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Wednesday
July 1, 1987

Briefings on How To Use the Federal Register—
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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.

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A,
Everett McKinley Dirksen Federal Building,
219 S. Dearborn Street,
Chicago, IL.
RESERVATIONS: Call the Chicago Federal Information Center, 312–353–0339.

BOSTON, MA

WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617–565–8129

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Rules and Regulations

Federal Register
Vol. 52, No. 126
Wednesday, July 1, 1987

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

Grapes Grown in a Designated Area of Southeastern California—Additional; Packing Holiday for the 1987 Season Only

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule suspends the Independence Day packing holiday for handlers of California desert grapes currently scheduled for Friday, July 3, 1987, and substitutes therefore Monday, July 6, 1987. This modification will apply to the 1987 season only. This action is necessary in order to counter slow table grape sales activity during the week following the Independence Day holiday. It was recommended by the California Desert Grape Administrative Committee, which works with the Department in administering the Federal Marketing Order No. 925 for California desert grapes

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250–1400, telephone (202) 475–3914.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Departmental Regulation 1512–1 and Executive Order 12291 and has been determined to be 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 issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (the Act, 7 U.S.C. 601–674), and rules promulgated thereunder, are unique in that they are brought about through the group action of essentially small entities acting on their on behalf. Thus, both statutes have small entity orientation and compatibility.

Grapes grown in the production area are marketed in the major market areas of the United States. Shipments of California desert grapes totaled 8,189,994 million lugs (22 pounds equivalent) in 1986. This is compared to 7,491,364 million lugs in 1985 and the three year (1983–1985) average of 6,899,377 million lugs. Since 1982, bearing acreage of California desert grapes has increased moderately. Bearing acreage was reported at 18,073 acres in 1986, slightly more than the 15,994 acres in 1985.

There are approximately 22 handlers of California desert grapes subject to regulation under the marketing order handling regulation. There are approximately 88 growers of desert grapes in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $100,000, and agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of table grapes may be classified as small entities.

The regulatory action in this instance is a final rule which suspends the Friday, July 3, 1987, Independence Day packing holiday and substitutes therefor Monday, July 6, as the packing holiday for handlers of California desert grapes. This change will apply to the 1987 season only. This action was recommended by the California Desert Grape Administrative Committee at a public meeting on November 20, 1986. California Desert Grape Regulation 6 (§ 925.304; 52 FR 8865) prohibits handlers from packing grapes on Saturdays, Sundays, Memorial Day, and Independence Day. The purpose of these packing holidays is to promote market stability by avoiding an oversupply of grapes in marketing channels. Section 925.304(e) authorizes the committee to modify or suspend these holidays.

Notice of this change was published in the June 10, 1987, issue of the **Federal Register** (52 FR 21960, 24090), affording interested persons 10 days in which to submit written comments. None were submitted.

Under the current handling regulation, the officially observed Independence Day packing holiday this season is Friday, July 3. Due in part to this holiday, most wholesale and terminal markets will be closed on Friday, July 3. The Los Angeles Wholesale Terminal Market, which receives a substantial percentage of grapes shipped out of Coachella Valley, will be closed on both July 3 and Monday, July 6. This action is necessary in order to counter slow table grape sales activity during the week after Independence Day and recognize market closings in observance of the Independence Day holiday.

No action is necessary for table grape imports under section 608e–1 of the Act. A change in the import regulation (7 CFR 944.503) is applicable when there is a change in the grade, size, quality, and maturity of a domestically produced commodity. Therefore, since packing holiday regulations are not included in the requirements of § 8e, no change is necessary to the applicable import regulations.

It is hereby found that suspending the Independence Day packing holiday for Friday, July 3, 1987, and substituting therefor Monday, July 6, will tend to effectuate the declared policy of the Act.

It is hereby further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the Independence Day holiday for 1987 will occur shortly, and this rule should become effective as soon as possible.

List of Subjects in 7 CFR Part 925

Marketing agreements and orders, Grapes, California.

For the reasons set forth in the preamble, Part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

1. The authority citation for 7 CFR Part 925 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 925.304, introductory text, is revised as follows:

§ 925.304 California desert grape regulation 6.

During the period April 20 through August 15 each year, no person shall pack or repack any variety of grapes except Emperor, Almeria, Calmeria, and Ribier varieties on any Saturday, Sunday, Memorial Day, or the observed Independence Day holiday, unless approved in accordance with paragraph (e) of this section, nor handle any variety of grapes except Emperor, Calmeria, Almeria, and Ribier varieties, unless such grapes meet the requirements specified in this section: *Provided,* That for the 1987 season, July 6, 1987, shall be substituted for July 3, 1987, as the Independence Day packing holiday.

* * * * *

Dated: June 26, 1987.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87–14952 Filed 6–30–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 141, 148, 152 and 177

[T.D. 87–89]

Customs Regulations Amendments Regarding Valuation of Imported Merchandise

AGENCY: U.S. Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the valuation of imported merchandise. The Trade Agreements Act of 1979, provided a new system of customs valuation based on transaction value. However, the old system of valuation was to continue to apply to merchandise exported to the U.S. before the effective date of the new law. The new law became effective on or after July 1, 1980, for most goods exported to the U.S., and on or after July 1, 1981, for all goods. Implementing the new valuation system required that the Customs Regulations be modified. Accordingly, T.D. 81–7 amended the regulations by adding new sections setting forth the new valuation system. However, T.D. 81–7 did not amend or delete certain sections explaining the old system so that reference could be made to them for entries which were made before the new valuation system became effective and were not yet liquidated pending the resolution of various legal issues. As the number of these entries has dwindled, Customs believes that it is now appropriate to amend the regulations to remove references to the old valuation system.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Elena Giacometti Kennedy, Classification and Value Division, (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

Classification and valuation are the two most important factors affecting the amount of duty assessed on imported merchandise. Classification and valuation must be provided by commercial importers when an entry is filed. Customs officers at ports of entry review the classification and valuation submitted by commercial importers, as well as other required import information, to verify that the submissions are correct for the imported merchandise they describe.

Before July 1, 1980 (or July 1, 1981, in the case of certain rubber footwear), imported merchandise was valued pursuant to sections 402 and 402a, Tariff Act of 1930, as amended (19 U.S.C. 1401a, 1402). However, Title II of the Trade Agreements Act of 1979 (Pub. L. 96–39) (TAA), significantly changed the laws administered by Customs relating to the valuation of imported merchandise.

The TAA incorporated into U.S. law the trade agreements negotiated by the U.S. in the Tokyo Round of Multilateral Trade Negotiations. Title II of the TAA, "Customs Valuation", implements the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Agreement). A supplementary agreement on customs valuation which eliminated one of the tests under the Agreement and Title II was passed as Pub. L. 96–490 on December 2, 1980.

Subsequently, by T.D. 81–7, published in the **Federal Register** on January 12, 1981 (46 FR 2597), Customs issued regulations to administer the new statutory valuation system. These regulations are set forth in Subpart E, Part 152, §§ 152.100–152.108, Customs Regulations (19 CFR 152.100–152.108). Pursuant to Presidental Proclamation 4768 (June 28, 1980), the effective date of these "new value" regulations for all merchandise, except certain rubber footwear, was July 1, 1980. The regulation became effective for the rubber footwear on July 1, 1981.

The TAA repealed 19 U.S.C. 1402 and amended 19 U.S.C. 1401a. However, the "old value law" was applicable to merchandise exported to the U.S. before the effective date. Accordingly, while T.D. 81–7 amended the regulations by adding new sections setting forth the new valuation system, it did not amend or delete certain sections explaining the old system so that reference could be made to them for entries made before the new valuation system became effective. Until recently, the number of entries made before the new valuation system became effective which were unliquidated pending the resolution of various legal issues was sufficient to maintain the old regulations. As the number of outstanding unliquidated entries made prior to the new law has dwindled, Customs believes that it is now appropriate to amend the value regulations to remove references to the old valuation system. It should be noted, however, that any unliquidated entries made prior to the new law which are still outstanding will still be valued according to the old system.

Discussion of Amendments

In this document Customs is amending sections of Parts 10, 141, 148, 152 and 177, Customs Regulations (19 CFR Parts 10, 141, 148, 152, and 177). Section 10.18 (19 CFR 10.18), is amended by stating that the full value of assembled articles imported under item 807.00, Tariff Schedules of the U.S. (TSUS) (19 U.S.C. 1202), is to be determined in accordance with 19 CFR 152.100 *et seq.*, the regulations detailing the new valuation law. Sections 10.19 and 10.20 (19 CFR 10.19, 10.20), are deleted as the concepts discussed in these sections relate to the old value law.

The TAA requires that the primary basis for valuing all imported merchandise is transaction value, *i.e.*, the price actually paid or payable for the goods. Accordingly, under the TAA in most instances, it is irrelevant that a purchaser of goods may have obtained them at retail or wholesale. In view of this, the references to retail sales in § 148.13(d) (1) and (2) (19 CFR 148(d) (1) and (2)), are deleted.

