. 2–42915, 2–58355, 2–59396 and 2–64862 filed under the Securities Act of 1933, and have been qualified under the Trust Indenture Act of 1939. Said four indentures are hereinafter called the Indentures and the securities issued pursuant to the Indentures are hereinafter called the Notes.

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On September 27, 1985, the Trust Company entered into a Pooling and Servicing Agreement dated as of September 1, 1985 (the "1985–I Agreement") with Citibank, N.A. Originator and Servicer, and Citicorp Homeowners, Inc., under which there were issued on September 27, 1985 Mortgage Pass-Through Certificates, Series 1985–I 12.00% Pass-Through Rate (the "Series 1985–I Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1985–I Mortgage Pool") originated and serviced by Citibank, N.A. and having adjusted principal balances aggregating $100,054,247.77 at the close of business on September 1, 1985, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1985–I Certificates. On September 27, 1985, Applicant, the parent of Citibank, N.A., entered into a Guaranty of even date (the "1985–I Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1985–I Certificates, to be liable for 6% of the initial aggregate principal balance of the 1985–I Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1985–I Guaranty. The 1985–I Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1985–I Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1985–I Certificates were registered under the Securities Act of 1933 (Registration Statement on Form S–11 and S–3, File No. 2–98528) as part of a delayed or continuous offering of $400,000,000 aggregate amount of Mortgage Pass-Through Certificates pursuant to Rule 415 under the Act. The Series 1985–I Certificates were offered by a Prospectus Supplement dated September 19, 1985, supplemental to a Prospectus dated June 20, 1985. The 1985–I Agreement has not been qualified under the Trust Indenture Act of 1939.

(4) The obligations of Applicant under the Indentures and the 1985–I Guaranty are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1985-I Guaranty are unlikely to cause any conflict of interest among the trusteeships of the Trust Company under the Indentures and the 1985-I Agreement.

(5) The Applicant Company has waived notice of hearing, and waived hearing, and waived any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application, File No. 22–14445, which is a public document on file in the office of the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C.

Notice Is Further Given that any interested person may, not later than December 9, 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 law or fact raised by said application which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, 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 for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporate Finance, pursuant to delegated authority.

John Wheeler,

Secretary.

[FR Doc. 85–27650 Filed 11–19–85; 8:45 am]

BILLING CODE 8010–01–M

[Rel. 22622; File No. SR–MSTC–85–4]

Self-Regulatory Organizations; Order Approving Amended Proposed Rule Change of Midwest Securities Trust Company

On July 25, 1985 Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission a proposed rule change under section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"). On October 28, 1985 MSTC filed an amendment to the proposal.[1] Notice of the proposal was published in Securities Exchange Act Release No. 22328 (August 13, 1985), 50 FR 33442 (August 19, 1985). No comments were received. As discussed below, the Commission is approving the proposed rule change as amended.

The rule change amends MSTC's By-Laws, among other things, to establish three classes of directors, each class consisting of six directors, with one, two or three-year initial terms and three-year terms thereafter.[2] After the initial

[1] MSTC's amendment deletes from the proposed rule change By-law amendments that would have authorized MSTC's shareholders to amend the By-laws by action at shareholder meetings. Recent changes to Illinois law grant shareholders of Illinois corporations the power to adopt By-law amendments without prior action by the Board of Directors. In this regard, it is noted that MSTC currently has only one shareholder, the Midwest Stock Exchange; its participant members are not shareholders of MSTC. Because MSTC's amendment deletes this provision from the proposed rule change, the Commission need not address in this context whether the proposed rule change, as originally filed, is consistent with a clearing agency's obligation under section 17A(b)(3)(C) of the Act to assure fair representation of clearing agency members in the administration of the clearing agency's affairs.

[2] Prior to the rule change, MSTC's 18 directors were elected annually. *See* MSTC By-Laws Article III, Section 2.

transition period, MSTC will have three classes of directors with three year-terms and one class will be elected annually. The rule change also makes several miscellaneous changes to MSTC's By-laws that are discussed below.

The rule change amends MSTC By-Law Article II in several ways. First, the rule change provides that written or printed notice of shareholder meetings shall be delivered between ten and sixty days before the meeting. For a merger or consolidation, notice must be given between twenty and sixty days before the meeting and delivered personally or by mail.[3] Second, the rule change adopts a new version of section 6 governing the closing of transfer books and fixing of record date.[4] Finally, the rule change provides that a list of shareholders entitled to vote at a meeting be prepared within twenty days after the record date for the meeting or ten days before the meeting, whichever is earlier.

The rule change makes two additional changes to MSTC's By-Laws. Article V is amended to delete a prohibition against one person holding the office of president and secretary. Article VI is amended to provide indemnification of MSTC directors, officers, and administrative employees who, at the request of MSTC, serve any other corporation, partnership, joint venture, trust or other enterprise.[5]

[3] MSTC By-Law Article II had provided for notice to be given between ten and forty days for meetings and between twenty and forty days before merger or consolidation meetings.

[4] New section 6 provides as follows:

Sec. 6. For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders, or shareholders entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors shall fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than 60 days and, for a meeting of shareholders, not less than 10 days, or in the case of a merger, consolidation, share exchange, dissolution or sale, lease or exchange of assets, not less than 20 days, immediately preceding such meeting. If no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this by-law, such determination shall apply to any adjournment thereof.

[5] Prior to the rule change, Article VI provided such indemnification where a director, officer or employee served, at MSTC's request, any other corporation in which MSTC has an interest as stockholder or creditor.

MSTC states in its filing that recent amendments to the Illinois Business Corporation Act ("IBCA"), under which MSTC is incorporated, enable MSTC to implement the rule change. MSTC further states that the rule change conforms MSTC's By-Laws to the IBCA and allows MSTC greater management flexibility.

The Commission agrees with MSTC that the creation of three director classes will provide director continuity by creating three-year director terms and providing for election of six, as opposed to eighteen, directors annually. The Commission also agrees with MSTC that MSTC may change its By-Laws in conformity with the IBCA so long as such changes are consistent with the Act. The Commission believes that the By-law changes approved today do not conflict with the requirements of the Act. Accordingly, the Commission believes the amended proposal is consistent with the Act and is approving the rule change as amended.

It is therefore ordered, under section 19(b)(2) of the Act, that the amended proposed rule change be, and hereby is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: November 13, 1985.

John Wheeler,

Secretary.

[FR Doc. 85-27651 Filed 11-19-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/899]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea; Meeting

The Shipping Coordinating Committee's Subcommittee on Safety of Life at Sea will conduct an open meeting at 9:30 AM on January 23, 1986, in Room 2415 of the U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593.

The purpose of the meeting is to finalize preparations for the 52nd Session of the Maritime Safety Committee (MSC) which is scheduled for January 27–February 5, 1986 in London. In particular the Subcommittee on Safety of Life at Sea will discuss the development of the U.S. positions dealing with, inter alia, the following topics:

Reports of the various Subcommittees
Preparation for 1988 Safety of Life at Sea/Loadline Conference
Casualty statistics
Amendments to control procedures

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. C.P. Yoest, U.S. Coast Guard Headquarters (G-CPI), 2100 Second Street SW., Washington, DC 20593. Telephone: (202) 426-2280.

Dated: November 14, 1985.

Richard C. Scissors,

Chairman, Shipping Coordinating Committee.

[FR Doc. 85-27625 Filed 11-19-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Trans Carib Air, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause (Order 85-11-38) Docket 43141.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding that Trans Carib Air, Inc., continues to be fit, willing, and able to provide the air transportation authorized by its current certificates for Routes 189 and 189-F.

DATE: Persons wishing to file objections should do so no later than December 6, 1985.

ADDRESSES: Responses should be filed in Docket 43141 and addressed to the Office of Documentary Services, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Barbara P. Dunnigan, Special Authorities Division, Department of Transportation, 400 7th Street, SW., Washington, DC. 20590 (202) 755-3812.

Dated: November 14, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-27628 Filed 11-19-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43575]

Assignment of Proceeding; U.S.-Japan Gateways Case

This proceeding has been assigned to

Administrative Law Judge John M. Vittone. Furture communications with respect to this proceeding should be addressed to him at U.S. Department of Transportation, Office of Hearings, M-50, Room 9400A, Nassif Bldg, 400 7th Street SW., Washington, DC 20590, telephone (202) 426-5560.

Dated Washington, DC, November 15, 1985.

Elias C. Rodriquez,

Chief Administrative Law Judge.

[FR Doc. 85-27626 Filed 11-19-85; 8:45 am]

BILLING CODE 4910-62-M

[Docket 43575]

Prehearing Conference; U.S.-Japan Gateways Case

Notice is hereby given that a prehearing conference in the above-entitled matter will be held on December 3, 1985, at 10:00 a.m. (local time) in Room 5332, 400 7th Street SW., Washington, DC, before the undersigned administrative law judge.

Order 85-11-29 defines the issues to be considered. In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and two copies to the judge of (1) proposed stipulations; (2) requests for information and evidence in addition to the proposed evidence request attached to Order 85-11-29; (3) statements of position; and (4) proposed procedural dates. The Office of Aviation Enforcement and Proceedings (AEP) will circulate its material on November 21, 1985, and the other parties on or before November 27, 1985. The submissions of the other parties shall be limited to points on which they differ with AEP and shall use the marking and lettering system used by AEP.

Order 85-11-29 states that the judge may entertain motions to alter the proposed request for information and evidence. Such motions shall be filed by all parties on their respective days for filing the above information.

The November 21 and November 27 dates are for actual delivery of material rather than mailing dates.

Dated at Washington, DC, November 15, 1985.

John M. Vittone,

Administrative Law Judge.

[FR Doc. 85-27627 Filed 11-19-85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

[Department Circular—Public Debt Series—No. 33-85]

Treasury Notes of November 30, 1987, Series AC-1987

Washington, November 14, 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 $9,500,000,000 of United States securities, designated Treasury Notes of November 30, 1987, Series AC-1987 (CUSIP No. 912827 SW 3), 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 be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities.

2. Description of Securities

2.1. The Notes will be dated December 2, 1985, and will accrue interest from that date, payable on a semiannual basis on May 31, 1986, and each subsequent 6 months on November 30 and May 31 through the date that the principal becomes payable. They will mature November 30, 1987, 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 $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 may 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, Wednesday, November 20, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, November 19, 1985, and received no later than Monday, December 2, 1985.

3.2 The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, 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 specified 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 dead-line 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 report 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 99.750. 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 accepted 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 of 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 Monday, December 2, 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, November 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 Monday, December 2, 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 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., an 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. 85-27759 Filed 11-19-85; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Import of Culturally Significant Objects for Exhibition; Determination

AGENCY: United States Information Agency.

ACTION: Modification of notice.

SUMMARY: The United States Information Agency hereby modifies a notice found at 50 FR 28058 (July 9, 1985) regarding immunity from judicial seizure for the art exhibit "Diego Rivera: A Retrospective" to include additional imported items to be exhibited and

therefore rendered immune from judicial seizure.

EFFECTIVE DATE: This modification is effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lorie J. Nierenberg, Office of the General Counsel and Congressional Liaison, United States Information Agency, 301–4th Street, SW., Washington, D.C. 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency is modifying a notice published at 50 FR 28058 (July 9, 1985). The notice rendered immune from judicial process certain items to be included in the exhibit entitled "Diego Rivera: A Retrospective." This modification of notice indicates additional imported items to be exhibited [1] and therefore rendered immune from judicial seizure.

Dated: November 18, 1985.

Thomas E. Harvey,

General Counsel and Congressional Liaison, United Stated Information Agency.

[FR Doc. 85–27859 Filed 11–19–85; 9:38 am]

BILLING CODE 8230–01–M

[1] An itemized list of additional imported objects to be included in the exhibit is filed as part of the original document.

Sunshine Act Meetings

Federal Register
Vol. 50, No. 224
Wednesday, November 20, 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).

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1

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46533, dated November 8, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (eastern time), Monday, November 18, 1985.

CHANGE IN THE MEETING: The following item has been postponed and rescheduled for the November 25, 1985 Commission Meeting: Proposed Commission Decisions.

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: November 15, 1985.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued November 15, 1985.

[FR Doc. 85-27740 Filed 11-18-85; 11:20 AM

BILLING CODE 6750-06-M

2

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 47325, dated November 15, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Tuesday, November 26, 1985.

CHANGE IN THE MEETING: The following items have been added to the agenda for the open portion of the November 26, 1985 Commission Meeting:

1. Request for Approval of the Resource Directory of Federal Equal Employment Compliance Information
2. Proposed Contract for Renewal of Subscriptions from the Bureau of National Affairs

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer, Executive Secretariat, at (202) 634-6748.

Dated: November 15, 1985

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued November 15, 1985.

[FR Doc. 85-27741 Filed 11-18-85; 11:20 am]

BILLING CODE 6750-06-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:31 a.m. on Friday, November 15, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution: (1) Making funds available for the payment of insured deposits in First National Bank of Teague, Teague, Texas, which was closed by the Deputy Comptroller of the Currency, Office of the Comptroller of the Currency, on Thursday, November 14, 1985, and (2) making funds available for an advance payment to uninsured depositors and other general creditors of First National Bank of Teague equal to 45 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), concurred in by Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(B)).

Dated: November 15, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-27807 Filed 11-18-85; 3:51 pm]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

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, November 25, 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.

Application for consent to purchase assets and assume liabilities:

Metropolitan Bank St. Paul, St. Paul, Minnesota, an insured State nonmember bank, for consent to pruchase the assets of and assume the liability to pay deposits made in Metro Thrift Company, Ince., St. Paul, Minnesota, a non-FDIC- insured institution.

Application for consent to merge and establish one branch:

Havelock Bank, Lincoln, Nebraska, an insured State nonmember bank, for consent to merge, under its charter and title, with City Bank & Trust Company of Lincoln, Lincoln, Nebraska, and for consent to establish the sole office of City Bank & Trust Company of Lincoln as a branch of the resultant bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 46,361-SR
Mt. Zion Deposit Bank, Mount Zion, Kentucky
Case No. 46,362-L
The First National Bank of Midland, Midland, Texas

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.

Report of the Director, Division of Accounting Corporate Services:

Memorandum re: Status Report on Ecker Square Condominium Office Building, San Francisco, California

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, DC.

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: November 18, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–27808 Filed 11–18–85; 3:51 pm]

BILLING CODE 6714–01–M

5

FEDERAL DEPOSIT INSURANCE CORPORATION

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, November 25, 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, DC.

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: November 18, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85–27809 Filed 11–18–85; 3:51 pm]

BILLING CODE 6714–01–M

6

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 25, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20501.

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.

CONTRACT 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: November 15, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–27711 Filed 11–15–85; 4:42 pm]

BILLING CODE 6210–01–M

7

FEDERAL TRADE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: FR 50, November 14, 1985, Page No. 47138.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, November 21, 1985.

CHANGES IN THE AGENDA: The Federal Trade Commission has changed the date of its previously announced open meeting from Thursday, November 21, 1985, 10:00 a.m., to Wednesday, December 18, 1985, 10:00 a.m.

Emily H. Rock,

Secretary.

[FR Doc. 85–27771 Filed 11–18–85; 1:44 pm]

BILLING CODE 6750–01–M

8

INTERNATIONAL TRADE COMMISSION

[USITC SE–85–48A]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 46241, Wednesday, November 6, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., November 20, 1985.

CHANGES IN THE MEETING: Change of time for Commission meeting from 10:00 a.m. to 2:00 p.m.

In conformity with 19 CFR 201.37(b), Commissioners Stern, Liebeler, Eckes, Lodwick, and Rohr determined by unanimous vote that Commission business requires the change in the time for the meeting, affirmed that no earlier announcement of the change to the agenda was possible, and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523–0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–27797 Filed 11–18–85; 3:17 pm]

BILLING CODE 7020–02–M

9

NATIONAL CREDIT UNION ADMINISTRATION

Change in Subject of Meeting

The national Credit Union Administration Board determined that its business required that the previously announced closed meeting on November

14, 1985 include additional items, which were closed to public observation:

Memorandum of Agreement. Closed pursant to exemption (8).
Civil Litigation. Closed pursuant to exemptions (7) and (10).
Conservatorship. Closed pursuant to exemption (8).

The Board unaimously voted to add these items to the closed agenda.

The previously annonced items were:

1. Approval of Minutes of Previous Closed Meeting.
2. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 11:15 a.m., in the Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC.

FOR MORE INFORMATION CONTACT: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

Rosemary Brady,

Secretary of the Board.

[FR Doc. 85–27800 Filed 11–18–85; 3:17 pm]

BILLING CODE 7535-01-M

10

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 47139, November 14, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m. on November 21, 1985.

CHANGES IN THE MEETING: The meeting is rescheduled at 10:00 a.m. on December 5, 1985.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634–4015.

Dated: November 18, 1985.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 85–27730 Filed 11–18–85; 11:06 am]

BILLING CODE 7600-01-M

11

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

STATUS: Open.

TIME AND DATE: November 25–26, 1985, 9:00 a.m.

PLACE: Council Offices, 850 SW. Broadway, Suite 1100, Portland, Oregon.

MATTERS TO BE CONSIDERED:

1. Council Deliveration on Draft Power Plan. The Council expects to address the following issues:
   a. Resource Portfolio.
   b. Schedule for Resource Options.
   c. Action Plan.
   d. Any issues not resolved at November 13, 14 and November 20, 21 meetings.
2. Council Business.
   • Administrative Matters.
3. Public Comment on any other issue.

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Curtis (Power Plan issues only) or Ms. Bess Atkins (all other issues) at (503) 222–5161

Edward Sheets,

Executive Director

[FR Doc. 85–27769 Filed 11–18–85; 12:35 pm]

BILLING CODE 0000-00-M

Federal Register

Wednesday
November 20, 1985

Part II

Environmental Protection Agency

40 CFR Part 300

National Oil and Hazardous Substances Pollution Contingency Plan; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FR-2892-6]

National Oil and Hazardous Substances Pollution Contingency Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and Executive Order (E.O.) 12316, the Environmental Protection Agency (EPA) is revising the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This revision of the NCP reflects experience gained since the NCP was last revised and considers extensive comments received on the proposed changes. The purpose of the revisions is to streamline the response mechanisms; to ensure prompt, cost-effective response; to respond to issues raised in litigation; and to clarify responsibilities and authorities contained in the NCP. CERCLA provides that actions taken in response to releases of hazardous substances shall be in accordance with the NCP. Section 311 of the Clean Water Act (CWA) provides that actions taken to remove oil discharges shall, to the greatest extent possible, be in accordance with the NCP.

In addition, EPA is establishing a policy concerning the extent to which response actions taken pursuant to CERCLA will be consistent with other pertinent Federal and State environmental and public health requirements.

DATES: The effective date for the revised National Contingency Plan shall be February 18, 1986.

CERCLA section 305 provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919, 103 S. Ct. 2764 (1983), casts doubt on the validity of the legislative veto, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives. If any action by Congress calls the effective date of this regulation into question, EPA will publish a notice of clarification in the **Federal Register.**

ADDRESSES: The public docket for the NCP is located in the Subbasement, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding holidays, by appointment only. For appointments, contact the public docket at (202) 382-3046.

FOR FURTHER INFORMATION CONTACT: Stephen M. Smith, Office of Emergency and Remedial Response (WH-548D), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 382-2200.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Introduction
II. Changes from Proposed to Final Rule
III. Revisions to Subpart F
  A. Section 300.68—Remedial Action: Compliance with Other Laws
  B. Section 300.68—Other Revisions
  C. Section 300.65—Removals
  D. Section 300.66—Site Evaluation Phase and NPL Determination
  E. Section 300.67—Community Relations
  F. Section 300.71—Other Party Responses
  G. Other Subpart F Sections
IV. Revisions to Other Subparts
V. Summary of Supporting Analyses
  A. Economic Impacts of Proposed NCP Revisions
  B. Classification Under E.O. 12991
  C. Regulatory Flexibility Act
  D. Paperwork Reduction Act
VI. List of Subjects in 40 CFR Part 300

I. Introduction

Pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. 96-510 (CERCLA or the Act) and Executive Order (E.O.) 12316, the Environmental Protection Agency (EPA) on February 12, 1985, proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP or the Plan) (50 FR 5862). The February 12, 1985, preamble discussed in detail the nature and purpose of the proposed revisions, which included EPA's proposed policy on the extent to which CERCLA response actions should be consistent with other Federal or State environmental or public health requirements. EPA received 72 letters totaling more than 1,000 pages of comments on the proposed revisions.

Today, EPA is promulgating final revisions to the NCP. EPA is also establishing its policy concerning the extent to which response actions taken pursuant to CERCLA will comply with the requirements of other environmental laws. This policy, "CERCLA Compliance with Other Environmental Statutes" (the Compliance Policy), can be found as an appendix to this preamble.

In preparing the revisions to the Plan, EPA has carefully considered all of the public comments submitted on the proposed revisions and is making some modifications in response to those comments. Major policy issues raised by commenters are addressed in this preamble. Additionally, a summary of all comments and EPA's response to each is included in the Response to Comments Documents, which is a separate document that may be found in the public docket for this rulemaking. This rulemaking does not address the criteria for listing releases on the NPL under NCP § 300.66(b)(4). A separate rulemaking (50 FR 37624, September 16, 1985) has already made final the changes that were initially proposed in the February 12, 1985, proposed rule.

In revising the NCP, EPA's primary concerns are twofold. First, EPA is making needed clarifications, modifications, and streamlining in program operations that EPA has identified during its past three years of experience. Second, EPA is implementing an agreement reached in the settlement of a lawsuit brought by the Environmental Defense Fund (EDF) and the State of New Jersey, (EDF v. EPA, No. 82-2234, D.C. Cir., Feb. 1, 1984). The terms of the settlement agreement are summarized in the preamble to the proposed rule at 50 FR 5862.

Section II of this preamble summarizes those changes made to the February 12 proposed rule. Section III of the preamble discusses the revisions to Subpart F of the NCP, which was the focus of extensive public comment. Section 300.68 of Subpart F, particularly the proposal to attain or exceed applicable or relevant and appropriate Federal requirements during response actions, was the subject of intense public interest, and is, therefore, discussed first in Section III. Section III is organized in the following order:

A. Section 300.68—Remedial Action: Compliance with Other Laws,
B. Section 300.68—Other Revisions,
C. Section 300.65—Removals,
D. Section 300.66—Site Evaluation Phase and NPL Determination,
E. Section 300.67—Community Relations,
F. Section 300.71—Other Party Responses, and
G. Other Subpart F Sections.

Section IV addresses comments that are related to the changes proposed for Subparts A-E, G, and H. Section V presents supporting analyses. Finally, Section VI provides a list of subjects addressed by this rulemaking.

II. Changes From Proposed to Final Rule

This section summarizes the changes that have been made to the proposed rule, excluding the correction of

typographical errors, misspellings, and other minor editorial changes. A copy of the final rule indicating all changes from the proposed rule has been placed in the docket for this rulemaking and is available for public inspection. The following summary is organized in the same order as the NCP itself.

Subpart A—Introduction

Section 300.3. In paragraph (a)(1), a phrase concerning application of the NCP to oil discharges was added to make the language in paragraphs (a)(1) and (a)(2) consistent.

Section 300.5. The United States Department of Agriculture and its abbreviation USDA were added to the list of abbreviations in paragraph (5)(a).

Section 300.6. The definitions of two terms, "applicable requirements" and "relevant and appropriate requirements" were added to this section. These definitions are discussed in section III. A of this preamble. Changes were also made to the definition of "First Federal Official." These changes are described in section IV of this preamble. EPA has made a conforming change in the definition of "Remedial Project Manager" (RPM) to extend the RPM's authority to include remedial and other response activities. This change was necessitated by a modification of the scope of removals.

Finally, the definition of "remove" or "removal" has been amended to include actions that may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances, the disposal of removed material, or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment.

Subpart B—Responsibility

Section 300.22. In paragraph (d)(1), the text "threat to the public health or welfare because of a discharge of oil from any offshore or onshore facility; or (2) That there may be an imminent and substantial" was accidentally deleted from the proposed rule. This language is reinstated in the final rule.

Section 300.23. A phrase has been added in paragraph (b)(2) in the discussion of the Department of Commerce. The phrase describes the National Oceanic and Atmospheric Administration's expertise concerning predicting the movement and dispersion of oil and hazardous substances through trajectory modeling and information on the sensitivity of coastal zones to oil discharges and hazardous substances releases.

One commenter recommended that the next to last sentence of § 300.23(b)(3) be revised to clarify that the Navy may assist the on-scene coordinator (OSC), regardless of whether government or commercial equipment is being used in a response. The proposed language implies that Navy services and equipment are available only when commercial equipment is not available. EPA agrees with the recommendation. The intent of the language was to indicate clearly that Navy *equipment* would be available for use only when commercial equipment is not available. It was not intended to limit the availability of *services or advice* from the Navy Superintendent of Salvage to cases where Navy equipment is being used. This advice or assistance is available to the OSC, regardless of whether commercial or government equipment is being used. The deletion of the phrase "these services" should eliminate any confusion. Two commenters noted that text in § 300.23(b)(7) describing the jurisdiction of the Bureau of Indian Affairs and the heading of the Territorial Affairs was dropped. The omissions were unintentional. One commenter also suggested adding to the list of bureaus the phrase, "Bureau of Reclamation: operation and maintenance of water projects in the west; engineering and hydrology; and reservoirs." EPA concurs with the comments and has amended the NCP accordingly. Paragraph (b)(9), which discusses the Department of Labor (DOL), has been revised to add text describing the authority of the Occupational Health and Safety Administration (OSHA) over and responsibility for worker health and safety.

Paragraph (b)(10), concerning the Department of Transportation (DOT) provision of expertise, has been amended to reflect the addition of the Research and Special Programs Administration (RSPA) to the National Response Team (NRT). See section IV of this preamble. Paragraph (b)(12) has been revised to reflect the policy that EPA may enter into a contract or cooperative agreement with a State for removal as well as remedial actions. See section III.C of this preamble. Paragraph (d)(2) has been amended to indicate that the authority for permanent relocation of threatened individuals not otherwise provided for has been redelegated from the Federal Emergency Management Administration to EPA.

Finally, the text in paragraph (e) describing the relationship between the Federal Coordinating Officers and OSC/RPM during a disaster has been changed. See section IV of this preamble.

Section 300.24. The sentence, "A State agency that acts pursuant to such agreements is referred to as lead agency," has been added in paragraph (d), which discusses contracts and cooperative agreements between EPA and States. See section III.G of this preamble.

Section 300.25. Section 300.25 required a technical change. Section 300.25(d)(2)(i) has been changed to include reference to § 300.68 because appropriate response actions under preauthorized claims include *remedial* as well as *removal* actions.

Subpart C—Organization

Section 300.31. Figures 2 and 3 have been revised. Figure 2 has been amended to list the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands, in EPA Region IX. Figure 3 has been amended to list Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands in the 14th Coast Guard District and to list the Virgin Islands and Puerto Rico in the 7th Coast Guard District. See section IV of this preamble.

Section 300.32. A phrase concerning separate standing regional response teams (RRTs) for Alaska and the Caribbean has been added in paragraph (b). The phrase "ensure preparedness" in paragraph (b)(6)(x) has been changed to "encourage preparedness activities" for the reasons described in section IV of this preamble. Paragraph (d), which refers to the Scientific Support Coordinator, has been deleted because it duplicates information contained in § 300.34(d) and § 300.43(b). See section IV of this preamble.

Section 300.33. In paragraph (b) (1), a technical change has been made that stipulates that the first Federal official should consult with the OSC before initiating any necessary action. This change is necessary because of an amendment to the definition of the "First Federal Official." See section IV of this preamble. Paragraph (b) (2) has been amended to require the OSC/RPM to conduct data gathering concerning the "identification" of potentially responsible parties instead of concerning the "existence" of potentially responsible parties. See section IV of this preamble. In order to conform with § 300.52(d) and § 300.63(c), the word "advise" has been changed to "notify" in paragraph (b)(9).

Finally, the sentence, "The RPM will also review responses implemented pursuant to preauthorization in order for

EPA to determine that the responses are consistent with preauthorization in cases where claims are filed for reimbursement," has been added to § 300.33(b)(14)(iii) to clarify the RPM's responsibilities. See section IV of this preamble.

Section 300.34. In paragraph (a), a reference has been made to the National Strike Force (NSF) Dive Team on the Atlantic Coast. In paragraph (a)(1), a description of the NSF Dive Team capability has been added to paragraph (a)(1) because it is a resource available to all OSCs requiring diving advice or support for response activities. In addition, the description of the National Strike Force role and capabilities in paragraph (a)(1) has been revised. All these changes are discussed in section IV of this preamble.

In paragraph (d), the description of the Scientific Support Coordinator (SSC) has been changed by adding the sentence, "The SSC will also provide scientific support for the development of regional and local contingency plans." Paragraph (f)(2) has been changed to authorize the OSC/RPM to activate the RRT and to clarify the ability of an RRT to request replacement of the OSC/RPM during a response. Paragraph (f)(4)(iv) has been changed to clarify the RRT's ability to request the replacement of the OSC/RPM.

In paragraph (f)(6), the requirements for deactivating an RRT have been changed by replacing the requirement that both EPA and the Coast Guard agree to the deactivation with the statement that the RRT can be deactivated "when the incident-specific RRT chairman determines that the OCS/RPM no longer requires RRT assistance." These changes are also discussed in section IV of this preamble.

Section 300.36. For consistency with similar language in § 300.36(d) covering the RRC, § 300.36(b) is being amended to add a reference to personnel provided for the National Response Center (NRC). This reference to personnel was in the 1980 version of the NCP but was inadvertently deleted in the 1982 amendments.

In paragraph (d), the text "coordinating response. Each regional plan will specify the location of" was inadvertently deleted from the proposed rule. This language is reinstated in the final rule.

Section 300.37. Paragraph (b)(2) has been revised to reflect that the Strike Teams and commercial salvors are other resources that could be consulted on marine salvage matters. See section IV of this preamble.

Subpart D—Plans

Section 300.41. Reference to regional and local contingency plans for Alaska and the Caribbean have been added to paragraph (a). See section IV of this preamble.

Section 300.42. Paragraph (a) has been revised to refer to separate regional contingency plans for Alaska and the Caribbean area. New language has been added which refers to a coordination between State and Federal local plans. See section IV of this preamble.

Section 300.43. Language has been added in paragraph (a), reinforcing and emphasizing RRT involvement in Federal local contingency plans as mentioned in the NCP in § 300.43(b) and § 300.32(c). See section IV of this preamble.

Subpart E—Operational Response Phases for Oil Removal

Section 300.51. Language has been modified in paragraph (b) concerning notification of an oil discharge. Similar changes have been made to § 300.63 for notification of releases of hazardous substances. See section III.G of this preamble for a discussion of these changes.

Section 300.52. Paragraph (b) has been clarified by requiring the OSC to "identify" potentially responsible parties rather than to "determine the existence of" potentially responsible parties. See section IV of this preamble.

Section 300.55. The language of paragraph (b) (1) has been revised to include as a category of incident the situation where a minor discharge is discovered, but no removal action is required. See section IV of this preamble.

Section 300.58. The phrase "including timely action" has been deleted from the description of funding of discharge removal actions in paragraph (a). This phrase was inadvertently included in the proposed rule.

Subpart F—Hazardous Substance Response

Numerous changes in Subpart F have been made from the proposed rule to the final rule. Two types of changes have been made throughout the subpart. First, EPA in this subpart has substituted "shall" or "shall, as appropriate" for the word "should" to clarify whether requirements are mandatory, regardless of the circumstances. EPA will consider making similar revisions to other subparts in a future rulemaking. Second, to clarify the requirements concerning the compliance of CERCLA responses with the requirements of other laws, EPA has altered two key phrases that are used in several places in Subpart F: (1) "Applicable or relevant and appropriate requirements" and (2) "other Federal criteria, advisories, and guidances and State standards." In the proposed rule, these were referred to as "applicable or relevant requirements" and "other requirements, advisories, and guidance to be considered." The meaning of these phrases is discussed in section III.A of this preamble. These two types of changes are not discussed further in this summary of changes.

Section 300.61. Paragraph (d) has been amended to require the lead agency, as practicable, to monitor the action of third parties preauthorized under § 300.25(d). See section III.G of this preamble. See also the change to §300.33(b)(14)(iii).

Section 300.62. Paragraph (a)(1) has been amended to include a statement that a State agency acting under a Superfund State contract or cooperative agreement is referred to as the lead agency. Paragraph (a)(2) has been amended to require States to enter into such contracts or agreements if they intend to use expenses incurred at sites to fulfill part of their cost-sharing obligations. This change will ensure that expenses are consistent with the NCP and other regulations, fully auditable, and acceptable to EPA. Paragraph (b) has been revised to clarify that agencies in addition to EPA may provide assistance to States under a contract or cooperative agreement. The changes to paragraphs (a) and (b) are discussed in section III.G of this preamble.

Editorial changes have been made to §300.62(d) to clarify the procedures for State cost-sharing and to paragraph (e) to require a State to submit "accounting" of response costs prior to remedial "action," (instead of "estimate" of response costs prior to remedial "investigation activity"). And finally, §300.62(f) has been revised to specify that it is the "Federal" lead agency that shall consult with the affected State or States.

Section 300.63. Section 300.63(b) has been amended to clarify the reporting requirements for releases of hazardous substances when direct reporting to the NRC is not practicable. The paragraph has been amended to state in such cases "reports may be made to the Coast Guard or EPA predesignated OSC for the geographic area where the release occurs. . . . If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the releaser notifies the NRC as soon as possible." These

changes are discussed in section III.G of this preamble.

In paragraph (c) the phrase "OSC or lead agency" has been changed to "OSC" to make it clear that the NRC will notify the OSC and that the OSC has the responsibility for notifying the Governor.

Section 300.64. In § 300.64(a) "OSC" was changed to "lead agency" to reflect NCP requirements.

Paragraph (a)(2) was amended to reflect the possibility that the lead agency may base preliminary assessments on sources other than the Department of Health and Human Services (e.g., State public health agencies) for the evaluation of the threat to public health. This change is discussed in section III.G of this preamble.

Paragraph (d) was amended to reference § 300.74(b), which delineates appropriate actions for trustees of natural resources.

Section 300.65. In § 300.65(b)(2)(vii), the phrase "and enforcement" was deleted because the availability of State or Federal enforcement mechanisms is not a factor that must be considered in determining the appropriateness of a removal action pursuant to §300.65. The word "similar" was deleted from §300.65(b)(2)(viii) to allow situations or factors that pose threats to public health or welfare or the environment to be considered regardless of whether they are similar to the threat being evaluated for the appropriateness of a removal action.

"Or other" was added to §300.65(c)(6) to reflect the fact that highly contaminated soils may need to be removed from non-drainage areas to reduce the spread of contamination. See section III.C of this preamble.

In §300.65(d), "may" was changed to "will" to require a lead agency to request FEMA to conduct a temporary relocation or evacuation when necessary to protect public health or welfare. In §300.65(e), the language "the OSC should coordinate with the RPM to ensure" was changed to "the lead agency shall ensure" to reflect changes made by EPA to the scope and definition of removals. See section III.C. Section 300.65(f) was revised to reflect changes in the terminology concerning CERCLA compliance with other laws and the definition of the terms "applicable requirements" and "relevant and appropriate requirements" in § 300.6. See section III.C.

Section 300.65(g) was amended to add "and other legal requirements" to indicate that there may be other legal requirements beyond Federal or State permits or authorizations when disposing of wastes off-site during a removal action.

Section 300.65 was also changed by the addition of new paragraphs (h) and (i) concerning the compliance of removal actions pursuant to CERCLA section 106 and of other private party responses with the requirements of the section for purposes of cost recovery under CERCLA section 107.

Section 300.66. Section 300.66(b)(4) has been amended in a recent separate rulemaking (50 FR 37624, September 16, 1985). The new language of §300.66(b)(4) is different from the language proposed on February 12, 1985.

The following sentence has been added to §300.66(c)(2) to clarify that limited response activities at Federal facilities are eligible for Fund-financing: "Except as provided by CERCLA section 111(e)(3), Federal facilities listed on the NPL are not eligible for Fund-financed remedial actions other than actions specified in CERCLA section 111(c)." This addition is discussed in section III.D of the preamble.

In §300.66(c)(6) the title "Ranking of Releases" has been deleted to make the paragraph consistent with other paragraphs, which do not have titles.

Several changes have been made in § 300.66(c)(7). The phrase "at that time" has been deleted from paragraphs (i), (ii), and (iii); the phrase "or recategorization on" has been added; the phrase "making this determination" has replaced "deleting sites," and consultation with the State has been required under paragraphs (ii) and (iii). These changes are discussed in section III.D of the preamble.

Section 300.67. The requirements for developing a formal community relations plan under § 300.67(b) have been amended to require a plan to be developed and implemented if the removal action extends or is expected to extend over 45 days. The phrase "develop and" was deleted from § 300.67(c) to clarify that a responsible party may be permitted to implement but not to develop a community relations plan. These changes are discussed in section III.E of this preamble.

In addition, in § 300.67(a) the phrase "A formal community relations plan must be developed and implemented" was replaced by the phrase "The lead agency shall develop and implement a formal community relations plan," and the phrase "as a general rule" in § 300.67(d) was replaced by the phrase "in most circumstances."

Section 300.68. Section § 300.68(a)(1) has been amended to specify that Fund-financed remedial actions, "excluding remedial planning activities pursuant to CERCLA section 104(b)," may be taken only at NPL sites. See discussion in section III.B of this preamble.

In § 300.68(a)(3), "public health or environmental" was deleted as the type of permits that are not required for Fund-financed remedial action or remedial action taken pursuant to CERCLA section 106. The phrase "and other legal requirements" was added to the end of the paragraph. See section III.A.

The phrase "initiation of a" replaced the term "undertaking" in the reference to Fund-financed remedial action in § 300.68(b)(2).

Section 300.68(d), "Operable Unit," and § 300.68(e), "Remedial Investigation/Feasibility Study," are being moved to precede § 300.68(c), "Scoping of Response Actions," to clarify the order in which the scoping of response actions occurs in the Remedial Investigation/Feasibility Study (RI/FS) process. Accordingly, the paragraphs have been redesignated as follows: Section 300.68(c) Operable Unit, § 300.68(d) Remedial Investigation/Feasibility Study, and § 300.68(e) Scoping of Response Actions during the Remedial Investigation.

Section 300.68(e)(1) (§ 300.68(c)(1) in the proposed rule) was changed to state that the initial scoping of response actions "may serve as the basis for further supporting funding requests for a remedial investigation or feasibility study." The previous language implied that the scoping *would in all cases* serve as the basis for requesting funds for a remedial investigation or feasibility study. For some sites, however, a removal action may be the only response needed; the change allows for this possibility. A phrase was also added to § 300.68(e)(1) to state that "Initial analysis shall, as appropriate, also provide a preliminary determination of the extent to which Federal environmental and public health requirements are applicable or relevant and appropriate to the specific site, and the extent to which other Federal criteria, advisories, and guidances and State standards are to be used in developing the remedy." The phrase clarifies that the applicability or relevance and appropriateness of other requirements should be considered from the initial stages of a remedial action. See section III.A of this preamble.

In § 300.68(e)(2)(iii) the terms "and transport" and "and opportunities" were added for clarification. See section III.A. Section 300.68(e)(2)(v) was added as another factor to be considered in determining the appropriate response action, and the subsequent paragraphs

were appropriately renumbered. The language of § 300.68(e)(2)(v) is as follows: "Current and potential ground water use (e.g., the appropriate ground water classes under the system established in the EPA Ground-Water Protection Strategy)." See section III.B. Section 300.68(e)(2)(xii) was added to reflect an additional factor to be considered in determining the appropriate response, and the subsequent paragraphs were renumbered. The language is as follows:

The extent to which Federal environmental and public health requirements are applicable or relevant and appropriate to the specific site, and the extent to which other Federal criteria, advisories, and guidances and State standards are to be considered in developing the remedy.

See section III.A.

The following language was deleted from § 300.68(e)(2)(xiii) (formerly § 300.68(e)(2)(xi)): "and criteria and the extent to which there are applicable or relevant standards for the storage, treatment, or disposal of materials of the type present at the release." See section III.A. "[A]nd/or food chain contamination" was added to § 300.68(e)(2)(xiv). Added to the beginning of § 300.68(e)(2)(xvi) was "for Fund-financed responses" in reference to the availability of other response and enforcement mechanisms to respond to the release. See section III.A. The beginning of § 300.68(f) has been changed to read: "To the extent that it is both possible and appropriate, at least one remedial alternative shall be developed as part of the feasibility study (FS) in each of the following categories:" This change is discussed in section III.B of this preamble. The phrase "including those in paragraph (f)(iv) of this section" has been added to § 300.68(f)(2), and the last sentence of proposed paragraph (f)(2) has been deleted.

EPA proposed in § 300.68(g)(1) of the NCP that in the initial screening of alternatives:

An alternative that far exceeds the costs of other alternatives evaluated and that does not provide substantially greater public health or environmental protection, or technical reliability shall usually be excluded from further consideration *unless there is no other remedy that meets applicable or relevant and appropriate Federal public health or environmental requirements.* (Emphasis added.)

In making this proposal, EPA did not intend to suggest, as one commenter put it, that an alternative that meets or exceeds relevant or applicable Federal requirements may not provide substantially greater public health or environmental protection than an alternative that does not meet those requirements. Rather, EPA believes that compliance with applicable or relevant and appropriate requirements is necessary to provide adequate protection of human health and the environment. Accordingly, the language emphasized above has been deleted and the following has been added:

For purposes of this paragraph, an alternative that meets or exceeds applicable or relevant and appropriate Federal public health or environmental requirements provides substantially greater protection than do alternatives that do not meet such requirements.

"[W]aste biodegradation" was added to the list of technologies in § 300.68(h)(2)(v), the appropriateness of which shall be considered in evaluating remedial alternatives. See section III.A.

Numerous changes were made to § 300.68(i)—Selection of Remedy, which are discussed in section III.A of this preamble. The wording of § 300.68(i)(1) was revised by adding the phrase "Except as provided in § 300.68(i)(5)" before the statement that the remedy selected will attain or exceed applicable or relevant and appropriate Federal requirements. In addition, the following phrase was deleted from the same paragraph because it was redundant and thus potentially confusing: "In making this determination, the lead agency will consider the extent to which the Federal standard(s) are applicable or relevant to the specific circumstances at the site."

In § 300.68(i)(4), in referring to the use of other Federal criteria, advisories, and guidances and State standards, the phrase "will be considered and may be used in developing alternatives, with adjustments for site-specific circumstances" was inserted to replace the phrase "shall be used, with appropriate adjustment, in determining the appropriate action." The revision is intended to clarify the role of such criteria, advisories, guidances, and standards in selecting remedial alternatives.

Section 300.68(i)(5) was reorganized so that the five exceptions to attaining applicable or relevant and appropriate requirements are numbered as §300.68(i)(5)(i) through (v), instead of § 300.68(i), § 300.68(ii)(A) through (C), and § 300.68(iii). In the Fund-balancing exception of § 300.68(i)(5)(ii) (formerly § 300.68(i)(5)(ii)(A)), the phrase "for all of the alternatives that attain or exceed applicable or relevant and appropriate Federal requirements" was added to clarify that the Fund-financing exception may only be invoked when *no* alternative that attains applicable or relevant and appropriate requirements passes the Fund-balancing test. The use of the exception was further specified by adding the following sentences:

In the event of Fund-balancing, the lead agency shall select the alternative which most closely approaches the level of protection provided by applicable or relevant and appropriate Federal requirements, considering the specific Fund-balanced sum of money available for the facility under consideration.

The phrase "at the specific site in question from an engineering perspective" was added to the technical impracticality exception at § 300.68(i)(5)(iii) (formerly § 300.68(i)(5)(ii)(B)). The following requirement was also added:

[T]he lead agency shall select the alternative that is reasonable to implement from an engineering perspective and that most closely approaches the level of protection provided by applicable or relevant and appropriate Federal public health and environmental requirements.

To the exception for unacceptable environmental impacts at § 300.68(i)(5)(iv) (formerly § 300.68(i)(5)(ii)(C)), the following analogous requirement was added:

[T]he lead agency shall select the alternative that most closely approaches the level of protection provided by applicable or relevant and appropriate Federal public health or environmental requirements, without resulting in significant adverse environmental impacts.

Similar language concerning the lead agency selection of an alternative was also added to § 300.68(i)(5)(v) (formerly § 300.68(i)(5)(iii)):

The lead agency shall select the alternative that most closely approaches the level of protection provided by applicable or relevant and appropriate Federal public health or environmental requirements in light of the strong public interest in expedited cleanup.

As a result of adding the above requirements, § 300.68(i)(6) was deleted as unnecessary. The deleted paragraph required selection of the alternative providing the level of protection most closely approaching the level that would be provided by attaining standards. The subsequent paragraph was accordingly renumbered.

Section 300.68(i)(6)(ii)) (formerly § 300.68(i)(7)(ii)), added the sentence: "Other Federal criteria, advisories, and guidances and State standards will be considered and may be used by the lead agency in developing remedial alternatives." This addition is intended to clarify how other criteria and standards will be used. The subsequent sentence in the same paragraph was revised slightly to read, "If the lead agency does not use or uses and adjusts any other pertinent standards, the

decision documents must explain and document the reasons."

In § 300.68(k)(1), which deals with the adequacy of site sampling plans, the phrase "will be adequate" was changed to "will generally be adequate if the plan includes the following elements." Section 300.68(k)(1)(v) was added. The language is as follows: "Such other elements as may be required by the RPM and the appropriate EPA Regional or Headquarters quality assurance office on a site-by-site basis." In §300.68(k)(2), the phrase "Remedial Project Manager with a coordination signature from the Quality Assurance Officer" replaces "appropriate EPA Regional or Headquarters quality assurance office" in referring to who must review and approve the quality assurance site sampling plan. See section III.A.

Section 300.68(1) is new and was added to clarify the circumstances under which a private party response pursuant to administrative action under section 106 of CERCLA or pursuant to a claim under section 111(a)(2) of CERCLA and § 300.25(d) of the NCP will be considered consistent with the NCP. The new paragraph is discussed in sections III.B and III.F of this preamble. See also section III.C.

Section 300.69. In addition to minor editorial changes in paragraphs (a) and (b), § 300.69 has been revised to ensure that Federal resources are available for timely responses by amending paragraph (d) to allow interagency agreements to address advance allocation of Fund monies and other funding procedures. See section III.F.

Section 300.70. Section 300.70(a) has been revised to state that the lead agency may consider the lists of response methods "before selecting the response action." The paragraph previously stated that the lead agency may consider the lists "in taking response action."

Section 300.71. To clarify the requirements for responses pursuant to CERCLA section 106, actions involving preauthorization under § 300.25, and other private responses, the following changes have been made to § 300.71(a):

- Paragraphs (a)(1), (3), and (4) have been deleted;
- The words "In addition," have been deleted from the beginning of § 300.71(a)(2), which has been renumbered § 300.71(a)(1); and
- Paragraph (5) has been: renumbered as paragraph (2); revised to reflect the deletion of § 300.71(a)(3); and revised to reflect (together with new paragraph (3)) changes in §§ 300.65 and 300.68 defining consistency with the NCP.

These changes are discussed in section III.F of this preamble. See also sections III.B and III.C.

Section 300.71(a)(5)(ii)(C) has been renumbered § 300.71(a)(2)(ii)(C) and revised to refer to selecting "a cost-effective response" rather than selecting "the cost-effective response." See section III.A of this preamble. Section 300.71(a)(2)(ii)(D) adds as a criterion for consistency with the NCP that an opportunity be provided for public comment concerning the selection of a remedial action.

Paragraph (c) of this section has been revised in two ways. First, the second sentence has been reworded to refer to "proposed response actions" rather than "responsible party proposals." Second, as discussed in section III.F of this preamble, the technical expertise that organizations must demonstrate to be certified under this paragraph have been clarified by a revision to § 300.71(c)(1).

Subpart G—Trustees for Natural Resources

Section 300.72. In response to a commenter, EPA has revised § 300.72 so that the designation of natural resource trustees includes designation for the purposes of the Clean Water Act.

Section 300.74. In response to several comments, EPA is clarifying the roles and responsibilities of EPA and the States under this section. As described in section IV of this preamble, new parargraph (b) has been added and proposed paragraph (b) has been renumbered paragraph (c).

Subpart H—Use of Dispersants and Other Chemicals

Section 300.84. Only one type of change has been made to this section. EPA has substituted "shall" or "shall, as appropriate" for the word "should" in paragraphs (a), (b), and (e) to clarify whether requirements are mandatory, regardless of the circumstances.

III. Revisions To Subpart F

A. Section 300.68—Remedial Action: Compliance with Other Laws

This section discusses EPA's policy to attain or exceed applicable or relevant and appropriate Federal requirements during remedial and removal actions.

Despite general support for responses to hazardous substances releases, the proper level of cleanup in specific instances is often disputed. In particular, the role of other environmental laws in determining the appropriate extent of cleanup has been the subject of controversy. In a settlement agreement entered in Environmental Defense Fund ("EDF") et al. v. EPA, Nos. 82-2234 et al., EPA agreed to promulgate a rule "addressing the issue of whether [CERCLA] response activities must comply with other federal, state, or local environmental laws."

As explained in the preamble to the proposed NCP revisions (50 FR 5861, February 12, 1985), EPA has determined that the requirements of other Federal environmental and public health laws, while not legally applicable to CERCLA response actions, will generally guide EPA in determining the appropriate extent of cleanup at CERCLA sites as a matter of policy. These laws were enacted with the goal of protecting public health and the environment. Regulations developed under these laws have imposed requirements that EPA and other Federal agencies deemed necessary to protect public health and the environment. Because protection of public health and the environment is also the goal of CERCLA response actions, other Federal environmental and public health laws will normally provide a baseline or floor for CERCLA responses. The revised NCP and the Appendix to the preamble containing the policy concerning CERCLA Compliance with Other Environmental Statutes (the Compliance Policy), therefore, provide, subject to five enumerated exceptions, that a cost-effective remedy will be selected from a range of alternatives that attain or exceed applicable or relevant and appropriate requirements. State and local environmental laws, while not applicable or relevant and appropriate to CERCLA response actions, will be considered by EPA in selecting response actions.

The proposed revisions to the NCP provided that EPA would apply "applicable or relevant" Federal environmental standards. This final rule retains the same approach, with some clarifications. First, EPA has replaced the term "standards" with "requirements" in order to clarify that all applicable and relevant statutory and regulatory requirements will be applied, regardless of whether they may be classified as "standards," "criteria," or anything else. Second, EPA has changed the term "applicable or relevant requirements" to "applicable or relevant and appropriate requirements." Finally, the definition of "applicable or relevant and appropriate requirements" has been modified as shown in §300.6, and as discussed below. Discussion of CERCLA compliance with other Federal requirements is organized in the following order:

1. Identification and Implementation of Applicable or Relevant and Appropriate Requirements
2. Exceptions to Compliance with Applicable or Relevant and Appropriate Requirements
3. Relationship of Compliance Policy to Statutory Requirements for Cost-Effectiveness
4. Relationship of Compliance Policy to Specific Requirements of Other Statutes
5. Compliance with State Requirements
6. Other Specific Concerns with Respect to the Compliance Policy

1. Identification and Implementation of Applicable or Relevant and Appropriate Requirements

Applicable Requirements. As defined in § 300.6, "applicable" requirements are those Federal requirements that would be legally applicable to the response action, if that action were not undertaken pursuant to section 104 or 106. The definition makes clear that Federal requirements will be considered "applicable" even if they would not directly apply in the State where the response takes place. For example, many States have Federally authorized programs under the Resource Conservation and Recovery Act (RCRA) and the Clean Water Act (CWA). In such States, the Federal environmental law does not directly apply; the State, in order to obtain Federal authorization, must comply with Federal requirements. In such instances, the lead agency will consider Federal law to be "applicable" under the NCP.

The characteristics of CERCLA sites are too varied and unpredictable for EPA to specify, by regulation, which Federal requirements are "applicable." Such a determination necessarily will be made on a case-by-case basis. Therefore, an important part of the remedial investigation/feasibility study (RI/FS) process will be the utilization of the list of potentially applicable or relevant and appropriate requirements contained in the Appendix to this preamble. "Applicability" is to be determined objectively: if, because of the nature of the CERCLA site, the requirement would apply but for the implied repeal of other environmental and public health requirements contained in CERCLA, it is "applicable." For example, the PCB Requirements, which are listed in the appended policy as potentially applicable or relevant and appropriate requirements, would not be applicable to an uncontrolled waste site that did not involve the release of PCBs and would be applicable or relevant and appropriate to sites that do involve the release of PCBs. Once a requirement is determined to be applicable, it will be applied in the same manner as it would be applied otherwise.

EPA believes that it is generally proper for CERCLA response actions to comply with applicable Federal requirements, just as persons in the regulated community must comply with those requirements. CERCLA requires that responses adequately protect public health and welfare and the environment. Only after such protection is assured through compliance with applicable or relevant and appropriate requirements is the cost-effectiveness analysis conducted.

Relevant and Appropriate Requirements. Under the February 12, 1985 proposed revisions, CERCLA responses also would comply with "relevant" requirements, which were defined in the Appendix to the preamble as those requirements "designed to apply to circumstances sufficiently similar to those encountered at CERCLA sites in which their application would be appropriate at a specific site, although not legally required." EPA has retained this concept, but has revised the terminology and included the definition in the body of the regulation. Section 300.6 now provides:

> "Relevant and appropriate" requirements are those Federal requirements that, while not "applicable," are designed to apply to problems sufficiently similar to those encountered at CERCLA sites that their application is appropriate. Requirements may be relevant and appropriate if they would be "applicable" but for jurisdictional restrictions associated with the requirement.

By adding the phrase "and appropriate," EPA emphasizes that non-applicable requirements will be used only when they are appropriate to the CERCLA site.

For purposes of clarification, EPA points out that relevant and appropriate requirements are intended to have the same weight and consideration as applicable requirements.

The reason that the concept of "relevant requirements" was added to the concept of "applicable requirements" was that it was anticipated that jurisdictional limitations of requirements developed under other statutes might prevent otherwise useful requirements from being named as "applicable." EPA does not believe that the definition of "relevant" needs enumerated criteria because, as discussed below, the decision of what is relevant can only be made on a site-by-site basis.

For example, RCRA requirements could be relevant even with respect to hazardous waste disposed of prior to November 19, 1980, the effective date of EPA's RCRA Subtitle C regulations, 40 CFR Parts 260–265. The date on which the waste was disposed or managed is not germane to the determination of what response action will adequately protect public health and welfare and the environment. The jurisdictional date would not be grounds for determining that a requirement is not relevant and appropriate to a particular site. Similarly, although the Subtitle C regulations differ according to whether a hazardous waste facility has a RCRA permit (40 CFR Part 264) or is operating under interim status (40 CFR Part 265), remedies will generally have to be consistent with the more stringent Part 264 standards, even though a permitted facility is not involved. The Part 264 standards represent the ultimate RCRA compliance standards and are consistent with CERCLA's goals of long term protection of public health and welfare and the environment.

In determining the relevance of a requirement, the lead agency must determine that the requirement is appropriate. As the definition states, other requirements are appropriate if they are designed to apply to problems sufficiently similar to those problems encountered at CERCLA sites. For example, the RCRA ground-water protection standards are designed to prevent contamination of ground water from discrete hazardous waste facilities and to remedy any contamination resulting from those facilities and thus would be appropriate in those situations. However, these standards may not be appropriate to address situations encountered at CERCLA sites of area-wide ground water contamination from unknown sources. In emphasizing the need to determine what requirements are appropriate, EPA does not suggest that a cost-benefit analysis should be performed, comparing remedies that meet other Federal requirements and those that do not. Rather, the only question to be answered is whether the requirement under consideration is appropriate to the *situation* presented at the CERCLA site.

When a requirement is determined to be "relevant and appropriate," it will be applied in the same manner as it would be otherwise, subject to the qualifications discussed previously for applicable requirements. However, the determination of "relevant and appropriate" requirements, even more so than "applicable" requirements, can be made only on a case-by-case basis, through the RI/FS process. It is not possible to determine which requirements are appropriate without

analyzing the characteristics of the site and other problems associated with the response. Again, as with the determination of which requirements are "applicable," the requirements listed in the Appendix to this preamble will be utilized in determining what is "relevant and appropriate." Although applicability is determined objectively, the determination of what requirements are relevant and appropriate is more flexible.This determination may require the exercise of the lead agency's best professional judgment. While these listed requirements are expected to be applicable or relevant and appropriate in most situations to which they pertain, the final decision will be made only on a site-specific basis during the RI/FS process.

Implementation. Many commenters have objected to the implementation of applicable or relevant and appropriate requirements on the basis that they do not represent the proper level of cleanup. Specifically, commenters thought that the use of these requirements would result in remedies that were either too stringent, too lenient, or otherwise inappropriate. To support the contention that the attainment of other requirements would be too stringent, commenters pointed out that the statutes under which other requirements were promulgated were directed at different objectives than those to be served by CERCLA. EPA rejects this criticism because if a statutory objective is so different from that of CERCLA as to render the use of a requirement inappropriate, as stated previously, it will not be used. However, all environmental statutes, including CERCLA, were enacted with the same basic goal in mind: the protection of public health and the environment. EPA emphasizes that the lead agency is expected to consider the objectives of other statutes and their variances. For instance, objectives of other Federal statutes relating to the intended use of the affected natural resources may be important in determining whether the requirement is "relevant and appropriate."[1] This principle may be considered in determining the proper remedy for contaminated ground water—a prevalent concern at CERCLA sites.

EPA has added paragraph (2)(xii) to § 300.68(e), "Scoping of Response Actions During the Remedial Investigation," (formerly § 300.68(c)), to provide, in the scoping phase of the RI/FS, for an assessment of the extent to which Federal environmental requirements are applicable or relevant and appropriate to the specific site and the extent to which other Federal criteria, advisories, and guidance and State standards should be considered in developing the remedy. Moreover, EPA has added a sentence to paragraph (1) of § 300.68(e) (formerly § 300.68(c)) to provide that a preliminary determination of what requirements are applicable or relevant and appropriate will be made in the scoping process. Of course, this determination may need to be revised on the basis of additional information as the RI/FS process continues. The determination of which Federal requirements are "applicable or relevant and appropriate," like the rest of the remedy-selection process, will be subject to public review and comment. See § 300.67 on Community Relations.

Some commenters questioned EPA's legal authority to require response actions to "exceed" the applicable or relevant and appropriate requirements of other statutes, charging that such a requirement is too stringent. EPA believes it has such authority because CERCLA directs EPA to, at a minimum, include in the NCP the methods and criteria for determining the appropriate extent of cleanup. In some unusual circumstances, statutory standards may, due to site conditions, be inadequate to address the extent of contamination at a particular CERCLA site (e.g., to reduce risk to an acceptable level). Furthermore, in some situations, a response may be selected that exceeds applicable or relevant and appropriate requirements and that results in no significant additional cost (e.g., some cost-effective technologies remove all hazardous substances from a site by virtue of the design and operating characteristics of the technology, even though applicable or relevant and appropriate requirements may allow some contamination to remain). In these cases, EPA prefers to retain the authority to determine that a remedial response should exceed requirements in order to protect the public health. For instance, contamination containing trihalomethanes[2] may be one circumstance in which the lead agency may choose to be more stringent than the maximum contaminant level (MCL) at a CERCLA site. The CERCLA site would not be subject to the same balancing constraints as the public drinking water supply under the Safe Drinking Water Act, and the lead agency might want to achieve a higher level of cleanup than the trihalomethanes MCL.

Some commenters stated that the standards did not go far enough or *were too lenient* for use at CERCLA sites because engineering and technology-based standards may be set without regard to pollutant concentrations that protect public health or welfare or the environment.

The short answer to the charge that requirements under other laws are too lenient is that EPA may select a remedy that *exceeds* applicable or relevant and appropriate requirements. EPA recognizes that technology-based requirements of other statutes may be set without *specific* reference in the statutes to achieving contaminant or pollutant levels that will protect public health and welfare and the environment. However, these statutes (such as the Clean Water Act) that prescribe technology-based limitations are aimed at protecting public health and welfare and the environment. Congress determined in enacting those statutes that technology-based limitations were the best means to that end.

Some commenters stated that structure should be provided for deciding which requirements are applicable or relevant and appropriate, and which requirements are to be considered. Specifically, commenters wanted to know how applicable and relevant and appropriate requirements would be identified, and how they would be used once they were so identified.

Another commenter stated that, ideally, any private party should be able to apply the same decisionmaking structure or process as the lead agency, and to arrive at the same conclusion as the lead agency regarding what requirements are applicable or relevant and appropriate. Another commenter suggested that EPA should promulgate with the rule a decisionmaking protocol

[1] The intended use of a natural resource will not always be determinative. For example, the Clean Water Act (CWA), 33 U.S.C. §§ 1251 et seq., requires effluent limitations based on the application of the best available technology economically achievable. The quality of the receiving stream is not a factor in setting such limitations, except to the extent that more stringent limitations are necessary to ensure compliance with State water quality standards. The CWA was enacted for the purpose of reducing or eliminating pollution of our nation's waters; Congress chose technology-based limitations to meet that goal. EPA believes that CERCLA responses should also be consistent with that goal; therefore, when a response involves the discharge of pollutants from a point source into navigable waters within the meaning of the Clean Water Act, technology-based standards will be applied, regardless of the intended use of those waters.

[2] The maximum contaminant level (MCL) under the Safe Drinking Water Act (SDWA) was established for trihalomethanes by balancing the risk of exposure to trihalomethanes resulting from chlorination against the risk of ingestion of less chlorinated drinking water.

for resolving any inconsistencies between the requirements during the determination of what requirements are applicable or relevant and appropriate.

EPA reemphasizes that the determination and implementation of applicable and relevant and appropriate requirements will be made on a case-by-case basis, including those situations where there are inconsistencies. The NCP is a rule that presents the Federal government's general plan or framework for responding to hazardous substances releases. The NCP is not intended to provide complex and detailed site-specific decisionmaking criteria. EPA has developed guidance on the feasibility study process and is developing additional addenda to that guidance to more fully detail the information to be considered in decisionmaking.

EPA intends that the decisionmaking process to be used at each site to determine applicable or relevant and appropriate requirements should be, insofar as possible, straightforward enough to lead private parties to select remedies that protect public health and the environment. Applicability is an objective standard because it is based on a finding that the Federal requirements would be applicable but for preemption by CERCLA. Relevance and appropriateness, as discussed previously, requires a more subjective determination. The list of requirements in the Appendix to this preamble contains potentially applicable or relevant and appropriate requirements.

EPA reiterates that early in the scoping process of the RI/FS certain site-specific factors will preliminarily indicate which requirements from the list are applicable or relevant and appropriate. Furthermore, this determination may be altered as continuing investigation reveals more information.

Another commenter requested a detailed structure describing how risk assessments would be used to select a remedy for a site where Federal requirements are not applicable or relevant and appropriate. From experience with other sites, EPA estimates that in most cases, applicable or relevant and appropriate requirements will be available to guide lead agency decisions (e.g., RCRA technology-based design and operating standards). Where insufficient Federal environmental or public health standards exist to determine the appropriate extent of remedy, the lead agency will conduct a risk assessment for that specific site. This risk assessment may be based on data from advisories, State standards, or other Federal requirements considered during the feasibility study, or may require a review of other scientific information concerning the threat posed by the substances in question. Chapter 5 of EPA's "Guidance on Feasibility Studies Under CERCLA" (April 1985) describes EPA's approach to risk assessment. Additional guidance on risk assessment is forthcoming. Specifically, the additional guidance will provide advice on how to conduct exposure assessment and risk characterization at CERCLA sites.

2. Exceptions to Compliance with Applicable or Relevant and Appropriate Requirements

Due to the unique nature of the CERCLA program, there may be some circumstances where the use of applicable or relevant and appropriate requirements is ill-suited. In § 300.68(i)(5) of the NCP, EPA is providing five exceptions to the Compliance Policy to accommodate these circumstances.

Comments focused only on the Fund-balancing and technical impracticality exceptions. Regarding Fund-balancing, section 104(c)(4) of CERCLA requires the lead agency to balance the need for protection of public health and welfare and the environment at a site against the need to use Fund monies for responses at other sites. Therefore, there may be circumstances where the lead agency will determine that in light of other demands on the Fund, it is not appropriate to expend monies necessary to comply with applicable Federal requirements.

A number of commenters have argued that the Fund-balancing exception is too broad because there would always be a need for action at other sites. One commenter stated that financial concerns should not block the achievement of applicable or relevant standards. Nevertheless, CERCLA section 104(c)(4) specifically provides for the consideration of Fund-balancing in selecting a remedy. EPA disagrees that the exception is too broad, because based on EPA's experience to date, the exception has only been used once. Accordingly, it is anticipated that the exception will be invoked infrequently. If it is invoked, the lead agency will select a remedy that provides significant protection of public health and welfare and the environment, and that most closely approaches the level of protection assured by the "applicable or relevant and appropriate" requirement, given the amount of Fund monies available. See § 300.68(i)(6). The basis for invoking the exception (and all other exceptions) will be fully documented and explained in the appropriate decision documents.

Some commenters contended that the Fund-balancing considerations should be extended to enforcement actions, in part because industry is the indirect source of monies for Fund-financed cleanups. Although EPA believes that enforcement actions should consider both the cost and effectiveness of a remedy, the Fund-balancing exception by its terms can apply only to the conservation of Fund money. The Interim CERCLA Settlement Policy, 50 FR 5043, February 5, 1985, discusses the circumstances in which EPA will consider using Fund monies as part of a settlement.

The second exception to EPA's policy on compliance with other laws applies where it would be technically impractical to implement the "applicable" requirement. Some commenters asked if cost would be a consideration in the determination of what is impractical.

This exception is intended to give EPA flexibility to avoid situations where the rigid imposition of requirements under other laws would lead to absurd or illogical results. The primary consideration in determining whether a particular alternative is practical is whether the option is logical and reliable in the long term. Cost may play a role in making this determination. For instance, in the example described in the preamble to the proposed rule (see 50 FR 5866), the placement of a cap on a steep slope was cited as being technically feasible but impractical because of long-term problems with maintaining the integrity of the cap. While long-term maintenance of the cap would probably be feasible, it could only be accomplished at inordinate cost, and the remedy still would not be reliable over the long run.

EPA emphasizes that the determination of technical practicality is not based on a cost/benefit analysis. To emphasize that the determination of impracticality is not dominated by cost considerations, EPA is modifying § 300.68(i)(5)(iii) of the rule to state:

Technical Impracticality: Where no alternative that attains or exceeds applicable or relevant and appropriate Federal public health or environmental requirements is technically practical to implement at the specific site in question from an engineering perspective, the lead agency shall select the alternative that is reasonable to implement from an engineering perspective and that most closely approaches the level of protection provided by applicable or relevant and appropriate Federal public health and environmental requirements.

In the preamble to the proposed rule, EPA had described the three remaining exceptions as follows:

• Interim Measures: If the selected remedy is not the final remedy for the site, it might be impractical or inappropriate to apply other environmental requirements. For example, it might be appropriate to treat contaminated drinking water at the tap as an interim measure, pending final decisions on the appropriate extent of cleanup in the contaminated aquifer itself.

• Unacceptable Environmental Impacts: In some cases, it might be possible to meet applicable or relevant and appropriate Federal requirements, but compliance might result in significant adverse environmental impacts. This might be the case, for example, when dredging contaminants from the bottom of a body of water to levels required by environmental standards would result in more harm to the ecosystem than an alternative remedial response.

• For enforcement actions under section 106 of CERCLA only, the decisionmaker could choose not to meet an otherwise applicable or relevant standard if the Fund is unavailable, there is a strong public interest in expedited cleanup, and the litigation probably would not result in the desired remedy. For example, this situation could occur where the defendant lacks sufficient resources to pay for a complete remedy or where liability is in question, the Fund is unavailable, and the public interest is served by expeditious cleanup. One situation where the Fund is unavailable is where the State does not have sufficient funds to make the necessary State cost-share match.

No major comments were received on these three exceptions.

As stated in the preamble to the proposed rule, based on its experience to date, EPA believes that the exceptions to the compliance with other laws policy will occur infrequently. When an exception is invoked, the decisionmaker will still select a remedy that most closely approaches the level of protection provided by the applicable or relevant and appropriate requirement, considering the circumstances which prevented meeting the requirement. Finally, the basis for not meeting the requirement will be fully documented.

3. Relationship of Compliance Policy to Statutory Requirements for Cost-Effectiveness

Many commenters charged that the compliance policy conflicts with CERCLA section 105(7), which requires that cost-effective remedies be applied to each CERCLA remedial action site.

EPA agrees that the statute requires selection of a cost-effective remedy for each Fund-financed remedial action, but believes that determining the appropriate extent of response actions through the attainment of applicable or relevant and appropriate Federal requirements is fully consistent with the requirement to select a cost-effective remedial response. CERCLA section 105(3) directs EPA to include in the NCP, among other requirements, the methods and criteria for determining the appropriate *extent* of removals, remedies, and other measures authorized by CERCLA. Section 105(7) also directs EPA to include in the NCP the *means* of assuring that remedial action measures are cost-effective over the period of potential exposure to the hazardous substances or contaminated materials.

The commenters' concerns about possible conflicts with cost-effective remediation raise the issue of *when* a cost-effectiveness of alternatives analysis should be conducted. Some commenters argued that a cost-effectiveness of alternatives analysis should be part of the process that the lead agency would use to determine which environmental requirements are applicable or relevant and appropriate. EPA disagrees. In promulgating standards under other environmental laws, EPA has generally imposed requirements deemed necessary to protect public health and welfare and the environment. Where applicable or relevant and appropriate, EPA believes that those requirements must be met in order to achieve an effective CERCLA remedy. Only after the lead agency determines, by the selection of applicable or relevant and appropriate requirements, that adequate protection of public health and welfare and the environment will be achieved, is it appropriate to consider cost-effectiveness.

Thus, the lead agency must develop one or more alternatives that attain applicable or relevant and appropriate requirements. As necessary or appropriate, the lead agency will also examine alternatives that exceed those applicable or relevant and appropriate standards. Although alternatives that do not meet the requirements may also be examined, they are only developed for possible use if one of the five enumerated exceptions applies; such alternatives have no bearing on the selection of a cost-effective remedy when the exceptions are not operable.

The Administrator (or others delegated this responsibility), after considering site-specific factors—including potential for further exposure, reliability of technologies, and other administrative concerns—will then select an alternative that, in his judgment, is the most cost-effective of the alternatives presented.

Several commenters recommended that EPA not delete the "lowest cost alternative" clause in the current NCP. EPA is replacing the "lowest cost" language because it believes that cost should be taken into account as one of several factors considered in the selection of remedies. The language in the current NCP could lead a decisionmaker to erroneously select the least cost, minimally adequate remedy, despite the existence of more effective remedies available at a reasonable, incrementally greater cost.

The approach embodied in today's rule is to select a cost-effective alternative from a range of remedies that protects the public health and welfare and the environment. First, it is clear that if all the remedies examined are *equally* feasible, reliable, and provide the same level of protection, the lead agency will select the least expensive remedy. Second, where all factors are not equal, the lead agency must evaluate the cost, level of protection, and reliability of each alternative. In evaluating the cost of remedial alternatives, the lead agency must consider not only immediate capital costs, but also the costs of operating and maintaining the remedy for the period required to protect public health and welfare and the environment. For example, the lead agency might select a treatment or destruction technology with a higher capital cost than long-term containment because treatment or destruction might offer a permanent solution to the problem. The reliability of various alternatives will be taken into account in the present worth comparison of alternatives to the maximum extent possible, including the cost of such factors as the long-term operation and maintenance and the integrity of physical structures.

Finally, the lead agency would not always select the most protective option, regardless of cost. The lead agency would instead consider costs, technology, reliability, administrative and other concerns, and their effects on public health and welfare and the environment. This allows selection of an alternative that is the most appropriate for the specific site in question.

In revising the NCP, EPA does not intend to lessen the role of cost or cost-

effectiveness in selecting CERCLA remedies, nor does EPA believe that the promulgated language reduces the importance of cost in the remedial process. In fact, cost is the first factor enumerated in § 300.68(i)(2) for selecting the appropriate extent of remedy.

Some commenters stated that EPA's requirement of compliance with applicable or relevant standards conflicts with cost-effectiveness because it would not balance risks and costs. However, while CERCLA requires a cost-effectiveness of alternatives analysis that takes both risks *and* costs into account, EPA believes that such an analysis should weigh risks and costs only with respect to remedies that adequately protect public health and welfare and the environment, except where the costs are sufficiently great that the Fund-balancing exception is invoked. Such an analysis is entirely different from the risk/cost balancing referred to by the commenters. The lead agency must select a remedy that adequately protects public health and welfare and the environment, unless Fund balancing comes into consideration. Fund balancing will be used only where the costs of implementing a remedy that attains or exceeds applicable or relevant and appropriate requirements will be disproportionately costly and Fund monies could be used more productively at another site where a response is necessary. Furthermore, CERCLA's legislative history indicates that Congressional sponsors of CERCLA dismissed the notion of a cost-benefit test for the NCP. (126 Cong. Rec. S16427 (1980).)

4. Relationship of Compliance Policy to Specific Requirements of Other Statutes

Ground Water Contamination. EPA regulates contaminated ground water under two statutes: the Safe Drinking Water Act (SDWA), 42 U.S.C. 300f et seq.; and the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). EPA requested comments concerning the application of the RCRA ground water protection standards (GWPS) to CERCLA actions. Many commenters opposed such a provision on the basis that the standards, when treated as requirements, are too rigid and do not result in a cost-effective remedy. EPA appreciates the regulated community's concern, but believes that the concern is misplaced. The RCRA (and SDWA) requirements may be applied flexibly in a manner that is appropriate for response actions at CERCLA sites. EPA believes that a discussion of EPA's ground water contamination requirements illustrates this point.

Under the SDWA, EPA requires that any pollutants occurring in public drinking water supplies be in concentrations less than the maximum contaminant levels (MCLs) established by regulations in 40 CFR Part 141, subpart B. EPA's regulations under the SDWA also prohibit certain injections of contaminants into aquifers, but these restrictions specifically are not applicable to CERCLA cleanups where contaminated ground water has been treated and is being reinjected into the same formation from which it is drawn. See 40 CFR §§144.13(c), 144.14, and 144.23. Similarly, section 7010 of RCRA prohibits the injection of hazardous waste into ground water, except for reinjection of treated ground water into the aquifer from which it was withdrawn, pursuant to a response action under section 104 or 106 of CERCLA.

EPA anticipates that requirements promulgated under the SDWA will be applicable or relevant and appropriate to underground sources of drinking water and potential sources of drinking water. (While the SDWA does not apply to private water supplies, it may, nevertheless, be *relevant* to determining levels of permissible contamination to be established for such supplies.)

The contaminant levels specified in the SDWA refer to concentrations to be achieved at the point of use. By contrast, EPA's RCRA regulations require attainment of concentration limits in the ground water. 40 CFR §264.94. Under the RCRA regulations, the concentration limit may be set at the SDWA MCL, or at "background." [3] Alternatively, an alternate concentration limit (ACL) may be set at a level that EPA determines will not pose a substantial present or potential hazard to human health and the environment. Under the RCRA regulations, hazardous waste facilities must monitor at the waste management area boundary (the compliance point) to determine whether concentration limits are exceeded. If exceeded, corrective action must be taken to prevent hazardous constituents from exceeding their concentration limits between the compliance point and the downgradient facility property boundary. 40 CFR §264.100. The 1984 Hazardous and Solid Waste Amendments to RCRA further require that corrective action be undertaken beyond the facility boundary where necessary to protect human health and the environment unless the owner or operator of the facility demonstrates that he is unable to obtain permission to undertake such action. RCRA section 3004(v).

The ACL mechanism gives EPA flexibility in developing a CERCLA response. For instance, where the aquifer is of concern as a source of drinking water, the ACL could be set on the basis of what would be safe to drink. If the ACL were lower than the existing concentration of contaminant(s) in the aquifer, the lead agency could clean up the aquifer to that ACL. Alternatively, an ACL could be set on the basis of exposure. If consumption of the ground water would be restricted by the use of institutional controls, or if the aquifer were clearly unsuited for use as drinking water, the ACL could be set without regard to drinking water considerations, or at a level that takes account of controls at the point of use.

The above discussion illustrates how RCRA requirements may be applied in a flexible manner. However, even where ground water will not be used for drinking water, and no other contamination routes exist that would threaten human health or the environment, RCRA would still require the establishment of an ACL and ground water monitoring for all Appendix VIII constituents. These requirements may not be appropriate in some CERCLA situations, and thus would not be applied unless "applicable" (i.e., a RCRA facility was causing the ground water contamination). EPA is considering the advisability of revising its RCRA regulations to determine the necessity of establishing ACLs where institutional controls are imposed.

The RCRA ground-water protection standards are aimed at preventing contamination of ground water from discrete hazardous waste facilities, and remedying any contamination that does occur. The standards are not designed to address the situation, encountered at several current and potential CERCLA sites, where there is area-wide ground water contamination of either unknown origin or resulting from numerous intermingled sources. However, where the contamination emanates, in whole or in part, from a facility subject to RCRA regulations, EPA will apply those regulations. In addition, subpart F requirements may be relevant and appropriate, even if not applicable, in determining the appropriate level of cleanup. EPA notes that the lead agency may determine that some, but not all RCRA requirements (or any other Federal requirements) are "relevant and appropriate" to a particular situation. In

[3] The RCRA regulations did not adopt all the SDWA MCLs. Where no MCL exists, the concentration limit will be set at background or at an ACL.

a situation where no facility is identifiable, certain requirements, such as monitoring at the hazardous waste management boundary, would not be applied.

If the RCRA subpart F requirements are not applicable, or are not relevant and appropriate for the area-wide contamination at issue, the lead agency may decide to implement a remedy on an area-wide basis, using a risk management approach, without necessarily setting concentration limits or monitoring requirements with respect to *individual* sources of contamination. Such an approach is outlined in EPA's "Guidance on Feasibility Studies under CERCLA," available for inspection in the docket to this rulemaking. In implementing such an area-wide remedy, the lead agency will adhere to the principle of the RCRA ground-water protection standards: concern for contamination by all RCRA Appendix VIII constitutents for as long as they remain hazardous.

EPA is considering whether modification of RCRA regulations is appropriate to take into account situations involving area-wide contamination.

RCRA Closure/Soil Contamination Requirements. Contaminated soil is the other major area of concern most frequently encountered at CERCLA sites. Some commenters on the proposed NCP stated that there is insufficient flexibility under the RCRA closure regulations, 40 CFR Part 264, subpart G, to fashion appropriate CERCLA remedies. EPA believes that a combination of the relevant and appropriate RCRA storage and disposal closure regulations provides an approach to CERCLA cleanup actions that is both flexible and consistent with RCRA.

The RCRA surface impoundment closure rules, 40 CFR § 264.228 and accompanying preamble, provide two closure options. The first option, for *storage* surface impoundments, requires that all waste residues and contaminated liners and subsoils be removed or decontaminated. The second option, for *disposal* surface impoundments (where contaminated materials remain after closure), resembles the requirements for closure as a landfill whereby a final cover is placed over the unit, and post-closure requirements apply, such as maintenance of the final cover, ground water monitoring, and corrective action if the ground-water protection standards are violated. The significant regulatory difference between storage and disposal impoundments is that after closure the disposal unit must be maintained and monitored, corrective action taken if needed, and a notice provided in the deed and plat that the site was used for hazardous waste, whereas for storage units there are no maintenance, monitoring, follow-up corrective action, or notice requirements. That is, a storage closure is one where enough removal and decontamination has occurred that no further action is needed to protect human health or the environment.

An approach that is consistent with the RCRA storage closure requirements and provides flexibility to CERCLA cleanup actions can best be demonstrated through an example. At the Crystal Chemical Company site in Texas, EPA has tentatively determined that off-site soil contaminated with arsenic may be cleaned up to a 100 parts per million (ppm) level, pending verification monitoring. The 100 ppm level has been determined by the Agency for Toxic Substances and Disease Registry (ATSDR) of the Center for Disease Control, Department of Health and Human Services; to be a safe level based on direct ingestion of the contaminated soil by a child. The verification monitoring means that ground water will be monitored to confirm that the residuals in the soil will not result in unsafe levels (i.e., will not exceed the drinking water standard for arsenic, 0.05 ppm) in ground water.

The RCRA storage closure requirements to "remove or decontaminate" contaminated soils will be relevant or appropriate in the Crystal Chemical case as well as many other CERCLA cleanup actions. Under RCRA, cleanup to background levels certainly satisfies this requirement. EPA believes, however, that a site-specific limited risk-assessment approach to determine acceptable levels of removal makes sense. Such an approach would take into account (a) the storage versus disposal dichotomy discussed above (i.e., no further need for action after storage closure to provide protection of human health and the environment); and (b) all the routes of exposure addressed by the disposal closure and post-closure care requirements (i.e., direct contact, wind dispersal, surface water, ground water, and bioaccumulation). Thus, such an approach would need to minimize the uncertainties associated with contaminant fate and transport, and focus primarily on the waste characteristics themselves, in a manner comparable to the RCRA delisting process. This approach could base the risk of exposure on water quality standards (surface water) or health-based limits, such as acceptable daily intakes (ADIs), or public health advisories issued by the ATSDR.

EPA notes here that corrective action requirements under section 3004 of RCRA will be developed in the near future. At such time, EPA will, for purposes of compliance with the NCP, determine whether it is more appropriate to follow the corrective action requirements than the closure requirements to the extent those requirements differ.

5. Compliance With State Requirements

Several commenters have taken issue with EPA's decision that State standards are only "to be considered," and that State permits need not be obtained for response actions taken under sections 104 and 106 of CERCLA. Some commenters have noted that State standards may exceed Federal standards because of local needs. The comments emphasize that because many State standards and permits are developed under Federal auspices and are specifically reviewed and approved by EPA, EPA should in this rulemaking presume that such State standards are applicable or relevant and appropriate. One commenter argued that additional costs of complying with State standards will be incurred during operation and maintenance financed by States, so that cost considerations do not justify noncompliance with State standards.

EPA notes first, as a legal matter, that CERCLA response actions are not subject to State requirements for the same reason that CERCLA responses are not subject to Federal requirements. In enacting CERCLA, Congress has preempted those requirements with respect to sections 104 and 106 response actions.

Moreover, EPA disagrees with some commenters' characterization of the compliance policy. The compliance policy will not necessarily cause noncompliance with State standards. State standards are to be considered in developing a site-specific remedy. "Consider" should not be interpreted to mean "disregard." EPA may give standards in the "to be considered" category full force and effect. Moreover, especially in a Fund-financed remedial action, the views of a State will be accorded great weight. If the lead agency does not use pertinent State standards, or substantially adjusts them, it must document the basis for adjusting or not using them.

Nonetheless, EPA believes the lead agency should not be bound by stricter State standards, nor should the Fund necessarily bear the additional cost of attaining stricter State standards. It

would be unwise to oblige CERCLA cleanups to conform to 50 different and possibly conflicting sets of State standards; further, some States have not based standards on protection of health or the environment. EPA wants the lead agency to have the flexibility to examine the basis of State standards before applying them to CERCLA cleanups. The fact that EPA may have approved some of these standards is irrelevant, because under some statutes, such as RCRA, EPA is obliged to approve State standards that are more stringent than those of EPA. This approval does not signify an EPA determination that attaining the standards is necessary to protect public health and welfare and the environment.[4]

In response to the comment that most of the additional costs of complying with State standards will always be incurred during State-financed operation and maintenance (O&M), EPA disagrees. Long-term operation and maintenance costs may be less than the construction costs. Furthermore, operation and maintenance is not exclusively financed by States. In fact, the time period of Federal funding of operation and maintenance has recently been increased; EPA will fund up to one year. Finally, State standards may be applied (assuming they fit the selected remedy) where the State is willing to pay the associated incremental cost.

One commenter suggested that because many Federal standards have not yet been promulgated, the NCP should be amended to say that "State standards will be used until Federal standards have been promulgated." Such an amendment is unnecessary because of new §300.68(e)(2)(xii) (discussed previously in this preamble).

It requires the lead agency, during the determination of whether and what type of remedial and/or removal actions should be considered, to assess:

The extent to which Federal environmental and public health requirements are applicable or relevant and appropriate to the specific site, and the extent to which other Federal criteria, advisories, and guidance and State standards are to be considered in developing the remedy.

EPA believes that this modification, in addition to the language of the policy on "CERCLA Compliance with Other Environmental Statutes" published in the Appendix to this preamble, makes it clear that State standards will indeed be considered in developing CERCLA remedies. While State standards will generally be used, EPA believes it is an entirely different matter to presume that State standards are applicable or relevant and appropriate. To the extent that commenters are asking EPA to grant such a presumption to their standards, EPA respectfully declines.

EPA emphasizes that it is not prohibiting the enactment of State standards regarding hazardous substances releases. EPA is merely saying that it will not necessarily spend Fund monies for a remedy that will attain State standards when they exceed Federal requirements.

Commenters had several suggestions with regard to permits. EPA cannot exempt privately financed cleanups not taken pursuant to CERCLA section 106 from permitting requirements. EPA does not believe that private responses, unlike sections 104 and 106 responses, are exempt from compliance with State (or other Federal) laws. Moreover, the policy reasons for exempting responses taken under sections 104 and 106 from permitting requirements do not apply to privately financed cleanups. EPA does not believe that permits are necessary for on-site CERCLA section 104 remedial actions because signed cooperative agreements or Superfund State contracts for remedial action afford States the opportunity to assure that their standards are met. Other responses under section 104 must comply with the NCP, which ensures compliance with the substantive requirements of applicable or relevant and appropriate requirements. In CERCLA section 106 enforcement actions, permits are not required for on-site actions because actions required under this section must also be consistent with the NCP. In all these cases, permitting requirements could add significant and unwarranted delay to the response. In addition, permitting requirements must not be allowed to obstruct removals that are necessary to protect public health or welfare or the environment. By contrast, if private parties were allowed to conduct cleanups without obtaining permits, there would be no legally enforceable vehicle to ensure compliance with substantive requirements of permits.

With regard to the comment that appropriate State agencies should give written approval as a condition to the waiving of permits for CERCLA section 106 actions, EPA believes that clarification is in order. Permits from States or their political subdivisions are not required for on-site CERCLA section 106 actions. EPA, however, is not precluding State or local agencies from pursuing their own enforcement actions if they are substantively unsatisfied with EPA section 106 actions. In such cases, States may condition their enforcement actions as they choose.

Some commenters contended that there would not be a delay of response actions as a result of State permitting requirements because most States have waiver provisions or emergency permits to allow expeditious responses. It is EPA's experience that it usually takes at least 18 months to obtain a RCRA permit. While it is true that remedial actions require many months, if not years, of remedial investigation, feasibility studies, and remedial design activities, a permit application cannot be completed until all the necessary data are collected. Therefore, the permit process cannot begin until roughly two-thirds of the RI/FS process is completed, and this usually occurs around 9 to 12 months after the start of the CERCLA planning process. EPA concludes that, using these figures, obtaining State permits could take from 10 to 12 months longer, and, in some cases, final selection of the remedy would be required prior to the initiation of the permit process. Although some permitting programs may not take that long, EPA anticipates that most sites will involve RCRA-type activities in addition to other program activities. The fact that some States may have emergency provisions to speed up the permit process is not a uniform principle upon which to base national regulation.

One commenter said that CERCLA sites require the extensive scrutiny provided in the permit process and that without permits, there is no assurance that proper treatment, storage, or disposal would be achieved. In response, EPA notes that the RI/FS process is comprehensive. The RI/FS provides adequate assurance that for remedial actions, proper treatment, storage, or disposal will be achieved. Moreover, cooperative agreements and Superfund State contracts for remedial actions provide additional assurances in this regard.

In response to the commenters who requested clarification concerning whether State and local requirements, such as building ordinances or well-drilling permits, would be considered "public health or environmental statutes," EPA wishes to clarify that the intent of the section was to exempt EPA from the requirement of obtaining all permits for on-site actions. This was added to the amendments to exempt EPA from the procedural and administrative requirements of the permitting process but not from substantive compliance with the environmental and public health

[4] State water quality standards adopted under the Clean Water Act are an exception. Those standards are Federally enforceable and will be applied where applicable or relevant and appropriate.

concerns addressed by permits. Because it may be difficult to distinguish environmental and public health concerns from the other procedural and administrative concerns addressed by permits, § 300.68(a)(3) is being changed to state that no permits, Federal or State, will be required in carrying out CERCLA sections 104 and 106 on-site response actions. EPA expects that non-environmental and construction permits (e.g., building and electrical codes) will in virtually all cases be secured by Federal or State Remedial Design/Remedial Action (RD/RA) contractors, as well as private parties' contractors. However, EPA will not allow such permit requirements to thwart a response action necessary for the protection of public health and welfare and the environment. As mentioned in § 300.68(a)(3), remedial actions involving off-site storage, treatment, or disposal of hazardous materials shall involve only facilities operating under appropriate permits, authorizations, and other legal requirements.

6. Other Specific Concerns with Respect to the Compliance Policy

• Health Effects Assessments (HEAs) were inadvertently omitted from the "to be considered" category.

HEAs may be utilized in establishing site-specific engineering design goals for remedial actions involving hazardous substances found at CERCLA sites for which applicable or relevant and appropriate requirements are insufficient. It is intended that where Federal requirements that are applicable or relevant and appropriate are insufficient to determine the appropriate extent of remedy, the HEA values should be given primary consideration. For those substances for which HEA values have not been developed, the use of other toxicity values should then be considered. (It should be noted that the HEAs address public health effects and do not necessarily address environmental protection concerns.)

• One commenter stated that risk assessments should be performed at all CERCLA sites, not just those where the selected alternative does not meet applicable or relevant Federal standards.

EPA disagrees with this comment. Neither CERCLA nor sound public policy requires the lead agency to conduct quantitative risk assessments at all CERCLA sites. The amount of time, money, and other resources that such a policy would demand is the single largest reason against requiring extensive risk assessments at all sites. Such a policy could significantly deplete the Fund. Furthermore, at a minimum, a qualitative or quantitative risk assessment is conducted at every site as a part of the evaluation of the "no action alternative" developed during the RI/FS process. Finally, EPA notes that many environmental requirements are based on risk assessments.

• One commenter attacked EPA's compliance with other laws policy on the ground that some applicable and relevant standards were the subject of current litigation, and therefore might change.

Requirements promulgated by EPA and other Federal agencies are effective and presumed valid unless or until they are stayed or overturned by judicial review. Until such time, those requirements will be applied under CERCLA, just as they are applied under the statutes from which they arose.

• One commenter objected that the rule does not comport with the settlement agreement because the compliance policy was set forth only in the Appendix to the proposed rule preamble rather than in the proposed rule.

The revised NCP plainly states that response activities must comply with applicable or relevant and appropriate Federal laws. State and local laws are to be considered in selecting a remedy. The rule also explicitly states that a site-by-site analysis of what requirements are applicable or relevant and appropriate (or to be used) is to be conducted. As discussed earlier, this is further clarified by the addition of new § 300.68(e)(2)(xii) and by the addition of the definitions of "applicable requirements" and "relevant and appropriate requirements" to § 300.6. In EPA's judgment, the rule clearly addresses the issue of whether response actions must comply with other Federal, State, and local environmental laws, as required by paragraph two of the settlement agreement.