The statutory language covering many of the personal exemptions mentions in Part 148, Customs Regulations (19 CFR Part 148), refers to "Fair retail value" or

"fair market value" despite the new laws's definition of transaction value. Items 813.30, 183.31, 869.00. and 869.10, TSUS (19 U.S.C. 1202), use the above-mentioned terms. Because of this, references in Part 148 to these terms are not being changed. Further, because of the use of the language "fair retail value" and "fair market value", a definition of these terms is included in § 152.1(d), Customs Regulations (19 CFR 152.1(d)). Both terms are defined as the price actually paid or payable for all imported merchandise, or if not purchased, the value as otherwise ascertained under 19 CFR 152.100 *et seq.*

Other changes made by this document are removing the references to the repealed statute, 19 U.S.C. 1402 (section 402(a), Tariff Act of 1930, as amended), in § 141.88, § 148.24, § 148.101, § 152.1(c), § 152.23, and § 177.9, Customs Regulations (19 CFR 141.88, 148.24, 148.101, 152.1(c), 152.23 and 177.9); and deleting §§ 152.1(a), 152.1(b), 152.20 through 152.22, 152.24, Customs Regulations (19 CFR 152.1(a), 152.1(b), 152.20–152.22, 152.24), as well as Subpart D, Part 152, Customs Regulations (19 CFR Part 152 Subpart D), because they relate to the old law.

Inapplicability of Notice and Delayed Effective Date Requirements

All merchandise exported to the U.S. on or after July 1, 1981, has been subject to the statutory valuation system established by the TAA. Because these amendments merely implement this statutory change and neither impose any additional burdens on, or take away any existing rights or privileges from, the public, it has been determined that pursuant to 5 U.S.C. 553(b)(B), notice is not required. For the same reasons, Customs has determined that good cause exists for dispensing with a delayed effective date pursuant to 5 U.S.C. 553(d)(3).

Executive Order 12291

This amendment does not meet the criteria for a "major rule" as defined by section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

It is certified that the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), are not applicable to these amendments because the rule will not have a significant economic impact on a substantial number of small entities. Any economic impact would be attributable to the actions of Congress and not Customs.

Paperwork Reduction Act

No new recordkeeping or data collection burdens are imposed upon the public as a result of this amendment. Accordingly, it is not subject to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations Control Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Customs duties and inspection, Imports, Exports.

19 CFR Part 141

Customs duties and inspection, Explosives, Imports, Lawyers.

19 CFR Part 148

Customs duties and inspection, Imports.

19 CFR Part 152

Customs duties and inspection, Imports, Valuation.

19 CFR Part 177

Administrative practice and procedure, Customs duties and inspection, Imports.

Amendments to the Regulations

Parts 10, 141, 148, 152 and 177, Customs Regulations (19 CFR Parts 10, 141, 148, 152, 177), are amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority for Part 10, Customs Regulations, continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1623, 1624.

All other statutory authority cited for various sections in Part 10 remain the same.

2. Section 10.18 is revised to read as follows:

§ 10.18 Valuation of assembled articles.

As in the case of the appraisement of any other import merchandise (see Subpart C of Part 152 of this chapter), the full value of assembled articles imported under item 807.00, Tariff Schedules of the United States (19 U.S.C. 1202), is determined in accordance with 19 CFR 152.100 *et seq.*

§§ 10.19 and 10.20 [Removed and Reserved]

3. Part 10 is further amended by removing §§ 10.19 and 10.20 and marking them "[Reserved]".

PART 141—ENTRY OF MERCHANDISE

1. The general authority for Part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

All other statutory authority cited for various sections in Part 141 remain the same.

2. The heading and text of § 141.88 is revised to read as follows:

§ 141.88 Computed value.

When the district director determines that information as to computed value is necessary in the appraisement of any class or kind of merchandise, he shall so notify the importer, and thereafter invoices of such merchandise shall contain a verified statement by the manufacturer or producer of computed value as defined in § 402(e), Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. 1401a(e)).

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for Part 148 continues to read as follows:

Authority: 19 U.S.C. 66, 1498, 1624. The provisions of this part, except for Subpart C, are also issued under 19 U.S.C. 1202 (Gen. Headnote 11).

All other statutory authority cited for various sections in Part 148 remain the same.

2. Section 148.13(d) is revised to read as follows:

§ 148.13 Written declarations.

* * * * *

(d) *Value.* Opposite the description of each article required to be declared specifically in a written declaration, the passenger shall state either:

(1) The price actually paid for the article in the currency of purchase, or its equivalent in U.S. currency; or

(2) The fair retail value in the country of acquisition if the article was not acquired by purchase, in the currency of the country in which the article was acquired, or its equivalent in U.S. currency.

* * * * *

§ 148.24 [Amended]

3. Section 148.24 is amended by removing the words "or section 402a" and ", 1402:" in the first sentence of paragraph (a).

§ 148.101 [Amended]

4. Section 148.101 is amended by removing the words "or 402a" and ", 1402" in the text and by removing "or 402a" in the footnotes to Example 1 and Example 2.

PART 152—CLASSIFICATION AND APPRAISEMENT OF MERCHANDISE

1. The general authority for Part 152 continues to read as follows:

Authority: 19 U.S.C. 66, 1401a, 1500, 1502, 1624.

All other statutory authority cited for specific subparts of, and various sections in, Part 152 remain the same.

§ 152.1 [Amended]

2. Section 152.1 is amended by removing paragraphs (a) and (b) and marking them "[Reserved]", and by removing the words "and 402a" and "and 1402" in the first sentence of paragraph (c).

3. Section 152.1 is further amended by adding a new paragraph (d) to read as follows:

§ 152.1 Definitions.

* * * * *

(d) *Fair retail value.* "Fair retail value" or "fair market value" as used in Schedule 8, Tariff Schedules of the United States, and Part 148 of this chapter means the price actually paid or payable for all imported merchandise, or if not purchased, the value as otherwise ascertained under 19 CFR 152.100 *et seq.*

§ 152.20 through 152.22 and 152.24

[Removed and Reserved]

4. Sections 152.20 through 152.22 and 152.24 are removed and marked "[Reserved]".

§ 152.23 [Amended]

5. Section 152.23 is amended by removing the words "402a," and ", 1402" in the first sentence.

Subpart D—[Removed and Reserved]

6. Part 152 is amended by removing the heading and text of Subpart D entitled "Subpart D—Benzenoid Chemicals and Products" (§§ 152.31–152.43) and marking it "[Reserved]".

PART 177—ADMINISTRATIVE RULINGS

1. The general authority for Part 177 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Headnote 11), 1624.

All other statutory authority cited for various sections in Part 177 remain the same.

§ 177.9 [Amended]

2. Section 177.9(b)(3) is amended by removing the words "or 402a" and ", 1402" in the first sentence.

William von Raab,

Commissioner of Customs.

Approved:

John P. Simpson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 87–14948 Filed 6–30–87; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1316

[A.G. Order No. 1198–87]

Administrative Functions, Practices, and Procedures; Technical Amendment

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This order revises 21 CFR 1316.75(b) to increase the cap on the bond from $2,500 to $5,000 to contest an administrative forfeiture. This is being done to reflect a recent amendment to the law.

EFFECTIVE DATE: June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 272–6420.

SUPPLEMENTARY INFORMATION: The Anti-Drug Abuse Act of 1986 amended 19 U.S.C. 1608 to raise the cap on the bond to be posted to contest administrative forfeiture actions from $2,500 to $5,000. Pub. L. 99–570, section 1862. The administrative forfeiture regulations of 21 CFR 1316.75(b), which refer to the Tariff Act (19 U.S.C. 1602, *et seq.*), must be amended to reflect this change in the cap on the bond.

It has been determined that this is an integral management matter not requiring consultation with the Office of Management and Budget under E.O. 12291. Moreover, this order will have no impact upon small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

List of Subjects in 21 CFR Part 1316

Seizures, Forfeitures.

PART 1316—[AMENDED]

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 1316 of Title 21 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Subpart E of Part 1316 is revised to read as follows:

Authority: 21 U.S.C. 871(b), 881, 965, 19 U.S.C. 1606, 1607, 1608, 1610, 1613, 1618, 28 U.S.C. 509, 510.

§ 1316.75 [Amended]

2. Section 1316.75(b)(3) is amended by removing "$2,500" and adding in its place, "$5,000".

Dated: June 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87–14862 Filed 6–30–87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary of Housing—Federal Housing Commissioner

24 CFR Part 888

[Docket No. N–87–1590; FR–2161]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation—All Markets; Correction

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

ACTION: Final notice; correction.

SUMMARY: This document corrects a notice published on August 7, 1986 in the **Federal Register** announcing final, Fiscal Year 1986 Fair Market Rents for the Section 8 New Construction Program and the Section 8 Substantial Rehabilitation Program.