• One commenter expressed concern that the NCP does not adequately consider food chain contamination for determining the type of responses to be taken.

EPA does intend that food chain contamination should be assessed as one possible route of exposure under § 300.68(c)(2)(ii) (today redesignated as § 300.68(e)(2)(ii)) along with other routes of exposure such as air, surface water, ground water, or direct contact. EPA has also provided for the consideration of persistence, mobility, and the bioaccumulation of hazardous substances in biota in determining how to handle substances as well as determining what additional measures may be necessary to prevent present or future threats to the public. EPA believes that response action(s) can be reasonably based upon an estimate of food chain contamination made from the careful consideration of the ability of hazardous substances to bioaccumulate in conjunction with consideration of other site-specific factors outlined in § 300.68(c)(2) (now § 300.68(e)(2)). Therefore, a statistically valid determination of the extent of bioaccumulation of hazardous substances in the ecosystems surrounding all CERCLA sites would needlessly require vast amounts of time and money.

Nevertheless, because food chain contamination is a serious problem, EPA is modifying §§ 300.68(c)(2)(iii) and (xii) (now §§ 300.68(e)(2)(iii) and (xiv), respectively) to make clear that opportunities for hazardous substances to bioaccumulate in their surrounding ecosystems will be considered along with the other factors outlined in § 300.68(c)(2) (now § 300.68(e)(2)). This additional consideration would cause the lead agency to assess not only the ability of a hazardous substance to bioaccumulate, but also to note the existence of flora and fauna in the surrounding area and their relation to the surrounding area and population in terms of food consumption. EPA is also modifying § 300.68(c)(2)(xii) (now § 300.68(e)(2)(xiv)) to include consideration of the contribution of the contamination to any food chain pollution problem. This approach, while not requiring extensive statistically valid ecosystem monitoring, would, at a minimum, cause the lead agency to examine and take note of the opportunities present for food chain contamination and to estimate the extent of any food chain pollution problem.

The same commenter suggested that § 300.65(b)(2) should require evaluation of food chain contamination, contaminated sediments, and the spread of contamination "into ground or surface waters, sensitive ecosystems, or the food chain, including edible fish and shellfish." This commenter made similar comments with respect to the parallel provisions for remedial actions (§ 300.68(j)). EPA believes that § 300.65(b)(2) and § 300.68(j) are sufficiently broad to include consideration of food chain contamination. For example, § 300.65(b)(2)(i) explicitly requires consideration of actual or potential exposure of the food chain to hazardous substances and pollutants or contaminants in determining whether a removal action is needed; § 300.68(j)(3) provides that, as a general rule, actions

to reduce or eliminate the potential for hazardous substances or pollutants or contaminants to be ingested are appropriate.

• Another commenter stated that any determination as to what, if any, cleanup is required should take into account naturally occurring effects (e.g., biodegradation, evaporation, sunlight, soil geochemistry, oxidation, rainfall). This commenter recommended adding a new criterion addressing this issue.

EPA believes that § 300.68(e)(2)(iii), formerly § 300.68(c)(2)(iii), addresses naturally occurring effects by requiring consideration of the "environmental fate (e.g., ability to bioaccumulate, persistence, mobility, etc.)." Nevertheless, as discussed previously, the rule is being changed to read: "environmental fate and transport (e.g., ability and opportunities to bioaccumulate, persistence, mobility, etc.)."

• A few commenters suggested that there are too few Federal statutory standards to provide meaningful guidance for specifying CERCLA cleanup levels.

EPA believes that the requirements listed in the Appendix to this preamble, particularly the RCRA Subtitle C requirements, will generally provide a strong basis for selection of a remedy. Of course, as EPA has repeatedly emphasized, each CERCLA site must be evaluated on its own merits and the remedy tailored to the characteristics of the site. In addition, the lead agency will not limit remedial alternatives to the consideration of existing Federal requirements. Instead, EPA intends to consider Federal criteria, advisories, and guidance and State standards in developing remedies.

• Another commenter stated that none of the exception provisions of § 300.68(i)(5) allows for downward adjustment of these standards to take account of level of risk or exposure factors.

EPA believes that the exception provisions are not the proper place to discuss the adjustment of cleanup standards for risk levels or exposure factors. EPA intends to provide for consideration of risk levels and exposure factors in the determination of how to use requirements that are identified as applicable or relevant and appropriate. Section 300.68(i)(4) states that applicable or relevant and appropriate requirements, as well as other Federal criteria, advisories, and guidance and State standards "will be considered and may be used in developing alternatives, with adjustments for site-specific circumstances." As mentioned previously, forthcoming guidance will address levels of risk or exposure factors.

• Some commenters expressed the belief that requiring compliance with standards would be contrary to statements made by EPA in its first revisions to the NCP on March 12, 1982, and is not warranted by subsequent EPA experience.

EPA disagrees. This rulemaking is, in part, in response to experience EPA has acquired since the NCP was first promulgated. EPA has continually found that other environmental requirements provide the most appropriate level of protection at CERCLA sites. Compliance with applicable or relevant and appropriate requirements has, to date, aided in design of remedies that provide adequate protection of public health and welfare and the environment. For example, EPA has used the MCLs established under the SDWA to design and set performance standards for water treatment systems when drinking water supplies are contaminated.

• Two commenters opposed a revision that would give quality assurance/site sampling plans a presumption of adequacy if they contain certain elements, on the grounds that the revision could be interpreted improperly to foreclose judicial review of sampling methods and results. Another commenter recommended that the review of quality assurance/site sampling plans be the responsibility of the remedial project manager.

EPA's intention in revising § 300.68(k) was to state what elements would normally be sufficient in a quality assurance/site sampling plan. While EPA does not intend to foreclose judicial review of such plans, this regulation will establish that plans containing the elements specified in § 300.68(k) are *generally* sufficient. The word "generally" has been added in § 300.68(k) to make this point clear. It will be up to the challenger of a plan to show why these elements were not sufficient in the particular case at issue.

• One commenter questioned whether the "compliance status" of permitted off-site facilities would be taken into account in the selection of off-site facilities to receive wastes from response actions. EPA's May 6, 1985, off-site policy memorandum, "Procedures for Planning and Implementing Off-Site Response Actions," addresses the "compliance status" of permitted off-site facilities. Under that policy, no CERCLA hazardous substances will be taken off-site to a RCRA facility if the EPA Region determines that the facility has significant RCRA violations or other environmental conditions that affect the satisfactory operation of the facility, unless certain specific conditions ensuring correction and compliance are met. No hazardous substances may be taken to a hazardous waste management *unit* that is not in compliance with RCRA regulations.

Therefore, in the selection of an appropriate off-site facility, a judgment will be made as to the overall acceptability of the facility and the unit to receive the substances. In making this judgment, the Region will follow specific, enumerated steps to gather and evaluate information about the facility and unit. In this manner, compliance status will be considered. However, EPA wishes to make it clear that, although the various types of RCRA violations will be considered, EPA does not intend the determination of whether the facility is acceptable to be based solely on whether the facility is a class I, class II, or class III RCRA violator. For more details, commenters may read the previously referenced off-site policy.

To summarize the discussion of CERCLA compliance with the requirements of other environmental laws, EPA remains committed to the selection of remedies that attain or exceed applicable or relevant and appropriate Federal environmental and public health requirements. This policy does not hinder site-by-site consideration of all site characteristics. Rather, attainment of these requirements provides a baseline of protection. To the extent that applicable or relevant and appropriate Federal public health and environmental requirements and attendant guidance provide flexibility, the lead agency may tailor remedies to the specific site characteristics. Cost-effectiveness of alternatives determinations should not be hindered by attainment of applicable or relevant and appropriate Federal public health and environmental requirements because the selected remedy must protect public health and welfare and the environment, as well as achieve cost-effectiveness. Because Federal environmental and public health requirements, like CERCLA, are based on protection of public health and welfare and the environment, selection of any remedy must both protect public health and welfare and the environment and be cost-effective. Satisfaction of applicable or relevant and appropriate Federal public health and environmental requirements will be inherent in the protection of public health and welfare and the environment. Only very limited circumstances will allow deviation from this policy, as detailed in § 300.68(i)(5).

B. Section 300.68—Other Revisions

The remainder of this discussion in section II.A addresses issues concerning § 300.68 not directly related to CERCLA compliance with the requirements of other environmental laws. The following discussion is organized in the same order as § 300.68 itself, beginning with § 300.68(a).

Section 300.68(a)—Introduction. One commenter suggested deleting or amending the limitation that Fund-financed remedial actions can occur only at NPL sites (§ 300.68(a)(1)). EPA did not propose to remove the restriction on performing Fund-financed remedial actions at sites other than those that have been placed on the NPL and is not removing that restriction in the final rule. EPA believes that the NPL is an orderly process for selecting sites that merit priority attention for possible Fund-financed remedial action. EPA sees no benefit in disturbing the existing procedures.

A number of persons have inquired about the applicability of § 300.68(a) to remedial investigations or feasibility studies (RI/FSs). Some of these persons have suggested that it is improper for EPA to conduct these studies before a site has been listed on the NPL. For the reasons discussed below, EPA disagrees with this view and, in fact, never intended that restricting Fund-financed remedial action to NPL sites would apply to remedial investigations or feasibility studies. Confusion over this issue may have arisen because a description of the remedial investigation process is included in the section of the NCP entitled "remedial action." It was placed in this section to give the reader a complete understanding of the investigation and action process. The language of § 300.68(a) has been modified to clarify that RI/FSs may be performed at non-NPL sites.

RI/FSs are conducted pursuant to EPA's removal authority under CERCLA. They may support removal actions, enforcement actions, or potential Fund-financed remedial actions. Section 101(23) of CERCLA defines "remove" or "removal" to include "such actions as may be necessary to monitor, assess, and evaluate the release or threat of release. . . ." The definition of "removal" also includes "action taken under section 104(b) of this Act. . . ." Section 104(b) authorizes EPA to perform a wide variety of investigatory work and studies. RI/FSs clearly fall within those definitions.

Generally, EPA does not perform RI/FSs at sites until they have been included on the NPL. Sometimes, however, these studies are performed at sites that have been proposed but have not been promulgated at the time the study commences. This can happen for a number of reasons. First, these studies may be performed in preparation for a possible removal or enforcement action. Sites need not be on the NPL to qualify for removal or enforcement actions. Second, these studies may be performed preparatory to a remedial action if EPA believes either: (a) That a site proposed for the NPL is likely to be promulgated and that delay in commencing the studies may create unnecessary risks to public health or welfare or the environment; or (b) that a proposed site may be promulgated on the NPL, but that delay may cause a particularly serious risk of harm to public health or welfare or the environment. In the latter situations, EPA, in performing an RI/FS, assumes a risk that the proposed site may not qualify for the NPL after all comments on the proposal are evaluated. EPA judges, however, that this risk of unnecessarily expending a limited amount of Fund money is sometimes outweighed by the desirability of expediting the Fund-financed remedial action, if one is taken.

The NPL listing process is not undermined when an RI/FS is performed before the site is listed. The criteria for listing sites are generally objective. Moreover, EPA responds in detail to all comments on proposed listings before sites are promulgated. Thus, there are sufficient safeguards so that potentially responsible parties are not prejudiced.

Section 300.68(c)—Operable Unit. As noted above, §§ 300.68(c) Scoping of Response Actions, (d) Operable Unit, and (e) Remedial Investigation/Feasibility Study (RI/FS) have been renumbered §§ 300.68(e), (c), and (d), respectively.

Section 300.68(c) in this rulemaking establishes the concept of conducting response actions in "operable units." One commenter suggested replacing the terms "source of [sic] control" and "off-site" remedial action with the concept of operable unit. Recognizing that operable units may include source control and off-site actions, EPA believes these terms are useful and therefore are retained. EPA would like to clarify that an operable unit may consist of any set of actions performed over time (e.g., consecutive operable units may include a surface remedy followed by a ground water contamination remedy) or any actions that are concurrent but located in different parts of a site (e.g., two operable units may be performed to address different portions of a large, complex surface remedy).

Section 300.68(d)—Remedial Investigation/Feasibility Study. One commenter objected to the deletion of §§ 300.68(e)(2)(iii) and (e)(3)(v) of the current regulations, which require assessment of the "experiences and approaches used in similar situations by State and Federal agencies and private parties." Those paragraphs were deleted because of the difficulty in implementing a comparative assessment of approaches used by different parties. Continued compilation of data on "similar situations" would be unreasonably time-consuming and costly and could delay response at a site. EPA's experience in implementing those paragraphs demonstrates the difficulty of achieving consistency in such comparative assessments; however, the experience of and approaches used by others will be considered when feasible. EPA has published several guidance documents comparing the experiences and approaches used in hazardous substances responses (e.g., "Modeling Remedial Actions at Uncontrolled Hazardous Waste Sites" (April 1985); "Handbook for Evaluating Remedial Action Technology Plans" (August 1983)).

Section 300.68(e)—Scoping of Response Actions during the Remedial Investigation. Several commenters requested clarification of the process of coordination and consultation between EPA and natural resource trustees and among EPA, States, third parties, and other Federal agencies involved in the scoping of response actions. The commenters requested that the roles and responsibilities of EPA and the States be clarified throughout the NCP. In response to these comments, EPA is adding a new § 300.74(b). (See § 300.74 discussion.) This new paragraph summarizes the appropriate actions that may be taken with respect to natural resource damages.

In addition, to coordinate response actions pursuant to the NCP with EPA's Ground-Water Protection Strategy, one factor has been added to the original 15 factors listed in § 300.68(e) of the February 12, 1985, proposed rule. This new factor has been inserted as § 300.68(e)(2)(v) and reads as follows: "(v) Current and potential ground water use (e.g., the appropriate ground water classes under the system established in the EPA Ground-Water Protection Strategy)."

Section 300.68(f)—Development of Alternatives. This paragraph requires the development of several types of remedial alternatives. One commenter stated that the proposed requirement to

develop at least one alternative for off-site treatment or storage appears to be unjustified and contrary to the preference for on-site solutions and the intent of CERCLA section 101(24), which defines remedial action.

Section 300.68(f)(1)(i) requires the development of off-site treatment or disposal alternatives, as appropriate. In order to make a comparison of alternatives from a cost-effectiveness perspective, where off-site alternatives are considered, it is necessary to compare them to an on-site alternative. In some cases, off-site disposal or treatment may not be feasible; and this alternative may be eliminated during the screening of alternatives stage. The feasibility study should appropriately document this screening.

EPA believes that the requirement to develop off-site alternatives is justified in order to evaluate the cost-effectiveness of all alternatives, including on-site treatment or disposal methods. Moreover, the requirement is consistent with CERCLA section 101(24)(A), which explicitly permits off-site treatment or disposal if such methods are more cost-effective than other remedial actions. EPA has modified both the CERCLA compliance with other laws policy and § 300.68(f)(1) of the NCP to make it clear that alternatives do not have to be developed in each listed category where it is either impossible or inappropriate to do so. For example, if a responsible party has entered into an agreement with EPA to construct an on-site remedy that will attain (or exceed if appropriate) all applicable or revelant and appropriate requirements, it would not be necessary or appropriate to develop off-site or non-complying alternatives for consideration. EPA does want to emphasize, however, that its intent in listing the various categories is to strongly encourage persons conductuing the RI/FS to develop and present for the decisionmaker's consideration a range of approaches for addressing site problems. EPA wishes to encourage the development and consideration of innovative approaches to remedying site problems. The only instance in which at least one alternative does *not* need to be developed within the enumerated categories is when it is impossible to design an alternative that meets the categorical descriptions, or when such alternatives are inappropriate, given the circumstances that characterize the site.

In addition, EPA has deleted the words "which most" from §§ 300.68(f)(1)(iv) and (2) to further clarify that during the development of alternatives stage in the RI/FS, it would be difficult to determine that a particular remedy "most closely" approached attainment of applicable or relevant and appropriate requirements. At this stage of the RI/FS, the lead agency will not have finally determined the universe of requirements that are applicable or relevant and appropriate for the specific site. Before the lead agency fully analyzes the range of alternatives developed for a particular site, the specific remedy that might "most closely approach" this attainment would not be known. EPA has also revised § 300.68(i)(5) to detail the circumstances under which the lead agency may select an alternative that does not attain applicable or relevant and appropriate requirements. The lead agency must then select a remedy that *most closely* approaches the attainment of such applicable or relevant and appropriate requirements taking into account those specific circumstances as specified in § 300.68(i)(5).

A second commenter requested that §§ 300.68(f)(1)(i)–(iv) each be reworded to refer to "alternative" in the singular, rather than to the plural "alternatives," in order to limit the number of alternatives that must be developed. EPA declines this request. The proposed wording does not prohibit response officials from developing a single alternative within each paragraph; the proposed wording allows response officials the flexibility to develop one or more alternatives in each paragraph as appropriate.

Section 300.68(g)—Initial Screening of Alternatives. One commenter observed that the present NCP requires rejection at the initial screening stage of remedial alternatives having "significant adverse effects" (§ 300.68(h)(2)). This commenter believed that the proposed deletion of this provision would apparently prevent early rejection of alternatives that have "significant adverse effects" unless they also have "very limited environmental benefits" (see proposed § 300.68(g)(3)). The commenter believed that such a result would require elaborate and wasteful development of remedial approaches whose use cannot be reconciled with Congressional intent or with sound public policy. EPA does not share the commenter's belief. The proposed changes provide response officials with the flexibility to consider remedial alternatives that, although containing the potential for adverse effects, may be superior to other available alternatives. EPA remains committed to avoiding significant adverse effects and intends that the lead agency reject alternatives resulting in such effects at an early stage, unless countervailing considerations are present. This commitment ensures that inappropriate development of elaborate and wasteful remedial approaches will not occur. EPA considers the benefits of a flexible approach in this case to outweight any potential cost of developing alternatives that may be rejected.

Section 300.68(h)—Detailed Analysis of Alternatives. The changes proposed in this paragraph include the consideration of "recycle/reuse, waste minimization or destruction, or other advanced or innovative technologies" as appropriate (§ 300.68(h)(2)(v)).

Several commenters opposed mandatory consideration of recycle/reuse and other innovative technologies on the grounds that this requirement could lead to excessive and unproductive paperwork and possibly delay prompt remedial actions. One commenter listed several criteria concerning the nature of the waste materials (e.g., their ability to be recycled) as important factors in determining whether a detailed analysis of recycle/reuse technologies is appropriate. EPA does not believe that specific criteria should be established to determine whether recycle/reuse should be considered. The appropriateness of innovative technologies will be determined on a site-by-site basis. If recycling/reuse or other innovative technologies are obviously inappropriate, an analysis would not be extensive and would not result in delays. Requiring consideration of these technologies ensures that the most cost-effective solution will not be overlooked.

A commenter recommended the following policy changes as necessary to remove economic disincentives for the use of advanced, innovative, or alternative technologies: (1) protection of potentially responsible parties (PRPs) from potential long-term liability after implementation of an innovative remedial approach; (2) deletion of the phrase "sharing of technology by industry and other experts" in § 300.61(c)(7); and (3) changing the language of § 300.65(g) and § 300.68(a)(3) to exempt "PRPs using innovative or alternative cleanup approaches" from requirements for permits and use of only off-site facilities that are permitted or authorized.

Although not addressed in the proposed NCP, EPA does address the relationship between innovative response technologies and responsible party liability in its settlement policy (50 FR 5034, February 5, 1985). The policy provides for more expansive releases

from liability after implementation of more innovative remedial approaches. EPA views the "sharing of technology by industry and other experts" as consistent with innovation and disagrees with the commenter that the phrase should be deleted. With respect to the commenter's last suggestion for change, EPA reiterates its commitment to encouraging innovative cleanup approaches. However, special permit exceptions are of doubtful legality, and in any event, are not necessary for on-site remedial actions conducted pursuant to section 106 of CERCLA.

EPA agrees with the same commenter's assertion that permanent solutions (e.g., "destruction, neutralization, or immobilization of wastes") should be preferred over other alternatives, "only to the extent that they are more cost-effective than other alternatives over the anticipated life of the response." However, the use of permanent solutions (in some cases, those that exceed applicable or relevant and appropriate requirements) may be the most cost-effective response and should be encouraged. Furthermore, the language of § 300.68(g)(1) ensures that excessively costly alternatives that do not provide substantially greater public health or environmental protection will be eliminated during initial screening.

One commenter expressed concern that each on-site treatment alternative be tested on-site because site materials may vary significantly from simulated materials used in off-site testing. EPA supports the practice of on-site testing where appropriate and practicable.

Another commenter suggested that the phrase "waste minimization or destruction" be changed to read "waste minimization, waste biodegradation or destruction." EPA agrees that the phrase "waste biodegradation" should be added to the list of potential alternative technologies for purposes of clarity and is amending § 300.68(h)(2)(v) accordingly.

Finally, one commenter argued that the NCP, through § 300.68(h)(2), performs a technology-forcing function inconsistent with the intent of CERCLA. EPA maintains, however, that because costs are required to be considered an important criterion for selecting a remedy from among available alternatives (§ 300.68(g)(1)), the NCP does not have a technology-forcing effect. Instead, the provisions ensure that when existing technologies are available, they will be identified and used if appropriate.

Section 300.68(1)—Response Actions Pursuant to Section 106 of CERCLA/ Consistency with NCP. A new paragraph, (1), has been added to § 300.68 to clarify the requirements for a response action pursuant to section 106 or section 111(a)(2) of CERCLA (the latter requiring preauthorization pursuant to § 300.25) and to determine consistency with the NCP for purposes of cost recovery under section 107 of CERCLA. This amendment is discussed in section III.F of this preamble, which addresses § 300.71.

C. Section 300.65 Removals

This final rulemaking eliminates the distinction between immediate and planned removals and establishes a single standard for authorizing all removals (except those taken pursuant to CERCLA section 104(b)), eliminates the State cost-sharing requirement for all removals (except those at sites owned by a State or political subdivision at the time of disposal), and makes other changes related to removal actions.

Five commenters stated that the elimination of the State cost-sharing requirement and possibly resulting reduced State participation in removals would make it more difficult to ensure that high priority sites are addressed first and that the number and cost of removals do not become excessive. EPA believes that eliminating State cost sharing for removals will not reduce State participation in removals or adversely influence the selection of removals. Since 1982, EPA policy has been to require a cost share only at planned removals or for immediate removals at publicly owned facilities if a remedial action is subsequently funded at the site. Planned removals have constituted a very small percentage of the total removal actions over the life of the program, with even fewer removals at publicly owned sites awaiting remedial action. Thus, the only significant impact will result from the relatively few initial remedial measures (IRMs) for which the State will not share the cost when they are undertaken as removals. EPA has estimated the economic impact of this change in the economic impacts analysis (see section V of this preamble). States will continue to participate in the removal process because of its importance to affected State residents. Furthermore, the § 300.65(c) list of removal activities that are generally appropriate indicates the general scope of removal actions and CERCLA section 104(c)(1) limits the length and cost of removals (codified in § 300.65(b)(3)). These provisions will ensure that the scope of removal actions is appropriate. EPA does not intend to increase greatly the percentage of Fund monies devoted to removal actions; EPA remains committed to the current allocation of Fund monies to the remedial program. The changes to § 300.65 are not anticipated to have any major effects on the current level of remedial actions.

One commenter supported the consolidation of the removal category, in part because he believed that under the definition of "lead agency" and the terms of CERCLA section 104(d)(1) a State can undertake a removal action upon its own initiative and file a claim for reimbursement against the Fund. This commenter apparently misinterprets CERCLA and the NCP. A State or political subdivision can obtain funding for response actions only under the terms of a Superfund State contract or cooperative agreement with EPA. In light of the expanded activities to be performed as removal actions under revised § 300.65(b), EPA will consider entering into cooperative agreements with States and political subdivisions to undertake removal actions. EPA does note, however, that neither a State nor a political subdivision may obtain reimbursement under § 300.25(d) for such response costs because CERCLA section 111(a)(2) authorizes reimbursement of response costs incurred by "any other person," which means any person other than a Federal or State government agency.

Two commenters urged EPA to clarify § 300.65(a)(2), which states that where responsible parties are known, an effort must be made "to have them perform the necessary removal action" and where responsible parties are unknown, an effort should be made to locate them and "have them perform the necessary removal action." One commenter recommended that EPA expand the paragraph to state that the efforts to identify responsible parties should not delay actions necessary "to protect the public health or prevent irreparable damage to the environment." EPA does not intend that the search for responsible parties delay removal actions to the detriment of public health, welfare, or the environment. Because the determination of how long to search for responsible parties will depend on an array of site-specific factors, EPA believes that the proposed language, which requires efforts to identify responsible parties "to the extent practicable considering the exigencies of the circumstances," is appropriate.

Another commenter suggested amending the paragraph to *require* responsible parties, where available, to act expeditiously and, if they do not, to provide for immediate EPA and/or State action. EPA proposed § 300.65(a)(2) to encourage responsible parties to

undertake removal actions. In certain situations, however, formally requiring responsible parties to conduct the removal may be counterproductive. For example, when there is a large number of responsible parties, the process of requiring removal actions may divert scarce Fund resources needed to direct a timely removal action and may require more time than is appropriate to take necessary action. In addition, existing enforcement policy and guidance establish procedures for response personnel to compel expeditious responsible party response. Therefore, EPA has declined to adopt the suggestion.

Two commenters stated that the proposed consolidation of the removal category was inconsistent with CERCLA. They claimed that CERCLA requires an "imminent and substantial threat" before a removal action is justified, yet the proposed NCP §300.65(b)(1) authorizes a removal when there is "a threat to public health, welfare or the environment." Another commenter suggested that EPA revise the paragraph to further restrict the situations in which removal actions can be performed.

CERCLA section 104(a)(1) authorizes Fund-financed response actions whenever any hazardous substance is released or there is a substantial threat of such a release, or whenever there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. This standard is reflected in NCP § 300.61(a). The imminent and substantial danger limitation applies only to "pollutants and contaminants" and not to hazardous substances. Moreover, the limitation does not define the scope of removal actions. Section 101(23) of CERCLA defines removal actions as whatever actions are necessary to prevent, minimize, or mitigate public health or environmental impacts from any release or threat of release. It is not the intent of § 300.65(b)(1) of the NCP to modify standards set forth in CERCLA section 104(a)(1), but merely to allow EPA, whenever a threat to public health or welfare or the environment has been identified, to determine whether the threshold for a removal action is met by examining the factors listed in § 300.65(b)(2). Thus, the proposed language of the paragraph is appropriate and consistent with CERCLA.

Four commenters were concerned that removal actions may be used increasingly as long-term or permanent remedies "before investigation is possible and analysis can be conducted to assure cost-effectiveness." One commenter specifically suggested redefining removal actions to mean all those actions required to stabilize a site, in order to make the two terms, removal and remedial, mutually exclusive.

EPA disagrees with these comments. It is EPA's intent to conduct engineering evaluations and/or cost analyses, as appropriate, as part of removal actions, especially in those cases where adequate time is available. Although the inclusion of IRMs in the removal category may result in a modest increase in the number and types of activities now being implemented under the removal authority, the listing in § 300.65(c) of types of removals appropriate in certain situations and the statutory limits on the length and cost of removals will ensure that removals are limited, as required by the definition of "removal" in CERCLA, to those "actions necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment" and are generally not used as long-term solutions. Also, redefining removal actions in the NCP to mean the "stabilization" of the threat posed by the site would unnecessarily restrict EPA from undertaking more limited or extensive actions where appropriate, particularly at non-NPL sites. However, because the removal of highly contaminated soils from non-drainage areas may stabilize a site and reduce the spread of contamination, EPA has inserted the words "or other" in § 300.65(c)(6), which now reads: "Removal of highly contaminated soils from drainage or other areas—where removal will reduce the spread of contamination."

Corresponding to the changes made by EPA to the scope and definition of removals, § 300.65 (e) has been changed. This change requires the lead agency to ensure an orderly transition from a removal to a remedial response activity rather than the OSC coordinating with the RPM.

Section 300.65(b)(4) requires the lead agency to determine at the "earliest possible time" whether any of the exceptions to the $1 million and six-month limitations apply. One commenter stated that this determination should be delayed until a removal action approaches these limits. EPA believes that in those many instances where a determination can be made earlier, it will be desirable to do so to ensure the efficient implementation of a removal consistent with the resources and time ultimately available.

Four commenters made suggestions concerning the factors that determine the appropriateness of the removal action (§ 300.65(b)(2)) and the list of the types of removals that are, as a general rule, appropriate in certain situations (§ 300.65(c)). One commenter suggested that cost-effectiveness be added to § 300.65(b)(2) as a factor that must be considered in determining the need for a response. EPA agrees that cost is often an important factor for determining the appropriate method of removal. As mentioned previously, it is EPA's intent that the lead agency conduct engineering evaluations and/or cost analyses, where appropriate and possible, as part of removal actions, especially in those cases where adequate time is available. Requiring costs to be considered in determining whether a threat necessitates a removal action, however, is neither desirable nor authorized by CERCLA.

In response to several comments, EPA would like to clarify that the list of factors to be considered in determining the need for a removal (§ 300.65(b)(2)) and the list of removals generally appropriate under certain conditions (§ 300.65(c)) do not exhaust the factors and alternatives that must be considered in the removal process. EPA believes that the changes to the removal provisions of the NCP, combined with the guidance materials, will effectively streamline the response process. This regulation establishes the types of removals that are generally appropriate to particular situations. This will not, however, preclude persons challenging EPA's action from asserting that the removal chosen was inappropriate, given site-specific considerations.

Several commenters addressed § 300.65(f), which states that removal actions are not required to comply with Federal, State, and local permit requirements, but shall, to the greatest extent practicable, attain or exceed applicable or relevant and appropriate requirements. Although these comments are generally addressed in the discussion of § 300.68, it should also be noted that the definitions of "applicable standards" and "relevant standards" have been deleted from this paragraph and the terms "applicable requirements" and "relevant and appropriate requirements" are now defined in § 300.6.

One commenter stated that permits required under § 300.65(g) for off-site storage, treatment, or disposal may result in unnecessary delays in removals and suggested that the restriction be loosened. In response, EPA believes that all off-site treatment, storage, and

disposal should take place only in permitted or interim status facilities. Moreover, to the greatest extent practicable considering the exigencies of the circumstances, there should be no significant violations or other conditions that affect the satisfactory operation of the facility, according to EPA's current off-site disposal policy of May 6, 1985. The lead agency, in order to be excepted from the requirement to use acceptable permitted facilities, must believe that the immediacy of the threat makes it imperative to remove the substances and that there is insufficient time to determine the status of the permitted facilities without endangering public health or welfare or the environment. To the extent possible, temporary solutions should be evaluated by the lead agency prior to making a decision. A written explanation must be provided by the lead agency to be excepted. This change will make the NCP consistent with the guidance published May 6, 1985, entitled, "Procedures for Planning and Implementing Off-Site Response Actions."

Two new paragraphs, (h) and (i), have been added to § 300.65. Section 300.65(h) provides that removal actions pursuant to section 106 of CERCLA are exempt from certain requirements of § 300.65, and § 300.65(i) provides that other private party responses not pursuant to section 106 of CERCLA are also exempt from certain requirements of § 300.65. These amendments are discussed in section III.F of this preamble, which addresses § 300.71.

D. Section 300.66—Site Evaluation Phase and NPL Determination

Section 300.66 currently serves two purposes. First, it establishes criteria to determine the appropriate action when a preliminary assessment (PA) of a site indicates a need for further response, or when the OSC and lead agency concur that further response should follow an immediate removal action. Second, it outlines the process and criteria for placing sites on the NPL.

Comments pertaining to minor proposed changes to this section are discussed first. The major comments and EPA responses on the amendments promulgated in this rulemaking that delete the prohibition against listing Federal facilities on the NPL and provide a formal mechanism for deleting sites from the NPL are discussed in subsequent paragraphs. Other related comments and responses are contained in the Response to Comments Document available in the docket to this rulemaking. The proposed expansion of listing criteria in § 300.66(b)(4) has been adopted in a separate final rule (50 FR 37624, September 16, 1985).

State Top Priority Sites. EPA has amended § 300.66(b)(3) to clarify that States are allowed to place only one priority site on the NPL over the life of the NPL (see CERCLA section 105(8)(B)). One State commented that the restriction is not supported by CERCLA and suggested that States be allowed to designate a new site upon completion of remedial construction at the current top priority site. Another commenter suggested that States should be allowed to list one site annually, irrespective of its Hazard Ranking System (HRS) ranking. A third commenter stated that "any site designated by the State should satisfy the requirements which would otherwise qualify a site for the NPL in terms of presenting harm or threat of harm to the environment. Thus, such a site would have to achieve the same score as any other site."

EPA disagrees with each of these comments. CERCLA section 105(8)(B) specifies that the initial NPL should consist of at least 400 sites and that the States' designated top priority sites must be included among the 100 highest priority sites on the NPL to the extent practicable. Of the initial 406 sites, 36 were States' top priority sites. The statutory requirement is satisfied by allowing each State to designate one top priority.

EPA has decided to rely primarily on the HRS criteria to identify sites for the NPL. This will ensure that the highest priority releases are identified in an objective, nationally consistent manner. Sites considered for placement on the NPL pursuant to § 300.66(b)(4) of the NCP also will be evaluated on a nationally consistent basis. If States were permitted to designate a new "highest priority" site upon completion of remedial actions at their previous priority site, EPA would be unable to ensure that sites were listed on a nationally consistent basis because States' criteria for designating priority sites will vary.

State priority sites would not necessarily qualify for the NPL by using the HRS or the requirements of § 300.66(b)(4) because States need not designate top priority sites by using the NCP criteria.

Federal Facilities. The response to the proposed deletion of the prohibition against listing Federal facilities on the NPL was very positive. At least nine commenters supported the inclusion of Federal facilities on the NPL, primarily to emphasize and publicize the need for cleanup at these sites. This proposal was discussed previously at 49 FR 37074 (September 21, 1984) and at 49 FR 40323 (October 15, 1984).

There was a consensus among commenters that the public should have access to information on the status of cleanups at Federal facilities. EPA had requested comment on different ways of advising the public of the status of cleanups at Federal facilities (50 FR 5870). The options under consideration were: listing Federal facilities on the NPL; periodic publishing of the list, using the A–106 process under Executive Order 12088; and publishing the list independent of the NPL. In response, several commenters stated that NPL listing would not, in itself, provide sufficient information and that a combination of alternatives for information dissemination may be more appropriate. In addition to the above-mentioned support for disseminating information by listing Federal facilities on the NPL, suggestions included the following:

- Publish releases *solely* from Federal facilities in a separate section of the NPL;
- Publicize the progress at *all* Federal facilities, including those not on the NPL, at least annually in a document available to the general public; and
- Publish a separate list of Federal facilities and their HRS ratings.

Several commenters opposed listing Federal sites on the NPL. One commenter suggested that Federal departments and agencies develop and establish their own priorities for dealing with releases of hazardous wastes, with executive oversight by EPA.

EPA recognizes the importance of advising the public of the status of Federal government cleanup efforts. Because the NPL is already in place and widely known and understood, EPA considers it the most effective means of disseminating this information. Therefore, it will periodically, not less than annually, update a section of the NPL that lists Federal facilities along with their response category and cleanup status codes. Also, narrative summaries concerning each site will be available as part of EPA's press briefing in both proposed and final rulemakings on NPL site listings. Because EPA believes that Federal sites should be evaluated and listed using the same process as non-Federal sites, the same criteria that qualify non-Federal sites for NPL listing will be used to qualify Federal sites for inclusion on the separate section of the NPL. As is done on the NPL, sites will be grouped into categories based on their HRS scores. EPA also intends to delete or recategorize Federal sites on the list

using a process that parallels the one used to delete or recategorize non-Federal sites.

Six commenters expressed concern that the NCP does not make clear that Federal sites are not eligible for Fund-financed remedial action and suggested amending the NCP. In response, EPA is amending § 300.66(c)(2), to state that, as mandated by CERCLA section 111(e)(3), Fund monies may not be used for remedial actions at Federally owned facilities, other than actions specified in CERCLA section 111(c).

Deletions from or Recategorization on the NPL. Section 300.66(c)(7) amends the NCP by establishing criteria for deleting sites from, or recategorizing sites on, the NPL. A site may be deleted or recategorized where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA in consultation with the State has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment, and, therefore, taking of remedial measures is not appropriate.

The amendment is identical to the proposal except that, the phrase "in consultation with the State" has been added to the second and third criteria and the phrase "at that time" has been removed from each of the deletion or recategorization criteria. Comments indicated that the latter phrase was confusing with respect to when EPA will determine that no further response is appropriate. One commenter suggested that the phrase be more specifically defined so that criteria with which a responsible party must comply in order to qualify its sites for deletion from or recategorization on the NPL will remain fixed when subsequent changes to the NCP occur. Before making a deletion or recategorization decision, EPA will make a determination that the remedy or decision that no remedy is necessary is protective of public health, welfare, and the environment considering environmental requirements which are applicable or relevant and appropriate at the time of deletion or recategorization.

Section 300.66(c)(8) makes clear that sites that have been deleted remain eligible for further Fund-financed remedial actions if future conditions warrant such action.

The three alternative criteria for deletion or recategorization were developed to reflect different situations in which it is necessary or desirable to delete or recategorize sites on the NPL because all necessary remedial actions have been taken or because no remedial actions are necessary.

The criteria and procedures for deleting sites from the NPL were outlined initially in a guidance memorandum dated March 27, 1984. EPA solicited comments on the criteria and procedures when EPA proposed the second update to the NPL. (49 FR 40322, October 15, 1984.) EPA again solicited comments when the NCP amendments were proposed. (50 FR 5862, February 12 1985.) Today's amendment reflects EPA's consideration of all the comments received on the criteria for deletion of sites from, or recategorization of sites on, the NPL. A number of commenters addressed the procedures they believed EPA should follow in deleting sites. EPA has not yet decided what procedures will be followed. EPA is still considering the most appropriate process for review and publication of deletion or recategorization decisions. EPA may decide simply to recategorize in a separate section of the NPL those sites that meet the criteria of § 300.66(c)(7) rather than to remove them entirely from the NPL.

Commenters supported the inclusion of criteria for determining when site deletion is appropriate. They felt that the deletion process is likely to allow EPA to show progress and to provide finality to the remedial process.

One commenter suggested that CERCLA section 105 prohibits Fund-financed remedial actions from being conducted at sites that have been deleted from the NPL. Nothing in CERCLA so restricts EPA's authority. Section 300.66(c)(8) makes clear that the regulatory restriction does not apply to these situations.

A commenter suggested that risk assessments should provide the basis for determining that "no significant threat" remains. This decision will be based on EPA's conclusion either that all applicable or relevant and appropriate requirements have been met or that a risk assessment indicates that public health and welfare and the environment are adequately protected. Those sites for which EPA has determined that no response was necessary will be considered for deletion or recategorization quickly after the "no action" decision is made.

One commenter suggested that EPA adopt additional deletion criteria such as: (1) listings that were based on erroneous HRS scores; (2) State requests for deletion of State-nominated sites, unless EPA finds that the site poses a significant risk of harm to human health or the environment; (3) sites for which a final court order or consent decree requiring cleanup is in place, unless there is serious doubt about whether the responsible party has adequate financial resources; and (4) sites where the State has prescribed action that either has been completed or is "legally enforceable," unless EPA determines that the remedy would be inadequate under the NCP.

In response to the concern that criteria should be provided for deletion of erroneous listings, EPA provides an adequate opportunity for the public to comment on the appropriateness of the application of the HRS at the time of proposed rulemaking for the NPL. EPA believes that these procedural safeguards are sufficient to ensure the appropriate application of the HRS at specific sites and subsequent listing of eligible sites on the NPL. Generally, as stated previously in NPL rulemakings (48 FR 40658, September 8, 1983, 49 FR 37070, September 31, 1984), EPA does not intend to rescore sites. However, in some limited circumstances, where an RI/FS shows an error was made, EPA may rescore the site and, if appropriate, delete it from, or recategorize it on, the NPL.

States may request the deletion or recategorization of State top-priority sites if the site meets one of the three deletion or recategorization criteria described in NCP § 300.66. Consistent with EPA's responsibilities under CERCLA and the NCP, EPA will delete or recategorize sites only where EPA determines one of the criteria has been met.

EPA does not intend to delete or recategorize sites that are the subject of consent agreements, court orders, or State-negotiated court orders until EPA has determined that the appropriate remedy has been implemented and has determined that no further response is appropriate. EPA does not intend to make *a priori* judgments with respect to the likelihood that a remedy will be implemented or that after implementation, the remedy will satisfy then applicable or relevant and appropriate requirements.

Another commenter stated that sites at which remedial action is in progress generally should not be deleted until the remedial action has been completed. EPA agrees that deleting or

recategorizing sites on the NPL should not be done until EPA has determined that no further response is necessary. This will meet the informational objectives of the NPL and will help ensure that appropriate remedial actions are performed (see 49 FR 37075, September 21, 1984).

Two commenters supported the inclusion of § 300.66(c)(8) which allows EPA to perform Fund-financed remedial actions at sites that have been deleted. One commenter felt that guidelines for making these funds available would be desirable. Two commenters suggested that further Fund monies should not be made available for such a site until it has been relisted on the NPL. EPA believes that relisting may cause unnecessary delay. EPA intends to make funds available for responses at deleted sites if EPA determines that conditions at the site warrant additional action to protect public health, welfare, or the environment.

E. Section 300.67—Community Relations.

This rulemaking adds a new section, § 300.67, which requires community relations activities for all removal and remedial actions at NPL sites—including enforcement actions—except for short-duration or urgent actions of less than 45 days.

Eight commenters discussed the role of community relations in enforcement negotiations. Most of these commenters pointed to the importance of privacy and confidentiality during the negotiation of settlements and stated that public involvement at such times could impair the government's ability to secure cleanups funded by private parties.

Commenters also noted the need for better guidance on when the public comment period should occur and expressed concern that the publicity resulting from a concurrent public comment period and responsible party negotiations could reduce the likelihood of a settlement. One commenter suggested that the comment period occur before negotiations so that the comments received could be taken into consideration during negotiations. Another commenter stated that careful consideration of when the public comment period should occur is necessary "to avoid compromising enforcement negotiations through the premature release of information." One commenter called for deletion of the language from the preamble which stated that the lead agency may, in appropriate circumstances, allow a "limited number of representatives of the public" to participate in "additional" meetings with potentially responsible parties. Another commenter was pleased that the NCP itself does not mandate public participation in EPA negotiations with private parties because of the disruptive effect such participation would have on the settlement process. On the other hand, one commenter urged EPA to revise § 300.67 to allow the public to participate in negotiations with potentially responsible parties.

EPA has not changed the provisions governing community relations in enforcement negotiations. On March 22, 1985, EPA issued interim guidance entitled, "Community Relations During Enforcement Actions." This interim guidance is Chapter 6 of the handbook, "Community Relations in Superfund." The chapter's stated objective is to "establish a structure that will allow communication between the government and the affected community in the course of enforcement actions, while at the same time, accommodating precautions that are necessary to preserve the ability of EPA to prosecute those enforcement actions on behalf of the public."

EPA believes that public comment on the remedial alternatives will help rather than hinder settlement. However, EPA does recognize the confidential nature of enforcement negotiations and agrees that in some circumstances during enforcement actions, community relations activities must be limited. Chapter 6 of the above-mentioned guidance outlines procedures to be followed during and after the public comment period at an enforcement site. With regard to the comment about "additional" meetings, Chapter 6 also recognizes that there may be occasions where affected citizens may make valuable contributions to an appropriate site remedy through participation in technical discussions with potentially responsible parties and government representatives. These discussions, which would deal with technical issues and not questions of liability or other issues unrelated to the remedy, would be conducted separately from, but contemporaneously with, government/responsible party remedy negotiations. EPA does not require and is not suggesting that the public be allowed to participate in the actual negotiation sessions.

Some commenters suggested that the 21-day public comment period on the feasibility study should be extended to 45 days, either generally, or for potentially responsible parties (PRP) only because the 21-day comment period is not long enough for a PRP to undertake the in-depth technical analysis necessary to determine whether to assume responsibility for site remediation. EPA would like to point out that a 21-day period is the *minimum* number of days that must be allowed for public comment on the feasibility study. The period may be, and frequently is, extended by the lead agency beyond the 21-day minimum.

Moreover, in many cases, PRPs will have participated in developing or conducting the RI/FS. Thus, the public comment period is not the first time the PRPs are exposed to the information necessary to make this determination.

At least two comments were received in response to the proposed § 300.67(b) requirement that a community relations plan be developed and implemented if a removal action lasts over 45 days. A commenter pointed out that it is unclear what marks the beginning of a "removal action," and it is, therefore, impossible to tell whether it extends over 45 days. Another commenter pointed out that the length of a removal action is difficult to predict and recommended that the requirement to prepare a community relations plan apply only where actual on-site activities are expected to extend beyond 45 days.

Section 300.65(b)(3) of the proposed NCP generally requires that a removal action be terminated "after $1 million has been obligated for the action or 6 months have elapsed from the date of initial response." The same criteria currently used by EPA to determine the date of initial response for purposes of the six-month limitation will be used to help determine whether a community relations plan is required (i.e., "Superfund Removal Procedures, Revision Number 2," August 20, 1984). In response to the concern about the difficulty of predicting when a removal will end, EPA is modifying § 300.67(b) to state that: "if the removal action is expected to extend or does extend over 45 days, a formal plan must be developed and implemented."

Finally, EPA declines to adopt the suggestion that the 45-day limit apply to on-site activities only. Citizens are often interested in key activities that do not take place on site (e.g., off-site disposal). Thus, community relations plans will be required for removal actions if any removal activity, not merely on-site activities, is expected to extend over 45 days.

Three commenters discussed the funding of community relations activities. One commenter maintained that development and implementation of a community relations plan does not fall within permissible uses of Fund monies. A second commenter suggested that responsible parties be held financially

responsible for community relations programs. Finally, the third commenter recommended that funding be provided for technical advisors to interested citizens groups because of such advisors' ability to present unbiased and understandable technical information.

EPA disagrees with the first commenter's statement that Fund monies cannot be used for development and implementation of a community relations plan. A program of community involvement and information is a necessary part of response and is, therefore, fundable under the authority of CERCLA section 111. With regard to the second suggestion, EPA points out that because responsible parties are liable for response costs, they are responsible for the costs of the community relations component of response. Responsible parties may participate in elements of EPA's community relations program at a site. However, the lead agency is responsible for preparation of the site community relations plan. Therefore, the words "develop and" contained in § 300.67(c) have been deleted. Thus, the final rule limits responsible parties to implementation of appropriate parts of the community relations plan, rather than both development and implementation.

In response to the third comment concerning funding for technical advisors, CERCLA provides no authority for grants to community groups. EPA's procurement limitations for Fund-financed actions make funding for technical advisors at EPA-lead sites very difficult. If the affected State agrees and circumstances allow, however, EPA may make money available to the State for contracting with technical advisors under a cooperative agreement. Such decisions will be made on a site-by-site basis.

F. Section 300.71—Other Party Responses

Section 300.71 requires the lead agency to approve in advance the adequacy of a response by a responsible party or other person when an action is undertaken in compliance with an administrative order or consent decree under CERCLA section 106 or when reimbursement from the Fund is to be sought under section 112 of CERCLA. (In the latter case, advance approval is known as preauthorization. See § 300.25(d).) Otherwise, government approval of response actions is not required. However, § 300.71 does set out the requirements that a private party or State must meet for a response to be "consistent [or not inconsistent] with the NCP" to recover its costs from a responsible party pursuant to CERCLA section 107, and it addresses the certification of individuals and organizations to conduct site response actions.

Numerous comments were received on various paragraphs of proposed § 300.71. Many suggested that prior approval by the lead agency should be required for response actions by private parties when recovery of costs will be sought from a responsible party under CERCLA section 107. One of these commenters suggested that, as part of a prior approval process, private parties should not be allowed to commence a cleanup until it is clear that negotiations with PRPs will not occur or will not result in a settlement. Another of the commenters recommended prior approval for private responses at NPL sites because of a concern that private parties and government may take independent responses at the same site and both seek cost recovery under CERCLA section 107.

EPA, however, believes that prior approval is unwarranted for response actions for which no claim against the Fund will be made and which are not taken in response to an enforcement action under CERCLA section 106. The costs and delays of prior approval by EPA of private party responses could significantly reduce the number and scope of those responses. Delaying private party responses pending negotiations between PRPs and the government would not only reduce incentives for other party responses, but could also harm the enforcement process by reducing incentives for PRPs to settle with the government expeditiously. In addition, based on past experience, EPA believes that private party and government responses for which cost recovery is sought are unlikely to overlap and, although such situations may arise, they are better addressed individually rather than by revising the NCP. EPA believes that the requirement that private party responses comply with all applicable Federal, State, and local requirements, including permit requirements, as appropriate, is sufficient to deter poorly planned cleanup proposals and minimize the possibility of independent private party and government responses.

Two commenters disagreed with the requirement that persons performing response actions that are neither Fund-financed nor pursuant to an enforcement action are subject to applicable permit requirements (§ 300.71(a)(6)). EPA is retaining this provision, however, because private responses are not legally exempt from these requirements.

Two commenters questioned EPA's authority to promulgate regulations concerning the right of responsible parties to bring cost recovery actions against other responsible parties under CERCLA section 107. These commenters believed that the courts, not the NCP, should resolve legal issues concerning whether responsible parties have the right to bring cost recovery actions under CERCLA section 107.

EPA agrees that the courts will make the ultimate determination of what parties may sue under section 107 of CERCLA. However, as a primary agency charged with the implementation of CERCLA, EPA has an interest in this issue and believes that its interpretation of the statute merits judicial deference. Moreover, because section 107 of CERCLA authorizes private cost recovery only for actions that are "consistent with" the NCP, EPA has an obligation, as promulgator of the NCP, to explain how private actions may be so consistent. This obligation is particularly important given the widespread confusion and conflicting judicial interpretations of the issue. See e.g., Walls v. Waste Resources Corp., No. 84-3287 (6th Cir. May 6, 1985); Pinole Point Properties, Inc. v. Bethlehem Steel Corp., 596 F. Supp. 293 (N.D. Cal. 1984); Bulk Distribution Centers, Inc. v. Monsanto Co., 589 F. Supp. 1437, 1442-44 (S.D. Fla. 1984); Jones v. Inmont Corp., 584 F. Supp. 1425, 1428 (S.D. Ohio 1984); City of Philadelphia v. Stepan Chemical Co., 544 F. Supp. 1135 (E.D. Pa. 1982).

In this rule, EPA makes it absolutely clear that no Federal approval of any kind is a prerequisite to a cost recovery under section 107 (except of course for government responses pursuant to section 104 of CERCLA or private responses taken pursuant to section 106 of CERCLA or for responses for which claims will be presented to the Fund for reimbursement pursuant to section 112 of CERCLA). In addition, EPA has modified § 300.71 to specify in detail what private parties must do in order to act consistently with the NCP.

One commenter suggested that further clarification was needed in § 300.71(a)(2) (proposed as § 300.71(a)(5)). This provision establishes the standards for consistency with the NCP for purposes of cost recovery for responses other than those specified in the preceding discussion. The commenter found this approach to be confusing because §§ 300.65 and 300.68 are written in terms of a Fund-financed action under lead agency direction.

In order to clarify the requirements for responses pursuant to section 106 of

CERCLA, actions involving preauthorization under § 300.25, and other private responses. EPA has made several amendments to the NCP language proposed in February 1985.

Two new paragraphs are being incorporated into § 300.65 to clarify that certain requirements of § 300.65 are germane only to Fund-financed removal actions and are not applicable to removal actions taken pursuant to section 106 of CERCLA or to other response actions. Specifically, removals pursuant to section 106 of CERCLA and other non-Fund-financed response actions are not subject to the following requirements:

1. $1 million/6 month limitations;
2. Consideration of availability of other appropriate Federal, State, or enforcement response mechanisms; and
3. Requirement to locate responsible parties and encourage responsible parties to undertake the response action.

To be consistent with the NCP for purposes of cost recovery under section 107 of CERCLA, all other requirements and criteria outlined in § 300.65 shall be met, where appropriate. Although EPA has not required that private parties try and locate responsible parties and encourage them to undertake the response, EPA believes that such action will be helpful if the private party contemplates attempting to recover response costs from the responsible parties. EPA has also revised § 300.71(a)(3) to make it clear that no lead agency role is required for private party cost recovery under section 107 of CERCLA.

Section 300.71 is being amended to clarify that it refers only to response actions that are not pursuant to section 106 of CERCLA or actions for which reimbursement claims will be presented to the Fund. Section 300.68 has been amended to include language on remedial responses taken pursuant to section 106 of CERCLA and actions involving preauthorization under § 300.25, for which a claim to the Fund will be made.

The most important factor of any response action is the ultimate level of cleanup to be achieved at a site. For remedial actions, the most important factors that contribute to the final selection of a remedy are the scoping of response actions, the development of alternatives, and the detailed analysis of alternatives during the RI/FS. To be consistent with the NCP for the purpose of cost recovery under section 107 of CERCLA, non-Fund-financed responses must, as appropriate, address the full range of alternatives outlined in § 300.68(f), as well as comply with all other provisions of §§ 300.68(e) through (i). Such responses also must provide an opportunity for appropriate public comment. This public involvement must be consistent with § 300.67(d) unless compliance with the legally applicable or relevant and appropriate State and local requirements identified in § 300.71(a)(4) provide a substantially equivalent opportunity for public involvement in the choice of remedy. Finally, such responses must also comply with all otherwise applicable or relevant and appropriate Federal, State, and local requirements.

Responses pursuant to section 106 of CERCLA and other private responses are not subject to the Fund balancing requirements of § 300.68(i).

Several commenters sought further specification of the standards for certification of organizations under § 300.71(c). This paragraph requires, in part, that an organization (1) have the "engineering, scientific, or other technical expertise necessary to evaluate the appropriate extent of remedy, oversee the design of remedial actions, and/or implement those acitons;" and (2) meet the standards for preauthorization under § 300.25(d), which requires, in part, "technical and other capabilities to respond safely and effectively to releases of hazardous substances, or pollutants or contaminants." In an effort to clarify the section on certification, § 300.71(c)(1) is being amended to state that the organization requesting certification:

> [H]as engineering, scientific, or other technical expertise necessary to assist or conduct site response by carrying out any or all of the functions listed in paragraph (b) of this section.

EPA believes that further specifications for certification are not appropriate for inclusion in the NCP because the necessary expertise for the various functions outlined in § 300.71(b) may vary from case to case. EPA does, however, recognize that appropriate guidelines for certification must be developed, and EPA plans to develop specific guidance on the certification program.

Two commenters suggested that the time within which the Administrator will respond to a certification request (§ 300.71(c)(3)) be reduced. EPA feels that 180 days is an appropriate time period given the content of certification requests and the scope of review.

Some commenters opposed § 300.71(d), concerning releases from liability, on the grounds that it was unnecessary or too broad. The paragraph is intended to clarify that implementation of response measures does not in itself release parties from liability. Under EPA's Interim CERCLA Settlement Policy, however, releases from liability may be granted by EPA as part of the settlement negotiation process, which lists three broad approaches for reconciling the concerns of EPA and of potentially responsible parties regarding releases from liability. (See 50 FR 5043, February 5, 1985.)

A commenter expressed concern about the conflict of interest involved when a potentially responsible party, who may have to pay for the costs of a remedial action, develops or helps to develop an RI/FS for the site. EPA believes that it provides adequate oversight in these circumstances to ensure that the RI/FS is conducted properly.

A number of technical changes to § 300.71 suggested by various commenters have been adopted by EPA. In § 300.71(a)(2)(ii)(C) (formerly § 300.71(a)(5)(ii)(C)), "the cost-effective response" has been changed to "a cost-effective response" to be consistent with § 300.68(i). In § 300.71(c), "responsible party proposals" has been changed to "proposed response actions" to make it clear that response actions by parties, other than just responsible parties, are contemplated.

G. Other Subpart F Sections

Section 300.61—General. One commenter suggested that § 300.61(b) exceeds the authority of CERCLA. This commenter believes that the Federal government's authority to terminate a private party response exists only under CERCLA section 106, and then only if the private party response may present an imminent and substantial danger. The commenter's interpretation of CERCLA is too narrow. The authority to terminate private responses is a necessary component of the President's authority to undertake response actions under CERCLA section 104(a)(1). Section 104(a)(1) authorizes the President to take response measures necessary to protect the public health or welfare or the environment, "unless the President determines that such removal and remedial action will be done properly by the owner or operator of the vessel or facility . . . or by any other responsible party." Implicit in the authority to respond when a private party response is not being conducted "properly" is the authority to terminate the private party response to ensure that a Federal response can be implemented in a timely and efficient manner that protects public health and welfare and the environment. Of course, under CERCLA section 106, EPA can require the private party to cease can activity or to

undertake a differing activity in order to abate an imminent and substantial endangerment to public health or welfare or the environment.

Section 300.61(d) has been amended to provide that:

> The lead agency shall, as practicable, provide surveillance over actions taken by responsible parties to ensure that a response is conducted consistent with this Plan. The lead agency also, as practicable, shall monitor the actions of third parties preauthorized under § 300.25(d).

One commenter recommended that the phrase "should, as practicable" be replaced with "shall" because the commenter could foresee no circumstance where it would be proper for the lead agency to forego any surveillance of actions by responsible parties. In response to this comment, the language of the paragraph has been changed from "should, as practicable" to "shall, as practicable" to emphasize that surveillance will take place whenever practicable and to the degree practicable. In addition, EPA has amended the paragraph to clarify the lead agency's responsibility to monitor the actions of third parties conducting responses preauthorized under § 300.25(d). See also the change to § 300.33(b)(14)(iii).

Section 300.61(e)(1) states that subpart F "does not establish any preconditions to enforcement action by either Federal or State governments to compel response actions by responsible parties." One commenter was concerned that this provision might limit a private party's right to prompt judicial review of an enforcement order; and another commenter stated that the paragraph violates CERCLA section 106, which requires enforcement actions to be consistent with the NCP to the extent practicable. Both concerns are misplaced. This provision is not intended to have any effect on judicial review of enforcement actions. (EPA notes, however, that most courts have upheld EPA's position that CERCLA administrative orders are not subject to preenforcement review.) Its primary purpose is to emphasize that enforcement actions are not limited to NPL sites and that the Federal government does not have a mandatory duty to take enforcement actions (i.e., no one has an entitlement to an enforcement action). See also the discussion of § 300.68(a) in section III.B of this preamble.

Section 300.62 State Role. Six commenters addressed changes in § 300.62, which outlines the procedures and requirements for State participation in response actions. One commenter believed that there should be a mechanism whereby the States can be reimbursed for costs expended on an NPL site before the execution of a cooperative agreement. EPA already allows cooperative agreements to provide that State expenditures for remedial planning costs incurred before the remedial action has been initiated may be counted as an advance towards the required future cost share and has issued guidance concerning this procedure. EPA, however, as a general rule will not reimburse States for costs incurred before a cooperative agreement has been executed because EPA ordinarily cannot determine whether such costs were incurred for activities conducted in accordance with the NCP.

Another commenter noted that the proposed NCP does not include a mechanism for State lead at Fund-financed removals at non-NPL sites and suggested that cooperative agreements could allow for State lead at Fund-financed removals. The commenter is correct that EPA has not used cooperative agreements for Fund-financed removals at non-NPL sites. EPA's primary objective has been to establish a mechanism for remedial actions at NPL sites because of the volume and cost of such activities and, second, to establish a mechanism for cooperative agreements with States to oversee remedial planning by potentially responsible parties. EPA's next objective, in light of the expanded activities to be performed as removal actions under revised § 300.65(b), is to consider the advisability of entering into cooperative agreements with States and political subdivisions for removal actions at NPL and non-NPL sites. Given the fact that CERCLA section 111(a)(2) limits the reimbursement of response costs from the Fund to persons other than Federal, State, and political subdivisions, cooperative agreements appear to be a viable option for funding State and political subdivision response activities.

A commenter suggested that § 300.62(a)(2) be revised to provide that Superfund State contracts and cooperative agreements should apply to all sites, not just Fund-financed sites. Cooperative agreements and Superfund State contracts serve as the funding documents for Fund-financed response activities. There is no reason to enter into either a cooperative agreement or Superfund State contract when Fund monies are not being used by States. Another commenter suggested that the same paragraph should be clarified to provide that even in situations where the response is not Fund-financed, the State is acting as the lead agency for purposes of CERCLA section 107 cost recovery. EPA did not make this change. States involved in hazardous waste management may take a variety of actions under their authority, and their authorities may vary widely from State to State. Designating the State as lead agency under the NCP in such situations would not further clarify roles and responsibilities because CERCLA section 107(a)(4)(A) already allows a State to recover costs of removal or remedial action not inconsistent with the NCP. However, EPA is considering the development of joint EPA/State agreements to clarify roles and responsibilities of the State and EPA for response actions at NPL sites. See also the discussion in § 300.71(a), which delineates requirements for State response actions to be considered not inconsistent with the NCP.

The discussion of § 300.62 in the preamble to the proposed rule (50 FR 5879) indicated that a cooperative agreement or Superfund State contract is needed for an advance match. However, the proposed regulatory language was silent on this point. To correct this, the following sentence is being added to the end of § 300.62(a)(2): "[if] a State intends to use expenses incurred as part or all of its cost-sharing obligations under section 104(c)(3) of CERCLA, it must enter into a response agreement to this effect."

This change will ensure that expenses are consistent with the NCP and other applicable regulations, fully auditable, and acceptable to EPA.

The preamble to the February 12, 1985, proposed rule noted that Federal agencies other than EPA have authority to enter into contracts and cooperative agreements with States and stated that the "prior omission of the USCG, FEMA and HHS which have such authority from this subsection was an oversight" (50 FR 5879). Although the proposed revisions to §§ 300.62 (a) and (c) referred to the "Federal Government," rather than EPA alone, there was still no recognition that other agencies will provide assistance to States pursuant to contracts and cooperative agreements. To correct this, § 300.62(b) is being revised to read:

> EPA will provide assistance from the Fund, and other Federal agencies will provide assistance under their existing authority, to States pursuant to a contract or cooperative agreement. The cooperative agreement can authorize States to undertake most actions specified in this subpart. However, certain authorities are reserved for the Federal lead agency.

A State that enters into such an agreement is a lead agency under this rule but only as to those activities

authorized in the agreement. Therefore, references in subpart F to lead agency mean a State agency only if a cooperative agreement or contract specifically authorizes the State to carry out particular activities.

A commenter noted that the proposed definition of "lead agency" addresses the situation where a State is acting as the lead agency pursuant to a Superfund State contract or cooperative agreement executed under CERCLA section 104(d)(1), but does not address the instance where a State is conducting activities that are not Fund-financed. The commenter suggested redrafting the definition to enable a State to act as a lead agency "when it is carrying out non-Fund-financed actions at any site." EPA does not agree with the comment. For responses undertaken pursuant to the NCP, States may only act as lead agency pursuant to a contract or cooperative agreement executed under authority of section 104(d)(1) of CERCLA. There is no lead agency with respect to non-Fund-financed response actions, other than those carried out pursuant to section 106 of CERCLA. Section 300.24(c) of the NCP encourages States to use State authorities to compel potentially responsible party responses or to undertake such responses themselves that are not eligible for Federal funding.

Section 300.63—Discovery or Notification. A commenter suggested that the on-scene coordinator (OSC) should be allowed to contact the State Regional Response Team (RRT) representative instead of the governor as stated in § 300.63(c). The language of this paragraph is based on CERCLA section 103(a). The term "governor" includes the governor's designee. Thus, if a governor designates the RRT representative as his or her designee for purposes of receiving these reports, the State RRT representative can be contacted directly.

One commenter suggested that § 300.63(b) be revised to allow reporting to "the Coast Guard or the EPA designated OSC for the geographic area where the release occurs, or to the nearest Coast Guard Unit" if direct reporting to the NRC is not practicable. In response, EPA has modified the language originally proposed for § 300.63(b) slightly. The first modification is in the language covering reports to the OSC. The language originally proposed authorized reports to ". . . the predesignated OSC at the nearest USCG or EPA office." OSCs are located at each of the ten EPA regional offices and at 48 Coast Guard marine safety units throughout the country. The revised language clearly indicates that, to meet the reporting requirements, the report would have to be specifically made to the office where the appropriate OSC is located. Locations of OSCs can be obtained from regional contingency plans.

The second revision is the addition of provisions for reporting of releases to the nearest Coast Guard unit under limited circumstances. This method of reporting, which has been authorized in the Coast Guard regulations for reporting discharges under the FWPCA since 1975 (33 CFR § 153.203), will be allowed only in those situations where it is not possible to report directly to the NRC or OSC. EPA believes that the use of this provision would be limited to releases involving vessels at sea or offshore platforms with no telephone access. These persons would normally report by radio to a Coast Guard station that maintains a radio watch. To ensure that the CERCLA reporting requirements are met, releasers who report to the Coast Guard units under this provision must subsequently notify the NRC as soon as possible. It is important to note that reports to locations other than the NRC are authorized only when direct reporting to the NRC is not practicable. Because the NRC maintains toll-free telephone numbers reachable from anywhere in the country, reporting to the predesignated OSC or the nearest Coast Guard unit should be very limited.

To clarify the procedures for the OSCs to relay reports to the NRC, EPA emphasizes that it is not intended that OSCs must relay such reports by telephone to the NRC. EPA and the Coast Guard are working to develop procedures for prompt transfer of reports to the NRC to minimize the burden on both the OSC and the NRC Duty Officer.

Section 300.64—Preliminary Assessment for Removal Actions. Several commenters requested clarification of the process of coordination and consultation between EPA and natural resource trustees, and among EPA, States, third parties, and other Federal agencies involved in response actions. The commenters requested that the roles and responsibilities of EPA and the States be clarified throughout the NCP. In response to these comments, EPA is revising § 300.64(d) to read:

(d) If it is determined during the assessment that natural resources have been, or are likely to be, damaged, the OSC or lead agency shall, where possible, ensure that the trustees of the affected natural resources are notified in order that the trustees may initiate appropriate actions as identified in § 300.74(b). Where practicable, the OSC shall consult with trustees in making such determinations.

Section 300.74(b) has been added to summarize appropriate actions that may be taken with respect to natural resource damages.

EPA has added the following language to the end of § 300.64(a)(2), "or other sources (e.g., State public health agencies)." This additional language allows the OSC or lead agency to use information generated by other sources regarding threats to public health in order to evaluate the threat to public health from a release or threat of a release. For example, the lead agency should evaluate any public health information available to aid in removal actions.

Section 300.69—Documentation and Cost Recovery. One commenter addressed an issue raised by proposed changes to § 300.69, which establishes the requirements for documents that support responses under the NCP and provide the basis for cost recovery. This commenter requested that § 300.69 also provide that when agencies delegated the authority to take a response under CERCLA have no other existing authority or funds for taking response actions, Fund monies should be allocated in advance to allow these agencies to take the necessary response. In response to this concern, EPA is revising § 300.69(d) to read:

(d) Actions undertaken by the participating agencies in response shall be carried out under existing programs and authorities when available. This plan intends that Federal agencies will make resources available, expend funds, or participate in responses to releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a release. The ultimate decision as to the appropriateness of expended funds rests with the agency that is held accountable for such expenditures.

Under the revised language, interagency agreements can address methods of ensuring Federal resources are available in addition to reimbursement, such as advance funding. This flexibility will help ensure that Federal resources are available for timely responses.

IV. Revisions to Other Subparts

In addition to the revisions to NCP subpart F addressed in section III, the following revisions were addressed by public comments. The comments and EPA responses are presented below by NCP subpart.

Subpart A—Introduction

Section 300.3—Scope

One commenter suggested broadening the scope of §300.3 to make it more

"consistent with CERCLA section 105" in order to clarify that there is "no liability to the United States Government or a State or any other person for response costs unless the costs incurred were consistent with the NCP." The commenter also stated that § 300.3(a)(2) should include a reference to the fact that only those releases that "pose substantial danger to the public health or the environment" are actionable under the Plan. EPA believes that the § 300.3(b)(1) fulfills the intent of CERCLA section 105 by including provision for the division and specification of responsibilities for response actions among the State, local, and Federal governments and by delineating the role of private entities. Furthermore, CERCLA section 105(4) states that EPA will specify for whom the Plan is in effect. The NCP specifies in the particular section to whom the section is applicable. In response to the second comment, CERCLA section 104(a)(1) clearly authorizes responses to all releases of hazardous substances whether or not "substantial danger" is posed. The items listed in CERCLA section 105 establish the minimum criteria for promulgating the NCP; it is not an exclusive list. EPA concludes that the change suggested by the commenter is not warranted.

Section 300.4—Application

One commenter proposed expanding this section to note that compliance with the "procedures and standards" of the NCP is a prerequisite to cost recovery under CERCLA section 107. CERCLA section 107(a)(1–4) specifies that responsible parties shall be liable for:

(A) all costs of removal or remedial action incurred by the United States Government or a State not inconsistent with the national contingency plan;

(B) any other necessary costs of response incurred by any other person consistent with the national contingency plan; and

(C) damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from such a release.

Consistency with the NCP for purposes of cost recovery is explained in §300.71. In regard to the reference by the commenter to "procedures and standards" listed in CERCLA section 105, EPA believes that the commenter did not clearly interpret the intent of the section, which is to establish a list of the minimum components of the NCP. The requirements for cost-effectiveness and cost recovery are described in other sections of the NCP.

Section 300.6—Definitions

One commenter requested that the phrase "provision of alternative water supply" be defined to go beyond provision of short-term, emergency water supplies to include, for example, extension of new water lines. The commenter stated that this definition would help to ensure that contaminated water supplies can be quickly replaced, without the need for a remedial RI/FS. EPA believes that defining the phrase would unduly restrict the range of the possible responses to water supply threats, and points out that alternative water supplies may be provided as part of either removal or remedial actions. Several examples of alternative water supplies that may be provided as removal or remedial actions are described in §300.70(c)(2). Removal actions may be taken without the preparation of a full cost-effectiveness evaluation.

One commenter suggested deleting the sentence in the definition of "feasibility study" that states that the RI and FS are performed concurrently and in an interdependent fashion. The commenter predicted "chaos and losses" if these activities are not performed sequentially. The commenter also suggested that conforming changes be made to EPA's RI and FS guidance documents. EPA declines to adopt the commenter's suggestion. In some complex situations, as the site becomes better characterized during the RI, it may become necessary to reassess the initial response alternative and include new ones. Assessment of new alternatives may, in turn, require collection of additional data during the RI. Concurrent RI and FS development thus leads to more rapid and more thorough assessment of the actions necessary at complicated sites. The level of data collection and analysis necessary in the RI depends on the level of information needed to adequately characterize the site for alternatives assessment, for support of the enforcement of cost recovery proceedings, and for public health evaluations. These assessments and proceedings must be coordinated in a manner that varies with the complexity of each site and the particular remedial alternatives relevant to the site problem. Concurrent RI/FS development allows the RI data collection effort to focus on the information needs of the remedial designs being analyzed, thus conserving limited Superfund resources and enhancing the speed of cleanup. Each proposed definition clearly indicates that while the RI and FS will be initiated concurrently, some RI activities will be concluded well in advance of the completion of the FS. This has occurred in most complex Superfund investigations. It will be more often necessary in the future as the authority for selecting the remedy is redelegated to the Regional Administrators in order to facilitate rapid cleanups at the remaining sites. (The commenter made the same suggestion for the definition of "remedial investigation" in this section. EPA's response is the same.)

One commenter suggested that the following sentence be added to the definition of "Federally permitted release." "A 'release' is 'Federally permitted' within the meaning of any of the preceding subsections regardless of whether the permit is issued by a Federal, State, or local authority." EPA does not concur with the comment. CERCLA defines "Federally permitted release" in section 101(10). Section 101(10) identifies a number of Federal environmental statutes, many, but not all of which authorize States to issue permits to achieve the goals of those statutes. For example, according to section 101(10)(A) of CERCLA, a Federally permitted release includes "discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act." Section 402 permits may be issued by either EPA or a State; in either case, discharges in compliance with the permit are considered "Federally permitted releases."

Thus, CERCLA section 101(10) considers certain discharges regulated by State-issued permits to be "Federally permitted releases." To the extent the commenter intends that those releases regulated by State or local permits that are not associated with the statutes identified in section 101(10) be "Federally permitted releases," EPA considers the suggestion to represent an unwarranted expansion of the statutory language.

One commenter believed that the proposed definition of "first Federal official" should be modified in several respects:

- Whether the clause "with responsibility under this Plan" modifies "first representative" or "Federal agency" should be clarified.
- The definition should specify that the Federal official responding at a Federal facility is the first qualified Federal employee to the scene, and not merely the closest Federal employee to the scene.
- The need for the "first Federal official" to be qualified to protect public health and welfare and the environment

at releases not occurring at Federal facilities should be clarified.

• The definition should be clarified to avoid any argument that a State with jurisdiction over a site under a multi-site cooperative agreement must await the arrival of a "first Federal official."

EPA generally agrees that the above points should be clarified and has made several changes to accommodate the suggestions. The new language is as follows:

First Federal official means the first Federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under this Plan and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC. A State with primary jurisdiction over a site covered by a cooperative agreement will act in the stead of the First Federal Official for any incident at the site.

EPA has addressed the concerns that the official be "qualified" by having him/her act in consultation with the OSC because such qualifications could not be stipulated for diverse other Federal agency personnel who might also appear on the scene.

One commenter noted that the term "initial response" is critical in calculating time limits for removal actions under NCP § 300.65(b)(3) and in the exemption from having to develop a community relations plan under § 300.67(b). The commenter advocated defining the term by specifying an event or events that mark the commencement of a response. EPA does not concur that the term "initial response" needs to be defined in § 300.6, but agrees that guidance should be provided for determining the referenced time limits. EPA has already provided such guidance. Activities signifying the official commencement and termination of removal actions are defined in Agency guidance entitled, *Superfund Removal Procedures* (Revision Number 2, August 20, 1984) as follows:

The six-month time period commences on the day on-site removal action actually begins, excluding time spent doing [CERCLA section] 104(b) investigation, monitoring surveys, or other information collection prior to the approval of a removal and excluding time spent procuring a contractor or conducting any off-site planning activities after approval of the removal action.

One commenter noted that the term "State" is not defined in § 300.6 of the NCP, and suggested that it be defined in a manner that clarifies whether it includes political subdivisions. EPA does not concur with this comment. The term "State" is defined in CERCLA section 101(27). In addition, CERCLA indicates when both a State and its subdivisions are covered by a particular provision of the statute. (See, for example, CERCLA section 104(d).)

Subpart B—Responsibility

Section 300.22—Coordination Among and by Federal Agencies

One commenter suggested that the preamble to the NCP note that the existing DOI/DOT memorandum of understanding (MOU) which deals with responses involving facilities on the Outer Continental Shelf addressed in § 300.22(f) is under revision, and that any changes that affect response actions under the NCP should be reflected in future NCP amendments. EPA agrees that the existing MOU may lead to some confusion over the scope of response activities and responsibilities of DOI and DOT during response to a discharge on the Outer Continental Shelf. The MOU is presently under revision, and any changes affecting response actions under the NCP will be incorporated in future amendments to the NCP.

Section 300.23—Other Assistance by Federal Agencies

One commenter advised that § 300.23(b)(8), as proposed, might create a conflict of interest by requiring the Department of Justice to represent both the Federal Government acting to enforce CERCLA and a Federal agency as a potentially liable party. The comment does not raise any technical issue concerning the merits of the NCP, but rather, raises a generic legal issue concerning the proper role of the Justice Department in such cases. That role is more particularly set forth in 28 U.S.C. Section 516, which provides in the pertinent part that "the conduct of litigation in which the United States, an agency, or officer thereof is a party . . . is reserved to officers of the Department of Justice under the direction of the Attorney General." This statutory duty, which is premised upon the President's Article II authority, does not amount to a conflict of interest merely because the Department of Justice represents EPA in enforcing CERCLA and/or an agency named in a counterclaim against the United States in a CERCLA action. In particular, it is important to note that the Justice Department is not, in such cases, specifically enforcing CERCLA on behalf of EPA against a Federal agency. There is no inherent conflict in such cases. Rather, as in many cases, the Department is both prosecuting its claims and defending against others in the course of litigation. Moreover, to the extent the Department has any perceived conflict of interest, nothing in the law requires that EPA or the Federal agency obtain separate legal representation.

This issue was conclusively resolved in *Nevada v. United States*, 103 S. Ct. 2906 (1983). In that case, the Attorney General represented the Government's position even though the Department of Interior had programmatic interests in both an Indian Tribe's reserved water rights, as well as the opposing interests of a reclamation project seeking water rights for the irrigation of land (*Id.* at 2923). The Court recognized that there were potentially conflicting interests involved, but went on to state that:

It is simply unrealistic to suggest that the Government may not perform its obligation . . . in litigation when Congress has obliged it to represent other interests as well. In this regard, the Government cannot follow the fastidious standards of a private fiduciary, who would breach his duties solely by representing potentially conflicting interests without the beneficiary's consent (*Id.* at 2917).

The Court also agreed with the trial court that the Government attorneys were not chargeable with an impermissible conflict of purpose or interest and that:

[T]he District Court's finding reflects the nature of a democratic government that is charged with more than one responsibility; it does not describe conduct *that would deprive* the United States of *the authority to conduct litigation on behalf of adverse interests (Id.* at 2922 n. 15 (emphasis added)).

Indeed, barring the Department of Justice from representing either the interests of EPA or another Federal agency on grounds of conflict of interest would itself raise serious Constitutional questions. Accordingly, the comment that proposed § 300.23(b)(8) creates an impermissible conflict of interest is ill-founded as a matter of law.

One commenter suggested that the descriptions of Federal agency assistance in § 300.23(b)(10) should reflect the recent addition of the DOT Research and Special Programs Administration (RSPA) to the NRT. EPA concurs that the recent addition of RSPA as an NRT member should be noted.

Two commenters requested clarification of and various revisions to the description of the role of the Federal Coordinating Officer (FCO) in § 300.23(e) and the relationship between the FCO and the OSC/RPM during a declared disaster. The commenter also requested that the definition of an FCO be added.

EPA is not adding a definition of FCO, but concurs with the revisions recommended to § 300.23(e). There is no need to define the FCO. The revised text of § 300.23(e) with reference to the

Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.) adequately describes the purpose of the FCO. Section 303 of that Act defines the role of the FCO during a major disaster. The proposed change also addresses the concern of whether the FCO would assume the responsibilities of the OSC or RPM during a declared disaster. The FCO is appointed by FEMA to coordinate Federal activity as it may relate to a disaster or emergency declaration of the President. The activities being performed by the OSC/RPM may or may not be within the scope of this disaster declaration. In either case, the OSC/RPM would continue to carry out his responsibilities under the NCP, but would coordinate his activities with the FCO to ensure consistency with other Federal disaster assistance activities.

Section 300.24—State and Local Participation

EPA has proposed amending this section to clarify State use of the titles "OCS" and "RPM" and to add language concerning the roles of State and local governments in protecting the public health and welfare during initial responses. In response to the proposal, a commenter requested clarification of § 300.24(d), which states, in part, that, "In the case of a State as lead agency, the State shall carry out the same responsibilities delineated for OSCs/RPMs in this Plan (except coordinating and directing Federal agency response actions)." The commenter suggested that it should be made clear that "exercise of these responsibilities by a State is in lieu of rather than in concert with an OSC or RPM."

EPA does not concur with this comment. In the case of a State as lead agency, there will still be a Federal OSC/RPM for the response; and, thus, State actions cannot be in lieu of the OSC/RPM, but must be in concert with the cognizant OSC/RPM. The definition of "lead agency" (§ 300.6) and § 300.24(d) provides that States which enter into contracts or cooperative agreements pursuant to section 104(c)(3) and (d) of CERCLA or section 311(c)(2)(H) of the Clean Water Act (CWA), may function as "lead agency" and, in that capacity, shall carry out the same responsibilities and authorities as a Federal OSC/RPM (*except coordinating and directing Federal agency response actions*). The commenter urges that this exception should not pertain to Federal agencies that are responding in the capacity as responsible parties under CERCLA section 107, rather than as an NRT member agency.

CERCLA provides that Federal agencies are subject to the Act and may have liability under section 107(a) to States that incur cleanup costs not inconsistent with the NCP. (See CERCLA section 107(g).) Nothing in the Act, Executive Order 12316, or this Plan, however, makes Federal agencies subordinate to States in the course of conducting removal actions at a site, particularly a site owned or operated by a Federal agency. EPA believes that it is inappropriate for States to coordinate among Federal agencies responding to a release or to direct the activities of any particular Federal agency. Accordingly, EPA does not concur with the comment.

Section 300.25—Nongovernmental Participation

One commenter requested a new paragraph to identify a team, including States, to decide whether a third party response should be preauthorized for Fund financing. EPA is committed to coordinating with the States; however, the decision on adequacy of the response should remain with the lead agency because reimbursement will come entirely from the Fund. Response claims regulations will identify how coordination with States will take place and the procedure(s) for preauthorization.

One commenter states that § 300.25(d) concerning preauthorization cannot be used or understood until CERCLA section 112 response claims procedures are promulgated. EPA is in the process of developing response claims regulations. However, EPA has been considering requests for preauthorization on a case-by-case basis.

One commenter requested a list of factors in § 300.25(d)(3) identifying what factors EPA will consider in deciding which reimbursement requests will receive priority. Specific considerations for developing priorities among claim requests will be included in the response claims procedures.

One commenter wants § 300.25(d) (3) or (4) to be changed to state that preauthorization *does* obligate the Fund. Current § 300.25(d)(4) has been written to state that preauthorization does not obligate the Fund because 'obligation' means that the money can never be used for other purposes; therefore, no change is required. By preauthorizing a claim, EPA makes a commitment that if response actions are taken in accordance with the Plan as submitted, and costs are reasonable and necessary, reimbursement up to the maximum amount of money established by the preauthorization will be paid from the Fund, subject to available appropriations.

Subpart C—Organization

Section 300.32—Planning and Coordination

One commenter requested that EPA expand this section to allow the use of Clean Water Act (CWA) section 311(k) and CERCLA Trust Fund monies to finance the development of resources to assist during spills. These resources would include "technical assistance, materials and personnel available for support operations, and inventory of specific materials, such as booms, absorbants, or computer models of dispersion patterns." The commenter also suggested revising the section to include a discussion of training to assist in the maintenance of spill contingency plans.

EPA does not concur with these recommendations. The use of the two Federal Funds to provide resources up-front is a matter for the applicable Fund managers. Both Funds are used to finance response activities on an incident-specific basis; authority to use funds for the purchase and staging of equipment is dependent on the particular statute. The CWA does not authorize the use of section 311(k) funds for up-front costs; CERCLA has limited provisions in section 111 for providing up-front costs for equipping Federal response teams. In most areas of the country, adequate resources are available, either commercially or through the Coast Guard Strike Teams. Regional and local contingency plans should include information on the availability of resources, either governmental or private, that could be called on during a response. The subject of training is already adequately addressed in §§ 300.32(a)(7)(vi), (b)(6)(x), (c)(1), and (c)(2).

One commenter requested revisions to the NCP, particularly § 300.32(b), to reflect the establishment of separate RRTs in Alaska and the Caribbean. Another commenter also proposed to make reference to a separate RRT covering Hawaii and the Pacific Islands.

EPA concurs with adding reference to the separate standing RRTs in Alaska and Caribbean; however, EPA does not concur with the recommendation to establish a separate RRT for Hawaii and the Pacific Islands. The NRT believes that the recommendations of the RRTs should be the primary factor in deciding whether to establish a separate standing RRT. The Region II and Region X RRTs have indicated the desire to have the Caribbean and Alaska function as

separate standing RRTs because of their geographical separation from the regional offices within the standard Federal regions. The Region IX RRT, covering Hawaii and the Pacific Islands, has considered the issue of establishing a separate RRT for the Pacific and has decided that the Pacific Oceanic area should continue to be part of the Region IX RRT, although a sub-RRT would be established in Hawaii to coordinate standing RRT activities in the Pacific. Thus, the third sentence of § 300.32(b) now reads: "[t]he standing team jurisdiction will correspond with the Standard Federal Regions, except for Alaska and the Caribbean area which will also have standing RRTs."

One commenter recommended that the wording of § 300.32(b)(6)(x) should be changed to state that RRTs "encourage" preparedness, not "ensure" preparedness, because RRT training exercises may serve as a mechanism to facilitate preparedness activities, but will not ensure preparedness. EPA concurs with this suggestion and is revising § 300.32(b)(6)(x) accordingly. While the RRTs need to take an active role in training exercises for response preparedness within their respective regions, it is beyond their capability to "ensure preparedness," especially at the State and local level. The revised wording does not modify the RRT's active role in encouraging preparedness activities at all levels of government through training exercises, but does not force the RRT's to take extraordinary steps to guarantee preparedness.

One commenter recommended that the criteria addressed in § 300.32(b)(7) for forwarding issues to the NRT be clarified as to whether the entire RRT must agree to forward an issue to the NRT, and to add examples of discretionary actions of the RRT. EPA does not concur with the recommendations of the commenter. The existing language in paragraph (b)(7) adequately describes those situations where it would be appropriate for the RRT to request NRT advice. It is not necessary for the RRT as a whole to agree with the forwarding of an issue to the NRT, especially because one of the situations addressed by the paragraph is disagreements that cannot be resolved at the regional level. With regards to listing some examples of discretionary actions of an RRT, any such listing could not cover all situations and, therefore, could be misleading.

A commenter recommended that reference to DOD development of local contingency plans (LCPs) in § 300.32(c) be deleted. DOD facilities would be covered by LCPs developed by EPA or the Coast Guard, which are based on geographic areas. EPA does not concur. DOD does maintain contingency plans for their facilities, and the LCPs of EPA or the Coast Guard should recognize and coordinate with, these DOD plans.

One commenter noted that several paragraphs of the NCP, including § 300.32(c)(1), inappropriately assume a Federal lead agency. EPA does not concur with the commenter. The procedures to be followed by the lead agency under the NCP are generally applicable whether the incident is Federal-lead or State-lead. As indicated in the definition of lead agency in § 300.6, a State when acting as lead agency shall carry out the same NCP responsibilities as the OSC/RPM, except for coordinating and directing Federal agency response actions. In the example cited by the commenter, State-lead incidents require trained personnel to carry out NCP activities; and, thus, States must ensure that their response personnel are properly trained to carry out their responsibilities under the applicable Superfund State contract or cooperative agreement.

One commenter recommended deletion of the reference to the SSC in § 300.32(d) because it duplicates information in § 300.34(d) and § 300.43(b). EPA agrees that this reference should be deleted, and that language should be added to § 300.34(d) to reflect the planning role of the SSC. Section 300.32(d) has been eliminated and a sentence has been added to § 300.34(d) that states: "[t]he SSC will also provide scientific support for the development of regional and local contingency plans."

Section 300.33—Response Operations

One commenter noted that there is still some confusion in § 300.33(a) over the role of the EPA or Coast Guard OSC at oil spills involving DOD vessels and facilities. This confusion has resulted from the fact that DOD is designated as the OSC for hazardous substances releases from its vessels and facilities, but not for oil spills from its vessels and facilities. The revisions in the proposed rule did not affect the assignment of OSC responsibilities. As indicated in paragraphs (a) and (b)(8) of this section, DOD acts as predesignated OSC only for releases of hazardous substances, pollutants, or contaminants from its vessels and facilities. DOD is still responsible for acting to remove any oil discharges, as is any other Federal agency whose vessel or facility is the source of an oil discharge, but the Federal OSC (i.e., EPA or USCG) will provide advice and assistance to DOD as necessary.

One commenter suggested that all statements in the NCP and particularly in § 300.33(b) related to the OSC/RPM directing Federal response actions be made explicitly subject to the provisions of Executive Order 12316. EPA does not agree that changes to the NCP are necessary to reflect this comment. All actions under the NCP are subject to the provisions of both Executive Order 11735 (FWPCA) and Executive Order 12316 (CERCLA), as appropriate. There is no need to repeat this fact in each section that addresses activities related to these Executive Orders. The language in § 300.21 is sufficient to note the applicability of these Executive Orders to NCP response actions.

EPA proposed changes to § 300.33(b)(3) authorizing the OSC or RPM to "designate capable persons from Federal, State, or local agencies to act as their on-scene representative." One commenter recommended authorizing such response actions only when "specifically authorized by the OSC/RPM or (if the OSC/RPM is unavailable) by the authorized representative of the lead agency." EPA believes the proposed NCP language is already sufficient to meet the recommendation of the commenter because a Superfund State contract or cooperative agreement with a State properly authorizes a State to take a response action involving Fund expenditures.

One commenter suggested that making the OSC responsible for worker health and safety in § 300.33(b)(11) sets a dangerous precedent. The commenter stated that contractors should not be relieved of the responsibility for protecting their workers. Although EPA agrees with the commenter's concerns, the commenter has apparently mistinterpreted the intent of this subsection. Although OSCs must remain cognizant of the occupational safety and health activities at the response scene and monitor contractor actions, the OSCs are directly responsible only for their own staff. The list of OSC/RPM responsibilities in § 300.33(b) acts as a cross-reference to other sections of the NCP where the OSC/RPM has been given certain specific responsibilities. In this case, § 300.38 provides the details of the role of the OSC/RPM in worker health and safety. As indicated in paragraph (a) of that section, each government agency and private employer is directly responsible for the health and safety of its own employees; thus, contractors are not relieved of their responsibility to protect their employees. In fact, paragraph (c) of that section requires contractors at Federal Fund-financed response actions to

comply with all OSHA requirements and with any health and safety program of the lead agency. As was indicated in the preamble on page 5877, "the Federal government is not assuming responsibility for individual workers."

A commenter stated that the role of the RPM in Fund-financed cleanups under State lead as described in § 300.33(b)(14)(ii) is too broad. EPA disagrees with the comment. Although both CERCLA and the NCP clearly emphasize the importance of the States' role in Fund-financed cleanups, the language proposed in § 300.33(b)(14)(ii) supports the oversight role required of EPA in State-lead cleanups by the terms of its cooperative agreements. Such agreements presume substantial Federal involvement in accordance with the Federal Grant and Cooperative Agreement Act of 1977, 31 U.S.C. 6301–6308 and its implementing regulations (40 CFR 30).

EPA disagrees with those commenters who believe that the authority of the RPM is too broad. In fact, the responsibility of the RPM to oversee and make decisions when third parties undertake cleanups needs to be clarified. This clarification is lacking in the current NCP; for example, § 300.25(d) does not specify how monitoring will take place, and §§ 300.33 and 300.61 overlook monitoring actions under claims against the Fund. Accordingly, § 300.33(b)(14)(iii) has been revised to read:

> The RPM shall participate in all decisionmaking processes necessary to ensure compliance with this Plan and the cooperative agreement between EPA and the State. The RPM will also review responses implemented pursuant to preauthorization in order for EPA to determine that responses are consistent with preauthorization in cases where claims are filed for reimbursement.

EPA made a technical change to § 300.33. A comment on the definition of "First Federal Official" in § 300.6 resulted in a modification of the definition, which in turn requires a change in § 300.33(b)(1). This change stipulates that the First Federal Official should consult with the OSC before initiating any necessary actions.

Section 300.34—Special Forces and Teams

A commenter recommended that § 300.34(a) be revised to reflect the existence of the Coast Guard Dive Team as part of the National Strike Force (NSF) and the role of the NSF in ship salvage. The commenter recommended retaining the reference to salvage capability that was proposed for deletion because, although DOD is the primary Federal agency with marine salvage expertise, its assistance is contingent on defense operational commitments. Thus, the NSF maintains limited capability in the area of ship salvage. EPA agrees to add a description of the NSF Dive Team capability because it is a resource available to all OSCs requiring diving advice or support for response activities. With regards to salvage expertise, revisions are being made to § 300.37(b) to reflect the NSF's ability to provide advice to OSCs on ship salvage matters.

One commenter recommended a revision of §§ 300.34(f)(2) and (f)(4)(iv) to authorize the OSC to activate the RRT and a clarification of the ability of an RRT to request replacement of the OSC/RPM during a response. EPA concurs with the revision recommended by the commenter. In practice, the OSC requests activation of the RRT for assistance, and this should be recognized in the Plan. The proposed change reflects the fact that the RRT may provide recommendations to the appropriate lead agency, but the lead agency has the final authority for replacing the OSC/RPM. The new language of paragraph (f)(2) is as follows: "[t]he RRT may be activated during any pollution emergency by a request from the OSC/RPM, or from any RRT representative, to the chairman of the Team. . . ."

The new language of paragraph (f)(4)(iv) is as follows: "[i]f the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated . . ."

One commenter recommended that the criteria in § 300.34(f)(6) for deactivating an RRT be revised to delete the requirement that both EPA and the Coast Guard agree to the deactivation, because they may not both be involved in the incident-specific activation. Another commenter requested that the State government representative be included in the deactivation process.

EPA concurs with the comment concerning deletion of the requirement that both EPA and the Coast Guard agree to the deactivation, but does not concur with the comment that the State also be included. With the creation of the incident-specific RRT, there will be situations where either the EPA or the Coast Guard may not be involved in the RRT activation, especially those involving inland remedial sites. Thus, it is unnecessary to have both agencies concur before deactivation can occur. Whichever agency is acting as chairman of the incident-specific RRT should decide when the RRT has completed its business and can be deactivated. It is unnecessary to add the State representative to the deactivation process. As indicated above, only the incident-specific RRT chairman should decide when the RRT should be deactivated. While EPA agrees that the States have a role on the RRT equal to that of the other Federal agencies, there is no need for them to participate in the deactivation, just as there is no need for the other Federal agencies on the RRT to participate. If there is some situation where an RRT member believes that the RRT has been deactivated prematurely, any member, including the State representative, can ask for the RRT to be reactivated under the provisions of § 300.34(f)(2).

One commenter remarked on proposed § 300.34(g)(4), which states that the NRT may be activated as an emergency response team by the request of an NRT member. The commenter suggested amending the provision to require that the member consider the other three criteria for activation, that is, whether the release or discharge (1) exceeds the region's response capability, (2) transects regional boundaries, or (3) involves significant population threat or national policy issues, substantial amounts of property, or substantial threats to natural resources. EPA does not concur with this comment. While NRT members have, in general, taken the three stated criteria into consideration in calling for NRT activation, the fourth option is included so that NRT members can call for NRT activation in situations that may not fit these criteria precisely. A similar option is available to an RRT member for RRT activation.

Section 300.35—Multi-Regional Responses

A commenter suggested that the term RPM not be added in the last two sentences of § 300.35(b), which authorizes the RRT or NRT to designate the RPM when other parties cannot agree. Because the lead agency designates any RPM for a remedial site, the commenter felt that there should never be dispute about the appointment of the RPM. EPA declines to adopt the commenter's suggestion to delete the reference. EPA agrees that there should be no dispute about the appointment of the RPM. However, this reference is designed to provide guidance on those rare occasions in which a dispute is possible; for instance, in a removal which involves multiple jurisdictions, or where a removal action is undertaken by one agency, while the long-term threat is addressed by another.

Section 300.37—Special Considerations

A commenter recommended that the reference in § 300.37(b)(2) to DOD being the only source of technical assistance for marine salvage activities be deleted because the Strike Teams and commercial salvors are other sources that could be consulted. EPA concurs with the comment that DOD is not the only resource available to the OSC and has revised the paragraph to reflect that the Strike Teams and commercial salvors are other resources that could be consulted on marine salvage matters.

Section 300.39—Public Information

One commenter objected to the requirement for clearance of statements or news releases about incidents involving Federal facilities with the lead agency. Although we concur with the commenter's concerns, EPA does not believe that the section needs to be revised. This section relates to OSC/RPM coordination of public information at an incident not involving a Federal facility. At a response involving a Federal facility as the source of a discharge or release, as specified in § 300.33(b)(8), the OSC/RPM would play a much different role. In such cases, the responsible agency would coordinate responses to such incidents in accordance with the NCP, although the OSC or lead agency still retains some monitoring and oversight responsibility.

Subpart D—Plans

Section 300.41—Regional and Local Plans and

Section 300.42—Regional Contingency Plans

A commenter recommended that these sections be revised to refer to separate regional contingency plans (RCPs) for Alaska and the Caribbean area. EPA concurs with this comment. Because these areas will function as separate RRTs, they will each be developing (RCPs) for their geographic area of coverage. Once these separate plans are completed, existing coverage of these areas in the Region II and Region X RCPs will be deleted.

One commenter recommended that the requirement that RCPs follow the format of the NCP be deleted to allow flexibility in RCP organization. Another commenter recommended that specific reference be made to coordination of RCPs with State and Federal local contingency plans. EPA concurs with the recommendation to add a specific reference to coordinating regional plans with the Federal local plans and State plans within the regions. However, EPA does not concur with the recommendation to delete the reference to RCP format. The existing language does not require RRTs to use the NCP format, but encourages use of this format to provide consistency among RCPs. This still provides flexibility to tailor the plan to meet regional needs. It is implied in various other sections of the NCP that coordination of RCPs with State and Federal local plans should occur. The proposed change will merely add specific reference to this coordination. The new language of § 300.42(a) reads: "[t]he RRTs . . . should coordinate with the State plans and the Federal local plans as specified in § 300.43."

Section 300.43—Local Contingency Plans

A commenter recommended that § 300.43(a) be amended in four respects:

(1) Specify that the OSC will consult with the RRT with respect to Federal local contingency plans;

(2) Specify that the OSC shall develop as well as maintain a plan, as practicable;

(3) Delete the requirement that plans shall be developed in all cases where the USCG provides the OSC; and

(4) Add a sentence requiring the OSC to inform the NRT and RRT that no plan will be developed if, in the OSC's opinion, there is no valid reason to develop a plan.

EPA concurs with the first two proposed additions and is amending § 300.43(a) accordingly. This language reinforces and emphasizes RRT involvement in Federal local contingency plans as mentioned in the NCP in §§ 300.43(b) and 300.32(c).

EPA does not concur with the other two proposed changes. The suggested change to require all OSCs either to develop a plan or else to justify to the NRT and RRT why a plan is not needed would be impractical and burdensome for OSCs. Historically, USCG OSCs have developed such plans for the coastal zone. This has been both necessary and practical. USCG OSC areas of responsibility tend to be areas with a high risk of releases and discharges (because they include major ports and harbors); but these areas are also well-defined geographically, are limited in size, and USCG OSCs are co-located within the geographic area of responsibility.

The situation for DOD and EPA OSCs is quite different. For DOD, this change would require a Federal local plan for each DOD facility (or justification for not developing one). EPA OSCs are generally not assigned responsibilities by geographic area and are centrally located in EPA Regional Offices. The inland zone is vast and not subdivided into well-defined geographic areas of OSC responsibility. These factors make the proposal both impractical and burdensome for DOD and EPA OSCs. While Federal local plans may be desirable in areas served by these OSCs, EPA believes that the current arrangement of allowing OSC discretion in determining the need for and development of such plans is preferable to the proposed requirement.

One commenter requested EPA to consider adding an appendix to the NCP specifying the format for Federal local contingency plans. The commenter believed that such an appendix would help ensure that plans are developed in a consistent manner. The commenter noted further that when the NCP was revised in 1982, such guidance was deleted because it purportedly gave inadequate attention to local needs. The commenter disagreed with that rationale and believed "that the format is broad enough to account for variations in local needs." In response to this comment, EPA is working with other Federal agencies on the NRT to develop consistent Federal contingency planning guidance. EPA intends to add a format for Federal local contingency plans consistent with such guidence in the next version of the NCP. Until then, OSCs and RRTs, may continue to use the format specified in Annex II of the 1980 NCP. State and local governments and private parties may also find this format useful in developing their contingency plans.

Subpart E—Operational Response Phases for Oil Removal

Section 300.51 Phase I—Discovery and Notification

One commenter recommended that the description of oil discharge reporting in § 300.51(b) be revised to correspond to that previously agreed upon by EPA and the Coast Guard, and that the methods for OSCs to relay reports to the NRC be clarified. The NRC is the preferred location for reporting discharges or releases, but reporting directly to the OSC or to any USCG unit should be authorized if direct reporting to the NRC is not practicable. The commenter strongly supported reporting directly to the NRC, but agreed with providing an alternative if a telephone report to the NRC was not practicable. In response to this comment, the language originally proposed for § 300.51(b) has been modified slightly. For a discussion of this issue, see the preamble discussion of § 300.63(b), which has been changed in the same manner.

Section 300.52 Phase II—Preliminary Assessment and Initiation of Action

A commenter recommended that the language in § 300.52(b)(3) relating to identification of potentially responsible parties during the preliminary assessment be revised because the existing language does not specifically require the identification of responsible parties. EPA agrees with the comment, and has revised the language to explicitly state that the OSC shall "[i]dentify potentially responsible parties."

Section 300.55—General Pattern of Response

One commenter recommended that § 300.55(b)(1), describing the general patterns of a response, be revised to include an incident where a minor discharge is discovered, but no removal action is required. This type of incident is not presently covered. EPA agrees with the revision proposed by the commenter. The existing language describes five categories of incidents, but excludes the one described by the commenter. The revision proposed will correct this deficiency. It should be noted when a case is closed for the purposes of response actions under the NCP, However, this closing in no way affects any potential liability for other civil or criminal penalties under the FWPCA that may result because of the discharge.

Subpart G—Trustees for Natural Resources

EPA received 13 comments on the proposed amendments to §§ 300.72–300.74 of the NCP. The proposed amendments included no major changes to §§ 300.72 and 300.74 of the current NCP. The proposal would have simplified and consolidated the references of CERCLA sections 111(h)(1), 111(b), and 107(f), which were included in § 300.73 of the NCP, into a single general reference to CERCLA provisions for State trustees. EPA will address all issues raised by commenters on the topic of trustees for natural resources in the promulgation of the natural resource claims procedures regulations.

One commenter suggested that the status of CERCLA section 301(c) damage assessment regulations be described in the NCP. The Department of the Interior is developing the section 301(c) regulations under deadlines imposed by the U.S. District Court in New Jersey v. Ruckelshaus, Civ. Action No. 1668 (D.N.J., December 12, 1984). The court-ordered deadline for final promulgation of "Type B" assessment regulations is April 1986; for "Type A" assessment regulations, August 1986.

In response to several commenters who urged EPA to clarify the roles and responsibilities of both EPA and the States with respect to response actions, EPA is introducing a new § 300.74(b) that specifies the appropriate actions available to trustees under CERCLA. The new paragraph reads:

(b) The trustee may, upon notification, take the following actions as appropriate:

(1) request that the lead agency issue an administrative order or pursue judicial relief against parties responsible for the release as authorized by CERCLA section 106;

(2) request that the lead agency remove or arrange for the removal or provide for remedial action with respect to any hazardous substance from a contaminated medium as authorized by CERCLA section 104;

(3) initiate actions against responsible parties under CERCLA section 107(a); or

(4) pursue a claim against the Fund for injury, destruction or loss of a natural resource as authorized by CERCLA section 111. (When this option is selected, a plan for restoration, rehabilitation or replacement or acquisition of equivalent natural resources must be adopted, pursuant to section 111(i) of CERCLA.)

The original § 300.74(b) becomes § 300.74(c). This addition provides clarification of trustee roles and responsibilities, as well as a necessary linkage to the natural resource damage claims procedures regulations. When a lead agency evaluates whether a removal action should be taken, the criteria in § 300.65(b)(2) and § 300.68(e)(2) (proposed as § 300.68(c)(2)) will be considered.

Subpart H—Use of Dispersants and Other Chemicals

On July 18, 1984, EPA promulgated a final rule (see 49 FR 29192 et seq.) revising Subpart H of the NCP, which deals with dispersants and other substances that may be used in responding to oil spills. The revisions specified testing and data requirements for inclusion of a dispersant, surface collecting agent, or biological additive on the NCP Product Schedule. Products that appear on this schedule may be authorized for use on oil discharges.

The proposed revisions to Subpart H would revise the designation of the Scientific Support Coordinator for inland areas, provide for preauthorized use of dispersants and other chemicals, and clarify the authorization and consultation process for using dispersants, surface collecting agents, burning agents, or biological additives on oil discharges. The proposal would add language to 40 CFR 300.84(a) and (b) that suggests the on-scene coordinator (OSC) consult, as practicable, with other Federal agencies before using products listed on the NCP Product Schedule.

Two commenters discussed Subpart H. One commenter indicated general satisfaction with OSC coordination of decisions whether to use a product listed on the NCP Product Schedule. In order to expedite the decisions, however, this commenter recommended that required concurrence and consultation at the State and Federal levels be pursued through designated representatives. This commenter also recommended that, when practicable, consultations be limited to Federal agencies represented on the NRT and RRTs.

EPA agrees with both of the recommendations made by this commenter. EPA believes that consultations undertaken by the OSC would proceed more efficiently if the consultations were pursued through State and Federal designated representatives and if, when practicable, they were limited to Federal agencies represented in the NRT and RRTs. However, EPA feels that these recommendations should be implemented as guidance rather than as changes to the NCP.

Another commenter addressed the Subpart H authorization of burning agents (see 40 CFR 300.48(c)), particularly the authority of the OSC to use burning agents without a State's concurrence in emergency situations endangering human life. Although this section is not affected by the proposed revisions to Subpart H, the commenter stated that in such situations a State official should approve the use of burning agents "in accordance with established procedures."

EPA disagrees with this comment. In situations where the OSC decides it is necessary to use burning agents to prevent or substantially reduce a hazard to human life, it is not realistic or practicable to require the approval of a State official. Subpart H requires the OSC to inform the appropriate State official of the use of a burning agent in an emergency situation as soon as possible, and obtain State concurrence for the continued use once the threat to human life has subsided.

V. Summary of Supporting Analyses

A. Economic Impacts of NCP Revisions

The incremental economic effect of each of the revisions is defined as the economic changes that may result from the revision compared to the current Superfund program without the revision. Some of the revisions merely affirm

current practice under the Superfund program and are being proposed as changes to the NCP for the purposes of consistency. These revisions are thus considered not to result in economic effects when compared to the current NCP.

There are three major revisions to the NCP. They are as follows:

- Eliminate planned removals and initial remedial measures (IRMs) as distinct response categories. Revise the provisions to establish one category of removal action to be accomplished in response to a threat to public health or welfare or the environment;
- Add explicit requirements for community relations programs and public comment at Fund-financed and enforcement responses;
- Explicitly require use of existing Federal public health and environmental requirements, where applicable or revelant and appropriate, in selecting the appropriate remedy.

The anticipated effects and the revisions are listed below:

1. In the July 16, 1982 NCP, §§ 300.65 and 300.67 authorize two categories of removal action: immediate and planned. Section 300.68 authorizes IRMs to be taken as a part of a remedial action. The criteria for taking IRMs are similar to those for planned removals, except that IRMs must be cost-effective. Both planned removals and IRMs require State cost-sharing. The revisions eliminate planned removal and IRM categories and expand the category of removals and modify the standard for taking action.

The anticipated effects of this revision are as follows:

State costs will be reduced as a result of the elimination of State cost-sharing for planned removals or IRMs, with a corresponding increase in demand on the Fund. With 38 projected planned removals and 32 projected IRMs expected to be reclassified as removals over a 6-year period, cost savings to States will be about $16 million (undiscounted FY86 dollars). Increased demand of $16 million on the Fund will have a minimal impact in reducing funds available for remedial response(s). On the other hand, these changes will help reduce health and environmental risks of exposure to hazardous substances and possibly reduce the longer-term costs because of quicker response.

2. In the July 16, 1982 NCP, § 300.61(c)(3) states that, to the extent practicable, response personnel should be sensitive to local community concerns in accordance with applicable guidance.

The revisions define major Superfund community relations program requirements and require a public comment period on draft feasibility studies.

The anticipated effects are minor. The additional requirement may increase response costs slightly, particularly administrative costs to EPA and local governments, with a corresponding increase in costs to responsible parties. Greater public involvement may expedite the response process in some cases, thereby offsetting any costs caused by delays.

3. In the July 16, 1982 NCP, use of existing EPA or other Federal standards is not explicitly discussed.

The revisions explicitly require the use of existing Federal public health and environmental requirements in selecting the appropriate remedy, where such requirements are applicable or relevant and appropriate, with limited exceptions. Risk assessments are required where no requirements are applicable or relevant. Under current operating procedures, EPA is generally attaining such requirements because it believes they generally define adequate protection of public health and the environment. Therefore, requiring attainment of existing federal public health and environmental requirements will not cause major cost increases.

The magnitude of these effects can be estimated only as site-specific information becomes available.

B. Classification Under E.O. 12291

Regulations must be classified as major or nonmajor to satisfy the rulemaking protocol established by Executive Order 12291. E.O. 12291 establishes the following criteria for a regulation to qualify as a major rule:

1. An annual effect on the economy of $100 million or more;

2. A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies or geographic regions; or

3. Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The NCP revisions are a nonmajor rule because they would have no significant incremental economic effects. In accordance with Executive Order 12291, no regulatory impact analysis was required.

This regulation was submitted to OMB for review under Executive Order 12291.

C. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, Agencies must evaluate the effects of a regulation on "small entities." That Act recognizes three types of such entities:

1. Small businesses (specified by Small Business Administration regulations);

2. Small organizations (independently owned, nondominant in their field, nonprofit); and

3. Small governmental jurisdictions (serving communities with fewer than 5,000 people).

If the rule is likely to have a "significant impact on a substantial number of small entities," the Act requires that a Regulatory Flexibility Analysis be performed. EPA certifies that the NCP revisions will not have a significant impact on a substantial number of small entities. To the extent that impacts on small entities occur, they are likely to be positive.

Small businesses and small organizations will generally be directly affected only by the changes that address enforcement actions. These changes in the NCP generally codify existing enforcement policies (e.g., proposed changes to require enforcement responses to comply with applicable or relevant and appropriate Federally enforceable environmental requirements); and, therefore, modifying the NCP will not impose any additional burden on small entities subject to enforcement actions. Although requiring community relations plans (CRPs) at most enforcement responses will increase responsible party costs, these costs are small (averaging $6,000) relative to response costs and may save costs by expediting the response process. Moreover, it is a matter of EPA discretion whether to proceed with enforcement actions against small entities that may be significantly affected by such actions. Therefore, there are no necessary adverse impacts on small businesses and organizations directly associated with the NCP.

The changes may affect some small governmental jurisdictions, but most of the effects are likely to be positive. For example, the change to mandate CRPs may reduce the burden on small government jurisdictions by providing an efficient vehicle for the local government involvement.

D. Paperwork Reduction Act

Today's rule does not impose any regulatory burden on parties other than Federal agencies, including any

reporting or information collection requirements.

VI. Lists of Subjects in 40 CFR Part 300

Air pollution control, chemicals, hazardous materials, hazardous substances, intergovernmental relations, natural resources, occupational safety and health, oil pollution, reporting and recordkeeping requirements, Superfund, waste treatment and disposal, water pollution control, water supply.

Dated: October 10, 1985.

Lee M. Thomas,

Administrator.

United States Environmental Protection Agency

Office of Solid Waste and Emergency Response

Washington, D.C. 20460

October 2, 1985.

Memorandum

Subject: CERCLA Compliance With Other Environmental Statutes.

From: J. Winston Porter, Assistant Administrator.

To: Regional Administrator, Regions I–X,

This memorandum sets forth the Environmental Protection Agency (EPA) policy on the applicability of the standards, criteria, advisories, and guidance of other State and Federal environmental and public health statutes to actions taken pursuant to sections 104 and 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). This policy addresses considerations for on-site and off-site actions taken under CERCLA.

I. Discussion

The National Oil and Hazardous Substances Pollution Contingency Plan (NCP) establishes the process for determining appropriate removal and/or remedial actions at Superfund sites. In the course of this process, EPA will give primary consideration to the selection of those response actions that are effective in preventing or, where prevention is not practicable, minimizing the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health, welfare, or the environment. As a general rule, this can be accomplished by pursuing remedies that attain or exceed the requirements of applicable or relevant and appropriate Federal public health or environmental laws. However, because of unique circumstances at particular sites, there may be alternatives that do not meet the standards of other laws, but that still provide protection of public health and welfare, and the environment.

Although response actions that prevent hazardous substances from migrating into the environment are seen as the most effective under CERCLA, actions which minimize migration must also be considered since CERCLA primarily addresses inadequate *past* disposal practices and resulting unique site conditions. At certain sites, it may be technically impractical, environmentally unacceptable, or excessively costly to implement a response action that prevents migration or restores the site to its original, uncontaminated condition.

II. Policy

Section 104 of CERCLA requires that off-site remedial actions, storage, destruction treatment or secure disposition, be in compliance with subtitle C of the Resource Conservation and Recovery Act (RCRA). CERCLA is silent, however, concerning the requirements of other laws with regard to all other response actions taken pursuant to sections 104 and 106.

As a general rule, the Agency's policy is to attain or exceed applicable or relevant and appropriate Federal environmental and public health requirements in CERCLA response actions unless one of the specifically enumerated situations is present. Where such a situation is present and a requirement is not followed, the Agency must document and explain the reasons in the decision documents. Other Federal criteria, advisories, guidance, and State standards also will be considered and may be used in developing remedial alternatives, with adjustments for site specific circumstances. If EPA does not use, or uses and adjusts any pertinent *standards* in this category, EPA will fully document the reasons why in the decision documents.

A. On-site Response Actions

(1) For removal actions, EPA's policy is to pursue actions that will meet applicable or relevant and appropriate requirements of other Federal environmental and public health laws to the maximum extent practicable, considering the exigencies of the situation.

(2) For remedial actions, EPA's policy is to pursue remedies that attain or exceed applicable or relevant and appropriate requirements of other Federal public health and environmental laws, unless the specific circumstances identified below exist.

CERCLA procedural and administrative requirements will be modified to provide safeguards similar to those provided under other laws. Application for and receipt of permits is not required for on-site response actions taken under the Fund-financed or enforcement authorities of CERCLA.

B. Off-Site Response Actions

CERCLA removal and remedial activities that involve the removal of hazardous substances from a CERCLA site to off-site facilities for proper storage, treatment or disposal must be in compliance with all applicable or relevant and appropriate requirements of Federal environmental and public health laws.

Off-site facilities that are used for storage, treatment, or disposal of Superfund wastes must have all appropriate permits or authorizations.

If the facility or process that is being considered for receipt of the Superfund wastes has not been permitted or authorized, the State or responsible party will be required to obtain all appropriate permits. Furthermore, as stated in the Agency's off-site policy memorandum, "Procedures for Planning and Implementing Off-Site Response Actions," May 6, 1985, barring an exeption in that memorandum, no CERCLA hazardous substances shall be taken off-site to a RCRA facility if the receiving Region's Administrator determines that the facility has significant RCRA violations or other environmental conditions that affect the satisfactory operation of the facility. A State's responsibility for obtaining any appropriate Federal, State or local permits (e.g., RCRA, TSCA, NPDES, UIC, Clean Air, etc.) will be specified in a contract or cooperative agreement with the State as part of its assurances required under section 104(c) of CERCLA.

III. Other Laws or Guidance That May Be Used To Determine the Appropriate Extent of Response Actions

Federal and State environmental and public health requirements, criteria, guidance and advisories fall into two categories:

- Federal requirements that are potetially applicable or relevant and appropriate,
- Other Federal criteria, advisories, guidance, and State standards to be considered.

An *initial* list of both categories is attached.

A. Applicable or Relevant and Appropriate Federal Requirements

"Applicable" requirements are those Federal requirements that would be legally applicable, whether directly, or as incorporated by a federally authorized State program, if the response actions were not undertaken pursuant to CERCLA section 104 or 106.

"Relevant and Appropriate" requirements are those Federal requirements that, while not "applicable," are designed to apply to problems sufficiently similar to those encountered at CERCLA sites that their application is appropriate. Requirements may be relevant and appropriate if they would be "applicable" but for jurisdictional restrictions associated with the requirement.

For example, the RCRA 40 CFR Part 264 Subpart F Ground-Water Protection Standards would be applicable to the management or cleanup of hazardous wastes in ground water from hazardous waste management facilities if such actions were not taken pursuant to CERCLA section 104 or 106. Yet RCRA Subtitle C regulations, while not applicable to hazardous wastes disposed of prior to the November 19, 1980, effective date of those regulations, could be relevant and appropriate to CERCLA response actions regardless of when the wastes were disposed of or managed.

B. Other Federal Criteria, Advisories, Guidance and State Standards To Be Considered

This category includes other standards, criteria, advisories and guidance that may be useful in developing Superfund remedies. These criteria, advisories and guidance were developed by EPA, other Federal agencies and the States. The concepts and data underlying these requirements may be used at Superfund sites in an appropriate way.

IV. Implementation

A. Removal Actions

For both on- and off-site Fund-financed removal actions, the lead agency should consult with the Regional Response Team within the framework of the Regional Contingency Plan to determine the most effective action.

(1) On-site

For on-site removal actions, the lead agency shall, as appropriate, attempt to *attain or exceed* all Federal applicable or relevant and appropriate public health and environmental requirements. The lead agency also shall, as appropriate, *consider* other Federal criteria, guidance, and advisories as well as State standards in formulating the removal action. However, because removal actions often involve situations requiring expeditious action to protect public health, welfare, or the environment, it may not always be feasible to fully meet them. In those circumstances where they cannot be attained, the decision documents, OSC reports, or other documents should specify the reasons.

(2) Off-site

Off-site facilities that are used for storage, treatment, or disposal of Superfund wastes must have all appropriate permits or authorizations and, barring an exception in the off-site policy, no hazardous substance shall be taken off-site to an RCRA facility if the Region determines that the facility has significant RCRA violations or other environmental conditions that affect the satisfactory operation of the facility.

B. Remedial Actions

1. Presentation and Analysis of Alternatives

To the extent that it is both possible and appropriate, at least one remedial alternative shall be developed as part of the feasibility study (FS) in each of the following categories:

(a) Alternatives for treatment or disposal in an off-site facility, as appropriate; [1]

(b) Alternatives that *attain* applicable or relevant and appropriate Federal public health and environmental requirements;

(c) As appropriate, alternatives that *exceed* applicable or relevant and appropriate public health and environmental requirements;[2]

(d) As appropriate, alternatives that do not attain applicable or relevant and appropriate public health and environmental requirements but will reduce the likelihood of present or future threat from the hazardous substances and that provide significant protection to public health and welfare and environment. This must include an alternative that closely approaches the level of protection provided by the applicable or relevant and appropriate requirements;

(e) A no action alternative.

2. Selection of Remedy

The decisionmaker will consider all of the alternatives arrayed in the feasibility study and will give primary consideration to remedies that attain or exceed applicable or relevant and appropriate Federal public health and environmental requirements. Where the selected remedy involves an EPA standard, criterion, or advisory, the decisionmaker will ensure appropriate coordination with affected EPA programs.

In appropriate cases, the decisionmaker may select a remedial action that includes both on- and off-site components.

The decisionmaker may select an alternative that does not attain applicable or relevant requirements in one of the five following circumstances:

(a) *Interim Remedy*—Where the selected alternative is not the final remedy and will become part of a more comprehensive remedy, the lead agency may select an interim remedy;

(b) *Fund-Balancing*—For Fund-financed responses only, the need for protection of public health, welfare and the environment at the facility under consideration for all of the alternatives that attain or exceed applicable or relevant and appropriate Federal requirements is, considering the amount of money available in the Fund, outweighed by the need for action at other sites that may present a threat to public health or welfare or the environment. In the event of Fund balancing, the lead agency shall select the alternative which most closely approaches the level of protection provided by applicable or relevant and appropriate Federal requirements, considering the specific Fund-balanced sum of money available for the immediate facility. Fund-balancing is not a consideration in determining the appropriate extent of remedy when the response will be performed by a potentially responsible party;

(c) *Technical Impracticality*—Where no alternative that attains or exceeds applicable or relevant and appropriate Federal public health and environmental requirements is technically practical to implement, the lead agency shall select the alternative that most closely approaches the level of protection provided by the applicable or relevant and appropriate requirements, and which is reasonable to implement from an engineering perspective;

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[1] These alternatives must be consistent with EPA's May 6, 1985 off-site policy, "Procedures for Planning and Implementing Off-Site Response Actions." In some cases, off-site disposal or treatment may not be feasible and this alternative may be eliminated during initial screening of alternatives. The decision documents should reflect this screening.

[2] For instance, the Agency might choose incineration as an alternative that exceeds what would be required by applicable standards because it is a more permanent and reliable solution than RCRA closure standards for land disposal facilities.

(d) *Unacceptable Environmental Impacts*—Where all the alternatives that attain or exceed Federal public health and environmental requirements, if implemented, will result in significant adverse environmental impacts, the lead agency shall select the alternative that most closely approaches the level of protection provided by applicable or relevant and appropriate requirements, without resulting in significant adverse environmental impacts; or

(e) *Overriding Public Interest Related to Enforcement*—Where the remedy is to be carried out pursuant to CERCLA section 106, the Fund is unavailable, there is a strong public interest in expedited cleanup, and the litigation probably would not result in the desired remedy, the lead agency will select the alternative that most closely approaches applicable or relevant and appropriate Federal public health and environmental statutes in light of the need to invoke the exception.

Where one of these situations is present, the decisionmaker *may* select an alternative which does not attain or exceed applicable or relevant and appropriate Federal public health or environmental requirements, yet still provides protection of the public health and welfare and the environment. The basis for not meeting the requirements must be fully documented and explained in the appropriate decision documents. The Agency anticipates that most final CERCLA remedial actions *will* attain or exceed applicable or relevant and appropriate public health or environmental requirements.

Other Federal criteria, advisories, guidance, and State standards also will be considered and may be used in developing remedial alternatives, with appropriate adjustments for site specific circumstances. If EPA does not use, or uses and adjusts any *pertinent standards* in this category, EPA will fully document the reasons why in the decision documents.

For Fund-financed actions, where State standards are part of the cost-effective remedy, the Fund will pay to attain those standards. Where the cost-effective remedy does not include those State standards, the State may pay the difference to attain them.

3. Administrative and Procedural Aspects

The following modifications will be made to the Superfund community relations program to ensure that it provides a similar level of public involvement to that provided by the permitting programs of other environmental laws:

- A fact sheet should be included with the public notice and feasibility study which is provided to the public 2 weeks before the 3-week public comment period. The fact sheet will clearly summarize the feasibility study response alternatives and other issues, including which alternatives attain or exceed Federal public health and environmental requirements. For those alternatives that do not attain applicable or relevant and appropriate requirements of other public health and environmental laws, the fact sheet shall identify how they do not attain the requirements and explain how they nonetheless meet the goals of CERCLA. The public notice should include a timetable in which a decision will be reached, any tentative determinations which the Agency has made, the location where relevant documents can be obtained, identification of community involvement opportunities, the name of an Agency contact, and other appropriate information.
- A public notice and updated fact sheet should be prepared upon (1) Agency selection of the final response action and (2) completion of the final engineering design. Prior to selecting the final engineering design, the Agency may hold a public meeting to inform the public of the design alternatives and to solicit comments.
- If a remedy is identified that is materially different from those proposed during the feasibility study public comment period, a new 3-week public comment period may be required prior to amending the Record of Decision, taking into consideration the features of the alternatives addressed in the public comment period.

The CERCLA enforcement community relations program will also be modified to provide for an enhanced public participation program for both consent decrees and administrative orders. This program will be substantially equivalent to the revised program for Fund-financed actions. Furthermore, consent decrees and administrative orders will incorporate administrative requirements (i.e. recordkeeping and monitoring) similar to those mandated by other environmental programs.

V. Applicability of Policy

This policy applies to two situations:

- A site-specific FS has not yet been initiated; the FS must fully comply with this policy.
- The FS has been initiated, but the remedy has not yet been selected; the requirements of this policy shall be incorporated into the FS and Record of Decision (ROD) as practicable.

This policy does not apply to RODs signed before February 12, 1985, the date of proposal of this policy.

If you have any questions or comments, please contact James Lounsbury, Director, Policy Analysis Staff (202 382–2182) or Stephen M. Smith of his staff (202 382–2200).

Potentially Applicable or Relevant and Appropriate Requirements

1. EPA's Office of Solid Waste administers, inter alia, the Resource Conservation and Recovery Act of 1976, as amended (Pub. L. 94–580, 90 Stat 95, 42 U.S.C. 6901 et seq.). Potentially applicable or relevant requirements pursuant to that Act are:

a. Open Dump Criteria—Pursuant to RCRA Subtitle D criteria for classification of solid waste disposal facilities (40 CFR Part 257).

Note.—Only relevant to nonhazardous wastes.

b. In most situations Superfund wastes will be handled in accordance with RCRA Subtitle C requirements governing standards for owners and operators of hazardous waste treatment, storage, and disposal facilities: 40 CFR Part 264, for permitted facilities, and 40 CFR Part 265, for interim status facilities.

- Ground Water Protection (40 CFR 264.90–264.109).
- Ground Water Monitoring (40 CFR 265.90–265.94).
- Closure and Post Closure (40 CFR 264.110–264.120, 265.110–265.112).
- Containers (40 CFR 264.170–264.178, 265.170–265.177).
- Tanks (40 CFR 264.190–264.200, 265.190–265.199).
- Surface Impoundments (40 CFR 264.220–264.249, 265.220–265.230).
- Waste Piles (40 CFR 264.250–264.269, 265.250–265.258).
- Land Treatment (40 CFR 264.270–264.299, 265.270–265.282).
- Landfills (40 CFR 264.300–264.339, 265.300–265.316).
- Incinerators (40 CFR 264.340–264.999, 265.340–265.369).
- Dioxin-containing Wastes (50 FR 1978). Includes the final rule for the listing of dioxin containing waste.

2. EPA's Office of Water administers several potentially applicable or relevant and appropriate statutes and regulations issued thereunder:

a. Section 14.2 of the Public Health Service Act as amended by the Safe Drinking Water Act as amended (Pub. L. 93–523, 88 Stat. 1660, 42 U.S.C. 300f *et. seq.*)

• Maximum Contaminant Levels (for *all* sources of drinking water exposure). (40 CFR 141.11–141.16).

• Underground Injection Control Regulations. (40 CFR Parts 144, 145, 146, and 147).

b. Clean Water Act as amended (Pub. L. 92–500, 86 Stat. 816, 33 U.S.C. 1251 *et. seq.*)

• Requirements established pursuant to sections 301, 302, 303 (including State water quality standards), 306, 307, (including Federal pretreatment requirements for discharge into a publicly owned treatment works), and 403 of the Clean Water Act. (40 CFR Parts 131, 400–469).

c. Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1401).

• Incineration at sea requirements. (40 CFR Parts 220–225, 227, 228. See also 40 CFR 125.120–125.124).

3. EPA's Office of Pesticides and Toxic Substances

Toxic Substances Control Act (15 U.S.C. 2601).

• PCB Requirements Generally: 40 CFR Part 761; Manufacturing Processing, Distribution in Commerce, and Use of PCBs and PCB Items (40 CFR 761.20–761.30); Markings of PCBs and PCB Items (40 CFR 761.40–761.45); Storage and Disposal (40 CFR 761.60–761.79). Records and Reports (40 CFR 761.180–761.185). See also 40 CFR 129.105, 750.

• Disposal of Waste Material Containing TCDD. (40 CFR Parts 775.180–775.197).

4. EPA's Office of External Affairs

• Section 404(b)(1) Guidelines for Specification of Disposal Sites for Dredged or Fill Material (40 CFR Part 230).

• Procedures for denial or Restriction of Disposal Sites for Dredged Material (§ 404(c) Procedures. 40 CFR Part 231).

5. EPA's Office of Air and Radiation administers several potentially applicable or relevant and appropriate statutes and regulations issued thereunder:

a. The Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 2022).

• Uranium mill tailing rules—Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings (40 CFR Part 192).

b. Clean Air Act (42 U.S.C. 7401).

• National Ambient Air Quality Standards for total suspended particulates (40 CFR Parts 50.6–50.7).

• National Ambient Air Quality Standards for ozone (40 CFR 50.9).

• Standards for Protection Against Radiation—high and low level radioactive waste rule. (10 CFR Part 20). See also 10 CFR Parts 10, 40, 60, 61, 72, 960, 961.

• National Emission Standard for Hazardous Air Pollutants for Asbestos, (40 CFR 61.140–61.156). See also 40 CFR 427.110–427.116, 763.

• National Emission Standard for Hazardous Air Pollutants for Radionuclides (40 CFR Part 61, 10 CFR 20.101–20.108).

6. Other Federal Requirements.

a. OSHA requirements for workers engaged in response activities are codified under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651). The relevant regulatory requirements are included under:

• Occupational Safety and Health Standards (General Industry Standards) (29 CFR Part 1910).

• The Safety and Health Standards for Federal Service Contracts (29 CFR Part 1926).

• The Shipyard and Longshore Standards (29 CFR Parts 1915, 1918).

• Recordkeeping, reporting, and related regulations (29 CFR Part 1904).

b. Historic Sites, Buildings, and Antiquities Act (16 U.S.C. 461).

c. National Historic Preservation Act, 16 U.S.C. 470. Compliance with NEPA required pursuant to 7 CFR Part 650. Protection of Archaeological Resources: Uniform Regulations—Department of Defense (32 CFR Part 229, 229.4), Department of the Interior (43 CFR Part 7, 7.4).

d. D.O.T. Rules for the Transportation of Hazardous Materials, 49 CFR Parts 107, 171.1–171.500. Regulation of activities in or affecting waters of the United States pursuant to 33 CFR Parts 320–329. The following requirements are also triggered by Fund-financed actions:

• Endangered Species Act of 1973, 16 U.S.C. 1531. (Generally, 50 CFR Parts 81, 225, 402). Wild and Scenic Rivers Act, 16 U.S.C. 1271.

• Fish and Wildlife Coordination Act, 16 U.S.C. 661 note.

• Fish and Wildlife Improvement Act of 1978, and Fish and Wildlife Act of 1956, 16 U.S.C. 742a note.

• Fish and Wildlife Conservation Act of 1980, 16 U.S.C. 2901. (Generally, 50 CFR Part 83).

• Coastal Zone Management Act of 1972, 16 U.S.C. 1451. (Generally, 15 CFR Part 930 and 15 CFR 923.45 for Air and Water Pollution Control Requirements).

Other Federal Criteria, Advisories, Guidance, and State Standards To Be Considered

1. Federal Criteria, Advisories and Procedures

• Health Effects Assessments (HEAs).

• Recommended Maximum Concentration Limits (RMCLs).

• Federal Water Quality Criteria (1976, 1980, 1984). Note: Federal Water Quality Criteria are not legally enforceable. State water quality standards are legally enforceable, and are developed using appropriate aspects of Federal Water Quality Criteria. In many cases, State water quality standards do not include specific numerical limitations on a large number of priority pollutants. When neither State standards nor MCLs exist for a given pollutant, Federal Water Quality Criteria are pertinent and therefore are to be considered.

• Pesticide registrations.

• Pesticide and food additive tolerances and action levels. Note: Germane portions of tolerances and action levels may be pertinent and therefore are to be considered in certain situations.

• Waste load allocation procedures, EPA Office of Water.

• Federal sole source aquifer requirements.

• Public health basis for the decision to list pollutants as hazardous under section 112 of the Clean Air Act.

• EPA's Ground-water Protection Strategy.

• New Source Performance Standards for Storage Vessels for Petroleum Liquids.

• TSCA health data.

• Pesticide registration data.

• TSCA chemical advisories (2 or 3 issued to date).

• Advisories issued by FWS and NWFS under the Fish and Wildlife Coordination Act.

• Executive Orders related to Floodplains (11988) and Wetlands (11990) as implemented by EPA's August 6, 1985, Policy on Floodplains and Wetlands Assessments for CERCLA Actions.

• TSCA Compliance Program Policy.

• OSHA health and safety standards that may be used to protect public health (non-workplace).

• Health Advisories, EPA Office of Water.

2. State Standards

• State Requirements on Disposal and Transport of Radioactive wastes.

• State Approval of Water Supply System Additions or Developments.

• State Ground Water Withdrawal Approvals.

• Requirements of authorized (Subtitle C of RCRA) State hazardous waste programs.

• State Implementation Plans and Delegated Programs Under Clean Air Act.
• All other State requirements, not delegated through EPA authority.
• Approved State NPDES programs under the Clean Water Act.
• Approved State UIC programs under the Safe Drinking Water Act.
Note: Many other State and local requirements could be pertinent. Forthcoming guidance will include a more comprehensive list.

3. USEPA RCRA Guidance Documents

• Draft Alternate Concentration Limits (ACL) Guidance.

A. EPA's RCRA Design Guidelines

1. Surface Impoundments, Liners Systems, Final Cover and Freeboard Control.
2. Waste Pile Design—Liner Systems.
3. Land Treatment Units.
4. Landfill Design—Liner Systems and Final Cover.

B. Permitting Guidance Manuals

1. Permit Applicant's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities.
2. Permit Writer's Guidance Manual for Hazardous Waste Land Treatment, Storage, and Disposal Facilities.
3. Permit Writer's Guidance Manual for Subpart F.
4. Permit Applicant's Guidance Manual for the General Facility Standards.
5. Waste Analysis Plan Guidance Manual.
6. Permit Writer's Guidance Manual for Hazardous Waste Tanks.
7. Model Permit Application for Existing Incinerators.
8. Guidance Manual for Evaluating Permit Applications for the Operation of Hazardous Waste Incinerator Units.
9. A guide for Preparing RCRA Permit Applications for Existing Storage Facilities.
10. Guidance Manual on Closure and Post-Closure Interim Status Standards.

C. Technical Resource Documents (TRDs)

(1) Evaluating Cover Systems for Solid and Hazardous Waste.
(2) Hydrologic Simulation of Solid Waste Disposal Sites.
(3) Landfill and Surface Impoundment Performance Evaluation.
(4) Lining of Water Impoundment and Disposal Facilities.
(5) Management of Hazardous Waste Leachate.
(6) Guide to the Disposal of Chemically Stabilized and Solidified Waste.
(7) Closure of Hazardous Waste Surface Impoundments.
(8) Hazardous Waste Land Treatment.
(9) Soil Properties, Classification, and Hydraulic Conductivity Testing.

D. Test Methods for Evaluating Solid Waste

(1) Solid Waste Leaching Procedure Manual.
(2) Methods for the Prediction of Leachate Plume Migration and Mixing.
(3) Hydrologic Evaluation of Landfill Performance (HELP) Model Hydrologic Simulation on Solid Waste Disposal Sites.
(4) Procedures for Modeling Flow Through Clay Liners to Determine Required Liner Thickness.
(5) Test Methods for Evaluating Solid Wastes.
(6) A Method for Determining the Compatibility of Hazardous Wastes.
(7) Guidance Manual on Hazardous Waste Compatibility.

4. USEPA Office of Water Guidance Documents

A. Pretreatment Guidance Documents

(1) 304(g) Guidance Document Revised Pretreatment Guidelines (3 Volumes)

B. Water Quality Guidance Documents

(1) Ecological Evaluation of Proposed Discharge of Dredged Material into Ocean Waters (1977)
(2) Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses (1983)
(3) Water-Related Environmental Fate of 129 Priority Pollutants (1979)
(4) Water Quality Standards Handbook (1983)
(5) Technical Support Document for Water Quality-based Toxics Control.

C. NPDES Guidance Documents

(1) NPDES Best Management Practices Guidance Manual (June 1981)
(2) Case studies on toxicity reduction evaluation (May 1983).

D. Ground Water/UIC Guidance Document

(1) Designation of a USDW
(2) Elements of Aquifer Identification
(3) Interim guidance for public participation
(4) Definition of major facilities
(5) Corrective action requirements
(6) Requirements applicable to wells injecting into, through or above an aquifer which has been exempted pursuant to §146.104(b)(4).
(7) Guidance for UIC implementation on Indian lands.

5. USEPA Manuals from the Office of Research and Development

(1) EW 846 methods—laboratory analytic methods.
(2) Lab protocols developed pursuant to Clean Water Act § 304(h).

For the reasons set forth in the preamble, Part 300, Chapter 1 of Title 40, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 300 continues to read as follows:

Authority: Sec. 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237 (August 20, 1981); E.O. 11735, 38 FR 21243 (August 1973).

2. Subparts A through G and §300.84 of Subpart H of Part 300 are revised to read as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

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Subpart F—Hazardous Substance Response

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Subpart A—Introduction

§ 300.1 Purpose and objectives.

The purpose of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP or Plan) is to effectuate the response powers and responsibilities created by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the authorities established by section 311 of the Clean Water Act (CWA), as amended.

§ 300.2 Authority.

The Plan is required by section 105 of CERCLA, 42 U.S.C. 9605, and by section 311(c)(2) of the CWA, as amended, 33 U.S.C. 1321(c)(2). In Executive Order 12316 (46 FR 42237), the President delegated to the Environmental Protection Agency the responsibility for the amendment of the NCP and all of the other functions vested in the President by section 105 of CERCLA. Amendments to the NCP shall be coordinated for notice and comment prior to publication with members of the National Response Team, including the Federal Emergency Management Agency and the Nuclear Regulatory Commission, in order to avoid inconsistent or duplicative requirements in the emergency planning responsibilities of those agencies.

§ 300.3 Scope.

(a) The Plan applies to all Federal agencies and this plan is in effect for:

(1) Discharges or substantial threats of discharges of oil to or upon the navigable waters of the United States and adjoining shorelines, for the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act). (See sections 311(b)(1) and 502(7) of the CWA.)

(2) Releases or substantial threats of releases of hazardous substances into the environment, and releases or substantial threats of releases of pollutants or contaminants which may present an imminent and substantial danger to public health or welfare.

(b) The Plan provides for efficient, coordinated, and effective response to discharges of oil and releases of hazardous substances, pollutants, and contaminants in accordance with the authorities of CERCLA and the CWA. It provides for:

(1) Division and specification of responsibilities among the Federal, State, and local governments in response actions, and appropriate roles for private entities.

(2) The national response organization that may be brought to bear in response actions, including description of the organization, response personnel, and resources that are available to respond.

(3) The establishment of requirements for Federal regional and Federal local contingency plans, and encouragement of pre-planning for response by other levels of government.

(4) Procedures for undertaking removal operations pursuant to section 311 of the CWA.

(5) Procedures for undertaking response operations pursuant to CERCLA.

(6) Designation of trustees for natural resources for purposes of CERCLA.

(7) National policies and procedures for the use of dispersants and other chemicals in removal and response actions.

(c) In implementing this Plan, consideration shall be given to the Joint Canada/U.S. Contingency Plan; the U.S./Mexico Joint Contingency Plan; and international assistance plans and agreements, security regulations and responsibilities based on international agreements, Federal statutes, and executive orders. Actions taken pursuant to this Plan shall conform to the provisions of international joint contingency plans, where they are applicable. The Department of State should be consulted prior to taking any action which may affect its activities.

§ 300.4 Application.

The Plan is applicable to response taken pursuant to the authorities under CERCLA and section 311 of the CWA.

§ 300.5 Abbreviations.

(a) Department and Agency Title Abbreviations:

DOC—Department of Commerce
DOD—Department of Defense
DOE—Department of Energy
DOI—Department of the Interior
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Department of Transportation
EPA—Environmental Protection Agency
FEMA—Federal Emergency Management Agency
HHS—Department of Health and Human Services
NIOSH—National Institute for Occupational Safety and Health
NOAA—National Oceanic and Atmospheric Administration
USCG—U.S. Coast Guard
USDA—U.S. Department of Agriculture

(b) Operational Title Abbreviations:

ERT—Environmental Response Team
FCO—Federal Coordinating Officer
NRC—National Response Center
NRT—National Response Team
NSF—National Strike Force
OSC—On-Scene Coordinator
PAAT—Public Affairs Assist Team
PIAT—Public Information Assist Team
RPM—Remedial Project Manager
RRC—Regional Response Center
RRT—Regional Response Team
SSC—Scientific Support Coordinator

§ 300.6 Definitions.

Terms not defined in this section have the meaning given by CERCLA or the CWA.

Activation means notification by telephone or other expeditious manner or, when required, the assembly of some or all appropriate members of the RRT or NRT.

Applicable requirements means those Federal requirements that would be legally applicable, whether directly, or as incorporated by a Federally authorized State program, if the response actions were not undertaken pursuant to CERCLA section 104 or 106.

CERCLA or "Superfund" is the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

Claim, as defined by section 101(4) of CERCLA, means a demand in writing for a sum certain.

Coastal waters, for the purposes of classifying the size of discharges, means the waters of the coastal zone except for the Great Lakes and specified ports and harbors on inland rivers.

Coastal zone, as defined for the purpose of this Plan, means all U.S. waters subject to the tide, U.S. waters of the Great Lakes, specified ports and harbors on the inland rivers, waters of the contiguous zone, other waters of the high seas subject to this Plan, and the land surface or land substrata, ground waters, and ambient air proximal to those waters. The term coastal zone delineates an area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreements and identified in Federal regional contingency plans.

Contiguous zone means the zone of the high seas, established by the United States under Article 24 of the Convention on the Territorial Sea and Contiguous Zone, which is contiguous to the territorial sea and which extends nine miles seaward from the outer limit of the territorial sea.

Discharge, as defined by section 311(a)(2) the of CWA, includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping of oil. For purposes of this Plan, discharge shall also mean substantial threat of discharge.

Drinking water supply, as defined by section 101(7) of CERCLA, means any raw or finished water source that is or may be used by a public water system (as defined in the Safe Drinking Water Act) or as drinking water by one or more individuals.

Environment, as defined by section 101(8) of CERCLA, means the navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and any other surface water, ground water, drinking water supply, land surface and subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

Facility, as defined by section 101(9) of CERCLA, means any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

Feasibility study is a process undertaken by the lead agency (or responsible party if the responsible party will be developing a cleanup proposal) for developing, evaluating, and selecting remedial actions which emphasizes data analysis. The feasibility study is generally performed concurrently and in an interdependent fashion with the remedial investigation. In certain situations, the lead agency may require potentially responsible parties to conclude initial phases of the remedial investigation prior to initiation of the feasibility study. The feasibility study process uses data gathered during the remedial investigation. These data are used to define the objectives of the response action and to broadly develop remedial action alternatives. Next, an initial screening of these alternatives is required to reduce the number of alternatives to a workable number. Finally, the feasibility study involves a detailed analysis of a limited number of alternatives which remain after the initial screening stage. The factors that are considered in screening and analyzing the alternatives are public health, economics, engineering practicality, environmental impacts, and institutional issues.

Federally permitted release, as defined by section 101(10) of CERCLA, means discharges in compliance with a permit under section 402 of the Federal Water Pollution Control Act; discharges resulting from circumstances identified and reviewed and made part of the public record with respect to a permit issued or modified under section 402 of the Federal Water Pollution Control Act and subject to a condition of such permit; continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of the Federal Water Pollution Control Act, which are caused by events occurring within the scope of relevant operating or treatment systems; discharges in compliance with a legally enforceable permit under section 404 of the Federal Water Pollution Control Act; releases in compliance with a legally enforceable final permit issued pursuant to sections 3005 (a) through (d) of the Solid Waste Disposal Act from a hazardous waste treatment, storage, or disposal facility when such permit specifically identifies the hazardous substances and makes such substances subject to a standard of practice, control procedure or bioassay limitation or condition, or other control on the hazardous substances in such releases; any release in compliance with a legally enforceable permit issued under section 102 or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972; any injection of fluids authorized under Federal underground injection control programs or State programs submitted for Federal approval (and not disapproved by the Administrator of EPA) pursuant to Part C of the Safe Drinking Water Act; any emission into the air subject to a permit or control regulation under section 111, section 112, Title 1 Part C, Title 1 Part D, or State implementation plans submitted in accordance with section 110 of the Clean Air Act (and not disapproved by the Administrator of EPA), including any schedule or waiver granted, promulgated, or approved under these sections; any injection of fluids or other materials authorized under applicable State law for the purpose of stimulating or treating wells for the production of crude oil, natural gas, or water, for the purpose of secondary, tertiary, or other enhanced recovery of crude oil or natural gas, or which are brought to the surface in conjunction with the production of crude oil or natural gas and which are reinjected; the introduction of any pollutant into a publicly owned treatment works when such pollutant is specified in and in compliance with applicable pretreatment standards of section 307(b) or (c) of the CWA and enforceable requirements in a pretreatment program submitted by a State or municipality for Federal approval under section 402 of such Act; and any release of source, special nuclear, or by-product material, as those terms are defined in the Atomic Energy Act of 1954, in compliance with a legally enforceable license, permit, regulation, or order issued pursuant to the Atomic Energy Act of 1954.

First Federal official means the first Federal representative of a participating agency of the National Response Team to arrive at the scene of a discharge or a release. This official coordinates activities under this Plan and may initiate, in consultation with the OSC, any necessary actions until the arrival of the predesignated OSC. A State with primary jurisdiction over a site covered by a cooperative agreement will act in the stead of the First Federal official for any incident at the site.

Fund or Trust Fund means the Hazardous Substance Response Trust Fund established by section 221 of CERCLA.

Ground water, as defined by section 101(12) of CERCLA, means water in a saturated zone or stratum beneath the surface of land or water.

Hazardous substance, as defined by section 101(14) of CERCLA, means: any

substance designated pursuant to section 311(b)(2)(A) of the CWA; any element, compound, mixture, solution, or substance designated pursuant to section 102 of CERCLA; any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act (but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by Act of Congress); any toxic pollutant listed under section 307(a) of the CWA; any hazardous air pollutant listed under section 112 of the Clean Air Act; and any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act. The term does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

Inland waters, for the purposes of classifying the size of discharges, means those waters of the U.S. in the inland zone, waters of the Great Lakes, and specified ports and harbors on inland rivers.

Inland zone means the environment inland of the coastal zone excluding the Great Lakes and specified ports and harbors of inland rivers. The term inland zone delineates the area of Federal responsibility for response action. Precise boundaries are determined by EPA/USCG agreement and identified in Federal regional contingency plans.

Lead agency means the Federal agency (or State agency operating pursuant to a contract or cooperative agreement executed pursuant to section 104(d)(1) of CERCLA) that has primary responsibility for coordinating response action under this Plan. A Federal lead agency is the agency that provides the OSC or RPM as specified elsewhere in this Plan. In the case of a State as lead agency, the State shall carry out the same responsibilities delineated for OSCs/RPMs in this Plan (except coordinating and directing Federal agency response actions).

Management of migration means actions that are taken to minimize and mitigate the migration of hazardous substances or pollutants or contaminants and the effects of such migration. Management of migration actions may be appropriate where the hazardous substances or pollutants or contaminants are no longer at or near the area where they were originally located or situations where a source cannot be adequately identified or characterized. Measures may include, but are not limited to, provision of alternative water supplies, management of a plume of contamination, or treatment of a drinking water aquifer.

Natural resources, as defined by section 101(16) of CERCLA, means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the United States (including the resources of fishery conservation zones established by the Magnuson Fishery Conservation and Management Act), any State or local government, or any foreign government.

Offshore facility, as defined by section 101(17) of CERCLA and section 311(a)(11) of the CWA, means any facility of any kind located in, on, or under any of the navigable waters of the U.S. and any facility of any kind which is subject to the jurisdiction of the U.S. and is located in, on, or under any other waters, other than a vessel or a public vessel.

Oil, as defined by section 311(a)(1) of the CWA, means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

Oil pollution fund means the fund established by section 311(k) of the CWA.

On-Scene Coordinator (OSC) means the Federal official predesignated by the EPA or USCG to coordinate and direct Federal responses under Subpart E and removals under Subpart F of this Plan; or the DOD official designated to coordinate and direct the removal actions from releases of hazardous substances, pollutants, or contaminants from DOD vessels and facilities.

Onshore facility, (a) as defined by section 101(18) of CERCLA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land or non-navigable waters within the United States; and (b) as defined by section 311(a)(10) of the CWA, means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under any land within the United States other than submerged land.

Operable Unit is a discrete part of the entire response action that decreases a release, threat of release, or pathway of exposure.

Person, as defined by section 101(21) of CERCLA, means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, U.S. government, State, municipality, commission, political subdivision of a State, or any interstate body.

Plan means the National Oil and Hazardous Substances Pollution Contingency Plan published under section 311(c) of the CWA and revised pursuant to section 105 of CERCLA.

Pollutant or contaminant, as defined by section 104(a)(2) of CERCLA, shall include, but not be limited to, any element, substance, compound, or mixture, including disease causing agents, which after release into the environment and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingesting through food chains, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions in reproduction), or physical deformation in such organisms or their offspring. The term does not include petroleum, including crude oil and any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under section 101(14) (A) through (F) of CERCLA, nor does it include natural gas, liquified natural gas, or synthetic gas of pipeline quality (or mixtures of natural gas and synthetic gas). For purposes of Subpart F of this Plan, the term pollutant or contaminant means any pollutant or contaminant which may present an imminent and substantial danger to public health or welfare.

Release, as defined by section 101(22) of CERCLA, means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping, or disposing into the environment, but excludes: any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of such act, or, for the purpose of section 104 of CERCLA or any other response action, any release of source, byproduct, or special nuclear material

from any processing site designated under section 122(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978; and the normal application of fertilizer. For the purpose of this Plan, release also means substantial threat of release.

Relevant and appropriate requirements are those Federal requirements that, while not "applicable," are designed to apply to problems sufficiently similar to those encountered at CERCLA sites that their application is appropriate. Requirements may be relevant and appropriate if they would be "applicable" but for jurisdictional restrictions associated with the requirement.

Remedial investigation is a process undertaken by the lead agency (or responsible party if the responsible party will be developing a cleanup proposal) which emphasizes data collection and site characterization. The remedial investigation is generally performed concurrently and in an interdependent fashion with the feasibility study. However, in certain situations, the lead agency may require potentially responsible parties to conclude initial phases of the remedial investigation prior to initiation of the feasibility study. A remedial investigation is undertaken to determine the nature and extent of the problem presented by the release. This includes sampling and monitoring, as necessary, and includes the gathering of sufficient information to determine the necessity for and proposed extent of remedial action. Part of the remedial investigation involves assessing whether the threat can be mitigated or minimized by controlling the source of the contamination at or near the area where the hazardous substances or pollutants or contaminants were originally located (source control remedial actions) or whether additional actions will be necessary because the hazardous substances or pollutants or contaminants have migrated from the area of their original location (management of migration).

Remedial Project Manager (RPM) means the Federal official designated by EPA (or the USCG for vessels) to coordinate, monitor, or direct remedial or other response activities under Subpart F of this Plan; or the Federal official DOD designates to coordinate and direct Federal remedial or other response actions resulting from releases of hazardous substances, pollutants, or contaminants from DOD facilities or vessels.

Remedy or remedial action, as defined by section 101(24) of CERCLA, means those actions consistent with permanent remedy taken instead of, or in addition to, removal action in the event of a release or threatened release of a hazardous substance into the environment, to prevent or minimize the release of hazardous substances so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment. The term includes, but is not limited to, such actions at the location of the release as storage, confinement, perimeter protection using dikes, trenches or ditches, clay cover, neutralization, cleanup of released hazardous substances or contaminated materials, recycling or reuse, diversion, destruction, segregation of reactive wastes, dredging or excavations, repair or replacement of leaking containers, collection of leachate and runoff, on-site treatment or incineration, provision of alternative water supplies, and any monitoring reasonably required to assure that such actions protect the public health and welfare and the environment. The term includes the costs of permanent relocation of residents and businesses and community facilities where the President determines that, alone or in combination with other measures, such relocation is more cost-effective than and environmentally preferable to the transportation, storage, treatment, destruction, or secured disposition off-site of such hazardous substances, or may otherwise be necessary to protect the public health or welfare. The term does not include off-site transport of hazardous substances or contaminated materials unless the President determines that such actions: are more cost-effective than other remedial actions; will create new capacity to manage in compliance with Subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

Remove or removal, as defined by section 311(a)(8) of the CWA, refers to removal of oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health, welfare, or the environment. As defined by section 101(23) of CERCLA, remove or removal means the cleanup or removal of released hazardous substances from the environment; such actions as may be necessary to monitor, assess, and evaluate the release or threat of release of hazardous substances; the disposal of removal material or the taking of such other actions as may be necessary to prevent, minimize, or mitigate damage to the public health or welfare or the environment which may otherwise result from such release or threat of release. The term includes, in addition, without being limited to, security fencing or other measures to limit access, provision of alternative water supplies, temporary evacuation and housing of threatened individuals not otherwise provided for, action taken under section 104(b) of CERCLA, and any emergency assistance which may be provided under the Disaster Relief Act of 1974.

Respond or response, as defined by section 101(25) of CERCLA, means remove, removal, remedy, or remedial action.

Site Quality Assurance and Sampling Plan is a written document, associated with site sampling activities, which presents in specific terms the organization (where applicable), objectives, functional activities, and specific quality assurance (QA) and quality control (QC) activities designed to achieve the data quality goals of a specific project(s) or continuing operation(s). The QA Project Plan is prepared for each specific project or continuing operation (or group of similar projects of continuing operations). The QA Project Plan will be prepared by the responsible program office, regional office, laboratory, contractor, recipient of an assistance agreement, or other organization.

Size classes of discharges refers to the following size classes of oil discharges which are provided as guidance to the OSC and serve as the criteria for the actions delineated in Subpart E. They are not meant to imply associated degrees of hazard to public health or welfare, nor are they a measure of environmental damage. Any oil discharge that poses a substantial threat to the public health or welfare or results in critical public concern shall be classified as a major discharge regardless of the following quantitative measures;

(a) *Minor discharge* means a discharge to the inland waters of less than 1,000 gallons of oil or a discharge to the coastal waters of less than 10,000 gallons of oil.

(b) *Medium discharge* means a discharge of 1,000 to 10,000 gallons of oil to the inland waters or a discharge of 10,000 to 100,000 gallons of oil to the coastal waters.

(c) *Major discharge* means a discharge of more than 10,000 gallons of oil to the inland waters or more than

100,000 gallons of oil to the coastal waters.

Size classes of releases refers to the following size classifications which are provided as guidance to the OSC for meeting pollution reporting requirements in Subpart C. The final determination of the appropriate classification of a release will be made by the OSC based on consideration of the particular release (e.g., size, location, impact, etc.).

(a) *Minor release* means a release of a quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses minimal threat to public health or welfare or the environment.

(b) *Medium release* means all releases not meeting the criteria for classification as a minor or major release.

(c) *Major release* means a release of any quantity of hazardous substance(s), pollutant(s), or contaminant(s) that poses a substantial threat to public health or welfare or the environment or results in significant public concern.

Source control remedial action means measures that are intended to contain the hazardous substances or pollutants or contaminants where they are located or eliminate potential contamination by transporting the hazardous substances or pollutants or contaminants to a new location. Source control remedial actions may be appropriate if a substantial concentration or amount of hazardous substances or pollutants or contaminants remains at or near the area where they are originally located and inadequate barriers exist to retard migration of hazardous substances or pollutants or contaminants into the environment. Source control remedial actions may not be appropriate if most hazardous substances or pollutants or contaminants have migrated from the area where originally located or if the lead agency determines that the hazardous substances or pollutants or contaminants are adequately contained.

Specified ports and harbors means those port and harbor areas on inland rivers, and land areas immediately adjacent to those waters, where the USCG acts as predesignated on-scene coordinator. Precise locations are determined by EPA/USCG regional agreements and identified in Federal regional contingency plans.

Trustee means any Federal natural resources management agency designated in Subpart G of this Plan, and any State agency which may pursue claims for damages under section 107(f) of CERCLA.

United States, when used in relation to section 311(a)(5) of the CWA, refers to the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands. *United States*, when used in relation to section 101(27) of CERCLA, and *State* include the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession over which the U.S. has jurisdiction.

Volunteer means any individual accepted to perform services by a Federal agency which has authority to accept volunteer services (examples: see 16 U.S.C. 742f(c)). A volunteer is subject to the provisions of the authorizing statute, and § 300.25.

Subpart B—Responsibility

§ 300.21 Duties of President delegated to Federal agencies.

In Executive Order 11735 and Executive Order 12316, the President delegated certain functions and responsibilities vested to him by the CWA and CERCLA, respectively. Responsibilities so delegated shall be responsibilities of Federal agencies under this Plan unless:

(a) Responsibility is redelegated pursuant to section 8(f) of Executive Order 12316; or

(b) Executive Order 11735 or Executive Order 12316 is amended or revoked.

§ 300.22 Coordination among and by Federal agencies.

(a) Federal agencies should coordinate their planning and response activities through the mechanisms described in Subpart C of this Plan and other means as may be appropriate.

(b) Federal agencies should coordinate planning and response action with affected State and local government and private entities.

(c) Federal agencies with facilities or other resources which may be useful in a Federal response situation should make those facilities or resources available consistent with agency capabilities and authorities.

(d) When the Administrator of EPA or the Secretary of the Department in which the Coast Guard is operating determines:

(1) That there is an imminent and substantial threat to the public health or welfare because of a discharge of oil from any offshore or onshore facility; or

(2) That there may be an imminent and substantial endangerment to the public health or welfare or the environment because of a release or threatened release of a hazardous substance from a facility; he/she may request the Attorney General to secure the relief necessary to abate the threat. The action described here is in addition to any actions taken by a State or local government for the same purpose.

(e) In accordance with section 311(d) of the CWA, whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare because of a discharge or an imminent discharge from a vessel of large quantities of oil or hazardous substances designated pursuant to section 311(b)(2)(A) of the CWA, the United States may:

(1) Coordinate and direct all public and private efforts to abate the threat; and

(2) Summarily remove and, if necessary, destroy the vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. The authority for these actions has been delegated under Executive Order 11735 to the Administrator of EPA and the Secretary of the Department in which the Coast Guard is operating, respectively, for the waters for which each designates the OSC under this Plan.

(f) Response actions to remove discharges originating from the Outer Continental Shelf Lands Act operations shall be in accordance with this Plan.

(g) Where appropriate, discharges of radioactive materials shall be handled pursuant to the appropriate Federal radiological plan. For purposes of this Plan, the Federal Radiological Emergency Response Plan (49 FR 35896, September 12, 1984) is the appropriate response plan.

§ 300.23 Other assistance by Federal agencies.

(a) Each of the Federal agencies listed in paragraph (b) of this section has duties established by statute, executive order, or Presidential directive which may be relevant to Federal response action following or in prevention of a discharge of oil or a release of a hazardous substance, pollutant, or contaminant. These duties may also be relevant to the rehabilitation, restoration, and replacement of damaged or lost natural resources. Federal regional contingency plans should call upon agencies to carry out these duties in a coordinated manner.

(b) The following Federal agencies may be called upon by an OSC/RPM during the planning or implementation of a response to provide assistance in

their respective areas of expertise as indicated below, consistent with agency capabilities and legal authorities:

(1) The Department of Agriculture (USDA) provides expertise in managing agricultural, forest, and wilderness areas. The Soil Conservation Service can provide to the OSC/RPM predictions of the effects of pollutants on soil and their movements over and through soil.

(2) The Department of Commerce (DOC), through NOAA, provides scientific expertise on living marine resources for which it is responsible and their habitats, including endangered species and marine mammals; coordinates scientific support for responses and contingency planning in coastal and marine areas, including assessments of the hazards that may be involved, predictions of movement and dispersion of discharged oil and released hazardous substances through trajectory modeling, and information on the sensitivity of coastal environments to oil discharges; and provides information on actual and predicted meteorological, hydrologic, ice, and oceanographic conditions for marine, coastal, and inland waters; and furnishes charts and maps, including tide and circulation information for coastal and territorial waters and for the Great Lakes.

(3) The Department of Defense (DOD), consistent with its operational requirements, may provide assistance to other Federal agencies on request. The United States Army Corps of Engineers has specialized equipment and personnel for maintaining navigation channels, for removing navigation obstructions, for accomplishing structural repairs, and for performing maintenance to hydropower electric generating equipment. The Corps can also provide design services, perform construction, and provide contract writing and contract administration services for other Federal agencies. The United States Navy (USN), as a result of its mission and Pub. L. 80–513 (Salvage Act), is the Federal agency most knowledgeable and experienced in ship salvage, shipboard damage control, and diving. The USN has an extensive array of specialized equipment and personnel available for use in these areas as well as specialized containment, collection, and removal equipment specifically designed for salvage-related and open sea pollution incidents. Also, upon request of the OSC, locally deployed USN oil spill equipment may be provided. This equipment is available on a reimburseable basis to Federal agencies upon request when commercial equipment is not available. As described elsewhere in the Plan, DOD officials serve as OSCs for removal actions and as RPMs for remedial actions resulting from releases of hazardous substances, pollutants, or contaminants from DOD vessels and facilities.

(4) The Department of Energy (DOE) provides advice to the OSC/RPM when assistance is required in identifying the source and extent of radioactive releases, and in the removal and disposal of radioactive contamination.

(5) The Department of Health and Human Services (HHS) is responsible for providing assistance on all matters related to the assessment of health hazards at a response, and protection of both response workers' and the public's health.

(6) The Federal Emergency Management Agency (FEMA) will provide advice and assistance to the OSC/RPM on coordinating civil emergency planning and mitigation efforts with other Executive agencies, State and local governments, and the private sector. In the event of a major disaster declaration or emergency determination by the President at a hazardous materials response site, FEMA will coordinate all disaster or emergency actions with the OSC/RPM.

(7) The Department of the Interior (DOI) should be contacted through Regional Environmental Officers (REO), who are the designated members of RRTs. Department land managers have jurisdiction over the National Park System, National Wildlife Refuges and Fish Hatcheries, the public lands, and certain water projects in western States. In addition, bureaus and offices have relevant expertise as follows: *Fish and Wildlife Service:* fish and wildlife, including endangered and threatened species, migratory birds, certain marine mammals; habitats, resource contaminants; and laboratory research facilities. *Geological Survey:* geology, hydrology (ground water and surface), and natural hazards. *Bureau of Land Management:* minerals, soils, vegetation, wildlife, habitat, archaeology, wilderness; hazardous materials; etc. *Minerals Management Service:* manned facilities for Outer Continental Shelf (OCS) oversight. *Bureau of Mines:* analysis and identification of inorganic hazardous substances. *Office of Surface Mining:* coal mine wastes, land reclamation. *National Park Service:* biological and general natural resources expert personnel at Park units. *Bureau of Reclamation:* operation and maintenance of water projects in the West; engineering and hydrology; and reservoirs. *Bureau of Indian Affairs:* coordination of activities affecting Indian lands. *Office of Territorial Affairs:* assistance in implementing the NCP in American Samoa, Guam, the Trust Territory of the Pacific Islands, and the Virgin Islands.

(8) The Department of Justice (DOJ) can provide expert advice on complicated legal questions arising from discharge or releases and Federal agency responses. In addition, the DOJ represents the Federal government, including its agencies, in litigation.

(9) The Department of Labor (DOL), through the Occupational Safety and Health Administration (OSHA), will provide the OSC/RPM with advice, guidance, and assistance regarding hazards to persons involved in removal or control of oil discharges and hazardous substance releases, and in the precautions necessary to prevent hazards to their health and safety. OSHA and the States operating OSHA-approved State plans have the responsibility for assuring employee safety and health at response activities under this Plan. In cooperation with EPA and the NRT, OSHA has established a policy for handling occupational safety and health problems which may arise. This policy specifies that on request, OSHA will provide technical assistance to EPA, any other lead agency, or the contractor. Technical assistance may include review of site safety plans, review of site work practices, assistance with exposure monitoring, and help with other questions that arise about compliance with OSHA standards. OSHA is also ready to respond to inspection requests from EPA or another lead agency, and will act if there are accidents or employee complaints about unsafe or unhealthful work conditions at response activities under this Plan, as it does in other industries. OSHA reserves the right to take other actions necessary to assure that employees are properly protected at such response activities. Any questions about occupational safety and health at response sites should be referred to the OSHA Regional Office.

(10) The Department of Transportation (DOT) provides expertise on all modes of transporting oil and hazardous substances. Through the USCG, DOT offers expertise in domestic/international fields of port safety and security, maritime law enforcement, ship navigation and construction, and the manning, operation, and safety of vessels and marine facilities. The USCG also maintains continuously manned facilities which can be used for command, control, and surveillance of

oil discharges and hazardous substance releases occurring in the coastal zone. The USCG provides predesignated OSCs for the coastal zone. Through the Research and Special Programs Administration (RSPA), DOT offers expertise in the requirements for packaging, handling, and transporting regulated hazardous materials.

(11) The Department of State (DOS) will lead in the development of joint international contingency plans. It will also help to coordinate an international response when discharges or releases cross international boundaries or involve foreign flag vessels. Additionally, this Department will coordinate requests for assistance from foreign governments and U.S. proposals for conducting research at incidents that occur in waters of other countries.

(12) The Environmental Protection Agency (EPA) provides expertise on environmental effects of oil discharges or releases of hazardous substances, pollutants, or contaminants and environmental pollution control techniques. EPA provides predesignated OSCs for the inland zone and RPMs for all remedial actions, unless otherwise agreed. EPA also will generally provide the SSC for responses in inland areas. EPA may enter into a contract or cooperative agreement with the appropriate State in order to implement a response action.

(c) In addition to their general responsibilities under paragraph (a) of this section, Federal agencies should:

(1) Make necessary information available to the NRT, RRTs, and OSCs/RPMs.

(2) Inform the NRT and RRTs (consistent with national security considerations) of changes in the availability of resources that would affect the operations of the Plan.

(3) Provide representatives, as necessary, to the NRT and RRTs and assist RRTs and OSCs in formulating Federal regional and Federal local contingency plans.

(d) All Federal agencies are responsible for reporting releases of hazardous substances and discharges of oil from facilities or vessels which are under their jurisdiction or control in accordance with sections 104(a) and (b) and 101(24) of CERCLA, subject to the following:

(1) HHS is delegated all authorities under section 104(b) of CERCLA relating to a determination that illness, disease, or complaints thereof may be attributable to exposure to a hazardous substance, pollutant, or contaminant. (In addition, section 104(i) of CERCLA calls upon HHS to: establish appropriate disease/exposure registries; conduct appropriate testing for exposed individuals; develop, maintain, and provide information on health effects of toxic substances; and maintain a list of areas restricted or closed because of toxic substance contamination.)

(2) FEMA is delegated the authorities vested in the President by section 104(a) of CERCLA to the extent they require permanent relocation of residents, businesses, and community facilities or temporary evacuation and housing of threatened individuals not otherwise provided for. Authority under section 101(24) of CERCLA to the extent that a determination by the President that "permanent relocation of residents and businesses and community facilities" is included within the terms "remedy" and "remedial action" as defined in section 101(24) of CERCLA, has been redelegated to the Environmental Protection Agency.

(3) DOD is delegated all authority of sections 104(a) and (b) of CERCLA with respect to releases from DOD facilities or vessels, including vessels owned or bareboat chartered and operated.

(e) If the situation is beyond the capability of State and local governments and the statutory authority of Federal agencies, the President may, under the Disaster Relief Act of 1974, act upon a request by the governor and declare a major disaster or emergency and appoint a Federal Coordinating Officer (FCO) to coordinate all Federal disaster assistance activities. In such cases, the OSC/RPM would continue to carry out his/her responsibilities under the NCP, but would coordinate his/her activities with the FCO to ensure consistency with other Federal disaster assistance activities.

§ 300.24 State and local participation.

(a) Each State governor is requested to assign an office or agency to represent the State on the appropriate RRT. Local governments are invited to participate in activities on the appropriate RRT as may be provided by State law or arranged by the State's representative. The State's representative may participate fully in all facets of activities of the appropriate RRT and is encouraged to designate the element of the State government that will direct State supervised response operations.

(b) State and local government agencies are encouraged to include contingency planning for responses, consistent with this Plan and Regional Contingency Plans, in all emergency and disaster planning.

(c) States are encouraged to use State authorities to compel potentially responsible parties to undertake response actions, or to themselves undertake response actions which are not eligible for Federal funding.

(d) States may enter into contracts or cooperative agreements pursuant to section 104(c)(3) and (d) of CERCLA or section 311(c)(2)(H) of the CWA, as appropriate, to undertake actions authorized under Subparts E and F of this Plan. Requirements for entering into these agreements are included in § 300.58 and § 300.62 of this Plan. A State agency that acts pursuant to such agreements is referred to as lead agency. While the terms "On-Scene Coordinator," "OSC," "Remedial Project Manager," and "RPM" are reserved for Federal officials for the purposes of this Plan, a State agency may choose to use these titles for its response personnel without such use connoting the definitions, responsibilities, and authorities for these titles for Federal officials under this Plan. In the case of a State as lead agency, the State shall carry out the same responsibilities delineated for OSCs/RPMs in this Plan (except coordinating and directing Federal agency response actions).

(e) Since State and local public safety organizations would normally be the first government representatives at the scene of a discharge or release, they would be expected to initiate public safety measures necessary to protect public health and welfare, and are responsible for directing evacuations pursuant to existing State/local procedures.

§ 300.25 Nongovernment participation.

(a) Industry groups, academic organizations, and others are encouraged to commit resources for response operations. Specific commitments should be listed in Federal regional and Federal local contingency plans.

(b) It is particularly important to use the valuable technical and scientific information generated by the nongovernment local community along with those from Federal and State governments to assist the OSC/RPM in devising cleanup strategies where effective standard techniques are unavailable, and to ensure that pertinent research will be undertaken to meet national needs. The scientific support coordinator (SSC) shall act as liaison between the OSC/RPM and such interested organizations.

(c) Federal local contingency plans shall establish procedures to allow for well-organized, worthwhile, and safe use of volunteers. Local plans should provide for the direction of volunteers by the OSC or by other Federal, State, or

local officials knowledgeable in contingency operations and capable of providing leadership. Local plans also should identify specific areas in which volunteers can be used, such as beach surveillance, logistical support, and bird and wildlife treatment. Unless specifically requested by the OSC, volunteers generally should not be used for physical removal or remedial activities. If, in the judgment of the OSC or an appropriate participating agency, dangerous conditions exist, volunteers shall be restricted from on-scene operations.

(d)(1) If any person other than the Federal government or a State or person operating under contract or cooperative agreement with the United States takes response action and intends to seek reimbursement from the Fund, such actions, to be in conformity with this Plan for purposes of section 111(a)(2) of CERCLA, may only be reimbursed if such person notifies the Administrator of EPA or his/her designee prior to taking such action and receives prior approval to take such action.

(2) The process of prior approval of Fund reimbursement requests is preauthorization. Fund preauthorization will be considered only for:

(i) Releases warranting a response action pursuant to § 300.65 or § 300.68;

((ii) CERCLA section 104(b) activities; and

(iii) Remedial actions at National Priorities List sites.

(3) All requests for preauthorization will be reviewed to determine whether the request should receive priority for funding.

(4) Preauthorization does not obligate the Fund. For purposes of payment of a claim under CERCLA section 112, the responsible Federal official must certify that costs incurred were necessary and consistent with the Fund preauthorization.

(5) All persons requesting preauthorization must demonstrate the technical and other capabilities to respond safely and effectively to releases of hazardous substances, or pollutants or contaminants.

Subpart C—Organization

§ 300.31 Organizational concepts.

Three fundamental kinds of activities are performed pursuant to the Plan: planning and coordination, operations at the scene of a discharge and/or release, and communications. The organizational elements created to perform these activities are discussed below in the context of their roles in these activities. The organizational concepts of this Plan are depicted in Figure 1. The standard Federal Regional boundaries are shown in Figure 2, and the U.S. Coast Guard District boundaries are shown in Figure 3.

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Figure 1

NATIONAL CONTINGENCY PLAN CONCEPTS

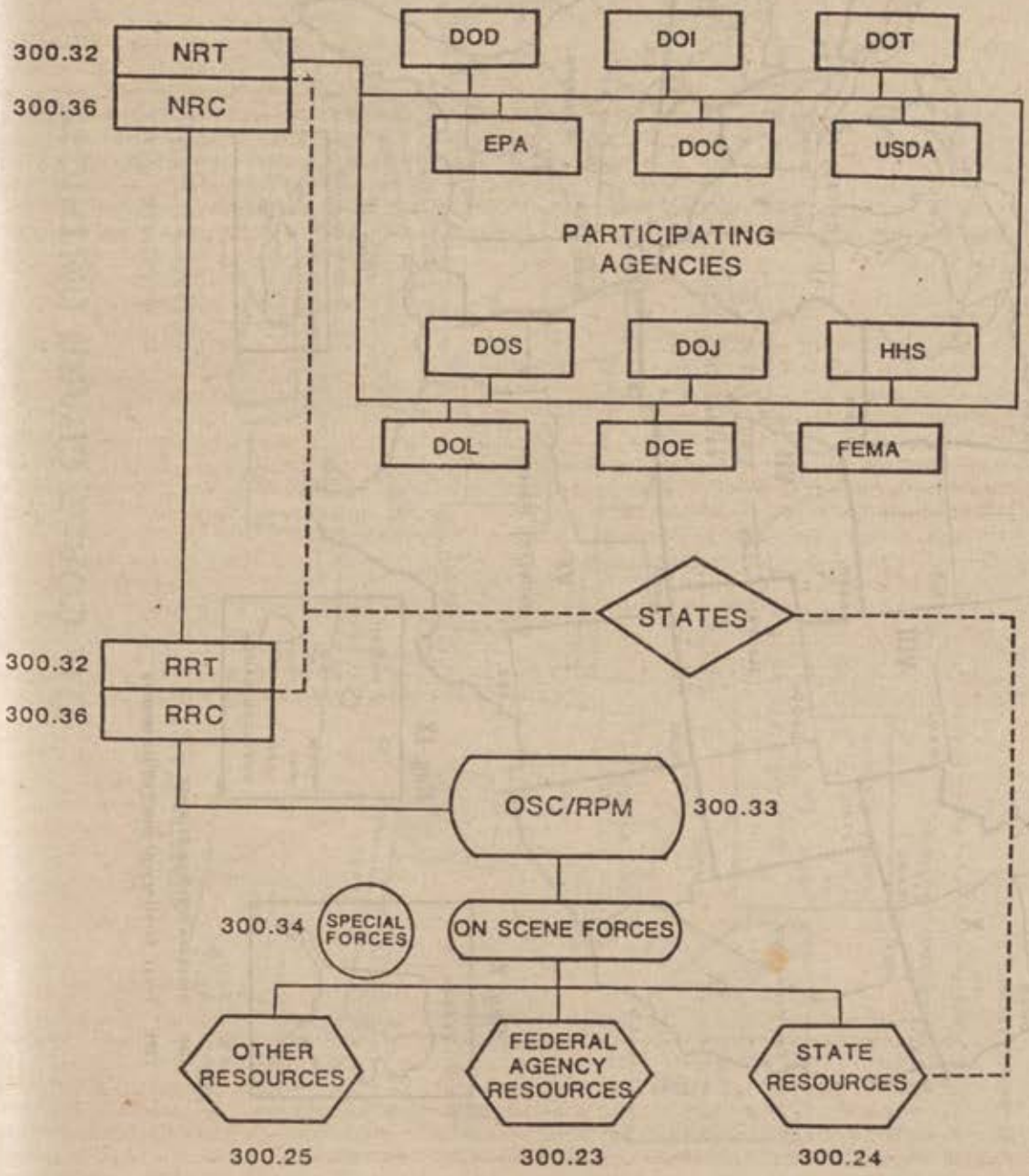


Figure 2

STANDARD REGIONAL BOUNDARIES TEN REGIONS

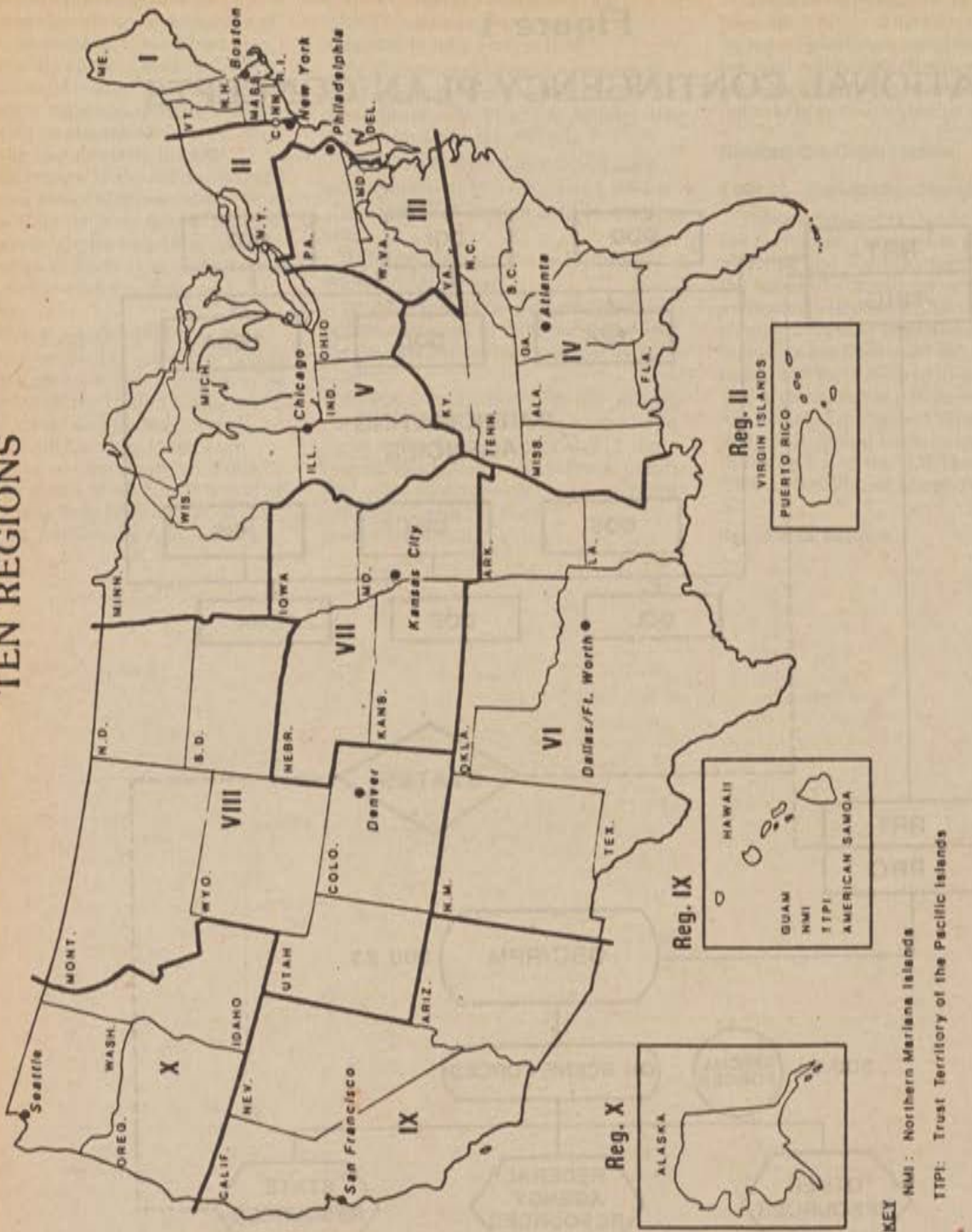
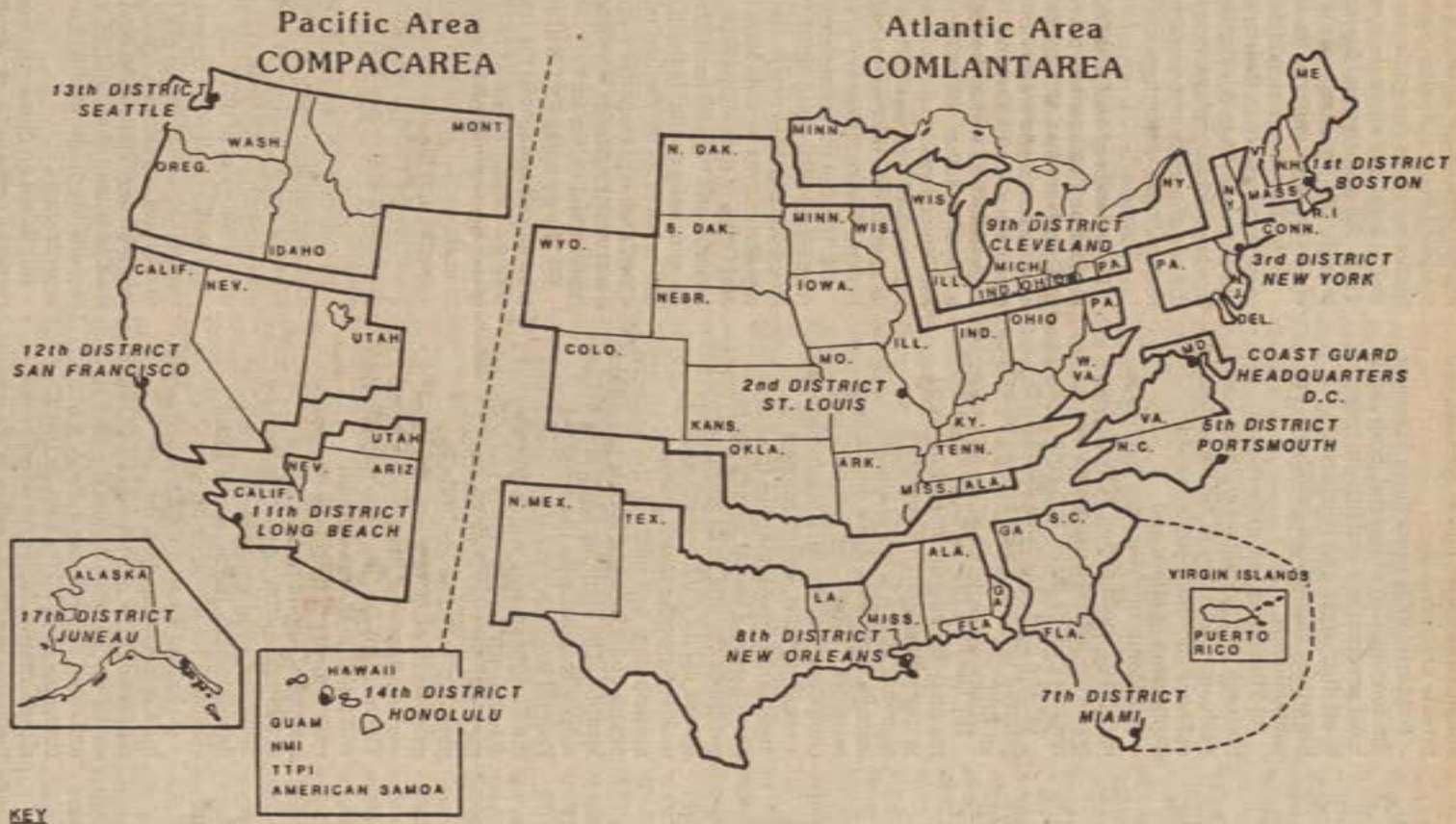


Figure 3

U.S. COAST GUARD DISTRICTS



KEY

NMI: Northern Mariana Islands

TTPI: Trust Territory of the Pacific Islands

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§ 300.32 Planning and coordination.