EFFECTIVE DATE: August 7, 1986.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street SW., Washington, DC 20410–8000, telephone (202) 426–7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department published final Fair Market Rents on August 7, 1986 (51 FR 28491). This document corrects the Fiscal Year 1986 Fair Market Rent schedule applicable to the San Juan, Puerto Rico market area permitting inclusion of additional rents for the 5+-story elevator category. These rents were inadvertently omitted from the published schedule.

Accordingly, FR Doc. 86–17684, appearing in the August 7, 1986, issue of the **Federal Register** (51 FR 28491) is corrected by revising the final rents for the area listed below:

OFFICE CARIBBEAN OFFICE REGION II

Market area	Structure type	Number of bedrooms				
		0	1	2	3	4 or more
San Juan	Detached		em	511	572	628
	Semi-Detached/row	405	410	491	550	577
	Walkup	337	388	458	519	570
	Elevator-2-4 sty					
	Elevator 5+ sty	386	433	496	570	631

[FR Doc. 87–14973 Filed 6–30–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1203–87]

Delegation of Authority to the Drug Enforcement Administration

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General delegated to the Administrator of the Drug Enforcement Administration (DEA) all functions vested in him by the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91–513) in Order No. 520–73, July 10, 1973. Since that time the Comprehensive Drug Abuse Prevention and Control Act has been amended by Congress. While the Attorney General asserts that any functions granted to him pursuant to these amendments were properly delegated to the Administrator of DEA by the 1973 Order, this amendment will ensure that any functions vested in the Attorney General by statutory amendments to the Comprehensive Drug Abuse Prevention and Control Act of 1970 are delegated to the Administrator of the Drug Enforcement Administration unless otherwise specifically assigned or reserved by the Attorney General.

EFFECTIVE DATE: June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis F. Hoffman, Chief Counsel, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, (202) 633–1276.

SUPPLEMENTARY INFORMATION:

List of Subjects in 28 CFR Part 0

Authority delegations (Government Agencies), Organization and Functions (Government Agencies).

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

By virtue of the authority vested in me by 5 U.S.C. 301, 21 U.S.C. 871, and 28 U.S.C. 509, 510 and 524, Part 0 of Chapter I, Title 28 Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.100 is amended by revising paragraph (b) as follows:

§ 0.100 General Functions.

* * * * *

(b) Functions vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. This will include functions which may be vested in the Attorney General in subsequent amendments to the Comprehensive Drug Abuse Prevention and Control Act of 1970, and not otherwise specifically assigned or reserved by him.

* * * * *

Dated: June 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87–14861 Filed 6–30–87; 8:45 am]

BILLING CODE 4410–09–M

28 CFR Part 0

[Order No. 1202–87]

Organization of the Department of Justicer

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule will amend 28 CFR Part 0 by adding a new paragraph to § 0.63 to reflect a delegation of authority to the Assistant Attorney General in charge of the Criminal Division.

EFFECTIVE DATE: June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald R. Roos, Trial Attorney, Criminal Division, Room 203, Federal Triangle Building, Department of Justice, Washington, DC, telephone number (202) 724–7041, which is not a toll free number.

SUPPLEMENTARY INFORMATION: Section 316(g) of the Immigration and Nationality Act confers on the Attorney General the authority, in conjunction with the Director of Central Intelligence and the Commissioner of Immigration, to expedite the naturalization of certain foreign intelligence sources who have made an extraordinary contribution to the national security of the United States. This rule will amend 28 CFR Part 0 by adding a new paragraph to § 0.63 to reflect a delegation of this authority to the Assistant Attorney General in charge of the Criminal Division.

This rule does not have an impact on small businesses, and therefore, is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601–602. It is not a major rule for purposes of Executive Order No. 12291. Compliance with 5 U.S.C. 553 as to notice of proposed rule-making and delayed effective date is not necessary because this rule relates to agency organization and management.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies).

PART 0—[AMENDED]

By virtue of the authority vested in me by 28 U.S.C. 509, 510, 569, 5 U.S.C. 301, and 8 U.S.C. 1427(g), Part 0 of Title 28 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 4201, *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22

U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 543, 552, 552a, 569; 31 U.S.C. 200(c); 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. Section 0.63 is revised to read as follows:

§ 0.63 Delegation respecting admission and naturalization of certain aliens.

(a) The Assistant Attorney General in charge of the Criminal Division is authorized to exercise the power and authority vested in the Attorney General by section 7 of the Central Intelligence Agency Act of 1949, as amended (50 U.S.C. 403h), with respect to entry of certain aliens into the United States for permanent residence.

(b) The Assistant Attorney General in charge of the Criminal Division is authorized to exercise the power and authority vested in the Attorney General by section 316(g) of the Immigration and Nationality Act, 8 U.S.C. 1427(g), with respect to the naturalization of certain foreign intelligence sources.

Dated: June 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87–14859 Filed 6–30–87; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 8

[A.G. Order No. 1197–87]

Delegation of Forfeiture Authority and Technical Amendment

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order revises 28 CFR 8.1 to add the Money Laundering Control Act of 1986 to the listed statutes for which the Federal Bureau of Investigation has administrative forfeiture authority and amends 28 CFR 8.8(b) to increase the cap on the bond from $2,500 to $5,000 to contest an administrative forfeiture. Both of these amendments are made to reflect recent changes in the law.

EFFECTIVE DATE: June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Brad Cates, Director, Asset Forfeiture Office, Criminal Division, United States Department of Justice, Washington, DC 20530; (202) 272–6426.

SUPPLEMENTARY INFORMATION: This order implements two statutory requirements in the Anti-Drug Abuse Act of 1986. Pub. L. 99–570. First, it adds the Money Laundering Control Act, Pub. L. 99–570, sec. 1351–1367, to the list of statutes pursuant to which the Federal Bureau of Investigation seizes property for forfeiture.

Second, the Anti-Drug Abuse Act of 1986 amended 19 U.S.C. 1608 to raise the cap on the bond to be posted to contest administrative forfeiture actions from $2,500 to $5,000. Pub. L. 99–570, section 1862. The administrative forfeiture regulations of Part 8, which refer to the Tariff Act (19 U.S.C. 1602, *et seq.*), must be amended to reflect this change in the cap on the bond.

It has been determined that this is an integral management matter not requiring consultation with the Office of Management and Budget under E.O. 12291. Moreover, this order will have no impact upon small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

List of Subjects in 28 CFR Part 8

Authority delegations (Government agencies), Seizures and forfeitures.

Part 8—[AMENDED]

By virtue of the authority vested in me by 28 U.S.C. 509, 510, 5 U.S.C. 301, and 18 U.S.C. 981(d), Part 8 of Chapter I of Title 28 of the Code of Federal Regulations is revised as follows:

1. The authority citation for Part 8 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510.

§ 8.1 [Amended]

2. Section 8.1 is amended by adding the following language at the end of the sentence:

; Anti-Drug Abuse Act of 1986, Pub. L. 99–570, sec. 1351–1367 (1986) (codified at 18 U.S.C. 981, commonly referred to as Money Laundering Control Act of 1986).

§ 8.8 [Amended]

3. Section 8.8.(b) is amended by removing "$2,500" and adding in its place, "$5,000".

Dated: June 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87–14860 Filed 6–30–87; 8:45 am]

BILLING CODE 4410–01–M

Justice Management Division

28 CFR Part 11

[Order No. 1201–87]

Federal Claims Collection Retention of Private Counsel

AGENCY: Department of Justice.

ACTION: Final rule; Request for Comment.

SUMMARY: This order describes and delegates responsibilities for implementation of the Department of Justice program for debt collection through the retention of private counsel.

DATES: Effective date of the rule is August 31, 1987. Written comments concerning this final rule must be received on or before July 31, 1987.

ADDRESS: Written comments concerning this final rule should be sent to Robert C. Niffenegger, Office of the Comptroller, Jutice Management Division, Room 1121, 10th Street and Constitution Avenue, NW., Washington, DC 20530. The public may see the written comments in Room 1121, from 9:00 a.m. to 5:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Robert C. Niffenegger, Office of the Comptroller, Justice Management Division, Room 1121, 10th Street and Constitution Avenue, NW., Washington, DC 20530. Telephone (202) 663–5343. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Public Law No. 99–578 amended section 3718 of Title 31, United States Code, to authorize the Attorney General to contract with private counsel in pilot program districts to collect debts owed to the United States other than debts arising under the tax, social security or tariff laws. This rule delegates authority and responsibility for the implementation of that program to the Assistant Attorney General for Administration, describes responsibilities of United States Attorneys in the pilot program districts and directs that contracts with private counsel be established in accordance with Federal law, with every effort to encourage maximum competition in the bidding process.

The regulation contains the first subpart of Part 11, which the Department anticipates will eventually contain other rules concerning debt collection.

This regulation is exempt from the requirements of Executive Order No. 12291 as a regulation related to agency organization and management. The regulation is similarly not subject to the notice and comment requirements of 5 U.S.C. 553, and is accordingly exempt from the Regulatory Flexibility Act, 5 U.S.C. 601–612 (Supp. 1986). The Department has decided to publish it in final with a request for comments nonetheless, in an effort to encourage maximum public participation in this program.