(a) National planning and coordination is accomplished through the National Response Team (NRT).

(1) The NRT consists of representatives from the agencies named in § 300.23. Each agency shall designate a member to the team and sufficient alternates to ensure representation, as agency resources permit. Other agencies may request membership on the NRT by forwarding such requests to the chairman of the NRT.

(2) Except for periods of activation because of a response action, the representative of EPA shall be the chairman and the representative of USCG shall be the vice chairman of the NRT. The vice chairman shall maintain records of NRT activities along with national, regional, and local plans for response actions. When the NRT is activated for response actions, the chairman shall be the EPA or USCG representative, based on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the chairman and vice chairman.

(3) While the NRT desires to achieve a consensus on all matters brought before it, certain matters may prove unresolvable by this means. In such cases, each department or agency serving as a participating agency on the NRT may be accorded one vote in NRT proceedings.

(4) The NRT may establish such by-laws and committees as it deems appropriate to further the purposes for which it is established.

(5) When the NRT is not activated for a response action, it shall serve as a standing committee to evaluate methods of responding to discharges or releases, to recommend needed changes in the response organization, and to recommend revisions to this Plan.

(6) The NRT may consider and make recommendations to appropriate agencies on the training, equipping, and protection of response teams and necessary research, development, demonstration, and evaluation to improve response capabilities.

(7) Direct planning and preparedness responsibilities of the NRT include:

(i) Maintaining national readiness to respond to a major discharge of oil or release of a hazardous substance or pollutant or contaminant which is beyond regional capabilities;

(ii) Monitoring incoming reports from all RRTs and activating when necessary;

(iii) Reviewing regional responses to oil discharges and hazardous substance releases, including an evaluation of equipment readiness and coordination among responsible public agencies and private organizations;

(iv) Developing procedures to ensure the coordination of Federal, State, and local governments and private response to oil discharges and releases of hazardous substances, pollutants, or contaminants;

(v) Monitoring response-related research and development, testing, and evaluation activities of NRT agencies to enhance coordination and avoid duplication of effort; and

(vi) Monitoring response training to encourage coordination of available resources between agencies with responsibilities under this Plan.

(8) The NRT may consider matters referred to it for advice or resolution by an RRT.

(b) The RRT provides the appropriate regional mechanism for planning and preparedness activities before a response action is taken and for coordination and advice during such response actions. The two principal components of the RRT mechanism are a standing team, which consists of designated representatives from each participating Federal agency, State governments, and local governments (as agreed upon by the States), and incident-specific teams where participation will relate to the technical nature of the incident and its geographic location. The standing team jurisdiction will correspond with the standard Federal Regions, except for Alaska and the Caribbean area which will also have standing RRTs. The role of the standing RRT will include communications, planning, coordination, training, evaluation, preparedness, and other such matters on a Region-wide basis. The incident-specific team jurisdiction will relate to the operational requirements of discharge or release response. Appropriate levels of activation, including participation by State and local governments, shall be determined by the designated RRT chairman for the incident.

(1) Except when the RRT is activated for a removal incident, the representatives of EPA and USCG shall act as co-chairmen. When the RRT is activated for response actions, the chairman shall be the EPA or USCG representative, based on whether the discharge or release occurs in the inland zone or coastal zone, unless otherwise agreed upon by the co-chairmen.

(2) Each participating agency should designate one member and at least one alternate member to the RRT. Agencies whose regional subdivisions do not correspond to the standard Federal Regions may designate additional representatives to the standing RRT to ensure appropriate coverage of the standard Federal Region. Participating States may also designate one member and at least one alternate member to the Team. All agencies and States may also provide additional representatives as observers to meetings of the RRT.

(3) RRT members should designate representatives from their agencies to work with OSCs in developing Federal local contingency plans, providing for the use of agency resources, and in responding to discharges and releases [see § 300.43].

(4) Federal regional and Federal local plans should adequately provide the OSC with assistance from the Federal agencies commensurate with agencies' resources, capabilities, and responsibilities within the region. During a response action, the members of the RRT should seek to make available the resources of their agencies to the OSC as specified in the Federal regional and Federal local contingency plans.

(5) Affected States are encouraged to participate actively in all RRT activities [see § 300.24(a)], to designate representatives to work with the RRT and OSCs in developing Federal regional and Federal local plans, to plan for and make available State resources, and to serve as the contact point for coordination of response with local government agencies whether or not represented on the RRT.

(6) The standing RRT will serve to recommend changes in the regional response organization as needed, to revise the regional plan as needed, and to evaluate the preparedness of the agencies and the effectiveness of local plans for the Federal response to discharges and releases. The RRT should:

(i) Conduct advance planning for use of dispersants, surface collection agents, burning agents, biological additives, or other chemical agents in accordance with § 300.84(e) of this Plan.

(ii) Make continuing review of regional and local responses to discharges or releases, considering available legal remedies, equipment readiness, and coordination among responsible public agencies and private organizations.

(iii) Based on observations of response operations, recommend revisions of the National Contingency Plan to the NRT.

(iv) Consider and recommend necessary changes based on continuing review of response actions in the region.

(v) Review OSC actions to help ensure that Federal regional and Federal local contingency plans are developed satisfactorily.

(vi) Be prepared to respond to major discharges or releases outside the region.

(vii) Meet at least semiannually to review response actions carried out during the preceding period, and consider changes in Federal regional and Federal local contingency plans.

(viii) Provide letter reports on their activities to the NRT twice a year, no later than January 31 and July 31. At a minimum, reports should summarize recent activities, organizational changes, operational concerns, and efforts to improve State and local coordination.

(ix) Encourage the State and local response community to improve their preparedness for response.

(x) Conduct training exercises as necessary to encourage preparedness activities of the response community within the region.

(7) Whenever there is insufficient national policy guidance on a matter before the RRT, a technical matter requiring solution, a question concerning interpretation of the Plan, or there is a disagreement on discretionary actions between RRT members that cannot be resolved at the regional level, it may be referred to the NRT for advice or resolution.

(c) The OSC is responsible for developing any Federal local contingency plans for the Federal response in the area of the OSC's responsibility. This may be accomplished in cooperation with the RRT and designated State and local representatives [see § 300.43]. Boundaries for Federal local contingency plans shall coincide with those agreed upon between EPA, DOD, and the USCG (subject to Executive Order 12316) to determine OSC areas of responsibility and should be clearly indicated in the regional contingency plan. Where practicable, consideration should be given to jurisdictional boundaries established by State and local plans.

(1) The lead agency should provide appropriate training for its OSCs, RPMs, and other response personnel to carry out their responsibilities under this Plan.

(2) To the extent practicable, OSCs/RPMs should ensure that persons designated to act as their on-scene representatives are adequately trained and prepared to carry out actions under this Plan.

§ 300.33 Response operations.

(a) EPA and USCG shall designate OSCs/RPMs for all areas in each region, provided, however, that DOD shall designate OSCs/RPMs responsible for taking all actions resulting from releases of hazardous substances, pollutants, or contaminants from DOD facilities and vessels. DOD will be the removal response authority with respect to incidents involving DOD military weapons and munitions. Removal actions involving nuclear weapons should be conducted in accordance with the joint Department of Defense, Department of Energy, and Federal Emergency Management Agency Agreement for Response to Nuclear Incidents and Nuclear Weapons Significant Incidents of January 8, 1981. The USCG will furnish or provide OSCs for oil discharges and for the immediate removal of hazardous substances, pollutants, or contaminants into or threatening the coastal zone except that the USCG will not provide predesignated OSCs for discharges and releases from hazardous waste management facilities or in similarly chronic incidents. EPA shall furnish or provide OSCs for discharges and releases into or threatening the inland zone and shall furnish or provide RPMs for Federally funded remedial actions except as otherwise agreed. The USCG will provide an initial response to hazardous waste management facilities within the coastal zone in accordance with the DOT/EPA Instrument of Redelegation (46 FR 63294). EPA will also assume all remedial actions resulting from removals initiated by the USCG in the coastal zone except those involving vessels. The USCG OSC shall contact the cognizant EPA RPM as soon as it is evident that a removal may require a follow-up remedial action to ensure that the required planning can be initiated and an orderly transition to EPA lead can occur.

(b) The OSC/RPM directs Federal Fund-financed response efforts and coordinates all other Federal efforts at the scene of a discharge or release, subject to Exective Order 12316. As part of the planning and preparation for response, the OSCs/RPMs shall be predesignated by the regional or district head of the lead agency.

(1) The first Federal official to arrive at the scene of a discharge or release should coordinate activities under this Plan and is authorized to initiate, in consultation with the OSC, any necessary actions normally carried out by the OSC until the arrival of the predesignated OSC. This official may initiate Federal Fund-financed actions only as authorized by the OSC or (if the OSC is unavailable) the authorized representative of the lead agency.

(2) The OSC/RPM shall, to the extent practicable under the circumstances, collect pertinent facts about the discharge or release, such as its source and cause; the identification of potentially responsible parties; the nature, amount, and location of discharged or released materials; the probable direction and time of travel of discharged or released materials; the pathways to human and environmental exposure; potential impact on human health, welfare, and safety and the environment; the potential impact on natural resources and property which may be affected; priorities for protecting human health, welfare, and the environment; and appropriate cost documentation.

(3) The OSC/RPM shall direct response operations (see Subparts E and F for descriptive details). The OSC's/RPM's effort shall be coordinated with other appropriate Federal, State, local, and private response agencies. OSCs/RPMs may designate capable persons from Federal, State, or local agencies to act as their on-scene representative. State and local representatives, however, are not authorized to take actions under Subparts E and F that involve expenditures of CWA section 311(k) or CERCLA funds unless an appropriate contract or cooperative agreement has been established.

(4) The OSC (and when the RRT has been activated for a remedial action, the RPM) should consult regularly with the RRT in carrying out this Plan and will keep the RRT informed of activities under this Plan.

(5) The OSC/RPM shall advise the appropriate State agency (as agreed upon with each State) as promptly as possible of reported discharges and releases.

(6) The OSC/RPM shall evaluate incoming information and immediately advise FEMA of potential major disaster situations. In the event of a major disaster or emergency, under the Disaster Relief Act of 1974 (Pub. L. 93-288), the OSC/RPM will coordinate any response activities with the Federal Coordinating Officer designated by the President. In addition, the OSC/RPM should notify FEMA of situations potentially requiring evacuation, temporary housing, and permanent relocation.

(7) In those instances where a possible public health emergency exists, the OSC/RPM should notify the HHS representative to the RRT. Throughout response actions, the OSC/RPM may call upon the HHS representative for assistance in determining public health threats and for advice on worker health and safety problems.

(8) All Federal agencies should plan for emergencies and develop procedures for dealing with oil discharges and releases of hazardous substances,

pollutants, or contaminants from vessels and facilities under their jurisdiction. All Federal agencies, therefore, are responsible for designating the office that coordinates response to such incidents in accordance with this Plan and applicable Federal regulations and guidelines. The OSC/RPM should provide advice and assistance as requested by Federal agencies for incidents involving vessels or facilities under their jurisdiction. At the request of the Federal agency, or if, in the opinion of the OSC (or in a remedial action, the lead agency), the responsible Federal agency does not act promptly or take appropriate action to respond to a discharge or release occurring on a vessel or facility, including contiguous lands under its jurisdiction, the OSC (or in a remedial action, the lead agency) designated to respond in the area where the discharge or release occurs may conduct appropriate response activities. If this occurs, the OSC (or in a remedial action, the lead agency) shall consult with and coordinate all response activities taken with the responsible Federal agency. With respect to release of hazardous substances, pollutants, or contaminants from DOD facilities or vessels, DOD designates the OSC/RPM.

(9) The OSC/RPM should notify the affected land managing agency and trustees of natural resources, as promptly as possible, of releases and discharges affecting Federal resources under their jurisdiction. The OSC or RPM should consult with and coordinate all response activities with the affected land managing agency or resource trustee to the extent practicable.

(10) Where the OSC/RPM becomes aware that a discharge or release may adversely affect any endangered or threatened species, or result in destruction or adverse modification of the habitat of such species, the OSC/RPM should consult with the DOI or DOC (NOAA).

(11) The OSC/RPM is responsible for addressing worker health and safety concerns at a response scene, in accordance with § 300.38 of this Plan.

(12) The OSC shall submit pollutant reports (POLREPs) to the RRT and appropriate agencies as significant developments occur during removal actions.

(13) OSCs/RPMs should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response in accordance with § 300.39 to the extent practicable.

(14) The RPM is the prime contact for remedial actions being taken (or needed to be taken) at sites on the proposed or promulgated National Priorities List (NPL). These actions include:

(i) *Fund-Financed Cleanup/Federal Lead*—The RPM coordinates, directs, and reviews the work of all EPA, State, and local governments, the U.S. Army Corps of Engineers, and all other agencies and contractors to assure compliance with this Plan. Based upon the reports of these parties, the RPM recommends action for decisions by lead agency officials. The RPM's period of responsibility begins prior to initiation of the Remedial Investigation/Feasibility Study (RI/FS) [described in § 300.68(d)] and continues through design, construction, deletion of the site from the NPL, and in some cases, the CERCLA cost recovery activity. The RPM should coordinate with the OSC to ensure an orderly transition from OSC response activities to remedial activities.

(ii) *Fund-Financed Cleanup/State Lead*—The RPM serves in an oversight capacity during the planning, design, and cleanup activities of a State-lead remedial action, offering both technical and programmatic guidance.

(iii) The RPM shall participate in all decisionmaking processes necessary to ensure compliance with this Plan and the cooperative agreement between EPA and the State. The RPM will also review responses implemented pursuant to preauthorization in order for EPA to determine that the responses are consistent with preauthorization in cases where claims are filed for reimbursement.

§ 300.34 Special forces and teams.

(a) The National Strike Force (NSF) consists of the Strike Teams established by the USCG on the Atlantic, Pacific, and Gulf coasts and a Dive Team located on the Atlantic coast, with resources available to provide assistance to the OSC/RPM.

(1) The Strike Teams can provide communication support, advice, and assistance for oil and hazardous substances removal. These teams also have knowledge of shipboard damage control, are equipped with specialized containment and removal equipment, and have rapid transportation available. The NSF Dive Team has knowledge and capability in diving, damage assessment, and underwater surveys. It also maintains limited capability for evaluating, planning, and carrying out diving in chemical-contaminated waters. When possible, the Strike Teams will provide training for emergency task forces and assist in the development of regional and local contingency plans.

(2) The OSC/RPM may request assistance from the Strike Teams. Requests for a team may be made directly to the Commanding Officer of the appropriate team, the USCG member of the RRT, the appropriate USCG Area Commander, or the Commandant of the USCG through the NRC.

(b) Each USCG OSC manages emergency task forces trained to evaluate, monitor, and supervise pollution responses. Additionally, they have limited "initial aid" response capability to deploy equipment prior to the arrival of a cleanup contractor or other response personnel.

(c)(1) The Environmental Response Team (ERT) is established by EPA in accordance with its disaster and emergency responsibilities. The ERT includes expertise in biology, chemistry, hydrology, geology, and engineering.

(2) It can provide access to special decontamination equipment for chemical releases and advice to the OSC/RPM in hazard evaluation; risk assessment; multimedia sampling and analysis program; on-site safety, including development and implementation plans; cleanup techniques and priorities; water supply decontamination and protection; application of dispersants; environmental assessment; degree of cleanup required; and disposal of contaminated material.

(3) The ERT also provides both introductory and intermediate level training courses to prepare response personnel.

(4) OSC/RPM or RRT requests for ERT support should be made to the EPA representative on the RRT; the EPA Headquarters, Director, Office of Emergency and Remedial Response; or the appropriate EPA regional emergency coordinator.

(d) Scientific Support Coordinators (SSCs) are available, at the request of OSCs/RPMs, to assist with actual or potential responses to discharges of oil or releases of hazardous substances, pollutants, or contaminants. The SSC will also provide scientific support for the development of regional and local contingency plans. Generally, SSCs are provided by NOAA in coastal and marine areas, and by EPA in inland regions.

(1) During a response, the SSC serves under the direction of the OSC/RPM and is responsible for providing scientific support for operational decisions and for coordinating on-scene scientific activity. Depending on the nature of the incident, the SSC can be expected to provide certain specialized scientific skills and to work with governmental agencies, universities, community representatives, and

industry to compile information that would assist the OSC/RPM in assessing the hazards and potential effects of discharges and releases and in developing response strategies.

(2) If requested by the OSC/RPM, the SSC will serve as the principal liaison for scientific information and will facilitate communications to and from the scientific community on response issues. The SSC, in this role, will attempt to reach a consensus on scientific issues surrounding the response but will also ensure that any differing opinions within the community are communicated to the OSC/RPM.

(3) The SSC will assist the OSC/RPM in responding to requests for assistance from the State and Federal agencies regarding scientific studies and environmental assessments. Details on access to scientific support shall be included in regional contingency plans.

(e) The USCG Public Information Assist Team (PIAT) and the EPA Public Affairs Assist Team (PAAT) are available to assist OSCs/RPMs and regional or district offices to meet the demands for public information and participation. Their use is encouraged any time the OSC/RPM requires outside public affairs support. Requests for these teams may be made through the NRC.

(f)(1) The RRT may be activated by the chairman as an incident-specific response team when a discharge or release:

(i) Exceeds the response capability available to the OSC in the place where it occurs;

(ii) Transects regional boundaries; or

(iii) May pose a substantial threat to the public health, welfare, or the environment, or to regionally significant amounts of property. Regional contingency plans shall specify detailed criteria for activation of RRTs.

(2) The RRT may be activated during any pollution emergency by a request from the OSC/RPM, or from any RRT representative, to the chairman of the Team. Requests for RRT activation shall later be confirmed in writing. Each representative, or an appropriate alternate, should be notified immediately when the RRT is activated.

(3) During prolonged removal or remedial action, the RRT may not need to be activated or may need to be activated only in a limited sense, or have available only those members of the RRT who are directly affected or who can provide direct response assistance.

(4) When the RRT is activated for a discharge or release, agency representatives shall meet at the call of the chairman and may:

(i) Monitor and evaluate reports from the OSC/RPM. The RRT may advise the OSC/RPM on the duration and extent of Federal response and may recommend to the OSC/RPM specific actions to respond to the discharge or release;

(ii) Request other Federal, State, or local governments, or private agencies to provide resources under their existing authorities to respond to a discharge or release or to monitor response operations;

(iii) Help the OSC/RPM prepare information releases for the public and for communication with the NRT;

(iv) If the circumstances warrant, make recommendations to the regional or district head of the agency providing the OSC/RPM that a different OSC/RPM should be designated; and

(v) Submit Pollution Reports (POLREPS) to the NRC as significant developments occur.

(5) When the RRT is activated, affected States may participate in all RRT deliberations. State government representatives participating in the RRT have the same status as any Federal member of the RRT.

(6) The RRT can be deactivated when the incident-specific RRT chairman determines that the OSC/RPM no longer requires RRT assistance.

(g) The NRT should be activated as an emergency response team:

(1) When an oil discharge or hazardous substance release:

(A) Exceeds the response capability of the regions in which it occurs;

(B) Transects regional boundaries; or

(C) Involves significant population threat or national policy issues, substantial amounts of property, or substantial threats to natural resources; or

(2) If requested by any NRT member.

(h) When activated for a response action, the NRT shall meet at the call of the chairman and may:

(1) Monitor and evaluate reports from the OSC/RPM. The NRT may recommend to the OSC/RPM, through the RRT, actions to combat the discharge or release;

(2) Request other Federal, State, and local governments, or private agencies, to provide resources under their existing authorities to combat a discharge or release or to monitor response operations; and

(3) Coordinate the supply of equipment, personnel, or technical advice to the affected region from other regions or districts.

§ 300.35 Multi-regional responses.

(a) If a discharge or release moves from the area covered by one Federal local or Federal regional contingency plan into another area, the authority for removal or response actions should likewise shift. If a discharge or release or substantial threat of discharge or release affects areas covered by two or more regional plans, the response mechanisms of both may be activated. In this case, removal or response actions of all regions concerned shall be fully coordinated as detailed in the regional plans.

(b) There shall be only one OSC/RPM at any time during the course of a response operation. Should a discharge or release affect two or more areas, the EPA, DOD, and USCG, as appropriate, shall give prime consideration to the area vulnerable to the greatest threat. The RRT shall designate the OSC/RPM if EPA, DOD, and USCG members are unable to agree on the designation. The NRT shall designate the OSC/RPM if members of one RRT or two adjacent RRTs are unable to agree on the designation.

(c) Where the USCG has provided the OSC for emergency response to a release from hazardous waste management facilities located in the coastal zone, responsibility for response action shall shift to EPA, in accordance with EPA/USCG agreements.

§ 300.36 Communications.

(a) The NRC is the national communications center for activities related to response actions. It is located at USCG Headquarters in Washington, D.C. The NRC receives and relays notices of discharges or releases to the appropriate OSC, disseminates OSC/RPM and RRT reports to the NRT when appropriate, and provides facilities for the NRT to use in coordinating a national response action when required.

(b) The Commandant, USCG, will provide the necessary personnel, communications, plotting facilities, and equipment for the NRC.

(c) Notice of an oil discharge or release of a hazardous substance in an amount equal to or greater than the reportable quantity must be made immediately in accordance with 33 CFR Part 153, Subpart B and 40 CFR Part 302, respectively. Notification shall be made to the NRC Duty Officer, HQ USCG, Washington, D.C., telephone (800) 424-8802 (or current local telephone number). All notices of discharges or releases received at the NRC shall be relayed immediately by telephone to the OSC or lead agency.

(d) The RRC provides facilities and personnel for communications, information storage, and other requirements for coordinating response.

Each regional plan will specify the location of the RRC.

§ 300.37 Special considerations.

(a) *Response Equipment*—The Spill Cleanup Inventory (SKIM) system is available to help OSCs and RRTs and private parties gain rapid information as to the location of response and support equipment. This inventory is accessible through the NRC and USCG's OSCs. The inventory includes private and commercial equipment, as well as government resources. The RRTs and OSCs shall ensure that data in the system are current and accurate. The USCG is responsible for maintaining and updating the system with RRT and OSC input.

(b) *Marine salvage.* (1) Marine salvage operations generally fall into five categories: afloat salvage; offshore salvage; river and harbor clearance; cargo salvage; and rescue towing. Each category requires different knowledge and specialized types of equipment. The complexity of such operations may be further compounded by local environmental and geographic conditions.

(2) The nature of marine salvage and the conditions under which it occurs combine to make such operations imprecise, difficult, hazardous, and expensive. Thus, responsible parties or other persons attempting to perform such operations without adequate knowledge, equipment, and experience could aggravate, rather than relieve, the situation. OSCs with responsibility for monitoring, evaluating, or supervising these activities should request technical assistance from DOD, the Strike Teams, or commercial salvors as necessary to ensure that proper actions are taken.

§ 300.38 Worker health and safety.

(a) Requirements under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) (OSH Act) and under the laws of States with plans approved under section 18 of the OSH Act (State OSH laws), as well as other applicable safety and health requirements, will be applied to response activities under this Plan. These requirements are subject to enforcement by the appropriate Federal and State agencies. Federal OSHA requirements include, among other things, all OSHA General Industry (29 CFR Part 1910), Construction (29 CFR Part 1926), Shipyard (29 CFR Part 1915), and Longshoring (29 CFR Part 1918), standards wherever they are relevant, as well as OSHA recordkeeping and reporting regulations. Employers at response actions under this Plan will also be subject to the general duty requirement of section 5(a)(1) of the OSH Act (29 U.S.C. 654(a)(1)). No action by the lead agency with respect to response activities under this Plan constitutes an exercise of statutory authority within the meaning of section 4(b)(1) of the OSH Act. All governmental agencies and private employers are directly responsible for the health and safety of their own employees.

(b) Under a response action taken by a responsible party, the responsible party must assure that an occupational health and safety program is made available for the protection of workers at the response site, and that workers entering the response site are apprised of the response site hazards and provisions of the safety and health program.

(c) Under a Federal Fund-financed response, the lead agency must assure that a program for occupational safety and health is made available for the protection of workers at the response site, and that workers entering the response site are apprised of the response site hazards and provisions of the safety and health program. Any contract relating to a Federal Fund-financed response action under this Plan shall require the contractor at the response site to comply with this program and with any applicable provision of the OSH Act and State OSH laws as defined in § 300.38(a)

§ 300.39 Public information.

(a) When an incident occurs, it is imperative to give the public prompt, accurate information on the nature of the incident and the actions underway to mitigate the damage. OSCs/RPMs and community relations personnel should ensure that all appropriate public and private interests are kept informed and that their concerns are considered throughout a response. They should coordinate with available public affairs/community relations resources to carry out this responsibility.

(b) An on-scene news office may be established to coordinate media relations and to issue official Federal information on an incident. Whenever possible, it will be headed by a representative of the lead agency. The OSC/RPM determines the location of the on-scene news office, but every effort should be made to locate it near the scene of the incident. If a participating agency believes public interest warrants the issuance of statements and an on-scene news office has not been established, the affected agency should recommend its establishment. All Federal news releases or statements by participating agencies should be cleared through the OSC/RPM.

§ 300.40 OSC reports.

(a) Within 60 days after the conclusion of a major discharge of oil, a major hazardous substance, pollutant, or contaminant release, or when requested by the RRT, the EPA or USCG OSC shall submit to the RRT a complete report on the response operation and the actions taken. The OSC shall at the same time send a copy of the report to the NRT. The RRT shall review the OSC's report and prepare an endorsement to the NRT for review. This shall be accomplished within 30 days after the report has been received.

(b) The OSC's report shall accurately record the situation as it developed, the actions taken, the resources committed, and the problems encountered. The OSC's recommendations are a source for new procedures and policy.

(c) The format for the OSC's report shall be as follows:

(1) Summary of Events—a chronological narrative of all events, including:

(i) The cause of discharge or release;

(ii) The initial situation;

(iii) Efforts to obtain response by responsible parties;

(iv) The organization of the response, including State participation;

(v) The resources committed;

(vi) The location of the hazardous substance, pollutant, or contaminant release or oil discharge. For oil discharges, indicate whether the discharge was in connection with activities regulated under the Outer Continental Shelf Lands Act (OCSLA), the Trans-Alaska Pipeline Authority Act, or Deepwater Port Act;

(vii) Comments on whether the discharge or release might have or actually did affect natural resources;

(viii) Comments on Federal or State damage assessment activities and efforts to replace or restore damaged natural resources;

(ix) Details of any threat abatement action taken under CERCLA or under section 311(c) or (d) of the CWA; and

(x) Public information/community relations activities.

(2) Effectiveness of Removal Actions—A candid and thorough analysis of the effectiveness of removal actions taken by:

(i) The responsible party;

(ii) State and local forces;

(iii) Federal agencies and special forces; and

(iv) (If applicable) contractors, private groups, and volunteers.

(3) Problems Encountered—A list of problems affecting response with particular attention to problems of intergovernmental coordination.

(4) Recommendations—OSC recommendations, including at a minimum:

(i) Means to prevent a recurrence of the discharge or release;

(ii) Improvement of response actions; and

(iii) Any recommended changes in the National Contingency Plan or Federal regional plan.

Subpart D—Plans

§ 300.41 Regional and local plans.

(a) In addition to the National Contingency Plan (NCP), a Federal regional plan shall be developed for each standard Federal Region, Alaska, and the Caribbean, and, where practicable, a Federal local plan shall be developed.

(b) These plans will be available for inspection at EPA Regional Offices or USCG district offices. Addresses and telephone numbers for these offices may be found in the United States Government Manual (issued annually) or in local telephone directories.

§ 300.42 Regional contingency plans.

(a) The RRTs, working with the States, shall develop Federal regional plans for each standard Federal region, Alaska, and the Caribbean. The purpose of these plans is coordination of a timely, effective response by various Federal agencies and other organizations to discharges of oil and releases of hazardous substances, pollutants and contaminants in order to protect public health, welfare, and the environment. Regional contingency plans should include information on all useful facilities and resources in the region, from government, commercial, academic, and other sources. To the greatest extent possible, regional plans will follow the format of the National Contingency Plan, and should coordinate with the State plans and the Federal local plans as specified in § 300.43.

(b) SSCs shall organize and coordinate the contributions of scientists of each region to the response activities of the OSC/RPM and RRT to the greatest extent possible. SSCs, with advice from RRT members, shall also develop the parts of the regional plan that relates to scientific support.

(c) Regional plans shall contain lines of demarcation between the inland and coastal zones, as mutually agreed upon by USCG and EPA.

§ 300.43 Local contingency plans.

(a) Each OSC, in consultation with the RRT, should develop and maintain a Federal local plan for response in his or her area of responsibility, where necessary and practicable. In areas in which the USCG provides the OSC, such plans shall be developed in all cases. The plan should provide for a well-coordinated response that is integrated and compatible with the pollution response, fire, emergency, and disaster plans of local, State, and other non-Federal entities. The plan should identify the probable locations of discharges or releases; the available resources to respond to multi-media incidents, where such resources can be obtained; waste disposal methods and facilities consistent with local and State plans developed under the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); and a local structure for responding to discharges or releases.

(b) While the OSC is responsible for developing Federal local plans, a successful planning effort will depend upon the full cooperation of all the agencies' representatives and the development of local capabilities to respond to discharges or releases. Particular attention should be given, during the planning process, to developing a multi-agency local response team for coordinating on-scene efforts. The RRT should ensure proper liaison between the OSC and local representatives.

Subpart E—Operational Response Phases for Oil Removal

§ 300.51 Phase I—Discovery and notification.

(a)[A discharge of oil may be discovered through:

(1) A report submitted by the person in charge of the vessel or facility in accordance with statutory requirements;

(2) Deliberate search by patrols; and

(3) Random or incidental observation by government agencies or the public.

(b) All reports of discharges shall be made to the NRC. If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated OSC for the geographic area where the discharge occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the discharger notifies the NRC as soon as possible. Federal regional and Federal local plans shall provide for prompt reporting to the NRC, RRC, and appropriate State agency (as agreed upon with the State).

(c) Upon receipt of a notification of discharge, the NRC shall promptly notify the OSC. The OSC shall proceed with the following phases as outlined in Federal regional and Federal local plans.

§ 300.52 Phase II—Preliminary assessment and initiation of action.

(a) The OSC for a particular area is responsible for promptly initiating preliminary assessment.

(b) The preliminary assessment shall be conducted using available information, supplemented where necessary and possible by an on-scene inspection. The OSC shall undertake actions to:

(1) Evaluate the magnitude and severity of the discharge or threat to public health, welfare, or the environment;

(2) Assess the feasibility of removal;

(3) Identify potentially responsible parties; and

(4) Ensure that authority exists for undertaking additional response actions.

(c) The OSC, in consultation with legal authorities when appropriate, shall make a reasonable effort to have the discharger voluntarily and promptly perform removal actions. The OSC shall ensure adequate surveillance over whatever actions are initiated. If effective actions are not being taken to eliminate the threat, or if removal is not being properly done, the OSC shall, to the extent practicable under the circumstances, so advise the responsible party. If the responsible party does not take proper removal actions, or is unknown, or is otherwise unavailable, the OSC shall, pursuant to section 311(c)(1) of the CWA, determine whether authority for a Federal response exists, and, if so, take appropriate response actions. Where practicable, continuing efforts should be made to encourage response by responsible parties.

(d) The OSC should ensure that the trustees of affected natural resources are notified, in order that the trustees may initiate appropriate actions when natural resources have been or are likely to be damaged (see Subpart G of Part 300). Where practicable, the OSC should consult with trustees in such determinations.

§ 300.53 Phase III—Containment, countermeasures, cleanup, and disposal.

(a) Defensive actions should begin as soon as possible to prevent, minimize, or mitigate threat to the public health or welfare or the environment. Actions may include: analyzing water samples to determine the source and spread of the

oil; controlling the source of discharge; measuring and sampling; source and spread control or salvage operations; placement of physical barriers to deter the spread of the oil or to protect endangered species; control of the water discharged from upstream impoundment; and the use of chemicals and other materials in accordance with Subpart H, to restrain the spread of the oil and mitigate its effects.

(b) Appropriate actions should be taken to recover the oil or mitigate its effects. Of the numerous chemical or physical methods that may be used, the chosen methods should be the most consistent with protecting the public health and welfare and the environment. Sinking agents shall not be used.

(c) Oil and contaminated materials recovered in cleanup operations shall be disposed of in accordance with Federal regional and Federal local contingency plans.

§ 300.54 Phase IV—Documentation and cost recovery.

(a) Documentation shall be collected and maintained to support all actions taken under the CWA and to form the basis for cost recovery. In general, documentation should be sufficient to prove the source and circumstances of the incident, the responsible party or parties, and impact and potential impacts to the public health and welfare and the environment. When appropriate, documentation should also be collected for scientific understanding of the environment and for the research and development of improved response methods and technology. Damages to private citizens (including loss of earnings) are not addressed by this Plan. Evidentiary and cost documentation procedures and requirements are specified in the USCG Marine Safety Manual (Commandant Instruction M16000.3) and 33 CFR Part 153.

(b) OSCs shall submit OSC reports to the RRT as required by § 300.40.

(c) The OSCs shall ensure the necessary collection and safeguarding of information, samples, and reports. Samples and information must be gathered expeditiously during the response to ensure an accurate record of the impacts incurred. Documentation materials shall be made available to the trustees of affected natural resources.

(d) Information and reports obtained by the EPA or USCG OSC shall be transmitted to the appropriate offices responsible for follow-up actions.

§ 300.55 General pattern of response.

(a) When the OSC receives a report of a discharge, actions normally should be taken in the following sequence:

(1) Immediately notify the RRT and NRC when the reported discharge is an actual or potential major discharge.

(2) Investigate the report to determine pertinent information such as the threat posed to public health or welfare or the environment, the type and quantity of polluting material, and the source of the discharge.

(3) Officially classify the size of the discharge and determine the course of action to be followed.

(4) Determine whether a discharger or other person is properly carrying out removal. Removal is being done properly when:

(i) The cleanup is fully sufficient to minimize or mitigate threat to the public health, welfare, and the environment (removal efforts are "improper" to the extent that Federal efforts are necessary to further minimize or mitigate those threats); and

(ii) The removal efforts are in accordance with applicable regulations including this Plan.

(5) Determine whether a State or political subdivision has the capability to carry out response actions and a contract or cooperative agreement has been established with the appropriate fund administrator for this purpose.

(6) Notify the RRT (including the affected State) and the trustees of affected natural resources in accordance with the applicable regional plan.

(b) The preliminary inquiry will probably show that the situation falls into one of the five classes. These classes and the appropriate response to each are outlined below:

(1) If the investigation shows that no discharge occurred, or it shows a minor discharge with no removal action required, the case should be closed for response purposes.

(2) If the investigation shows a minor discharge with the responsible party taking proper removal action, contact should be established with the party. The removal action should be monitored to ensure continued proper action.

(3) If the investigation shows a minor discharge with improper removal action being taken, the following measures shall be taken:

(i) An immediate effort should be made to stop further pollution and remove past and on-going contamination.

(ii) The responsible party shall be advised of what action will be considered appropriate.

(iii) If the responsible party does not properly respond, he shall be notified of his potential liability for Federal response performed under the CWA. This liability includes all costs of removal and may include the costs of assessing and restoring damaged natural resources and other actual or necessary costs of a Federal response.

(iv) The OSC shall notify appropriate State and local officials, keep the RRT advised, and initiate phase III operations as conditions warrant.

(v) Information shall be collected for possible recovery of response costs in accordance with § 300.54.

(4) When the investigation shows that an actual or potential medium oil discharge exists, the OSC shall follow the same general procedures as for a minor discharge. If appropriate, the OSC shall recommend activation of the RRT.

(5) When the investigation shows an actual or potential major oil discharge, the OSC shall follow the same procedures as for minor and medium discharges.

§ 300.56 [Reserved]

§ 300.57 Waterfowl conservation.

The DOI representatives and State liaison to the RRT shall arrange for the coordination of professional and volunteer groups permitted and trained to participate in waterfowl dispersal, collection, cleaning, rehabilitation, and recovery activities (consistent with 16 U.S.C. 703–712 and applicable State laws). Federal regional and Federal local plans will, to the extent practicable, identify organizations or institutions that are permitted to participate in such activities and operate such facilities. Waterfowl conservation activities will normally be included in Phase III response actions (§ 300.53 of this subpart).

§ 300.58 Funding

(a) If the person responsible for the discharge does not act promptly or take proper removal actions, or if the person responsible for the discharge is unknown, Federal discharge removal actions may begin under section 311(c)(1) of the CWA. The discharger, if known, is liable for the costs of Federal removal in accordance with section 311(f) of the CWA and other Federal laws.

(b) Actions undertaken by the participating agencies in response to pollution shall be carried out under existing programs and authorities when available. This Plan intends that Federal agencies will make resources available, expend funds, or participate in response to oil discharges under their existing authority. Authority to expend resources will be in accordance with agencies' basic statutes and, if required, through interagency agreements. Where the OSC requests assistance from a Federal agency, that agency may be reimbursed

in accordance with the provisions of 33 CFR 153.407. Specific interagency reimbursement agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a discharge of oil. The ultimate decisions as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures.

(c) The OSC shall exercise sufficient control over removal operations to be able to certify that reimbursement from the following funds is appropriate:

(1) The oil pollution fund, administered by the Commandant, USCG, has been established pursuant to section 311(k) of the CWA. Regulations governing the administration and use of the fund are contained in 33 CFR Part 153.

(2) The fund authorized by the Deepwater Port Act is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(3) The fund authorized by the Outer Continental Shelf Lands Act, as amended, is administered by the Commandant, USCG. Governing regulations are contained in 33 CFR Parts 136 and 150.

(4) The fund authorized by the Trans-Alaska Pipeline Authorization Act is administered by a Board of Trustees under the purview of the Secretary of the Interior. Governing regulations are contained in 43 CFR Part 29.

(d) Response actions other than removal, such as scientific investigations not in support of removal actions or law enforcement, shall be provided by the agency with legal responsibility for those specific actions.

(e) The funding of a response to a discharge from a Federally operated or supervised facility or vessel is the responsibility of the operating or supervising agency.

(f) The following agencies have funds available for certain discharge removal actions:

(1) EPA may provide funds to begin timely discharge removal actions when the OSC is an EPA representative.

(2) The USCG pollution control efforts are funded under "operating expenses." These funds are used in accordance with agency directives.

(3) The Department of Defense has two specific sources of funds which may be applicable to an oil discharge under appropriate circumstances. (This does not consider military resources which might be made available under specific conditions.)

(i) Funds required for removal of a sunken vessel or similar obstruction of navigation are available to the Corps of Engineers through Civil Works Appropriations, Operations and Maintenance, General.

(ii) The U.S. Navy may conduct salvage operations contingent on defense operational commitments, when funded by the requesting agency. Such funding may be requested on a direct cite basis.

(4) Pursuant to section 311(c)(2)(H) of the CWA, the State or States affected by a discharge of oil may act where necessary to remove such discharge and may, pursuant to 33 CFR Part 153, be reimbursed from the pollution revolving fund for the reasonable costs incurred in such a removal.

(i) Removal by a State is necessary within the meaning of section 311(c)(2)(H) of the CWA when the OSC determines that the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs does not effect removal properly, or is unknown, and that:

(A) State action is required to minimize or mitigate significant threat to the public health or welfare which Federal action cannot minimize or mitigate, or

(B) Removal or partial removal can be done by the State at a cost which is less than or not significantly greater than the cost which would be incurred by the Federal departments or agencies.

(ii) State removal actions must be in compliance with this Plan in order to qualify for reimbursement.

(iii) State removal actions are considered to be Phase III actions, under the same definitions applicable to Federal agencies.

(iv) Actions taken by local governments in support of Federal discharge removal operations are considered to be actions of the State for purposes of this section. Federal regional and Federal local plans shall show what funds and resources are available from participating agencies under various conditions and cost arrangements. Interagency agreements may be necessary to specify when reimbursement is required.

Subpart F—Hazardous Substances Reponse

§ 300.61 General.

(a) This subpart establishes methods and criteria for determining the appropriate extent of response authorized by CERCLA:

(1) when there is a release of a hazardous substance or there is a substantial threat of such a release into the environment; or

(2) when there is a release or substantial threat of a release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare.

(b) Section 104(a)(1) of CERCLA authorizes removal or remedial action unless it is determined that such removal or remedial action will be done properly by the owner or operator of the vessel or facility from which the release or threat of release emanates, or by any other responsible party. If appropriate response actions are not being taken or executed properly, including in a timely manner, the lead agency may initiate proper action, terminate any improper actions and shall so advise any known responsible party, and complete response activities.

(c) In determining the need for and in planning or undertaking Fund-financed action, the lead agency shall, to the extent practicable:

(1) Engage in prompt response.

(2) Encourage State participation in response actions (see § 300.62).

(3) Conserve Fund monies by encouraging private party cleanup.

(4) Be sensitive to local community concerns (see § 300.67).

(5) Rely on established technology, but also consider alternative and innovative technology when feasible and cost-effective.

(6) Involve the RRT in both removal and remedial response actions at appropriate decisionmaking stages.

(7) Encourage the involvement and sharing of technology by industry and other experts.

(8) Encourage the involvement of organizations to coordinate responsible party actions, foster site cleanup, and provide technical advice to the public, Federal and State governments, and industry.

(d) The lead agency shall, as practicable, provide surveillance over actions taken by responsible parties to ensure that a response is conducted consistent with this Plan. The lead agency also, as practicable, shall monitor the actions of third parties preauthorized under § 300.25(d).

(e)(1) This subpart does not establish any preconditions to enforcement action by either the Federal or State governments to compel response actions by responsible parties.

(2) While some of this subpart is oriented toward Federally funded response actions, this subpart may be used as guidance concerning methods and criteria for response actions by other parties under other funding mechanisms. Except as provided in § 300.71, nothing in this part limits the rights of any person to seek recovery of

response costs from responsible parties pursuant to CERCLA section 107.

(3) Activities by the Federal and State governments in implementing this subpart are discretionary governmental functions. This subpart does not create in any private party a right to Federal response or enforcement action. This subpart does not create any duty of the Federal government to take any response action at any particular time.

§ 300.62 State role.

(a)(1) States are encouraged to undertake actions authorized under this subpart. Section 104(d)(1) of CERCLA authorizes the Federal government to enter into contracts or cooperative agreements with the State to take Fund-financed response actions authorized under CERCLA, when the Federal government determines that the State has the capability to undertake such actions. A State agency acting under such an agreement is referred to as the lead agency.

(2) Cooperative agreements or State Superfund contracts are unnecessary for response actions that are not Fund-financed, including any State or other party actions. Coordination with EPA or USCG is encouraged in such situations, however. If a State intends to use expenses incurred as part or all of its cost-sharing obligations under section 104(c)(3) of CERCLA, it must enter into a response agreement to this effect.

(b) EPA will provide assistance from the Fund and other Federal agencies will provide assistance under their existing authority to States pursuant to a contract or cooperative agreement. The cooperative agreement can authorize States to undertake most actions specified in this subpart. However, certain authorities are reserved for the Federal lead agency.

(c) Contracts and cooperative agreements between the State(s) and Federal government for Fund-financed remedial action are subject to section 104(c)(3) of CERCLA. Such agreements are not a precondition to access, information gathering, investigations, studies, or liability pursuant to sections 106 and 107 of CERCLA.

(d) Prior to remedial action as defined in section 101(24) of CERCLA, the State must make a firm commitment, through either a new or amended cooperative agreement or State contract, to provide its required cost share for remedial implementation by:

(1) Authorizing the reduction of a State credit to cover its share of costs;

(2) Identifying currently available funds earmarked for remedial implementation; or

(3) Submitting a schedule with milestones for obtaining necessary funds during the period of remedial implementation.

(e) State credits allowed under section 104(c)(3) of CERCLA must be documented on a site-specific basis for State out-of-pocket, non-Federal eligible response costs between January 1, 1978, and December 11, 1980. Prior to remedial action at a site, the State must submit its accounting of these costs as a part of the cooperative agreement application, or as a part of the EPA State agreement. State credits will be applied against State cost shares for Federally funded remedial actions. A State cannot be reimbursed from the Fund for credit in excess of its matching share nor may the credit be applied to any other site.

(f) Pursuant to section 104(c)(2) of CERCLA, prior to determining any appropriate remedial action, the Federal lead agency shall consult with the affected State or States.

(g) States are encouraged to participate in all RRT planning and response activities.

(h) State and local public safety organizations are normally expected to initiate public safety measures (e.g., actions to limit public access to a site) and are responsible for directing evacuations pursuant to existing State/local procedures.

§ 300.63 Discovery or notification.

(a) A release may be discovered through:

(1) Notification in accordance with sections 103 (a) or (c) of CERCLA;

(2) Investigation by government authorities conducted in accordance with section 104(e) of CERCLA or other statutory authority;

(3) Notification of a release by a Federal or State permit holder when required by its permit;

(4) Inventory efforts or random or incidental observation by government agencies or the public;

(5) Other sources.

(b) All reports of releases shall be made to the NRC. If direct reporting to the NRC is not practicable, reports may be made to the Coast Guard or EPA predesignated OSC for the geographic area where the release occurs. All such reports shall be promptly relayed to the NRC. If it is not possible to notify the NRC or predesignated OSC immediately, reports may be made immediately to the nearest Coast Guard unit, provided that the releaser notifies the NRC as soon as possible.

(c) Upon receipt of a notification of a release, the NRC shall promptly notify the appropriate OSC. The OSC shall notify the Governor of the State affected by the release.

(d)(1) When the OSC is notified of a release which may require response pursuant to § 300.65(b), a preliminary assessment shall, as appropriate, be promptly undertaken pursuant to § 300.64.

(2) When notification indicates that action pursuant to § 300.65(b) is not required, site evaluation shall, as appropriate, be undertaken by the lead agency pursuant to § 300.66.

§ 300.64 Preliminary assessment for removal actions.

(a) A preliminary assessment of a release or threat of a release identified for possible CERCLA response pursuant to § 300.65 shall, as appropriate, be undertaken by the lead agency as promptly as possible. The lead agency shall, as appropriate, base the assessment on readily available information. This assessment may include but is not limited to:

(1) Identification of the source and nature of the release or threat of release;

(2) Evaluation by HHS or by other sources (e.g., State public health agencies) of the threat to public health;

(3) Evaluation of the magnitude of the potential threat;

(4) Evaluation of factors necessary to make the determination of whether a removal is necessary; and

(5) Determination if a non-Federal party is undertaking proper response.

(b) A preliminary assessment of releases or threats of releases from hazardous waste management facilities may include collection or review of data such as site management practices, information from generators, photographs, analysis of historical photographs, literature searches, and personal interviews conducted as appropriate. In addition, a perimeter (off-site) inspection may be necessary to determine the potential for a release. Finally, if more information is needed, a site visit may be performed, if conditions are such that it may be performed safely.

(c) A preliminary assessment shall be terminated when the OSC or lead agency determines:

(1) There is no release or threat of release;

(2) The source is neither a vessel nor a facility;

(3) The release does not involve a hazardous substance, nor a pollutant or contaminant;

(4) The amount, quantity, and concentration released does not warrant Federal response;

(5) A party responsible for the release, or any other person, is providing appropriate response, and on-scene monitoring by the government is not required; or

(6) The assessment is completed.

(d) If it is determined during the assessment that natural resources have been, or are likely to be, damaged, the OSC or lead agency shall, where possible, ensure that the trustees of the affected natural resources are notified in order that the trustees may initiate appropriate actions as identified in paragraph 300.74(b). Where practicable, the OSC shall consult with trustees in making such determinations.

(e) If the preliminary assessment indicates that removal action under § 300.65 is not required, but that remedial actions under § 300.68 may be necessary, the lead agency shall, as appropriate, initiate site evaluation pursuant to § 300.66.

§ 300.65 Removals.

(a)(1) In determining the appropriate extent of action to be taken at a given release, the lead agency shall first review the preliminary assessment and the current site conditions to determine if removal action is appropriate.

(2) Where the responsible parties are known, an effort initially shall be made, to the extent practicable considering the exigencies of the circumstances, to have them perform the necessary removal actions. Where responsible parties are unknown, an effort initially shall be made, to the extent practicable considering the exigencies of the circumstances, to locate them and have them perform the necessary removal action.

(3) This section does not apply to removal actions taken pursuant to section 104(b) of CERCLA. The criteria for such actions are set forth in section 104(b).

(b)(1) At any release, regardless of whether the site is included on the National Priorities List, where the lead agency determines that there is a threat to public health or welfare or the environment, based on the factors in paragraph (b)(2) of this section, the lead agency may take any appropriate action to abate, minimize, stabilize, mitigate, or eliminate the release or threat of release, or the threat resulting from that release or threat of release.

(2) The following factors shall be considered in determining the appropriateness of a removal action pursuant to this subsection:

(i) Actual or potential exposure to hazardous substances or pollutants or contaminants by nearby populations, animals, or food chain;

(ii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iii) Hazardous substances or pollutants or contaminants in drums, barrels, tanks, or other bulk storage containers, that may pose a threat of release;

(iv) High levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate;

(v) Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released;

(vi) Threat of fire or explosion;

(vii) The availability of other appropriate Federal or State response mechanisms to respond to the release;

(viii) Other situations or factors which may pose threats to public health or welfare or the environment.

(3) Removal actions, other than those authorized under section 104(b) of CERCLA, shall be terminated after $1 million has been obligated for the action or six months have elapsed from the date of initial response, unless the lead agency determines that:

(i) there is an immediate risk to public health or welfare or the environment;

(ii) continued response actions are immediately required to prevent, limit, or mitigate an emergency; and

(iii) such assistance will not otherwise be provided on a timely basis.

(4) If the lead agency determines that a removal action pursuant to this subsection is appropriate, actions shall, as appropriate, begin as soon as possible to prevent, minimize, or mitigate the threat to public health or welfare or the environment. The lead agency shall, at the earliest possible time, also make any necessary determinations contained in paragraph (b)(3) of this section.

(c) The following removal actions are, as a general rule, appropriate in the following situations; however, this list does not limit the lead agency from taking any other actions deemed necessary in response to any situation or preclude the lead agency from deferring response action to other appropriate Federal or State enforcement or response authorities:

(1) Fences, warning signs, or other security or site control precautions—where humans or animals have access to the release;

(2) Drainage controls (e.g., run-off or run-on diversion)—where precipitation or run-off from other sources (e.g., flooding) may enter the release area from other areas;

(3) Stabilization of berms, dikes, or impoundments—where needed to maintain the integrity of the structures;

(4) Capping of contaminated soils or sludges—where needed to reduce migration of hazardous substances or pollutants or contaminants into soil, ground water, or air;

(5) Using chemicals and other materials to retard the spread of the release or to mitigate its effects—where the use of such chemicals will reduce the spread of the release;

(6) Removal of highly contaminated soils from drainage or other areas—where removal will reduce the spread of contamination;

(7) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances or pollutants or contaminants—where it will reduce the likelihood of spillage, leakage, exposure to humans, animals or food chain, or fire or explosion;

(8) Provision of alternative water supply—where it will reduce the likelihood of exposure of humans or animals to contaminated water.

(d) Where necessary to protect public health or welfare, the lead agency will request that FEMA conduct a temporary relocation or evacuation.

(e) If the lead agency determines that the removal action will not fully address the threat or potential threat posed by the release and the release may require remedial action, the lead agency shall ensure an orderly transition from removal to remedial response activities.

(f) Although Fund-financed removal actions and removal actions pursuant to CERCLA section 106 are not required to comply with other Federal, State, and local laws governing the removal activity, including permit requirements, such removal actions shall, to the greatest extent practicable considering the exigencies of the circumstances, attain or exceed applicable or relevant and appropriate Federal public health and environmental requirements. Other Federal criteria, advisories, and guidance and State standards also shall, as appropriate, be considered in formulating the removal action.

(g) Fund-financed removal actions and removal actions pursuant to section 106 of CERCLA involving the storage, treatment, or disposal of hazardous substances or pollutants or contaminants at off-site facilities shall involve only off-site facilities that are operating under appropriate Federal or State permits or authorization and other legal requirements.

(h) Removal actions pursuant to section 106 of CERCLA are exempt from

the following requirements of this section:

(1) Paragraph 300.65(a)(2) requirement to locate responsible parties and have them undertake the response.

(2) Paragraph 300.65(b)(2)(vii) requirement to consider the availability of other appropriate Federal or State response and enforcement mechanisms to respond to the release.

(3) Section 300.65(b)(3) requirement to terminate response after $1 million has been obligated or six months have elapsed from the date of the initial response.

(i) Other private party responses not pursuant to section 106 of CERCLA are exempt from paragraphs (b)(2)(vii) and (b)(3) of this section.

§ 300.66 Site evaluation phase and National Priorities List determination.

(a) *The Site Evaluation Phase.* (1) This phase of response includes activities beginning with discovery of a release and extends through the initial evaluation (preliminary assessment and site inspection—see § 300.64). The purpose of the site evaluation phase is to further categorize the nature of any releases and potential threats to public health and welfare and the environment and to collect data as required to determine whether a site should be included on the National Priorities List (NPL). (See §§ 300.66(b) and (c).)

(2) Pursuant to sections 104(b) and (e) of CERCLA and other authorities, the lead agency may undertake preliminary assessments and site inspections to gather appropriate information to determine if a release warrants response and, if so, its priority for response.

(3) For response actions that may be taken pursuant to § 300.68, a preliminary assessment consists of a review of existing data and may include an off-site reconnaissance. The purposes of such a preliminary assessment are:

(i) To eliminate from further consideration those releases where available data indicate no threat or potential threat to public health or the environment exists;

(ii) To determine if there is any potential need for removal action;

(iii) To establish priority for scheduling a site inspection.

(4) A site inspection consists of a visual inspection of the site and routinely includes collection of samples. There are several major purposes for a site inspection:

(i) To determine which releases pose no threat or potential threat to public health and the environment;

(ii) To determine if there is any immediate threat to persons living or working near the release;

(iii) To collect data, where appropriate, to determine whether a site where a release has occurred or may occur should be included on the NPL.

(b) *Methods for Establishing Priorities.* (1) Section 105(8)(A) of CERCLA requires the President to include as part of the Plan criteria for establishing priorities among releases and potential releases. Three mechanisms are set forth here for that purpose: The Hazard Ranking System (HRS); designation by the States of their top priority releases; and determination that a site poses a significant threat to public health or welfare or the environment as indicated in paragraph (b)(4) of this section. These criteria will be used to establish and amend the NPL (see § 300.66(c)).

(2) The primary mechanism for identifying releases for inclusion on the NPL will be scores calculated by applying the HRS (Appendix A).

(3) Each State may designate a release as the State's highest priority release by certifying in writing, signed by the Governor or the Governor's designee, that the release presents the greatest danger to public health or welfare or the environment among known releases in the State. Each State may designate one top priority site over the life of the NPL.

(4) In addition to those releases whose HRS scores qualify them for the NPL, EPA may include on the NPL any other release if:

(i) The Agency for Toxic Substances and Disease Registry of the Department of Health and Human Services has issued a public health advisory which recommends dissociation of individuals from the release;

(ii) EPA determines that the release poses a significant threat to public health; and

(iii) EPA anticipates that it will be more cost-effective to use its remedial authority than to use removal authority to respond to the release.

(c) *The National Priorities List.* (1) Section 105(8)(B) of CERCLA requires the President to establish a list of at least 400 releases and potential releases, based upon the criteria developed pursuant to section 105(8)(A) of the Act. CERCLA also requires the States to identify their priorities at least annually and requires that each State's designated top priority releases be included among the one hundred (100) highest priority releases, to the degree practicable. The process for establishing the NPL is set forth below.

(2) The NPL serves as a basis to guide the allocation of Fund resources among releases. Except as provided by CERCLA section 111(e)(3), Federal facilities listed on the NPL are not eligible for Fund-financed remedial actions other than actions specified in CERCLA section 111(c). Only those releases included on the NPL will be considered eligible for Fund-financed remedial action. Inclusion on the NPL is not a precondition to liability pursuant to Agency action under CERCLA section 106 or to action under CERCLA section 107, for recovery of non-Fund-financed costs or Fund-financed costs other than remedial construction costs.

(3) States that wish to submit candidates for the NPL must use the HRS (Appendix A of this Part) to score the releases and furnish EPA with appropriate documentation for the scores.

(4) EPA will notify the States at least thirty days prior to the deadline for submitting candidate releases for the NPL or any revisions.

(5) EPA will review the States' HRS scoring documents and revise the application of the hazard ranking criteria when appropriate. EPA will add any additional priority releases known to the Agency after consultation with the States. Taking into account the HRS scores, the States' top priority releases, and the criteria specified in paragraph (b)(4) of this section, EPA will compile the NPL.

(6) Minor differences in HRS scores among releases may not accurately differentiate among threats represented by the releases. Thus, releases having similar scores may be presented in groups on the NPL.

(7) Sites may be deleted from or recategorized on the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

(8) All releases deleted from the NPL are eligible for further Fund-financed remedial actions should future conditions warrant such action.

(9) EPA will submit the recommended NPL to the NRT for review and comment.

(10) EPA will revise and publish the NPL at least annually.

§ 300.67 Community relations.

(a) The lead agency shall develop and implement a formal community relations plan for removal actions taken pursuant to § 300.65 and for remedial action at NPL sites, including enforcement actions, except as provided for in § 300.67(b). Such plans must specify the communications activities which will be undertaken during the response and shall include provision for a public comment period on the alternatives analysis undertaken pursuant to § 300.68. The use of the RRT to assist community relations activities shall be considered in developing community relations plans.

(b) In the case of actions taken pursuant to § 300.65 or enforcement action to compel response analogous to § 300.65, or other short-term action needed to abate a threat to public health or welfare or the environment, a spokesperson will be designated by the lead agency. The spokesperson will inform the community of actions taken, respond to inquiries, and provide information concerning the release. In such cases, if the action is of short duration, or if response is needed immediately, a formal plan is not necessary. However, if the removal action is expected to extend or does extend beyond 45 days, a formal plan must be developed and implemented.

(c) For all remedial actions pursuant to CERCLA section 106 at NPL sites including Fund-financed and enforcement actions, a community relations plan must be developed and approved prior to initiation of field activities and implemented during the course of the action. In enforcement actions, a responsible party may be permitted with lead agency oversight to implement appropriate parts of the community relations plan.

(d) In remedial actions at NPL sites, including Fund-financed and enforcement actions, feasibility studies that outline alternative remedial measures must be provided to the public for review and comment for a period of not less than 21 calendar days. Such review and comment shall precede selection of the remedial response. Public meeting(s) shall, in most circumstances, be held during the comment period. The lead agency may also provide the public with an opportunity to comment during the development of the feasibility study.

(e) A document which summarizes the major issues raised by the public and how they are addressed must be included in the decision document approving the remedy.

(f) In enforcement actions in litigation under CERCLA section 106, the community relations plan, including provision for public review of any feasibility study prepared for source control or management of migration measures, may be modified or adjusted at the direction of the court of jurisdiction or to accommodate the court calendar.

(g) Where responsible parties agree to implement the permanent site remedy pursuant to an administrative order on consent, the lead agency shall provide public notice and a 30-day period for public comment, including comment on remedial measures. Where settlement is embodied in a consent decree, public notice and opportunity for public comment shall be provided in accordance with 28 CFR 50.7. A document summarizing the major issues raised by the public and how they are addressed will be prepared.

§ 300.68 Remedial action.

(a) *Introduction.* (1) Remedial actions are those responses to releases that are consistent with permanent remedy to prevent or minimize the release of hazardous substances or pollutants or contaminants so that they do not migrate to cause substantial danger to present or future public health or welfare or the environment [see CERCLA section 101(24)]. Fund-financed remedial action, excluding remedial planning activities pursuant to CERCLA section 104(b), may be taken only at sites listed on the NPL.

(2) The Remedial Project Manager (RPM) shall carry out responsibilities in a remedial action as delineated in § 300.33(b).

(3) Federal, State, and local permits are not required for Fund-financed remedial action or remedial actions taken pursuant to Federal action under section 106 of CERCLA. However, remedial actions that involve storage, treatment, or disposal of hazardous substances or pollutants or contaminants at off-site facilities shall involve only such off-site facilities that are operating under appropriate Federal or State permits or authorization and other legal requirements.

(b) *State Involvement.* (1) States are encouraged to undertake Fund-financed remedial response in accordance with § 300.62 of this Plan.

(2) States must meet the requirements of CERCLA section 104(c)(3) prior to initiation of a Fund-financed remedial action.

(3) Planning activities associated with remedial actions taken pursuant to CERCLA section 104(b) shall not require a State cost share unless the facility was owned at the time of any disposal of hazardous substances therein by the State or a political subdivision thereof. Such planning activities include, but are not limited to, remedial investigations, feasibility studies, and design of the proposed remedy. For sites owned by a State or its political subdivision, cost sharing commitment is required prior to remedial action.

(c) *Operable Unit.* Response action may be conducted in operable units. Operable units may be conducted as remedial and/or removal actions.

(1) Response actions may be separated into operable units consistent with achieving a permanent remedy. These operable units may include removal actions pursuant to § 300.65(b), and/or remedial actions involving source controls, and/or management of migration.

(2) The RPM shall, as appropriate, recommend whether or not operable units should be implemented prior to selection of the appropriate final remedial measure.

(3) Implementation of operable units may begin before selection of an appropriate final remedial action if such measures are cost-effective and consistent with a permanent remedy. Compliance with § 300.68(b) is a prerequisite to implementing remedial operable units.

(d) *Remedial Investigation/Feasibility Study* (RI/FS). An RT/FS shall, as appropriate, be undertaken by the lead agency conducting the remedial action to determine the nature and extent of the threat presented by the release and to evaluate proposed remedies. This includes sampling, monitoring, and exposure assessment, as necessary, and includes the gathering of sufficient information to determine the necessity for and proposed extent of remedial action. Part of the RI/FS may involve assessing whether the threat can be prevented or minimized by controlling the source of the contamination at or near the area where the hazardous substances were originally located (source control measures) and/or whether additional actions will be necessary because the hazardous substances have migrated from the area of or near their original location (management of migration). Planning for remedial action at these releases shall, as appropriate, also assess the need for removals. During the remedial investigation, the original scoping of the project may be modified based on the factors in § 300.68(e).

(e) *Scoping of Response Actions during the Remedial Investigation.* (1) The lead agency, in cooperation with the State(s), will examine available information and determine, based on the factors indicated in paragraph (e)(2) of this section, the type of response that may be needed to remedy the release. This scoping will serve as a basis for requesting funding for a necessary removal action and may serve as the basis for further supporting funding requests for a remedial investigation or feasibility study. Initial analysis shall indicate the extent to which the release or threat of release may pose a threat to public health or welfare or the environment, indicate the types of removal measures and/or remedial measures suitable to abate the threat, and set priorities for implementation of the measures. Initial analysis shall, as appropriate, also provide a preliminary determination of the extent to which Federal environmental and public health requirements are applicable or relevant and appropriate to the specific site and the extent to which other Federal criteria, advisories, and guidance and State standards are to be used in developing the remedy.

(2) The following shall, as appropriate, be assessed in determining whether and what type of remedial and/or removal actions will be considered:

(i) Population, environmental, and welfare concerns at risk;

(ii) Routes of exposure;

(iii) Amount, concentration, hazardous properties, environmental fate and transport (e.g., ability and opportunities to bioaccumulate, persistence, mobility, etc.), and form of the substance(s) present;

(iv) Hydrogeological factors (e.g., soil permeability, depth to saturated zone, hydrologic gradients, proximity to a drinking water aquifer, floodplains and wetlands proximity);

(v) Current and potential ground water use (e.g., the appropriate ground water classes under the system established in the EPA Ground-Water Protection Strategy);

(vi) Climate (rainfall, etc.);

(vii) The extent to which the source can be adequately identified and characterized;

(viii) Whether substances at the site may be reused or recycled;

(ix) The likelihood of future releases if the substances remain on-site;

(x) The extent to which natural or man-made barriers currently contain the substances and the adequacy of the barriers;

(xi) The extent to which the substances have migrated or are expected to migrate from the area of their original location, or new location if relocated, and whether future migration may pose a threat to public health welfare or the environment;

(xii) The extent to which Federal environmental and public health requirements are applicable or relevant and appropriate to the specific site, and the extent to which other Federal criteria, advisories, and guidance and State standards are to be considered in developing the remedy;

(xiii) The extent to which contamination levels exceed applicable or relevant and appropriate Federal requirements or other Federal criteria, advisories, and guidance and State standards;

(xiv) Contribution of the contamination to an air, land, water, and/or food chain contamination problem;

(xv) Ability of responsible party to implement and maintain the remedy until the threat is permanently abated;

(xvi) For Fund-financed responses, the availability of other appropriate Federal or State response and enforcement mechanisms to respond to the release; and

(xvii) Other appropriate matters may be considered.

(3) As a remedial investigation progresses, the project may be modified if the lead agency determines that, based on the factors in § 300.68(e)(2), such modifications would be appropriate.

(f) *Development of Alternatives.* (1) To the extent that it is both possible and appropriate, at least one remedial alternative shall be developed as part of the feasibility study (FS) in each of the following categories:

(i) Alternatives for treatment or disposal at an off-site facility, as appropriate;

(ii) Alternatives that attain applicable or relevant and appropriate Federal public health and environmental requirements;

(iii) As appropriate, alternatives that exceed applicable or relevant and appropriate Federal public health and environmental requirements;

(iv) As appropriate, alternatives that do not attain applicable or relevant and appropriate Federal public health and environmental requirements but will reduce the likelihood of present or future threat from the hazardous substances and that provide significant protection to public health and welfare and the environment. This must include an alternative that closely approaches the level of protection provided by the applicable or relevant and appropriate requirements;

(v) No action alternative.

(2) These alternatives, including those in paragraph (f)(iv) of this section, shall, as appropriate, be developed based upon the analysis conducted under paragraphs (c), (d), and (e) of this section. The alternatives shall, as appropriate, consider and integrate waste minimization, destruction, and recycling.

(g) *Initial Screening of Alternatives.* The alternatives developed under paragraph (f) of this section will be subject to an initial screening to narrow the list of potential remedial actions for further detailed analysis. When an alternative is eliminated in screening, the rationale shall be documented in the feasibility study. Three broad criteria shall, as appropriate, be used in the initial screening of alternatives:

(1) *Cost.* For each alternative, the cost of implementing the remedial action must be considered, including operation and maintenance costs. An alternative that far exceeds the costs of other alternatives evaluated and that does not provide substantially greater public health or environmental protection or technical reliability shall usually be excluded from further consideration. For purposes of this paragraph, an alternative that meets or exceeds applicable or relevant and appropriate Federal public health and environmental requirements provides substantially greater protection than do alternatives that do not meet such requirements.

(2) *Acceptable Engineering Practices.* Alternatives must be feasible for the location and conditions of the release, applicable to the problem, and represent a reliable means of addressing the problem.

(3) *Effectiveness.* Those alternatives that do not effectively contribute to the protection of public health and welfare and the environment shall not be considered further. If an alternative has significant adverse effects, and very limited environmental benefits, it shall also be excluded from further consideration.

(h) *Detailed Analysis of Alternatives.* (1) A more detailed evaluation will be conducted of the limited number of alternatives that remain after the initial screening in § 300.68(g).

(2) The detailed analysis of each alternative shall, as appropriate, include:

(i) Refinement and specification of alternatives in detail, with emphasis on use of established technology. Innovative or advanced technology shall, as appropriate, be evaluated as an alternative to conventional technology;

(ii) Detailed cost estimation, including operation and maintenance costs, and distribution of costs over time;

(iii) Evaluation in terms of engineering implementation, reliability, and constructability;

(iv) An assessment of the extent to which the alternative is expected to effectively prevent, mitigate, or minimize threats to, and provide adequate protection of public health and welfare and the environment. This shall include an evaluation of the extent to which the alternative attains or exceeds applicable or relevant and appropriate Federal public health and environmental requirements. Where the analysis determines that Federal public health and environmental requirements are not applicable or relevant and appropriate, the analysis shall, as appropriate, evaluate the risks of the various exposure levels projected or remaining after implementation of the alternative under consideration;

(v) An analysis of whether recycle/reuse, waste minimization, waste biodegradation, or destruction or other advanced, innovative, or alternative technologies is appropriate to reliably minimize present or future threats to public health or welfare or the environment;

(vi) An analysis of any adverse environmental impacts, methods for mitigating these impacts, and costs of mitigation.

(3) In performing the detailed analysis of alternatives, it may be necessary to gather additional data to complete the analysis.

(i) *Selection of Remedy.* (1) The appropriate extent of remedy shall be determined by the lead agency's selection of a cost-effective remedial alternative that effectively mitigates and minimizes threats to and provides adequate protection of public health and welfare and the environment. Except as provided in § 300.68(i)(5), this will require selection of a remedy that attains or exceeds applicable or relevant and appropriate Federal public health and environmental requirements that have been identified for the specific site.

(2) In selecting the appropriate extent of remedy from among the alternatives that will achieve adequate protection of public health and welfare and the environment in accordance with § 300.68(i)(1), the lead agency will consider cost, technology, reliability, administrative and other concerns, and their relevant effects on public health and welfare and the environment.

(3) If there are no applicable or relevant and appropriate Federal public health or environmental requirements, the lead agency will select that cost-effective alternative that effectively mitigates and minimizes threats to and provides adequate protection of public health and welfare and the environment, considering cost, technology, and the reliability of the remedy.

(4) Pertinent other Federal criteria, advisories, and guidance and State standards will be considered and may be used in developing alternatives, with adjustments for site-specific circumstances.

(5) Notwithstanding § 300.68(i)(1), the lead agency may select an alternative that does not meet applicable or relevant and appropriate Federal public health or environmental requirements in any of the following circumstances:

(i) The selected alternative is not the final remedy and will become part of a more comprehensive remedy;

(ii) *Fund-Balancing:* For Fund-financed responses only, the need for protection of public health and welfare and the environment at the facility under consideration for all of the alternatives that attain or exceed applicable or relevant and appropriate Federal requirements is outweighed by the need for action at other sites that may present a threat to public health or welfare or the environment, considering the amount of money available in the Fund. In the event of Fund-balancing, the lead agency shall select the alternative which most closely approaches the level of protection provided by applicable or relevant and appropriate Federal requirements, considering the specific Fund-balanced sum of money available for the facility under consideration. Fund-balancing is not a consideration in determining the appropriate extent of remedy when the response will be performed or funded by a responsible party;

(iii) *Technical Impracticality:* Where no alternative that attains or exceeds applicable or relevant and appropriate Federal public health and environmental requirements is technically practical to implement at the specific site in question from an engineering perspective, the lead agency shall select the alternative that is reasonable to implement from an engineering perspective and that most closely approaches the level of protection provided by applicable or relevant and appropriate Federal public health and environmental requirements.

(iv) *Unacceptable Environmental Impacts:* Where all the alternatives that attain or exceed applicable or relevant Federal public health and appropriate environmental requirements will result in significant adverse environmental impacts if implemented, the lead agency shall select the alternative that most closely approaches the level of protection provided by applicable or relevant and appropriate Federal public health and environmental requirements, without resulting in significant adverse environmental impacts.

(v) Where the remedy is to be carried out pursuant to Federal action under CERCLA section 106, the Fund is unavailable, there is a strong public interest in expedited cleanup, and the litigation probably would not result in the desired remedy, the lead agency shall select the alternative that most closely approaches the level of protection provided by applicable or relevant and appropriate Federal public health and environmental requirements in light of the strong public interest in expedited cleanup.

(6)(i) If a factor under § 300.68(i)(5) is used in eliminating an alternative or in scaling down the extent of remedy, it must be explained and documented in the appropriate decision document.

(ii) Other Federal criteria, advisories, and guidance and State standards will be considered and may be used by the lead agency in developing remedial alternatives. If the lead agency does not use or uses and adjusts any other standards, the decision documents must explain and document the reasons. The rationale for not using such other standards may include one or more of the circumstances enumerated in § 300.68(i)(5).

(j) *Appropriate Actions.* The following remedial actions are, as a general rule, appropriate in the following situations; however, this list does not limit the lead agency from selecting any other actions deemed necessary in response to any situation:

(1) In response to contaminated ground water—elimination or containment of the contamination to prevent further contamination, treatment and/or removal of such ground water to reduce or eliminate the contamination, physical containment of such ground water to reduce or eliminate potential exposure to such contamination, and/or restrictions on use of the ground water to eliminate potential exposure to the contamination;

(2) In response to contaminated surface water—elimination or containment of the contamination to prevent further pollution, and/or treatment of the contaminated water to reduce or eliminate its hazard potential;

(3) In response to contaminated soil or waste—actions to remove, treat, or contain the soil or waste to reduce or eliminate the potential for hazardous substances or pollutants or contaminants to contaminate other

media (ground water, surface water, or air) and to reduce or eliminate the potential for such substances to be inhaled, absorbed, or ingested;

(4) In response to the threat of direct contact with hazardous substances or pollutants or contaminants—any of the actions listed in § 300.65(c) to reduce the likelihood of such contact or the severity of any effects from such contract.

(k) *Remedial Site Sampling.* (1) Sampling performed pursuant to Fund-financed remedial action must have a written quality assurance/site sampling plan. Sampling performed pursuant to the written quality assurance/site sampling plan will generally be adequate if the plan includes the following elements:

(i) A description of the objectives of the sampling efforts with regard to both the phase of the sampling and the ultimate use of the data;

(ii) Sufficient specification of sampling protocol and procedures;

(iii) Sufficient sampling to adequately characterize the source of the release, likely transport pathways, and/or potential receptor exposure;

(iv) Specifications of the types, locations, and frequency of samples taken, taking into account the unique properties of the site, including the appropriate hydrological, geological, hydrogeological, physiographical, and meteorological properties of the site; and

(v) Such other elements as may be required by the RPM and the appropriate EPA Regional or Headquarters quality assurance office on a site-by-site basis.

(2) In Fund-financed actions or actions under CERCLA section 106, the quality assurance/site sampling plan must be reviewed and approved by the Remedial Project Manager with a coordination signature from the Qualify Assurance Officer.

(l) *Response Actions Pursuant to Sections 106 and 111(a)(2) of CERCLA/ Consistency With NCP.* When a person other than the lead agency takes the response action, the lead agency shall evaluate and approve the adequacy of proposals submitted when the response action: is taken pursuant to section 106 of CERCLA; or involves preauthorization pursuant to section 111(a)(2) of CERCLA or § 300.25 of this Plan. When evaluating these proposed response actions and for the purpose of determining consistency with this Plan for cost recovery under section 107 of CERCLA, the remedial investigation or its equivalent must address the factors outlined in paragraph (e) of this section. The full range of alternatives outlined in paragraph (f) of this section must be developed unless a specific, more limited range of alternatives has been negotiated with the lead agency pursuant to action under section 106 of CERCLA or preauthorization.

§ 300.69 Documentation and cost recovery.

(a) During all phases of response, documentation shall be collected and maintained to support all actions taken under this Plan, and to form the basis for cost recovery. In general, documentation shall be sufficient to provide the source and circumstances of the condition, the identity of responsible parties, accurate accounting of Federal or private party costs incurred, and impacts and potential impacts to the public health and welfare and the environment. Where applicable, documentation shall state when the National Response Center received notification of a release of a reportable quantity and when Fund-balancing has been used to limit the Federal response.

(b) The information and reports obtained by the lead agency for Fund-financed response actions shall, as appropriate, be transmitted to the RRT. Copies can then be forwarded to the NRT, members of the RRT, and others as appropriate. In addition, OSCs shall report as required by § 300.40 for all major releases and all Fund-financed removal actions taken.

(c) Information and documentation of actual or potential natural resource damages shall be made available to the trustees of affected natural resources.

(d) Actions undertaken by the participating agencies in response shall be carried out under existing programs and authorities when available. This Plan intends that Federal agencies will make resources available, expend funds, or participate in responses to releases under their existing authority. Interagency agreements may be signed when necessary to ensure that the Federal resources will be available for a timely response to a release. The ultimate decision as to the appropriateness of expending funds rests with the agency that is held accountable for such expenditures.

§ 300.70 Methods of remedying releases.

(a) This section lists methods for remedying releases that may be considered by the lead agency before selecting the response action. This list of methods shall not be considered inclusive of all possible methods of remedying releases.

(b) Engineering Methods for On-Site Actions—(1)(i) *Air emissions control*—The control of volatile gaseous compounds shall, as appropriate, address both lateral movements and atmospheric emissions. Before gas migration controls can be properly installed, field measurements to determine gas concentrations, pressures, and soil permeabilities shall, as appropriate, be used to establish optimum design for control. In addition, the types of hazardous substances present, the depth to which they extend, the nature of the gas and the subsurface geology of the release area shall, if possible, be determined. Typical emission control techniques include the following:

(A) Pipe vents;

(B) Trench vents;

(C) Gas barriers;

(D) Gas collection;

(E) Overpacking.

(ii) *Surface water controls*—These are remedial techniques designed to reduce water infiltration and to control runoff at release areas. They also serve to reduce erosion and to stabilize the surface of covered sites. These types of control technologies are usually implemented in conjunction with other types of control and include the following:

(A) Surface seals;

(B) Surface water diversions and collection systems:

(1) Dikes and berms;

(2) Ditches, diversions, waterways;

(3) Chutes and downpipes;

(4) Levees;

(5) Seepage basins and ditches;

(6) Sedimentation basins and ditches; and

(7) Terraces and benches;

(C) Grading;

(D) Revegetation.

(iii) *Ground water controls*—Ground water pollution is a particularly serious problem because, once an aquifer has been contaminated, the resource cannot usually be cleaned without the expenditure of great time, effort, and resources. Techniques that can be applied to the problem with varying degrees of success are as follows:

(A) Impermeable barriers:

(1) Slurry walls;

(2) Grout curtains; and

(3) Sheet pilings;

(B) Permeable treatment beds;

(C) Ground water pumping:

(1) Water table adjustment; and

(2) Plume containment;

(D) Leachate control—Leachate control systems control surface seeps and seepage of leachate to ground water. Leachate collection systems consist of a series of drains which intercept the leachate and channel it to a sump, wetwell, treatment system, or appropriate surface discharge point.

Technologies applicable to leachate control include the following:

(1) Subsurface drains;

(2) Drainage ditches; and

(3) Liners.

(iv) *Contaminated water and sewer lines*—Sanitary sewers and municipal water mains located downgradient from hazardous waste disposal sites may become contaminated by infiltration of leachate or polluted ground water through cracks, ruptures, or poorly sealed joints in piping. Technologies applicable to the control of such contamination to water and sewer lines include:

(A) Grouting;

(B) Pipe relining and sleeving; and

(C) Sewer relocation.

(2) Treatment technologies.

(i) *Gaseous emissions treatment*—Gases from waste disposal sites frequently contain malodorous and toxic substances, and thus require treatment before release to the atmosphere. There are two basic types of gas treatment systems:

(A) Vapor phase adsorption; and

(B) Thermal oxidation.

(ii) *Direct waste treatment methods*—In most cases, these techniques can be considered long-term permanent solutions. Many of these direct treatment methods are not fully developed and the applications and process reliability are not well demonstrated. Use of these techniques for waste treatment may require considerable pilot plant work. Technologies applicable to the direct treatment of wastes are:

(A) Biological methods:

(1) Treatment via modified conventional wastewater treatment techniques;

(2) Anaerobic, aerated and facultative lagoons; and

(3) Supported growth biological reactors.

(B) Chemical methods:

(1) Chlorination;

(2) Precipitation, flocculation, sedimentation;

(3) Neutralization;

(4) Equalization; and

(5) Chemical oxidation.

(C) Physical methods:

(1) Air stripping;

(2) Carbon absorption;

(3) Ion exchange;

(4) Reverse osmosis;

(5) Permeable bed treatment;

(6) Wet air oxidation; and

(7) Incineration.

(iii) *Contaminated soils and sediments*—In some cases where it can be shown to be cost-effective, contaminated sediments and soils will be treated on the site. Technologies available include:

(A) Incineration;

(B) Wet air oxidation;

(C) Solidification;

(D) Encapsulation; and

(E) On-site treatment:

(1) Solution mining (soil washing or soil flushing);

(2) Neutralization/detoxification;

(3) Microbiological degradation.

(c) Off-site Transport for Storage, Treatment, Destruction or Secure Disposition.

(1) General—Off-site transport or storage, treatment, destruction, or secure disposition off-site may be provided in cases where EPA determines that such actions:

(i) Are more cost-effective than other forms of remedial actions;

(ii) Will create new capacity to manage, in compliance with Subtitle C of the Solid Waste Disposal Act, hazardous substances in addition to those located at the affected facility; or

(iii) Are necessary to protect public health or welfare or the environment from a present or potential risk which may be created by further exposure to the continued presence of such substances or materials.

(2) Contaminated soils and sediments may be removed from the site. Technologies used to remove contaminated sediments from soils include:

(i) Excavation;

(ii) Hydraulic dredging;

(iii) Mechanical dredging.

(d) Provision of alternative water supplies can be provided in several ways:

(1) Provision of individual treatment units;

(2) Provision of water distribution system;

(3) Provision of new wells in a new location or deeper wells;

(4) Provision of cisterns;

(5) Provision of bottled or treated water;

(6) Provision of upgraged treatment for existing distribution systems.

(e) *Relocation*—Permanent relocation of residents, businesses, and community facilities may be provided where it is determined that human health is in danger and that, alone or in combination with other measures, relocation would be cost-effective and environmentally preferable to other remedial response. Temporary relocation may also be taken in appropriate circumstances.

§ 300.71 Other party responses.

(a)(1) Any person may undertake a response action to reduce or eliminate the release or threat of release of hazardous substances, or pollutants or contaminants. Section 107 of CERCLA authorizes persons to recover certain response costs consistent with this Plan from responsible parties.

(2) For purposes of cost recovery under section 107 of CERCLA, except for actions taken pursuant to section 106 of CERCLA or pursuant to preauthorization under § 300.25 of this Plan, a response action will be consistent with the NCP (or for a State or Federal government response, not inconsistent with the NCP), if the person taking the response action:

(i) Where the action is a removal action, acts in circumstances warranting removal and implements removal action consistent with § 300.65.

(ii) Where the action is a remedial action:

(A) Provides for appropriate site investigation and analysis of remedial alternatives as required under §300.68;

(B) Complies with the provisions of paragraphs (e) through (i) of § 300.68;

(C) Selects a cost-effective response; and

(D) Provides an opportunity for appropriate public comment concerning the selection of a remedial action consistent with paragraph (d) of § 300.67 unless compliance with the legally applicable or relevant and appropriate State and local requirements identified under paragraph (4) of this section provides a substantially equivalent opportunity for public involvement in the choice of remedy.

(3) For the purpose of consistency with § 300.65 and § 300.68 of this Plan, except for response actions taken pursuant to section 106 of CERCLA or response actions for which reimbursement from the Fund will be sought, any action to be taken by the "lead agency" in § 300.65 or § 300.68 may be taken by the person carrying out the response.

(4) Persons performing response actions that are neither Fund-financed nor pursuant to action under section 106 of CERCLA shall comply with all otherwise legally applicable or relevant and appropriate Federal, State, and local requirements, including permit requirements.

(b) *Organizations.* Pursuant to CERCLA section 105(9), organizations may assist or conduct site response by:

(1) organizing responsible parties;

(2) initiating negotiation or other cooperative efforts;

(3) apportioning costs among liable parties;

(4) recommending appropriate settlements to the lead agency;

(5) conducting the RI/FS in accordance with this Plan;

(6) evaluating and recommending appropriate remedies to the lead agency;

(7) implementing and overseeing response actions;

(8) obtaining assurances for continued site maintenance from responsible parties; and/or

(9) recommending sites for deletion after completion of all appropriate response action.

(c) *Certification.* Organizations may be certified to conduct site response actions. Certification is not necessary for, but may facilitate, Fund preauthorization under § 300.25(d) and lead agency evaluation of the adequacy of proposed response actions.

(1) An organization may request certification by submitting a written request to the Administrator or his designee establishing that the requesting organization has engineering, scientific, or other technical expertise necessary to assist or conduct site response by carrying out any or all of the functions listed in paragraph (b) of this section.

(2) For each specific release being addressed, the certified organization must:

(i) Meet the requirements of § 300.25(d) and 40 CFR 307 if requesting preauthorization; and

(ii) Have established procedures to recuse members of the organization that may have a conflict of interest with a party potentially responsible for the release.

(3) The Administrator will respond to a request for certification within 180 days of receipt of the request. The Administrator may grant certification, request further information relating to the requested certification, or deny certification.

(4) Certification is effective for two years from the date of latest certification. If certification is not renewed at that time, it automatically expires.

(5) Certification is not to be construed as approval by the lead agency of response actions undertaken by that organization. Certification does not authorize that organization to act on behalf of, or as an agent for, the lead agency.

(6) Certification may be revoked at the discretion of the Administrator for failure to comply with this Plan or the requirements of CERCLA.

(d) *Releases from Liability.* Implementation of response measures by responsible parties, certified organizations, or other persons does not release those parties from liability.

Subpart G—Trustees for Natural Resources

§ 300.72 Designation of Federal trustees.

When natural resources are lost or damaged as a result of a discharge of oil or a release of a hazardous substance, the following officials are designated to act as Federal trustees pursuant to section 111(h)(1) of CERCLA and section 311(f)(5) of the Clean Water Act for purposes of sections 111(h)(1), 111(b), and 107(f) of CERCLA and section 311(f)(5) of the Clean Water Act:

(a)(1) *Natural Resource Loss.* Damage to resources of any kind located on, over, or under land subject to the management or protection of a Federal land managing agency, other than land or resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal land managing agency, or the head of any other single entity designated by it to act as trustee for a specific resource.

(b)(1) *Natural Resource Loss.* Damage to fixed or non-fixed resources subject to the management or protection of a Federal agency, other than land or resources in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence.

(2) *Trustee.* The head of the Federal agency authorized to manage or protect these resources by statute, or the head of any other single entity designated by it to act as trustee for a specific resource.

(c)(1) *Natural Resource Loss.* Damage to a resource of any kind subject to the management or protection of a Federal agency and lying in or under United States waters that are navigable by deep draft vessels, including waters of the contiguous zone and parts of the high seas to which the National Contingency Plan is applicable and other waters subject to tidal influence, and upland areas serving as habitat for marine mammals and other species subject to the protective jurisdiction of NOAA.

(2) *Trustee.* The Secretary of Commerce or the head of any other single Federal entity designated by it to act as trustee for a specific resource; provided, however, that where resources are subject to the statutory authorities and jurisdictions of the Secretaries of the Departments of Commerce or the Interior, they shall act as co-trustees.

(d)(1) *Natural Resource Loss.* Damages to natural resources protected by treaty (or other authority pertaining to Native American tribes) or located on lands held by the United States in trust for Native American communities or individuals.

(2) *Trustee.* The Secretary of the Department of the Interior, or the head of any other single Federal entity designated by it to act as trustee for specific resources.

§ 300.73 State trustees.

States may act as trustee for natural resources within the boundary of a State or belonging to, managed by, controlled by, or appertaining to such State as provided by CERCLA.

§ 300.74 Responsibilities of trustees.

(a) The Federal trustees for natural resources shall be responsible for assessing damages to the resource in accordance with regulations promulgated under section 301(c) of CERCLA, seeking recovery for the costs of assessment and for the losses from the person responsible or from the Fund, and devising and carrying out a plan for restoration, rehabilitation, or replacement or acquisition of equivalent natural resources pursuant to CERCLA.

(b) The trustee may, upon notification, take the following actions as appropriate:

(1) request that the lead agency issue an administrative order or pursue judicial relief against parties responsible for the release, as authorized by CERCLA section 106;

(2) request that the lead agency remove or arrange for the removal or provide for remedial action with respect to any hazardous substance from a contaminated medium, as authorized by CERCLA section 104;

(3) initiate actions against responsible parties under CERCLA section 107(a); or

(4) pursue a claim against the Fund for injury, destruction, or loss of a natural resource, as authorized by CERCLA section 111. (When this option is selected, a plan for restoration, rehabilitation, or replacement or acquisition of equivalent natural resources must be adopted pursuant to section 111(i) of CERCLA.)

(c) Where there are multiple trustees, because of co-existing or contiguous natural resources or concurrent jurisdictions, they shall coordinate and cooperate in carrying out these responsibilities.

Subpart H—Use of Dispersants and Other Chemicals

. . . . .

§ 300.84 Authorization of use.

(a) The OSC, with the concurrence of the EPA representative to the RRT and the concurrence of the States with jurisdiction over the navigable waters polluted by the oil discharge, may authorize the use of dispersants, surface collecting agents, and biological additives on the oil discharge, provided that the dispersants, surface collecting agents, or additives are on the NCP Product Schedule. The OSC shall consult with other appropriate Federal agencies as practicable when considering the use of such products.

(b) The OSC, with the concurrence of the EPA representative to the RRT and the concurrence of the States with jurisdiction over the navigable waters polluted by the oil discharge, may authorize the use of burning agents on a case-by-case basis. The OSC shall consult with other appropriate Federal agencies as practicable when considering the use of such products.

(c) The OSC may authorize the use of any dispersant, surface collecting agent, other chemical agent, burning agent, or biological additive (including products not on the NCP Product Schedule) without obtaining the concurrence of the EPA representative to the RRT or the State with jurisdiction over the navigable waters polluted by the oil discharge, when, in the judgment of the OSC, the use of the product is necessary to prevent or substantially reduce a hazard to human life. The OSC is to inform the EPA RRT representative and the affected States of the use of a product as soon as possible and, pursuant to the provisions in paragraph (a) of this section, obtain their concurrence for its continued use once the threat to human life has subsided.

(d) Sinking agents shall not be authorized for application to oil discharges.

(e) RRTs shall, as appropriate, consider, as part of their planning activities, the appropriateness of using the dispersants, surface collecting agents, or biological additives listed on the NCP Product Schedule, and the appropriateness of using burning agents. Regional contingency plans shall, as appropriate, address the use of such products in specific contexts. If the RRT and the States with jurisdiction over the waters of the area to which a plan applies approve in advance the use of certain products as described in the plan, the OSC may authorize the use of the products without obtaining the concurrence of the EPA representative to the RRT or of the States and without consultation with other appropriate Federal agencies.

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Part III

Environmental Protection Agency

40 CFR Part 440

Ore Mining and Dressing Point Source Category; Gold Placer Mining; Effluent Limitations Guidelines and New Source Performance Standards; Proposed Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 440

[WH-FRL 2892-4]

Ore Mining and Dressing Point Source Category; Gold Placer Mining; Effluent Limitations Guidelines and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulation.

SUMMARY: EPA is proposing effluent limitations guidelines and standards under the Clean Water Act to limit effluent discharges of pollutants to waters of the United States from existing and new sources in the gold placer mining segment of the ore mining and dressing industry.

The purpose of this proposed regulation is to propose effluent limitations guidelines based on "best practicable technology" (BPT), "best available technology economically achievable" (BAT) and "best conventional control technology" (BCT), and "new source performance standards" (NSPS) based on best demonstrated technology for direct dischargers. Pretreatment standards for both existing and new sources will not be issued since no known indirect dischargers exist nor are any known to be planned. After considering comments received in response to this proposal, EPA will promulgate a final rule.

DATES: Comments on this proposal must be submitted on or before March 20, 1986. Because of the unique seasonal operation operation of most gold placer mines and remote location of many miners, EPA is providing this extended comment period to allow affected miners adequate time to comment.

ADDRESS: Send comments to: Mr. William Telliard, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Technical information may be obtained from Mr. B. Matthew Jarrett, at the address listed above, or by calling (202) 382-7164. The economic information may be obtained from Mr. Mark Kohorst, Analysis and Evaluation Division (WH-586), Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, or by calling (202) 382-5834.

EPA has prepared two documents to support this proposal: Draft Development Document for Effluent Limitations Guidelines and Standards for the Gold Placer Mining Subpart of the Ore Mining and Dressing Point Source Category and Economic Analysis of the Proposed Effluent Limitations Guidelines and Standards for the Gold Placer Mining Subpart of the Ore Mining and Dressing Point Source Category. On (four weeks after **Federal Register** publication date), copies of these two documents and the entire record for this proposal will be available for public review in EPA's Public Information Reference Unit, Room 2404 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. At the same time this information will be available in the Alaska Operations Office, Federal Building, Room E556, 701 C Street, Anchorage, AK 99513, and at EPA Region X, 1200 Sixth Avenue, Room xxx, Seattle, WA 98101. The EPA information regulation (40 CFR Part 2) allows the Agency to charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: B. Matthew Jarrett, at the address above or call (202) 382-7164.

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I. Legal Authority

The regulations described in this notice are proposed under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217) (the "Act").

II. Background

A. The Clean Water Act

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the nation's waters," section 101(a). By July 1, 1977, existing industrial dischargers were required to achieve "effluent limitations requiring the application of the best practicable control technology currently available" ("BPT"), section 301(b)(1)(A). By July 1, 1983, these dischargers were required to achieve "effluent limitations requiring the application of the best available technology economically achievable, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants" ("BAT"), section 301(b)(2)(A). New industrial direct dischargers were required to comply with section 306 new source performance standards ("NSPS"), based on best available demonstrated technology. The requirements for direct dischargers were to be incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued under section 402 of the Act.

Although section 402(a)(1) of the 1972 Act authorized the setting of

requirements for direct dischargers on a case-by-case basis in the absence of nationally applicable effluent limitations guidelines and standards, section 304(b) of the Act authorized the Administrator to promulgate regulations providing guidelines for effluent limitations setting forth the degree of effluent reduction attainable through the application of BPT and BAT and sections 304(c) and 306 of the Act required promulgation of regulations for NSPS for certain designated industry categories. In addition to these regulations for designated industry categories, section 307(a) of the Act required the Administrator to promulgate effluent standards applicable to all dischargers of toxic pollutants. Finally, section 501(a) of the Act authorized the Administrator to prescribe any additional regulations "necessary to carry out his functions" under the Act.

EPA was unable to promulgate many of these regulations by the dates contained in the 1972 Act. In 1976, EPA was sued by several environmental groups, and in settlement of this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" that was approved by the Court. This Agreement required EPA to develop a program and adhere to a schedule for promulgating for 21 major industries BAT effluent limitations guidelines, pretreatment standards, and new source performance standards for 65 "priority" toxic pollutants and classes of pollutants. See, *Natural Resources Defense Council, Inc. v. Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), *modified* by orders dated October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984, and January 7, 1985. EPA promulgated regulations for the ore mining and dressing point source category on December 3, 1982, 40 CFR Part 440, 49 FR 54598. In that rulemaking EPA deferred regulation of gold placer mining.

On December 27, 1977, the President signed into law the Clean Water Act of 1977. Sections 301(b)(2)(A) and 301(b)(2)(C) of the Act now require the achievement by July 1, 1984 of effluent limitations requiring application of BAT for "toxic" pollutants, including the 65 "priority" pollutants and classes of pollutants which Congress declared "toxic" under section 307(a) of the Act. Likewise, EPA's program for new source performance standards is now aimed principally at toxic pollutant controls. Moreover, to strengthen the toxics control program, section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" ("BMP") to prevent the release of toxic and hazardous pollutants from plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

The 1977 Amendments added section 301(b)(2)(E) to the Act establishing "best conventional pollutant control technology" (BCT) for discharges of conventional pollutants from existing industrial point sources. Conventional pollutants are those mentioned specifically in section 304(a)(4) (biochemical oxygen demanding pollutants (BOD_5), total suspended solids (TSS), fecal coliform, and pH), and any additional pollutants defined by the Administrator as "conventional." (To date, the Agency has added one such pollutant, oil and grease, 44 FR 44501, July 30, 1979.)

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two-part "cost-reasonableness" test, *American Paper Institute* v. *EPA*, 660 F. 2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT relative to the cost-effectiveness of attaining BPT. This ratio is then evaluated against an industry cost benchmark which is a ratio of analogous measures. EPA must find that limiations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA first published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.) A revised methodology for the general development of BCT limitations was proposed on October 29, 1982 (47 FR 49176), and a notice of availability of additional data was published on September 20, 1984 (49 FR 37046). EPA has not yet republished the BCT methodology.

For non-toxic, nonconventional pollutants, sections 301 (b)(2)(A) and (b)(2)(F) require achievement of BAT effluent limitations within three years after their establishment or July 1, 1984, whichever is later, but not later than July 1, 1987.

The purpose of these proposed regulations is to provide effluent limitations guidelines for BPT, BCT, and BAT and to establish NSPS, under sections 301, 304, 306, and 501 of the Clean Water Act.

Pretreatment standards for Existing Sources (PSES) and Pretreatment Standards for New Sources (PSNS) are designed to control the discharge of pollutants into publicly owned treatment works. Pretreatment standards are not being proposed for the gold placer mining segment of the ore mining and dressing subpart since no known indirect dischargers exist nor are any known to be planned. Gold placer mines are located in remote areas, generally far from a POTW. EPA expects that the cost of pumping mine and mill wastewater to a POTW would be prohibitive and that on-site treatment will be the practice in this industry.

B. History of Current Regulations for Ore Mining and Dressing

On November 6, 1975, EPA published interim final regulations establishing BPT requirements for existing sources in the ore mining and dressing industry (see 40 FR 51722). These regulations became effective upon publication. However, concurrent with their publication, EPA solicited public comments with a view to possible revisions. On the same date, EPA published proposed BAT, NSPS and pretreatment standards for this industry (see 40 FR 51738) including gold placer mines.

On May 24, 1976, as a result of the public comments received, EPA suspended certain portions of the interim final BPT regulations including the portion which applied to gold placer mines and solicited additional comments (see 41 FR 21191). EPA promulgated revised, final BPT regulations for the ore mining and dressing industry on July 11, 1978 (see 43 FR 29711, 40 CFR Part 440), which reserved the subcategory on gold placer mines. On February 8, 1979, EPA published a clarification of the BPT regulations as they apply to storm runoff (see 44 FR 7953). On March 1, 1979, the Agency amended the final BPT regulations by deleting the requirements for cyanide applicable to froth flotation mills in the base and precious metals subcategory (see 44 FR 11546).

On December 10, 1979, the United States Court of Appeals for the Tenth Circuit upheld the BPT regulations, rejecting challenges brought by five

industrial petitioners. *Kennecott Copper Corp.* v. *EPA*, 612 F.2d 1232 (10th Cir. 1979).

The Agency withdrew the 1975 proposed BPT, NSPS, and pretreatment standards on March 19, 1981 (see 46 FR 17567). On June 14, 1982, the Agency proposed new BAT, BCT, and NSPS limitations and standards for the ore mining and dressing point source category. The final rule was published on December 3, 1982 (see 47 FR 54598). This final rule also reserved limitations for gold placer mines.

C. Overview of Gold Placer Mining Subcategory

This proposed regulation applies to facilities engaged in the mining and processing of gold placer ores. Placer mining is one of the four basic methods of mining metal ores; the other three include underground or deep-mining, open pit mining, and in situ or soilution mining. Placer mining is the mining of alluvial deposits (generally loose gravel, sand, soil, or mud that has been deposited by water or ice) of mineral derived from erosion or weathering of bedrock. Placer mining consists of excavating waterborne or glacial deposits, in this case gold-bearing gravel and sands, which can then be separated by gravity or other physical means. Separation methods that are used today include various dredging techniques (clam shell, continuous bucket, or dragline) and the open cut mining method which uses bulldozers, front end loaders, drag lines, and backhoes. Where water availability and physical characteristics permit, dredging or hydraulic methods are often favored because they are more economical and can process large volumes of ore. At some locations, hydraulic excavation (using water cannons known as monitors) is employed both for overburden removal and for sluicing ores.

Water is used for mining and ore dressing. Five main ore dressing processes use water: gravity concentration (which is covered by this proposed rule), and magnetic separation, electrostatic separation, forth flotation, and leaching (which are not covered by this proposed rule). Most of the processes involve size reduction by classification. In the case of placer mining, size reduction (classification) consists of the separation of the larger non-gold bearing components of the raw pay dirt (ore) from the finer sized components that contain the free gold and black sand. The use of grizzlies (bars spaced in one direction or in a grid pattern to remove [scalp] the larger components), screens (including trommels and vibrating screen decks), and undercurrents are the principal classfication methods employed for this separation.

Gravity concentration processes use differences in specific gravity to further separate the valuable free gold and gold-bearing minerals from the gangue (unwanted portion of the ore). The processes depend upon viscosity forces to suspend and transport gangue away from the heavier, valuable minerals. Several devices are currently employed including sluices, undercurrents, jigs, cyclones, tables, spirals and rotating wheels of various sizes. Each device employs water as the medium through which the separation takes place and the means of removing unwanted lighter minerals. The process water is generally recycled and reused in areas where water is scarce. Recycling often requires extra planning and careful engineering but results in the reduction of pollutants discharged to the environment. Classification prior to and during processing reduces the quantity of water required for processing and further reduces the total amount of pollutants discharged to the environment.

Sluice discharges are extremely high in suspended solids, and depending on geology, these discharges may contain arsenic (at treatable levels) and mercury (at very low levels). There are no organic toxics in these effluents. Raw sluice discharges contain settleable solids averaging over 47 ml/l, total suspended solids averaging over 27,000 mg/l, and turbidity averaging over 20,000 NTU. Undisturbed streams typically contain no settleable solids, TSS at 10–15 mg/l, and turbidity at 50 NTU or less. During spring snowmelt (and for some rivers all summer), TSS and turbidity are upwards of 1000 units, but mines are usually in the upriver tributaries which run fairly clear once the initial ice "breakup" ends in late spring.

Prior to the involvement of EPA and the several States, many of the placer mines did not treat their wastewater and discharged directly to the local stream systems. Several facilities used settling ponds for recirculation purposes to conserve process water; the resultant water treatment was a secondary consequence.

The environmental consequences of placer mining and associated issues are varied and complex; they are similar to those associated with many mining activities where the land surfaces are substantially disturbed, if not permanently altered. Unlike other mining operations moving hundreds or thousands of cubic yards of earth per day, placer operations are conducted directly in streambeds and adjacent property, often with enormous aesthetic and water quality impacts in the immediate vicinity and sometimes for miles downstream. While individual placer mines in the Western U.S. and Alaska are usually very remote (with site-specific impacts that can be at least minimized by proper and complete site management practices), the wilderness setting itself also leads to broader environmental concern about wildlife habitat and scenic destruction or disturbances. Sometimes, though not always, a placer deposit rich in gold ore is located (and being mined) in streams which serve as spawning sites for sensitive species like salmon, trout, or Artic grayling. In these instances, the constant sediment loads downstream from mines disrupt stable stream bottoms, smother breeding areas, and otherwise disturb fish habitat. In other situations, however, mine site streams are very small, flow only intermittently, and do not support fishlife. In these cases, water quality impacts may be reduced.

There are also concerns presented by the construction and installation of treatment plants/technologies which could lead to destruction or disturbances of scenic values or wildlife habitat. The economic feasibility of the use of sand filters (slow and rapid), diatomaceous earth filters or other media filters, or settling tanks is not only highly questionable, but the mere presence of these technologies violates the pristine quality of the wilderness and has profound complications for fish and wildlife. These types of treatment installations encourage construction of permanent facilities; e.g., power poles, lines, reinforced concrete structures and other highly visible support facilities. This construction disturbs the wilderness areas and changes their natural state.

Moreover, placer mining activity occurs because of an acquired mineral right (i.e., to mine the gold) at sites usually situated on public (state or federal) lands. These public lands often are set aside for specific or multiple "public use" purposes (mineral development, forestry, wildlife conservation, recreational uses) and mine operators often find themselves confronting a conflict between their right to mine and the impacts of the mining on these "public uses." An example of such a conflict is typified by the results of a recent lawsuit filed by several environmental groups against the U.S. National Park Service (in the United States Department of the

Interior) in the State of Alaska. The United States District Court for the District of Alaska issued a ruling to cease mining within the boundaries of the federal parks in Alaska until all legal requirements are met to allow such activity. These requirements include environmental assessments, environmental impact statements, posting of bonds, submission of mining plans and rehabilitation plans plus the issuance of access permits for each operation by the Park Service. In this particular case, the judge issued a Preliminary Injuction plus a Memorandum and Order simultaneously on July 22, 1985, allowing current operators 45 calendar days to stop mining, while cancelling all existing permits issued by the Park Service. This deadline was later extended to cover the 1985 mining season. Copies of these documents are a part of the record for the gold placer mining rulemaking package.

Many state and federal agencies administer the different programs to implement (or control) the various uses of public land. In this regard, seasonal placer mine site rehabilitation, post-mining reclamation requirements, and site management assistance during active mining are all activities, administered by other state and federal agencies, which can go far to eliminate adverse environmental impacts from placer mining.

D. History of Regulation of Gold Placer Mining

Effluent limitations guidelines and standards are not directly enforceable against dischargers. Instead, they are incorporated into a National Pollutant Discharge Elimination System (NPDES) permit, which is required by section 402(a)(1) of the Clean Water Act for the discharge of pollutants from a point source into the waters of the United States. If EPA has not established industry-wide effluent limitations guidelines and standards to cover a particular type of discharge, section 402(a)(1) of the Act expressly authorizes the issuance of permits upon "such conditions as the Administrator determines are necessary to carry out the provisions of this Act." In other words, this section authorizes a determination of the appropriate effluent limitations (e.g., BPT, BCT, BAT), on a case-by-case basis, based on the Agency's "best professional judgment" (BPJ).

The establishment of technology-based effluent limitations in NPDES permits is a two-step process. First, EPA must identify the appropriate technology basis. The second step in the permitting process is the setting of precise effluent limitations which can be met by application of that technology. The Clean Water Act does not require dischargers to install the technology which is the basis of the limitations; dischargers may choose how to meet the effluent limitations. In addition to technology-based standards, sections 402 and 301(b)(1)(C) of the Clean Water Act require a permit to include any more stringent limitations including those necessary to meet water quality standards established pursuant to any state law or regulation or any other Federal law or regulation. Under section 401 of the Act, no NPDES permit may be issued unless the state has granted or waived certification that the discharge will comply with the applicable provisions of the Act; if the state includes conditions as part of a valid certification, EPA must include those conditions in the permit.

1. The 1976–1977 Alaska BPT Permits

In 1976 and 1977, EPA issued 170 permits to Alaska placer miners. Because there were no effluent limitations guidelines promulgated for the placer mining industry at that time, these permits were based on BPJ. In addition, these permits included limitations designed to satisfy Alaska's water quality standards.

Each of the permits had identical effluent limitations, monitoring requirements, and reporting requirements. The permits required treatment of process wastes so that the maximum daily concentration of settleable solids was 0.2 milliliters per liter (ml/l). In addition, the permits required monthly monitoring for this pollutant or instead of monitoring to establish compliance with the settleable solids limitation, each permittee was given the option of installing a settling pond with the capacity to hold 24 hours' water use. In addition, the permittee could not cause an increase in turbidity of 25 JTU (Jackson Turbidity Units) over natural turbidity in the receiving stream at a point measured 500 feet downstream from the final discharge point. EPA added the turbidity limitation to the request of the State of Alaska, which included this requirement in its certification of these permits under Section 401 of the Clean Water Act, to ensure compliance with its state water quality standards. The technology basis for the settleable solids limitation was settling ponds.

In June 1976, Gilbert Zemansky (a citizen) requested an adjudication of the 1976 NPDES permits as an interested party. Subsequently, the Trustees for Alasks (Trustees) and the Alasks Miners Association (Miners), as well as others, were admitted as additional parties to the proceeding. The Trustees and Zemansky argued that the permit terms were not stringent enough and that EPA should have selected recycle as the model BPT technology and required zero discharge of any pollutants, while the Miners argued that the terms were too stringent and not achievable. After the initial adjudicatory hearing, the Regional Administrator for Region X issued his Initial Decision on October 25, 1978, upholding the terms of the permits.

The Trustees, Zemansky, and the Miners each petitioned the Administrator of EPA to review the initial decision. On March 10, 1980, the EPA Administrator issued his decision on review. The Administrator held that the Regional Administrator's findings regarding settling pond technology "conclusively establish that any less stringent control technology does not satisfy the requirements of BPT." Decision of the Administrator (Ad. Dec.) Ad. Dec. at 15. The Administrator also found that "the Regional Administrator was in doubt about the facts respecting the extra costs of recycling. . . ." Therefore, the Administrator remanded the proceedings to the Regional Administrator "for the limited purpose of reopening the record to receive additional evidence on the extra cost of recycling in relationship to the effluent reduction benefits to be achieved from recycling." Ad. Dec. at 22. The Administrator directed the Regional Administrator to determine whether recycling constitutes BPT based on the additional evidence received.

After the Administrator rendered his decision, the Trustees requested the Administrator to: (1) Determine the effluent limitations necessary to meet state water quality standards; (2) determine appropriate effluent monitoring requirements in the event the Regional Administrator did not determine that zero discharge was required; and (3) direct the Regional Administrator on remand to determine effluent limitations for total suspended solids or turbidity, for arsenic, and for mercury based on BPT in the event he did not determine that zero discharge is required. On July 10, 1980, the Administrator issued a Partial Modification of his decision, directing the Presiding Officer "to allow additional evidence to be received if he determines on the basis of the record that such additional evidence is needed to make the requested determinations." Partial Modification on Remand at 3.

The hearing on remand was held in March and June 1981, and the Presiding Officer issued his Initial Decision on Remand (Rem. Dec.) on March 17, 1982. After reviewing the costs and effluent reduction benefits associated with both settling ponds and recycle, the Presiding Officer held that "the preponderance of the evidence in this case indicates that zero discharge is not 'practicable' for gold placer miners in Alaska." Rem. Dec. at 17. He also ordered EPA to modify the permits to include monitoring requirements for settleable solids and turbidity, and to require monitoring for arsenic and mercury, for at least one season, "to determine whether or not [they] constitute a problem with placer mining." Rem. Dec. at 19–20.

On September 20, 1983, the Administrator denied review of the Initial Decision on Remand. Both the Trustees for Alaska and Zemansky, as well as the Alaska Miners Association, petitioned the Ninth Circuit Court of Appeals for review. (Case No. 83–7764 and Case No. 83–7961). The Ninth Circuit consolidated the cases and issued its decision in *Trustees for Alaska* v. *EPA* and *Alaska Miners Association* v. *EPA* on December 10, 1984 (749 F.2d 549).

In this court proceeding, the Miners raised various legal issues, including certain constitutional challenges, each of which was dismissed by the Court. Specifically, the Court held that: (1) The Clean Water Act's permit requirements applied to placer mining, *i.e.*, when discharge water is released from a sluice box it is a point source; (2) EPA's failure to establish effluent limitations guidelines and standards for the placer mining industry could only be challenged in district court; and (3) the Miners' challenge to the assignment of the burden of proof in the administrative hearings was not timely; it should have been raised when the permit regulations establishing that standard were promulgated.

The Court also dismissed the Miners' constitutional claims as too speculative or premature. The Miners had claimed, *e.g.*, that the permit conditions constituted a taking of their vested property rights in violation of the Fifth Amendment; the permits' self-monitoring, reporting, and recordkeeping provisions infringed their constitutional privilege against self-incrimination; and the permits' inspection provisions infringed their rights under the Fourth Amendment to be free from unreasonable searches.

The Court dismissed most other challenges to the permits as moot since the permits expired before this case reached the Ninth Circuit, and EPA had issued two sets of subsequent permits (in 1983 and 1984) based on newer, more complete records by the time the Court heard this case. The Court specifically held that EPA's choice of settling ponds as "best practicable control technology" (BPT) was moot because a different standard, "best available technology" (BAT), now applies.

However, the Court held that the form of the limitations included in the permits to ensure achievement of state water quality standards was not moot since both the permits at issue and the subsequent permits incorporated state water quality standards directly into the permits. After reviewing the definition of "effluent limitation," the legislative history of the 1972 amendments to the Clean Water Act, and relevant court cases, the Court held that EPA should not have incorporated the state water quality standard for turbidity, which was a receiving water standard, directly into the permits. Instead, the Court held that the permits must include end-of-pipe effluent limitations necessary to achieve the water quality standards. The Court also held that EPA should have given the Trustees the "opportunity to present in a public hearing their case for proposed effluent limitations or monitoring requirements for arsenic and mercury."

2. The 1983 Alaska Permits

During the proceedings on the 1976–1977 permits, EPA issued additional permits to Alaskan placer miners. In 1983, EPA issued 269 new permits. The 1983 permits were issued for the 1983 mining season and differed from the 1976 permits in several respects. For example, the 1983 permits contained a daily maximum discharge limit of 1.0 ml/l and a monthly average discharge limit of 0.2 ml/l on settleable solids. The 1983 permits also included a limit on arsenic based on the Alaska state water quality standards.

The Trustees for Alaska and Gilbert Zemansky requested an evidentiary hearing on the 1983 permits which the EPA Region X Regional Administrator granted. On February 16, 1984, the proceedings were dismissed for several reasons, including expiration of the 1983 permits and the Agency's intent to issue new permits that would take effect in the next mining season (*i.e.*, the summer of 1984). No one appealed the decision within the Agency or petitioned for judicial review of the decision.

3. The 1984 and 1985 Alaska Permits

In 1984, EPA issued BAT permits to 445 placer miners (the first set was issued on June 8, 1984; additional permits were issued on June 14, 1984). The technology basis for the BAT permits, like the BPT permits, is settling ponds. Based on additional data developed since the BPT permits were issued, the instantaneous maximum settleable solids discharge limit is 1.5 ml/l and the monthly average limit is 0.7 ml/l. Monitoring is required twice a day, each day of sluicing. The permits incorporate Alaska's state water quality standards for turbidity and arsenic and require visual monitoring for turbidity.

On January 31, 1985, in response to the Ninth Circuit opinion which held that permits must include end-of-pipe effluent limitations necessary to achieve state water quality standards (see above), EPA proposed to modify the 1984 permits to include effluent limitations for turbidity (5 NTU's above background) and arsenic (0.05 mg/l). On February 12, 1985, EPA proposed permits for 93 additional miners. These permits proposed the same limitations as the 1984 permits, except they include the effluent limitations for turbidity and arsenic just mentioned, rather than simply citing the state water quality standards. On May 10, 1985, EPA issued both the modified permits to miners holding permits in 1984 and the new permits to the 1985 applicants. Various parties have challenged these permits; they are currently being adjudicated. Several of the other States require total recycle for all mines and thus NPDES permits are not required.

III. Scope of This Rulemaking and Summary of Methodology

This proposed regulation is a part of the Agency's continuing effort in water pollution control requirements.

In this rulemaking EPA is proposing to establish both nationally applicable BPT effluent limitations guidelines and nationally applicable effluent limitations guidelines based on the best available technology economically achievable (BAT), best conventional technology (BCT) for control of conventional pollutants and new source performance standards (NSPS).

In developing this proposed regulation, EPA studied the gold placer mining industry to determine whether differences in placer deposits, extraction processes, equipment, age and size of mines, water usage, wastewater constituents, or other factors required the development of separate effluent limitations guidelines and standards for different segments of the industry. This study included the identification of raw waste and treated effluent characteristics, including: (1) the sources and volume of water used, the processes employed, and the sources of pollutants

and wastewaters, and (2) the constituents of wastewaters, including toxic pollutants. EPA then identified the constituents of wastewaters which should be considered for effluent limitations guidelines and standards of performance, and statistically analyzed raw waste constituents, as discussed in detail in Section VI of the Development Document.

Next, EPA identified several actual and potential control and treatment technologies (including both in-process and end-of-process technologies). The Agency compiled and analyzed both historical data and newly generated data on the performance, operational limitations, and reliability of each of these treatment and control technologies. In addition, EPA considered the nonwater quality environmental impacts on these technologies, including impacts of air quality, solid waste generation, water scarcity, and energy requirements.

The Agency then estimated the costs of each control and treatment technology using cost equations developed by standard engineering analysis as applied to gold placer mining wastewater characteristics. EPA derived these costs for five model operations, representative of the entire gold placer mining subcategory. These unit process costs were derived using data and characteristics (production and flow) applied to each treatment level. The Development Document discusses in detail the method used to extrapolate the costs for each subcategory from the costs estimated for the five representative operations.

After confirming the reasonableness of this methodology by comparing EPA cost estimates to treatment system costs supplied by the industry, the Agency evaluated the economic impacts of these costs. (Costs and economic impacts are discussed in detail under the various technology options, and in Section XIV of this notice).

On the basis of these factors, as more fully described below, EPA identified various control and treatment technologies as BPT, BCT, BAT and NSPS. It is important to note, however, that the proposed regulations would not require the installation of a particular technology. Rather, it would require the achievement of specified limitations, equivalent to those achieved by the proper operation of these or equivalent technologies.

IV. Data Gathering Program

A. Data Gathering Efforts

EPA's program for gathering data to support the proposed regulation is described in detail in Section V of the Development Document. A summary of this program follows.

In the course of developing the 1982 Ore Mining and Dressing Point Source Category regulation, EPA collected some data on gold placer mining. However, as noted earlier, these data were insufficient to promulgate a regulation. Since then EPA Headquarters, EPA Region X, several agencies in the State of Alaska, the U.S. Department of the Interior (USGS), other state agencies in the lower 48 states, and others have been gathering data on gold placer mining. Various tests were performed in the field, at various mine sites, and in laboratories. The results of this combined effort form the basis for the proposed regulation.

During the summer (operating season) of 1982, EPA conducted reconnaissance sampling visits to obtain basic site information and effluent data at 51 mines. Subsequently, certain errors were found in sample handling and corresponding site-specific field data were found to be incomplete. As a result, these data were only used to define more specific information needs for additional engineering and field sampling in 1983 and 1984.

The Agency and its contractors, with the cooperation of the miners, conducted a two-year information gathering effort (during 1983 and 1984) to sample influent water, in-plant process flow water, effluent water, and receiving stream water quality. In addition, this two-year study was expanded to acquire economic and financial data, which form the basis for the economic impact analysis of this proposed rule.

The 1983 reconnaissance site visits were conducted at 60 mines by the Agency and its contractors. Except for one mine which ceased to operate at the time of the inspection, contractor work entailed both a preliminary site visit and detailed follow-up sampling and engineering surveys.

During the 1984 operating season EPA Region X personnel visited 7 mines. EPA Headquarters with contractor assistance conducted engineering assessment visits at 20 mines from which 10 mines were selected for follow-up sampling visits to verify in-place technology and performance. Four of the ten mines had to be eliminated from further study due to various operational problems, e.g. pond scouring (re-mixing solids), and process water bypasses (which resulted in no control on discharges), that would have rendered any subsequent data unless for study purposes. Contractor personnel also visited six gold placer mines in the lower 48 states during the summer of 1984 to obtain operational, economic, and water quality information.

Treatability tests were conducted at a total of 19 different mines during the 1983 and 1984 seasons. These treatability tests consisted of jar tests and settling tube tests (using large 8 inch diameter, clear plastic tubes four and eight feet long) and involved both chemically assisted (flocculant-aided) and plain settling. Procedural details and results are presented in Sections V and VI of the Development Document.

In addition to the foregoing data sources, supplementary data were obtained from NPDES permit files in EPA regional offices, engineering studies on treatment facilities, contacts with state pollution control offices, and reports from two demonstration projects sponsored by EPA.

In response to comments received to date (both written and oral) from the industry, EPA recognized that further site-specific data would be useful to provide a more detailed data base to support this rulemaking. Accordingly, the Agency had several teams in the field during the summer of 1985 to acquire information covering all aspects of the industry (i.e., revenue, cost, equipment requirements, personnel requirements, operating conditions, etc.). In addition, the Agency conducted a Method Detection Limit analysis to determine the lowest level of repeatable detection limit for settlement solids for the gold placer mining industry. These data will be provided for public comment before the close of the public comment period on this proposed rule.

B. Sampling and Analytical Methods

The sampling and analysis program conducted in 1983 and 1984 covered a wide range of locations, operating conditions, processes, water use rates, topography, production rates, and existing treatment technologies. The Agency studied placer mining wastewaters to determine the presence or absence of conventional, nonconventional, and toxic pollutants designated in the Clean Water Act.

As Congress recognized in enacting the Clean Water Act of 1977, the state-of-the-art ability to monitor and detect toxic pollutants was limited. Most toxic pollutants were relatively unknown until only a few years ago, and only on rare occasions had EPA regulated these pollutants or had industry monitored or even developed methods to monitor these pollutants. Section 304(h) of the Act, however, requires the Administrator to promulgate guidelines to establish test procedures for the analysis of toxic pollutants. As a result,

EPA scientists, including staff at the Environmental Research Laboratory in Athens, Georgia, and staff at the Environmental Monitoring and Support Laboratory in Cincinnati, Ohio, conducted a literature search and initiated a laboratory program to develop analytical protocols. The analytical techniques used in this rulemaking were developed concurrently with the development of general sampling and analytical protocols and were incorporated into the protocols ultimately adopted for the study of other industrial categories. See Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, revised April 1977.

Because section 304(h) methods were available for most toxic metals, pesticides, cyanide, and phenolics (4AAP), the analytical effort focused on developing methods for sampling and analyses of organic toxic pollutants. The three basic analytical approaches considered by EPA were infrared spectroscopy (IS), gas chromatography (GC) with multiple detectors, and gas chromatography/mass spectrometry (GC/MS). Evaluation of these alternatives led the Agency to propose analytical techniques for 113 toxic organic pollutants (see 44 FR 69464, December 3, 1979, amended 44 FR 75028, December 18, 1979) based on (1) GC with selected detectors, or high-performance liquid chromatography (HPLC), depending on the particular pollutant; and (2) GC/MS. On October 26, 1984, the Agency promulgated a final rule and an interim final rule for Guidelines Establishing Test Procedures for the Analysis of Pollutants under the Clean Water Act (see 49 FR 43234). This regulation established new test procedures (including quality control requirements) for the analysis of toxic organic pollutants; a new test procedure based upon inductively coupled plasma optical emission spectroscopy for the analysis of toxic heavy metal pollutants; and mandatory sample handling requirements. EPA applied these test procedures in the study supporting this proposed rulemaking and the Agency believes they represent the best state-of-the-art methods for toxic pollutant analysis available when the study was begun.

To develop effluent limitations guidelines and standards, EPA defined specific toxic pollutants for the analyses. The list of 65 pollutants and classes of pollutants potentially includes thousands of specific pollutants, and the expenditure of resources in government and private laboratories would be overwhelming if analyses were attempted for all these pollutants. Therefore, to make the task more manageable, EPA selected 129 specific toxic pollutants for study in this rulemaking and other industry rulemaking.

For each subcategory, including placer mining, EPA analyzes toxic pollutants according to groups of chemicals and associated analytical schemes. Organic toxic pollutants include volatile (purgeable), base-neutral, and acid (extractable) pollutants, and pesticides. Inorganic toxic pollutants include toxic metals. The primary method used in screening and verification of the volatile, base-neutral, and acid organics was gas chromatography with confirmation and quantification on all samples by mass spectrometry (GC/MS). Phenolics (total) were analyzed by the 4-aminoantipyrine (4AAP) method. GC was employed for analysis of pesticides with limited MS confirmation. The Agency analyzed the toxic metals by atomic adsorption spectrometry (AAS), with flame or graphite furnace atomization following appropriate digestion of the sample.

On the basis of EPA's study of the rest of the ore mining and dressing industry, EPA previously excluded 114 of the toxic organic pollutants from regualation during the BAT rulemaking (see 47 FR 54598, December 3, 1982). The toxic organic compounds are primarily synthetic and are not naturally associated with metal ores. No information has been developed during the study supporting this proposed rule or provided to EPA by the public indicating that any of the organic toxic pollutants are present in amounts which are treatable. In addition, final effluent samples from ten mines were analyzed for the presence of toxic organics. Two organics were detected in the final effluent, but in concentrations that are too low to treat and are considered to be attributable to sample and laboratory contamination. The remaining 117 toxic organics were not detected.

Sampling and analysis for each of the 13 toxic metals were performed at the same 10 mines. Of all the toxic metals, 11 were not detected or were present at or near the analytical detection limit and so were present in amounts too small to be treated. The toxic metals arsenic and mercury were found in placer mine wastewater in the 1983 and 1984 studies, and earlier studies. Analysis for the conventional pollutants, TSS and pH, and the nonconventional pollutants, turbidity and settleable solids, were routinely performed. Settleable solids is a measure of residual wastewater solids that settle in one hour; whereas, turbidity is a measure of light scatter in water due to the presence of suspended solids. Suspended solids is a measure of the total particulate solids in a water sample.

In planning data generation for this rulemaking, EPA considered requiring dischargers to monitor and analyze toxic pollutants under section 308 of the Act. The Agency did not use this authority, however, because it was reluctant to impose this cost on the industry and because it wanted to keep direct control over sample analyses—particularly the need for close quality control. Although EPA believes that the available data support these regulations, it would have preferred a larger data base for some of the pollutants and therefore will continue to seek additional data.

V. Subcategorization

In developing this proposed regulation, it was necessary to determine whether different effluent limitations guidelines and standards were appropriate for different segments (subcategories) of the gold placer mining subcategory. The major factors considered during this review included: wastewater characteristics, mining processes employed, water use, water pollution control technology, treatment costs, solid waste generation, size of the operation, location, weather, topography, geology, and age of the mine. Section IV of the Technical Development Document contains a detailed discussion of these factors and the rationale for the basis for the placer mining industry subcategorization scheme. EPA is proposing to develop separate limitations and standards for placer mines based on the size of the mine (defined by sluicing or process throughput, expressed in yd^3/day of bank run material prior to extraction) and mining process employed (see the Economic Development Document for a detailed discussion of these operating parameters).

As noted earlier, gold placer mining is part of the Ore Mining and Dressing Point Source Category, which generally deals with mining and processing gold ores. The effluent limitations guidelines and standards for this category, which were promulgated at 47 FR 54598 on December 3, 1982, covered discharges from mines that produce gold from open-pit or underground operations or use the cyanidation process or froth flotation process to extract gold. However, the 1982 regulation specifically reserved regulation of gold placer mines.

Because placer mining takes place in stream beds, generally uses sluices for ore processing, and does not use refined ore extraction methods, the basic processes for mining and processing placer deposits are different from the processes for mining and processing at "hard rock" gold mines and mills. Accordingly, we are creating a separate subcategory for gold placer mining.

Within gold placer mining, the most important of the factors considered in determining a need for further subcategorization into segments is the size of the operation as measured in yd^3/day of "bank run pay dirt" processed and the mining process employed. The term "bank run pay dirt" is defined as the actual mine/plant through-put of ore as measured in place prior to the "swell" that occurs once the material is removed from its natural state (which is approximately 20 to 30 percent in volume). Most mines calculate yd^3 mined prior to swell. Mines vary in size from very small recreational or assessment operations that process less that 20 yd^3/day up to and beyond 4,000 yd^3/day for commercial operations using conventional mechanical methods, i.e., bulldozers, loaders, and sluices, while the very large dredges process in excess of twice that amount daily. There exists a natural division between non-commercial and commercial mines (i.e., very small capacity versus large capacity). There are a large number of non-commercial (i.e., recreational, hobby, and assessment) operations periodically active in any mining season that process less than 20 yd^3/day of ore. The exact number of mines in this group varies considerably year to year and the amount of pollutants discharged by this group is unknown. However, because these small mines generally operate intermittently, and individually have little or no mechanized equipment, process a low total volume of ore, and thus discharge a low total volume of wastewater, the Agency believes they are not a major pollution source.

The pollutants present in the wastewater from the various commercial types of placer mines (larger than 20 yd^3/day) are essentially the same, while the quantity of the wastewater and the amounts (mass) of settleable solids (SS) and total suspended solids (TSS) discharged varies. The gold recovery (sluicing) operation suspends soil particles in the wastewater. Concentrations of 47 ml/l of SS and 27,000 mg/l of TSS are typical for commercial size operations.

Dredges represent a physically different means of mining placer deposits compared with the separate earth moving and sluicing equipment at other commercial mines. The dredges are large, self-contained barges which house all the ore mining equipment, ore processing equipment, and tailings separation equipment as a single machine. Dredges typically operate on electricity (but may be diesel-powered) and literally dig out an ore deposit over vast areas while floating on a "pond" of water created by digging out the streambed. In conjunction with the sheer size of these operations, dredges represent a fundamental process difference which the Agency believes should be recognized in subcategorization. EPA is unaware of any dredges which process less than 4,000 yd^3/day (except for small suction dredges).

Water use for processing ranges from about 1,000 gallons per cubic yard of ore processed up to about 8,000 gallons per yard. Extremes at the high end of this range are unusual and appear to result from using more water because it is available, rather than any inherent process requirement. Typical flows at commercial mines average 2,500 gallons per yard; dredges use about 4,000 gallons per yard for the self-contained systems. The Agency believes that within each segment it has created, the amount of water used is similar and that this factor supports the subcategorization scheme.

Similarly, sludge generation is also directly related to mine capacity since a fairly consistent volume of sludge per cubic yard of ore sluiced is generated at all types and sizes of placer mines. For a mine with 1200 yards per day sluicing capacity, some 150–200 yards of sludge would be contained in settling ponds. Approximately 1000 yards of the original ore are "heavy" tailings that generally never reach settling facilities. Thus, about 15 to 20 percent of a given cubic yard of ore will be discharged (ultimately) as sludge into containment structures. The Agency believes that sludge generation is similar for all mining segments and thus is not an appropriate basis for subcategorization.

A number of the other factors, such as climate, remote location, and age of the equipment, affect the cost of "doing business" and the degree of difficulty in operating the mine; but they have virtually no impact on the basic wastewater characteristics. As a factor in subcategorization, costs have been considered through the Agency's economic impact assessment. The Agency has subcategorized to reflect differential impacts for different sized mines. EPA's economic analysis indicates that a mine's potential for earning a profit increases as the size of the mine (amount of pay dirt processed per day) increases and that it is economically achievable for mines which process about 500 yd^3/day to install treatment in addition to simple settling. (See Economic Considerations, Section XIV of this preamble).

Similarly, the Agency has concluded that it is not necessary to subcategorize based on the geologic characteristics of the soil. For the settleable solids (SS) parameter, the data available to the Agency indicate achievable levels of SS from simple settling technology (proposed BPT model technology) are similar regardless of the type of soil being mined. However, geologic origins and soil characteristics have a direct bearing on effluent quality in terms of the physical nature and form of the particulate total suspended solids (TSS). The available data on TSS show similar wastewater treatability for placer mine discharges within a range of absolute (numerical) values for TSS. As shown in the Development Document, all settling pond treated effluent values for TSS are relatively high (one to several thousand mg/l). While there is no clear means to differentiate (subcategorize) mines when all values are so high and similar in magnitude, it appears there could be some differences for certain mines. If the placer deposit in question has high levels of colloidal or organic particulates in the fraction that becomes suspended (TSS), then this portion of the TSS would not be as amenable to control by simple settling (BPT) and thus could result in higher effluent values for this parameter. "Tyler" (or comparable) sieve analysis data on sludge "fines" in ponds, or on effluent TSS, is not now available to the Agency but could provide additional insight as to whether or not soil type (or geology) is a factor warranting further segments in the placer mining industry. EPA solicits any such available data.

Also, the Agency's subcategorization analysis reveals topography has little direct bearing on raw wastewater characteristics or general treatability of these wastewaters. Most operations successfully mine and provide effluent treatment in rugged terrain including steep upland valleys. However, there are a few situations where topography can dictate the availability of adequate space to provide treatment facilities. Operations in very narrow stream beds associated with narrow valley cross sections and steep gradient valley side slopes may not have sufficient space either to mine profitably or to install ponds or to adequately manage mine

drainage without substantially reconstructing (to expand) the site at considerable cost. However, EPA has no data indicating what differential costs would be incurred by these facilities to meet the proposed limitations and standards. Accordingly, the EPA analysis has not taken this very site-specific situation into account. EPA solicits comments on the number of facilities that may not have space to install ponds and alternative limitations that may be appropriate for these facilities. (See Solicitation of Comments, Section XXII below).

Based on available field and laboratory data, the Agency proposes to subdivide the gold placer mining subcategory into four segments, based on size of operation (yd^3/day of bank run processed) and type of operation (dredge and all others). (See Section IV of the Development Document.) Data show the same general distribution of commercial operations by size and mining process both in Alaska and in the contiguous United States.

The following subcategorization is proposed for this regulation:

1. Small mines (see description of mining methods above) with a production rate of <20 yd^3/day.
2. Large dredges with a production rate $>4{,}000$ yd^3/day, which operate in a self-contained pond.
3. All mines using all mining methods with production rates >20 yd^3/day and $<;$ 500 yd^3/day of "bank run" ore.
4. All mines, all mining methods (except group 2, large dredges) with a production rate $<;$ 500 yd^3/day of "bank run" ore.

VI. Scope of Proposed Regulation

EPA is proposing effluent limitations guidelines based on the application of best practicable technology (BPT), best conventional technology (BCT), and best available technology (BAT), and new source performance standards (NSPS).

The industry includes facilities listed under the U.S. Bureau of the Census Standard Industrial Classification (SIC), Gold Ores, SIC 1044. Over 600 active mining and processing operations are located in eight western states with approximately 70 percent of these located in Alaska. Most are situated in remote areas and are very difficult to reach.

The proposed effluent limitations guidelines and standards are applicable to facilities discharging wastewater from gold placer mining and milling operations that employ gravity separation methods for gold recovery. These regulations do not, however, apply to milling operations that employ chemicals or reagents for gold recovery. These more complex operations are covered under the Ore Mining and Dressing Point Source Category Effluent Limitations Guidelines and Standards, 40 CFR Part 440. See 47 FR 54598, December 3, 1982.

In addition, this proposal does not cover "recreational" mines that actually process less than 20 cubic yards of ore per day or dredges which operate in open water, e.g., open marine waters, bays, or major rivers.

At the present time, EPA does not believe that proposed effluent limitations guidelines and standards for recreational mines that actually process less than 20 cubic yards of ore per day are warranted. We have determined that because of the diversity among these operations and the limited nature of their discharge, the preferable approach is to develop effluent limitations for these facilities in the permit process based on the permit writer's best professional judgment. EPA invites comment on this approach. The dredges in open seas and flowing stream waters are not covered at this time because the Agency has no information as to number, location, or applicable technologies for these facilities. Similarly, permits for such facilities would be based on best professional judgement.

In many facilities, water from a number of different sources can be found commingled in the wastewater treatment facilities, i.e. normal process water, side stream flow, main stream excess flow, storm water runoff from the process area or other areas upstream, and subsurface or side bank seepage. This proposal deals directly with process wastewater (sluice water) as well as mine drainage and runoff within the ore processing area and certain drainage flows commingled with sluice water. Discharges from the mine site which are not commingled such as diverted runoff from the active mining area, offsite runoff entering the mine site, and certain other drainages are not covered by these regulations and would be handled by the permit authority on a site-specific basis. Design storm exemptions and combined waste stream clauses apply to all subcategories (see Definitions).

VII. Available Wastewater Control and Treatment Technologies

The control and treatment technologies available for this category include both in-process and end-of-pipe technologies. The ability of these technologies to control placer mining wastewater was evaluated; and this analysis formed the general basis of the regulatory options.

(A) Settling

Settling ponds are sometimes installed as a single, large pond but are frequently used in a multiple arrangement, in which one or more settling ponds are added in series to a primary settling pond. The purpose of the series scheme is to further reduce settleable solids (SS) and suspended solids (TSS), and thereby somewhat reduce turbidity associated with the solids in the sequential ponds. Toxic metals encountered (arsenic and mercury) are in the particulate form and are also substantially removed along with SS and TSS in this process.

Whether single ponds or ponds in series are used, the principle involved is to retain the wastewater long enough (detention time) to allow particulates to settle. The settling process will proceed efficiently as long as the velocity of the water flow is minimized (i.e., quiescent settling) and ponds contain storage volume for the sludge. Sludge storage volume is particularly critical because it assures that settled particles do not become remixed as the treated water moves through the pond to discharge or to uptake by recycle systems.

(B) Coagulation/Flocculation

In coagulation and flocculation, chemical coagulants act to destabilize colloidal solids, causing them to gather together in a large particle, or "floc," and settle. The primary purpose of chemical coagulation or flocculant addition to wastewater is to increase the size of settling particles by forming flocs of individual particles that act as a single larger particle, which settles faster than individual particles. These chemicals, which typically are added to the influent to sedimentation ponds, enhance overall solids removal and field tests reveal they can substantially reduce residuals of suspended solids in settling pond effluent. EPA views the use of chemicals with cautious optimism and the Agency will attempt to acquire additional data on the applicability of this technology, and the engineering and economic aspects for placer mines during the summer of 1986.

(C) Recycle

Raw wastewater discharged from a typical placer mine is usually routed through a "tail race" (open channel) to a primary settling pond for removal of settleable and suspended solids with associated toxic metals. If recycle (partial or total) is employed, the pump suction intake is positioned in the pond so as to obtain the "cleanest" water possible with the least amount of suspended solids. Care must also be taken to minimize excessive effects of

the water velocity in the pond so that "short circuiting" does not occur. The recycle facilities visited and evaluated are used principally to assure adequate water supplies to the sluice in water-short conditions (small streams or fairly arid areas). Recycle is also employed at mines because it allows somewhat smaller end-of-pipe treatment ponds, and recycle is fundamental to the operation of dredges which (conceptually) are literally floating in a pond serving both as water supply and effluent settling facility. A number of miners have stated that a high solids content in the recycle water inhibits the recovery of the fine gold particles. But no evidence has been submitted to the Agency thus far supporting this contention. As discussed in the Development Document, recent analyses did not reveal any significant loss in fine gold recovery due to increased solids levels in recycle water (see also Comment/Response, Section XX).

The use of recycle water reduces the total amount of pollutants discharged to the receiving stream (total recycle results in zero discharge of process wastewater). While capital and operating costs are slightly less for partial recycle (50 Percent to 80 percent recycle), the costs for complete recycle are similar and the mass of pollutants including toxic metals in the discharge is greatly reduced, if not mostly eliminated.

VIII. Best Practicable Technology (BPT) Effluent Limitations Guidelines

The factors considered in defining best practicable control technology currently available (BPT) include the total cost of application of the technology in relation to the effluent reduction benefits, the age of equipment and facilities involved, the process employed, nonwater quality environmental impacts (including energy requirements), and other factors the Administrator considers appropriate. In general, the BPT level represents the average of the best existing performance of plants of various ages, sizes, processes, or other common characteristics. Where existing performance is uniformly inadequate, BPT may be transferred from a different subcategory or category. Limitations based on transfer technology must be supported by a conclusion that the technology is, indeed, transferable and a reasonable prediction that it will be capable of achieving the prescribed effluent limitations guidelines. See, *Tanners' Council of America* v. *Train*, 540 F.2d 1188 (4th Cir. 1976). BPT focuses on end-of-pipe treatment rather than process changes or internal controls, except where such are common industry practice.

The cost/benefit inquiry for BPT is a limited balancing, committed to EPA's discretion, which does not require the Agency to quantify benefits in monetary terms. See, e.g. *American Iron and Steel Institute* v. *EPA*, 526 F.2d 1027 (3rd Cir. 1975). In balancing costs in relation to effluent reduction benefits, EPA considers the volume and nature of existing discharges, the volume and nature of discharges expected after application of BPT, the general environmental effects of the pollutants, and the cost and economic impacts of the required pollution control level. The Act does not require or permit consideration of water quality problems attributable to particular point sources or industries, or water quality improvements in particular water bodies, in setting technology-based effluent limitations guidelines. Accordingly, water quality considerations are not the basis for selecting the proposed BPT. See *Weyerhaeuser Company* v. *Costle*, 590 F.2d 1011 (D.C. Cir. 1976).

The BPT limitations for the ore mining industry, which were promulgated in 1978 and upheld by the 10th Circuit Court of Appeals [see *Kennecott Copper Corp.* v. *EPA*, 612 F.2d 1232 (1979)], reserved effluent limitations for the gold placer mine industry. While it is not long after the 1977 date to comply with BPT under the Clean Water Act, EPA is proposing BPT because treatment at most existing placer mines is inadequate to establish a baseline for additional limitations, including BCT and BAT.

The Agency considered four treatment options as the basis for the proposed BPT requirements. These options are discussed briefly below and in further detail in Section X of the Technical Development Document for this proposed regulation.

A. Control Technologies for Process Wastewaters

Option 1: Simple settling with a minimum six hours of detention time and discharge of treated wastewater to an effluent quality of 0.2 ml/l settleable solids; TSS of 2000 mg/l.

Option 2: Option 1 with the addition of recycle for 80 percent of the process wastewater and a discharge allowance for the remaining 20 percent as a blowdown. For this option, the Agency selected a configuration (from among several analyzed) of two ponds in series. The first pond is to the designed for at least one hour of detention time for the process wastewater—80 percent recycle is assumed using wastewater from the first pond. The second pond is designed for six hours of detention time for the 20 percent blowdown of process wastewater from the first pond. Settleable solids and total suspended solids are controlled in the discharge of the blowdown to the Option 1 levels, but the mass of pollutants discharged in reduced by 80 percent coincidentially with the discharge flow reduction.

Option 3: Option 2 with the addition of a chemical flocculant to further treat the 20 percent blowdown. The effluent limitations are based on pilot treatability studies to determine the type and amount of flocculant necessary to produce effluent with no settleable solids in the discharge and an effluent limitation on total suspended solids (TSS) of about 35 mg/l long-term average.

Option 4: Option 1 with 100 percent recycle of process wastewater. The design configuration is a six hour pond to assure solids reduction for the recycle stream and commingled flows.

B. Drainage Flows, Seepage, Runoff, and Storm Exemption

This proposal is applicable primarily to the discharge of "process wastewater" as defined in § 440.131, of the proposed rule. Moreover, these proposed limitations and standards generally are also applicable to all other wastewater which enters the treatment system, i.e., drainage or groundwater infiltration which commingles (or becomes "combined") with process wastewater. These "combined waste streams" to the treatment system are addressed in specialized provisions in Section 440.131 of the proposed rule. Certain other discharges from placer mines are not covered by this proposal, including impoundment seepage, offsite drainage diverted away from treatment facilities, and sanitary water. For these discharges, the permitting authority must apply its best professional judgment to set any applicable effluent limitations or standards for point sources.

The definitions and special provisions proposed in § 440.131 are applicable only to Subpart M—Gold Placer Mine Subpart and will supersede the definitions and provisions set forth in 40 CFR Part 401 and 40 CFR Part 440 Subpart L. In 40 CFR Part 401, the term *process wastewater* means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. However, the Agency is proposing for placer mines a more specific definition which recognizes the

process wastewater streams specific to placer mining. *Process wastewater* in Subpart M is proposed to mean all water used in the beneficiation process, including but not limited to, the water used to move the pay dirt or ore to and through the beneficiation process, the water used to aid in classification, and the water used in the gravity separation method. In addition, process wastewater includes the rainfall runoff and drainage discharge from within the beneficiation area. "Beneficiation area" is defined to mean the area of land used to stockpile pay dirt or ore immediately before the beneficiation process, the area of land used to stockpile the tailings immediately after the beneficiation process, and the area of land from the stockpiled tailings to the treatment system, e.g. holding pond or settling pond, and the area of the treatment system.

These regulations include a proposed provision for combined waste streams. Where process wastewater is commingled with mine drainage or groundwater infiltration to the wastewater impoundment, settling pond, or holding pond, for mines and processing methods in the range of 20 yd^3/day to 500 yd^3/day, the combined waste stream may be discharged if the concentration of each pollutant or pollutant property does not exceed the BPT effluent limitations. For larger mines and dredges the volume of commingled wastewater that may be discharged under BCT cannot include the flow or volume of process wastewater where the effluent limitation for the beneficiation process is no discharge of process wastewater.

The provision Combined Waste Streams for the gold placer mine subcategory in effect supersedes the commingling provision of wastestreams in the NPDES regulation (40 CFR 125.3) as it applies to the defined "mine drainage" and "ground water infiltration" that is commingled with "process wastewater." In 40 CFR 125.3 the effluent limitations for commingled wastestreams must be applied and based on a flow-weighted average so that the mass loading of pollutants in the commingled discharge is not more than the mass of pollutants had each waste stream been treated separately to their respective effluent limitations. In the gold placer mine subcategory there are not separate effluent limitations for mine drainage and for ground-water infiltration because we have no data or information on treating these gold placer mine wastewaters separately. Site-specific BPJ's will govern these situations. Also, effluent limitations guidelines and standards for all of the mining point source categories, e.g. ore, coal, and mineral, are based on concentration limitations not mass limitations because correlating units of production and wastewater discharged by mines and beneficiation processes is not possible.

This proposed regulation also contains a "storm exemption" which provides relief from these effluent limitations guidelines & standards under certain conditions.

The regulation includes this provision because the Agency believes that it is unreasonable to expect any mine operator with a properly designed, constructed, and maintained wastewater treatment facility to be responsible for treating or containing the wastewater that could result from a heavy precipitation event or a series of precipitation events that could statistically occur. The storm exemption provides a limited exception to the requirements applicable to gold placer mines under normal operating conditions. It grants relief from excess discharges which occur during and immediately after any precipitation or snowmelt—the intensity of the event is not specified. In the case of mines which are allowed to discharge process wastewater under this regulation, the storm exemption applies if the treatment system has been designed, constructed, and maintained to contain the maximum volume of untreated process wastewater which would be discharged by the beneficiation process during a 6-hour period (without an increase in volume from precipitation or groundwater infiltration) plus the maximum volume of water resulting from a 5-year, 6-hour precipitation event. In the case of mines which are not allowed to discharge process wastewater, the storm exemption applies if the treatment system is designed, constructed, and maintained to contain the maximum volume of process wastewater stored, contained, and used or recycled by the beneficiation process (without an increase in volume from precipitation or groundwater infiltration) plus the maximum volume of wastewater resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of waters which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which would result from all areas contributing runoff to the individual treatment facility, i.e., all runoff that is not diverted from the active mining area and runoff which enters the treatment system. The storm exemption does not grant the operator the option of ceasing or reducing efforts to contain or treat the runoff resulting from a rainfall or snowmelt, regardless of the design and construction of the facility. The operator must, instead, take all reasonable steps during and after the precipitation event to treat or contain the wastewater discharge and to limit the amount of overflow or excess discharge.

EPA's general NPDES permit regulations have provisions for "bypass" (the intentional diversion of wastestreams from any portion of a treatment facility) and "upset" (an exceptional incident in which there is unintentional and temporary noncompliance with permit limitations based on this regulation because of factors beyond the reasonable control of the permittee). See 40 CFR 122.41 (m) and (n). In general, the storm exemption supersedes the general NPDES bypass and upset provisions with respect to precipitation events; that is, an operator wishing to obtain an excursion from the BPT, BAT, or NSPS requirements during precipitation events must comply with the prerequisites of the storm exemption. However, an operator also must comply with the notice provisions of the general upset and bypass provisions. The storm exemption, like the general upset and bypass provision, simply provides an affirmative defense to an enforcement action. Consequently, the burden of proving compliance with the conditions of the storm provision rests with the operator, just as in the case of the general upset and bypass exemptions.

This proposed storm exemption differs from the storm provisions for other ore mines and mills (see 40 CFR 440.131) because gold placer mines differ in many respects from the rest of the ore industry. First, the placer mine average daily production and production life generally is much less than "hard rock" mines. Also, placer mines generally operate fewer hours per day and only a few months per year. In addition, wastewater from placer mines contains only solids from the disturbed streambed; not the low or high pH found in effluent from "hard rock" mills. Furthermore, the typical settling pond at placer mines is not a large, permanent, stable earthen impoundment as is found at large "hard rock" ore mines. Lastly, the Agency has based limitations and standards on settling ponds with 6 hours of detention time, rather than days or weeks which is typical of large coal and ore mines for which a 10-year, 24-hour storm runoff benchmark has been established. Accordingly, the Agency is basing the proposed storm exemption on

a treatment system that is designed, constructed, and maintained to include the volume resulting from a 5-year, 6-hour precipitation event. The 6-hour duration of precipitation is tied to the 6-hour detention time upon which the settleable solids effluent limitations are based and upon which the economic model is based. The 5-year occurrence frequency reflects the shorter production life at placer mines and the seasonal operation at placer mines.

Based on observations of many settling ponds in 1983 and 1984, EPA had concluded that, while a few ponds would require only continuing maintenance to qualify for the storm exemption, the majority of mine operators wishing to qualify will have to improve the design, construction, and maintenance of the ponds. The Development Document supporting this proposed rule deals with the design, construction, and operation of settling ponds which are capable of removing settleable solids to trace levels and includes methods to design ponds to meet the criteria to qualify for the storm provision.

C. BPT Recommendations

The Agency is proposing that BPT for all placer mining methods and sizes other than small mines with a production rate <20 yd^3/day and large dredges with a production rate of >4000 yd^3/day be based upon Option 1, e.g. simple settling. Flocculant addition and 80 percent recycle were not included in the model BPT technology. Flocculants have not been used in full-scale application and, while showing promise in solids control, several technical questions remain to be resolved. Recycle at 80 percent was not selected because the technology is less efficient than 100 percent recycle at nearly the same cost, and is not economically practicable for the smaller mines. Total recycle was not selected as the model technology basis for BPT because, as an in-process (rather than end-of-pipe) technology it is more appropriately considered as a model BAT technology. EPA is proposing BPT effluent limitations for the following pollutants: Settleable Solids (SS) and Total Suspended Solids (TSS).

If the settling ponds are designed, constructed and maintained to provide a minimum of six hours of wastewater detention time in the pond with an additional volume for sludge sufficient to preclude reduction in this detention time, effluents with 0.2 ml/1 of settleable solids can be obtained. Field tests indicate that settleable solids in placer mine discharges can be reduced to less than 0.2 ml/1 or trace with 3 hours of settling under quiescent conditions. As a general engineering design premise, three hours quiescent settling can be accomplished under full-scale pond conditions by doubling the field test results to six hours of detention time. In addition, the Agency's engineering analysis and statistical analysis of existing facilities indicate that many existing ponds achieve 0.2 ml/1 settleable solids as their long-term performance.

The settleable solids effluent limitation is an "instantaneous maximum." This is a value which is not to be exceeded. This limitation was developed based on a combination of statistical analysis of pond performance, review of discharge monitoring data from miners, and engineering evaluations of sediment pond performance. The Agency believes it is appropriate to specify the instantaneous maximum because it is a more practical standard to apply and enforce, and is based upon the typical grab sample test. Statistical analysis of the performance at facilities the Agency sampled in 1984 showed some variation in instantaneous samples that could have a number of causes; the sample may reflect the technique used by the individual taking the sample, variation in treatment efficiency reflected by an undersized pond, or short circuiting in the pond. For additional discussion on this variability of sample results please note the Response to Comment No. 17. Many of the mines sampled by EPA in 1984 and in 1983 did not have ponds of sufficient size to provide a minimum of 6 hours of detention time if the sluice operated constantly during the work day. These mines generally did not operate constantly but rather on a cycle akin to a batch operation; there were periods when the raw wastewater was very high in solids followed by periods when the raw wastewater had low levels of solids (essentially the same level of solids as in the water supply). The effect of this batch type operation is to impact the settling facility with solids and then dilute the settling facility. Other mines, to provide process water to the sluice, diverted supply water to the settling facility with obvious dilution that reduced actual detention time. These mines nevertheless produced an effluent with settleable solids of trace to less than 0.2 ml/1.

EPA Region X issued 446 NPDES permits to the gold placer mining industry in Alaska for the 1984 season. In 1984, 338 of the placer miners holding NPDES permits submitted reports to the EPA at year's end. Of this total, 107 included a full Discharge Monitoring Report (DMR). Of the 107 DMR's, 26 (24.3 percent) reported 0.2 ml/1 or less of settleable solids (SS) both for individual monthly averages as well as for daily maximums the entire operating season. The effluent was sampled at some mines twice a day and at other mines only once per day. But, for these mines reporting SS of 0.2 ml/1 or less, over 2600 individual samples were reported which the Agency believes are representative of the better treatment found in the industry and which the Agency is using as the basis for BPT limitations. BPT also includes a limitation on TSS of 2000 mg/1 as a 30-day (long term) average. The statistical analysis and calculation of the arithmetic means of TSS data show averages of about 1900 mg/1 and 1700 mg/1 respectively. Because of analytical test variability (i.e., several dilutions required to determine actual TSS values in concentrated samples), the Agency believes it is appropriate to round off to the nearest whole 1000 units. A daily maximum is not specified in this instance because there is insufficient data to fully define variability between daily maximum and monthly averages, and simple settling performance is better defined by frequent settleable solids analyses.

The Agency is proposing that BPT for large dredges with production rates <4000 yd^3/day be based on total or 100 percent recycle of process wastewater from the beneficiation process used by the dredge. In § 440.141 of the proposed regulation, "process wastewater" and "beneficiation process" are defined. The technology basis for this proposal is recycle of the water from the pond in which the dredge floats as it mines and processes the paydirt. The very nature of the mining and processing methods used by dredges makes recycle of the water used to process gold placer ore necessary. All of the information available to the Agency at this time indicates that these large dredges with <4000 yd^3/day capacity are all presently recycling process wastewater at a very high rate, with at least 3 dredges recycling 100 percent of their process wastewater.

As discussed above and in the final rule promulgated for ore mining and dressing, the Agency recognizes that storm exemptions or relief are necessary for wastewater treatment facilities at ore mines and mills. As explained above, the proposed storm exemption or relief for gold placer mines in this rule differs somewhat from the relief in the 1982 rule for ore mining and dressing in that the intensity of the storm for which the treatment systems are designed is

the 5-year, 6-hour precipitation event. In all other respects the relief provided to gold placer mines in the storm exemption is the same as provided in the 1982 rule for ore mining and dressing. The storm exemption provides an affirmative defense to an enforcement action as a specified condition of upset resulting from precipitation for mines with treatment systems that are properly designed, constructed, and maintained to include the volume that would result from a 5-year, 6-hour precipitation event. Under the condition specified in § 440.141 of this proposed rule, relief is provided both for facilities permitted to discharge and for facilities not permitted to discharge.

In order for a placer mine operator to design, construct, and maintain the wastewater treatment facility at the mine, the effluent limitations for process wastewater and combined wastestreams must be considered in conjunction with the storm provisions. For mines allowed to discharge process wastewater and combined wastestreams, the mine operator would provide treatment for the total flow from the beneficiation process and the flow that would result from a 5-year 6-hour precipitation event on areas contributing to the combined wastestreams. For mines with a no discharge of process wastewater requirement, the mine operator would provide containment of the "process wastewater" and the volume resulting from a 5-year, 6-hour precipitation on the "benefication process area" and on the holding pond. The mine may discharge only the excess flow beyond that which results from a 5-year, 6-hour precipitation event on areas outside of the beneficiation process area contributing to the combined wastestream and any ground water infiltration. Thus, the relief from no discharge of process wastewater does not apply to the volume impounded from water used in the beneficiation process, or the volume that would result from a 5-year, 6-hour precipitation event on the beneficiation process area, or the volume that would result from a 5-year, 6-hour precipitation event on the surface of settling ponds.

The Agency's economic assessments indicate a number of mines that process <500 yd^3/day of ore could be unprofitable in the baseline [see Economic Considerations, Section XIV of the preamble). Nevertheless, the Agency believes that for these smaller mines it is appropriate to propose limitations on settleable solids and total suspended solids based on the best performance of simple settling, which is minimum treatment technology. Also, settling ponds are a demonstrated and familiar technology often used by the miners, and (in Alaska) all placer mining permits issued over the past decade have incorporated limits based upon settling pond technology. Current NPDES permits for 1985 incorporate effluent limitations based upon the use of settling ponds. These permit limitations (and BPT) apply at the end of pipe discharge and do not apply after any downstream dilution. In order to meet the proposed BPT effluent limitation, existing ponds may require an upgraded design and operation requirement.

The Agency estimates that the proposed BPT effluent limitations guidelines for this subcategory would remove approximately 95 percent of the solids produced in the untreated waste stream and 60 percent of the arsenic and mercury. The Agency estimates that the proposed BPT effluent limitations guidelines for this subcategory will result in the removal of approximately 8 million tons of solids per year, and ½ million pounds per year of arsenic and 1,600 pounds per year of mercury from the raw wastes. The estimated total annual cost in 1982 dollars for the proposed BPT effluent limitations guidelines is $7 million in investment costs. The Agency has determined that the effluent reduction benefits associated with compliance with BPT justify the costs.

IX. Best Conventional Technology (BCT) Effluent Limitations

The 1977 amendments to the Clean Water Act added Section 301(b)(2)(E) establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Conventional pollutants are those defined in section 304(a)(4) (biochemical oxygen demanding pollutants (BOD_5), total suspended solids (TSS), fecal coliform, and pH), and any additional pollutants defined by the Administrator as "conventional." (To date, the Agency has added one such pollutant, oil and grease, 44 FR 44501, July 30, 1979.)

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in section 304(b)(4)(B), the Act requires that BCT limitations be assessed in light of a two-part "cost-reasonableness" test, *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50372). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

The Agency proposed a revised BCT methodology on October 29, 1982 (47 FR 49176) and published a notice of data availability on September 20, 1984 (49 FR 37046).

For each of the alternate technologies, EPA estimated the incremental cost from BPT to BCT. This incremental cost is divided by the additional pounds of conventional pollutant removed by the BCT technology. The resulting cost per pound is then compared to a benchmark value, which is based on the cost per pound for Publicly Owned Treatment Works (POTWs) to upgrade from secondary treatment to advanced secondary treatment. This first test is passed if industry's cost per pound is lower than the POTW benchmark. For the second test, EPA calculates the following ratio for each of the alternate technologies: incremental cost per pound in going from BPT to BCT divided by the cost per pound to achieve BPT. This ratio is compared to an analagous ratio for POTWs: cost per pound to upgrade from secondary treatment to advanced secondary treatment divided by the cost per pound to reach secondary treatment. The second test is passed if industry's ratio is lower than the POTW ratio.

As discussed below in Section X, EPA determined that solids, primarily the solids put into suspension by the beneficiation process at placer mines, are the principal pollutants in the wastewater from placer mines and, that if the solids are controlled, other pollutants which are found in the solid form will be controlled as well. The Agency is setting BCT limitations equal to or more stringent than BPT for TSS, a conventional pollutant.

EPA considered the same four treatment options considered for BPT as the technology options for BCT. For large dredges, EPA is proposing BCT effluent limitations guidelines equal to the BPT effluent limitations guidelines based on total or 100 percent recycle of

process wastewater. EPA has identified no more stringent technologies to control process wastewaters from these types of facilities.

For all placer mining methods and sizes larger than 20 yd^3/day (except for large dredges), EPA determined the "cost reasonableness" of each option in terms of cost per pound of solid material (i.e., TSS) removed, utilizing the five model mines as structured to represent the industry both in Alaska and the lower 48 States. Model mine details and baseline economic parameters are delineated in the Economic Impact Analysis Document and in the Development Document, Section IX. The treatment technologies are considered to be "add-on" technologies to the basic BPT treatment scheme (simple settling), which EPA assumes (for BCT purposes) is already in place for these facilities. For each additional treatment option, EPA evaluated achievable effluent pollutant levels and the cost to implement the option. The pounds of solids removed annually by each treatment option were calculated for each model mine size group by extrapolation from data acquired through treatability tests performed by EPA at representative mines. Annual costs for total pounds removed for each of the four options for each model mine were then computed. The dollar cost per pound removed for BPT for all mines in the industry was $0.00062. For that segment of mines mining more than 500 yd^3/day, the cost per pound is $0.00058 for BPT and $0.002 for BCT. BCT costs for mines of less than 500 yd^3/day production were also in this range, but these more stringent BCT options to control solids are not economically achievable for this subcategory as discussed in Section XIV of this preamble. For purposes of applying the BCT methodology to this industry EPA is proposing to use a cost per pound of one cent. We are doing this because the costs are so low relative to removals and because one cent is the smallest real monetary unit. Thus, the requirements are "cost reasonable" and pass the test as previously proposed by EPA. Also, the Agency believes the costs are sufficiently low that they would pass any "cost reasonable" test that may be promulgated. (For further discussion of these findings see Sec. 3.6 of the cost-effectiveness document included in the record of this rulemaking). EPA specifically invites comment on the way it has applied its BCT methodology to the placer mining industry.

These larger mines will require additional equipment for wastewater treatment (i.e., recycle pumps, piping, etc.) in order to meet BCT limitations The four effluent control technologies considered for BPT were evaluated for applicability to the conventional pollutant of concern, appropriatess for the wastewater volume and pollutant concentrations found in this industry, and for economic achievability. The technologies that fullfilled these criteria are described below.

Pollutant levels or concentrations achievable by these technologies were determined using data from sampling and analysis at existing facilities, together with data from treatability studies performed by the Agency and data from other sources.

Based on the above consideration plus other available data the Agency proposes the following BCT effluent limitations guidelines:

1. For mines with a production rate from 20 to 500 yd^3/day, BCT limitations equal BPT limitations, and TSS is controlled at 2000 mg/1 (30–day average). Also, because BPT is no discharge of process wastewater for large dredges, BCT limitations equal BPT limitations for this subcategory.

2. For mines with an actual production rate greater than 500 yd^3/day, BCT based on Option 4, total recycle of process water is proposed.

The Agency is currently in the process of finalizing the BCT cost test methodology. In developing the final placer mining regulation, EPA will apply the final methodology in evaluating various technology options.

X. Best Available Technology (BAT) Effluent Limitations

The factors considered in assessing best available technology economically achievable (BAT) include the age of equipment and facilities involved, the process employed, process changes, nonwater quality environmental impacts (including energy requirements) and the costs of application of such technology (Section 304(b)(2)(B) of the Clean Water Act). In general, the BAT technology level represents, at a minimum, the best economically achievable performance of plants of various ages, sizes, processes, or other shared characteristics. BAT may include feasible process changes or internal controls, even when not in common industry practice.

The required assessment of BAT "considers" costs, but does not require a balancing of costs against effluent reduction benefits (see *Weyerhaueser* v. *Costle, supra*). In developing this proposal, however, EPA has given substantial weight to the reasonableness of costs. The Agency has considered the volume and nature of discharges, the volume and nature of discharges expected after application of BAT, the general environmental effects of the pollutants, and the costs and economic impacts of the various pollution control levels.

Despite this expanded consideration of costs, the primary determinant of BAT is effluent reduction capability.

EPA reconsidered the four treatment options previously considered for BPT and BCT as the technology options for BAT.

For large dredges and placer mines larger than 500 yd^3/day, EPA is proposing BAT effluent limitations guidelines based on total recycle of process wastewater pollutants. These effluent limitations guidelines are the same as the BCT effluent limitations guidelines. EPA is not proposing any more stringent limitations because we have not identified any more stringent technologies to control process wastewater pollutants.

For placer mines with a production rate from 20 to 500 yd^3/day, EPA is proposing BAT effluent limitations guidelines for settleable solids (SS) based on simple settling (i.e., BAT equals BPT and BCT). EPA is not proposing BAT effluent limitations for these smaller mines based on partial or total recycle (Option 3 or 4) because, as discussed in Section XIV, we do not believe such limitations would be economically archievable for this segment of the industry. EPA is not proposing limitations based on Option 2 because, as discussed above, serious technical questions remain to be resolved regarding the use of flocculants and the economic impact of this option on the smaller mines.

Sampling and analysis data indicate that wastewater from gold placer mining operations sometimes contains one or two toxic pollutants: arsenic and mercury. However, EPA is not proposing technology-based effluent limitations guidelines for these pollutants. Based on field and laboratory testing, EPA has determined that both pollutants are found in the particulate form and respond to the control of solids proposed for BPT and for BCT. They are also adequately controlled by the no discharge of process wastewater limitations in the BAT/BCT effluent limitations guidelines. Therefore, specific limitations at BAT are unnecessary. See response to Comments 4 and 19 in Section XX of this preamble.

XI. New Source Performance Standards

The basis for new source performance standards (NSPS) under section 306 of the Act is the application of the best

available demonstrated technology. New facilities have the opportunity to design and use the best and most efficient placer mining and milling processes and wastewater treatment technologies. Accordingly, Congress directed EPA to consider the best demonstrated process changes and end-of-pipe treatment technologies capable of reducing pollution to the maximum extent feasible.

Under EPA's general NPDES regulations, a "new source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants for which construction began after promulgation of new source performance standards under section 306 of the Clean Water Act 122.2 def. (b), if: (1) It is constructed at a site at which no other source is located, or (2) it totally replaces the process or production equipment that causes the discharge of pollutants at an existing source, or (3) its processes are substantially independent of an existing source. See 40 CFR 122.2, 122.29 (49 FR 38048, September 26, 1984).

EPA solicits comments on whether this general defintion is appropriate for the placer mining industry.

EPA is proposing that new sources in the gold placer mining and dressing industry achieve new source performance standards based on the same technology proposed for BAT/BCT (i.e. simple settling for mines that process <500 yd^3/day and total recycle of process wastewater for those mines that process >500 yd^3/day including large dredges). For the latter facilities, EPA was unable to identify any more stringent technologies that could control process wastewater pollutants at new mines. For the smaller mines (i.e., <500 yd^3/day) EPA is not establishing more stringent NSPS because we believe any more stringent standards may prevent new people from entering the placer mining industry, i.e., it may be a barrier to entry.

The general characteristics of wastewater, costs to treat this wastewater, and percentages of pollutant removals from new placer mining sources are expected to be similar to existing placer mining sources. Since the new source standards are equivalent to the existing source standards, these proposed NSPS will not pose a barrier to entry.

XII. Regulated Pollutants

The basis on which the controlled pollutants were selected is set out in Section VII of the development document.

Specific effluent limitations are being established for settleable solids (SS) and for total suspended solids (TSS). Control of these parameters will also achieve control of arsenic and mercury, the only two toxic pollutants controlled in placer mining discharges as discussed below in Section XIII, Pollutants Not Regulated.

XIII. Pollutants Not Regulated

Although this regulation is not being issued under a schedule established in the NRDC Settlement Agreement, EPA has decided to apply the criteria for regulating (or in the alternative excluding from regulation) individual toxic pollutants and classes of toxic pollutants established in Paragraph 8 of the Agreement. Data collected by EPA and individual facilities within the industry were used in deciding which specific toxic pollutants would be excluded from these national effluent limitations guidelines and standards.

Paragraph 8(a)(iii) of the Revised Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by section 304(h) analytical methods or other state-of-the-art methods. This provision includes pollutants below EPA's nominal detection limit. In addition, Paragraph 8(a)(iii) allows the exclusion of pollutants that were detected in amounts too small to be effectively reduced by technologies known to the Administrator. Pollutants excluded under these provisions are listed in Appendices C and D. One hundred and nine toxic organics, cyanide, and eleven toxic metals are proposed for exclusion from regulation under these provisions.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation pollutants detected in the effluent of only a small number of sources within the category and which are uniquely related to those sources. The toxic organic pollutant methylene chloride was detected in the effluent at three mines during the screen sampling program and bis(2-ethylhexyl)phthalate was found at one mine. These two organics have been attributed to sample and laboratory contamination. Therefore, methylene chloride and bis(2-ethylhexyl)phthalate are excluded under this provision.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation pollutants that are effectively controlled by the technology upon which other effluent limitations guidelines and standards are based. The Agency believes that arsenic and mercury found in discharges from placer mines are adequately controlled by the incidental removal associated with the control and removal of settleable solids and total suspended solids (TSS) found in the discharges from this industry at BPT, BCT, and BAT. If solids are controlled to the limitations specified, any arsenic and mercury in the raw discharge would be reduced to levels that would be proposed if arsenic and mercury were controlled directly (see Section VI of the Development Document).

The 1982 final effluent limitations guidelines and standards for ore mining and dressing excluded the toxic pollutant asbestos from direct effluent limitations and standards because effluent limitations and standards on solids (TSS) effectively controlled the discharge of asbestos (chrysotile). Asbestos was found in all raw waste discharges and all effluent from all ore mines and mills where an analysis was made for asbestos (88 samples representing 23 mine/mill facilities). The concentrations varied from 10^5 fibers/liter, the lower detection limit, to 10^{12} fibers/liter. EPA found a high degree of correlation between solids and chrysotile asbestos in the raw wastewater and treated wastewater; the Agency concluded that the success of settling technology to remove solids made an effluent limitation on asbestos inappropriate, considering the correlation with solids and the expense of monitoring specifically for asbestos. Based on the data and information available, the Agency believes that the proposed effluent limitations guidelines and standards for solids in the discharge from gold placer mines will also control the discharge of asbestos.

Turbidity is not directly limited by these regulations, though it is covered by effluent limitations in many existing NPDES permits and has been the subject of some controversy as to levels that can be obtained by various treatment technologies and what levels of turbidity are acceptable water quality for various uses. Turbidity is not a toxic pollutant nor a conventional pollutant subject to control under BCT. Turbidity is a nonconventional pollutant and as such, can be controlled by direct BAT limitations on the levels of turbidity that may be discharged or by indirect control through limitations on other pollutant parameters, i.e., solids, in the wastewater discharge. Turbidity is a measure of the light scattering properties of water which is measured by candle turbidimeters, Jackson Turbidity Units, (JTU) or nephelometers, (NTU). Turbidity is caused by the presence of suspended solids in water. The mass, size, shape, and refractive index of the solids in the water affects the measured turbidity. Effluent limitations guidelines and standards are proposed here controlling the discharge

of solids as measured by TSS and settleable solids based on simple settling technology and no discharge of process wastewater based on recycle technology of the process wastewater from the beneficiation process. The Agency has not identified any technology more stringent than those proposed here for BPT, BAT, BCT, and NSPS which are technically feasible and economically achievable within the meaning of the Act. However, effluent limitations or standards on turbidity will be included in NPDES permits if necessary to achieve water quality standards.

XIV. Economic Considerations

A. Introduction

EPA's economic assessment of the proposed regulation is presented in the "Economic Analysis of Proposed Effluent Limitations and Standards for the Gold Placer Mining Industry." This report estimates the required investment and annual costs for existing sources in the industry as a whole and for typical new sources covered by the proposed regulation. Compliance costs are based on engineering estimates of capital requirements and construction expenses implied by each option. These estimates include the full cost for settling ponds and/or recycle equipment already in place at mine sites, since accurate, mine-specific information on treatment-in-place is unavailable. The report also estimates the impacts of the costs of the regulation, price changes, production changes, profitability changes, mine shut-downs, employment changes, local community impacts, balance of trade effects, and industry structure changes. The Agency solicits comment on the methodological approach used to perform this analysis.

In addition, EPA has calculated the cost per pound of total solids material removed annually by each treatment option. Ordinarily, the Agency does not calculate the cost per pound or removal of settleable or suspended solids, but instead restricts its analysis to toxic pollutants. In the gold placer mining industry, however, solids are the major pollutant, and substantial amounts of solids are removed by each of the treatment options under consideration. This analysis is included in the record of this proposed rulemaking, and is entitled "Cost Effectiveness Analysis of Proposed Effluent Limitations and Standards for the Placer Mining Industry". EPA invites comments on the methodology used in this analysis.

B. Impacts

The Agency projects there will be approximately 568 mining operations throughout 11 states affected by this regulation. Such an estimate is extremely difficult to make for several reasons. First, state, federal, and local sources sometimes provide widely disparate estimate of the number of operations in a specific state or region. EPA therefore had to choose the most reliable and up-to-date source. Secondly, it is impossible to project at this time the effect the future price of gold will have on entrepreneurs who rely on this price as a barometer of the profitability of a mining venture. A sudden, upward swing in the market price of gold might significantly increase the number of mines which operate and thus incur costs as a result of this regulation, and vice versa if there were a downward plunge. Within this uncertainty, the Agency has developed what it feels to be the best estimate based on the sources available. All of these mines discharge their wastewater directly into navigable waters. Note also that the estimate of 568 mines does *not* include the large number of "recreational/assessment" mines, stated previously by EPA as mines processing 20 cubic yards per day or less, for which no effluent limitations guidelines and standards are proposed.

Based on EPA's estimate of 568 mines, total capital and construction costs to be incurred industry-wide during the 1985 season as a result of this regulation would be approximately $10.8 million. These costs are expressed in 1985 dollars. To assess the impact of these regulatory expenditures on the economic viability of placer gold operations, the Agency developed model mines of various sizes. The size of a mining venture, in terms of the average amount of sediment or gravel processed per hour per day, has a significant effect on the mines' potential to recover costs and earn a profit, especially during periods of declining gold prices. However, it is also true that two mines which process identical amounts of gravel in a season could vary significantly in terms of types and age of equipment used, amount of overburden to be stripped prior to mining, content and fineness of gold in the paydirt, water use, operating hours, etc. Equally important to the viability of a mine is the miners's skill at running an efficient operation, repairing equipment, and obtaining capital. Hence, it is accurate to say no two placer mines even in the same size range, are identical. EPA does believe, however, that enough similarities exist between operations to allow the development of reasonably representative model mines. Five such models were constructed; four models represent Alaskan mines and one represents operations in the lower 48 states. All five models were set up to process ore an average of 10 hours per day (see the development document for the average sluicing days per year for each model mine).

The Agency is aware that a single model is probably not an adequate representation of the spectrum of mining operations in the continental U.S. Lack of accurate and comprehensive data on the lower 48 states, however, limited EPA's ability to assess the industry in this region. The model presented (Model E) reflects the general observation that mines in the continental U.S. are smaller than those in Alaska. Most commercial operations are believed to process 75 cubic yards per hour or less. The Agency solicits comment on this observation and plans to actively pursue additional data on mines in the lower 48 states between proposal and promulgation of this regulation.

The size ranges chosen as the bases of the model mines are as follows:

Model	Size range (cubic yards per hour)	Value used in economic analysis
Alaska mines:		
A	20–35	25
B	36–75	50
C	76–150	100
D	151–>	180
Continental U.S. Mines:		
E	20–75	50

Each model was developed on the basis of EPA's estimates of equipment and labor requirements necessary for the operation of that size mine. Assumptions were then made for the values of many highly variable parameters such as gold content, leasing expenses, operating hours, opportunity costs, etc. The Agency invites comment on each of the assumptions employed in the development of the model mine profiles. They are identified and discussed in detail in the economic document. Several are mentioned below.

The Agency categorized mines into four segments for this regulation, but is only proposing limitations for 3 of them (i.e., mines processing less that 500 yd^3/day and mines processing more than 500 yd^3/day, including large dredges). The Very Large Dredge Segment (dredges processing more than 4000 yd^3/day) contains less than a dozen active operations nationwide and most are assumed to be at zero discharge. The mines that process less than 20 yd^3/day are not covered by these proposed regulations. The five models are

intended to portray mines in the remaining segments separated into two groups, mines processing between 20–500 yd^3/day (all mining methods) and mines processing more than 500 yd^3/day (all mining methods).

The methodology employed to estimate impacts on the all mining methods segment began with development of the models described above. The models are first constructed under "baseline" conditions; that is, prior to imposing any regulatory controls and related expenses. After the baseline performance of each mine is established, treatment costs for the various control options were imposed to determine the regulatory impact.

Revenue estimates developed for the models were based on the assumptions that: (1) All gold recovered and sold is 80 percent pure and thus commands 80 percent of the market price per ounce, (2) all gold recovered and sold is "fine" gold and is not in nugget form, (3) mines recover gold at a rate of .022 troy ounce per cubic yard of material processed, and (4) the price of gold is $360 per troy ounce, the average price through 1984. Sensitivity analyses were performed in which the price of gold was varied to reflect more current market values. The results of these tests are discussed in the economic analysis document. In addition, a series of gold recovery rates, both above and below the assumed value of .022 per cubic yard, were employed to analyze the sensitivity of the results to this parameter.

On the cost side, it is significant to note the model mine profiles assume miners lease and employ *new* earth-moving equipment for their operations. The operating cost estimates are thus in part derived from equipment dealers' quotations of lease costs and expected fuel/maintenance expenses associated with new machinery. This assumption was necessary since information on the age, depreciation, transportation costs, stock of spare parts, and status of equipment ownership at specific sites is scarce and/or unreliable. Furthermore, information concerning auxiliary expenses as well as the extent to which miners incur long-term debt to finance their operations is also difficult to obtain. The assumptions employed to estimate these cost items are as follows: auxiliary expenses (generators, supplemental piping, etc.) equal 25 percent of the model mine heavy equipment costs, and long-term debt obligations consume 10 percent of each model mine's gross revenues. The Agency solicits data which will help identify the auxiliary equipment items likely to be in use at representative operations, and characterize the availability and frequency of long-term financing arrangements within the industry.

The analysis indicates that Alaskan mines processing less than 50 yd^3/hr, 10 hours, per day, i.e., 500 yd^3/day (these operations are represented by model A and Model B) are generally not viable operations and are projected to be unprofitable in the baseline. EPA estimates there are approximately 110 mines in this size group. The Agency recognizes, however, that some mines of this size can and will be operated profitably, owing to the large variability among mine-sites and miners. Hence it is difficult to project what percentage of the estimated 110 mines of this size in Alaska would not operate profitably, if this regulation were imposed considering the economics for any given year. Furthermore, little is known about the size distribution of mines in the lower 48 states. Lack of comprehensive information on the mining industry in these states prevents EPA from accurately projecting how many mines will operate in any season. General observations indicate at least half of the estimated 264 mines in the continental U.S. are in the lower end (i.e., below 50 cubic yards per hour) of the size range portrayed by model E. Although projected to be unprofitable, the generally lower equipment expenses and longer operating season associated with the lower 48 states may allow a larger percentage of these mines to operate relative to those in Alaska.

In summary, EPA's analysis implies that small/medium scale operations are essentially unprofitable ventures under current economic conditions, even without regulatory controls. This conclusion is derived from the available data plus the assumptions and parameters employed in the "model mine" analysis and should not, as discussed above, be interpreted as a blanket projection of shut-down applicable to all operations this size. The Agency expects some mines that process less than 500 yd^3/day will operate profitably this season, and in accordance with this expectation, EPA is proposing that a minimum level of wastewater treatment (i.e., settling ponds) be required under BPT. However, (given the general implications of the analysis), EPA is recommending no more stringent technology for mines of this size or smaller under BAT/BCT.

Although no exact determination can be made, EPA's analysis indicates a miner's potential for earning a profit increases as the size of the operation approaches and exceeds 500 yds^3 processed per day. The Agency has therefore chosen this level of production as a boundary or cut-off. Most mines below this size level are projected to be unprofitable and most mines above this size level are projected to be financially healthy and capable of installing treatment beyond settling ponds. Therefore, mines processing more than 500 yds^3 per day are required under this proposal to attain 100 percent recycle of process wastewater. EPA solicits comment on this projection. Larger volume mines will incur reduced profitability under the proposed treatment options, but are not expected to shut down as a result. Employment and community effects are projected to be minimal, and no balance of trade impact is expected since U.S. placer gold production accounts for such a small percentage of total World gold production. These estimated impacts pertain to BPT and BCT/BAT levels of effluent control.

Note these results are contingent in part on the assumed revenue and cost parameters. In response to comments received on the draft economic analysis document, the Agency evaluated the performance of the mines at a gold recovery rate of .01 ounces per cubic yard of material processed. In this case, all five model mines were projected to be unprofitable in the baseline, especially after accounting for auxiliary expenses and long-term debt repayment. A significant number of miners claimed this recovery rate is standard for many operations. Others felt strongly that operating costs were understated in the models, and their suggestions led to the adjustments cited above. EPA questions the validity of these assertions, and requests data to justify them, since their inclusion in the models results in general unprofitability even without the imposition of wastewater controls. This is inconsistent with the fact that several hundred miners mined successfully last season and plan to do so again this year.

BPT—The technology chosen as the basis for proposed BPT limitations is the installation of simple settling ponds with six-hour detention of wastewater discharges for all facilities except large dredge facilities. For large dredges, EPA is proposing BPT effluent limitations guidelines based on zero discharge of process wastewater. Approximately 568 mines would incur costs as a result of the BPT requirements. Total annual costs at this level of control are estimated to be approximately $6.9 million. Commercial mines processing abour 500 cubic yards of material per day or more are not expected to incur any significant adverse effects. Smaller

mines, as discussed above, are likely to be unprofitable regardless of the imposition of wastewater controls. The Agency had determined that the effluent reduction benefits associated with compliance with the proposed BPT effluent limitations guidelines justify the costs.

BCT—BCT limitations more stringent than BPT are proposed only for mines processing more than 500 cubic yards of material per day. The technology basis for these limitations is 100 percent recycle of process wastewater. The estimated incremental cost above BPT requirements for these mines to attain this level of control in approximately $3.9 million. Added to the 6.9 million required for the entire industry to achieve BPT, the *total* cost of the proposed BPT/BCT requirement is an estimated $10.8 million. The projected economic and financial impact of this total recycle requirement on mines processing more than 500 cubic yards of material per day is expected to be minimal. For mines processing less than 500 cubic yards per day and for large dredge facilities, EPA is proposing the BCT=BPT. The Agency has determined that the BCT effluent limitations are economically achievable and, as discussed elsewhere in this preamble, satisfy the Agency's proposed "BCT cost test."

BAT—Since the Agency is proposing BAT effluent limitations guidelines equal to the proposed BPT/BCT effluent limitations guidelines, there are no additional costs or impacts associated with the proposed BAT effluent limitations guidelines.

NSPS—The technology basis for new source standards is the same as for BPT, BAT and BCT. Thus, new mines will not incur costs beyond those incurred by existing mines. Hence the regulations are not expected to present a barrier to entry into the industry.

C. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million or more or meet other economic impact criteria. The proposed regulation for placer gold mining activities is not a major rule. The costs expected to be incurred by this industry will be significantly less than $100 million. Therefore a formal Regulatory Impact Analysis is not required. The Agency's regulatory strategy considered both the cost and economic impact of the regulation.

D. Regulatory Flexibility Analysis

Pub. L. 96-354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. This analysis may be conducted in conjunction with or as part of other Agency analyses. A small business analysis is included in the economic impact assessment for this regulation.

After consultation with the U.S. Small Business Administration, EPA developed a definition of "small" as a basis for the small business analysis. EPA defines the small segment of the placer gold mining industry to include all small-scale "recreational/assessment" mines, plus all operations represented by model mines A, B, and E (see model mine description above). Recreational miners (i.e., miners processing 20 yd^3/day or less) would not be covered by this regulation or incur costs while model A, B and E operations (between 20 yd^3/day and 750 yd^3/day in Alaska and elsewhere), primarily those below 500 cubic yards or less per day, are projected to be unprofitable in the baseline (see "Section B. Impacts," above).