List of Subject in 28 CFR Part 11

Authority delegations (government agencies); government procurement; claims.

By virtue of the authority vested in me as Attorney General by 31 U.S.C. 3718 and 28 U.S.C. 301, 509 and 510, Title 28 of the Code of Federal Regulations is amended by adding a new Part 11 to read as follows:

PART 11—DEBT COLLECTION

Subpart A—Retention of Private Counsel for Debt Collection

Sec.
11.1 Delegation of authority.
11.2 Pilot program.
11.3 Compliance with existing laws.

Authority: 28 U.S.C. 301, 509, 510, 31 U.S.C. 3718, as amended by Pub. L. 99–578.

Subpart A—Retention of Private Counsel for Debt Collection

§ 11.1 Delegation of authority.

The Assistant Attorney General for Administration shall exercise the full authority of the Attorney General to develop and administer the Department of Justice pilot program for debt collection by private counsel. This authority shall include, but is not limited to, the authority to set policies and procedures for the program, and to enter into contracts for the retention of private counsel. The Assistant Attorney General for Adminstration can in turn delegate authority regarding debt collection to subordinate officials as appropriate. Existing delegations of authority with respect to settlement determinations on disputed claims shall remain in force. See generally, 28 CFR 0,160 *et seq.*

§11.2 Pilot program.

The Assistant Attorney General for Administration, in consultation with the Executive Office for United States Attorneys, shall designate the districts that will participate in the pilot program. United States Attorneys in the districts chosen for the pilot program, shall direct the full cooperation and assistance of their respective offices in implementing the program. Among other things, the United States Attorneys shall designate an Assistant United States Attorney to serve as the Contracting Officer's Technical Representative (COTR) on the contracts with private debt collection lawyers in their respective districts. The COTRs will be responsible for assisting the contracting officer by supervising the work of the private counsel in their respective districts and providing necessary approvals with respect to the initiation or settlement of lawsuits or similar matters.

§ 11.3 Compliance with existing laws.

The procurement of the services of private attorneys for debt collection shall be accomplished in accordance with the competitive procurement procedures mandated by Federal law, and set forth in the Federal Property and Administrative Services Act of 1949, 41 U.S.C. 251 *et seq.* Best efforts shall be made to encourage extensive participation by law firms owned and controlled by socially and economically disadvantaged individuals in the competition for award of these contracts in the pilot districts. Such efforts shall include, at minimum, publication of the requirement for these services in the Commerce Business Daily and in a selection of pertinent legal publications likely to reach socially and economically disadvantaged firms, as well as sending written notice of the requirements to bar associations that have a significant socially and economically disadvantaged membership in the pilot districts. These special recruitment efforts will not authorize or permit preferential consideration to any bidders in selection for award of these contracts. The Department's Office of Small and Disadvantaged Business Utilization shall also make its resources available to assist in encouraging broad participation in this competition.

Dated: June 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87–14857 Filed 6–30–87; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 42

[Order Number: 1204–87]

Nondiscrimination in Federally Assisted Programs

AGENCY: Department of Justice.

ACTION: Final rule; Appendix A revisions.

SUMMARY: The Department of Justice (DOJ) revises the Appendix A both to its Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973 nondiscrimination regulations. The Appendix A's list the Federal financial assistance programs administered by DOJ that, when a recipient receives such assistance for any of its programs or activities, gives rise to coverage of those programs or activities under these regulations. Actual operation of a program depends upon a Congressional appropriation and Departmental funding priorities.

The revisions update non-substantive material. They are made pursuant to DOJ's coordination regulation, which requires at 28 CFR 42.403(d) that supplementary appendices in civil rights regulations listing the Federal financial assistance programs to which the regulations apply shall be kept up-to-date. The revision clarify that failure to list a DOJ financial assistance program in the Appendix A does not mean that it is exempt from coverage under title VI or section 504 if these statutes otherwise apply.

Because the scope of coverage of financial assistance programs under title VI and section 504 is viewed as substantially the same, the Appendix A to Subpart C of 28 CFR Part 42 (DOJ's title VI regulation) and the Appendix A to Subpart G of 28 CFR Part 42 (DOJ's section 504 regulation) have been made consistent with each other. Redundancy is eliminated by publishing a single full text Appendix A under Subpart C and by including a cross-reference to this appendix under Subpart G.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Stewart B. Oneglia, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice, Washington, DC 20530; Telephone (202) 724–2222 (Voice) or (202) 724–7678 (TDD).

Approved: June 19, 1987.

Arnold I. Burns,

Acting Attorney General.

PART 42—[AMENDED]

1. The authority citation for Part 42, Subpart C, is revised to read as follows:

Authority: 42 U.S.C. 2000d–2000d–4; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

2. Appendix A to Part 42, Subpart C, is revised to read as follows:

Appendix A to Subpart C—Federal Financial Assistance Administered By The Department of Justice To Which This Subpart Applies.

Note.—Failure to list a type of Federal assistance in Appendix A shall not mean, if Title VI is otherwise applicable, that a program is not covered.

1. Assistance provided by the Office of Justice Programs (OJP), the Bureau of Justice Assistance (BJA), the National Institute of Justice (NIJ), the Bureau of Justice Statistics (BJS), and the Office of Juvenile Justice and Delinquency Prevention (OJJDP), including block, formula, and discretionary grants, victim compensation payments, and victim assistance grants (Title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701–3796, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–

415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473); the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601–5751, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–509, and Pub. L. 98–473); the Victims of Crime Act of 1984, 42 U.S.C. 10601–10604, (Pub. L. 98–473)).

2. Assistance provided by the Bureau of Prisons (BOP) including technical assistance to State and local governments for improvement of correctional systems; training of law enforcement personnel, and assistance to legal services programs (18 U.S.C. 4042).

3. Assistance provided by the National Institute of Corrections (NIC) including training, grants, and technical assistance to State and local governments, public and private agencies, educational institutions, organizations and individuals, in the area of corrections (18 U.S.C. 4351–4353).

4. Assistance provided by the Drug Enforcement Administration (DEA) including training, joint task forces, information sharing agreements, cooperative agreements, and logistical support, primarily to State and local government agencies (21 U.S.C. 871–886).

5. Assistance provided by the Community Relations Service (CRS) in the form of discretionary grants to public and private agencies under the Cuban-Haitian Entrant Program (Title V of the Refugee Education Assistance Act of 1980, Pub. L. 96–422).

6. Assistance provided by the U.S. Parole Commission in the form of workshops and training programs for State and local agencies and public and private organizations (18 U.S.C. 4204).

7. Assistance provided by the Federal Bureau of Investigation (FBI) including field training, training through its National Academy, National Crime Information Center, and laboratory facilities, primarily to State and local criminal justice agencies (Omnibus Crime Control and Safe Streets Act of 1968, as amended 42 U.S.C. 3701–3796).

8. Assistance provided by the Immigration and Naturalization Service (INS) including training and services primarily to State and local governments under the Alien Status Verification Index (ASVI); and citizenship textbooks and training primarily to schools and public and private service agencies (8 U.S.C. 1360, 8 U.S.C. 1457).

9. Assistance provided by the United States Marshals Service through its Cooperative Agreement Program for improvement of State and local correctional facilities (Pub. L. 99–180, 99 Stat. 1142).

10. Assistance provided by the Attorney General through the Equitable Transfer of Forfeited Property Program (Equitable Sharing) primarily to State and local law enforcement agencies (21 U.S.C. 881(e)).

11. Assistance provided by the Department of Justice participating agencies that conduct specialized training through the National Center for State and Local Law Enforcement Training, a component of the Federal Law Enforcement Training Center (FLETC), Glenco, Georgia (Pursuant to Memorandum Agreement with the Department of Treasury).

3. The authority citation for Part 42, Subpart G, is revised to read as follows:

Authority: 29 U.S.C. 794; 29 U.S.C. 706; E.O. 12250, 45 FR 72995, 3 CFR 1980 Comp. p. 298.

4. Appendix A to Part 42, Subpart G, is revised to read as follows:

Appendix A to Subpart G—Federal Financial Assistance Administered by the Department of Justice to Which This Subpart Applies

Note.—Failure to list a type of Federal assistance in Appendix A shall not mean, if section 504 is otherwise applicable, that a program is not covered.

Editorial Note.—For the text of Appendix A to Subpart G, see Appendix A to Subpart C of this Part.

[FR Doc. 87–14858 Filed 6–30–87; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 218

Providing Information and Claiming Rewards Under the Federal Oil and Gas Royalty Management Act

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Minerals Management Service (MMS) is adopting a final regulation covering receipt of information from informants and claims for rewards. This final rule implements section 113 of the Federal Oil and Gas Royalty Management Act of 1982 which authorizes the Secretary of the Interior to pay any person, with certain exceptions, an amount equal to not more than 10 percent of each recovered royalty or other payment owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf, recovered as a result of information provided by such person.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch, Minerals Management Service, P.O. Box 25165, MS 628, Building 85, Denver Federal Center, Denver, Colorado 80225. Telephone: (303) 231–3432, (FTS) 326–3432.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Marvin D. Shaver, Minerals Management Service, Lakewood, Colorado.

I. Summary of Rule Adopted

On January 14, 1987, MMS published a notice of proposed rulemaking in the **Federal Register** [52 FR 1471], to add a regulation at 30 CFR 218.30, to provide for the receipt of information from informants and for informants to claim rewards under section 113 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1723. However, because section 113 of the FOGRMA applies only to oil and gas, MMS has decided to publish the final rule under Subpart B—Oil and Gas, General, rather than under Subpart A—General Provisions, of 30 CFR Part 218. Therefore, the final rule is published at 30 CFR 218.57, as opposed to 30 CFR 218.30. The rule being adopted at 30 CFR 218.57 is substantially the same as the proposed rule at 30 CFR 218.30. Therefore, much of the discussion in the preamble to the proposed rule applies to the final rule. Based on comments received from the public on the proposed rule, certain changes were made to the final rule. These changes are discussed below in section II, Comments Received on Proposed Rule.

The provisions of 30 CFR 218.57 provide for the receipt of information from informants and for informants to claim rewards where amounts representing royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf are recovered as the result of information provided. The adopted regulation provides for the payment of a reward only for information that would not have been discovered during the normal course of an audit or investigation. Also, the value of the information furnished in relation to the facts developed by the investigation will be taken into account in determining whether a reward should be paid and, if so, the amount thereof. The information must be voluntarily given and upon the informant's own initiative to qualify for a reward. The Director, MMS, will determine whether a reward will be paid and, if so, the amount thereof.

II. Comments Received on Proposed Rule

The proposed rulemaking provided for a 60-day public comment period which ended March 16, 1987. Three comments were received during that time period and are addressed in this section. The text of the adopted regulation has been

changed to reflect comments, as appropriate.

One commenter suggested that § 218.30(c)(5), adopted as § 218.57(c)(4), be clarified to avoid possible misinterpretation. The MMS agrees with the suggested language, which makes it clear that no reward will be paid until any monies discovered to be owed as a result of an informant's information is collected by MMS and no longer subject to dispute by the payor. This section prevents MMS from paying a reward only to find later that the monies are determined, on appeal, not to be owed.

Two commenters contended that section 113 of FOGRMA applies only to Federal onshore and offshore lands and that Indian lands are specifically not included. The MMS agrees that the statute is limited to Federal lands. Indian lands were included in the proposed rule since MMS did not want to discourage informants from providing information relative to Indian lands. Of course, since FOGRMA does not expressly provide for rewards for information regarding Indian leases, ultimate payment of any reward would have been contingent on appropriate legislative action. However, MMS has decided to limit this regulation to Federal lands and has made necessary changes in the adopted rule to exclude information provided relative to Indian leases from the reward provisions.

One commenter opposed the proposed language of § 218.30(b)(1), adopted as § 218.57(b)(1), which would extend the informant reward program to Federal, State, or Indian tribal officers or employees, unless the information was obtained in the course of official duties. The commenter pointed out that the FOGRMA specifically provides that such persons are excluded from participation in the reward system in all instances, not just when the information is obtained in the course of official duties. The MMS agrees and has revised the definition of an eligible participant in the adopted rule accordingly.

One commenter stated that the final rule should make very clear that any rewards must be paid from Government funds with no cost to the lessee. The MMS considers the statement in proposed paragraph § 218.30(a)(1), adopted as § 218.57(a)(1), that ". . . funds must be appropriated before payment of any reward . . ." sufficient to indicate that rewards are to be paid from Government funds and not by the lessee. As stated in the preamble of the proposed rule, section 306 of the FOGRMA authorizes the appropriation of such sums as may be necessary to carry out the provisions of the FOGRMA, including the payment of rewards under section 113.

A commenter disagreed with the determination by the Department of the Interior that there will be no significant effect upon a substantial number of small entities. In the commenter's opinion, there are many small lessees on Federal lands which may find it necessary to defend themselves against unfounded royalty claims. The MMS disagrees on the basis that there have been relatively few inquiries to MMS concerning potential rewards. In addition, MMS has established criteria in the adopted rule whereby the amount of any reward payment is subject to the value of the information furnished. Also, MMS will review any information furnished to determine if it is worthy of initiating an investigation. These procedures should minimize the number of unfounded claims that would be made and investigated by MMS.

III. Procedural Matters

Executive Order 12291 and The Regulatory Flexibility Act

The final rulemaking establishes procedures to implement section 113 of the FOGRMA and does not result in any change in existing rules, therefore, the Department of the Interior has determined that this rule is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act.

Paperwork Reduction Act of 1980

The information collection requirement contained in § 218.57(b)(3) of the adopted rule has been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 et seq. and assigned OMB Clearance Number 1010–0076.

National Environmental Policy Act of 1969

The Department of the Interior has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required under the National Environmental Policy Act of 1969 [42 U.S.C. 4332 (2)(C)].

List of Subjects in 30 CFR Part 218

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Oil and gas exploration, Public lands-mineral resources.

Dated: June 3, 1987.

J. Steven Griles,

Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, Title 30, Subchapter A of the Code of Federal Regulations, is amended as set forth below:

Part 218—[AMENDED]

1. The authority citation for Part 218 is revised to read as follows:

Authority: 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 218.57 is added to Subpart B of Part 218 to read as follows:

218.57 Providing Information and Claiming Rewards.

(a) *General.* (1) If a person has any information that could lead to the recovery of royalty or other payments owed to the United States with respect to any oil and gas lease on Federal lands or the Outer Continental Shelf, such information may be provided to the Minerals Management Service (MMS) in accordance with this paragraph. The MMS is authorized, under the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1723, to pay a reward for information with respect to Federal oil and gas leases. Funds must be appropriated before payment of any reward. Criteria and procedures covering claims for and payment of rewards are provided in paragraphs (b), (c), and (d) of this section.

(2) If a person has any information he or she believes would be valuable to MMS, that person ("informant") should submit the information in writing, in the form of a letter, mailed or delivered in person to the Director, Minerals Management Service, Department of the Interior, 18th and C Street, NW., Washington, DC 20240, or to the Director's designated representative. Although written communications are preferred, oral information will be accepted.

(3) The informant should provide all data he or she has with respect to royalty or other payments owed. The information provided should include: identification of the alleged debtor; the source of the informant's knowledge of royalties or other payments owed; the date, if known, of the indebtedness; and any other information that could be used to establish indebtedness. All information received by MMS from persons providing information will be

considered "highly confidential" and will not be disclosed to any individual except on a "need to know" basis in the performance of official duties.

(b) *Claim For Reward.* (1) Any informant who provides information that could lead to the recovery of royalty or other payments may file a claim for reward unless the person is an officer or employee of the United States, an officer or employee of a State or Indian tribe acting pursuant to a cooperative agreement or delegation under the FOGRMA, or any person acting pursuant to a contract authorized by the FOGRMA.

(2) A claim for reward is not acceptable if filed on behalf of a claimant by his or her agent under power of attorney. However, an agent may provide MMS with information for an unidentified informant, to be evaluated and used by MMS as it deems appropriate. The informant's identity ultimately must be disclosed if the informant intends to file a claim for reward so that MMS can report the reward as taxable income to the Internal Revenue Service. An executor, administrator, or other legal representative of a deceased informant may file a claim on behalf of such deceased informant if, prior to his or her death, the informant was eligible to file a claim under this section. The representative must attach to the claim evidence of authority to file it.

(3) To file a claim for reward the informant must:

(i) Notify the Director, MMS, or the person to whom the information was reported, that he/she is claiming a reward.

(ii) Request an "Application for Reward for Original Information" (Form MMS–4280). This form provides for information to enable MMS to determine and pay rewards, to control reward applications, and to report a claimant's reward as taxable income to the Internal Revenue Service.

(iii) File a claim for reward by completing Form MMS–4280, sign it with his or her true name, and mail or deliver it in person to the Director or to the Director's designated representative. If the informant provided the information in person, the claim should include the name and title of the person to whom the information was reported and the date that it was reported.

(4) If the informant used an identity other than his or true name when the information was originally reported, the person should attach proof to the claim that he or she is the person who gave the information. The MMS does not disclose the identity of its informants to unauthorized persons.

(c) *Basis for Rejection of Claims.* No reward will be paid to a claimant:

(1) Where the information originally furnished was deemed unworthy of initiating an investigation, but at some later date the records of the lessee are examined without reference to the information furnished. The claim will be rejected on the basis that the information did not cause the investigation nor did it, in itself, result in any recovery.

(2) For information that would have been discovered during the normal course of an audit or investigation.

(3) Unelss the informant's true identity is disclosed.

(4) Until after all of the royalties, penalties, or other payments discovered to be owed as a result of information provided are collected and no longer subject to dispute.

(5) Unless funds are appropriated for the payment of rewards.