To evaluate the relative impact of the proposed regulation on this segment versus other size operations, the ratio of annual compliance costs to revenues was computed for "small" mines and compared to the same ratio computed for all other operations. For each treatment option, this was done by summing the estimated compliance costs incurred by the mines designated as small and comparing the total to the sum of the mines' projected revenues. The procedure was then repeated for the larger mines.

As noted earlier, this proposal does not cover small-scale, "recreational/assessment" mines. Furthermore, small commercial mines (those that process <500 yd^3/day), with the exception of those operated by the most capable and cost-efficient miners, are projected to be unprofitable under current economic conditions. Partly as a result of this conclusion, EPA has recommended no more stringent technology-based limitations beyond BPT for this segment of the industry. The compliance cost to revenue ratio for small mines calculated at Option 1, Simple Settling, is approximately the same as the ratio for large mines calculated at Option 4, Total Recycle. Thus, the projected impact on the two segments, as measured by the ratio of estimated compliance costs to projected revenues, is similar. Based on this analysis, EPA has determined that there will not be a significant impact on small entities within this category. Therefore, the Agency is not required to perform a formal Regulatory Flexibility Analysis.

E. SBA Loans

The Agency continues to encourage small plants to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Business Loan Program. Eligibility for SBA programs varies by industry.

For further information and specifics on the Pollution Control Bond Program, contact: U.S. Small Business Administrator, Office of Pollution Control Financing, 4040 North Fairfax Drive, Arlington, Virginia 22203, (703) 235-2902.

The Section 503 Program, as amended in July 1980, allows long-term loans to small and medium size businesses. These loans are made by SBA-approved local development companies. These companies are authorized to issue Government-based debentures that are bought by the Federal Financing Bank, and are an arm of the U.S. Treasury.

Through SBA's Regular Business Loan Program, loans made available by commercial banks are guaranteed by SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan and Section 503 Programs, contact your district or local SBA office. The coordinator at EPA Headquarters is Ms. Frances Desselle who may be reached at (202) 382-5373.

XV. Non-Water Quality Environmental Impacts

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, sections 304(b) and 306 of the Act require EPA to consider the non-water-quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of these regulations on air pollution, solid waste generation, land requirements, energy consumption, and consumptive water loss. This proposal was circulated to and reviewed by EPA personnel responsible for non-water-quality environmental programs. While balancing pollution problems against each other and against energy use is difficult, EPA is proposing a regulation that it believes best serves competing national goals.

The following are the non-water-quality environmental impacts associated with the proposed regulation.

A. Air Pollution

Imposition of BPT, BCT, and BAT effluent limitations guidelines and NSPS will not create any additional air pollution emissions.

B. Solid Waste Generation

All of the solid wastes produced by the gold placer mining industry are the soil, sand, and rock residuals of the mining and processing operations. The vast majority (over 95%) of solid waste is from overburden removal, classification, and sluicing. These wastes, like other ore mining wastes, are not hazardous under the Resource Conservation and Recovery Act. It is estimated that more than 160 million tons of overburden and tailings result from placer operations each year. The settling pond treatment systems which are the basis of these regulations will contain some 8 million tons of sludge (sand, soil), which approximates the amount of sludge controlled by current practices. The recycle requirement for BCT will increase sludge generation by less than 0.5 million tons per year.

EPA estimates that a typical new source mine (of 1000 yd ^{3}day) will generate over 106,000 tons of tailings per year and control about 5,600 tons of sludge per year. Both new and existing mines manage solid waste by storage in ponds, reworking with tailings, or stacking on site.

C. Land Requirements

As a general rule, imposition of BPT, BAT/BCT, and NSPS standards are expected to create a moderate impact on land requirements. Land for the extra ponds will be required, but this land normally will be available on existing claims.

D. Energy Consumption

Achievement of BCT limitations and NSPS will result in a significant net increase in energy requirements for facilities. BCT and NSPS limitations for all facilities processing more than 500 yd ^{3} per day are based upon total recycle of the process water. This requires the addition of pumps, motors, controls, and piping. The power requirements are substantial and normally consist of a skid-mounted diesel motor with a mechanical drive for the pump. This additional fuel cost varies depending upon the remoteness of the mining site. Wherever feasible, gravity flow is used in treatment facilities for mine and mill process wastewater.

E. Consumptive Water Loss

Placer mining that occurs in areas that are normally short of water have historically resorted to recycling the available water in order to increase daily ore throughput to economic levels. These mines are usually close to the headwaters of the streams. The smaller mines normally establish a water balance with a pond discharge roughly equal in volume to existing stream flow with very little consumptive water loss and thus do not adversely impact downstream water rights. The mines processing more than 500 yd ^{3}day throughput impound the required volume of water, and, generally, except for makeup water, also achieve water balance resulting in no significant impact on downstream water rights.

In adequate and excess water areas the smaller mines (that discharge) do not affect water rights. Placer mines that employ recycle (or a portion of recycle) in areas of adequate or excess water, in the opinion of the Agency, do not adversely impact downstream water rights in that a water balance is usually attained via seepage through the impoundment structures.

XVI. Best Management Practices

Section 304(e) of the Clean Water Act authorizes the Administrator to prescribe "best management practices" ("BMP"), as described in the "Authority and Background" section of this preamble for toxic or hazardous pollutants.

Section 402(a)(1) of the Act allows the Administrator to prescribe conditions in a permit which are necessary to carry out the provisions of the Act. A BMP is such a condition. The discharges to be controlled by BMPs are plant site runoff, spillage or leaks, sludges, or waste disposal and drainage from raw material storage.

The gold placer ore mining and dressing industry has numerous problem areas, including storm water runoff, groundwater infiltration, and seepage. Section VIII of the Development Document addresses possible BMP's and can guide the permitting agency in developing case-by-case BMP requirements for NPDES permits. The following paragraphs contain a brief description of some possible BMP's.

Minimizing the volume of water contaminated at a mine is desirable because the volume of water and mass of pollutants to be treated is less. Diversion of water around a mine site to prevent its contact with possible pollution-forming materials is an effective and widely applied control technique. For example, settling ponds should be designed with adequate drainage and storm water diversion around the pond.

Regarding or recontouring of surface mines and surface waste piles can be used to modify surface runoff, decrease erosion, and prevent infiltration of water into the mine area.

A number of the mines examined in preparing this proposal practice some measure of mine drainage control, including bypasses, berms, and the use of mine drainage as intake process water. Use of the mine water as makeup water in sluice circuits is a desirable management practice and is widely implemented in this industry.

As the placer mining industry implements increased, proper application of technology-based standards, the industry must improve its use of bypasses to control stream flow away from the "process area" and the wastewater treatment area (i.e., ponds). In addition, best management practices in offstream disposal and containment of solid wastes becomes increasingly important.

XVII. Upset and Bypass Provisions

An issue of recurrent concern has been whether industry guidelines should include provisions authorizing noncompliance with effluent limitations during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance occurring for reasons beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur, even in properly operated control equipment. Because technology-based limitations require only what technology can achieve, it is claimed that liability for such situations is improper. When confronted with this issue, courts have disagreed on the question of whether an explicit upset or excursion exemption is necessary, or whether upset or excussion incidents may be handled through EPA's exercise of enforcement discretion. Compare *Marathon Oil Co* v. *EPA* 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser Co.* v. *Costle, supra,* and *Corn Refiners Association, et al.* v. *Costle,* No. 78–1069 (8th Cir., April 2, 1979). See also *American Petroleum Institute* v. *EPA,* 540 F.2d 1023 (10th Cir., 1976); *CPC International, Inc.* v. *Train* 540 F.2d 1320 (8th Cir. 1976); *FMC Corp* v. *Train,* 539 F.2d 973 (4th Cir. 1976).

While an upset is an unintentional episode during which effluent limits are exceeded, a bypass is an act of intentional noncompliance during which

waste treatment facilities are circumvented in emergency situations. Bypass provisions have in the past been included in NPDES permits.

EPA has determined that both explicit upset and bypass provisions should be included in NPDES permits and has promulgated NPDES regulations that include upset and bypass permit provisions (see 40 CFR 122.41 (m) and (n)). The upset provision establishes an upset as an affirmative defense if an operation is prosecuted for violating a technology-based effluent limitation. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage.

The Agency has received several inquiries about the relationship between the upset and bypass provisions set forth in EPA's general NPDES permit regulations and the storm exemption contained in the 1982 final regulations for ore mining and dressing. The proposed storm exemption described above in Section VIII supersedes the general upset and bypass provisions with respect to precipitation events. In this proposed rule, an operator wishing to obtain relief from BPT, BAT, or BCT limitations, or NSPS during precipitation events must demonstrate that he has complied with the prerequisites of the rainfall exemption provision. However, the general upset and bypass provisions are available in all other applicable situations.

XVIII. Variances and Modifications

After the final regulations are promulgated, the appropriate effluent limitations must be incorporated in all Federal and State NPDES permits issued after that date to direct dischargers in this subpart.

For the BPT, BCT, and BAT effluent limitations, the one basis for an exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E.I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 1112 (1977); *Weyerhaeuser Co.* v. *Costle, supra.* This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking.

However, the economic ability of the individual operator to meet the compliance costs for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was originally set forth in EPA's 1973–1976 industry regulations, it is now included in the general NPDES regulations and will be cross-referenced in the gold placer mining or other specific industry regulations. See the NPDES regulations for Fundamentally Different Factors Variances at 40 CFR Part 125, Subpart D.

New sources subject to NSPS are not eligible for any statutory or regulatory modifications. (See *E.I. DuPont de Nemours & Co.* vs. *Train, supra.)*

After reviewing Mine Safety & Health Administration and Army Corps of Engineers regulations and design guidelines, and holding discussions with representatives of other appropriate Federal regulatory agencies (Department of Labor, Department of the Interior, Department of Defense), EPA is confident that the impoundment facilities that provide the technological basis for compliance with the regulations proposed in this notice are reasonable, and that no additional danger will result from requirements for pollution control. Specifically, the Agency has concluded that the construction of impoundment facilities can be achieved without violation of State or Federal safety standards. However, if an owner or operator of a mining operation submits to the permitting authority evidence that he cannot achieve required effluent limitations or standards without violating safety standards, a variance from the national effluent limitations may be considered through the "fundamentally different factors" variance procedure. Under no circumstances will an owner or operator be required to violate applicable safety standards to meet these requirements. If more than isolated instances occur, EPA will consider amending this regulation. However, as noted above, the State and Federal authorities with whom EPA has consulted on this matter uniformly have concluded that safety issues should arise infrequently, if at all.

XIX. Relation to NPDES Permits

The BPT, BCT, and BAT limitations and NSPS in this regulation will be applied to individual gold placer mines through NPDES permits issued by EPA or approved State agencies, under section 402 of the Act after the limitations are promulgated in final form. As discussed in the preceding section of this preamble, these limitations must be incorporated in all Federal and State NPDES permits issued to gold placer mining operations.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. The promulgation of this regulation does not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulation. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit such a pollutant on a case-by-case basis when such limitations are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require the limitation of pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), such limitations must be applied by the permit-issuing authority.

XX. Summary of Public Participation

The EPA has solicited comments from the industry for the past several years and most recently at the public workshop on the proposed rulemaking package held at Fairbanks, Alaska, on April 25, 1985. Specifically, the Agency requested written comments on the Draft Development Document on the Gold Placer Mining Segment of the Ore Mining and Dressing Point Source Category and the Draft Economic Impact Analysis of Proposed Effluent Limitations and Standards for Gold Placer Mining which were distributed as contractors' draft documents to interested Federal and State pollution control agencies, industry trade associations, environmental organizations, and interested individuals who requested copies. The Agency received nine written replies on the preliminary draft reports. The major comments and the Agency's responses are set forth below.

(1) *Comment:* One commenter expressed concern that the proposed rule may not regulate small or "recreational" mines and these mines will then be able to discharge unrestricted amounts of sediment into the streams.

Response: the Agency is proposing to exclude small mines (<20 yd^3/day) from these national effluent limitations guidelines and standards because we do not have adequate information on the number of mines, the cost of requiring treatment of these mines, or the pollutants discharged by these mines to establish national standards. This does not mean that these mines will be able to discharge unrestricted amounts of pollutants. Each such miner is required to obtain an NPDES permit which will include discharge limitations on a case-by-case basis. EPA also is considering issuing general NPDES permits for these sources with limitations based on its best professional judgment. Such permits when completed, would simplify the permit process.

(2) *Comment:* The comment was made that the draft Development Document

refers to "preliminary screening" and "selected mines" but does not document that the mines visited and sampled are representative of the industry as a whole (most of the mines are located in Alaska), that the mines represent the best performance or the "best operator," or the mines use the best available technology. Present data on the industry indicates that total recycle is practiced by many mines, zero discharge is attainable with total recycle, and therefore, total recycle represents the best available technology. The document should have proposed total recycle as BAT.

Response: The proposed Development Document summarizes the studies the Agency relied on to develop the proposed effluent limitations guidelines and standards for gold placer mines. Although EPA has historical data from gold placer mines from as early as 1976 and many subsequent years, the Agency primarily relied upon the studies performed in 1984 since these technical data on treatment performance were relatively current and fully documented. The majority of the available cost and economic data were also obtained in 1984. The Alaska mine sites in the 1984 studies used both for engineering site visits and sampling, were selected from available data from previous studies and through discussions with EPA Region X, Alaska Department of Environmental Conservation (ADEC), miners' trade associations, the Placer Miners Advisory Committee (PMAC), and individual miners. These mines were selected to be as representative as possible of placer mines considering such factors as: location, type of mining, size, amount and type of overburden, topography, and treatment employed. The majority of the data are for Alaska because the majority of placer mines in the U.S. are located in Alaska. However, data on facilities in the "lower 48" were also collected generally from state contacts and some site visits.

These data were also used in the analyses. All site visits included the collection of data on existing treatment, and the Alaska work provided data on pilot-scale treatment technology, high rate recycle, costs of operations and treatment, and the economic viability of mines.

All these data were used to help the Agency identify various alternative technologies to define the basis for standards for existing and new sources. The Agency agrees that several mines achieve what has been referred to as "zero discharge" at least to the extent of full containment of sluice water flows. However even under these conditions, there exist seepages from berms, overflows from drainage or runoff from these "best" facilities. As discussed elsewhere in this preamble, EPA is proposing no discharge of process wastewater (with drainage allowances) as the basis for BPT, BCT, BAT, and NSPS for large dredges with a production rate of more than 4,000 yd^3/day and BAT, BCT and NSPS for other mines processing more than 500 yd^3/day. The Agency is not proposing effluent limitations guidelines and standards based on no discharge of process wastewater for smaller placer mines for the reasons discussed elsewhere in this preamble.

(3) *Comment:* The comment was made that it is not clear how the costs of alternative treatment technology were determined in the draft development document.

Response: The cost estimates in Section IX of the draft development document were explained in some detail for various components (e.g. ponds, pumps) of the treatment options. The cost of a treatment component for a mine is determined from various figures in the section. The cost of a given treatment option is based on wastewater flow rate (hydraulic loading) and is the sum of the cost of the components making up the option. The proposed development document now includes an example of how to determine the costs of an option.

(4) *Comment:* One comment expressed concern that limitations for arsenic and mercury are necessary because these pollutants are not controlled by the limitations on solids, and in view of the decision of the Ninth Circuit (*Trustees for Alaska* v. *EPA*), EPA must place specific limitations on arsenic and mercury.

Response: As is discussed elsewhere in this preamble, EPA has determined that its proposed effluent limitations guidelines and standards on settleable solids (SS) and total suspended solids (TSS) will adequately control the discharge of arsenic and mercury.

EPA's proposed effluent limitations guidelines and standards for dredges and large mines (mines processing more than 500 yd^3/day) are based on zero discharge of process wastewater with only drainage and storm event allowances. Application of this technology will eliminate discharges of arsenic and mercury from the process wastewaters. The drainage and storm event allowances for these facilities contain effluent limitations on settleable solids (BPT/BAT/NSPS) and total suspended solids (BPT/BCT–NSPS). As discussed previously in this preamble and in response to Comment 19, EPA believes these limitations will ensure optimal removal of arsenic and mercury using the model treatment technology.

EPA's effluent limitations guidelines and standards for other mines that process between 20 yd^3/day and 500 yd^3/day are based on simple settling and likewise contain effluent limitations on SS and TSS. This technology removes approximately 70 percent of the arsenic and 90 percent of the mercury in the process wastewater. EPA has identified no economically achievable technology which could remove the remaining arsenic and mercury. EPA believes that the limitations and standards on SS and TSS will ensure optimal removal of arsenic and mercury using the model treatment technology. Accordingly, EPA is not proposing effluent limitations guidelines and standards for arsenic and mercury because we have determined that the *technology-based* requirements of the Clean Water Act for toxic pollutants (i.e., BAT, NSPS) will be satisfied by the BCT, BAT, NSPS limitations and standards on settleable solids and total suspended solids.

This position is not inconsistent with the Court's holding in *Trustees for Alaska* v. *EPA*. The Court had before it the question of how to implement Alaska's water quality standards for arsenic and mercury in NPDES permits. The Court held that Section 301(b)(1)(C) of the Act requires EPA to include effluent limitations for arsenic and mercury in placer mining permits if EPA determines such limitations are necessary to achieve the state water quality standards.

These national regulations are not issued to satisfy state water quality standards, but rather the technology-based requirements in Sections 301(b)(1)(A) and 301(b)(2) of the Clean Water Act. The effluent limitations necessary to achieve state water quality standards will be determined during the NPDES permit proceeding. As part of that proceeding, limitations and standards for arsenic and mercury will be added to the permit if necessary to meet state water quality standards.

(5) *Comment:* Commenters suggested that EPA should consider alternative regulatory measures to lessen the economic impact on small business. They suggest that all of the provisions of P. L. 96–354 (The Regulatory Flexibility Act) apply to the gold placer mining industry in Alaska because the U.S. Small Business Administration's definition of small business applies to *all* Alaska placer operations. They

therefore argued that EPA must consider alternative regulatory approaches to mitigate or eliminate economic impacts on the industry.

Response: EPA has considerable discretion in defining "small entities" within an industry for purposes of compliance with Pub. L. 96–354 (the Regulatory Flexibility Act). The Agency's guidelines for implementing the requirements of this Act clearly describe this discretion. The guidelines state that ". . . EPA programs will often need to start out with a clear definition of "small entity" (unless it is clear that the regulation will have insignificant impacts on any affected entities, whether large or small). For this purpose, the lead office may either: (1) Use the definitions of "small entity" provided in the Act or (2) develop its own definitions."

"Lead offices should always seriously consider using the definitions in the Act before deciding to develop an alternative. To establish its own definition, the lead office must consult with the Office of Advocacy of the Small Business Administration (SBA) and provide the public an opportunity for comment."

As noted in a memorandum included in the record of this proposed rulemaking, EPA consulted with a representative of SBA's Size Standard Staff within the Office of Advocacy on January 11, 1985. The SBA official was informed of EPA's plans to develop a definition of "small entity" and offer it for public comment. Accordingly, EPA is in full compliance with its obligations.

As discussed in Section XIV of this preamble, the Agency conducted a detailed economic assessment of placer mines including small facilities. EPA has defined "small mines" to include all very small recreational/assessment mines as well as all small commercial operations represented by model mines A, B and E in the economic impact analysis. Consistent with the Regulatory Flexibility Act, the Agency has considered regulatory alternatives for small mines, and taken actions to minimize the impact of this regulation on this segment of the industry. EPA is proposing to exclude recreational/assessment mines (i.e., mines processing no more than 20 cubic yards of paydirt material per day) from these national regulations. Furthermore, our analysis indicates model A, B and E operations (between 20 and 500 cubic yards processed per day) are likely to be unprofitable under current economic conditions. Partly as a result of this finding, EPA is proposing technology-based limitations based on settling pond technology *only* for mines processing less than 500 yards per day, with no requirement for recycle of process water. Not only are settling ponds a familiar and demonstrated technology within the industry, but also ponds have long served as the basis for most state permit requirements to maintain water quality. Moreover, many miners employ such ponds as a best management practice aimed at conserving process water. Hence, EPA believes settling ponds are a reasonable requirement for any small-scale miner who is able to operate successfully in the coming season. Large mines would be required under the proposed regulation to attain 100 percent recycle of process wastewater. The Agency's analysis has shown that the ratio of compliance cost to projected revenues, calculated for the recommended treatment option is the same for small mines (at settling ponds only) as it is for large operations (at 100 percent recycle). Thus EPA concludes the regulation does not impose an inordinate burden on the small segment of the industry.

(6) *Comment:* Several comments were made that grab samples should not be used as a basis for providing analytical data to develop regulations for the gold placer mine industry.

Response: Grab samples were used rather than composite samples which were used for other subcategories of the ore industry because performance of simple settling to control settleable and suspended solids is better described with fairly frequent samples. Alternative composite samples (over say a 24-hour period) would reflect *average* daily conditions but would fail to reveal fluctuations in pond performance, for example during periods of sluicing versus periods of shutdown. Frequency of sampling is most important whether composite or grab samples are taken. Either sample scheme should be as frequent as possible to define long-term performance. However, the Agency used statistical methodology to define variability based on grab samples because the settling ponds associated with existing placer mines are comparatively small when compared to settling facilities found at mines and mills in other subcategories of the ore industry that provide settling time of 24 hours to 30 hours and more. These large settling facilities in general do not show as great short-term fluctuations in effluent quality as the smaller facilities at placer mines. Placer miners tend to operate the beneficiation process intermittently; the process operates a few hours up to as many as 12 hours per day and at many mines the process is akin to batch processes in which the process (sluice) is loaded, run, and then stopped while another load of paydirt is moved into process. On the other hand, most beneficiation processes (mills) in other subcategories of the ore industry are continuous processes, running almost 24 hours a day. The smaller size of settling facilities and intermittent nature of the operation cause impacts on the settling facilities at most placer mines. These impacts are a function of the settling detention time for the facility, the point in time after the facility is sampled relative to the sluice operating time and the volume of paydirt loaded for sluicing. Grab samples best represent these variables by providing data that can be used to establish the average and long-term performance of existing settling facilities at placer mines reflecting the treatment of the wastewater during the actual operation of the beneficiation process, even though operations may be intermittent and vary in loadings during the working day.

The use of grab samples as a basis to establish treatment performance and solids removal also has an advantage over the use of composite samples in that the Imhoff cone can be used as the sample container, thereby reducing solids agglomeration (and causing artificially high SS readings) in the sample container, and even more in the composite sample. Finally, all data reported by miners and the monitoring requirements in the previously issued NPDES permits are based on grab samples. Therefore, these monitoring data could be compared to EPA's sampling data.

(7) *Comment:* The comment was made that polymer (flocculant) addition should not be considered as a technology for placer mines because of the cost and their possible "chemical pollution."

Response: Chemical aids (e.g., polyelectrolytes) are in common usage to remove residuals of solids in a wide variety of municipal and industrial wastewater discharges. Polyelectrolytes (sometimes called "polymers" or "organic flocculants") have not been used at full scale at placer mines, but are successfully used rather widely in the ore mining industry to further remove residuals of solids and metals in treated effluent. These treatment chemicals literally bridge two or more suspended particles, causing them to agglomerate and settle. The chemicals themselves have not been shown to present an environmental problem in previous applications, and do not appear to present any implications of "chemical pollution." Thus, the Agency undertook an investigation to determine

if the application of polyelectrolytes to placer mine wastewater would be similarly successful to enhance settling in ponds. While they were not conducted on full scale treatment systems, the field tests conducted by the Agency showed highly effective removal of solids and turbidity in the wastewater from several placer mines. Based on these test results and other engineering data available, the Agency decided that polyelectrolytes may be feasible and that it would be appropriate to assess the costs associated with their use. The total annual cost of polymer use to reduce solids in an overflow (blowdown) equivalent to 20 percent of sluice process wastewater was determined and is presented in the development document. Based on the economic assessment for the larger mines, (mines processing more than 500 yd^3/day), the costs appear reasonable. Notwithstanding the generally favorable findings to date, the Agency recognizes that work remains to resolve questions about full scale operations (including the feasibility of chemical metering systems and sludge handling and disposal requirements) to reasonably assure this technology is "available" for use by placer mines. Accordingly, while the use of polyelectrolytes is not the basis for these proposed effluent limitations guidelines and standards, the Agency will continue to consider this technology in developing these regulations.

(8) *Comment:* Several comments noted that mine revenues estimated by EPA were based on the assumption that gold is 100 percent pure as mined. It was pointed out, however, that no more than 80 percent purity (one comment suggested 82 percent) should be applied to gold as mined. Price fluctuation in the price of gold should also be considered in determining revenues for mines.

Response: Revenue estimates in the economic impact analysis supporting the proposed rule have been revised to reflect gold purity of 80 percent with coincidental effect on prices paid to the miner. The market price for gold was assumed to be $360 per troy ounce (1984 average price), but sensitivity analyses were performed using the economic impact on model mines and varying the market gold price between $300 and $400 per ounce. Thus, applying the 80 percent factor, the price actually received by mines used in EPA's analysis ranges between $240 and $320 per ounce. The results of these analyses are discussed in Section XIV of this preamble and in detail in the economic document supporting the proposed rule.

(9) *Comment:* EPA has overstated the availability of heavy equipment in use at Alaskan gold placer mines. Routine maintenance and repair, often performed by the equipment operators themselves, in addition to breakdowns reduce the availability of heavy equipment over the course of the season. The availability should not exceed 67 percent.

Response: EPA has not assumed 100 percent availability of heavy equipment in the model mine analysis used to assess economic impacts. EPA's model mine estimates of the costs of owning and operating heavy equipment reflect an assumption of 200 operating hours per month, or 800 hours over the course of a 3½-4 month season. This figure (200 hours) was cited by heavy equipment dealers as the standard number of operating hours per month guaranteed against extraordinary repair. However, a miner is assumed to work 10 hours per day which, in a 30-day month, totals 300 working hours. If only 200 equipment hours are available per month, this implies an equipment availability ratio of 200/300 or 67 percent. Furthermore, the assumption of a 10-hour work day is believed to be conservative since data indicate miners often work substantially longer days. As the length of the work day expands, the implied equipment availability ratio declines even further. As additional site-specific data becomes available to the Agency, steps will be taken to assure that cost items, cost methodology, and model mine profiles are reviewed and revised as necessary.

(10) *Comment:* One commenter claims the model mine profiles in the draft economic analysis do not totally address the time needed for stripping land prior to sluicing. This is due primarily to EPA's overstatement of heavy equipment earth-moving capability. Therefore, some mines will be unable to sluice the amount of material, and thus recover the volume of gold, implied by the Agency model. The commenter applied the conditions existing at his own mine site to EPA's model mine C to justify his assertions. The commenter's site is characterized by requiring the commenter to move a yard of overburden for every yard of material sluiced. By employing his site's "job condition factors," the commenter calculated the production capability of the bulldozer and then estimated the number of hours needed to remove 50,000 cubic yards of overburden in preparation for sluicing (250 hours would be required). The commenter concludes by determining the amount of material which can be processed (50,000 cubic yards) using the 500 machine hours left of the 750 hours assumed for the model. The 50,000 cubic yards of paydirt is below the range of production model mine C is intended to represent. Therefore, the total amount of gold recovered and revenues earned are substantially lower than model mine C, thus rendering the model far less profitable than EPA claims.

Response: EPA does not dispute the commenter's calculation of the earth-moving capacity of his bulldozer and the bulldozer in the model. However, the commenter fails to employ this stated capacity to determine the amount of material which can be sluiced. The capacity of the bulldozer is 280 loose cubic yards per hour (LCY/hr.) but the miner assumes gravel will be processed at a rate of only 100 LCY/hr. While it is true EPA's model mine C is described as an operation processing 100 yards per hour, this figure is not intended to serve as a constraint, but is the season-long *average* implied by the assumptions of the model (75 days sluicing 1,000 cubic yards during a 10-hour "sluice-day"). Given the capability of the bulldozer, it appears the miner could sluice substantially more than 100 yards per hour and increase his total yardage for the season well above the 75,000 yd^3/year used for the model. The front-end loader also costed for this model, which the commenter states cannot be used very much for stripping, could assist in loading paydirt while the dozer is stripping and add to the production by loading and clearing tailings from the sluice. Thus, it appears the commenter's claim that he is able to process no more than 50,000 cubic yards is somewhat conservative. If the miner is somehow constrained by operational or site-specific conditions such that he is unable to sluice more than this amount, then his operation fits more properly into the framework of model mine B. The Agency is aware of the variety of site-specific characteristics which affect the production and dictate the expense of operating a placer mine. We welcome comments such as the above which discuss these conditions in the framework of the model mine profiles.

(11) *Comment:* One commenter suggested that the use of the word "pollutant" throughout the text of the draft technical document is ill-advised because placer mining adds no unnatural substances to the waters.

Response: Pollutant is defined in the Act and in 40 CFR 401.11 General definitions. As defined: "The term 'pollutant' means dredged spoil, solid waste, incenerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, *rock, sand,* cellar

dirt and *industrial,* municipal, and agricultural *waste* discharged into water [emphasis added]. This term does not mean (A) 'sewage from vessels' within the meaning of section 312 of this Act; or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation of ground or surface water resources." This definition clearly includes the constituents (rock, sand, industrial waste) discharged by gold placer mine point sources.

In addition, the Act stresses the control of the 65 classes of pollutants that Congress declared toxic under section 307(a) of the Act. Arsenic and mercury are found in the wastewater discharges from placer mines and are included in the list of toxic pollutants as defined by the Act.

(12) *Comment:* One commenter questioned how the draft development document can suggest for BAT the use of process controls and changes in operations that may not be in common use by placer operations.

Response: The Act specifically requires EPA to consider process changes and control techniques in defining the basis for BAT limitations. Section 304(b)(2)(B) states: "Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate" (emphasis added). For placer mining BAT, EPA assessed the availability of in-process controls as well as control and treatment techniques at the end of the recovery process. In-process controls and treatment techniques considered as part of this rulemaking include: water conservation through the use of classification (screening) before the separation process (sluice), wastestream segregation so that process wastewater from the beneficiation process is not allowed to commingle with mine drainage, the use of flocculants in wastewater treatment to reduce the solids in the wastewater discharge, and other control and treatment techniques discussed in the Development Document. In order to be considered BAT, a process control need not be in common use in the industry. It need only be demonstrated by some member of the industry or, if the industry's pollution control is found to be uniformly inadequate, technology can be transferred from another industry. Limitations based on transfer technology must be supported by a conclusion that the technology is transferable and a reasonable prediction that it will achieve the effluent limitations guidelines. *See, Tanners' Council of America* v. *Train,* 540 F.2d 1188 [4th Cir. 1976].

While some process controls considered for BAT are not included as the basis for BAT in this proposed regulation, some miners may choose to implement such controls to achieve BAT. The Agency encourages the use of such process controls. For example, classification or screening the run of mine paydirt before sluicing will reduce the water use at many mines that presently require large volumes of water to push oversize material through the sluice. Reduced process water use reduces the size of a settling pond necessary to provide any given retention time and therefore reduces the cost of wastewater treatment. Similarly, segregating mine drainage, mine run-off, and run-off from the area surrounding the active mine by the use of ditches and berms reduces the commingled wastewater to be treated and the cost of treatment, and allows this relatively clean water to be discharged without being contaminated by process water used in the beneficiation process.

(13) *Comment:* One commenter said that water monitoring (sampling and analyses) costs at a mine should be the responsibility of EPA.

Response: Water monitoring of a point source discharge (sampling and analyses) is clearly the responsibility of the owner or operator of the point source facility. Section 308(a)(A) of the Act states that when carrying out section 402 of the Act: "the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require."

Section 402 establishes the National Pollutant Discharge Elimination System (NPDES) and the conditions under which the Administrator may issue an NPDES permit. Also, 40 CFR Part 122, National Pollutant Discharge Elimination System, contains provisions for the NPDES program. Subpart C—Permit Conditions, at § 122.41(h) states: "*Duty to provide information.* The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit." "Director" is defined as the EPA Regional Administrator or the chief administrative officer of any State agency operating an approved NPDES program.

(14) *Comment:* Geographic considerations have been eliminated as a basis for subcategorization; however, remote sites in Alaska have economic and mechanical difficulties not present in the "Lower 48." Also, climate and rainfall differ between Alaska and the Lower 48.

Response: As discussed in the Development Document, geographic location was considered as a possible basis for subcategorization, but upon examination and analysis of mines in seven mining districts in Alaska (representing ⅔ of the total mines in Alaska) and comparing these mines in Alaska with mines in the Lower 48 for which we have information and data, the Agency found many similarities. Regardless of geographic location within Alaska or whether the mine was located in the western states or in Alaska, the mines used similar mining methods and benefication methods and worked with similar types of equipment, and the wastewater characteristics, in-place treatment, and wastewater treatability were all similar. Likewise climate and rainfall do not justify separate subcategories. EPA has found that geographic location does effect the cost of doing business. For example, the sheer logistics of mines without road access leads to higher costs of operation. Also location, by way of climate, affects the duration of the mining season and the opportunity to mine and process. In the Agency's analyses, these effects have been accommodated in defining income and profitability of mines. For instance, the financial profile for the mines in Alaska and the western states reflects

differences in operating days per season due to variable thaw-freeze between these locations.

Rainfall, as a basis for subcategorization, was considered as a component of climate. In addition, rainfall intensity was considered in the storm exemptions provided in §§ 440.131(a) (2) and (3). The storm exemption and the size of the treatment system required to qualify for the exemption are based on the 5-year, 6-hour precipitation event at the specific mine location. Therefore, the larger the 5 year, 6 hour precipitation event, the larger the pond must be required to qualify for the relief. However, the 5-year, 6-hour precipitation event in Alaska is about 0.75 to 1.5 inches, depending upon the mine site, and in the western states, is about 0.5 to 1.25 inches. These ranges of intensity do not support a separate subcategorization based on rainfall.

(15) *Comment:* Topography is dismissed as a basis for subcategorization but the EPA analysis details the economic and physical impacts of topography on placer mining.

Response: Topography is a further, specific aspect of geography (location) and the Agency did consider topography as a possible basis for subcategorization. The Agency can find no justification to subcategorize based on the topography at a mine.

Topography differs from mine site to mine site and sometimes varies considerably even within a mine operator's claim area. But the Agency has found that production practices, wastewater characteristics, and treatability are similar for all types of topography. Generally, mines in Alaska and the lower 48 states can be characterized as operating in valleys, either instream or on the flood plains of a stream, and as generally having sufficient land area to mine and build wastewater treatment facilities. However, a few mines for which EPA has data (3 of the 33 site visits in 1984) are located in rugged, narrow, and steeply sloping valleys which constrain the land available for both mining and building wastewater treatment facilities (ponds). At least partially because of these constraints, these mines are smaller mines, i.e., they process less than 500 yd^3/day, which as a group are already identified by the Agency as not requiring additional controls beyond BPT. Therefore, EPA has indirectly accounted for varying topography.

The Agency believes the number of mines located in this type of topography is small and that these mines already approach base line closure, i.e., are marginal operations because of their small size. However, the Agency is aware of the space availability issue and specifically requests information and data from owners and operators of mines which believe they have constraints on their mine caused by the topography of the mine or area adjacent to the mine. If this data supports a conclusion that different limitations and standards should be established for mines on the basis of topography, EPA will subcategorize the industry accordingly.

(16) *Comment:* The comment was made that in Table V–2 of the draft development document, the sample population of mines in Alaska is too small and is biased towards easily accessible mines (reached by road) which are not representative of the Alaska industry.

Response: The table referenced lists by mine code approximately 100 mines that were sampled by EPA or EPA contractors from 1982 to 1984. These mines represent both remote and readily accessible sites, and all types of practices and mine site situations. The Agency believes the data are representative. The majority of the data is for mines located in Alaska because most placer mines are in Alaska. As discussed elsewhere in this section (See Comment 2), the Agency relied substantially upon the results from the 1984 studies in Alaska to develop this proposed guideline. The mine sites were selected to be typical and representative of mines found across Alaska. The sites are located across 7 mining districts (as detailed by the United States Department of the Interior's Geological Survey) where over ⅔ of the total mines in Alaska are located. Some emphasis was on the Circle District and Fairbanks District where about 40 percent of the total mines in Alaska are located. It is true that the mines in these two districts are comparatively accessible and can be reached by road. Indeed, available data show a substantial percentage of all mines in Alaska are located at accessible sites. However, mine site visits were also made to mines in the Yentna District, Kantishna District, and Koyokuk District which are not easily accessible and are reached by "winter roads and trails" or by air.

(17) *Comment:* Commenters requested that EPA clarify sampling techniques to acquire grab samples and show that they maintained consistency between and among sample sites. They stated that if sampling techniques are not "identical" at all sites, you cannot compare the results in any meaningful way. Also, sampling during periods when there was no sluicing activity would lead to artifically low results.

Response: In the studies conducted by EPA in 1984, grab samples were taken at prescribed intervals for 2–6 days per mine. Measurements were made in the field for pH, temperature, turbidity, and settleable solids. Samples were also provided for laboratory measurements of total suspended solids (TSS). For each site, the sample location, date, and time were noted and a sketch of the mine site and sample locations was prepared. At every mine, samples were taken from the following: supply, sluice discharge, and final effluent (except for those mines recycling 100 percent). Depending on the mine layout and water use, additional samples were obtained for the same measurements on recycle water, intermediate pond effluent (where more than one pond was in use), ground water, mine drainage, and runoff from boiling (washing ore with high pressure water). Water samples were taken during periods when the mine was actively operating and sluicing ore. Samples were collected, preserved, and transported in accordance with the procedures in Appendix III of "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants" (EPA Environmental Monitoring and Support Laboratory, Cincinnati, Ohio, March 1977).

"Identical" samples are pragmatically unlikely and statistically remote for any water discharge. This is especially so in the placer mining industry where process controls (e.g., automation) are not present and pollutant loads are high. Moreover, there is certain inherent variation in sampling due to many influences, one important aspect of which is "sampling error." This is a statistical term that generally refers to any error from "true" value or "exact" samples occasioned by action of the person taking the sample, changes in the discharge being tested, differences in accessibility of sample points and other factors. The Agency is fully aware of these factors and therefore follows a very consistent procedure at each mine and for each individual sample to minimize both sample variation and measurement variability. The Agency then applies statistical analyses to the actual data to obtain a measure of the overall variability in effluent characteristic when defining technology performance. This variability is reflected in daily maxima and monthly averages presented in the proposed Development Document. These averages reflect the performance of all mines tested that had treatment ponds in place, not just the best mines. In assessing performance of the best mines as well as engineering evaluation of properly designed and

operated ponds (6 hour detention time), the Agency believes that 0.2 m1/1 SS is achievable at all times. That is, the variability in effluent performance for settleable solids occurs below this level. Well designed and operated ponds will simply contain wastewater long enough to assure settling of these large particles and solids substantially diminish the influence of variability of this parameter. The available data supports this conclusion. (See Section VIII C. BPT Recommendations). For total suspended solids, however, the Agency is proposing only a 30-day (long-term) average because EPA believes that even well designed and operated ponds will experience day-to-day variability for this parameter, while this long-term average can be met. The Agency is very interested in receiving additional data on raw waste and effluent characteristics for settleable solids and total suspended solids to assess these variability factors (See Solicitation of Comments, Section XXII).

(18) *Comment:* Two commenters questioned the statistical methods employed by the Agency. In particular, they asserted that the sampling scheme and sample sizes were inadequate and the distributional model (the delta-lognormal distribution) and the methods used to estimate the mean and 99th percentile of the delta-lognormal were not appropriate. One of the commenters also questioned the difference between the daily and monthly limitations.

Response: The sample was designed to obtain information from mines of various sizes and mines with a broad range of sluice water treatment or controls (e.g., simple settling, recycle). The composition of the final sample reflected a compromise between the competing requirements of economic and effluent data gathering. In order to assure that the sze (i.e., sluicing capacity) distribution of the industry was properly represented in the sample, the industry was stratified by size. The sample was then designed so that each stratum was properly represented in the sample.

As discussed in response to Comment 17 and Comment 6 above, the sampling technique and procedure in the studies conducted by EPA used grab samples at the same sample point at each mine, e.g., final effluent, so that consistency was maintained in sampling at a mine and between mines. Frequent grab samples of a mine's effluent were used to account for fluctuations in treatment performance caused by the intermittent nature of the sluice process during the time a mine is operating. The samples are representative of the treated discharge from an operating sluice. Samples from "down days" and the normal periods when a mine is not operating (most mines sampled were operated 10 to 12 hours per day, not 24 hours) were not included in the data base used for statistical analyses.

The Agency used statistical techniques to define the pattern of treatment performance for solids control. For analysis of effluent settleable solids, EPA employed the "delta-lognormal" statistical model to predict mean and 99th percentile level effluent characteristics for the mines sampled by the Agency. The delta-lognormal is a probability distribution which is a general form of the lognormal distribution used extensively in the determination of treatment performance limitations in effluent guidelines regulations, including ore mining. The basic approach is to use statistical methods to model observed effluent data. This is done by fitting the data to mathematical formulae known as probability distributions. Estimates of the 99th percentiles of distributions fit to effluent data are used as the basis of limitations. A probability distribution describes the variation in a set of data and provides a mechanism for estimating the percentiles and variability of a population based on small samples. A well-known example of a probability distribution is the familiar bell-shaped curve of the normal distribution. The lognormal is closely related to the normal distribution in that the logarithms of lognormally distributed data follow the bell-shaped curve of the normal distribution. The primary factor in determining the adequacy of the fit of a distribution to a set of data is the relationship between the general shape displayed by a graphical plot of the data and the shape of the curve determined by the mathematical formula for the distribution. While no set of observed data will fit a mathematical model precisely, the data will usually display a shape that is reasonably close to a particular distribution. Usually, larger data sets will display a more distinct shape than smaller data sets. However, the Agency has found, in extensive work with data sets of various sizes, that the lognormal distribution provides a reasonable tool to analyze effluent data.

(19) *Comment:* Two commenters took issue with the Agency's interpretation of the relationships of arsenic and mercury to total suspended solids (TSS), claiming that the results of the correlations are indistinct, not supported by a consideration of the chemical makeup (form) of the arsenic and mercury, and based upon too few samples for arsenic and mercury.

Response: EPA used statistical techniques to examine whether the data support the premise that removal of arsenic and mercury is associated with the removal of SS and TSS. This premise is based on the notion that arsenic (As) and mercury (Hg) in particulate or solid form should be removed with the other solids. The Agency believes the statistical analysis, supported by engineering judgment and information from many miners, confirms this basic premise. The Agency conducted pilot tests of simple settling on samples of mine wastewater. The results of the pilot tests show that as solids were removed from samples of untreated mine wastewater, the concentrations of As and Hg were also reduced. These results were confirmed by statistical analysis of the pilot test data.

(20) *Comment:* One commenter observed that the draft Development Document "admits" that quiescent settling does not exist in settling ponds, suspended solids in placer effluents are often (predominately) colloidal suspensions, and in no case did turbidity levels ever reach 5 NTU at existing facilities or in pilot testing. Therefore, it is unreasonable to expect a placer mine to achieve 5 NTU at end-of-pipe.

Response: The issue raised by the commenter on the achievability of a turbidity limitation of 5 NTU is related to individual NPDES permit conditions. This proposed regulation does not impose effluent limitations on turbidity. Effluent limitations and standards are being proposed based on two technologies, simple settling and recycle. The BPT effluent limitations based on simple settling require control of solids in the wastewater discharge, e.g., settleable solids and TSS. The BCT, BAT, and NSPS effluent limitations guidelines and standards for larger mines, as well as the BPT effluent limitations guidelines for dredges require no discharge of process wastewater from the sluicing process based upon recycle.

The comment is correct that effluent turbidity levels of 5 NTU have not been observed in discharges from any technology at mines (i.e., discharges from pond systems with or without recycle) nor was this level attained in flocculant-aided settling tests. However, for placer mines, turbidity reduction can be achieved by solids control and recycle of process (sluice) water is believed to be the most technically and economically feasible means to control solids.

Turbidity effluent limitations will be included in NPDES permits if necessary to meet state water quality standards. Questions pertaining to the achievability of any such effluent limitation should be raised with the State when it establishes or reviews its water quality standards.

(2) *Comment:* A number of comments were received regarding the validity of a conclusion in the draft Development Document that it appears that gold loss, due to recycle of process water with high solids concentrations, is minimal. The conclusion was based primarily upon two pilot scale studies of gold recovery in a sluice when the TSS in the process water is varied from 0 to about 200,000 mg/l. Commenters stated the conclusion is not valid because: a known quantity of gold was salted into paydirt with an unknown quantity of gold and the percent recovery is then meaningless; the tests were based on "only 2" tests; "fine gold" was defined as −30 to +60 mesh and the fine gold that is lost due to recycle (high TSS) is −100 mesh according to one commenter and −200 mesh according to a second commenter. They claim recycle (with high TSS) causes reduced gold recovery in a sluice in direct proportion to the solids concentration.

Response: A concern often repeated by miners is that recycle washwater containing high TSS reduces gold recovery in a sluice. However, no conclusive data were offered to quantify the loss or, if there is a loss, what TSS concentration starts to effect a loss. Information submitted or referenced to confirm gold loss due to recycle or buildup of solids consists of anecdotal data that is either not measurable or, if measured, lacked control data that would indicate the conclusion (i.e., that there is gold loss with recycle water) was in fact a loss of recoverable product and not an extraneous or circumstantial difference in recovered gold. More ounces of gold per cubic yard of paydirt from one area of a mine sluiced with clean water *vs* fewer ounces of gold per cubic yard of paydirt from a second area of a mine sluiced with recycle water does not necessarily mean there was a loss of recovery due to recycle, i.e., the assay of the paydirt could be quite higher in the first area. A literature search of mining texts, handbooks, and articles offered narrative data but not quantifying information. (Primarily because the assumption is sufficient water is available for mining and washing of paydirt and water is recycled only in water short areas). Therefore, EPA and ADEC funded projects to start to provide reasonably hard data and information that addresses the issue. While the two studies are not all inclusive, the results of the studies of two separate paydirts with only small variation in the study methods are the same, i.e. over 99 percent of the gold was recovered in the pilot test sluice regardless of the concentrations of TSS.

In the pilot test conducted for ADEC, a fixed amount of paydirt was washed to recover the unknown gold in the paydirt. This "barren paydirt" was then salted with a known amount of gold. The same barren paydirt and salted gold was washed, recovered, reblended, washed and recovered using washwater with varied amounts of TSS. Gold recovery for all concentrations of TSS was over 99 percent.

The pilot test recycle study conducted for EPA used paydirt from a different mine and a larger sample of paydirt to provide a fresh sample of paydirt for each test run. Part of the pilot test included coning and dividing the ore sample to provide an ore sample split for each test run which is a standard method used in an ore dressing laboratory for large bulk samples. Theoretically, the same amount of "unknown" gold was in each sample split. As with the other pilot test, a known quantity of gold was added to a split before a test run to be certain there was gold to measure as recovered gold. From the results of the tests, it appears the paydirt was essentially barren because 99.5 percent of the known gold added was recovered in the test runs. Gold recovery of the known gold was consistant in each run and there was over 99 percent recovery regardless of the TSS concentrations.

There is no single recognized standard of what mesh gold is "fine gold." Authors of mining texts and mining articles define fine gold, depending upon the author, from −10 mesh to −100 mesh when discussing both loss of gold (percent recovery of recoverable gold) and recoverable gold (what size gold can be recovered in a sluice). The Agency is not defining what size constitutes fine gold. Placer gold (for the EPA sponsored test) was obtained from a mine in an as recovered condition from mine's sluice and was size −30+60 mesh. However, apparently from abrasion during the repeated use of the gold in the pilot test runs, the −30+60 mesh gold was broken down so that after the final test run, about 11 percent of the recovered gold was −60+100 mesh. Including the −100 mesh gold, after 5 test runs using wash water with varying TSS concentrations, the loss of the original known gold was less than 0.3 percent. This indicates that in the pilot sluice some recoverable gold is −60 mesh.

Based on the data available to the Agency at this time, there appears to be no gold loss attributable to high TSS even in the 200,000 mg/l range. Furthermore, simple settling even for an hour will reduce TSS to less than 5000 mg/l. Therefore, if as alleged there is some direct relationship between TSS and gold loss, the Agency believes the loss would be insignificant if the recycle water is allowed to settle for a few hours.

(22) *Comment:* Turbidity should not be used to regulate the placer industry because there is no documented cause and effect between turbidity and environmental damage.

Response: As discussed above, the national regulation for gold placer mines being proposed does not establish effluent limitations guidelines or standards for turbidity. Some states have water quality standards for turbidity. If a state has such water quality standards, effluent limitations and standards for turbidity will be included in any NPDES permit as necessary to meet the state water quality standards.

As discussed in the Development Document supporting this proposed regulation, turbidity is a nonconventional pollutant that was considered for regulation of gold placer mines discharges. Turbidity is defined by the American Public Health Association (APHA, 1980) as "an expression of the optical property of a sample that causes light to be scattered and absorbed rather than transmitted in straight lines through the sample." Turbidity in water is caused by suspended matter (including clay, silt, finely divided organic and inorganic matter, plankton, and other microscopic organisms). Solids and turbidity are measured differently. The terms solids and turbidity are analogous, but they are not synonomous measures of water quality. Turbidity is a measure of the light scattering properties of the sample. Turbidity is measured by Jackson candle turbidimeters or nephelometers, in Jackson turbidity units (JTU) and nephelometric turbidity units (NTU), respectively. Solids are generally reported on a concentration (milligrams per liter) basis. The size, shape, and refractive index of suspended particulate matter are not directly related to the concentration and specific gravity of the suspended matter. Therefore, measurements of suspended solids and turbidity are not interchangeable.

Criteria for solids (suspended and settleable) and turbidity are included as a part of the EPA Red Book, *Quality Criteria for Water* (U.S. Environmental Protection Agency, 1976). The EPA Red Book incorporates both solids (suspended and settleable) and turbidity in a single criterion (U.S. EPA, 1976). The criterion is written as follows:

Freshwater fish and other aquatic life: Settleable and suspended solids should not reduce the depth of the compensation point for photosynthetic activity by more than 10 percent from the seasonally established norm for aquatic life.

Turbidity restricts the depth to which light will penetrate in water. Decreases in light penetration cause reductions in photosynthesis, and thus in primary production. Animals dependent upon vision for feeding are also adversely affected by the decreased light since the ability to see their prey is impaired. Both lethal and sublethal sediment effects of high turbidity have been demonstrated, along with habitat changes that render an area unsuitable for particular species. Suspended clays may be detrimental to zooplankton as their feeding efficiency decreases and particles that have a little or no nutritional value are ingested.

(23) *Comment:* The Comment was made that EPA's prediction in the draft economic analysis that every single model A size mine in Alaska is going to close is not credible. The closure prediction is based on unprofitability created largely on paper by the inclusion of "opportunity cost of capital." This is an accounting cost only and does not affect the cash flow in a negative manner as do labor expense and fuel costs. It is unrealistic to assume all 110 (est.) mines represented by model A will close. Miners will often continue to operate through bad seasons in the hope of encountering better paydirt, to build equity through exploration, and/or for a variety of other reasons. It is also absurd for EPA to assume that no mines in the continental United States are going to close.

Response: The conclusions drawn from EPA's model mine analysis concerning the profitability of various size operations are general in nature and are not specifically applicable to every existing placer operation. The very nature of a "model" analysis precludes any such narrow determinations. Hence, EPA does *not* conclude that each and every placer mine of model A or B dimensions will be unprofitable in the coming season and therefore will not operate. Instead, EPA believes mines of this size will require very capable and cost-efficient operators to earn a profit during the 1985 season, laregly due to currently depressed gold prices. Furthermore, EPA recognizes that many factors affect the decision to operate in a given year, and that expected profit is not the sole motive. As explained elsewhere in the preamble to the proposed regulation and the supporting economic impact assessment, the projection that all model A or B mines will shut down is a worst case assumption only. The Agency fully realizes that, due primarily to the inherent hetererogenity of the placer mining industry, some percentage of these mines will operate in the coming season. The implication of the analysis (based largely on the assumptions therein) is that current economic conditions will make it difficult for many mines of this size to operate profitably.

Placer operations in the lower 48 states are profiled in the economic analysis by model E, intended to represent continental placer mines processing 75 cubic yards of paydirt per hour or less. As currently constructed, this model appears unprofitable in the baseline as well under current economic conditions. Thus it is projected that many such operations in the lower 48 states will not operate (at least not profitably) in the coming seasons. Again, EPA does not mean to suggest that all 264 (est.) mines of this size will shut down, but instead that only the most cost-efficient and capable operators of such mines will earn a profit. Thus, the commenters claim that only Alaska mines are projected to close is incorrect.

(24) *Comment:* One commenter observed that EPA based their revenue estimates on a gold recovery rate of .022 troy ounces per cubit yard, the average of the values reported by the 20 miners interviewed in 1984. This commenter stated this figure is 100 percent higher than a nationwide average based on hundreds of mines sampled over a period of 9 years.

Response: Early drafts of the economic impact document showed only .022 troy ounces/yd^3 as a basis for revenue estimates. This value was used because it represents an average of actual, recently reported values given directly to EPA representatives. Revisions have been made and the economic analysis supporting the proposed rule includes a *range* of gold recovery rates in the models to assess the impact of various "ground" values on the performance of the models. Also, as discussed in Section XV, Solicitation of Comments, the Agency is seeking additional specific data on mine revenues.

(25) *Comment:* A number of comments contended that EPA's estimates of operating costs for Alaska mines are understated (and "skeletal") and do not take into account differentials due to the Arctic environment.

Response: EPA's model mine costs for owning and operating heavy equipment, obtaining fuel, and hiring labor do reflect differences for Alaska mines from those estimated for the continental U.S. mine. The Agency recognizes that the cost differentials may need to be better defined for certain parameters particularly heavy equipment maintenance cost. The Agency plans to identify and incorporate necessary additional changes into the models between proposal and promulgation. (See Section XV, Solicitation of Comments).

In addition, an "auxiliary expense" line item calculated as 40 percent of the model mine heavy equipment costs has been incorporated into the model mine profile in the economic analysis for the proposed rule. This item is intended to cover miscellaneous costs that are not itemized. The Agency also plans to obtain further information on auxiliary expenses to enumerate the various components of these outlays.

(26) *Comment:* One comment noted that in the economic draft report, the sluicing time of mines is given as 650, 750 or 850 hours per year, depending on the size of the mine. This implies the model D mine would feed itself for 50 hours, since the equipment costs are only estimated for 800 hours.

Response: Model D placer operations are assumed to employ three separate pieces of heavy equipment: one D-8K and one D-9L bulldozer in addition to a 966D front-end loader. The operating cost profile developed for this model includes the estimated cost of securing, operating, and maintaining *each* of these for 800 working hours, or 2400 heavy equipment hours in total. This easily accommodates the 850 hours designed for feeding the sluice and processing paydirt. The balance of the hours are intended to represent the time needed for clearing land, removing overburden, maintaining ponds, and other "non production" use of equipment.

(27) *Comment:* One comment observed that in the draft economic document, if one divides the number of mines in any state into the total compliance cost by option, one will get the cost per mine by option and by each state. The results of doing this reveal almost no variation between the states, except for Alaska. EPA is "cooking the books" to arrive at pre-set ratios of

compliance costs in Alaska relative to the lower 48 states.

Response: EPA has made no attempt whatsoever to construct the costs according to preconceived cost-per-mine ratios. EPA developed compliance cost estimates for each of the five model mines. Four of the models represent Alaska operations, so cost estimates depended primarily on the relevant Alaska data on pond size necessitated by the amount of gravel processed and the volume of water used per yard. Compliance cost estimates for the continental U.S. model were also derived using these factors, but an allowance was also made for the lower equipment and maintenance costs incurred by "lower 48" mines. Site specific data obtained thus far justify this differential. State-specific differentials were not included due to lack of sufficient information. Once the compliance cost estimates for the model mines were determined, the aggregate compliance cost per state was calculated by multiplying the cost for each model by the number of mines represented by that model estimated to be in the state. In other words, if a state is estimated to contain 50 model A mines and the Option 1 compliance cost for model A is estimated to be $8,000, then the Option 1 compliance cost for that state is reported as $50 \times \$8,000 = \$400,000$. This procedure is clearly explained in Chapter VI, *Cost of Compliance*, of the economic document. This analysis is made necessary by the use of model mine analysis, which is in turn made necessary by the lack of mine-specific operating data.

(28) *Comment:* Several commenters have raised the issue that mines have legally defined water rights for certain amounts of water and "end of pipe" limitations do not take into account instream mixing on the miner's property before the wastewater is discharged from the miner's property.

Response: Under the Clean Water Act, effluent limitations guidelines and standards apply at the point where a "point source" "discharges" pollutants to the "navigable waters." Each of these terms is defined in the Act and in 40 CFR Part 401. The commenters seem to believe that a pollutant should not be deemed to be "discharged" to the "navigable waters" until it leaves the miner's property. Such an interpretation is not consistent with the Clean Water Act. A pollutant is "discharged" when it is added to the navigable waters from any point source. See e.g., *United States* v. *Earth Sciences, Inc.*, 599 F.2d 368 (10th Cir. 1979). "Navigable waters" under the Clean Water Act is a very broad term. *United States* v. Earth Sciences, Inc. supra; *Quivira Mining Company* v. United States Environmental Protection Agency, Nos. 83-2338, 83-2339, 83-2356 (10th Cir. June 10, 1985); *State of Utah* v. *Marsh*, 740 F2d 799 (10th Cir. 1984); *Avoyelles Sportsmens League* v. *Marsh*, 715 F.2d 897 (5th Cir. 1983). It includes all the waters of the United States. Thus navigable waters include the portions of a stream that runs through a miner's property. The effluent limitations apply where the discharge from the point source enters the stream, even though the stream might continue for some distance exiting the miner's property.

EPA recognizes that under state law miners have water rights for certain amounts of water. EPA's effluent limitations guidelines and standards do not in any way deny the miner's use of their claimed water rights. On the contrary, EPA's proposed regulations are economically and technologically feasible and EPA has considered any consumptive water loss non-water quality environmental impacts of the proposed limitations and standards. Accordingly, EPA's regulations are being properly developed and apply at the point where the pollutants are discharged to the navigable waters.

(29) *Comment:* One Commenter noted that the analyses for turbidity, settleable solids, and TSS in the draft development document and in a separate study by another consulting engineering company should be assessed in light of apparent differences in values taken from the same discharge point and sampled at approximately the same time.

Response: EPA believes that the results of the settleable solids analyses are in close agreement. The analyses for TSS and turbidity show differences in absolute values between the two studies, particularly the analyses for turbidity, although the Agency notes that the average values, especially for TSS, are comparable and indicate very similar pond performance over the 3-day sampling period. The differences can have a number of explanations including the sampling method and handling of the sample before analysis, a change in the effluent quality or treatment efficiency, and the variability of the analytical method. The turbidity results are particularly sensitive to variation at very high values (thousands of turbidity units, NTU). This is because the test requires dilution of highly turbid raw sample by factors of 100 to 1000 or more to run the test. Any small error or difference in analyses of the dilute sample is greatly magnified in calculating the projected actual sample result.

(30) *Comment:* The comment was made that placer mining should not be included in the ore mining and dressing point source category because placer gold is not an ore but is raw gold which was liberated from ore rock by natural forces. Crushing is not required and treatment with toxic chemicals is not required to separate the mineral as in other parts of the ore mining and dressing category.

Response: Gold placer mining is specifically included in the ore mining and dressing point source category in SIC 1041 Gold Ores. For the purpose of the regulation, ore and "paydirt" are synonymous and the recovered or concentrated mineral (metal) is placer gold. The Agency realizes that there are significant differences between the facilities, mines, and mills in the ore mining and dressing category and therefore subcategorized the industry. In particular, a separate Gold Placer Mine Subcategory is being established by this proposed rule to take account of the unique factors presented by gold placer mining.

XXI. Solicitation of Comments

Copies of the draft "Development Document" and the draft "Economic Impact Analysis" document were circulated to all interested parties the first week of March, 1985. A public workshop to present and discuss the proposal was held in Fairbanks, Alaska, on April 25, 1985. The Agency is accepting comments at this time. The formal comment period will extend for 120 days after the proposal is published. This extended period will allow sufficient time for the miners to review and respond to the proposal after the 1985 operating season ends. In addition, the Agency will continue to gather data during the 1986 operating season.

There exists an ongoing question on the Method Detection Limit (MDL) for settleable solids (SS) and the SS limitations for gold placer mining. The current mean MDL for settleable solids is 0.3 ml/l, which is a direct result of EPA Headquarters work in conjunction with the Cincinnati EPA laboratory in the early 1980's relative to establishing effluent limitations and and standards for the coal mining industry. Due to the lack of a definitive data base that is directly related to the gold placer mining industry for settleable solids, the Agency conducted a sampling program in Alaska during the summer of 1985. This involved mines in several different areas of the state. The sampling procedure used for the determination of the Method Detection Limit involved seven replicates of an effluent sample at

each mine using the methods outlined in Appendix B to 40 CFR Part 136 with a representative sample from each mine forwarded to the EPA Cincinnati Laboratory for correlation. The results of this program plus any additional data obtained in response to this proposal will be made available for public comment prior to the development of final regulations.

EPA encourages and solicits public participation in this rulemaking effort. The Agency requests that any comments relating to errors, deficiencies or omissions in this proposal or in the supporting documents be specific as to item and location in the record and be supported with facts and information that will correct or otherwise supplement the existing data base. The information in this data base, which profiles the gold placer mining industry, was used to develop this proposed regulation.

Any comments or data submittals to the Agency should include pertinent mailing and mine location addresses, so this information can be entered into EPA's record. In addition it would be helpful if the number of years of operation at the current location or other sites could also be provided. This type of information is essential not only for the Agency to assure reasonable accuracy, but also for compiling aggregate.profile statistics, assessing subcategorization, and completing meaningful analyses of facilities.

(1) *Operating Cost, Revenue and Other Data.* Many people who commented on the preliminary draft of the proposed Development Document were also at the technical workshop on the proposed effluent limitations guidelines and standards held in Fairbanks, Alaska on April 25, 1985. They were critical of the data EPA used to estimate revenue and costs, which in turn were used to conduct an economic assessment of the impact of the proposed regulation on the gold placer mining industry. However, virtually no specific data or detailed infotmation on existing mines were supplied to EPA either at the meeting or submitted later. Thus, the Agency continues to seek site-specific data and other information from mines to augment the present data base. The cost, revenue information, and data are essential to determining which technologies are "economically achievable."

Specifically, the Agency requests data from individual mines in both Alaska and the lower 48 States covering the following areas: revenue; operating and maintenance costs, including overhead expenses, mine lease costs, and equipment costs; operating data relating to daily and seasonal operating hours, water quality and quantity, mining and process methods employed, ore throughput, personnel and equipment utilized; mine site data such as the stream and mining district names, geology, topography, location, and climate; and operating details for stripping overburden, prospecting, mining and processing (i.e., sluicing) ore.

(1) The revenue data should delineate assay value of ore ("pay dirt") in place and gold recovered as a result of processing (sluicing) on the basis of ounces of gold per cubic yard of material. Gold fineness (percent pure gold) and particle size distribution including percentage of nuggets is also requested, if possible.

Aggregate costs have been defined to cover a number of major cost items. To better define and further document these estimates, the Agency is seeking additional site specific data from the industry on item costs such as the following: delivered fuel costs, cost of spare parts and parts inventories carried, cost of outside maintenance service, cost of prospecting (dollar value and labor and equipment hours), cost of season start-up and shutdown, camp costs, labor costs per hour or per day (including methods of payment) and list of personnel by job category, equipment costs (including lease or rental arrangements), mining site lease costs and methods of payment, costs to recycle process water, professional service charges (engineering, legal, or accounting), reclamation costs, costs to construct and maintain wastewater treatment facilities (in both equipment and labor hours), costs involved for disposal of solid wastes (including equipment and labor hours), costs pertaining to thawing and removal of overburden, transportation costs, and any other costs of doing business.

(2) *Processing Methods.* EPA seeks specific information pertaining to the various mining and ore processing methods employed in the industry including all relevant equipment data such as type, size (capability in yd^3/hour), cost, operating and maintenance costs, and type and cost of power used for all aspects of the work.

This information is necessary to properly structure the "model mines" so as to reflect the actual gold placer mining industry as accurately as possible. This information, in turn, will provide the best available data necessary to assess the economic impact of the proposed regulations on individual mines as well as the industry as a whole.

(3) *Water Use.* The Agency would appreciate information on water sources and uses and wastewater treatment. Updated information on mines which have already provided information for the data base, would also be useful.

The following information regarding water supply would be especially useful: average stream flow (gal/min or cfs), and if there is a low flow problem, the location of the stream as it relates to the mine; the method of supplying water (gravity or pump); data on the pump (if used) including type of power (electric, diesel, gas), horsepower and capacity; and the total amount of water used by the mine. The amount of water used should be broken down as to the amount used for hydraulic mining (i.e., overburden removal, thawing, "boiling"), the amount used for classification (screening), the amount used in the separation process (i.e., sluice, jigs, spirals), and the volume that is recycled.

The Agency also requests specific information on recycle of wastewater, if practiced by the mine, as well as data on the pump used for recycle, including type of power (electric, diesel, gas), horsepower and capacity, and length of pipe, diameter of pipe, and pipe material (steel, aluminum, plastic).

(4) *Settling Ponds.* The wastewater treatment system at most mines includes settling or holding ponds. The Agency requests data on existing ponds, the dimensions of the ponds (width, length, depth), the method of construction, the cost of construction (dollar value or machine hours and labor hours), the annual maintenance cost of the ponds (dollar value or machine hours and labor hours), the method and cost of handling solid waste (build new ponds as ponds fill or how often ponds are cleaned out and by what method), and whether the ponds are leveled or reclaimed at the end of the season. The Agency would also like to know if the mine has adequate land available within the existing claims for new pond construction.

In the event information is not supplied in response to this request the Agency has the legal authority under section 308 of the Clean Water Act to obtain all desired information. EPA regulations provide that a business may, if it desires, assert a business confidentiality claim covering part or all of the information it furnishes to EPA. A mine submitting information may assert a confidentiality claim covering the information by attaching a cover sheet or notice labelled "company confidential" or with a similar notation. In the event that the Agency receives a request for release of information covered by a claim of confidentiality, or the Agency otherwise decides to make a

determination as to whether or not specific information submitted is entitled to confidential treatment, notice will be first provided to the business which furnished the information. Effluent data cannot be claimed confidential. In addition, any information may be disclosed to officers, employees, or authorized representatives of the United States concerned with carrying out provisions of the Act or when relevant in any proceeding under the Act. The complete details of confidential treatment afforded by EPA appear in 40 CFR Part 2, Subpart B. The manner of asserting claims of confidentiality is specified in 40 CFR 2.203(b). Copies of the Code of Federal Regulations, Title 40 contains the regulation and can be found in the libraries of most Federal and State offices. If individual miners or mining companies wishing to supply data cannot obtain access to the Code of Federal Regulations, they can request copies of 40 CFR Part 2, Subpart B at the address listed in this preamble for technical information.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. This rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 440

Metal, Mines, Water pollution control, Waste treatment and disposal.

Dated: November 6, 1985.

Lee M. Thomas,

Administrator.

XXIII. Appendices

Appendix A—Abbreviations, Acronyms and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology under Section 304(b)(4) of the Act.

BMP—Best management practice under Section 304(e) of the Act.

BPT—The best practicable control technology currently available, under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95-217).

MSHA—The Mine Safety and Health Administration, U.S. Department of Labor.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards under Section 306 of the Act.

POTW—Publicly owned treatment works.

RCRA—Resource Conservation and Recovery Act (Pub. L. 94-580) of 1976, Amendments to Solid Waste Disposal Act.

SBA—Small Business Administration.

OMB—Office of Management and Budget.

Appendix B—Pollutants Selected for Regulation

1. Settleable Solids (SS).
2. Total Suspended Solids (TSS).

Appendix C—Toxic Pollutants Not Detected During Sampling

1. Acenaphthene
2. Acrolein
3. Acrylonitrite
4. Benzidene
5. Carbon Tetrachloride
6. 1,2,4-Trichlorobenzene
7. Hexachlorobenzene
8. 1,2-Dichloroethane
9. Hexachloroethane
10. 1,1-Dichloroethane
11. 1,1,2-Trichloroethane
12. 1,1,2,2-Tetrachloroethane
13. Chloroethane
14. Bis(2-Chloroethyl) Ether
15. 2-Chloroethyl Vinyl Ether
16. 2-Chloronaphthalene
17. 2,4,6-Trichlorophenol
18. Parachlorometa Cresol
19. 2-Chlorophenol
20. 1,2-Dichlorobenzene
21. 1,3-Dichlorobenzene
22. 1,4-Dichlorobenzene
23. 3,3-Dichlorobenzidene
24. 1,1-Dichloroethylene
25. 2,4-Dichlorophenol
26. 1,2-Dichloropropane
27. 1,3-Dichloropropylene
28. 2,4-Dinitrotoluene
29. 2,6-Dinitrotoluene
30. 1,2-Diphenylhydrazine
31. Fluoranthene
32. 4-Chlorophenyl Phenyl Ether
33. 4-Bromophenyl Phenyl Ether
34. Bis(2-Chloroisopropyl) Ether
35. Bis(2-Chloroethoxy) Methane
36. Methyl Chloride
37. Methyl Bromide
38. Bromoform
40. Dichlorodifluoromethane
39. Chlorodibromomethane
40. Hexachlorobutadiene
41. Hexachlorocyclopentadiene
42. Isophorone
43. Naphthalene
44. Nitrobenzene
45. 2-Nitrophenol
46. 4-Nitrophenol
47. 2,4-Dinitrophenol
48. 4,6-Dinitro-O-Cresol
49. N-Nitrosodimethylamine
50. N-Nitrosodiphenylamine
51. N-Nitrosodi-N-Propylamine
52. Pentachlorophenol
53. Benzo(A) Anthracene
54. Benzo(A) Pyrene
55. 3,4-Benzofluoranthene
56. Benzo(K) Fluoranthene
57. Chrysene
58. Acenaphthylene
59. Anthracene
60. Benzo(G, H, I) Perylene
61. Phenathrene
62. Dibenzo(A, H) Anthracene
63. Indeno(1, 2, 3-C, D) Pyrene
64. Pyrene
65. Trichloroethylene
66. Vinyl Chloride
67. Chloradane
68. 4,4-DDT
69. 4,4-DDE
70. 4,4-DDD
71. Endosulfan-Alpha
72. Endosulfan-Beta
73. Endosulfan Sulfate
74. Endrin Aldehyde
75. Heptachlor Epoxide
76. g BHC (Lindane)—Gamma
77. PCB-1242 (AROCHLOR 1242)
78. PCB-1254 (AROCHLOR 1254)
79. PCB-1221 (AROCHLOR 1221)
80. PCB-1232 (AROCHLOR 1232)
81. PCB-1248 (AROCHLOR 1248)
82. PCB-1260 (AROCHLOR 1260)
83. PCB-1016 (arochlor 1016)
84. Toxaphene
85. 2,3,7,8-Tetrachlorodibenzo-p-Dioxin
86. 2,4-dimethylphenol
87. Chlorobenzene
88. Dichlorobromomethane
89. Fluorene
90. Aldrin
91. Dieldrin
92. Endrin
93. Heptachlor
94. 1,1,1-Trichloroethane
95. Chloroform
96. Ethylbenzene
97. Diethyl Phthalate
98. Tetrachloroethylene
99. Toluene
100. BHC-Alpha
101. BHC-Beta
102. BHC-Delta
103. Benzene
104. 1,2-Trans-Dichloroethylene
105. Phenol
106. Butyl Benzyl Phthalate
107. Di-N-Butyl Phthalate
108. Di-n-Octyl Phthalate
109. Dimethyl Phthalate
110. Cyanide
111. Antimony
112. Beryllium
113. Silver
114. Thallium
115. Selenium

Appendix D—Toxic Pollutants Detected in Amounts Too Small To Be Effectively Reduced by Technologies Considered in Preparing this Guideline

1. Cadmium
2. Chromium
3. Copper
4. Nickel
5. Lead
6. Zinc

Appendix E—Toxic Pollutants Detected From a Small Number of Sources and Uniquely Related to These Sources

1. Bis(2-Ethylhexyl)Phthalate
2. Methylene chloride

Appendix F—Pollutants Effectively Controlled by the Technology Upon which Other Effluent Limitations and Guidelines are Based

1. Arsenic
2. Mercury
3. Asbestos

Technical amendments to the Subpart J—Copper, Lead, Zinc, Gold, Silver, and Molybdenum Ores Subcategory are being proposed as part of today's document to clarify the applicability of Subpart M—Gold Placer Mine Subcategory which is being proposed today. However, the limitations and requirements of Subpart J remain unaffected by today's proposal; they are not being reproposed today, and are not subject to review.

PART 440—ORE MINING AND DRESSING POINT SOURCE CATEGORY

For the reasons discussed above, EPA proposes to amend portions of Part 440 as follows:

1. The authority citation for Part 440 continues to read as follows:

Authority: Sections 301, 304 (b) and (c), 306, and 501 of the Clean Water Act (The Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977), (the Act), as amended, 33 U.S.C. 1311, 1314 (b) and (c), 1316, and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

2. § 440.100 is amended by revising paragraph (a) to read as follows:

§ 440.100 Applicability: description of the copper, lead, zinc, gold, silver, and molybdenum ores subcategory.

(a) The provisions of this Subpart J are applicable to discharges from—

(1) Mines that produce copper, lead, zinc, gold, silver, or molybdenum bearing ores, or any combination of these ores from open-pit or underground operations other than gold placer deposits;

(2) Mills that use the froth-flotation process alone or in conjunction with other processes, for the beneficiation of copper, lead, zinc, gold, silver, or molybdenum ores, or any combination of these ores;

(3) Mines and mills that use dump, heap, in-situ leach, or vat-leach processes to extract copper from ores or ore waste materials; and

(4) Mills that use the cyanidation process to extract gold or silver.

Discharge from mines or mines and mills that use gravity separation methods (including placer or dredge mining or concentrating operations, and hydraulic mining operations) to extract gold ores are regulated under Subpart M. Discharge from mines or mines and mills that use gravity separation methods (including placer or dredge mining or concentrating operations, and hydraulic mining operations) to extract silver ores are not covered by this Part.

* * * * *

§ 440.102 [Amended]

3. § 440.102 is amended by removing paragraph (e) and redesignating paragraphs (f) through (i) as (e) through (h).

§ 440.103 [Amended]

4. § 440.103 is amended by removing paragraph (e).

§ 440.104 [Amended]

5. § 440.104 is amended by removing paragraph (e).

6. Part 440 is amended to add a new Subpart M to read as follows:

Subpart M—Gold Placer Mine Subcategory

Sec.

440.140 Applicability: description of the gold placer mine subcategory.
440.141 Specialized provisions and definitions
440.142 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
440.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BPT).
440.144 New Source Performance Standards (NSPS).
440.145 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Subpart M—Gold Placer Mine Subcategory

§ 440.140 Applicability: description of the gold placer mine subcategory.

(a) The provisions of this Subpart M are applicable to discharges from—

(1) Mines that produce gold or gold bearing ores from gold placer deposits; and

(2) The beneficiation processes for gold placer deposits which use gravity separation methods.

(b) The provisions of this Subpart M are not applicable to any mines or beneficiating processes which process less than 20 cubic yards (yd^3) of paydirt or ore per day, or to dredges located in open waters, i.e., open bays, marine waters, or major rivers.

§ 440.141 Specialized provisions and definitions.

For the purpose of this Subpart M, the general definitions, abbreviations, methods of analysis, and general provisions set forth in 40 CFR Part 401 shall apply, as well as the general provisions and definitions set forth in 40 CFR Part 440 Subpart L, except as provided below.

(a) *Specialized Provisions.* (1) *Combined Waste Streams.* Where process wastewater from the beneficiation processes, including, but not limited to, the discharges from classification equipment, sluices, jigs, shaking tables, and spiral separators, is commingled with mine drainage or groundwater infiltration to the wastewater impoundment, settling pond, or holding pond, this combined waste stream may be discharged if the concentration of each pollutant or pollutant property does not exceed the effluent limitations applicable to mines processing paydirt or ore in the range of 20 yd^3/day to 500 yd^3/day. However, the volume of commingled wastewater that may be discharged does not include the flow or volume of process wastewater for the beneficiation process where the effluent limitation for the beneficiation process is no discharge of process wastewater.

(2) *Storm Exemption for Facilities Not Subject to Effluent Limitations Guidelines and Standards Requiring No Discharge of Process Wastewater.* If, as a result of precipitation (rainfall or snowmelt), a source with an allowable discharge under this subpart has an overflow or discharge of effluent which does not meet the limitations or standards of this subpart, the source may qualify for an exemption from such limitations and standards with respect to such discharge if the following conditions are met:

(i) The treatment system is designed, constructed, and maintained to contain or treat the maximum volume of untreated process wastewater which would be discharged by the beneficiation process during a 6-hour operating period without an increase in volume from precipitation or groundwater infiltration, plus the maximum volume of water runoff resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of water which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which would result from all areas contributing runoff to the individual treatment facility, i.e., all runoff that is not diverted from the active mining area and runoff which is allowed to commingle with the influent to enter the treatment system.

(ii) The operator takes all reasonable steps to maintain treatment of the

wastewater and minimize the amount of overflow.

(iii) The operator complies with the notification requirements of § 122.41 (m) and (n) of this Part. The storm exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

(3) *Storm Exemption for Facilities Subject to Effluent Limitations and Guidelines Requiring No Discharge of Process Wastewater.* If, as a result of precipitation (rainfall or snowmelt), a source which is subject to effluent limitations guidelines or standards requiring no discharge of process wastewater under this subpart, has an overflow or discharge which violates the limitations or standards of this subpart, the source may qualify for an exemption from such limitations or standards with respect to such discharge if the following conditions are met:

(i) The treatment system is designed, constructed, and maintained to contain the maximum volume of process wastewater stored, contained, and used or recycled by the beneficiation process during normal operating conditions without an increase in volume from precipitation or groundwater infiltration plus the maximum volume of wastewater resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of wastewater which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which would result from all areas contributing runoff from the beneficiation process area, i.e., all runoff that is not diverted from the active mining area and runoff which is allowed to commingle with the influent to the treatment system.

(ii) The operator takes all reasonable steps to minimize the overflow or excess discharge.

(iii) The operator complies with the notification requirements of § 122.41 (m) and (n). The storm exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

(b) *Specialized Definitions.* (1) "Groundwater infiltration" in this subpart means that water which enters the treatment facility as a result of the interception of natural springs, aquifers, and other seepage or run-off which percolates into the ground and seeps into the treatment facility's pond or wastewater holding facility.

(2) "Five (5)-year, 6-hour precipitation event" in this subpart means the maximum 6-hour precipitation event with a probable recurrence interval of once in 5 years as established by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Weather Service, or equivalent regional or rainfall probability information.

(3) "Gold placer deposit" in this subpart means an ore consisting of metallic gold-bearing gravels, which may be: residual, from weathering of rocks in-situ; river gravels in active streams; river gravels in abandoned and often buried channels; alluvial fans; sea-beaches; and sea-beaches now elevated and inland.

(4) "Beneficiation process" in this subpart means the dressing or processing (sluicing) of gold bearing ores for the purpose of—

(i) Regulating the size of, or recovering, of the ore or product,

(ii) Removing unwanted constituents from the ore, and

(iii) Improving the quality, purity, or assay grade of a desired product.

(5) "Gravity separation methods" in this subpart means the treatment of mineral particles which exploits differences between their specific gravities. The separation is usually performed by means of sluices, jigs, classifiers, spirals, hydrocyclones, or shaking tables.

(6) "Dredge" in this subpart means a self-contained combination of an elevating excavator, the beneficiation or gold-concentrating plant, and a tailing disposal plant, all mounted on a barge.

(7) "Process wastewater" in this subpart means all water used in and resulting from the beneficiation process, including but not limited to, the water used to move the pay dirt or ore to and through the beneficiation process, the water used to aid in classification, the water used in the gravity separation method, and the water and runoff from the beneficiation process area.

(8) "Ore pay dirt or" in this subpart means the raw "bank run" measured in place, before extraction cubic yards of raw material which is moved by mechanical or hydraulic means to a mine's beneficiation process.

(9) "Beneficiation area" in this subpart means the area of land used to stockpile pay dirt or ore immediately before the beneficiation process, the area of land used to stockpile the tailings immediately after the beneficiation process, and the area of land from the stockpiled tailings to the treatment system e.g., holding pond or settling pond and the area of the treatment system.

(10) "Settleable solids" in this subpart means the organic or inorganic particulate material which will settle in one hour, expressed in milliliters per liter (ml/l) as determined using an Imhoff cone and the method described for Settleable Solids—209E in *Standard Methods for Examination of Water and Wastewater*, 16th edition.

(11) "Total Suspended Solids" (TSS) in this subpart means the residue retained on a standard glass-fiber filter after filtration of a well-mixed water sample expressed in milligrams per liter (mg/l) using the method described for Total Suspended Solids Dried at 103–105C—209C in *Standard Methods for Examination of Water and Wastewater*, 16th Edition.

§ 440.142 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT)

Except as provided in § 440.131 and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) The concentration of pollutants discharged from a mine's beneficiation process that processes 20 to 500 yd^3 of pay dirt or ore per day shall not exceed:

Effluent characteristic	Effluent limitations	
	Instantaneous maximum	Average of daily values for 30 consecutive days
Settleable solids	0.2ml/l	
TSS		2,000 mg/l.

(b) The concentration of pollutants discharged from a mine's beneficiation process that processes more than 500 yd^3 of pay dirt or ore per day (except dredges with capacities of more than 4000 yd^3 per day) shall not exceed:

Effluent characteristic	Effluent limitations	
	Instantaneous maximum	Average of daily values for 30 consecutive days
Settleable solids	0.2 ml/l	
TSS		2,000 mg/l.

(c) There shall be no discharge of process wastewater from the beneficiation process used by any dredge which mines and processes more than 4000 yd^3 of ore or pay dirt per day.

§ 440.143 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in § 440.141 and 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

(a) The concentration of pollutants discharged from a mine's beneficiation process which processes 20 to 500 yd^3 of ore or pay dirt shall not exceed:

Effluent characteristic	Effluent limitations—instantaneous maximum
Settleable solids	0.2 ml/l

(b) There shall be no discharge of process wastewater from the beneficiation process used by any mine which processes more than 500 yd^3 of pay dirt or ore per day.

(c) There shall be no discharge of process wastewater from the beneficiation process used by any dredge which mines and processes more than 4000 yd^3 of ore or pay dirt per day.

§ 440.144 New Source Performance Standards (NSPS).

Except as provided in § 440.141 any new source subject to this subpart must achieve the following NSPS representing the degree of effluent reduction attainable by the application of the best available demonstrated technology (BADT):

(a) The concentration of pollutants discharged from a mine's beneficiation process which processes 20 to 500 yd^3 of pay dirt or ore per day shall not exceed:

Effluent characteristic	Effluent limitations	
	Instantaneous maximum	Average of daily values for 30 consecutive days
Settleable Solids	0.2 ml/l	
TSS		2,000 mg/l.

(b) There shall be no discharge of process wastewater from the beneficiation process used by any mine which processes more than 500 yd^3 of pay dirt or ore per day.

(c) There shall be no discharge of process wastewater from the beneficiation process used by any dredge which mines and processes more than 4000 yd^3 of ore or pay dirt per day.

§ 440.145 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in § 440.141 and 40 CFR 125.30–125.32, any existing source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) The concentration of pollutants discharged from a mine's beneficiation process which processes 20 to 500 yd^3 of pay dirt or ore per day shall not exceed:

Effluent characteristic	Effluent limitations—Average of daily values for 30 consecutive days
TSS	2,000 mg/l.

(b) There shall be no discharge of process wastewater from the beneficiation process used by any mine which processes more than 500 yd^3 of pay dirt or ore per day.

(c) There shall be no discharge of process wastewater from the beneficiation process used by any dredge which mines and processes more than 4000 yd^3 of ore or pay dirt per day.

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federal register

Wednesday
November 20, 1985

Part IV

Federal Reserve System

12 CFR Parts 202 and 202a

Equal Credit Opportunity; Revision of Regulation B; Official Staff Commentary; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Parts 202 and 202a

[Regulation B; Docket No. R-0541]

Equal Credit Opportunity; Revision of Regulation B; Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and final official staff interpretation.

SUMMARY: The Board is issuing a final rule revising Regulation B, its regulation implementing the Equal Credit Opportunity Act (ECOA). This rule results from the Board's review of Regulation B pursuant to its policy of periodically reviewing all of its regulations. The Board considered ways the regulation could be simplified to ease the burdens imposed on creditors, consistent with the Board's responsibility for implementing the ECOA, and also considered whether the regulation could more effectively carry out the purposes of the act. The Board has made changes in the data notation requirements applicable to dwelling-related mortgage loan applications, and in the definition of "applicant" to give guarantors legal standing in the courts when there is an alleged violation of the signature provisions of the act or the regulation. In light of renewed concern about availability of business credit to women and members of minority groups, the Board considered (but deferred a decision on) revising the rules applicable to business credit transactions; the Board will monitor developments in this area, and if it appears that regulatory changes are needed, the Board will take appropriate action. The Board also considered but did not revise the regulation to cover consumer leasing under the ECOA. The Board has updated some provisions of the regulation and revised others to facilitate creditor compliance. The revisions include streamlined procedures for dealing with incomplete applications and a broader selection of sample forms for informing applicants of the action taken on applications. The major portions of the existing regulatory provisions remain virtually unchanged.

The Board is also publishing an economic impact analysis and an official staff commentary. The commentary interprets the requirements of revised Regulation B—incorporating prior Board and staff interpretations. Good-faith compliance with the commentary affords creditors protection from civil liability under section 706(e) of the ECOA.

EFFECTIVE DATE: Effective December 16, 1985, Part 202 is redesignated as Part 202a (Part 202a will be removed on October 1, 1986).

A new Part 202 is added to be effective on December 16, 1985.

FOR FURTHER INFORMATION CONTACT: Regarding the regulatory amendments and official staff commentary, John C. Wood (Senior Attorney), Adrienne D. Hurt (Staff Attorney), or James K. Baebel (Senior Review Examiner), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–2412); regarding the economic impact statement, Glenn Canner (Director, Micro-Consumer Projects) or Robert D. Kurtz (Staff Economist), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–2910); or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) (202–452–3244).

SUPPLEMENTARY INFORMATION: (1) *Introduction.* In keeping with its policy of reviewing all of its regulations periodically, the Board published a notice of intent to review Regulation B on June 21, 1983 (48FR 28285). On March 18, 1985, the Board published proposed revisions to Regulation B (50 FR 10890), and has now adopted a revised regulation in final form. The revised regulation and official staff commentary will become effective December 16, 1985. However, creditors have the option of continuing to comply with the Board's current regulation and existing interpretations, which remain in effect, until October 1, 1986.

Several new rules may require operational changes:

- Applications subject to data notation requirements under section 202.13 will have to be in writing and creditors will be required to note the applicant's sex and race or national origin by visual observation or surname for applicants who do not voluntarily provide that information.
- Under the new rules for incomplete applications, a creditor may act on the application and notify the applicant of the action taken in accordance with § 202.9(a) or, alternatively, may notify the applicant in writing that additional information is needed, under new § 202.9(c). The written notice of incompleteness must specify what information is needed and designate a reasonable time period for the applicant to provide the information
- Under the rules for record retention, a creditor will be required to maintain records for 25 months or withdrawn applictions as well as on incomplete applications.

Other revisions, though substantive, will not require changes in operational procedures:

- The revised definition of applicant gives legal standing to guarantors and like parties (enabling them to sue for violations of the reguation's signature rules) but imposes no new requirements on creditors.
- The Board has redefined the criteria that a credit scoring system must meet to qualify as "demonstrably and statistically sound" in order to use the applicant's age as a factor. The change makes clear that the criteria can be met by "decision tree" and other systems, but does not affect the standing of systems that meet the current criteria.

The aforementioned rules and other regulatory changes are discussed in detail below.

(2) *Background.* The Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*), signed into law in 1974, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex or marital status. Under amendments enacted by Congress in 1976, the act also bars discrimination on the basis of race, color, religion, national origin, age, receipt of public assistance, and the good-faith exercise of rights under the Consumer Credit Protection Act. The Federal Reserve Board was given rulewriting authority to issue implementing regulations, and issued Regulation B (12 CFR Part 202) in October 1975, amending it in December 1976 to incorporate the act's expanded coverage.

The Board's policy under its Regulatory Improvement Project calls for the periodic review of each Board regulation. In keeping with that policy, the Board made a detailed review to consider whether Regulation B could be simplified to ease the burdens imposed on creditors, consistent with the Board's responsibility for implementing the ECOA, and to consider also whether the regulation could more effectively carry out the purposes of the ECOA. The Board published a notice of intent to review the regulation in June 1983, to ensure the participation of interested parties early in the review. Based upon its own internal analysis and public comments received, as well as information from other sources, the Board proposed a revised version of Regulation B in March 1985. The Board received 166 comments on that proposal from creditors, Federal Reserve Banks, federal and state agencies, trade

associations, consumer groups, and others.

The Board believes, on the basis of the public comments and other available information, that the regulation is achieving its intended goals. The Federal Reserve Banks and the other federal enforcement agencies report no major compliance problems. As a rule, creditors appear to consider the Regulation B requirements to be manageable, and view the regulation as providing certainty about how to comply with the ECOA. Civil rights and consumer advocates continue to view the regulation as providing important protections. To the exent that consumers' views can be discerned from Board-sponsored surveys, consumers appear satisfied with the treatment they are receiving in the credit market.

In light of the indications that major revisions are not needed, the Board's revisions leave most of the regulatory provisions substantially unchanged. This is in contrast to the extensive changes made when the Board engaged in similar reviews of Regulation Z (Truth in Lending) and Regulation C (Home Mortgage Disclosure). The more limited nature of the revisions to Regulation B comes from the different circumstances that have surrounded the review of the regulation:

- The Board's review of the Truth in Lending and Home Mortgage Disclosure regulations implemented statutory amendments, that, particularly in the case of Truth in Lending, made significant reductions in the disclosure requirements. In contrast, there are no statutory amendments of any kind to be implemented under the ECOA.
- The volume of litigation under the ECOA and Regulation B has been quite limited, and by and large the court decisions that have been reported do not reflect the need for simplification of requirements that was evident in the case of Truth in Lending.
- It became apparent, in the course of the review, that creditors have no major problems in complying with Regulation B. Many creditors may find burdensome the notification requirements applicable to credit denials and other adverse action, but these provisions are drawn directly from the statute. Some creditors asked the Board to provide clarification on various points; others believe that the regulation is working effectively and encouraged the Board to leave the regulation substantially unchanged.
- Civil rights and consumer advocates have opposed any diminution of ECOA protections. Because the ECOA is civil rights legislation, and not strictly a consumer protection law, there is particular concern that the Board not cut back on any protections currently provided.