(d) *Basis for Allowance of Claims.* (1) The value of the information furnished in relation to the facts developed by the investigation will be taken into account in determining whether a reward shall be paid and, if so, the amount thereof. Information must be voluntarily given and upon the informant's own initiative to warrant the allowance of a reward. Information secured by representatives of MMS from witnesses and others in the course of their investigative activities does not constitute a basis for reward.

(2) In determing whether a reward will be allowed and, if so, the amount thereof, consideration will be given to any corresponding adjustment(s) which will result in potential savings to the lessee for other leases owned by the lessee or an affiliate of the lessee. An example of such an adjustment is a reduction in royalty payment on a different lease as the result of a revised allocation under a unitization or communitization agreement or from an offshore pipeline system. Rewards otherwise allowable will be reduced or rejected by reason of such offsetting adjustments.

(3) If several claims filed by one informant are considered in one recommendation, the reward, if any, may be allowed on one claim and the others may be closed by reference.

(4) Where an informant has provided information and filed a claim for reward with respect to royalty reports of one lessee for several leases, no reward will be granted with respect to an individual lease which has been examined until examination of all leases involved has been completed. Because the possibility exists that adjustments made to the reports for the open leases may result in offsetting adjustments, no reward will be allowed until the overall results of the information are evaluated.

(e) *Amount and Payment of Reward.* (1) The Director, MMS will determine whether a reward will be paid and, if so, the amount thereof. In making this decision, the information provided will be evaluated in relation to the facts developed by the resulting investigation. Claims for reward will be paid in proportion to the value of information furnished voluntarily and on the informant's own initiative with respect to recovered royalties or other payments. The amount of reward will be determined as folows:

(i) For specific and responsible information that caused the investigation and resulted in recovery, the reward will be 10 percent of the first $75,000 recovered, 5 percent of the next $25,000, and 1 percent of any additional recovery. The total reward cannot exceed $100,000.

(ii) For information that caused the examination and was of value in determining royalty or other payments due, although not specific, and for information that was a direct factor in recovering royalty or other payments, the reward will be 5 percent of the first $75,000 recovered, 2½ percent of the next $25,000, and ½ percent of any additional recovery. The total reward cannot exceed $100,000.

(iii) For information that caused the investigation but was of no value in determining royalty or other payments due, the reward will be 1 percent of the first $75,000 recovered and ½ percent of any additional recovery. The total reward cannot exceed $100,000.

(2) Rewards will be paid only if moneys are appropriated for that purpose. Subject to appropriations, payments will be made as soon as possible after collection of the amounts owed by the lessee, and after those amounts no longer are subject to dispute by the payor. The reward payment to an informant will be net of Federal and State income tax in accordance with withholding guidelines of the Internal Revenue Service and the applicable State(s).

(3) A decision by the Director, MMS, either denying a reward or establishing the amount of any reward is a final departmental action and may not be appealed to the Interior Board of Land Appeals in accordance with the provisions of 30 CFR Part 290.

(Approved by the Office of Management and Budget under control number 1010–0076)

[FR Doc. 87–14854 Filed 6–30–87; 8:45 am]

BILLING CODE 4310–MR–M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1602, 1605, 1609, 1618, 1621, 1624, 1630, 1633, 1636, 1639, 1642, 1648, 1651, 1653, 1657, and 1698

Selective Service Regulations

AGENCY: Selective Service System.

ACTION: Final rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 et seq.) are revised to assure greater fairness and efficiency in administration in the processing of registrants.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel Selective Service System, Washington, DC 20435 Phone (202) 724–1167.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These regulations implement the Military Selective Service Act (50 U.S.C. App 451 et seq.).

Analysis of Comments

The proposed amendments to Selective Service Regulations were published in the **Federal Register** on March 20, 1987 (52 FR 8924) for public comment. Ten cards or letters of comment were received during the comment period which expired May 19, 1987. Only three of the cards or letters were from persons purporting to write in their personal capacity. None of the cards or letters of comment received was from a person who claimed to be or otherwise could be identified as a registrant of the Selective Service System. For convenience each letter or card will be referred to as a comment.

Many comments addressed matters beyond the scope of the proposed amendments to Selective Service Regulations. Many of such comments reflected disagreement with or proposals for change in the Military Selective Service Act. Consideration of possible amendments to the Military Selective Service Act is not currently being given. The proposed amendments to Selective Service Regulations are based on the assumption that if and when inductions are resumed that will occur without change in the Military Selective Service Act other than with respect to the date July 1, 1973 when general induction authority expired.

Several comments expressed approval or disapproval of various proposed regulations without including reasons for the opinions that were expressed. Those comments do not require analysis.

The concern reflected in many comments with respect to the time period for reporting for induction or for physical examination appears to be based upon the unrealistic assumption that a registrant's first acquaintance with the possibility that he might be required to do either one would come with his receipt of the appropriate order. When inductions are resumed every registrant—particularly those with low random sequence numbers—would be well acquainted with the possibility, indeed likelihood, that soon he would be receiving an order. Common sense suggests that he would be making preparation to respond to that order well in advance of its actual receipt at his home.

The expressed opposition to the revocation of the requirement that list of names and telephone numbers of persons who desire to advise registrants of their rights under the Selective Service law be posted in area offices appears to be based upon the desire to retain the free advertising for advisors which the posting requirement would provide. While there is no thought within the Selective Service System that the availability of such advice should be curtailed, it is equally clear that the System simply should not be in the business of advertising the services of those who desire to advise or assist registrants. Selective Service personnel will be available to provide information and assistance as registrants may desire or require when inductions are authorized. Persons who wish to make their services available to registrants with or without cost to the registrants are free to make their availability known to registrants by any lawful means.

Many comments expressed an ignorance of the fact that a registrant's receiving an exemption does not extend his liability for military service. The statutory extension of liability for military service applies only to registrants who receive deferments.

Comments which reflected an opposition to the creation of Class 4–A–A failed to appreciate that registrants who as aliens served in the military service of specified foreign government for the prescribed length of time are exempt from service in the Armed Forces of the United States. The creation of Class 4–A–A will facilitate the identification of such registrants so as to ensure that they will never be issued induction orders.

The procedures for the rescheduling of a registrant for a personal appearance before the local board will be the same for all registrants who request or are required to have such personal appearance. No convincing reason that this arrangement would operate unfairly with respect to any registrant or group of registrants was suggested by the comments.

Criticism of the proposal to restrict appeals of local board decisions on claims for administrative classifications to those decisions in which the local board was not unanimous reflects a failure of the writers to appreciate that the entitlement to an administrative classification is a matter of documentation. Thus, the issue is always whether the requisite document has been furnished to the Selective Service System. It is difficult to imagine a serious dispute on the issue with respect to classification of any given individual.

No convincing reason was suggested for the view that transportation should be furnished to overseas registrants to attend personal appearances when such transportation is not furnished to registrants within the United States.

The proposed regulations will become the final rule except that printing errors and awkward expressions have been corrected and § 1698.2 has been revised to include authority for a parent or guardian of a person who could request an advisory opinion but is unable to make such request would be permitted to make the request in his behalf.

Determinations

As required by Executive Order 12291, I have determined that these regulations are not "Major" rules and therefore do not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that these regulations do not have a significant economic impact on a substantial number of small entities.

Certificate

Whereas, on March 20, 1987, the Director of Selective Service published a Notice of Proposed Amendments of Selective Service Regulations at 52 FR 8924; and whereas such publication complied with the publication requirement of section 13(b) of the Military Selective Service Act (50 App. U.S.C. 463(b)) in that more than 30 days have elapsed subsequent to such publication during which period comments form the public (summarized above) have been received and considered; and I certify that I have

requested the view of officials named in section 2(a) of Executive Order 11623 and none of them has timely requested that the matter be referred to the President for decision.

Now therefore by virtue of the authority vested in me by the Military Selective Service Act, as amended [50 App. U.S.C. 451 et seq.] and Executive Order 11623 of October 12, 1971, the Selective Service Regulations constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations, are hereby amended, as stated below.

List of Subjects in 32 CFR Chapter XVI

Armed Forces—draft, Selective Service System.

Dated: June 12, 1987.

Wilfred L. Ebel,

Acting Director.

*The regulations are:**

PART 1602—DEFINITIONS

1. The authority citation for Part 1602 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

2. Section 1602.2 is revised to read:

§ 1602.2 Administrative classification.

A reclassification action relating to a registrant's claim for Class 1–C, 1–D–D, 1–D–E, 1–H, 1–O–S, 1–W, 3–A–S, 4–A–A, 4–A, 4–B, 4–C, 4–F, 4–G, 4–T, or 4–W. These classes shall be identified as administrative classes.

3. Section 1602.11 is revised to read:

§ 1602.11 District Appeal Board.

A district appeal board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1651 of this chapter.

4. Section 1602.14 is revised to read:

§ 1602.14 Local Board.

A local board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President after nomination by a Governor to act on cases of registrants in accord with the provisions of Part 1648 of this chapter.

5. Section 1602.15 is revised to read:

§ 1602.15 Local board of jurisdiction.