In the review of the regulation, it was frequently found that no substantive change in regulatory provisions was required—that elaborating on a given point in a staff commentary could effectively facilitate creditor compliance. Accordingly, an official staff commentary has been prepared. The commentary provides needed guidance in a less formal manner than the regulation. It is discussed further in section (5) of this notice; the commentary text follows the regulatory text set forth in section (7).

The revised regulation is shorter than current Regulation B by about one-sixth—a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to the official staff commentary. The regulation also has been improved by the rewriting of some sections and the editing of others to state the requirements more clearly. The substance of all but two of the 19 footnotes contained in the current regulation has been moved to the official staff commentary, making the regulation itself less cumbersome to use.

In accordance with section 3507 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.13, the revisions to Regulation B that pertain to third-party disclosures were approved under authority delegated to the Board by the Office of Management and Budget.

An economic impact statement, required by section 604 of the Regulatory Flexibility Act (5 U.S.C. 604), appears in section (6) below.

(3) *Treatment of business credit and consumer leasing.* Two areas that received special attention in the review of Regulation B (although no changes resulted) deserve mention: the treatment accorded to business credit transactions and coverage of consumer leases under Regulation B.

The Board considered whether any changes might be appropriate in the rules applicable to business credit under the regulation, in light of renewed public and congressional concern about the availability of credit to businesses owned by women and members of minority groups. The ECOA and Regulation B apply to all credit transactions, including business credit. Regulation B modifies the rules applicable to business credit transactions, relieving creditors from some of the more technical procedural requirements of the regulation. These exceptions do not, however, affect the basic ECOA protections against discrimination. For example, a creditor may not take the business applicant's marital status into account, and may not request information about a married applicant's spouse except when the spouse has some connection to the business. A creditor must comply with rules that prohibit requiring the spouse to guarantee the loan. Women and other business credit applicants are entitled to notice of the action taken and, upon request, to a written statement of the reasons for a denial. They have the right to ask the creditor to retain records for the full 25-month period applicable in consumer credit transactions.

The Board believes that these provisions should fully protect women and members of minority groups against unlawful discrimination in business credit transactions, but has not ruled out changing the regulation to increase protections. In particular, the Board discussed whether the rules should be modified to require creditors to give business applicants who are denied credit a written notice of their right to receive a statement of reasons for the denial. Modifying the business credit rules would require new rulemaking, however, since the Board's March 1985 proposal did not contain proposed changes to these rules. The Board has deferred a decision on whether to initiate such rulemaking. In the meantime, the Board is developing an educational pamphlet on the application of the ECOA and Regulation B to business credit transactions for distribution to business owners through government agencies, women's groups, and other organizations. Better informing women and minority business owners about their rights under the law could be an effective way to assist them in enforcing those rights, and less costly than subjecting business credit fully to the rules applicable in consumer credit transactions. The Board will monitor developments in this area, and if it appears that the regulatory changes are needed, the Board will take appropriate action.

In the review of Regulation B, the Board also addressed the issue of whether to establish a uniform rule extending ECOA coverage to consumer leases. In *Brothers* v. *First Leasing*, 724 F.2d 789 (9th Cir.), *cert. denied*, 105 S. Ct. 121 (1984), the U.S. Court of Appeals for the Ninth Circuit held that consumer leases are defined by the Consumer Leasing Act are subject to the ECOA. The appellate ruling in *Brothers* is binding law in California and other states within the jurisdiction of the Ninth Circuit, and is being enforced in those states by the Federal Reserve and other regulatory agencies.

On policy grounds there is some support for a regulatory amendment to cover lease transactions. It seems inconsistent to allow lessors to consider marital status, sex, and other characteristics while creditors are prohibited from doing so. In additon, some lease transactions are similiar in many ways to credit transactions; indeed, financing leases, or open-end leases, have been held to be functionally equivalent to credit.

Nevertheless, the Board believes that the Ninth Circuit interpreted the ECOA's definition of credit too broadly when it concluded in the *Brothers* case that the granting of a lease is an extension of credit. The Congress has consistently viewed lease and credit transactions as distinct and mutually exclusive financial transactions and has treated them separately under the Consumer Credit Protection Act. The Board believes that the Congress did not intend the ECOA, which on its face applies only to credit transactions, to cover lease transactions unless the transaction results in a "credit sale" as defined in the Truth in Lending Act and Regulation Z. In addition, aside from the *Brothers* case there is little evidence of discrimination by lessors based on the personal characteristics of lessees, in contrast to the situation that existed with respect to credit transactions before the ECOA was enacted. Furthermore, core provisions of Regulation B if applied to leasing transactions could impose significant burdens for certain segments of the industry—such as furniture and appliance leasing. (Other lessors would be less affected; financial institutions that engage in automobile leasing, for example, already comply with Regulation B in many cases.)

In light of those considerations, the Board has not applied Regulation B to leasing. Instead, the Board will monitor the practices followed in lease transactions through contacts with government agencies, the leasing industry, and consumers. The Federal Reserve's enforcement activities in the Ninth Circuit will also provide the Board with first-hand experience regarding the application of Regulation B to consumer leases. Should it later appear that action is warranted, the Board will engage in rulemaking or make legislative recommendations as appropriate.

(4) *Regulatory revisions.* The following discussion covers the revisions to Regulation B section by section. In a number of sections, changes in the text have been made for the purpose of simplification or clarification, with no substantive change in the regulatory requirements; these minor changes are not covered in the discussion.

Section 202.1—Authority, Scope and Purpose

Paragraph (a), on authority and scope, remains unchanged except for the addition of a reference to the control number assigned to Regulation B by the Office of Management and Budget as required by the Paperwork Reduction Act; other minor changes include the deletion of footnote 1 as unnecessary. A new paragraph (b) has been added to outline the purpose of Regulation B, consistent with the format followed in other Board regulations.

Paragraph (b) of the current regulation, concerning administrative enforcement, has been moved to new § 202.14, as has paragraph (c), on penalties and liabilities. Paragraph (d), regarding procedures for the issuance of official staff interpretations, has been moved to new Appendix D.

Section 202.2—Definitions

In this section, the Board has made a substantive change to the definition of "applicant" and a change to the definition of "empirically derived, demonstrably and statistically sound, credit scoring system" that will broaden its applicability, as discussed below. Other changes are structural or editorial, without substantive effect.

The references to notification of action taken, statement of reasons for denial, and record retention in the definition of "adverse action" in paragraph (c)(1) of the current regulation have been deleted as unnecessary. Editorial revisions have been made in paragraph (c)(1)(i), which now explicitly defines a counteroffer, and other subparagraphs of this definition. No substantive change is intended.

The Board has revised the definition of "applicant" in paragraph (e) to include guarantors, sureties, endorsers, and similar parties for purposes of § 202.7(d), which contains rules regarding signatures. The Board had proposed in March to define such parties as applicants without limitation. The final version of the definition was modified in response to the concerns of industry commenters who believed that the unlimited inclusion of guarantors and similar parties in the definition might subject creditors to a risk of liability for technical violations of various provisions of the regulation.

The principal effect of the change is to give guarantors and similar parties standing to seek legal remedies when a violation occurs under § 202.7(d). The regulation prohibits creditors, in certain situations, from requiring the signature of an applicant's spouse as a guarantor, surety, cosigner, or similar party. If a creditor violates this provision, however, a guarantor whose signature has been illegally required currently has no legal remedy because section 706 of the act confers standing to sue only upon an "aggrieved applicant." The Board has included guarantors and similar parties within the definition of "applicant" to resolve this question of standing.

Material regarding notification to an applicant that an application is incomplete has been deleted from the definition of "application" in paragraph (f) and incorporated into § 202.9(c), a new provision dealing with incomplete applications.

The Board has broadened the definition of an "empirically derived, demonstrably and statistically sound, credit scoring system" contained in paragraph (p). The currrent language appears to limit the applicability of the definition to a system that uses the allocation of points or the assigning of weights. The revised language makes clear that, if the system is developed using accepted statistical principles and methodology, a decision-tree or other type of credit scoring system that meets these standards also qualifies. Other conforming technical revisions to this paragraph have resulted in no substantive change. Credit scoring systems that meet the criteria as stated in the current definition will continue to qualify as "demonstrably and statistically sound" under the revised definition.

Other changes to the definitional section include the deletion of: footnote 2 to the introductory material, the last sentence in the definition of "open-end credit" in paragraph (w), footnote 3 to the definition of "prohibited basis" in paragraph (z), the definition of "public assistance program" in paragraph (aa), and the rule of construction in paragraph (dd). Comparable material appears in the official staff commentary, 202.1(a)–1; 202.2(w)–1; 202.2(z)–1 and –3; and comment 4 to the Introduction, respectively. Paragraph (cc), a rule of construction regarding captions, has been deleted as unnecessary.

Section 202.3—Limited Exceptions For Certain Classes of Transactions

The Board has restructured this section for easier reference. In the revised regulation, the definition of each type of credit is immediately followed by the list of exceptions applicable to it. There are no substantive changes to any of the existing provisions.

The definition of public utilities credit in paragraph (a) has been slightly revised to correspond more closely to the definition in Regulation Z (Truth in Lending).

In the section on business credit, the rules relating to notification and record retention have been placed in paragraph (d)(3) and labeled "modified requirements," to emphasize that they only modify the procedures ordinarily required by Regulation B, rather than provide total exceptions. Paragraph (d)(3)(i) incorporates official staff interpretation EC–0009, and makes clear that a creditor is required to notify the business credit applicant of the action taken on an application or of its incompleteness. The provision concerning record retention has been edited to make clear that the time period for requesting record retention runs from the notification of action taken or of incompleteness.

The list of exceptions applicable to government credit in paragraph (e) has been simplified without substantive change.

Section 202.4—General Rule Prohibiting Discrimination

No changes have been made to this section.

Section 202.5—Rules Concerning Taking of Applications

With the exception of paragraph (e), changes in this section are structural or editorial. Captions have been added to facilitate use of the regulation. With the deletion of the preceding footnotes, footnote 4 has been renumbered footnote 1; the part of the footnote that has been deleted from the regulation appears in the official staff commentary, 202.5(b)–1. Footnote 5 and portions of paragraphs (b)(3) and (d)(2) also have been deleted; comparable material appears in the official staff commentary, 202.5(d)(1)–1; 202.7(e)–2; and 202.5(d)(2)–2 and –3, respectively. Footnote 6 has been deleted as obsolete.

Revised paragraph (e) requires that written applications be taken for dwelling-related loans that are subject to the data notation requirements of § 202.13. (In all other types of credit transactions, written applications continue to be optional.) This change, along with the changes in data notation requirements discussed under § 202.13, will increase the information available to enforcement agencies to monitor compliance. A creditor may comply with the new requirement by writing down the information that it normally considers in making a credit decision; use of a form is not required. Some of the material in paragraph (e) of the current regulation concerning the use of the Board's model application forms has been moved to the introductory section in Appendix B.

Section 202.6—Rules Concerning Evaluating of Applications

The few changes in this section are structural or editorial only. Captions have been added to facilitate use of the regulation. Footnote 7 of the current regulation has been renumbered footnote 2. The last sentence of the footnote, citing portions of the legislative history of the act dealing with the "effects test," has been deleted from the regulation; comparable material appears in the official staff commentary, 202.6(a)–2. Footnotes 8 and 9 of the current regulation, as well as the material in paragraph (b)(5) regarding factors that a creditor may consider in determining the likelihood of consistent payments, have been deleted; comparable material appears in the official staff commentary to § 202.6(b). The provision regarding inadvertent errors has been deleted from paragraph (b)(6) and has been incorporated in new § 202.14(c).

Section 202.7—Rules Concerning Extensions of Credit

Except for minor revisions to the rules governing the treatment of open-end accounts in paragraph (c), revisions to this section are structural or editorial, without substantive effect, and include the addition of captions for ease of reference.

In paragraph (c)(1)(i), a reference to paragraph (c)(2) has been added to clarify the relationship between the two paragraphs. Paragraph (c)(2) has been revised in minor ways from the current provision. New language makes clear that the provision applies only in the case of an applicant who is contractually liable. The term "earned by" has been deleted to clarify that the provision applies to any instance in which the creditor relied upon the income of the applicant's spouse in granting the credit. "Information available to the creditor" replaces existing language because it is believed to be a more appropriate basis for determining whether a creditor may require reapplication. In the proposal published in March, "current credit limit" was substituted for existing language because it appeared to be a more appropriate test for determining the applicant's overall ability to repay than the "amount of credit currently extended." Because some creditors do not have predetermined credit limits, the final version refers to the "current credit available."

Some editorial revisions have been made in the signature rules of paragraph (d), without substantive effect. Paragraph (d)(2) has been revised to make clear that, in applications for unsecured credit, if the applicant relies on jointly owned property, the creditor may require the signature of the co-owner only to assure access to the property; see the official staff commentary, 202.7(d)(2)–1. The material concerning factors that the creditor may consider regarding property owned by the applicant has been deleted. Comparable material appears in the official staff commentary, 202.7(d)(2)–1. In response to public comment, the "reasonable belief" standard omitted from the March proposal has been retained in the regulation.

Paragraph (d)(5) of the current regulation has been divided into two paragraphs, (d) (5) and (6), without substantive effect.

Paragraph (e) prohibits a refusal to grant credit because certain types of credit-related insurance are not available due to the applicant's age. The coverage of this paragraph has been broadened to include "other credit-related insurance" as well as credit life and other specific types already listed. The provisions in current paragraph (e) regarding differences in rates and the like have been deleted; comparable material appears in the official staff commentary to § 202.7(e).

Section 202.8—Special Purpose Credit Programs

The wording of this section has been edited in various places for clarity, without substantive effect.

Section 202.9—Notifications

Substantive as well as structural and editorial changes have been made to this section. As in other sections, captions have been added throughout for ease of reference.

In this section the Board had proposed in March to substitute the words "denying" or "denial" of credit or "changing adversely" for the term "adverse action." The proposed change was based on the Board's belief that use of the term "adverse action" in the regulation raises unnecessarily negative connotations and has also led creditors to believe that they must use that term in communicating with applicants who are denied credit. In response to public comment and upon further analysis, the Board has retained use of the term "adverse action" in this section. The substitution of a term defined by the act and regulation with such undefined (and not necessarily synonymous) words as

"denial" could lead to confusion and inadvertent noncompliance. Guidance on use of the term "adverse action" has been provided in the official staff commentary, 202.9–1.

Language has been added to paragraph (a)(1)(i) to make clear that a creditor's counteroffer must be made within 30 days of the receipt of a completed application. Material that appears in the current regulation, permitting notification of the approval of an application to be either express or implied, has been deleted. Comparable material appears in the official staff commentary, 202.9(a)(1)–2. Editorial changes made to paragraph (a)(1)(iv) have no substantive effect.

In addition to the current requirements of paragraph (a)(2), the revised rule requires that an adverse action notice contain the name and address of the creditor, identification that is customarily but not always provided . That information will give rejected applicants a clearer indication of whom to contact if there are questions about the content of the notice. Editorial changes have been made to paragraph (a)(2)(ii), without substantive effect.

Paragraphs (a) (3) and (4) of the current regulation have been redesignated as paragraphs (f) and (g), and are discussed below.

Material in paragraph (b)(1) allowing modification of the model ECOA notice, to include references to similar state law and a state enforcement agency, has been deleted. Comparable material appears in the offical staff commentary, 202.9(b)(1)–1.

The second sentence of paragraph (b)(2) of the current regulation has been deleted. It states that a creditor may design its own notice form or use all or a portion of the Board's sample form, which if properly completed will satisfy the requirements of paragraph (a)(2)(i). Comparable language is contained in the revised introduction to Appendix C. The sample form itself has also been deleted. It has been replaced by a number of sample notices in new Appendix C, as discussed below.

Current paragraph (b)(3), concerning the format of disclosures, has been deleted. Comparable material appears in the official staff commentary, 202.9–4; see also 202.9(b)(1)–1.

Current paragraph (c) has been redesignated paragraph (d) and is discussed below. New paragraph (c) establishes a streamlined procedure for dealing with incomplete applications. It provides that if a creditor receives an application that is incomplete regarding matters that the applicant can complete, within 30 days the creditor must either notify the applicant of its decision, under paragraph (a) of this section, or notify the applicant that additional information is needed. The latter notification must specify the information needed, designate a reasonable time period for submission of the information, and inform the applicant that unless the information is provided there will be no further consideration of the application. (Form C–6 in Appendix C is a sample form for a notice of incompleteness under this paragraph.) If the applicant fails to respond within the designated time period, the creditor has no obligation to provide further notification of any kind. If the applicant provides the requested information in a timely manner, the creditor must then take action on the application and give appropriate notice under paragraph (a). Paragraph (a)(1)(ii), concerning the denial of an incomplete application, has been revised to include conforming language.

Paragraph (d) on oral notifications is currently paragraph (c); changes are strictly editorial. Paragraph (e), currently paragraph (d), provides a special rule on withdrawn applications. It is virtually identical to the current provision.

Paragraph (f) is virtually identical to current paragraph (a)(3). Paragraph (g) is comparable to current paragraph (a)(4). That portion of current paragraph (a)(4) dealing with liability for acts of third parties has been deleted. Comparable material appears in the official staff commentary, 202.9(g)–3.

Paragraph (e) of the current regulation, regarding inadvertent errors, has been deleted. Comparable language is contained in new section 202.14(c). Paragraph (f) of the current regulation has also been deleted; comparable material appears in the official staff commentary, 202.9–3.

Section 202.10—Furnishing of Credit Information

This section has been rewritten and restructured for clarity, with obsolete material deleted. There is no substantive change from the existing rules. Current footnotes 11 and 12 have been deleted; comparable material appears in the staff commentary, 202.10–3 and 202.10(a)–1. Some material in current paragraph (c), dealing with the legal effect of signing a request to change the manner in which information is furnished, has been deleted. Comparable material appears in the official staff commentary, 202.10(a)–2. Current paragraph 10(d) regarding inadvertent errors has also been deleted; comparable language is contained in new § 202.14(c).

Section 202.11—Relation to State Law

This section is virtually identical to the current section except for editorial changes. Footnote 16 has been deleted as unnecessary.

Section 202.12—Record Retention

The revised section requires creditors to maintain records on withdrawn applications as well as on incomplete applications. Other revisions are minor. Captions have been added for ease of reference.

Paragraph (a) permits the retention in files, under certain circumstances, of information that is generally prohibited. Paragraphs (a) (2) and (3) of the current regulation have been merged into paragraph (a)(2), so that a creditor is allowed to retain (without violating the regulation) prohibited information that it receives from a credit bureau, provided the creditor did not specifically request that information. There is no reason for giving special protection, as the current rule seems to do, when prohibited information is obtained from a credit bureau at the specific request of the creditor. A violation will not occur if a creditor requests and receives a credit report that happens to contain prohibited information. The words "at any time" have been deleted as unnecessary, and footnote 17 to paragraph (a) has been deleted as obsolete.

Paragraph (b)(1) requires retention of records for 25 months after the creditor notifies an applicant of action taken on an application. This paragraph has been revised to require the same record retention after a notification of incompleteness because, as discussed under section 202.9, a notification of incompleteness may substitute for notification of action taken in certain instances. In addition, footnote 18 to paragraph (b)(1) has been deleted; comparable material appears in the official staff commentary, 202.12(b)–1 and –2.

Under paragraph (b)(3), currently paragraph (b)(4), record retention is required of creditors who, under paragraph (a)(4) of the current regulation, do not have to give notice to an applicant of action taken. (This result occurs when an application has been "shopped" among several creditors and at least one creditor has granted credit.) As revised, the record retention provision also requires a creditor to retain records when an applicant submits an application for credit but then withdraws it prior to notification of the creditor's decision. This change will ensure more complete records of

applications and better enable regulatory agencies to assess creditors' compliance.

A reference to the Attorney General of the United States has been added to paragraph (b)(4), currently paragraph (b)(3), to require retention of records until final disposition of an enforcement proceeding or investigation conducted by the Attorney General. Current paragraph (c) regarding inadvertent errors has been deleted. Comparable language is contained in new § 202.14(c).

Section 202.13—Information For Monitoring Purposes

This section requires creditors to request applicants for particular types of dwelling-related loans to provide certain information about their race or national origin, sex, age, and marital status. The purpose is to enable enforcement agencies to monitor creditors' compliance with the ECOA and Regulation B. In March, the Board proposed a number of changes in the section, with two purposes: first, to attempt to achieve greater uniformity in the data notation rules applicable to various groups of creditors; and second, to improve the ability of the Federal Reserve System and other agencies to carry out their responsibilities under the ECOA, Fajr Housing Act, and Community Reinvestment Act. Revised § 202.13 differs from both the current regulation and the proposed version in some respects.

Under revised paragraph (a), a creditor must request information regarding an applicant's race or national origin, sex, marital status, and age upon receiving an application for the purchase or the refinancing of a dwelling occupied or to be occupied by an applicant as a principal residence, where the extension of credit will be secured by the dwelling. This differs from the current regulation in the following ways:

(1) The revised rule covers all applications for the specified types of loans, while the current rule applies only to written applications. (Section 202.5(e) of the revised regulation further requires that applications subject to § 202.13 be taken in writing, as discussed above.)

(2) The revised rule applies to refinancings as well as purchase loans (including construction-permanent financing).

(3) The revised rule covers loans related to the borrower's principal residence, including manufactured or mobile home loans whether or not the structure is attached to real property. The current provision, in contrast, only covers manufactured homes that are considered real property under state law.

The March proposal would have covered, in addition, credit applications for the repair or improvement of the borrower's principal residence. The Board received 104 comments on the proposed revisions to § 202.13. Over half of the commenters generally opposed the proposal. Some argued that the addition of home improvement loans would be unduly burdensome not only because it would require data notation on additional loans but in particular because it would impose data notation requirements on new groups of creditors, those that do not make purchase money mortgage loans but do engage in secured home improvement lending. Moreover, some of them—finance companies and home improvement contractors, for example—are not subject to periodic examination as are financial institutions, making the usefulness of the notation questionable. The Board believes that the final revisions to this section move in the direction of uniformity without imposing undue burdens.

Under revised paragraph (b), a creditor is required to request the race or national origin, sex, marital status, and age of an applicant, as in the current regulation. If the applicant does not voluntarily provide the requested information, the creditor must note the sex and race or national origin of the applicant on the basis of visual observation or surname. This is the rule currently used by the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the Office of the Comptroller of the Currency. Thus, the revision represents a change for state member banks, credit unions, and mortgage bankers, all of which currently collect the information only on a voluntary basis. The revision establishes a uniform rule for institutions supervised by federal financial regulatory agencies and will provide better data by which to determine a creditor's compliance with the ECOA and the Fair Housing Act. Paragraph (c) requires disclosure of the revised requirement.

Paragraph (d) of the current regulation permits other enforcement agencies to substitute their own monitoring programs for the Regulation B procedures. The Board requested specific comment on whether paragraph (d) should be deleted. Comments both from other federal enforcement agencies and from creditors were generally unfavorable. Therefore, the paragraph has been retained.

A provision for inadvertent errors in data notation is contained in new § 202.14(c).

Section 202.14—Enforcement, Penalties and Liabilities

This is a new section, consisting primarily of material from current § 202.1 (b) and (c). The material has been edited for purposes of simplification, without substantive effect.

Paragraph (a), identifying administrative enforcement agencies, is comparable to current § 202.1(b), and reflects the transfer of the enforcement functions of the Civil Aeronautics Board to the Secretary of Transportation (49 FR 50994, December 31, 1984). Paragraph (b), discussing penalties and liabilities, is comparable to current § 202.1(c)(1). Paragraph (c) incorporates material from current §§ 202.6(b)(6), 202.10(d), and 202.12(c) regarding inadvertent errors, and adds a similiar provision relating to § 202.13.

Appendix A—Federal Enforcement Agencies

Changes have been made to this appendix to reflect the current addresses of the various enforcement agencies.

Appendix B—Model Application Forms

The introductory material to this appendix incorporates material from § 202.5(e) of the current regulation, so that all directions for the proper use of the model forms appear in one place. The material permitting the addition of three specific items to the model forms has been deleted because creditors may add any item not prohibited by § 202.5 (not merely these three). The discussion of the FHLMC 65/FNMA 1003 form has been deleted; approval of that form appears in the official staff commentary, app. B–1. The Board has also adopted a sample disclosure and information request form that may be used to comply with revised § 202.13; this disclosure and request form appears on page 2 of the model application form for residential real estate loans. No other change has been made to the model application forms. The model forms are being reprinted in this notice.

Appendix C—Sample Notification Forms

The regulation currently provides a sample adverse action notification form in § 202.9(b)(2) that creditors may use to satisfy the requirements of § 202.9(a)(2)(i). In the June 1983 notice of intent to review Regulation B, the Board requested comment concerning that

sample form. The Board then developed a number of sample notices in response to suggestions received from various sources, including the industry, members of the Board's Consumer Advisory Council, staff of other enforcement agencies, and the Reserve Banks.

Ten sample forms were published in the March proposal. The Board requested comment on which of the proposed forms would be most useful to creditors and most informative to consumers. Comments on the proposed model forms were largely favorable; there was some concern, however, that ten forms were too many. Commenters specified which forms they felt were more useful than others, and also suggested changes in the text of a number of the forms.

New Appendix C to the regulation contains six sample notification forms. The Board dropped proposed forms C–2, C–4 and C–10, combined forms C–5 and C–6, and revised the text of some of the forms. The availability of a variety of model forms, in different formats, should better convey to creditors that they have wide latitude in the design and wording of their own forms.

No single form contains a comprehensive listing of possible reasons for denial. Creditors must incorporate into their forms the factors on which they actually base their credit evaluations; they should not simply reprint a model form and check a factor that most closely approximates the reason for adverse action. Forms C–1 through C–4 are sample statements of reasons for a credit denial or other adverse action. Form C–3 is a sample notice for use with a credit scoring system. Form C–4 combines the statement of reasons with notice of a counteroffer. Form C–5 is a sample disclosure of the right to receive a specific statement of reasons for a credit denial or other adverse action. Form C–6 is a request for additional information, as provided for in § 202.9(c); in that circumstance, the ECOA notice is not required.

Use of sample notices is entirely optional, as is true of the existing notice. A creditor may continue to use the existing sample form if the form sets forth accurately the factors the creditor considers.

Appendix D—Issuance of Staff Interpretations

This new appendix replaces § 202.1(d) of the current regulation, which deals with requests for and issuance of official staff interpretations of Regulation B. Because of changes in the procedures (particularly the introduction of the official staff commentary as the vehicle for such interpretations), this appendix differs from current § 202.1(d); it is modeled on Appendix C to Regulation Z, which deals with staff interpretations under that regulation.

(5) *Discussion of official staff commentary.* The Board is publishing an official staff commentary to the revised regulation. Good-faith compliance with the commentary affords creditors protection from civil liability under section 706(e) of the ECOA.

A proposed version of the commentary was published in the **Federal Register** on March 18, 1985 (50 FR 10890). Some changes to the substance of the proposal were requested by the commenters; a number have been adopted in the final commentary. Certain provisions have been revised and clarified. In addition, comments have been added, modified or deleted as necessary.

The commentary format follows that already used for other Board regulations such as Regulation Z (Truth in Lending) and Regulation M (Consumer Leasing). The commentary replaces six existing Board interpretations, thirteen official staff interpretations, and fifteen informal staff letters that were designated public information letters. The commentary is the sole means for issuing official interpretations of the regulation.

As is the case with other staff commentaries, the commentary to Regulation B gives general guidance, and is designed to assist creditors in applying the regulation to specific fact situations. Following the format used in the commentary to Regulation Z, each paragraph in the commentary is identified by the relevant section or paragraph of the regulation. For example, commentary to § 202.7 is designated according to the particular paragraph addressed, such as comments 7(c)–1 and 7(d)(2)–1.

The Board has previously ruled that several state laws in Alabama, California, and Nebraska are not preempted by the ECOA and Regulation B. These nonpreemption determinations relate to laws that deal with the age of majority, notices to unmarried cosigners, and Spanish language translations of credit documents. The have been omitted from the official staff commentary, which will follow the rule in Regulation Z of including only those determinations that result in the preemption of a state law or regulation.

Official staff interpretation EC–0009 has been incorporated into the text of § 202.3(d) of the regulation, which now makes clear that a creditor that denies a business credit application must give the applicant notice of action taken or of incompleteness within a reasonable time.

Certain official interpretations have been omitted for various reasons. Interpretation EC–0001, which addressed the requirements for sending credit history notices by June 1977, is obsolete. Interpretation EC–0004 has been omitted because it appears that the subject matter—the application of state laws governing graduated rates, maximum loan ceilings, and rate splitting—does not continue to warrant the detailed treatment provided in that letter. EC–0010, which dealt with the permissibility of inquiries about a potential customer's religion by a seller of religious books, has been omitted because of its limited applicability.

Interpretations that approved certain creditor forms—EC–0012 and EC–0015—have been incorporated into the commentary to Appendix B, the vehicle for approving credit application forms used on distributed by federal or state agencies or federally chartered operations. EC–0013 related to a form no longer in use, and has been omitted.

The answers provided in other official staff interpretations have served as the basis for the sections of the official staff commentary to which they relate. This includes EC–0011 regarding the applicability of Regulation B to lending operations outside of the United States, which had been omitted from the March proposal; see 202.1(a)–2. Material from some of the 15 staff opinion letters originally published as public information letters also has been used.

Proposed comment 202.2(1)–1 has been omitted from the final version. It appeared to create unnecessary confusion regarding possible liability for officers or employees of a creditor. The proposed comment had been included as a reminder that a court may hold an officer or employee accountable for individual acts of illegal discrimination, and not to suggest that officers or employees would be held liable for technical violations of the regulation. Since courts will make determinations about individual responsibility in any specific case involving illegal discrimination, withdrawal of the comment seems appropriate.

Proposed comment 202.7(d)(3)–2 also has been omitted from the final version of the official staff commentary. The comment, which was based on Public Information Letter 15, dealt with consideration of a spouse's earnings in community property states, taking the position that in an equal management state a creditor may not require the signature of the nonapplicant spouse on an application, note, or other credit

instrument. A U.S. district court in California recently ruled for the defendant in *United States.* v. *ITT Consumer Financial Corp.*, No. C–83–3924 JPV (N.D. Cal. Sept. 18, 1985) (order granting motion for summary judgment), allowing ITT to obtain the signature in such circumstances. (A decision by the government on the filing of a notice of intent to appeal is pending.) The U.S. District Court of Arizona, in *Clark* v. *Avco Financial Services*, No. 80-272 (D. Ariz. June 24, 1981), took a position contrary to the California ruling. Although the Board continues to believe that the position stated in proposed comment 202.7(d)(3)–2 as published in March 1985 is correct, this portion of the commentary is being omitted in view of the conflicting court decisions.

(6) *Economic impact analysis. Introduction.* The benefits and costs of the revisions to Regulation B are discussed in this economic impact analysis.

Redefinition of "applicant" to include guarantors. An applicant for credit has standing to sue under Regulation B but a guarantor does not. The rule redefines "applicant" in § 202.2(e) to include guarantors for purposes of the § 202.7(d) signature rules. This modification of the rule allows guarantors who believe they have been injured by an ECOA violation to bring suit, thereby enhancing protections.

The new provision may increase creditors' costs by increasing their exposure to litigation. Litigation would increase to the extent guarantors sue regarding alleged Regulation B signature rule violations, and the alleged violations would not have been litigated by applicants themselves. Analysis by the Division of Consumer and Community Affairs suggests that this situation will probably arise infrequently. Applicants normally bring suit in their own right; and guarantors, if they have standing to sue, would merely join in the lawsuit. Guarantors are often the spouse or business associate of the applicant. If it becomes a matter of course in legal actions involving defaulted loans that both the applicant and the guarantor claim injury from the same alleged violation, litigation expense may be increased; the increase will probably be small since the same alleged violation is involved.

Written applications and notation of monitoring data. Provisions in § 202.5 will for the first time require covered creditors to take written applications for certain home purchase and refinancing loans. Section 202.5 provisions will require written applications of credit requests covering loans for the purchase or refinancing of a dwelling occupied or to be occupied by the borrower as a principal residence. Creditors can satisfy the requirement for taking written applications by writing down information that they normally consider in making a credit decision. In addition, creditors are required by § 202.13 to record monitoring data on the race or national origin, sex, age, and marital status of an applicant for home purchase and refinancing loans secured by the dwelling. If the applicant does not volunteer such information upon request, loan officers are required to observe and note the loan applicant's race or national origin and sex. The applicant must be informed orally or in writing about the purpose and provisions of § 202.13.

At present, Regulation B requires creditors to request the monitoring data from applicants for home purchase loans only if the application is in writing. The current regulation does not require written applications for home purchase loans or notation of monitoring data not volunteered by the applicant.

The changes are expected to enhance consumer protection through more effective enforcement. Current ECOA enforcement techniques call for the consumer compliance examiners to use all available data to test for the presence or absence of discrimination on a prohibited basis, such as race or national origin, sex, age, or marital status. The primary data for examiners are creditor loan files. In the case of banks supervised by the Federal Reserve System (FRS), the absence of written applications and information on personal characteristics of loan applicants in many cases substantially reduces the examiners' ability to perform tests for possible discrimination. (Survey results indicate that in 1980 and 25 percent of applications for housing-related loans from banks examined by the Federal Reserve did not contain monitoring data.) The changes will facilitate more effective enforcement.

While banks regulated by the FRS are not required at present to take written applications nor record monitoring data if not provided voluntarily by the applicant, this is not the case for many other creditors. Regulation B allows agencies charged with ECOA enforcement responsibilities to establish their own rules regarding the recording of monitoring data. Banks and savings and loan associations regulated by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Federal Home Loan Bank Board (FHLBB) are required by rules established by these agencies to take written applications and record monitoring data on most housing-related loans. Federally chartered credit unions are required by the National Credit Union Administration to take written applications but are not required to record monitoring data. Mortgage bankers are not currently required to take written applications. However, since these firms generally sell loans they originate in the secondary market, they typically use standardized written application forms as a matter of course.

The new rule requiring creditor notation will create uniformity in the compliance rules established by the various regulatory agencies regarding home purchase and refinancing loans. The major beneficiary of uniform rules will be the mortgage banking industry. Mortgage banking firms are currently in an untenable position. On the one hand, they must comply with Regulation B provisions that prohibit the notation of monitoring data by the loan officer when the applicant declines to provide the data. On the other hand, in order to sell loans in the secondary market, the loan application generally must include the monitoring data.

The extent to which the revised rule can be expected to result in the detection of an increased number of ECOA violations is uncertain. For example, the FDIC, OCC, and FHLBB have cited a very small number of creditors for discrimination even though these agencies have had access to written applications and monitoring data for a number of years. The inability to detect ECOA violations may reflect widespread creditor compliance with ECOA provisions. To some extent the low number of violations may indicate that discrimination is effectively deterred by creditors' knowledge that examiners have access to written applications and monitoring data. Under these circumstances, the number of cases of actual discrimination detected by examiners will likely be small. To the extent the deterrent effect is important, adoption of the rule will enhance consumer protection.

The changes are unlikely to impose significant costs on the industry because most creditors are currently covered by rules established by the FDIC, OCC, and the FHLBB that require written housing-related loan applications and the recording of monitoring data. The creditors most likely to be affected by the changes are banks supervised by the FRS, and to a lesser extent, federally chartered credit unions. These financial institutions would incur costs to modify existing written application forms if the monitoring data and section 202.13

disclosure statement are to be included on the loan application form, or costs to print and store for record retention a separate form with the required monitoring information. (Complying mortgage loan application forms available from the Federal Home Loan Mortagage Corporation and the Federal National Mortgage Association cost about 20 cents per form.) Currently, a few small banks supervised by the FRS do not request monitoring data because they do not take written applications for home purchase or refinancing loans. Public comments indicate that these banks view the monitoring data requirements as a significant disturbance to the "relaxed" atmosphere in which business is conducted.

A final burden associated with a requirement to record monitoring data involves the loss of personal privacy some loan applicants may feel if creditors note their personal characteristics even though they choose not to voluntarily supply such information. Information available to the Board indicates that in 1980 about 10 percent of the applicants for home purchase loans at state member banks declined to voluntarily provide monitoring data when asked to do so. Presumably, these individuals are the most likely to be offended by the change. On the other hand, there is no record of consumer complaints about the recording of the monitoring data, even though the OCC, FDIC, and FHLBB have been requiring information for many years.

Incomplete applications. The current rule requires that adverse action notification be given when efforts by a creditor to obtain missing information regarding an application fail to elicit a response from the applicant. Under the revised regulation, creditors are not required to provide adverse action notification if the applicant does not supply the information needed to complete the application within a reasonable period. As a consequence, creditors may provide one less notice in these circumtances, thereby reducing costs. Consumer protections will not be significantly reduced since applicants who do not respond in a reasonable time period to a creditor's request for additional information probably are no longer interested in the loan from that creditor, or expect to be denied credit based on the lender's evaluation of that additional information.

Record retention of withdrawn applications. Under the current rule, there is no record retention requirement with respect to an application expressly withdrawn by the applicant. The absence of records on withdrawn applications hampers an examiner's investigation of an unusually low application denial rate which the creditor claims reflects a high rate of withdrawn applications. Therefore, the change requiring record retention of applications withdrawn by the applicant may increase the effectiveness of enforcement.

Because of the revision, some creditors may incur costs to expand record storage space for applications expressly withdrawn by the applicant. The cost per record of additional storage space will vary among creditors depending on record storage technology and current storage capacity utilization. If examiners are correct in their belief that in general there are few nonbusiness applications expressly withdrawn by applicants relative to denials, then compliance costs of the change will be small for most creditors. Business applications expressly withdrawn do not have to be retained under the revised regulation because of the business credit provisions in section 202.3.

Small Entities

Recent research on compliance costs for consumer protection regulations suggests that the smallest commercial banks have incurred the greatest compliance costs per account. Similarly, the compliance costs associated with the regulatory changes may tend to fall disproportionately on the smallest banks. According to the Board's consumer compliance examiners, a few FRS supervised banks will need to start using written application procedures, and most of these banks are relatively small. Even though many of these small banks may already satisfy the written application requirement by noting down information that they normally consider in making a credit decision, these small banks will be recording the monitoring data for the first time. However, the marginal costs of the revisions to Regulation B are not likely to be large for any creditor, regardless of the creditor's size.

List of Subjects in 12 CFR Part 202

Banks, Banking, Civil rights, Consumer protection, Credit, Federal Reserve System, Marital status discrimination, Minority groups, Penalties, Religious discrimination, Sex discrimination, Women.

(7) *Regulatory text.* Pursuant to the authority granted under section 703 of the Equal Credit Opportunity Act, 15 U.S.C. 1691b, the Board amends 12 CFR Chapter II as follows:

1. Effective December 16, 1985 Part 202 is redesignated as Part 202a (Part 202a will be removed on October 1, 1986). Part 202a is amended by adding the following note at the end of the table of contents to read:

Effective date note: Part 202 was effective on December 16, 1985, but creditors have the option of continuing to comply with this Part 202a (in lieu of Part 202) until October 1, 1986.

2. A new Part 202 is added to be effective on December 16, 1985 to read as follows:

PART 202—EQUAL CREDIT OPPORTUNITY

Sec.

202.1 Authority, scope and purpose.
202.2 Definitions.
202.3 Limited exceptions for certain classes of transactions.
202.4 General rule prohibiting discrimination.
202.5 Rules concerning taking of applications.
202.6 Rules concerning evaluation of applications.
202.7 Rules concerning extensions of credit.
202.8 Special purpose credit programs.
202.9 Notifications.
202.10 Furnishing of credit information.
202.11 Relation to state law.
202.12 Record retention.
202.13 Information for monitoring purposes.
202.14 Enforcement, penalties and liabilities.
Appendix A—Federal Enforcement Agencies
Appendix B—Model Application Forms
Appendix C—Sample Notification Forms
Appendix D—Issuance of Staff Interpretations
Supplement I—Official Staff Interpretations

Authority: 15 U.S.C. 1691 et seq.

Effective date note: Effective December 16, 1985, but creditors have the option of continuing to comply with Part 202a until October 1, 1986.

Regulation B (Equal Credit Opportunity)

§ 202.1 Authority, scope and purpose.

(a) *Authority and scope.* This regulation is issued by the Board of Governors of the Federal Reserve System pursuant to title VII (Equal Credit Opportunity Act) of the Consumer Credit Protection Act, as amended (15 USC 1601 et seq.). Except as otherwise provided herein, the regulation applies to all persons who are creditors, as defined in § 202.2(l). Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 USC 3501 et seq. and have been assigned OMB No. 7100-0201.

(b) *Purpose.* The purpose of this regulation is to promote the availability of credit to all creditworthy applicants without regard to race, color, religion, national origin, sex, marital status, or age (provided the applicant has the capacity to contract); to the fact that all or part of the applicant's income derives from a public assistance program; or to the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The regulation prohibits creditor practices that discriminate on the basis of any of these factors. The regulation also requires creditors to notify applicants of action taken on their applications; to report credit history in the names of both spouses on an account; to retain records of credit applications; and to collect information about the applicant's race and other personal characteristics in applications for certain dwelling-related loans.

§ 202.2 Definitions.

For the purposes of this regulation, unless the context indicates otherwise, the following definitions apply.

(a) *Account* means an extension of credit. When employed in relation to an account, the word *use* refers only to open-end credit.

(b) *Act* means the Equal Credit Opportunity Act (title VII of the Consumer Credit Protection Act).

(c) *Adverse action.* (1) The term means:

(i) A refusal to grant credit in substantially the amount or on substantially the terms requested in an application unless the creditor makes a counteroffer (to grant credit in a different amount or on other terms) and the applicant uses or expressly accepts the credit offered;

(ii) A termination of an account or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts; or

(iii) A refusal to increase the amount of credit available to an applicant who has made an application for an increase.

(2) The term does not include:

(i) A change in the terms of an account expressly agreed to by an applicant.

(ii) Any action or forbearance relating to an account taken in connection with inactivity, default, or delinquency as to that accounnt;

(iii) A refusal or failure to authorize an account transaction at a point of sale or loan, except when the refusal is a termination or an unfavorable change in the terms of an account that does not affect all or a substantial portion of a class of the creditor's accounts, or when the refusal is a denial of an application for an increase in the amount of credit available under the account;

(iv) A refusal to extend credit because applicable law prohibits the creditor from extending the credit requested; or

(v) A refusal to extend credit because the creditor does not offer the type of credit or credit plan requested.

(3) An action that falls within the definition of both paragraphs (c)(1) and (c)(2) of this section is governed by paragraph (c)(2).

(d) *Age* refers only to the age of natural persons and means the number of fully elapsed years from the date of an applicant's birth.

(e) *Applicant* means any person who requests or who has received an extension of credit from a creditor, and includes any person who is or may become contractually liable regarding an extension of credit. For purposes of § 202.7(d), the term includes guarantors, sureties, endorsers and similar parties.

(f) *Application* means an oral or written request for an extension of credit that is made in accordance with procedures established by a creditor for the type of credit requested. The term does not include the use of an account or line of credit to obtain an amount of credit that is within a previously established credit limit. A *completed application* means an application in connection with which a creditor has received all the information that the creditor regularly obtains and considers in evaluating applications for the amount and type of credit requested (including, but not limited to, credit reports, any additional information requested from the applicant, and any approvals or reports by governmental agencies or other persons that are necessary to guarantee, insure, or provide security for the credit or collateral). The creditor shall exercise reasonable diligence in obtaining such information.

(g) *Board* means the Board of Governors of the Federal Reserve System.

(h) *Consumer credit* means credit extended to a natural person primarily for personal, family, or household purposes.

(i) *Contractually liable* means expressly obligated to repay all debts arising on an account by reason of an agreement to that effect.

(j) *Credit* means the right granted by a creditor to an applicant to defer payment of a debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(k) *Credit card* means any card, plate, coupon book, or other single credit device that may be used from time to time to obtain money, property, or services on credit.

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the act or this regulation committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before becoming involved in the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

(m) *Credit transaction* means every aspect of an applicant's dealings with a creditor regarding an application for credit or an existing extension of credit (including, but not limited to, information requirements; investigation procedures; standards of creditworthiness; terms of credit; furnishing of credit information; revocation, alteration, or termination of credit; and collection procedures).

(n) *Discriminate against an applicant* means to treat an applicant less favorably than other applicants.

(o) *Elderly* means age 62 or older.

(p) *Empirically derived and other credit scoring systems.*

(1) *A credit scoring system* is a system that evaluates an applicant's creditworthiness mechanically, based on key attributes of the applicant and aspects of the transaction, and that determines, alone or in conjunction with an evaluation of additional information about the applicant, whether an applicant is deemed creditworthy. To qualify as an *empirically derived, demonstrably and statistically sound, credit scoring system,* the system must be:

(i) Based on data that are derived from an empirical comparison of sample groups or the population of creditworthy and noncreditworthy applicants who applied for credit within a reasonable preceding period of time;

(ii) Developed for the purpose of evaluating the creditworthiness of applicants with respect to the legitimate business interests of the creditor utilizing the system (including, but not limited to, minimizing bad debt losses

and operating expenses in accordance with the creditor's business judgment);

(iii) Developed and validated using accepted statistical principles and methodology; and

(iv) Periodically revalidated by the use of appropriate statistical principles and methodology and adjusted as necessary to maintain predictive ability.

(2) A creditor may use an empirically derived, demonstrably and statistically sound, credit scoring system obtained from another person or may obtain credit experience from which to develop such a system. Any such system must satisfy the criteria set forth in paragraph (p)(1) (i) through (iv) of this section; if the creditor is unable during the development process to validate the system based on its own credit experience in accordance with paragraph (p)(1) of this section, the system must be validated when sufficient credit experience becomes available. A system that fails this validity test is no longer an empirically derived, demonstrably and statistically sound, credit scoring system for that creditor.

(q) *Extend credit* and *extension of credit* mean the granting of credit in any form (including, but not limited to, credit granted in addition to any existing credit or credit limit; credit granted pursuant to an open-end credit plan; the refinancing or other renewal of credit, including the issuance of a new credit card in place of an expiring credit card or in substitution for an existing credit card; the consolidation of two or more obligations; or the continuance of existing credit without any special effort to collect at or after maturity).

(r) *Good faith* means honesty in fact in the conduct or transaction.

(s) *Inadvertent error* means a mechanical, electronic, or clerical error that a creditor demonstrates was not intentional and occurred notwithstanding the maintenance of procedures reasonably adapted to avoid such errors.

(t) *Judgmental system of evaluating applicants* means any system for evaluating the creditworthiness of an applicant other than an empirically derived, demonstrably and statistically sound, credit scoring system.

(u) *Marital status* means the state of being unmarried, married, or separated, as defined by applicable state law. The term "unmarried" includes persons who are single, divorced, or widowed.

(v) *Negative factor or value*, in relation to the age of elderly applicants, means utilizing a factor, value, or weight that is less favorable regarding elderly applicants than the creditor's experience warrants or is less favorable than the factor, value, or weight assigned to the class of applicants that are not classified as elderly and are most favored by a creditor on the basis of age.

(w) *Open-end credit* means credit extended under a plan under which a creditor may permit an applicant to make purchases or obtain loans from time to time directly from the creditor or indirectly by use of a credit card, check, or other device.

(x) *Person* means a natural person, corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(y) *Pertinent element of creditworthiness*, in relation to a judgmental system of evaluating applicants, means any information about applicants that a creditor obtains and considers and that has a demonstrable relationship to a determination of creditworthiness.

(z) *Prohibited basis* means race, color, religion, national origin, sex, marital status, or age (provided that the applicant has the capacity to enter into a binding contract); the fact that all or part of the applicant's income derives from any public assistance program; or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act or any state law upon which an exemption has been granted by the Board.

(aa) *State* means any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

§ 202.3 Limited exceptions for certain classes of transactions.

(a) *Public utilities credit.*—(1) *Definition.* Public utilities credit refers to extensions of credit that involve public utility services provided through pipe, wire, or other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, and any discount for prompt payment are filed with or regulated by a government unit.

(2) *Exceptions.* The following provisions of this regulation do not apply to public utilities credit:

(i) Section 202.5(d)(1) concerning information about marital status;

(ii) Section 202.10 relating to furnishing of credit information; and

(iii) Section 202.12(b) relating to record retention.

(b) *Securities credit.*—(1) *Definition.* Securities credit refers to extensions of credit subject to regulation under section 7 of the Securities Exchange Act of 1934 or extensions of credit by a broker or dealer subject to regulation as a broker or dealer under the Securities Exchange Act of 1934.

(2) *Exceptions.* The following provisions of this regulation do not apply to securities credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status;

(iii) Section 202.5(d)(3) concerning information about the sex of an applicant;

(iv) Section 202.7(b) relating to designation of name, but only to the extent necessary to prevent violation of rules regarding an account in which a broker or dealer has an interest, or rules necessitating the aggregation of accounts of spouses for the purpose of determining controlling interests, beneficial interests, beneficial ownership, or purchase limitations and restrictions;

(v) Section 202.7(c) relating to action concerning open-end accounts, but only to the extent the action taken is on the basis of a change of name or marital status;

(vi) Section 202.7(d) relating to the signature of a spouse or other person;

(vii) Section 202.10 relating to furnishing of credit information; and

(viii) Section 202.12(b) relating to record retention.

(c) *Incidental credit.* (1) *Definition.* Incidental credit refers to extensions of consumer credit other than credit of the types described in paragraphs (a) and (b) of this section:

(i) That are not made pursuant to the terms of a credit card account;

(ii) That are not subject to a finance charge (as defined in Regulation Z, 12 CFR 226.4); and

(iii) That are not payable by agreement in more than four installments.

(2) *Exceptions.* The following provisions of this regulation do not apply to incidental credit:

(i) Section 202.5(c) concerning information about a spouse or former spouse;

(ii) Section 202.5(d)(1) concerning information about marital status;

(iii) Section 202.5(d)(2) concerning information about income derived from alimony, child support, or separate maintenance payments;

(iv) Section 202.5(d)(3) concerning information about the sex of an applicant, but only to the extent necessary for medical records or similar purposes;

(v) Section 202.7(d) relating to the signature of a spouse or other person;
(vi) Section 202.9 relating to notifications;
(vii) Section 202.10 relating to furnishing of credit information; and
(viii) Section 202.12(b) relating to record retention.

(d) *Business credit.*—(1) *Definition.* Business credit refers to extensions of credit primarily for business or commercial (including agricultural) purposes, but excluding extensions of credit of the types described in paragraphs (a) and (b) of this section.

(2) *Exceptions.* The following provisions of this regulation do not apply to business credit:
(i) Section 202.5(d)(1) concerning information about marital status; and
(ii) Section 202.10 relating to furnishing of credit information.

(3) *Modified requirements.* The following provisions of this regulation apply to business credit as specified below:
(i) Section 202.9 (a), (b), and (c) relating to notifications: the creditor shall notify the applicant, orally or in writing, of action taken or of incompleteness. When credit is denied or when other adverse action is taken, the creditor is required to provide a written statement of the reasons and the ECOA notice specified in section 202.9(b) if the applicant makes a written request for the reasons within 30 days of that notification; and
(ii) Section 202.12(b) relating to record retention: the creditor shall retain records as provided in § 202.12(b) if the applicant, within 90 days after being notified of action taken or of incompleteness, requests in writing that records be retained.

(e) *Government credit.*—(1) *Definition.* Government credit refers to extensions of credit made to governments or governmental subdivisions, agencies, or instrumentalities.

(2) *Applicability of regulation.* Except for section 202.4, the general rule prohibiting discrimination on a prohibited basis, the requirements of this regulation do not apply to government credit.

§ 202.4 General Rule Prohibiting Discrimination.

A creditor shall not discriminate against an applicant on a prohibited basis regarding any aspect of a credit transaction.

§ 202.5 Rules Concerning Taking of Applications.

(a) *Discouraging applications.* A creditor shall not make any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application.

(b) *General rules concerning requests for information.* (1) Except as provided in paragraphs (c) and (d) of this section, a creditor may request any information in connection with an application.[1]

(2) *Required collection of information.* Notwithstanding paragraphs (c) and (d) of this section, a creditor shall request information for monitoring purposes as required by § 202.13 for credit secured by the applicant's dwelling. In addition, a creditor may obtain information required by a regulation, order, or agreement issued by, or entered into with, a court or an enforcement agency (including the Attorney General of the United States or a similar state official) to monitor or enforce compliance with the act, this regulation, or other federal or state statute or regulation.

(3) *Special purpose credit.* A creditor may obtain information that is otherwise restricted to determine eligibility for a special purpose credit program, as provided in §§ 202.8 (c) and (d).

(c) *Information about a spouse or former spouse.* (1) Except as permitted in this paragraph, a creditor may not request any information concerning the spouse or former spouse of an applicant.

(2) *Permissible inquiries.* A creditor may request any information concerning an applicant's spouse (or former spouse under paragraph (c)(2)(v)) that may be requested about the applicant if:
(i) The spouse will be permitted to use the account;
(ii) The spouse will be contractually liable on the account;
(iii) The applicant is relying on the spouse's income as a basis for repayment of the credit requested;
(iv) The applicant resides in a community property state or property on which the applicant is relying as a basis for repayment of the credit requested is located in such a state; or
(v) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

(3) *Other accounts of the applicant.* A creditor may request an applicant to list any account upon which the applicant is liable and to provide the name and address in which the account is carried. A creditor may also ask the names in which an applicant has previously received credit.

(d) *Other limitations on information requests.* (1) *Marital status.* If an applicant applies for individual unsecured credit, a creditor shall not inquire about the applicant's marital status unless the applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested. If an application is for other than individual unsecured credit, a creditor may inquire about the applicant's marital status, but shall use only the terms "married," "unmarried," and "separated." A creditor may explain that the category "unmarried" includes single, divorced, and widowed persons.

(2) *Disclosure about income from alimony, child support, or separate maintenance.* A creditor shall not inquire whether income stated in an application is derived from alimony, child support, or separate maintenance payments unless the creditor discloses to the applicant that such income need not be revealed if the applicant does not want the creditor to consider it in determining the applicant's creditworthiness.

(3) *Sex.* A creditor shall not inquire about the sex of an applicant. An applicant may be requested to designate a title on an application form (such as Ms., Miss, Mr., or Mrs.) if the form discloses that the designation of a title is optional. An application form shall otherwise use only terms that are neutral as to sex.

(4) *Childbearing, childrearing.* A creditor shall not inquire about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children. A creditor may inquire about the number and ages of an applicant's dependents or about dependent-related financial obligations or expenditures, provided such information is requested without regard to sex, marital status, or any other prohibited basis.

(5) *Race, color, religion, national origin.* A creditor shall not inquire about the race, color, religion, or national origin of an applicant or any other person in connection with a credit transaction. A creditor may inquire about an applicant's permanent residence and immigration status.

(e) *Written applications.* A creditor shall take written applications for the types of credit covered by § 202.13(a), but need not take written applications for other types of credit.

[1] This paragraph does not limit or abrogate any federal or state law regarding privacy, privileged information, credit reporting limitations, or similar restrictions on obtainable information.

§ 202.6 Rules Concerning Evaluation of Applications.

(a) *General rule concerning use of information.* Except as otherwise provided in the act and this regulation, a creditor may consider any information obtained, so long as the information is not used to discriminate against an applicant on a prohibited basis.[2]

(b) *Specific rules concerning use of information.* (1) Except as provided in the act and this regulation, a creditor shall not take a prohibited basis into account in any system of evaluating the creditworthiness of applicants.

(2) *Age, receipt of public assistance.* (i) Except as permitted in this paragraph (b)(2), a creditor shall not take into account an applicant's age (provided that the applicant has the capacity to enter into a binding contract) or whether an applicant's income derives from any public assistance program.

(ii) In an empirically derived, demonstrably and statistically sound, credit scoring system, a creditor may use an applicant's age as a predictive variable, provided that the age of an elderly applicant is not assigned a negative factor or value.

(iii) In a judgmental system of evaluating creditworthiness, a creditor may consider an applicant's age or whether an applicant's income derives from any public assistance program only for the purpose of determining a pertinent element of creditworthiness.

(iv) In any system of evaluating creditworthiness, a creditor may consider the age of an elderly applicant when such age is used to favor the elderly applicant in extending credit.

(3) *Childbearing, childrearing.* In evaluating creditworthiness, a creditor shall not use assumptions or aggregate statistics relating to the likelihood that any group of persons will bear or rear children or will, for that reason, receive diminished or interrupted income in the future.

(4) *Telephone listing.* A creditor shall not take into account whether there is a telephone listing in the name of an applicant for consumer credit, but may take into account whether there is a telephone in the applicant's residence.

(5) *Income.* A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because the income is derived from part-time employment or is an annuity, pension, or other retirement benefit; a creditor may consider the amount and probable continuance of any income in evaluating an applicant's creditworthiness. When an applicant relies on alimony, child support, or separate maintenance payments in applying for credit, the creditor shall consider such payments as income to the extent that they are likely to be consistently made.

(6) *Credit history.* To the extent that a creditor considers credit history in evaluating the creditworthiness of similarly qualified applicants for a similar type and amount of credit, in evaluating an applicant's creditworthiness a creditor shall consider:

(i) The credit history, when available, of accounts designated as accounts that the applicant and the applicant's spouse are permitted to use or for which both are contractually liable;

(ii) On the applicant's request, any information the applicant may present that tends to indicate that the credit history being considered by the creditor does not accurately reflect the applicant's creditworthiness; and

(iii) On the applicant's request, the credit history, when available, of any account reported in the name of the applicant's spouse or former spouse that the applicant can demonstrate accurately reflects the applicant's creditworthiness.

(7) *Immigration status.* A creditor may consider whether an applicant is a permanent resident of the United States, the applicant's immigration status, and any additional information that may be necessary to ascertain the creditor's rights and remedies regarding repayment.

(c) *State property laws.* A creditor's consideration or application of state property laws directly or indirectly affecting creditworthiness does not constitute unlawful discrimination for the purposes of the act or this regulation.

§ 202.7 Rules Concerning Extensions of Credit.

(a) *Individual accounts.* A creditor shall not refuse to grant an individual account to a creditworthy applicant on the basis of sex, marital status, or any other prohibited basis.

(b) *Designation of name.* A creditor shall not refuse to allow an applicant to open or maintain an account in a birth-given first name and a surname that is the applicant's birth-given surname, the spouse's surname, or a combined surname.

(c) *Action concerning existing open-end accounts.*—(1) *Limitations.* In the absence of evidence of the applicant's inability or unwillingness to repay, a creditor shall not take any of the following actions regarding an applicant who is contractually liable on an existing open-end account on the basis of the applicant's reaching a certain age or retiring or on the basis of a change in the applicant's name or marital status:

(i) Require a reapplication, except as provided in paragraph (c)(2) of this section;

(ii) Change the terms of the account; or

(iii) Terminate the account.

(2) *Requiring reapplication.* A creditor may require a reapplication for an open-end account on the basis of a change in the marital status of an applicant who is contractually liable if the credit granted was based in whole or in part on income of the applicant's spouse and if information available to the creditor indicates that the applicant's income may not support the amount of credit currently available.

(d) *Signature of spouse or other person.* (1) *Rule for qualified applicant.* Except as provided in this paragraph, a creditor shall not require the signature of an applicant's spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor's standards of creditworthiness for the amount and terms of the credit requested.

(2) *Unsecured credit.* If an applicant requests unsecured credit and relies in part upon property that the applicant owns jointly with another person to satisfy the creditor's standards of creditworthiness, the creditor may require the signature of the other person only on the instrument(s) necessary, or reasonably believed by the creditor to be necessary, under the law of the state in which the property is located, to enable the creditor to reach the property being relied upon in the event of the death or default of the applicant.

(3) *Unsecured credit—community property states.* If a married applicant requests unsecured credit and resides in a community property state, or if the property upon which the applicant is relying is located in such a state, a creditor may require the signature of the spouse on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the community property available to satisfy the debt in the event of default if:

(i) Applicable state law denies the applicant power to manage or control sufficient community property to qualify for the amount of credit requested under

[2] The legislative history of the act indicates that the Congress intended an "effects test" concept, as outlined in the employment field by the Supreme Court in the cases of *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), and *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405 (1975), to be applicable to a creditor's determination of creditworthiness.

the creditor's standards of creditworthiness; and

(ii) The applicant does not have sufficient separate property to qualify for the amount of credit requested without regard to community property.

(4) *Secured credit.* If an applicant requests secured credit, a creditor may require the signature of the applicant's spouse or other person on any instrument necessary, or reasonably believed by the creditor to be necessary, under applicable state law to make the property being offered as security available to satisfy the debt in the event of default, for example, an instrument to create a valid lien, pass clear title, waive inchoate rights or assign earnings.

(5) *Additional parties.* If, under a creditor's standards of creditworthiness, the personal liability of an additional party is necessary to support the extension of the credit requested, a creditor may request a cosigner, guarantor, or the like. The applicant's spouse may serve as an additional party, but the creditor shall not require that the spouse be the additional party.

(6) *Rights of additional parties.* A creditor shall not impose requirements upon an additional party that the creditor is prohibited from imposing upon an applicant under this section.

(e) *Insurance.* A creditor shall not refuse to extend credit and shall not terminate an account because credit life, health, accident, disability, or other credit-related insurance is not available on the basis of the applicant's age.

§ 202.8 Special Purpose Credit Programs.

(a) *Standards for programs.* Subject to the provisions of paragraph (b) of this section, the act and this regulation permit a creditor to extend special purpose credit to applicants who meet eligibility requirements under the following types of credit programs:

(1) Any credit assistance program expressly authorized by federal or state law for the benefit of an economically disadvantaged class of persons;

(2) Any credit assistance program offered by a not-for-profit organization, as defined under section 501(c) of the Internal Revenue Code of 1954, as amended, for the benefit of its members or for the benefit of an economically disadvantaged class of persons; or

(3) Any special purpose credit program offered by a for-profit organization or in which such an organization participates to meet special social needs, if:

(i) The program is established and administered pursuant to a written plan that identifies the class of persons that the program is designed to benefit and sets forth the procedures and standards for extending credit pursuant to the program; and

(ii) The program is established and administered to extend credit to a class of persons who, under the organization's customary standards of creditworthiness, probably would not receive such credit or would receive it on less favorable terms than are ordinarily available to other applicants applying to the organization for a similar type and amount of credit.

(b) *Rules in other sections.* (1) *General applicability.* All of the provisions of this regulation apply to each of the special purpose credit programs described in paragraph (a) of this section unless modified by this section.

(2)—*Common characteristics.* A program described in paragraph (a)(2) or (a)(3) of this section qualifies as a special purpose credit program only if it was established and is administered so as not to discriminate against an applicant on any prohibited basis; however, all program participants may be required to share one or more common characteristics (for example, race, national origin, or sex) so long as the program was not established and is not administered with the purpose of evading the requirements of the act or this regulation.

(c) *Special rule concerning requests and use of information.* If participants in a special purpose credit program described in paragraph (a) of this section are required to possess one or more common characteristics (for example, race, national origin, or sex) and if the program otherwise satisfies the requirements of paragraph (a) of this section, a creditor may request and consider information regarding the common characteristic(s) in determining the applicant's eligibility for the program.

(d) *Special rule in the case of financial need.* If financial need is one of the criteria under a special purpose program described in paragraph (a) of this section, the creditor may request and consider, in determining an applicant's eligibility for the program, information regarding the applicant's martial status; alimony, child support, and separate maintenance income; and the spouse's financial resources. In addition, a creditor may obtain the signature of an applicant's spouse or other person on an application or credit instrument relating to a special purpose program if the signature is required by federal or state law.

§ 202.9 Notifications.

(a) *Notification of action taken, ECOA notice, and statement of specific reasons.* (1) *When notification is required.* A creditor shall notify an applicant of action taken within:

(i) 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application;

(ii) 30 days after taking adverse action on an incomplete application, unless notice is provided in accordance with paragraph (c) of this section;

(iii) 30 days after taking adverse action on an existing account; or

(iv) 90 days after notifying the applicant of a counteroffer if the applicant does not expressly accept or use the credit offered.

(2) *Content of notification when adverse action is taken.* A notification given to an applicant when adverse action is taken shall be in writing and shall contain: a statement of the action taken; the name and address of the creditor; a statement of the provisions of section 701(a) of the act; the name and address of the federal agency that administers compliance with respect to the creditor; and either:

(i) A statement of specific reasons for the action taken; or

(ii) A disclosure of the applicant's right to a statement of specific reasons within 30 days, if the statement is requested within 60 days of the creditor's notification. The disclosure shall include the name, address, and telephone number of the person or office from which the statement of reasons can be obtained. If the creditor chooses to provide the reasons orally, the creditor shall also disclose the applicant's right to have them confirmed in writing within 30 days of receiving a written request for confirmation from the applicant.

(b) *Form of ECOA notice and statement of specific reasons.*

(1) *ECOA notice.* To satisfy the disclosure requirements of paragraph (a)(2) of this section regarding section 701(a) of the act, the creditor shall provide a notice that is substantially similar to the following:

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and

address as specified by the appropriate agency listed in Appendix A of this regulation).

(2) *Statement of specific reasons.* The statement of reasons for adverse action required by paragraph (a)(2)(i) of this section must be specific and indicate the principal reason(s) for the adverse action. Statements that the adverse action was based on the creditor's internal standards or policies or that the applicant failed to achieve the qualifying score on the creditor's credit scoring system are insufficient.

(c) *Incomplete applications.*—(1) *Notice alternatives.* Within 30 days after receiving appliation that is incomplete regarding matters that an applicant can complete, the creditor shall notify the applicant either:

(i) Of action taken, in accordance with paragraph (a) of this section; or

(ii) Of the incompleteness, in accordance with paragraph (c)(2) of this section.

(2) *Notice of incompleteness.* If additional information is needed from an applicant, the creditor shall send a written notice to the applicant specifying the information needed, designating a reasonable period of time for the applicant to provide the information, and informing the applicant that failure to provide the information requested will result in no further consideration being given to the application. The creditor shall have no further obligation under this section if the applicant fails to respond within the designated time period. If the applicant supplies the requested information within the designated time period, the creditor shall take action on the application and notify the applicant in accordance with paragraph (a) of this section.

(3) *Oral request for information.* At its option, a creditor may inform the applicant orally of the need for additional information; but if the application remains incomplete the creditor shall send a notice in accordance with paragraph (c)(1) of this section.

(d) *Oral notifications by small-volume creditors.* The requirements of this section (including statements of specific reasons) are satisified by oral notifications in the case of any creditor that did not receive more than 150 applications during the preceding calendar year.

(e) *Withdrawal of approved application.* When an applicant submits an application and the parties contemplate that the applicant will inquire about its status, if the creditor approves the application and the applicant has not inquired within 30 days after applying, the creditor may treat the application as withdrawn and need not comply with paragraph (a)(1) of this section.

(f) *Multiple applicants.* When an application involves more than one applicant, notification need only be given to one of them, but must be given to the primary applicant where one is readily apparent.

(g) *Applications submitted through a third party.* When an application is made on behalf of an applicant to more than one creditor and the applicant expressly accepts or uses credit offered by one of the creditors, notification of action taken by any of the other creditors is not required. If no credit is offered or if the applicant does not expressly accept or use any credit offered, each creditor taking adverse action must comply with this section, directly or through a third party. A notice given by a third party shall disclose the identify of each creditor on whose behalf the notice is given.

§ 202.10 Furnishing of Credit Information.

(a) *Designation of accounts.* A creditor tht furnishes credit information shall designate:

(1) Any new account to reflect the participation of both spouses if the applicant's spouse is permitted to use or is contractually liable on the account (other than as a guarator, surety, endorser, or similar party); and

(2) Any existing account to reflect such participation, within 90 days after receiving a written request to do so from one of the spouses.

(b) *Routine reports to consumer reporting agency.* If a creditor furnishes credit information to a consumer reporting agency concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in a manner that will enable the agency to provide access to the information in the name of each spouse.

(c) *Reporting in response to inquiry.* If a creditor furnishes credit information in response to an inquiry concerning an account designated to reflect the participation of both spouses, the creditor shall furnish the information in the name of the spouse about whom the information is requested.

§ 202.11 Relation to State Law.

(a) *Inconsistent state laws.* Except as otherwise provided in this section, this regulation alters, affects, or preempts only those state laws that are inconsistent with the act and this regulation and then only to the extent of the inconsistency. A state law is not inconsistent if it is more protective of an applicant.

(b) *Preempted provisions of state law.* (1) A state law is deemed to be inconsistent with the requirements of the act and this regulation and less protective of an applicant within the meaning of section 705(f) of the act to the extent that the law:

(i) Requires or permits a practice or act prohibited by the act or this regulation;

(ii) Prohibits the individual extension of consumer credit to both parties to a marriage if each spouse individually and voluntarily applies for such credit;

(iii) Prohibits inquiries or collection of data required to comply with the act or this regulation;

(iv) Prohibits asking or considering age in an empirically derived, demonstrably and statistically sound, credit scoring system to determine a pertinent element of creditworthiness, or to favor an elderly applicant; or

(v) Prohibits inquiries necessary to establish or administer as special purpose credit program as defined by § 202.8.

(2) A creditor, state, or other interested party may request the Board to determine whether a state law is inconsistent with the requirements of the act and this regulation.

(c) *Laws on finance charges, loan ceilings.* If married applicants voluntarily apply for and obtained individual accounts with the same creditor, the accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or loan ceilings under any federal or state law. Permissible loan ceiling laws shall be construed to permit each spouse to become individually liable up to the amount of the loan ceilings, less the amount for which the applicant is jointly liable.

(d) *State and federal laws not affected.* This section does not alter or annul any provision of state property laws, laws relating to the disposition of decedents' estates, or federal or state banking regulations directed only toward insuring the solvency of financial institutions.

(e) *Exemption for state-regulated transactions.* (1) *Applications.* A state may apply to the Board for an exemption from the requirements of the act and this regulation for any class of credit transactions within the state. The Board will grant such an exemption if the Board determines that:

(i) The class of credit transactions is subject to state law requirements substantially similar to the act and this regulation or that applicants are

afforded greater protection under state law; and

(ii) There is adequate provision for state enforcement.

(2) *Liability and enforcement.* (i) No exemption will extend to the civil liability provisions of section 706 or the administrative enforcement provisions of section 704 of the act.

(ii) After an exemption has been granted, the requirements of the applicable state law (except for additional requirements not imposed by federal law) will constitute the requirements of the act and this regulation.

§ 202.12 Record Retention.

(a) *Retention of prohibited information.* A creditor may retain in its files information that is prohibited by the act or this regulation in evaluating applications, without violating the act or this regulation, if the information was obtained:

(1) From any source prior to March 23, 1977;

(2) From consumer reporting agencies, an applicant, or others without the specific request of the creditor; or

(3) As required to monitor compliance with the act and this regulation or other federal or state statutes or regulations.

(b) *Preservation of records.*—(1) *Applications.* For 25 months after the date that a creditor notifies an applicant of action taken on an application or of incompleteness, the creditor shall retain in original form or a copy thereof:

(i) any application that it receives, any information required to be obtained concerning characteristics of the applicant to monitor compliance with the act and this regulation or other similar law, and any other written or recorded information used in evaluating the application and not returned to the applicant at the applicant's request;

(ii) A copy of the following documents if furnished to the applicant in written form (or, if furnished orally, any notation or memorandum made by the creditor):

(A) The notification of action taken; and

(B) The statement of specific reasons for adverse action; and

(iii) Any written statement submitted by the applicant alleging a violation of the act or this regulation.

(2) *Existing accounts.* For 25 months after the date that a creditor notifies an applicant of adverse action regarding an existing account, the creditor shall retain as to that account, in original form or a copy thereof:

(i) Any written or recorded information concerning the adverse action; and

(ii) Any written statement submitted by the applicant alleging a violation of the act or this regulation.

(3) *Other applications.* For 25 months after the data that a creditor receives an application for which the creditor is not required to comply with the notification requirements of § 202.9 the creditor shall retain all written or recorded information in its possession concerning the applicant, including any notation of action taken.

(4) *Enforcement proceedings and investigations.* A creditor shall retain the information specified in this section beyond 25 months if it has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the act or this regulation by the Attorney General of the United States or by an enforcement agency charged with monitoring that creditor's compliance with the act and this regulation, or if it has been served with notice of an action filed pursuant to section 706 of the act and § 202.14 of this regulation. The creditor shall retain the information until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

§ 202.13 Information for Monitoring Purposes.

(a) *Information to be requested.* A creditor that receives an application for credit primarily for the purchase or refinancing of a dwelling occupied or to be occupied by the applicant as a principal residence, where the extension of credit will be secured by the dwelling, shall request as part of the application the following information regarding the applicant(s):

(1) Race or national origin, using the categories American Indian or Alaskan Native; Asian or Pacific Islander; Black; White; Hispanic; Other (Specify);

(2) Sex;

(3) Marital status, using the categories married, unmarried, and separated; and

(4) Age.

"Dwelling" means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes, but is not limited to, an individual condominium or cooperative unit, and a mobile or other manufactured home.

(b) *Obtaining of information.* Questions regarding race or national origin, sex, marital status, and age may be listed, at the creditor's option, on the application form or on a separate form that refers to the application. The applicant(s) shall be asked but not required to supply the requested information. If the applicant(s) chooses not to provide the information or any part of it, that fact shall be noted on the form. The creditor shall then also note on the form, to the extent possible, the race or national origin and sex of the applicant(s) on the basis of visual observation or surname.

(c) *Disclosure to applicant(s).* The creditor shall inform the applicant(s) that the information regarding race or national origin, sex, marital status, and age is being requested by the federal government for the purpose of monitoring compliance with federal statutes that prohibit creditors from discriminating against appliants on those bases. The creditor shall also inform the applicant(s) that if the applicant(s) chooses note to provide the information, the creditor is required to note the race or national origin and sex on the basis of visual observation or surname.

(d) *Substitute monitoring program.* A monitoring program required by an agency charged with administrative enforcement under section 704 of the act may be substituted for the requirements contained in paragraphs (a), (b), and (c).

§ 202.14 Enforcement, Penalties and Liabilities.

(a) *Administrative enforcement.* (1) As set forth more fully in section 704 of the act, administrative enforcement of the act and this regulation regarding certain creditors is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration, Interstate Commerce Commission, Secretary of Agriculture, Farm Credit Administration, Securities and Exchange Commission, Small Business Administration, and Secretary of Transportation.

(2) Except to the extent that administrative enforcement is specifically assigned to other authorities, compliance with the requirements imposed under the act and this regulation is enforced by the Federal Trade Commission.

(b) *Penalties and liabilities.* (1) Sections 706 (a) and (b) and 702(g) of the act provide that any creditor that fails to comply with a requirement imposed by the act or this regulation is subject to civil liability for actual and punitive damages in individual or class actions. Pursuant to sections 704 (b), (c), and (d) and 702(g) of the act, violations of the act or regulations also constitute violations of other federal laws. Liability

for punitive damages is restricted to nongovernmental entities and is limited to $10,000 in individual actions and the lesser of $500,000 or 1 percent of the creditor's net worth in class actions. Section 706(c) provides for equitable and declaratory relief and section 706(d) authorizes the awarding of costs and reasonable attoreny's feeds to an aggrieved applicant in a successful action.

(2) As provided in section 706(f), a civil action under the act or this regulation may be brought in the appropriate United States district court without regard to the amount in controversy or in any other court of competent jurisdiction within two years after the date of the occurrence of the violation, or within one year after the commencement of an administrative enforcement proceeding or of a civil action brought by the Attorney General of the United States within two years after the alleged violation.

(3) Sections 706 (g) and (h) provide that, if an agency responsible for administrative enforcement is unable to obtain compliance with the act or this regulation, it may refer the matter to the Attorney General of the United States. On referral, or whenever the Attorney General has reason to believe that one or more creditors are engaged in a pattern or practice in violation of the act or this regulation, the Attorney General may bring a civil action.

(c) *Failure of compliance.* A creditor's failure to comply with §§ 202.6(b)(6), 202.9, 202.10, 202.12 or 202.13 is not a violation if it results from an inadvertent error. On discovering an error under §§ 202.9 and 202.10, the creditor shall correct it as soon as possible. If a creditor inadvertently obtains the monitoring information regarding the race or national origin and sex of the applicant in a dwelling-related transaction not overed by § 202.13, the creditor may act on and retain the application without violating the regulation.

Appendix A—Federal Enforcement Agencies

The following list indicates the federal agencies the enforce Regulation B for particular classes of creditors. Any questions concerning a particular creditor should be directed to its enforcement agency.

National Banks

Comptroller of the Currency, Consumer Examinations Division, Washington, DC 20219.

State Member Banks

Federal Reserve Bank serving the district in which the state member bank is located.

Nonmember Insured Banks

Federal Deposit Insurance Corporation Regional Director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (Except for Savings Banks Insured by FDIC)

The Federal Home Loan Bank Board Supervisory Agent in the district in which the institution is located.

Federal Credit Unions

Regional office of the National Credit Union Administration serving the area in which the federal credit union is located.

Air Carriers

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

Creditors Subject to Interstate Commerce Commission

Office of Proceedings, Interstate Commerce Commission, Washington, DC 20523.

Creditors Subject to Packers and Stockyards Act

Nearest Packers and Stockyards Administration area supervisor.

Small Business Investment Companies

U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

Brokers and Dealers

Securities and Exchange Commission, Washington, DC 20549.

Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations

Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Retailers, Finance Companies, and All Other Creditors Not Listed Above

FTC Regional Office for region in which the creditor operates or Federal Trade Commission, Equal Credit Opportunity, Washington, DC 20580.

Appendix B—Model Application Forms

This appendix contains five model credit application forms, each designated for use in a particular type of consumer credit transaction as indicated by the bracketed caption on each form. The first sample form is intended for use in open-end, unsecured transactions; the second for closed-end, secured transactions; the third for closed-end transactions, whether unsecured or secured; the fourth in transactions involving community property or occurring in community property states; and the fifth in residential mortgage transactions. The appendix also contains a model disclosure for use in complying with § 202.13 for certain dwelling-related loans. All forms contained in this appendix are models; their use by creditors is optional.

The use or modification of these forms is governed by the following instructions. A creditor may change the forms: by asking for additional information not prohibited by § 202.5; by deleting any information request; or by rearranging the format without modifying the substance of the inquiries. In any of these three instances, however, the appropriate notices regarding the optional nature of courtesy titles, the option to disclose alimony, child support, or separate maintenance, and the limitation concerning marital status inquiries must be included in the appropriate places if the items to which they relate appear on the creditor's form.

If a creditor uses an appropriate Appendix B model form, or modifies a form in accordance with the above instructions, that creditor shall be deemed to be acting in compliance with the provisions of paragraphs (c) and (d) of § 202.5 of this regulation.

BILLING CODE 6210-01-M

(Open end, unsecured credit)

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for an individual account in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D.
- ☐ If you are applying for a joint account or an account that you and another person will use, complete all Sections, providing information on B about the joint applicant or user.
- ☐ If you are applying for an individual account, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections to the extent possible, providing information on B about the person on whose alimony, support, or maintenance payments or income or assets you are relying.

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Previous Street Address: Years there:

City: State: Zip:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? When? Office:

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with you: Telephone:

Relationship: Address:

SECTION B—INFORMATION REGARDING JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /

Relationship to Applicant (if any):

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per Source(s) of other income:

Is any income listed in this Section likely to be reduced in the next two years?
☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with Joint Applicant, User, or Other Party: Telephone:

Relationship: Address:

SECTION C—MARITAL STATUS
(Do not complete if this is an application for an individual account.)

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name on Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit cents)	$ (Omit cents)	$	
2.						
3.						
4.						
5.						
6.						
Total Debts			$	$	$	

(Credit Reference) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other Obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature Date Other Signature (Where Applicable) Date

[Closed end, secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete Sections A, C, D, and E, omitting B and the second part of C.
- ☐ If this is an application for joint credit with another person, complete all Sections, providing information in B about the joint applicant.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections, to the fullest possible, providing information in B about the person on whose alimony, support, or separate maintenance payments or income or assets you are relying.

Amount Requested	Payment Date Desired	Proceeds of Credit To Be Used For
$		

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): Birthdate: / /

Present Street Address: Years there:

City: State: Zip: Telephone:

Social Security No.: Driver's License No.:

Previous Street Address: Years there:

City: State: Zip:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Have you ever received credit from us? Where? Office:

Checking Account No. Institution and Branch:

Savings Account No. Institution and Branch:

Name of nearest relative not living with you: Telephone:

Relationship: Address:

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): Birthdate: / /

Relationship to Applicant (if any):

Present Street Address: Years there:

City: State: Zip Telephone:

Social Security No.: Driver's License No.:

Present Employer: Years there: Telephone:

Position or title: Name of supervisor:

Employer's Address:

Previous Employer: Years there:

Previous Employer's Address:

Present net salary or commission: $ per No. Dependents: Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?
☐ Yes (Explain in detail on a separate sheet.) No ☐

Checking Account No.: Institution and Branch:

Savings Account No.: Institution and Branch:

Name of nearest relative not living with Joint Applicant or Other Party: Address:

Relationship:

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)
Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Joint Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes, No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes, No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit cents)	$ (Omit cents)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes" for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount $ If "yes" to which court?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes" where? Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature	Date	Other Signature (Where Applicable)	Date

[Closed end, unsecured/secured credit]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

- ☐ If you are applying for individual credit in your own name and are relying on your own income or assets and not the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete the first part of Section C and Section E.
- ☐ If you are applying for joint credit with another person, complete all Sections except E, providing information in B about the joint applicant. If the requested credit is to be secured, then complete Section E.
- ☐ If you are applying for individual credit, but are relying on income from alimony, child support, or separate maintenance or on the income or assets of another person as the basis for repayment of the credit requested, complete all Sections except E to the extent possible, providing information in B about the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, then complete Section E.

Amount Requested: $ | Payment Date Desired: | Proceeds of Credit: To be Used For

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): | Birthdate: / /

Present Street Address: | Years there:

City: | State: | Zip: | Telephone:

Social Security No.: | Driver's License No.:

Previous Street Address: | Years there:

City: | State: | Zip:

Present Employer: | Years there: | Telephone:

Position or title: | Name of supervisor:

Employer's Address:

Previous Employer: | Years there:

Previous Employer's Address:

Present net salary or commission: $ per | No. Dependents: | Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per | Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Have you ever received credit from us? | When? | Office

Checking Account No.: | Institution and Branch:

Savings Account No.: | Institution and Branch:

Name of nearest relative not living with you: | Telephone:

Relationship: | Address:

SECTION B—INFORMATION REGARDING JOINT APPLICANT OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): | Birthdate: / /

Relationship to Applicant (if any):

Present Street Address: | Years there:

City: | State: | Zip: | Telephone:

Social Security No.: | Driver's License No.:

Present Employer: | Years there: | Telephone:

Position or title: | Name of supervisor:

Employer's Address:

Previous Employer: | Years there:

Previous Employer's Address:

Present net salary or commission: $ per | No. Dependents: | Ages:

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ per | Source(s) of other income:

Is any income listed in this Section likely to be reduced before the credit requested is paid off?

☐ Yes (Explain in detail on separate sheet.) ☐ No

Checking Account No.: | Institution and Branch:

Savings Account No.: | Institution and Branch:

Name of nearest relative not living with Joint Applicant or Other Party: | Telephone:

Relationship: | Address:

SECTION C—MARITAL STATUS

(Do not complete if this is an application for individual unsecured credit.)

Applicant ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

Other Party ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

SECTION D—ASSET AND DEBT INFORMATION

(If Section B has been completed, this Section should be completed giving information about both the Applicant and from Applicant or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer, Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Omit cents)	$ (Omit cents)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) | Date Paid:

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ | If "Yes," for whom? | To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount: $ | If "Yes," to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ | If "Yes," where? | Year

Other obligations—(E.g., liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT

(Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

Name | Address

If the security is real estate, give the full name of your spouse (if any):

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

Applicant's Signature | Date | Other Signature (Where Applicable) | Date

[Community property]

CREDIT APPLICATION

IMPORTANT: Read these Directions before completing this Application.

Check Appropriate Box

☐ If you are applying for individual credit in your own name, are not married, and are not relying on alimony, child support, or separate maintenance payments or on the income or assets of another person as the basis for repayment of the credit requested, complete only Sections A and D. If the requested credit is to be secured, also complete Section E.

☐ In all other situations, complete all Sections except E, providing information in B about your spouse, a joint applicant or user, or the person on whose alimony, support, or maintenance payments or income or assets you are relying. If the requested credit is to be secured, also complete Section E.

Amount Requested: $ ____ Payment Date Desired: ____ Proceeds of Credit To be Used For: ____

SECTION A—INFORMATION REGARDING APPLICANT

Full Name (Last, First, Middle): ____ Birthdate: / /

Present Street Address: ____ Years there: ____

City: ____ State: ____ Zip: ____ Telephone: ____

Social Security No.: ____ Driver's License No.: ____

Previous Street Address: ____ Years there: ____

City: ____ State: ____ Zip: ____

Present Employer: ____ Years there: ____ Telephone: ____

Position or title: ____ Name of supervisor: ____

Employer's Address: ____

Previous Employer: ____ Years there: ____

Previous Employer's Address: ____

Present net salary or commission: $ ____ per ____ No. Dependents: ____ Ages: ____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ____ per ____ Source(s) of other income: ____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off? ☐ Yes (Explain in detail on a separate sheet.) ☐ No

Have you ever received credit from us? ____ When? ____ Office: ____

Checking Account No.: ____ Institution and Branch: ____

Savings Account No.: ____ Institution and Branch: ____

Name of nearest relative not living with you: ____ Telephone: ____

Relationship: ____ Address: ____

SECTION B—INFORMATION REGARDING SPOUSE, JOINT APPLICANT, USER, OR OTHER PARTY (Use separate sheets if necessary.)

Full Name (Last, First, Middle): ____ Birthdate: / /

Relationship to Applicant (if any): ____ Years there: ____

Present Street Address: ____

City: ____ State: ____ Zip: ____ Telephone: ____

Social Security No.: ____ Driver's License No.: ____

Present Employer: ____ Years there: ____ Telephone: ____

Position or title: ____ Name of supervisor: ____

Employer's Address: ____

Previous Employer: ____ Years there: ____

Previous Employer's Address: ____

Present net salary or commission: $ ____ per ____ No. Dependents: ____ Ages: ____

Alimony, child support, or separate maintenance income need not be revealed if you do not wish to have it considered as a basis for repaying this obligation.

Alimony, child support, separate maintenance received under: court order ☐ written agreement ☐ oral understanding ☐

Other income: $ ____ per ____ Source(s) of other income: ____

Is any income listed in this Section likely to be reduced in the next two years or before the credit requested is paid off? ☐ Yes (Explain in detail on a separate sheet.) ☐ No

Checking Account No.: ____ Institution and Branch: ____

Savings Account No.: ____ Institution and Branch: ____

Name of nearest relative not living with Spouse, Joint Applicant, User, or other Party: ____ Telephone: ____

Relationship: ____ Address: ____

SECTION C—MARITAL STATUS

Applicant: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, and widowed)

Other Party: ☐ Married ☐ Separated ☐ Unmarried (including single, divorced, widowed)

SECTION D—ASSET AND DEBT INFORMATION (If Section B has been completed, this Section should be completed giving information about both the Applicant and Spouse, Joint Applicant, User, or Other Person. Please mark Applicant-related information with an "A." If Section B was not completed, only give information about the Applicant in this Section.)

ASSETS OWNED (Use separate sheet if necessary.)

Description of Assets	Value	Subject to Debt? Yes/No	Name(s) of Owner(s)
Cash	$		
Automobiles (Make, Model, Year)			
Cash Value of Life Insurance (Issuer; Face Value)			
Real Estate (Location, Date Acquired)			
Marketable Securities (Issuer, Type, No. of Shares)			
Other (List)			
Total Assets	$		

OUTSTANDING DEBTS (Include charge accounts, installment contracts, credit cards, rent, mortgages, etc. Use separate sheet if necessary.)

Name of Creditor	Type of Debt or Acct. No.	Name in Which Acct. Carried	Original Debt	Present Balance	Monthly Payments	Past Due? Yes/No
1. (Landlord or Mortgage Holder)	☐ Rent Payment ☐ Mortgage		$ (Only rent)	$ (Only rent)	$	
2.						
3.						
Total Debts			$	$	$	

(Credit References) Date Paid

1. $

2.

Are you a co-maker, endorser, or guarantor on any loan or contract? Yes ☐ No ☐ If "yes," for whom? To whom?

Are there any unsatisfied judgments against you? Yes ☐ No ☐ Amount: $ If "yes," to whom owed?

Have you been declared bankrupt in the last 14 years? Yes ☐ No ☐ If "yes," where? Year

Other obligations—(E.g., Liability to pay alimony, child support, separate maintenance. Use separate sheet if necessary.)

SECTION E—SECURED CREDIT (Complete only if credit is to be secured.) Briefly describe the property to be given as security:

and list names and addresses of all co-owners of the property:

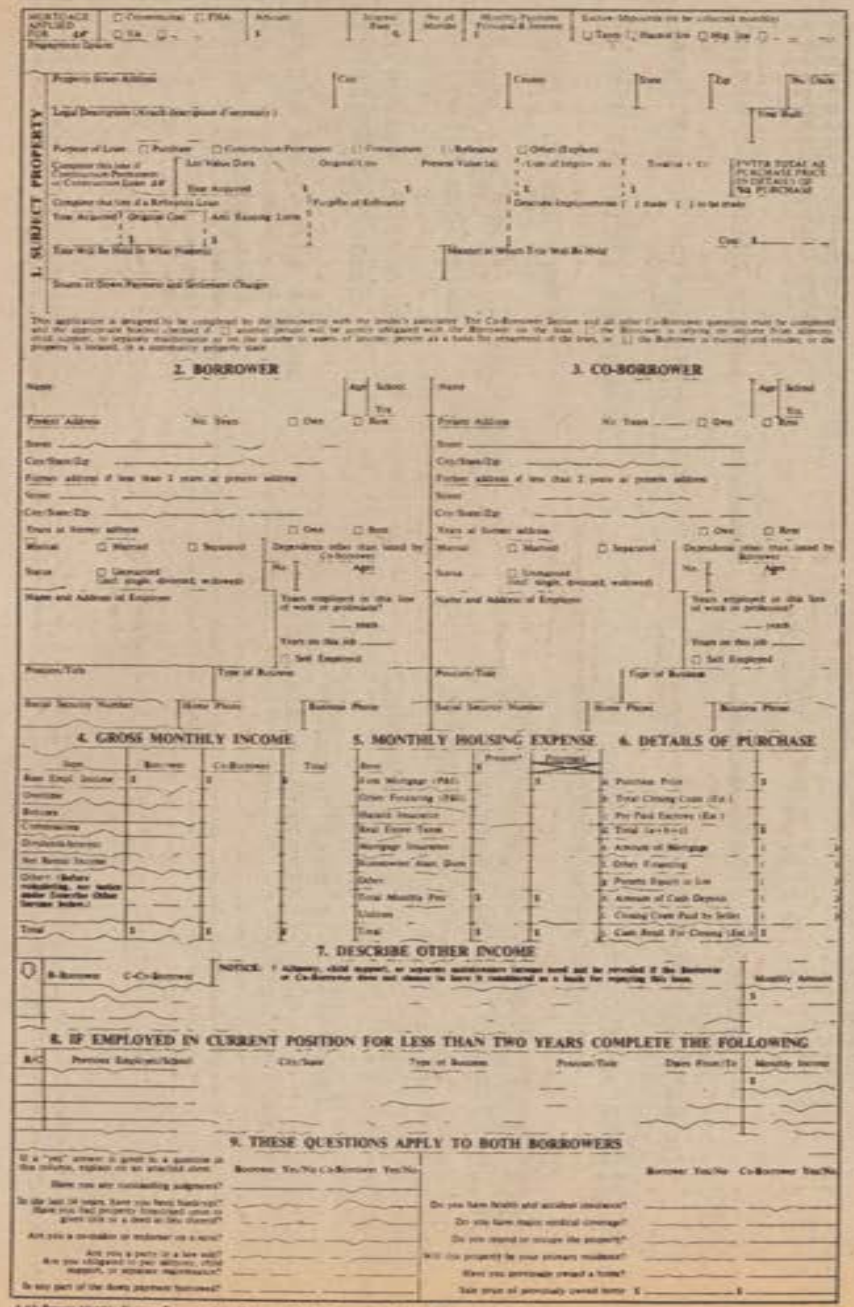
Name Address

Everything that I have stated in this application is correct to the best of my knowledge. I understand that you will retain this application whether or not it is approved. You are authorized to check my credit and employment history and to answer questions about your credit experience with me.