The local board of jurisdiction is the local board to which a registrant is assigned and which has authority, in accord with the provisions of this chapter, to determine his claim or to issue to him an order. "His local board" and "registrant's local board" refer to the local board of jurisdiction.

6. Section 1602.18 is revised to read:

§ 1602.18 National Appeal Board.

The National Appeal Board or a panel thereof of the Selective Service System is a group of not less than three civilian members appointed by the President to act on cases of registrants in accord with the provisions of Part 1653 of this chapter.

7. Section 1602.24 is revised to read:

§ 1602.24 Claim.

A "claim" is a request for postponement of induction or classification into a class other than 1–A.

8. Section 1602.25 is revised to read:

§ 1602.25 Director.

Director is the Director of Selective Service.

PART 1605—SELECTIVE SERVICE SYSTEM ORGANIZATION

9. The authority citation for Part 1605 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1605.51 [Amended]

10. Section 1605.51(b) is removed and reserved.

11. Section 1605.81(b) is revised to read:

§ 1605.81 Interpreters.

* * * * *

(b) The following oath shall be administered by a member of the board or a compensated employee of the System to an interpreter each time he or she interprets:

Do you swear (or affirm) that you will truly interpret in the matter now in hearing?

* * * * *

PART 1609—UNCOMPENSATED PERSONNEL

12. The authority citation for Part 1609 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

13. Section 1609.1 is revised to read:

§ 1609.1 Uncompensated positions.

Members of civilian review boards, local boards, and district appeal boards and all other persons volunteering their services to assist in the administration of the Selective Service Law shall be uncompensated. No person serving without compensation shall accept remuneration from any source for services rendered in connection with Selective Service matters.

PART 1618—NOTICE TO REGISTRANTS

14. The authority citation for part 1618 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1618.3 [Removed]

15. Section 1618.3 is removed.

PART 1621—DUTY OF REGISTRANTS

16. The authority citation for part 1621 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

17. Section 1621.1 is revised to read:

§ 1621.1 Reporting by registrants of their current status.

Until otherwise notified by the Director of Selective Service, it is the duty of every registrant who registered after July 1, 1980:

(a) To notify the System within 10 days of any change in the following items of information that he provided on his registration form: name, current mailing address and permanent residence address; and

(b) To submit to the classifying authority, all information concerning his status within 10 days after the date on which the classifying authority mails him a request therefor, or within such longer period as may be fixed by the classifying authority; and

(c) Who has a postponement of induction, or has been deferred or exempted from training and service, to notify the System immediately of any changes in facts or circumstances relating to the postponement, deferment or exemption; and

(d) Who has a postponement of examination, to notify the System immediately of any changes in facts or circumstances relating to the postponement.

PART 1624—INDUCTIONS

18. The authority citation for 1624 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

19. Section 1624.4 (b) and (c) are revised to read:

§ 1624.4 Selection and/or scheduling of registrants for induction.

* * * * *

* Editorial Note: For documents relating to this regulation, see regulations published in the Federal Register at 51 FR 17618, May 14, 1986, and Pub. L. 99–500.

(b) Registrants whose postponements have expired in the order of expiration.

(c) Registrants who previously have been ordered to report for induction and whose exemptions or deferments have expired, in the order of their random sequence number (RSN) established by random selection procedures in accord with § 1624.1

* * * * *

20. Section 1624.5(a) is revised to read:

§ 1624.5 Order to report for induction.

(a) Immediately upon determining which persons are to be ordered for induction, the Director of Selective Service shall issue to each person selected an Order to Report for Induction. The order will be sent to the current address most recently provided by the registrant to the Selective Service System. The date specified to report for induction shall be at least 10 days after the date on which the Order to Report for Induction is issued. The filing of a claim for reclassification in accord with § 1633.2 of this chapter delays the date the registrant is required to report for induction until not earlier than the tenth day after the claim is determined to have been abandoned or is finally determined is finally determined in accord with the provisions of this chapter. A claim is finally determined when the registrant does not have the right to appeal the last classification action with respect to the claim or he fails to exercise his right to appeal.

* * * * *

21. Section 1624.6, paragraphs (a) and (e) are removed and reserved; paragraphs (b) and (j) are revised to read:

§ 1624.6 Postponement of induction.

(a) [Reserved]

(b) In the case of the death of a member of the registrant's immediate family, extreme emergency involving a member of the registrant's immediate family, serious illness or injury of the registrant, or other emergency beyond the registrant's control, the Director, after the Order to Report for Induction has been issued, may postpone for a specific time the date when such registrant shall be required to report. The period of postponement shall not exceed 60 days from the date of the induction order. When necessary, the Director may grant one further postponement, but the total postponement shall not exceed 90 days from the reporting date on the induction order.

* * * * *

(e) [Reserved]

* * * * *

(j) The initial determination of claims for all postponements is made by area office compensated personnel. After a denial of a claim for a student postponement, the registrant may request the local board to consider the claim. Such registrant shall be afforded an opportunity to appeal before the board in accord with the procedures of §§ 1648.4 and 1648.5.

22. Section 1624.7 is revised to read:

§ 1624.7 Expiration of deferment or exemption.

The Director shall issue an Order to Report for Induction to a registrant who is liable for induction whenever his deferment or exemption expires.

23. Section 1624.10 is revised to read:

§ 1624.10 Order to report for examination.

(a) The Director of Selective Service may order any registrant in Class 1–A who has filed a claim for classification in a class other than Class 1–A or whose induction has been postponed, to report for an Armed Forces examination to determine acceptability for military service. The date specified to report for examination shall be at least 7 days after the date on which the Order to Report for Examination is issued. Such registrant will not be inducted until his claim for reclassification has been decided or abandoned.

(b) The reporting date for examination may be postponed for any reason a reporting date for induction may be postponed in accord with § 1624.6 (b), (d) or (f)(1).

(c) If a registrant fails to report for or complete an examination, the local board will determine that he has abandoned his claim.

(d) If a registrant is determined not acceptable for military service, he will be reclassified in Class 4–F.

(e) If a registrant is determined acceptable for military service, the processing of his claim will be completed.

PART 1630—CLASSIFICATION RULES

24. The authority citation for Part 1630 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

25. Section 1630.13 is revised to read:

§ 1630.13 Class 1–D–D: Deferment for certain members of a reserve component or student taking military training.

In Class 1–D–D shall be placed any registrant who:

(a)(1) Has been selected for enrollment or continuance in the Senior (entire college level) Army Reserve Officer's Training Corps, or the Air Force Reserve Officer's Training Corps, or the Naval Reserve Officer's Training Corps, or the Naval and Marine Corps officer candidate program of the Navy, or the platoon leader's class of the Marine Corps, or the officer procurement programs of the Coast Guard and the Coast Guard Reserve, or is appointed an ensign, U.S. Naval Reserve while undergoing professional training; and

(2) Has agreed in writing to accept a commission, if tendered, and to serve subject to order of the Secretary of the military department having jurisdiction over him (or the Secretary of Transportation with respect to the U.S. Coast Guard), not less than 2 years on active duty after receipt of a commission; and

(3) Has agreed to remain a member of a regular or reserve component until the eighth anniversary of his receipt of a commission. Such registrant shall remain eligible for Class 1–D–D until completion or termination of the course of instruction and so long thereafter as he continues in a reserve status upon being commissioned except during any period he is eligible for Class 1–C under the provision of § 1630.12; or

(b) Is a fully qualified and accepted aviation cadet applicant of the Army, Navy, or Air Force, who has signed an agreement of service and is within such numbers as have been designated by the Secretary of Defense. Such registrant shall be retained in Class 1–D–D during the period covered by such agreement but in no case in excess of four months; or

(c) Is other than a registrant referred to in paragraph (a) or (d) of this section who:

(1) Prior to the issuance of orders for him to report for induction; or

(2) Prior to the date scheduled for his induction and pursuant to a proclamation by the Governor of a State to the effect that the authorized strength of any unit of the National Guard of that State cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction; or

(3) Prior to the date scheduled for his induction and pursuant to a determination by the President that the strength of the Ready Reserve of the Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve, or Coast Guard Reserve cannot be maintained by the enlistment or appointment of persons who have not been issued orders to report for induction:

enlists or accepts an appointment before attaining the age of 26 years, in the Ready Reserve of any Reserve

component of the Armed Forces, the Army National Guard, or the Air National Guard. Such registrant shall remain eligible for Class 1–D–D so long as he serves satisfactorily as a member of an organized unit of such Ready Reserve or National Guard, or satisfactorily performs such other Ready Reserve service as may be prescribed by the Secretary of Defense, or serves satisfactorily as a member of the Ready Reserve of another reserve component, the Army National Guard, or the Air National Guard, as the case may be; or

(d) At any time has enlisted in the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air Force Reserve, or the Coast Guard Reserve and who thereafter has been commissioned therein upon graduation from an Officer's Candidate School of such Armed Force and has not has been ordered to active duty as a commissioned officer. Such registrant shall remain eligible for Class 1–D–D so long as he performs satisfactory service as a commissioned officer in an appropriate unit of the Ready Reserve, as determined under regulations prescribed by the Secretary of the department concerned; or

(e) Is serving satisfactorily as a member of a reserve component of the Armed Forces and is not eligible for Class 1–D–D under the provisions of any other paragraph of this section:

Provided: That, for the purpose of this paragraph, a member of a reserve component who is in the Standby Reserve or the Retired Reserve shall be deemed to be serving satisfactorily unless the Armed Forces of which he is a member informs the Selective Service System that he is not serving satisfactorily.