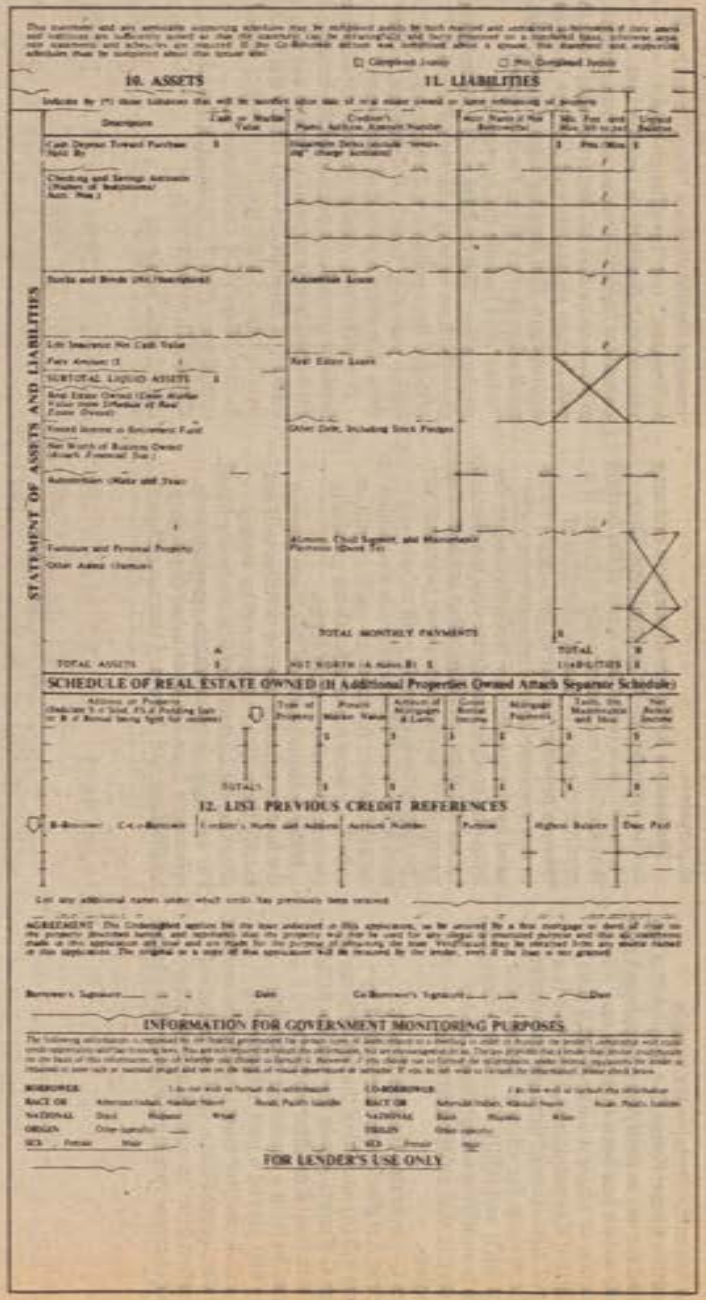
Applicant's Signature ____ Date ____ Other Signature (Where Applicable) ____ Date ____

(Residential real estate mortgage loan)

RESIDENTIAL LOAN APPLICATION



* All Present Monthly Housing Expenses of the Borrower and Co-Borrower should be listed on a combined basis



BILLING CODE 6210-01-C

Appendix C—Sample Notificaton Forms

This appendix contains six sample notification forms. Forms C–1 through C–4 are intended for use in notifying an applicant that adverse action has been taken on an application or account under § 202.9 (a)(1) and (2)(i) of this regulation. Form C–5 is a notice of disclosure of the right to request specific reasons for adverse action under § 202.9 (a)(1) and (2)(ii). Form C–6 is designed for use in notifying an applicant, under § 202.9(c)(2), that an application is incomplete.

Form C–1 contains the Fair Credit Reporting Act disclosure as required by sections 615 (a) and (b) of that act. Forms C–2 through C–5 contain only the section 615(a) disclosure (that a creditor obtained information from a consumer reporting agency that played a part in the credit decision). A creditor must provide the section 615(b) disclosure (that a creditor obtained information from an outside source other than a consumer reporting agency that played a part in the credit decision) where appropriate.

The sample forms are illustrative and may not be appropriate for all creditors. They were designed to include some of the factors that creditors most commonly consider. If a creditor chooses to use the checklist of reasons provided in one of the sample forms in this appendix and if reasons commonly used by the creditor are not provided on the form, the creditor should modify the checklist by substituting or adding other reasons. For example, if "inadequate down payment" or "no deposit relationship with us" are common reasons for taking adverse action on an application, the creditor ought to add or substitute such reasons for those presently contained on the sample forms.

If the reasons listed on the forms are not the factors actually used, a creditor will not satisfy the notice requirement by simply checking the closest identifiable factor listed. For example, some creditors consider only references from banks or other depository institutions and disregard finance company references altogether; their statement of reasons should disclose "insufficient bank references," not "insufficient credit references." Similarly, a creditor that considers bank references and other credit references as distinct factors should treat the two factors separately and disclose them as appropriate. The creditor should either add such other factors to the form or check "other" and include the appropriate explanation. The creditor need not, however, describe how or why a factor adversely affected the application. For example, the notice may say "length of residence" rather than "too short a period of residence."

A creditor may design its own notification forms or use all or a portion of the forms contained in this appendix. Proper use of forms C–1 through C–4 will satisfy the requirement of § 202.9(a)(2)(i). Proper use of forms C–5 and C–6 constitutes full compliance with §§ 202.9(a)(2)(ii) and 202.9(c)(2), respectively.

BILLING CODE 6210-01-M

FORM C-1 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Statement of Credit Denial, Termination, or Change

DATE _____

Applicant's Name: _____

Applicant's Address: _____

Description of Account, Transaction, or Requested Credit:

_____

Description of Action Taken:

_____

_____

PART I - PRINCIPAL REASONS(S) FOR CREDIT DENIAL, TERMINATION, OR OTHER ACTION TAKEN CONCERNING CREDIT.
This section must be completed in all instances.

___Credit application incomplete

___Insufficient number of credit references provided

___Unacceptable type of credit references provided

___Unable to verify credit references

___Temporary or irregular employment

___Unable to verify employment

___Length of employment

___Income insufficient for amount of credit requested

___Excessive obligations in relation to income

___Unable to verify income

___Length of residence

___Temporary residence

___Unable to verify residence

___No credit file

___Limited credit experience

___Poor credit performance with us

___Delinquent past or present credit obligations with others

___Garnishment, attachment, foreclosure, repossession, collection action, or judgment

___Bankruptcy

___Value or type of collateral not sufficent

___Other, specify:_____

FORM C-1, page 2

PART II - DISCLOSURE OF USE OF INFORMATION OBTAINED FROM AN OUTSIDE SOURCE. This section should be completed if the credit decision was based in whole or in part on information that has been obtained from an outside source.

___ Our credit decision was based in whole or in part on information obtained in a report from the consumer reporting agency listed below. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency. The reporting agency played no part in our decision and is unable to supply specific reasons why we have denied credit to you.

Name: _____

_____

Address: _____

_____

Telephone number: _____

___ Our credit decision was based in whole or in part on information obtained from an outside source other than a consumer reporting agency. Under the Fair Credit Reporting Act, you have the right to make a written request, no later than 60 days after you receive this notice, for disclosure of the nature of this information.

If you have any questions regarding this notice, you should contact:

Creditor's name: _____
Creditor's address: _____
Creditor's telephone number: _____

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-2 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS

Date

Dear Applicant:

Thank you for your recent application. Your request for [a loan/a credit card/ an increase in your credit limit] was carefully considered, and we regret that we are unable to approve your application at this time, for the following reason(s):

YOUR INCOME:
____ is below our minimum requirement.
____ is insufficient to sustain payments on the amount of credit requested.
____ could not be verified.

YOUR EMPLOYMENT:
____ is not of sufficient length to qualify.
____ could not be verified.

YOUR CREDIT HISTORY:
____ of making payments on time was not satisfactory.
____ could not be verified.

YOUR APPLICATION:
____ lacks a sufficient number of credit references.
____ lacks acceptable types of credit references.
____ reveals that current obligations are excessive in relation to income.

OTHER: _____

The consumer reporting agency contacted that provided information that influenced our decision in whole or in part was [name, address and telephone number of the reporting agency]. The reporting agency is unable to supply specific reasons why we have denied credit to you. You do, however, have a right under the Fair Credit Reporting Act to know the information contained in your credit file. Any questions regarding such information should be directed to [consumer reporting agency].

If you have any questions regarding this letter you should contact us at [creditor's name, address and telephone number].

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national orgin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-3 -- SAMPLE NOTICE OF ACTION TAKEN AND STATEMENT OF REASONS (CREDIT SCORING)

Date

Dear Applicant:

Thank you for your recent application for _____. We regret that we are unable to approve your request.

Your application was processed by a credit scoring system that assigns a numerical value to the various items of information we consider in evaluating an application. These numerical values are based upon the results of analyses of repayment histories of large numbers of customers.

The information you provided in your application did not score a sufficient number of points for approval of the application. The reasons why you did not score well compared to other applicants were:

* Insufficient bank references
* Type of occupation
* Insufficent credit experience

In evaluating your application the consumer reporting agency listed below provided us with information that in whole or in part influenced our decision. The reporting agency played no part in our decision other than providing us with credit information about you. Under the Fair Credit Reporting Act, you have a right to know the information provided to us. It can be obtained by contacting: [name, address, and telephone number of the consumer reporting agency].

If you have any questions regarding this letter, you should contact us at

Creditor's Name: _____

Address: _____

_____

Telephone: _____

Sincerely,

NOTICE: The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (with certain limited exceptions); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-4 -- SAMPLE NOTICE OF ACTION TAKEN, STATEMENT OF REASONS AND COUNTEROFFER

Date

Dear Applicant:

Thank you for your application for _____. We are unable to offer you credit on the terms that you requested for the following reason(s): _____.

We can, however, offer you credit on the following terms: _____.

If this offer is acceptable to you, please notify us within [amount of time] at the following address: _____

Our credit decision on your application was based in whole or in part on information obtained in a report from [name, address and telephone number of the consumer reporting agency]. You have a right under the Fair Credit Reporting Act to know the information contained in your credit file at the consumer reporting agency.

You should know that the federal Equal Credit Opportunity Act prohibits creditors, such as ourselves, from discriminating against credit applicants on the basis of their race, color, religion, national origin, sex, marital status, age because they receive income from a public assistance program, or because they may have exercised their rights under the Consumer Credit Protection Act. If you believe there has been discrimination in handling your application you should contact the [name and address of the appropriate federal enforcement agency listed in Appendix A]

Sincerely,

FORM C-5 -- SAMPLE DISCLOSURE OF RIGHT TO REQUEST SPECIFIC REASONS FOR CREDIT DENIAL

Date

Dear Applicant:

Thank you for applying to us for _____.

After carefully reviewing your application, we are sorry to advise you that we cannot [open an account for you/grant a loan to you/increase your credit limit] at this time.

If you would like a statement of specific reasons why your application was denied, please contact [our credit service manager] shown below within 60 days of the date of this letter. We will provide you with the statement of reasons within 30 days after receving your request.

Creditor's Name
Address
Telephone number

If we obtained information from a consumer reporting agency as part of our consideration of your application, its name, address, and telephone number is shown below. You can find out about the information contained in your file (if one was used) by contacting:

Consumer reporting agency's name
Address
Telephone number

Sincerely,

NOTICE

The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with this law concerning this creditor is (name and address as specified by the appropriate agency listed in Appendix A).

FORM C-6 -- SAMPLE NOTICE OF INCOMPLETE APPLICATION AND REQUEST FOR ADDITIONAL INFORMATION

Creditor's name
Address
Telephone number

Date

Dear Applicant:

Thank you for your application for credit. The following information is needed to make a decision on your application: _____

_____

We need to receive this information by __(date)____. If we do not receive it by that date, we will regrettably be unable to give further consideration to your credit request.

Sincerely,

BILLING CODE 6210-01-C

Appendix D—Issuance of Staff Interpretations

Official Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this regulation. These interpretations provide the protection afforded under section 706(e) of the act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

Requests for Issuance of Official Staff Interpretations

A request for an official staff interpretation should be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request should contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

Scope of Interpretations

No staff interpretations will be issued approving creditor's forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

Supplement I—Official Staff Interpretations

[Reg. B; ECO–1]

Following is an official staff interpretation of Regulation B issued under authority delegated by the Federal Reserve Board to officials in the Division of Consumer and Community Affairs. References are to sections of the regulation or the Equal Credit Opportunity Act (15 U.S.C. 1601 et seq.).

Introduction

1. *Official status.* Section 706(e) of the Equal Credit Opportunity Act protects a creditor from civil liability for any act done or omitted in good faith in conformity with an interpretation issued by a duly authorized official of the Federal Reserve Board. This commentary is the means by which the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation B. Good-faith compliance with this commentary affords a creditor protection under section 706(e) of the act.

2. *Issuance of interpretations.* Under Appendix D to the regulation, any person may request an official staff interpretation. Interpretations will be issued at the discretion of designated officials and incorporated in this commentary following publication for comment in the **Federal Register.** Except in unusual circumstances, official staff interpretations will be issued only by means of this commentary.

3. *Status of previous interpretations.* Interpretations of Regulation B previously issued by the Federal Reserve Board and its staff have been incorporated into this commentary as appropriate. All other previous Board and staff interpretations, official and unofficial, are superseded by this commentary

4. *Footnotes.* Footnotes in the regulation have the same legal effect as the text of the regulation, whether they are explanatory or illustrative in nature.

5. *Comment designations.* The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. For example, comments to section 202.2(c) are further divided by subparagraph, such as comment 2(c)(1)(ii)–1 and comment 2(c)(2)(ii)–1.

Section 202.1—Authority, Scope, and Purpose

1(a) *Authority and scope.*

1. *Scope.* The Equal Credit Opportunity Act and Regulation B apply to all credit—commercial as well as personal—without regard to the nature or type of the credit or the creditor. If a transaction provides for the deferral of the payment of a debt, it is credit covered by Regulation B even though it may not be a credit transaction covered by Regulation Z (Truth in Lending). Further, the definition of creditor is not restricted to the party or person to whom the obligation is initially payable, as is the case under Regulation Z. Moreover, the act and regulation apply to all methods of credit evaluation, whether performed judgmentally or by use of a credit scoring system.

2. *Foreign applicability.* Regulation B generally does not apply to lending activities that occur outside the United States. The regulation does apply to lending activities that take place within the United States (as well as the Commonwealth of Puerto Rico and any territory or possession of the United States), whether or not the applicant is a citizen.

Section 202.2—Definitions

2(c) *Adverse action.*

Paragraph 2(c)(1)(ii)

1. *Move from service area.* If a credit card issuer terminates the open-end account of a customer because the customer has moved out of the card issuer's service area, the termination is "adverse action" for purposes of the regulation unless termination on this ground was explicitly provided for in the credit agreement between the parties. In cases were termination is adverse action, notification is required under § 202.9.

2. *Termination based on credit limit.* If a creditor terminates credit accounts that have low credit limits (for example, under $400) but keeps open accounts with higher credit limits, the termination is adverse action and notification is required under § 202.9.

Paragraph 2(c)(2)(ii)

1. *Default—exercise of due-on-sale clause.* If a mortgagor sells or transfers mortgaged property without the consent of the mortgagee, and the mortgagee exercises its contractual right to accelerate the mortgage loan, the mortgagee may treat the mortgagor as being in default. An adverse action notice need not be given to the mortgagor or the transferee. (See comment 2(e)-1 for treatment of a purchaser who requests to assume the loan.)

Paragraph (2)(c)(2)(iii)

1. *Point-of-sale transactions.* Denial of credit at point of sale is not adverse action except under those circumstances specified in the regulation. For example, denial, at point of sale is not adverse action in the following situations:

- A credit cardholder presents an expired card or a card that has been reported to the card issuer as lost or stolen.
- The amount of a transaction exceeds a cash advance or credit limit.
- The circumstances (such as excessive use of a credit card in a short period of time) suggests that fraud is involved.
- The authorization facilities are not functioning.
- Billing statements have been returned to the creditor for lack of a forwarding address.

Paragraph 2(c)(2)(v)

1. *Terms of credit versus type of credit offered.* When an applicant applies for credit and the creditor does not offer the credit terms requested by the applicant (for example, the interest rate, length of maturity, collateral, or amount of downpayment), a denial of the application for that reason is adverse action (unless the creditor makes a counteroffer that is accepted by the applicant) and the applicant is entitled to notification under § 202.9.

2(e) *Applicant.*

1. *Request to assume loan.* If a mortgagor sells or transfers the mortgaged property and the buyer makes an application to the creditor to assume the mortgage loan, the mortgagee must treat the buyer as an applicant unless its policy is not to permit assumptions.

2(f) *Application.*

1. *General.* A creditor has the latitude under the regulation to establish its own application process and to decide the type and amount of information it will require from credit applicants.

2. *"Procedures established."* The term refers to the actual practices followed by a creditor for making credit decisions as well as its stated application procedures. For example, if a creditor's stated policy is to require all applications to be in writing on the creditor's application form, but the creditor also makes credit decision based on oral requests, the creditor's establish procedures are to accept both oral and written applications.

3. *When an inquiry becomes an application.* A creditor is encouraged to provide consumers with information about loan terms. However, if in giving information to the consumer the creditor also evaluates information about the appliant, decides to decline the request, and communicates this to the applicant, the creditor has treated the inquiry as an application and must then comply with the notification requirements under § 202.9. Whether the inquiry becomes an application depends on how the creditor responds to the applicant, not on what the appliant says or asks.

4. *Examples of inquiries that are not applications.* The following examples illustrate situations in which only an inquiry has taken place:

• When a consumer calls to asks about loan terms and an employee explains the creditor's basic loan terms, such as interest rates, loan to value ration, and debt to income ratio.

• When a consumer calls to ask about interest rates for car loans, and, in order to quote the appropriate rate, the loan officer asks for the make and sale price of the car and amount of the down-payment, then given the consumer the rate.

• When a consumer asks about terms for a loan to purchase home and tells the loan officer her income and intended down-payment, but the loan officer only explains the creditor's loan to value ratio policy and other basic lending policies, without telling the consumer whether she qualifies for the loan.

• When a consumer calls to ask about terms for a loan to purchase vacant land and states his income, the sale price of the property to be financed, and asks whether he qualifies for a loan, and the employee responds by describing the general lending policies, explaining that he would need to look at all of the applicant's qualifications before making a decision, and offering to send an application form to the consumer.

5. *Completed application—diligence requirement.* The regulation defines a complete application in terms that give a creditor the latitude to establish its own information requirements. Nevertheless, the creditor must act with reasonable diligence to collect information needed to complete the application. For example, the creditor should request information from third parties, such as a credit report, promptly after receiving the application. If additional information is needed from the applicant, such as an address or telephone number needed to verify employment, the creditor should contact the applicant promptly.

2(j) *Credit.*

1. *General.* Regulation B covers a wider range of credit transactions than Regulation Z (Truth in Lending). For purposes of Regulation B a transaction is credit if there is a right to defer payment of a debt—regardless of whether the credit is for personal or commercial purposes, the number of installments required for repayment, or whether the transaction is subject to a finance charge.

2(l) *Creditor.*

1. *Assignees.* The term "creditor" includes all persons participating in the credit decision. This may include an assignee or a potential purchaser of the obligation who influences the credit decision by indicating whether or not it will purchase the obligation if the transaction is consummated.

2. *Referrals to creditors.* For certain purposes, the term "creditor" includes persons such as real estate brokers who do not participate in credit decisions but who regularly refer applicants to creditors or who select or offer to select creditors to whom credit requests can be made. These persons must comply with § 202.4, the general rule prohibiting discrimination, and with § 202.5(a), on discouraging applications.

2(p) *Empirically derived and other credit systems.*

1. *Purpose of definition.* The definition under § 202.2(p)(1) through (iv) sets the criteria that a credit system must meet in order for the system to use age as a predictive factor. Credit systems that do not meet these criteria are judgmental systems and may consider age only for the purpose of determining a "pertinent element of creditworthiness." (Both types of systems may favor an elderly applicant. See § 202.6(b)(2).)

2. *Periodic revalidation.* The regulation does not specify how often credit scoring systems must be revalidated. To meet the requirements for statistical soundness, the credit scoring system must be revalidated frequently enough to assure that it continues to meet recognized professional statistical standards.

2(w) *Open-end credit.*

1. *Open-end real estate mortgages.* The term "open-end credit" does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

2(z) *Prohibited basis.*

1. *Persons associated with applicant.* "Prohibited basis" as used in this regulation refers to the race, color, religion, national origin, sex, marital status, or age of an applicant (or officers of an applicant in the case of a corporation). The term also refers to the characteristics of individuals with whom an applicant is affiliated or with whom the applicant associates. This means, for example, that under the general rule stated in § 202.4, a creditor may not discriminate against an applicant because of that person's personal or business dealings with members of a certain religion, because of the national origin of any persons associated with the extension of credit (such as the tenants in the apartment complex being financed), or because of the race of other residents in the neighborhood where the property offered as collateral is located.

2. *National origin.* A creditor may not refuse to grant credit because an applicant comes from a particular country but may take the applicant's immigration status into account. A creditor may also take into account any applicable law, regulation, or executive order restricting dealings with citizens (or the government) of a particular country or imposing limitations regarding credit extended for their use.

3. *Public assistance program.* Any federal, state, or local governmental assistance program that provides a continuing, periodic income supplement, whether premised on entitlement or need, is "public assistance" for purposes of the regulation. The term includes (but is not limited to) Aid to Families with Dependent Children, food stamps, rent and mortgage supplement or assistance programs, Social Security and Suppiemental Security Income, and unemployment compensation. Only physicians, hospitals, and others to whom the benefits are payable need consider Medicare and Medicaid as public assistance.

Section 202.3—Limited Exceptions for Certain Classes of Transactions

1. *Scope.* This section relieves burdens with regard to certain types of credit for which full application of the procedural requirements of the regulation is not needed. All classes of transactions remain subject to the general rule given in § 202.4, barring discrimination on a prohibited basis, and to any other provision not specifically excepted.

3(a) *Public utilities credit.*

1. *Definition.* This definition applies only to credit for the purchase of a utility service, such as electricity, gas, or telephone service. Credit provided or offered by a public utility for some other purpose—such as for financing the purchase of a gas dryer, telephone equipment, or other durable goods, or for insulation or other home improvements—is not excepted.

2. *Security deposits.* A utility company is a creditor when it supplies utility service and bills the user after the service has been provided. Thus, any credit term (such as a requirement for a security deposit) is subject to the regulation.

3(c) *Incidental credit.*

1. *Examples.* If a service provider (such as a hospital, doctor, lawyer or retailer) allows the client or customer to defer the payment of a bill, this deferral of debt is credit for purposes of the regulation, even though there is no finance charge and no agreement for payment in installments. Because of the exceptions provided by this section, however, these particular credit extensions are excepted from compliance with certain procedural requirements as specified in the regulation.

3(d) *Business credit.*

1. *Definition.* The test for deciding whether a transaction qualifies as business credit is one of primary purpose. For example, an open-end credit account used for both personal and business purposes is not business credit unless the primary purpose of the account is business-related. A creditor may rely on an applicant's statement of the purpose for the credit requested.

Paragraph 3(d)(3)

1. *Notification.* A creditor is required in all cases to notify a business credit applicant of action taken on an application within a reasonable time of receiving a completed application. This notification may be written or oral.

3(e) *Government credit.*

1. *Credit to governments.* The exception relates to credit extended to (not by) governmental entities. For example, credit extended to a local government by a creditor in the private sector is covered by this exception, but credit extended to consumers by a federal or state housing agency does not qualify for special treatment under this category.

Section 202.4—General Rule Prohibiting Discriminotion

1. *Scope of section.* The general rule stated in § 202.4 covers all dealings, without exception, between an applicant and a creditor, whether or not addressed by other provisions of the regulation. Other sections of the regulation identify specific practices that the Board has decided are impermissible because they could result in credit discrimination on a basis prohibited by the act. The general rule covers, for example, application procedures, criteria used to evaluate creditworthiness, administration of accounts, and treatment of delinquent or slow accounts. Thus, whether or not

specifically prohibited elsewhere in the regulation, a credit practice that treats applicants differently on a prohibited basis violates the law because it violates the general rule.

Section 202.5—Rules Concerning Taking of Applications

5(a) *Discouraging applications.*

1. *Potential applicants.* Generally, the regulation's protections apply only to persons who have requested or received an extension of credit. In keeping with the purpose of the act—to promote the availability of credit on a nondiscriminatory basis § 202.5(a) covers acts or practices directed at potential applicants. Practices prohibited by this section include:

- A statement that the applicant should not bother to apply, after the applicant states that he is retired.
- Use of words, symbols, models or other forms of communication in advertising that express, imply or suggest a discriminatory preference or a policy of exclusion in violation of the act.
- Use of interview scripts that discourage applications on a prohibited basis.

2. *Affirmative advertising.* A creditor may affirmatively solicit or encourage members of traditionally disadvantaged groups to apply for credit, especially groups that might not normally seek credit from that creditor.

5(b) *General rules concerning requests for information.*

1. *Requests for information.* This section governs the types of information that a creditor may gather. Section 202.6 governs how information may be used.

5(d) *Other limitations on information requests.*

Paragraph 5(d)(1)

1. *Indirect disclosure of prohibited information.* The fact that certain credit-related information may indirectly disclose marital status does not bar a creditor from seeking such information. For example, the creditor may ask about:

- The applicant's obligation to pay alimony, child support, or separate maintenance.
- The source of income to be used as the basis for repaying the credit requested, which could disclose that it is the income of a spouse.
- Whether any obligation disclosed by the applicant has a co-obligor, which could disclose that the co-obligor is a spouse or former spouse.
- The ownership of assets, which could disclose the interest of a spouse.

Paragraph 5(d)(2)

1. *Disclosure about income.* The sample application forms in Appendix B to the regulation illustrate how a creditor may inform an applicant of the right not to disclose alimony, child support, or separate maintenance income.

2. *General inquiry about source of income.* Since a general inquiry about the source of income may lead an applicant to disclose alimony, child support, or separate maintenance, a creditor may not make such an inquiry on an application form without prefacing the request with the disclosure required by this paragraph.

3. *Specific inquiry about sources of income.* A creditor need not give the disclosure if the inquiry about income is specific and worded in a way that is unlikely to lead the applicant to disclose the fact that income is derived from alimony, child support or separate maintenance payments. For example, an application form that asks about specific types of income such as salary, wages, or investment income need not include the disclosure.

5(e) *Written applications.*

1. *Requirement for written applications.* The requirement of written applications for certain types of dwelling-related loans is intended to assist the federal supervisory agencies in monitoring compliance with the ECOA and the Fair Housing Act. Model application forms are provided in Appendix B to the regulation, although use of a printed form of any kind is not required. A creditor will satisfy the requirement by writing down the information that it normally considers in making a credit decision. The creditor may complete the application on behalf of an applicant and need not require the applicant to sign the application.

2. *Telephone applications.* A creditor that accepts applications by telephone for dwelling-related credit covered by section 202.13 can meet the requirements for written applications by writing down pertinent information that is provided by the applicant(s).

3. *Computerized entry.* Information entered directly into and retained by a computerized system qualifies as a written application under this paragraph. (See the commentary to § 202.13(b).)

Section 202.6—Rules Concerning Evaluation of Applications

6(a) *General rule concerning use of information.*

1. *General.* When evaluating an application for credit, a creditor generally may consider any information obtained. However, a creditor may not consider in its evaluation of creditworthiness any information that it is barred by § 202.5 from obtaining.

2. *Effects test.* The effects test is a judicial doctrine that was developed in a series of employment cases decided by the Supreme Court under Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e *et seq.*). Congressional intent that this doctrine apply to the credit area is documented in the Senate Report that accompanied H.R. 6516, No. 94-589, pp. 4-5; and in the House Report that accompanied H.R. 6516, No. 94-210, p. 5. The act and regulation may prohibit a creditor practice that is discriminatory in effect because it has a disproportionately negative impact on a prohibited basis, even though the creditor has no intent to discriminate and the practice appears neutral on is face, unless the creditor practice meets a legitimate business need that cannot reasonably be achieved as well by means that are less disparate in their impact. For example, requiring that applicants have incomes in excess of a certain amount to qualify for an overdraft line of credit could mean that women and minority applicants will be rejected at a higher rate than men and non-minority applicants. If there is a demonstrable relationship between the income requirement and creditworthiness for the level of credit involved, however, use of the income standard would likely be permissible.

6(b) *Specific rules concerning use of information.*

Paragraph 6(b)(1)

1. *Prohibited basis—marital status.* A creditor may not use marital status as a basis for determining the applicant's creditworthiness. However, a creditor may consider an applicant's marital status for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit. For example, in a secured transaction involving real property, a creditor could take into account whether state law gives the applicant's spouse an interest in the property being offered as collateral.

2. *Prohibited basis—special purpose credit.* In a special purpose credit program, a creditor may consider a prohibited basis to determine whether the applicant possesses a characteristic needed for eligibility. (See § 202.8.)

Paragraph 6(b)(2)

1. *Favoring the elderly.* Any system of evaluating creditworthiness may favor a credit applicant who is age 62 or older.

2. *Consideration of age in a credit scoring system.* Age may be taken directly into account in a credit scoring system that is "demonstrably and statistically sound," as defined in § 202.2(p), with one limitation: an applicant who is 62 years old or older must be treated at least as favorably as anyone who is under age 62.

3. *Consideration of age in a judgmental system.* In a judgmental system, defined in § 202.2(t), a creditor may not take age directly into account in any aspect of the credit transaction. For example, the creditor may not reject an application or terminate an account because the applicant is 60 years old. But a creditor that uses a judgmental system may relate the applicant's age to other information about the applicant that the creditor considers in evaluating creditworthiness. For example:

- A creditor may consider the applicant's occupation and length of time to retirement to ascertain whether the applicant's income (including retirement income) will support the extension of credit to its maturity.
- A creditor may consider the adequacy of any security offered when the term of the credit extension exceeds the life expectancy of the applicant and the cost of realizing on the collateral could exceed the applicant's equity. (An elderly applicant might not qualify for a 5 percent down, 30-year mortgage loan but might qualify with a larger downpayment or a shorter loan maturity.)
- A creditor may consider the applicant's age to assess the significance of the length of the applicant's employment (a young applicant may have just entered the job market) or length of time at an address (an elderly applicant may recently have retired and moved from a long-time residence).

4. *Consideration of age in a combined system.* A creditor using a credit scoring system that qualifies as "empirically derived" under § 202.2(p) may consider other factors (such as credit report or the applicant's cash

flow) on a judgmental basis. Doing so will not negate the classification of the credit scoring component of the combined system as "demonstrably and statistically sound." While age could be used in the credit scoring portion, however, in the judgmental portion age may not be considered directly. It may be used only for the purpose of determining a "pertinent element of creditworthiness." (See comment 6(b)(2)-3.)

5. *Consideration of public assistance.* When considering income derived from a public assistance program, a creditor may take into account, for example:

- The length of time an applicant will likely remain eligible to receive such income.
- Whether the applicant will continue to qualify for benefits based on the status of the applicant's dependents (such as Aid to Families with Dependent Children or Social Security payments to a minor).
- Whether the creditor can attach or garnish the income to assure payment of the debt in the event of default.

Paragraph 6(b)(5)

1. *Consideration of an individual applicant.* A creditor must evaluate income derived from part-time employment, alimony, child support, separate maintenance, retirement benefits, or public assistance (all referred to as "protected income") on an individual basis, not on the basis of aggregate statistics, and must assess its reliability or unreliability by analyzing the applicant's actual circumstances, not by analyzing statistical measures derived from a group.

2. *Payments consistently made.* In determining the likelihood of consistent payments of alimony, child support, or separate maintenance, a creditor may consider factors such as whether payments are received pursuant to a written agreement or court decree; the length of time that the payments have been received; whether the payments are regularly received by the applicant; the availability of court or other procedures to compel payment; and the creditworthiness of the payor, including the credit history of the payor when it is available to the creditor.

3. *Consideration of income.* A creditor need not consider income at all in evaluating creditworthiness. If a creditor does consider income, there are several acceptable methods, whether in a credit scoring or a judgmental system:

- A creditor may score or take into account the total sum of all income stated by the applicant without taking steps to evaluate the income.
- A creditor may evaluate each component of the applicant's income, and then score or take into account reliable income separately from income that is not reliable, or the creditor may disregard that portion of income that is not reliable before aggregating it with reliable income.
- A creditor that does not evaluate all income components for reliability must treat as reliable any component of protected income that is not evaluated.

In considering the separate components of an applicant's income, the creditor may not automatically discount or exclude from consideration any protected income. Any discounting or exclusion must be based on the applicant's actual circumstances.

4. *Part-time employment, sources of income.* A creditor may score or take into account the fact that an individual applicant has more than one source of earned income—a full-time and a part-time job or two part-time jobs. A creditor may also score or treat earned income from a secondary source differently than earned income from a primary source. However, the creditor may not score or otherwise take into account the number of sources for protected income—for example, retirement income, social security, alimony. Nor may the creditor treat negatively the fact that an applicant's only earned income is derived from a part-time job.

Paragraph 6(b)(6)

1. *Types of credit references.* A creditor may restrict the types of credit history and credit references that it will consider, provided that the restrictions are applied to all credit applicants without regard to sex, marital status, or any other prohibited basis. However, on the applicant's request, a creditor must consider credit information not reported through a credit bureau when the information relates to the same types of credit references and history that the creditor would consider if reported through a credit bureau.

Paragraph 6(b)(7)

1. *National origin—immigration status.* The applicant's immigration status and ties to the community (such as employment and continued residence in the area) could have a bearing on a creditor's ability to obtain repayment. Accordingly, the creditor may consider and differentiate, for example, between a noncitizen who is a long-time resident with permanent resident status and a noncitizen who is temporarily in this country on a student visa.

2. *National origin—citizenship.* Under the regulation a denial of credit on the ground that an applicant is not a United States citizen is nor per se discrimination based on national origin.

Section 202.7—Rules Concerning Extensions of Credit

7(a) *Individual accounts.*

1. *Open-end credit—authorized user.* A creditor may not require a creditworthy applicant seeking an individual credit account to provide additional signatures. However, the creditor may condition the designation of an authorized user by the account holder on the authorized user's becoming contractually liable for the account, as long as the creditor does not differentiate on any prohibited basis in imposing this requirement.

2. *Open-end credit—choice of authorized user.* A creditor that permits an account holder to designate an authorized user may not restrict this designation on a prohibited basis. For example, if the creditor allows the designation of spouses as authorized users, the creditor may not refuse to accept a non-spouse as an authorized user.

3. *Overdraft authority on transaction accounts.* If a transaction account (such as a checking account or NOW account) includes an overdraft line of credit, the creditor may require that all persons authorized to draw on the transaction account assume liability for any overdraft.

7(b) *Designation of name.*

1. *Single name on account.* A creditor may require that joint applicants on an account designate a single name for purposes of administering the account and that a single name be embossed on any credit card(s) issued on the account. But the creditor may not require that the name be the husband's name. (See § 202.10 for rule governing the furnishing of credit history on accounts held by spouses.)

7(c) *Action concerning existing open-end accounts.*

Paragraph 7(c)(1)

1. *Termination coincidental with marital status change.* When an account holder's marital status changes, a creditor generally may not terminate the account unless it has evidence that the account holder is unable or unwilling to repay. But the creditor may terminate an account on which both spouses are jointly liable, even if the action coincides with a change in marital status, when one or both spouses:

- Repudiate responsibility for future charges on the joint account.
- Request separate accounts in their own names.
- Request that the joint account be closed.

2. *Updating information.* A creditor may periodically request updated information from applicants but may not use events related to a prohibited basis—such as an applicant's retirement, reaching a particular age, or change in name or marital status—to trigger such a request.

Paragraph 7(c)(2)

1. *Procedure pending reapplication.* A creditor may require a reapplication from a contractually liable party, even when there is no evidence of unwillingness or inability to repay, if (1) the credit was based on the qualifications of a person who is no longer available to support the credit and (2) the creditor has information indicating that the account holder's income by itself may be insufficient to support the credit. While a reapplication is pending, the creditor must allow the account holder full access to the account under the existing contract terms. The creditor may specify a reasonable time period within which the account holder must submit the required information.

7(d) *Signature of spouse or other person.*

1. *Qualified applicant.* The signature rules assure that qualified applicants are able to obtain credit in their own names. Thus, when an applicant requests individual credit, a creditor generally may not require the signature of another person unless the creditor has first determined that the applicant alone does not qualify for the credit requested.

2. *Unqualified applicant.* When an applicant applies for individual credit but does not alone meet a creditor's standards, the creditor may require a cosigner, guarantor or the like—but cannot require that it be the spouse. (See commentary to § 202.7(d) (5) and (6).)

Paragraph 7(d)(1)

1. *Joint applicant.* The term "joint applicant" refers to someone who applies contemporaneously with the applicant for shared or joint credit. It does not refer to someone whose signature is required by the creditor as a condition for granting the credit requested.

Paragraph 7(d)(2)

1. *Jointly owned property.* In determining the value of the applicant's interest in jointly owned property, a creditor may consider factors such as the form of ownership and the property's susceptibility to attachment, execution, severance, or partition and the cost of such action. If the applicant's interest in the property does not support the amount and terms of credit sought, the creditor may give the applicant some other option of providing additional support for the extension of credit. For example:

- Requiring an additional party under § 202.7(d)(5).
- Offering to grant the applicant's request on a secured credit basis.
- Asking for the signature of the co-owner of the property on an instrument that assures access to the property but does not impose personal liability unless necessary under state law.

2. *Need for signature—reasonable belief.* A creditor's reasonable belief as to what instruments need to be signed by a person other than the applicant should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

Paragraph 7(d)(3)

1. *Residency.* In assessing the creditworthiness of a person who applies for credit in a community property state, a creditor may assume that the applicant is a resident of the state unless the applicant indicates otherwise.

Paragraph 7(d)(4)

1. *Creation of enforceable lien.* Some state laws require that both spouses join in executing any instrument by which real property is encumbered. If an applicant offers such property as security for credit, a creditor may require the applicant's spouse to sign the instruments necessary to create a valid security interest in the property. The creditor may not require the spouse to sign the note evidencing the credit obligation if signing only the mortgage or other security agreement is sufficient to make the property available to satisfy the debt in the event of default. However, if under state law both spouses must sign the note to create an enforceable lien, the creditor may require them to do so.

2. *Need for signature—reasonable belief.* Generally, a signature to make the secured property available will only be needed on a security agreement. A creditor's reasonable belief that, to assure access to the property, the spouse's signature is needed on an instrument that imposes personal liability should be supported by a thorough review of pertinent statutory and decisional law or an opinion of the state attorney general.

3. *Integrated instruments.* When a creditor uses an integrated instrument that combines the note and the security agreement, the spouse cannot be required to sign the integrated instrument if the signature is only needed to grant a security interest. But the spouse could be asked to sign an integrated instrument that makes clear—for example, by a legend placed next to the spouse's signature—that the spouse's signature is only to grant a security interest and that signing the instrument does not impose personal liability.

Paragraph 7(d)(5)

Qualifications of additional parties. In establishing guidelines for eligibility of guarantors, cosigners, or similar additional parties, a creditor may restrict the applicant's choice of additional parties but may not discriminate on the basis of sex, marital status or any other prohibited basis. For example, the creditor could require that the additional party live in the creditor's market area.

2. *Income of another person.* An applicant who requests inidividual credit relying on the income of another person (such as a spouse) may be required to provide the signature of the other person to make the income available to pay the debt. In community property states, the signature may be required if the applicant relies on the separate income of another person, i.e., income that as a matter of state law is not community property.

3. *Renewals.* If the borrower's creditworthiness is reevaluated when a credit obligation is renewed, the creditor must determine whether an additional party is still warranted and, if not, release the additional party.

Paragraph 7(d)(6)

1. *Guarantees.* A guarantee on an extension of credit is part of a credit transaction and therefore subject to the regulation. The rules in § 202.7(d) bar a creditor from requiring the signature of a *guarantor's spouse* just as they bar the creditor from requiring the signature of an *applicant's spouse.* For example, when all officers of a closely held corporation are required to personally guarantee a corporate loan, the creditor may not automatically require that spouses of married officers also sign. However, an evaluation of the financial circumstances of an officer may indicate that an additional signature is necessary, and this may be the signature of a spouse in appropriate circumstances.

7(e) *Insurance*

1. *Differences in terms.* Differences in the availability, rates, and other terms on which credit-related casualty insurance or credit life, health, accident, or disability insurance is offered or provided to an applicant does not violate Regulation B.

2. *Insurance information.* A creditor may obtain information about an applicant's age, sex, or marital status for insurance purposes. The information may only be used, however, for determining eligibility and premium rates for insurance, and not in making the credit decision.

Section 202.8—Special Purpose Credit Programs

8(a) *Standards for programs.*

1. *Determining qualified programs.* The Board does not determine whether individual programs qualify for special purpose credit status, or whether a particular program benefits an "economically disadvantaged class of persons." The agency or creditor administering or offering the loan program must make these decisions regarding the status of its program.

2. *Compliance with a program authorized by federal or state law.* A creditor does not violate Regulation B when it complies in good faith with a regulation promulgated by a government agency implementing a special purpose credit program under § 202.8(a)(1). It is the agency's responsibility to promulgate a regulation that is consistent with federal and state law.

3. *Expressly authorized.* Credit programs authorized by federal or state law include programs offered pursuant to federal, state or local statute, regulation or ordinance, or by judicial or administrative order.

4. *Creditor liability.* A refusal to grant credit to an applicant is not a violation of the act or regulation if the applicant does not meet the eligibility requirements under a special purpose credit program.

8(b) *Rules is other sections.*

1. *Applicability of rules.* A creditor that rejects an application because the applicant does not meet the eligibility requirements (common characteristic or financial need, for example) must nevertheless notify the applicant of action taker as required by 202.9.

8(c) *Special rule concerning requests and use of information.*

1. *Request of prohibited information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6 to determine an applicant's eligibility for a particular program.

2. *Examples.* Examples of programs under which the creditor can ask for and consider information related to prohibited basis are:

- Energy conservation programs to assist the elderly, for which the creditor must consider the applicant's age.
- Programs under a Minority Enterprise Small Business Investment Corporation, for which a creditor must consider the applicant's minority status.

8(d) *Special rule in the case of financial need.*

1. *Request of prohibited information.* This section permits a creditor to request and consider certain information that would otherwise be prohibited by §§ 202.5 and 202.6, and to require signatures that would otherwise be prohibited by § 202.7(d).

2. *Examples.* Examples of programs in which financial need is a criterion are:

- Subsidized housing programs for low- to moderate-income households, for which a creditor may have to consider the applicant's receipt of alimony or child support, the spouse's or parents' income, etc.
- Student loan programs based on the family's financial need, for which a creditor may have to consider to spouse's or parents' financial resources.

3. *Student loans.* In a guaranteed student loan program, a creditor may obtain the signature of a parent as a guarantor when

required by federal or state law or agency regulation, or when the student does not meet the creditor's standards of creditworthiness. (See §§ 202.7(d)(1) and (5).) The creditor may not require an additional signature when a student has a work or credit history that satisfies the creditor's standards.

Section 202.9—Notifications

1. *Use of the term "adverse action."* The regulation does not require that a creditor use the term "adverse" in communicating to an applicant that a request for an extension of credit has not been approved. In notifying an applicant of adverse action as defined by § 202.2(c)(1), a creditor may use any words or phrases that describe the action taken on the application.

2. *Expressly withdrawn applications.* When an applicant expressly withdraws a credit application, the creditor is not required to comply with the notification requirements under § 202.9. (The creditor must, however, comply with the record retention requirements of the regulation. See § 202.12(b)(3).)

3. *When notification occurs.* Notification occurs when a creditor delivers or mails a notice to the applicant's last known address or, in the case of an oral notification, when the creditor communicates the credit decision to the applicant.

4. *Location of notice.* The notifications required under § 202.9 may appear on either or both sides of a form or letter.

9(a) *Notification of action taken, ECOA notice, and statement of specific reasons.*

Paragraph 9(a)(1)

1. *Timing of notice—when an application is complete.* Once a creditor has obtained all the information it normally considers in making a credit decision, the application is complete and the creditor has 30 days in which to notify the applicant of the credit decision. (See also comment 2(f)–5.)

2. *Notification of approval.* Notification of approval may be express or by implication. For example, the creditor will satisfy the notification requirement when it gives the applicant the credit card, money, property, or services requested.

3. *Incomplete application—denial for reasons other than incompleteness.* When an application is missing information but provides sufficient data for a credit decision, the creditor may evaluate the application and notify the applicant under this section as appropriate. If credit is denied, the applicant must be given the specific reasons for the credit denial (or notice of the right to receive the reasons); in this instance the incompleteness of the application cannot be given as the reason for the denial.

4. *Length of counteroffer.* Section 202.9(a)(1)(iv) does not require a creditor to hold a counteroffer open for 90 days or any other particular length of time.

5. *Counteroffer combined with adverse action notice.* A creditor that gives the applicant a combined counteroffer and adverse action notice that complies with § 202.9(a)(2) need not send a second adverse action notice if the applicant does not accept the counteroffer. A sample of a combined notice is contained in form C–4 of Appendix C to the regulation.

6. *Denial of a telephone application.* When an application is conveyed by means of telephone and adverse action is taken, the creditor must request the applicant's name and address in order to provide written notification under this section. If the applicant declines to provide that information, then the creditor has no further notification responsibility.

9(b) *Form of ECOA notice and statement specific reasons.*

Paragraph 9(b)(1)

1. *Substantially similar notice.* The ECOA notice sent with a notification of a credit denial or other adverse action will comply with the regulation if it is "substantially similar" to the notice contained in § 202.9(b)(1). For example, a creditor may add a reference to the fact that the ECOA permits age to be considered in certain scoring systems, or add a reference to a similar state statute or regulation and to a state enforcement agency.

Paragraph 9(b)(2)

1. *Number of specific reasons.* A creditor must disclose the principal reasons for denying an application or taking other adverse action. The regulation does not mandate that a specific number of reasons be disclosed, but disclosure of more than four reasons is not likely to be helpful to the applicant.

2. *Source of specific reasons.* The specific reasons disclosed under § 202.9 (a)(2) and (b)(2) must relate to and accurately describe the factors actually considered or scored by a creditor.

3. *Description of reasons.* A creditor need not describe how or why a factor adversely affected an applicant. For example, the notice may say "length of residence" rather than "too short a period of residence."

4. *Credit scoring system.* If a creditor bases the denial or other adverse action on a credit scoring system, the reasons disclosed must relate only to those factors actually scored in the system. Moreover, no factor that was a principal reason for adverse action may be excluded from disclosure. The creditor must disclose the actual reasons for denial (for example, "age of automobile") even if the relationship of that factor to predicting creditworthiness may not be clear to the applicant.

5. *Credit scoring—method for selecting reasons.* The regulation does not require that any one method be used for selecting reasons for a credit denial or other adverse action that is based on a credit scoring system. Various methods will meet the requirements of the regulation. One method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by applicants whose total score was at or slightly above the minimum passing score. Another method is to identify the factors for which the applicant's score fell furthest below the average score for each of those factors achieved by all applicants. These average scores could be calculated during the development or use of the system. Any other method that produces results substantially similar to either of these methods is also acceptable under the regulation.

6. *Judgmental system.* If a creditor uses a judgmental system, the reasons for the denial or other adverse action must relate to those factors in the applicant's record actually reviewed by the person making the decision.

7. *Combined credit scoring and judgmental system.* If a creditor denies an application based on a credit evaluation system that employs both credit scoring and judgmental components, the reasons for the denial must come from the component of the system that the applicant failed. For example, if a creditor initially credit scores an application and denies the credit request as a result of that scoring, the reasons disclosed to the applicant must relate to the factors scored in the system. If the application passes the credit scoring stage but the creditor then denies the credit request based on a judgmental assessment of the applicant's record, the reasons disclosed must relate to the factors reviewed judgmentally, even if the factors were also considered in the credit scoring component.

8. *Automatic denial.* Some credit decision methods contain features that call for automatic denial because of one or more negative factors in the applicant's record (such as the applicant's previous bad credit history with that creditor, the applicant's declaration of bankruptcy, or the fact that the applicant is a minor). When a creditor denies the credit request because of an automatic-denial factor, the creditor must disclose that specific factor.

9. *Combined ECOA–FCRA disclosures.* The ECOA requires disclosure of the principal reasons for denying or taking other adverse action on an application for an extension of credit. The Fair Credit Reporting Act requires a creditor to disclose when it has based its decision in whole or in part on information from a source other than the applicant or from its own files. Disclosing that a credit report was obtained and used to deny the application, as the FCRA requires, does not satisfy the ECOA requirement to disclose specific reasons. For example, if the applicant's credit history reveals delinquent credit obligations and the application is denied for that reason, to satisfy § 202.9(b)(2) the creditor must disclose that the application was denied because of the applicant's delinquent credit obligations. To satisfy the FCRA requirement, the credit must also disclose that a credit report was obtained and used to deny credit. Sample forms C–1 through C–5 of Appendix C of the regulation provide for the two disclosures.

9(c) *Incomplete applications.*

Paragraph 9(c)(2)

1. *Reapplication.* If information requested by a creditor is submitted by an applicant after the expiration of the time period designated by the creditor, the creditor may require the applicant to make a new application.

Paragraph 9(c)(3)

1. *Oral inquiries for additional information.* If the applicant fails to provide the information in response to an oral request, a creditor must send a written notice to the applicant within the 30-day period specified in § 202.9 (c)(1) and (c)(2). If the applicant

does provide the information, the creditor shall take action on the application and notify the applicant in accordance with § 202.9(a).

9(g) *Applications submitted through a third party.*

1. *Third parties.* The notification of adverse action may be given by one of the creditors to whom an application was submitted. Alternatively, the third party may be a noncreditor.

2. *Third-party notice—enforcement agency.* If a single adverse action notice is being provided to an applicant on behalf of several creditors and they are under the jurisdiction of different federal enforcement agencies, the notice need not name each agency; disclosure of any one of them will suffice.

3. *Third-party notice—liability.* When a notice is to be provided through a third party, a creditor is not liable for an act or omission of the third party that constitutes a violation of the regulation if the creditor accurately and in a timely manner provided the third party with the information necessary for the notification and maintains reasonable procedures adapted to prevent such violations.

Section 202.10—Furnishing of Credit Information

1. *Scope.* The requirements of § 202.10 for designating and reporting credit information apply only to creditors that furnish credit information to credit bureaus or to other creditors. There is no requirement that a creditor furnish credit information on its accounts.

2. *Reporting on all accounts.* The requirements of § 202.10 apply only to accounts held or used by spouses. However, a creditor has the option to designate all joint accounts (or all accounts with an authorized user) to reflect the participation of both parties, whether or not the accounts are held by persons married to each other.

3. *Designating accounts.* In designating accounts and reporting credit information, a creditor need not distinguish between accounts on which the spouse is an authorized user and accounts on which the spouse is a contractually liable party.

4. *File and index systems.* The regulation does not require the creation or maintenance of separate files in the name of each participant on a joint or user account, or require any other particular system of recordkeeping or indexing. It requires only that a creditor be able to report information in the name of each spouse on accounts covered by § 202.10. Thus, if a creditor receives a credit inquiry about the wife, it should be able to locate her credit file without asking the husband's name.

10(a) *Designation of accounts.*

1. *New parties.* When new parties who are spouses undertake a legal obligation on an account, as in the case of a mortgage loan assumption, the creditor should change the designation on the account to reflect the new parties and should furnish subsequent credit information on the account in the new names.

2. *Request to change designation of account.* A request to change the manner in which information concerning an account is furnished does not alter the legal liability of either spouse upon the account and does not require a creditor to change the name in which the account is maintained.

Section 202.12—Record Retention

12(a) *Retention of prohibited information.*

1. *Receipt of prohibited information.* Unless the creditor specifically requested such information, a creditor does not violate this section when it receives prohibited information from a consumer reporting agency.

2. *Use of retained information.* Although a creditor may keep in its files prohibited information as provided in § 202.12(a), the creditor may use the information in evaluating credit applications only if permitted to do so by § 202.6.

12(b) *Preservation of records.*

1. *Copies.* A copy of the original record includes carbon copies, photocopies, microfilm or microfiche copies, or copies produced by any other accurate retrieval system, such as documents stored and reproduced by computer.

2. *Computerized decisions.* A creditor that enters information items from a written application into a computerized or mechnaized system and makes the credit decision mechanically, based only on the items of information entered into the system, may comply with § 202.12(b) by retaining the information actually entered. It is not required to store the complete written application, nor is it required to enter the remaining items of information into the system. If the transaction is subject to § 202.13, however, the creditor is required to enter and retain the data on personal characteristics in order to comply with the requirements of that section.

Paragraph 12(b)(3)

1. *Withdrawn and brokered applications.* In most cases, the 25-month retention period for applications runs from the date a notification is sent to the applicant granting or denying the credit requested. In certain transactions, a creditor is not obligated to provide a notice of the action taken. (See, for example, comment 9–2.) In such cases, the 25-month requirement runs from the date of application, as when:

- An application is withdrawn by the applicant.
- An application is submitted to more than one creditor on behalf of the applicant, and the application is approved by one of the other creditors.

Section 202.13—Information for Monitoring purposes

13(a) *Information to be requested.*

1. *Natural person.* Section 202.13 applies only to applications from natural persons.

2. *Principal residence.* The requirements of § 202.13 apply only if an application relates to a dwelling that is or will be occupied by the applicant as the principal residence. A credit application related to a vacation home or a rental unit is not covered. In the case of a two- to four-unit dwelling, the application is covered if the applicant intends to occupy one of the units as a principal residence.

3. *Temporary financing.* An application for temporary financing to construct a dwelling is not subject to § 202.13. But an application for both a temporary loan to finance construction of a dwelling and a permanent mortgage loan to take effect upon the completion of construction is subject to § 202.13.

4. *New principal residence.* A person can have only one principal residence at a time. However, if a person buys or builds a new dwelling that will become that person's principal residence within a year or upon completion of construction, the new dwelling is considered the principal residence for purposes of § 202.13.

5. *Refinancings.* A creditor who receives an application to change the terms and conditions of an existing extension of credit made by that creditor for the purchase of the applicant's dwelling may request the monitoring information again, but is not required to do so if it was obtained in the earlier transaction.

13(b) *Obtaining of information.*

1. *Forms for collecting data.* A creditor may collect the information specified in § 202.13(a) either on an application form or on a separate form referring to the application.

2. *Written applications.* The regulation requires written applications for the types of credit covered by § 202.13. A creditor can satisfy this requirement by recording in writing or by means of computer the information that the applicant provides orally and that the creditor normally considers in a credit decision.

3. *Telephone, mail applications.* If an applicant does not apply in person for the credit requested, a creditor does not have to complete the monitoring information. For example:

- When a creditor accepts an application by telephone, it does not have to request the monitoring information.
- When a creditor accepts an application by mail, it does not have to make a special request to the applicant if the applicant fails to complete the monitoring information on the application form sent to the creditor.

If it is not evident on the face of the application that it was received by mail or telephone, the creditor should indicate on the form or other application record how the application was received.

4. *Applications through loan shopping services.* When a creditor accepts an application through an unaffiliated loan shopping service, it does not have to request the monitoring information.

5. *Inadvertent notation.* If a creditor inadvertently obtains the monitoring information in a dwelling related transaction not covered by § 202.13, the creditor may process and retain the application without violating the regulation.

13(c) *Disclosure to applicant(s).*

1. *Procedures for providing disclosures.* The disclosures to an applicant regarding the monitoring information may be provided in writing. Appendix B contains a sample disclosure. A creditor may devise its own disclosure so long as it is substantially similar. The creditor need not orally request the applicant to provide the monitoring information if it is requested in writing.

13(d) *Substitute monitoring program.*

1. *Substitute program.* An enforcement agency may adopt, under its established rulemaking or enforcement procedures, a program requiring creditors under its jurisdiction to collect information in addition to that required by this section.

Section 202.14—Enforcement, penalties and liabilities

14(c) *Failure of compliance.*

1. *Inadvertent errors.* Inadvertent errors include, but are not limited to, clerical mistake, calculation error, computer malfunction, and printing error. An error of legal judgment is not an inadvertent error under the regulation.

2. *Correction of error.* For inadvertent errors that occur under §§ 202.12 and 202.13, this section requires that they be corrected prospectively only.

Appendix B—Model Application Forms

1. *FHLMC/FNMA form—residential loan application.* The residential loan application form (FHLMC 65/FNMA 1003) and supplemental form (FHLMC 65A/FNMA 1003A) prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association comply with the requirements of this regulation.

2. *FHLMC/FNMA form—home improvement loan application.* The home improvement and energy loan application form (FHLMC Form 703/FNMA Form 1012) prepared by the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association comply with the requirements of this regulation.

By order of the Board of Governors of the Federal Reserve System, November 13, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-27459 Filed 11-19-85; 8:45 am]

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November 20, 1985

Part V

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 864

Hematology and Pathology Devices; Premarket Approval of the Automated Differential Cell Counter; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 864

[Docket No. 85N-0280]

Hematology and Pathology Devices; Premarket Approval of the Automated Differential Cell Counter

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; opportunity to request change in classification.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the automated differential cell counter, a medical device. The agency also is summarizing its proposed findings on: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet the statute's approval requirements and (2) the benefits to the public from the use of the device. In addition, FDA is announcing an opportunity for interested persons to request the agency to change the classification of the device based on new information.

DATES: Comments by January 21, 1986; requests for a change in classification by December 5, 1985.

ADDRESS: Written comments or requests for a change in classification are to be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ-440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION:

Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I, general controls; class II, performance standards; or class III, premarket approval. As a general rule, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295), and devices marketed on or after that date that are substantially equivalent to such devices, have been, or are being, classified by FDA. For the sake of convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Sections 501(f), 513, and 515(b) of the act (21 U.S.C. 351(f), 360c, and 360e(b)), taken together, establish a general requirement that a preamendments device that FDA has classified into class III is subject, in accordance with section 515 of the act, to premarket approval. (As an alternative procedure for premarket approval, section 515(f) of the act provides for development of a PDP, the last stage of which is for FDA to declare that a PDP has been completed.) A preamendments class III device may be commercially distributed without a filed PMA or a notice of completion of a PDP until 90 days after FDA's promulgation of a final rule requiring premarket approval for the device. Also, such a device is exempt from the investigational device exemption (IDE) regulations (21 CFR Part 812) until the date stipulated by FDA in the final rule requiring premarket approval for that device. A device that was not in commercial distribution before May 28, 1976, or that has not been found by FDA to be substantially equivalent to such a device, is required to have an approved PMA or a declared completed PDP in effect before it may be marketed.

Section 515(b)(2)(A) of the act provides that a proceeding for the promulgation of a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice either denying the request or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 515(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, promulgate a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate a proceeding to reclasify the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f) of the act requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days of the date of promulgation of the final rule, or 30 months after final classification of the device, whichever is later. If a PMA or a notice of completion of a PDP for such a device is not filed by the later of the two dates, commercial distribution of the device is required to cease. The divice may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDA regulations. If a PMA or a notice of completion of a PDP has not been filed, and there is not any IDE in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334). Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333).

The act does not permit an extension of the 90-day period after promulgation of a final rule within which an application or notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval." H. Rept. 94-853, 94th Cong., 2d Sess. 42 (1976).

Classification of the Automated Differential Cell Counter

In the **Federal Register** of September 12, 1980 (45 FR 60576), FDA issued a final rule (21 CFR 864.5220) classifying the automated differential cell counter into class III. The preamble to the proposal to classify the device (44 FR 52950; September 11, 1979) included the recommendation of the Hematology and

Pathology Devices Panel (formerly the Hematology and Pathology Device Section of the Clinical Chemistry and Hematology Devices Panel) (the Panel), an FDA advisory committee, regarding the classification of the device. The Panel's recommendation included a summary of the reasons why the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the automated differential cell counter. The preamble to the final rule classifying the device advised that the earliest date by which a PMA for the device (or a notice of completion of a PDP) could be required was April 29, 1983, or 90 days after promulgation of a rule requiring premarket approval for the device, whichever occurred later.

In the **Federal Register** of September 6, 1983 (48 FR 40272), FDA published a notice of intent to initiate proceedings to require premarket approval of 13 preamendments class III devices assigned a high priority by FDA for the application of premarket approval requirements. Among other things, the notice describes the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for promulgating final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. Using these factors, FDA has determined that the automated differential cell counter, identified in § 864.5220(a), has a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the automated differential cell counter have an approved PMA or a PDP that has been declared completed.

Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the automated differential cell counter within 90 days after promulgation of any final rule based on this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the automated differential cell counter during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device, within 90 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period for a PMA unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will stipulate that as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c) (1) and (2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any automated differential cell counter (1) which is not legally on the market on or before that date or (2) which is legally on the market on or before that date but for which a PMA or a notice of completion of a PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA or a notice of completion of a PDP for the automated differential cell counter is not filed with FDA within 90 days after the date of promulgation of any final rule requiring premarket approval for the device, commercial distribution of the device will be required to cease. The device may be distributed for investigational use only if the requirements of the IDE regulations regarding significant risk devices are met. The requirements for significant risk devices include submitting an IDE application to FDA for its review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued. FDA, therefore, cautions that IDE applications should be submitted to FDA at least 30 days before the end of the 90-day period to avoid interrupting investigations.

Description of Device

The automated differential cell counter is a device used to identify and classify one or more of the formed elements of the blood. The three types of formed elements found in human blood are: red blood cells (erythrocytes), white blood cells (leukocytes), and platelets. The white blood cells consist of five basic leukocyte types: (1) Lymphocytes, (2) neutrophils, (3) monocytes, (4) eosinophils, and (5) basophils. Different proportions of each leukocyte type among the white blood cells indicate the existence of certain diseases or other medical conditions.

The following table from a report by Arthur D. Little, Inc. (Ref. 2), addresses some of the more common diagnoses indicated by abnormal differential counts:

Indicated diagnosis or condition	Indicative differential count (per 100 leukocytes)
Bacterial infection	Neutrophils (80). Band neutrophils (5).
Viral infection	Lymphocytes (50). Reactive (atypical) lymphocytes (2).
Mononucleosis	Reactive (atypical) lymphocytes (10).
Leukemia	Blast cells (1)[1].
Bone marrow infiltration	Nucleated erythrocytes (2)[1]
Chronic granulocytic leukemia	Basophils (4).
Allergy	Eosinphils (7).
Chronic infection	Monocytes (15).

[1] Blast cells and nucleated erythrocytes are immature forms of cells found in the bone marrow, but they are not found in the blood of the normal individual.

Koepke notes that the leukocyte differential count (LDC) is one of the most frequently performed clinical laboratory tests (Ref. 3). Based on survey data, IMS America projected that approximately 125,000,000 LDC's were performed in 1979 in hospital and private non-Federal clinical laboratories (Ref. 4). The LDC may be used as a screening test to separate healthy individuals from those who are ill, to aid in the diagnosis of a wide variety of hematological and other conditions, to monitor the progression of a disease, and to monitor a patient's response to chemotherapy or radiation therapy.

FDA contracted with Arthur D. Little, Inc., to review the labeling and perform a literature review of automated differential cell counters. The firm's report (Ref. 2) is available from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161. The report notes that the data in the literature were limited for both abnormal samples and for red cell function. The report also notes that the majority of LDC's are done manually. The manual LDC procedure is time consuming. It involves the analysis of 100 leukocytes, which is a small sample size in comparison to some of the automated procedures which analyze several hundred or several thousand leukocytes. The report notes that errors or discrepancies occur in the manual LDC procedure due to the small sample sizes (that provide only a coarse estimate of the frequency of leukocytes found in low numbers) and to laboratory-to-laboratory variability.

Necheles lists four reasons why automation of the LDC procedure is desirable: (1) To minimize error and maximize precision; (2) to rapidly process samples; (3) to reduce costs; and (4) to improve standardization of laboratory testing (Ref. 5). Dutcher states that instruments for examining blood cell morphology have been in use for less than 10 years (Ref. 6). This author reported that two methodologies for automated differential cell counting

have been developed; one procedure uses cytochemical characteristics of cells flowing through the instrument, the other uses pattern recognition and image analysis similar to the manual LDC procedure.

The first marketed device for automated differential cell counting, the diff 3® manufactured by Perkin-Elmer, incorporated pattern recognition and image analysis. In addition to the diff 3®, currently marketed by Coulter Electronics, Inc., three other devices using similar techniques were marketed by the end of the 1970's: Corning Medical and Scientific's LARC™, Geometric Data's Hematrak ®, and Abbott Laboratories' ADC 500 ™.

Corash noted that in 1983 only four instruments for automated differential cell counting were still in use (Ref. 7). Two of these devices, the Hematrak ™ and the diff 3®, use pattern recognition, the other two, the Hemalog ™ D/90 and the H6000, both manufactured by Technicon ™ Instruments Corp., use flow cytometry.

In devices using flow cytometry, the red blood cells in the whole blood sample are lysed or destroyed by exposing them to a concentration of water that is higher than that normally found in blood, leaving the leukocytes for analysis. The five basic leukocyte cell types are sized by light scatter and identified by using cytochemical staining activity of the cell types. A total of 10,000 cells are counted if the leukocyte count is greater than 4,000 microliters of whole blood. If the leukocyte count is less than 4,000 microliters of whole blood, only 1,000 cells are counted.

Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding (1) the degree of risk of illness or injury designed to be eliminated or reduced by requiring the automated differential cell counter to have an approved PMA or a declared completed PDP and (2) the benefits to the public from the use of the device.

Degree of Risk

Failure to detect or correctly identify immature or abnormal blood cells. Failure to detect or identify lymphoblasts (immature lymphocytes) with demonstrable nucleoli may delay the diagnosis of certain types of leukemias, e.g., monocytic leukemia. Failure to detect or identify atypical lymphocytes may delay the diagnosis of infectious mononucleosis. Failure to detect other abnormal leukocytes could delay the diagnosis of other malignancies. The failure to detect or identify vacuoles (clear unstained areas) in leukocytes may delay the diagnosis of malignancies and other diseases (Ref. 9). Failure to detect or identify these cells could also result in inappropriate therapy.

Accuracy of cell identification. Nosanchuck et al. evaluated Coulter Electronics, Inc.'s diff 3® (Ref. 10). They noted that unlike other automated differential cell counters the diff 3® erroneously identified abnormal nucleated cells as atypical lymphocytes, immature granulocytes, or blast cells. Errors in cell identification were noted between the diff 3® and manual observations in distinguishing between late metamyelocytes and early neutrophils; between blasts and promyelocytes; lymphocytes and monocytes; and blasts and atypical lymphocytes, and/or young monocytes; and blasts and atypical lymphocytes, and/or young monocytes. Abnormal cells found in leukemias also were difficult to classify using the diff 3®. The most difficult cells to classify were basophils.

Nosanchuck et al. stated that automated differential cell counters need reliably to distinguish normal from abnormal samples and to alert the operator if a sample is abnormal, criteria which the authors concluded were met by the diff 3®. The authors noted that even though the diff 3® misclassified abnormal and atypical cells, the device almost always detected a sufficient number of abnormalities to alert the operator to review the sample. The authors noted further that the diff 3® correctly identified only 33 percent of basophils. They maintained, however, that this finding presented little practical impact because few basophils are normally present in normal specimens. Also, lymphocytes and degenerating cells were sometimes misclassified, presenting a problem in situations of abnormal increase in the number of basophils.

In a report on Coulter Electronics, Inc.'s, diff 3/50®, Cembrowski el al. noted that this device requires improvement for the identification of band or nonsegmented neutrophils, basophils, immature granulocytes, and atypical lymphocytes (Ref. 9). In their study, Cembrowski et al. found one very discordant result where a specimen contained approximately 20 percent blast cells, but the diff 3/50®, while flagging the specimen as abnormal, only identified two blast cells. This device tended to identify some lymphocytes as basophils, and many atypical lymphocytes as monocytes, normal lymphocytes, or blast cells. The same sample preparations were used for comparisons between the manual LDC procedure and the diff 3/50® did not make any labeling claim with respect to identification of abnormal cells, other than a representation that the device will flag the specimen for review. Cembrowski et al. recommended that accuracy studies be made available for all the analyzers that use pattern recognition and image analysis.

Perel et al. examined principal components of Geometric Data's Hematrak® 360 (Ref. 18). They found the device to be simple to operate and reliable in operation. They noted that due to updates in computer programs for the logic of cell recognition, results previously reported in the literature by various investigators could not be strictly compared. Perel et al. did not attempt statistical analysis in their study, on the ground that different updated computer data logic programs had been used in the Hematrak® 360 during the 18-month period of their investigation. Although the authors found excellent correlation with the manual LDC procedure, they acknowledged that the device had difficulty recognizing larger lymphocytes and monocytes. The device was found to be very reliable in tagging abnormal leukocytes and red cells, even when present in small numbers, as suspicious. In some 60,000 blood cell slides, abnormal cells identified by the manual LDC procedure were not regarded as normal by the Hematrak® 360 in any instance.

Perel et al. indicated that the Hematrak® 360 did not present any advantage over the manual LDC procedure when abnormal samples were examined because the operator still has to classify the suspicious cells. In cases of leukopenia (decrease of the total number of white cells), the device could locate and differentiate leukocytes faster than would be done by the manual LDC procedure. Lymphocytes and monocytes, however, accounted for the majority of leukocytes in the suspicious category. Estimates of the number of platelets in a sample were erroneously reported as low in normal subjects due to clumping of the platelets in the sample preparation. In addition, identification of erythrocytes or red cell morphology was not satisfactory. The device tended to register normal red cells as abnormal. When significant red cell abnormalities occurred, the correlation with the manual LDC procedure appeared good, however.

Gulati et al. evaluated Geometric Data's Hematrak® 480 (Ref. 13). The Hematrak® 480 identifies red blood cells by size, color, and shape. Segmented

and nonsegmented (band) neutrophils also are differentiated. The labeling for the device claims to identify abnormal leukocytes, atypical or variant lymphocytes, immature granulocytes, and blast cells. In the study by Gulati et al., blood from 117 normal adults was analyzed by the Hematrak® 480 and by the manual LDC procedure. Of the types of possible abnormal leukocytes that could be found in the blood, only atypical lymphocytes were identified. As many as 7 percent atypical lymphocytes in some specimens were identified, but only by the Hematrak® 480. Atypical lymphocytes were not differentiated from the normal lymphocytes, however, by the manual LDC procedure. As a result, atypical lymphocytes were classified by Gulati et al. as normal lymphocytes using the manual LDC procedure. Other variations were found in differentiating band (nonsegmented) leukocytes from segmented leukocytes. For example, when more than 600 blood smears were classified as normal or abnormal, the agreement between the Hematrak® 480 and manual LDC procedure was 76.9 percent for leukocytes, 90 percent for platelet scans, and 90 percent for red cell morphology evaluations. These investigators concluded that the Hematrak® 480 provided results that were as accurate and precise as their own manual LDC procedure.

Talstad evaluated Technicon™ Instruments, Corp.'s Hemalog™ D (Ref. 12). The device identifies blast cells as large unstained cells. The Hemalog™ D identified large unstained cells in 95 percent of the patient samples, whereas the manual LDC procedure revealed a rate of only 4 percent. The difference was attributed to high sensitivity and low specificity of the Hemalog™ D.

Corash reported that Technicon™ Instrument Corp.'s Hemalog™ D/90 identifies the five basic leukocyte cell types plus two additional categories: Large unstained cells and those that do not fit into the other six categories (Ref. 7). Using the Hemalog™ D/90, Ross and Bardwell found an improvement in the diagnostic accuracy for subclassifying leukemias, in the sensitivity of the distinction between early remission and persistent leukemia, and in the increased precision of the differential count (Ref. 15). Bauer also reviewed the Hemalog™ D/90 (Ref. 16). Bauer concluded that a minor disadvantage of the Hemalog™ D/90 was the underestimation of basophils. This author also concluded that red cell and platelet adequacy and morphology are not performed, and band or nonsegmented neutrophils, juveniles, and myelocytes are not specifically identified as such using the Hemalog™ D/90.

Hinchcliffe et al. used the Hemalog™ D/90 to perform differential counts of the blood of 46 adults with active chronic and acute leukemia (Ref. 17). The differential counts for all but one of the adults indicated an abnormality. Myeloblast cells sometimes were classified as neutrophils. Hinchcliffe et al. found that in the final stages of leukemia, larger blast cells were classified by the device as abnormal. The majority of the smaller blast cells seen in earlier stages, however, were classified by the device as neutrophils. These investigators stated that to be of use in the clinical hematology laboratory, an automated differential cell counter needs to have the ability to reliably detect abnormal blood cells.

Hosty et al. reported on Technicon™ Instruments Corp.'s Hemalog™ H6000 (Ref. 11). Blood cells are stained and the intensity of the stain and the cell size are the criteria used for determining specific cells types. Cell size is plotted against cell light absorbance. Correlation between the Hemalog™ H6000 and the manual LDC procedure was greater than 90 percent for identifying neutrophils and lymphocytes. Correlations between the Hemalog™ H6000 and manual LDC procedures were not obtained for other cell types because the 100 cell sample size used in the manual procedures was insufficient to perform a valid study.

Arthur D. Little, Inc., reported on four manufacturers' instruments: Abbott Laboratories' ADC 500™, Coulter Electronics, Inc.'s, diff 3®, Geometric Data's Hematrak®, and Technicon™ Instruments Corp.'s Hemalog™ D (Ref. 2). According to the report, the pattern recognition systems (ADC 500™, diff 3®, and Hematrak®) follow the decision criteria used in the manual LDC procedure, whereas the flow cytometry system (Hemalog™ D) uses new chemical procedures to identify cells. According to the report, each of the systems classify blast cells and atypical lymphocytes. Each of the systems, with the exception of the Hemalog™ D, also classify red cells by size and color. The systems identify specimens that are suspicious and that should be examined by the operator. The limits of each system, e.g., types of cells not identified, were addressed. The report also summarized published evaluations of these devices and included recommendations for labeling of the devices.

Marchand et al. compared Geometric Data's Hematrak® 360, Coulter Electronics, Inc.'s diff 3®, and Technicon™ Instruments, Corp.'s Hemalog™ D/90 with the manual LDC procedure (Ref. 14). They reported that the Hemalog™ D/90 was the most precise instrument for identifying mature leukocytes. The Hemalog™ D/90 agreed with the manual LDC procedure for identifying quantitative abnormalities for 78 percent of the samples and agreed with the manual LDC procedure for identifying qualitative abnormalities for 80 percent of the samples. The diff 3® had the lowest agreement (61 percent for quantitative abnormalities and 70 percent for qualitative abnormalities). The coefficients of variation for monocyte identification compared to the manual LDC procedure varied from 37 percent to 44 percent with the three automated instruments. There was poor agreement between the manual LDC procedure and the three instruments for red cell morphology. No indication was provided that any of the individuals sampled had leukemia.

Winkel et al. compared Geometric Data's Hematrak® 240 with Technicon™ Instruments Corp.'s Hemalog™ D (Ref. 19). For the leukocyte types that occurred in low concentrations (eosinophils and basophils), Winkel et al. preferred the Hemalog™ D. The author also preferred the histochemical method of the Hemalog™ D for differentiating monocytes. The Hemalog™ D was found to be superior for basophil counts.

Benefits of the Device

The automated procedure is designed to replace the manual LDC procedure. Bull and Korpman noted that the manual LDC procedure was the most labor intensive procedure in the clinical laboratory (Ref. 20). Bauer noted that automated differential cell counters, especially those that count more than 100 cells, increased the precision of the count and thereby made small departures from normal more meaningful and significant (Ref. 16). The larger the number of cells counted, the greater the increase in precision and in the elimination of subjective and distributional errors. Also, sampling error is reduced.

Ross and Bardwell found increased precision in the quantification of blast cells and in the detection of neutrophils in leukopenic patients when the number of leukocytes were sharply decreased below normal (Ref. 15). They noted that sequential differential counts can measure small changes in the blast population, and the ability to detect very low levels of neutrophils may provide information on the patient's response to

antimicrobial therapy and to leukocyte transfusions.

Bacus stated that automation relieves the drudgery and improves the speed and quality of leukocyte differential counts (Ref. 21). Triplett lists 9 advantages of the automated pattern recognition systems, and 11 advantages of the automated flow cytometry systems (Ref. 1). Among the advantages both share are: (1) Increased precision; (2) increased intralaboratory consistency; (3) increased number of specimens processed; (4) decreased technologist involvement; and (5) increased number of cells counted.

Hinchcliffe et al. (Ref. 17) concluded that Technicon™ Instruments Corp.'s Hemalog™ D provides rapid and reliable neutrophil counts. For example, in cases of marked neutropenia, manual LDC procedures took 30 to 60 minutes to perform, whereas the Hemalog™ D performed a count in 1 minute. Another benefit of the device reported by Hinchcliffe et al. was that sometimes the reappearance of blast cells in the peripheral blood could be detected earlier with the device than by the manual LDC procedure. These authors concluded that the Hemalog™ D would be useful in: (1) Detecting most cases of unsuspected leukemia, (2) obtaining rapid and reliable neutrophil counts in patients with gross leukopenia, and (3) permitting early recognition of relapse.

Discussion of Risks and Benefits

FDA classified the automated differential cell counter into class III in part because there was not sufficient information available to establish a performance standard to provide reasonable assurance of the safety and effectiveness for all uses of the device (45 FR 60594; September 12, 1980). In addition, the Panel recommended that the device be classifed into class III, based on the possibility of misclassification of cells by the device which could result in the failure to diagnose a serious disorder (44 FR 52975; September 11, 1979). (The Panel reaffirmed its recommendation after considering the comments received on the proposed rule and additional testimony presented at a public meeting of the Panel to consider the comments received on the proposal (45 FR 60595).)

Misclassification of cells by the device could result from a failure to differentiate between cell types or a failure to detect a certain cell type. The device therefore presents a potential unreasonable risk of illness or injury. Panel members were concerned about the fully automated mode of certain differential cell counters because the task of classifying cells, once that of the technician, now is left entirely to the device. The Panel members believed that the ability of this device to accurately identify abnormal cells remained to be established, and that operator verification of the device's abnormal cell identifications is essential.

The Panel members believed that general controls would not provide sufficient control over these characteristics. The Panel members also believed that a performance standard would not provide reasonable assurance of the safety and effectiveness of the device and that there was not sufficient information to establish a standard to provide such assurance. Also, failure of the device to perform satisfactorily may lead to an error in the diagnosis of a blood cell disorder. Inappropriate therapy based on inaccurate diagnostic data may place the patient at risk. The device, therefore, should be subject to premarket approval to provide reasonable assurance of its safety and effectiveness.

The Panel members based on their recommendations upon members' clinical experience with automated differential cell counters and on information presented at a symposium entitled "Differential Counters in Hematology" held during a 1976 Panel meeting. Among the speaker at the symposium was Dr. Robert Miller of the Johns Hopkins University Medical Center. Dr. Miller discussed difficulties concerning: (1) Data interpretation; (2) precision and accuracy; (3) correlation to reference methods; and (4) error in terms of coincidence, nonrepreducible results, nonlinearity, and specific interferences.

Bacus has stated that the proper evaluation in a clinical setting of the automated differential cell counters has only been marginally addressed (Ref. 21). This author noted a decreased accuracy in the identification of certain common leukocytes, e.g., monocytes and basophils, compared to the manual LDC procedure. Bacus also stated that the accuracy of classification of abnormal cells by automated differential cell counters had not been satisfactorily documented.

Some investigators found these devices generally acceptable (Refs. 2, 7, 8, 9, 10, 12, 14, 17, 18, and 19). Bauer reported that the more cells in a sample that are counted, the greater the precision and the less the subjective and distributional errors (Ref. 16). Although the manual LDC procedure only counts 100 cells per specimen, automation enables hundreds or thousands of cells to be counted. Ross and Bardwell also found an increased precision in cases where the totals leukocyte count was sharply decreased below normal (Ref. 15). The increase in precision over the labor-intensive manual LDC procedure was due to the ability of the automated cell differential counter which these authors studied to count larger number of cells. Ross and Bardwell found this device which uses flow cytometry to offer an improvement over the manual LDC procedure in: (1) The diagnostic accuracy in subclassifying leukemias; (2) the sensitivity in distinguishing between early remission and persistent leukemias; and (3) the increased precision of the differential count. Hosty et al. found a correlation greater than 90 percent between the manual LDC procedure and another device which uses flow cytometry for the two types of leukocytes that were compared (Ref. 11). Gulti et al. concluded that the automated differential cell counter that they studied, which device uses pattern recognition, was as accurate and precise as their manual LDC procedure (Ref. 13).

FDA currently believes that the accuracy and reliability of the automated differential cell counter have not been established, especially with respect to identifying abnormal blood cells. This belief applies to the types of automated differential cell counters described above in this preamble, as well as to other automated differential cell counters, such as those that only identify and classify one or two of the formed elements of the blood. Investigators who have studied the effectiveness of automated differential cell counters have reported varying, often contradictory, results. Some investigators have used normal subjects while others have used abnormal subjects.

FDA has weighed the probable benefits to health from the use of the device and believes that the information and data discussed throughout this document present evidence of significant risks associated with the use of the device and raise questions about whether probable benefits from use of the device outweight the risk of illness or injury from such use.

Accordingly, FDA tentatively concludes that the automated differential cell counter should undergo premarket approval to determine whether the risks of using the device are balanced by the benefits to the patient. Any PMA for the device is to contain the information required by section 515(c)(1)(A) of the act. In this process, data should be provided to demonstrate that the automated differential cell counter for which premarket approval is sought performs in a manner that

provides accurate clinical laboratory results.

Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(iv) of the act and § 860.132 of FDA's regulations governing classification of devices (21 CFR 860.132) to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. The legal standard governing reclassification under section 513(e) of the act and § 860.123 is discussed in detail in the preambles to FDA's proposed rules to reclassify daily wear spherical contact lenses consisting of rigid gas permeable plastic materials and daily wear optically spherical (soft) contact lenses from class III into class I (47 FR 53402, 53411; November 26, 1982).

A request for a change in the classification of the automated differential cell counter is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by December 5, 1985.

The agency advises that to assure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in classification of the Automated differential cell counter is submitted, the agency will by January 21, 1986, after consultation with the appropriate FDA advisory committee, and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and § 860.130 of the regulations.

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The following references have been placed on file in the Dockets Management Branch (address above) and may be reviewed by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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15. Ross, D.W., and A. Bardwell, "Automated Cytochemistry and the White Cell Differential in Leukemia," *Blood Cells*, 6(3):455–470, 1980.

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17. Hinchcliffe, R.F., J.S. Tilleyman, N.F. Burrows, and H.T. Swan, "Use of the Hemalog D Automated Leukocyte Differential Counter in the Diagnosis and Therapy of Leukemia," *Acta Haematologica*, 65:79–84, 1981.

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19. Winkel, P., B.E. Stratland, A.M. Saunders, H. Osborn, and H. Kupperman, "Within-day Physiologic Variation of Leukocyte Types in Healthy Subjects as Assayed by Two Automated Differential Analysers" *American Journal of Clinical Pathology*, 75:693–700, 1981.

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Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has examined the economic consequences of this proposed rule in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the proposal would not be a major rule as specified in the Order. The agency believes that only four small firms will be affected by this proposed rule. Therefore, the agency certifies under the regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule would not have a significant economic impact on a substantial number of small entities. An assessment of the economic impact of any final rule based on this proposal has been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

Comments

Interested persons may, on or before January 21, 1986, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before December 5, 1985, submit to the Dockets Management Branch a written request to change the classification of the automated differential cell counter. Two copies of any requests are to be submitted, except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments

and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 864

Blood, Hematology and pathology devices, Medical devices, Packaging and containers.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 864 be amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR Part 864 is revised to read as follows:

Authority: Secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540–546 (21 U.S.C. 360c, 371(a)); 21 CFR 5.10; § 864.5220(c) also is issued under secs. 501, 515, and 520(g), 52 Stat. 1049–1050 as amended, 90 Stat. 552–559, 569–571 (21 U.S.C. 351, 360e, 360j(g)).

2. In Part 864, § 864.5220 is amended by adding new paragraph (c) to read as follows:

§ 864.5220 Automated differential cell counter.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (a date 90 days after date of promulgation of a final rule) for any automated differential cell counter that was in commercial distribution before May 28, 1976, or that has on or before (a date 90 days after date of promulgation of a final rule) been found to be substantially equivalent to an automated differential cell counter that was in commercial distribution before May 28, 1976. Any other automated differential cell counter shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: October 25, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85–27608 Filed 11–19–85; 8:45 am]

BILLING CODE 4160-01-M

Federal Register

Wednesday
November 20, 1985

Part VI

Department of Education

Educational Media Research, Production, Distribution, and Training; Application Notice for New Awards

Part VI

Department of Education

Educational Media Research, Production, Distribution, and Training Applications
Notice for New Awards

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Educational Media Research, Production, Distribution, and Training

AGENCY: Department of Education.

ACTION: Application notice for new awards under the Educational Media Research, Production, Distribution and Training Program for fiscal year 1986.

Programmatic and Fiscal Information

The purpose of this notice is to invite applications for new projects under the Educational Media Research, Production, Distribution, and Training program authorized by sections 651 and 652 of Part F of the Education of the Handicapped Act (20 U.S.C. 1451, 1452).

The Educational Media Research, Production, Distribution, and Training program is designed to promote the educational advancement of handicapped persons by providing assistance for: (a) conducting research on the use of educational media and technology for handicapped persons; (b) producing and distributing educational media for the use of handicapped persons, their parents, their actual or potential employers, and other persons directly invqlved in work for the advancement of handicapped persons; and (c) training persons in the use of educational media for the instruction of handicapped persons.

This particular competition invites projects that are designed to provide information on the impact and use of captioned materials with hearing impaired individuals and those with handicapped conditions other than hearing impairment. Profit and nonprofit public and private agencies, organizations and institutions are eligible to apply under this program.

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(b)(2) and 75.105(c)(3)(i), and subject to available funds, the Secretary gives an absolute preference to each applicant which provides satisfactory assurance that the recipient will use funds made available for these projects to conduct the activities that address the final priority published in this issue of the **Federal Register.**

It is estimated that approximately $450,000 will be available for support of four grants with the average award expected to be approximately $112,000. the anticipated project period is 36 months.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statue or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before March 3, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.026G, 400 Maryland Avenue SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand-delivered applications between 8:00 a.m., and 4:30 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the Educational Media Research, Production, Distribution and Training program in 34 CFR Part 332. A Notice of Final Annual Funding Priority is published in this issue of the **Federal Register.** Applicants should prepare their applications based on the regulations and the final annual funding priority for these projects.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of Executive Order 12372 is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should contact, immediately upon receipt of this notice, the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by May 1, 1986 to the following address:

The Secretary, U.S Department of Education, Room 4181 (CFDA Number: (84.026G), 400 Maryland Avenue SW., Washington, DC 20202.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Application forms:

Application forms and program information packages are expected to be available by January 6, 1986. These may be obtained by writing to the Captioning and Adaptation Branch, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW., (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm J. Norwood, Chief, Captioning and Adaptation Branch, Special Education Programs, Department of Education, 330 C Street SW. (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1172.

(Catalog of Federal Domestic Assistance No. 84.026, Educational Media Research, Production, Distribution, and Training)

(20 U.S.C. 1451, 1452)

Dated: November 15, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–27648 Filed 11–19–85; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
November 20, 1985

Part VII

Department of Education

Training Personnel for the Education of the Handicapped; Application Notice for New Awards

Digest of Public General Statutes

Chapter 72

Part VII

Department of Education

Training Manual for the Evaluation of the Developmental Rehabilitation Training for New Appeals

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Training Personnel for the Education of the Handicapped

AGENCY: Department of Education.

ACTION: Application notice for new awards under training personnel for the education of the handicapped: Preparation of regular educators for fiscal year 1986.

Programmatic and Fiscal Information

The purpose of this notice is to invite applications for new projects under the Training Personnel for the Education of the Handicapped program: Preparation of Regular Educators priority. This priority supports projects which develop personnel training programs for regular educators, including supervisors and administrators, to facilitate the Statewide delivery of educational services to learning disabled and other handicapped children and youth. In accordance with Section 632 of the Education of the Handicapped Act, awards under this priority will be limited to State educational agencies.

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 gives 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 that address the final priority published in this issue of the **Federal Register**.

It is estimated that approximately $1,500,000 will be available for support of 20 new awards, with an average award expected to be about $75,000. An applicant for a grant may propose a project period of up to 60 months. Generally, however, awards will be made for a period of 24 to 36 months.

These estimates do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before March 17, 1986.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: CFDA No. 84.029S, 400 Maryland Avenue SW., Washington, DC 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, DC time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) Regulations governing the Training Personnel for the Education of the Handicapped in 34 CFR Part 318. A notice of Final Annual Funding Priority is published in this issue of the **Federal Register**. Applicants should prepare their applications based on the regulations and the Final Annual Funding Priority for these projects.

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, and 78.

Application Forms

Application forms and program information packages are expected to be available by December 20, 1985. These may be obtained by writing to the Division of Personnel Preparation, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202.

FOR FURTHER INFORMATION: For further information contact Dr. Richard Champion, Division of Personnel Preparation, Special Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Switzer Building, Room 3511–M/S 2313), Washington, DC 20202. Telephone: (202) 732–1158.

Program Authority: 20 U.S.C. 1432.

(Catalog of Federal Domestic Assistance No. 84.029; Training Personnel for the Education of the Handicapped)

Dated: November 15, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–27647 Filed 11–19–85; 8:45 am]

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Vol. 50, No. 224

Wednesday, November 20, 1985

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H.J. Res. 449 / Pub. L. 99-156

To provide for the temporary extension of certain programs relating to housing and community development, and for other purposes. (Nov. 15, 1985; 99 Stat. 815; 3 pages) Price: $1.00

S. 1851 / Pub. L. 99-157

To extend temporarily the dairy price support program and certain food stamp program provisions, and for other purposes. (Nov. 15, 1985; 99 Stat. 818; 2 pages) Price: $1.00



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