26. Section 1630.18 is revised to read:

§ 1630.18 Class 1–W: Conscientious objector ordered to perform alternative service.

In Class 1–W shall be placed any registrant who has been ordered to perform alternative service contributing to the mainenance of the national health, safety, or interest.

27. Section 1630.30 is revised to read:

§ 1630.30 Class 3–A: Registrant deferred because of hardship to dependents.

(a) In accord with Part 1642 of this chapter any registrant shall be classified in Class 3–A:

(1) Whose induction would result in extreme hardships to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grrandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) The classification of each registrant in Class 3–A will not be granted for a period longer than 365 days.

28. Section 1630.31 is revised to read:

§ 1630.31 Class 3–A–S: Registrant deferred because of hardship to dependents (Separated).

Any registrant who has been separated from active military service by reason of dependency or hardship shall be placed in Class 3-A-S unless his period of military service qualifies him for Class 4–A or 1–D–E. No registrant shall be retained in Class 3–A–S for more than six months.

29. Section 1630.40(a) introductory text is revised and (a)(4) is removed and reserved:

§ 1630.40 Class 4–A: Registrant who has completed military service.

(a) In Class 4–A shall be placed any registrant other than a registrant eligible for classification in Class 1–C, 1–D–D, or 1–D–E who is within any of the following categories:

* * * * *

(4) [Reserved]

* * * * *

30. Section 1630.44 is revised to read:

§ 1630.44 Class 4–F: Registrant not acceptable for military service.

In Class 4–F shall be placed any registrant who is found by the Secretary of Defense, under applicable physical, mental or administrative standards, to be not acceptable for service in the Armed Forces; except that no such registrant whose further examination or re-examination is determined by the Secretary of Defense to be justified shall be placed in Class 4–F until such further examination has been accomplished and such registrant continues to be found not acceptable for military service.

31. Section 1630.45, the section heading and paragraph (a) are revised to read as follows:

§ 1630.45 Class 4–G: Registrant exempted from service because of the death of his parent or sibling while serving in the Armed Forces or whose parent or sibling is in a captured or missing in action status.

* * * * *

(a) A surviving son or brother:

(1) Whose parent or sibling of the whole blood was killed in action or died in the line of duty while serving in the Armed Forces of the United States after December 31, 1959, or died subsequent to such date as a result of injuries received or disease incurred in the line of duty during such service; or

(2) Whose parent or sibling of the whole blood is in a captured or missing status as a result of such service in the Armed Forces during any period of time; or

* * * * *

32. Section 1630.48 is revised to read:

§ 1630.48 Class 4–A–A: Registrant who has performed military service for a foreign nation.

In Class 4–A–A shall be placed any registrant who, while an alien, has served on active duty for a period of not less than 12 months in the armed forces of a nation determined by the Department of State to be a nation with which the United States is associated in mutual defense activities and which grants exemptions from training and service in its armed forces to citizens of the United States who have served on active duty in the Armed Forces of the United States for a period of not less than 12 months; *Provided:* That all information which is submitted to the Selective Service System concerning the registrant's service in the armed forces of a foreign nation shall be written in the English language.

PART 1633—ADMINISTRATION OF CLASSIFICATION

33. The authority citation for Part 1633 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

34. Section 1633.1 (e) and (f) are revised to read as follows:

§ 1633.1 Classifying authority.

* * * * *

(e) A local board may also classify a registrant into Class 1–C, 1–D–D, 1–D–E, 1–O–S, 1–W, 3–A–S, 4–A, 4–A–A, 4–B, 4–C, 4–F, 4–G, 4–T or 4–W for which he is eligible upon request by the registrant for a review of a classification denial action under § 1633.1(f). No individual shall be classified into Class 4–F unless the Secretary of Defense has determined that he is unacceptable for military service.

(f) Compensated employees of an area office may in accord with § 1633.2 may classify a registrant into an administrative class for which he is eligible. No individual shall be classified into Class 4–F unless the Secretary of Defense has determined that he is unacceptable for military service.

35. Section 1633.2 is revised to read:

§ 1633.2 Claim for other than Class 1-A.

(a) Any registrant who has received an order to report for induction may, prior to the day he is scheduled to report, submit to the Selective Service System a claim that he is eligible to be classified into any class other than Class 1-A. The registrant may assert a claim that he is eligible for more than one class other than Class 1-A. The registrant cannot subsequently file a claim with respect to a class for which he was eligible prior to the day he was originally scheduled to report. Information and documentation in support of claims for reclassification and postponement of induction shall be filed in accordance with instructions from the Selective Service System.

(b) Any registrant who has received an order to report for induction that has not been canceled may, at any time before his induction, submit a claim that he is eligible to be classified into any class other than Class 1-A based upon events over which he has no control that occurred on or after the day he was originally scheduled to report for induction.

(c) (1) Claims will be filed with the area office supporting the local board of jurisdiction.

(2) Claims will be considered by the local board identified in paragraph (c)(1) or its supporting area office as prescribed in this part.

(d) The initial determination of claims for all administrative classifications are made by area office compensated personnel. After a denial of a claim for an administrative classification the registrant may request the local board to consider the claim.

(e) The initial determination of a judgmental classification is made by a local board.

(f) A registrant may request and shall be granted a personal appearance whenever a local or appeal board considers his claim for reclassification. Personal appearances will be held in accord with Parts 1648, 1651 and 1653 of this chapter.

(g) A registrant who has filed a claim for classification in Class 1-A-O or Class 1-O shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

(h) If granted, a deferment or exemption supersedes the original order to report for induction. When a deferment or exemption expires or ends, a new order to report for induction will be issued.

36. Section 1633.6 is revised to read:

§ 1633.6 Consideration of classes.

Claims of a registrant will be considered in inverse order of the listing of the classes below. When grounds are established to place a registrant in one or more of the classes listed in the following table, the registrant shall be classified in the lowest class for which he is determined to be eligible, with Class 1-A-O considered the highest class and Class 1-H considered the lowest class, according to the following table:

Class 1-A-O: Conscientious Objector Available for Noncombatant Military Service Only.

Class 1-O: Conscientious Objector to all Military Service.

Class 1-O-S: Conscientious Objector to all Military Service (Separated).

Class 2-D: Registrant Deferred Because of Study Preparing for the Ministry.

Class 3-A: Registrant Deferred Because of Hardship to Dependents.

Class 3-A-S: Registrant Deferred Because of Hardship to Dependents (Separated).

Class 4-D: Minister of Religion.

Class 1-D-D: Deferment for Certain Members of a Reserve Component or Student Taking Military Training.

Class 4-B: Official Deferred by Law.

Class 4-C: Alien or Dual National.

Class 4-G: Registrant Exempted From Service Because of the Death of his Parent or Sibling While Serving in the Armed Forces or Whose Parent or Sibling is in a Captured or Missing in Action Status.

Class 4-A: Registrant Who Has Completed Military Service.

Class 4-A-A: Registrant Who Has Performed Military Service For a Foreign Nation.

Class 4-W: Registrant Who Has Completed Alternative Service in Lieu of Induction.

Class 1-D-E: Exemption of Certain Members of a Reserve Component or Student Taking Military Training.

Class 1-C: Member of the Armed Forces of the United States, the National Oceanic and Atmospheric Administration, or the Public Health Service.

Class 1-W: Conscientious Objector Ordered to Perform Alternative Service in Lieu of Induction.

Class 4-T: Treaty Alien.

Class 4-F-: Registrant Not Acceptable for Military Service.

Class 1-H: Registrant Not Subject to Processing for Induction.

37. Section 1633.7(b) is revised to read as follows, and paragraph (c) is removed:

§ 1633.7 General principles of classification.

* * * * *

(b) The classifying authority in considering a registrant's claim for classification shall not discriminate for or against him because of his race, creed, color or ethnic background and shall not discriminate for or against him because of his membership or activity in any labor, political, religious, or other organization.

38. Section 1633.10 is revised to read:

§ 1633.10 Notification to registrant of classification action.

The Director will notify the registrant of any classification action.

39. Section 1633.11 is revised to read:

§ 1633.11 Assignment of registrant to a local board.

(a) A registrant is assigned to the local board that has jurisdiction over his permanent address that he last furnished the Selective Service System prior to the issuance of his induction order.

(b) The Director may change a registrant's assignment when he deems it necessary to assure the fair and equitable administration of the Selective Service Law.

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

40. The authority citation for Part 1636 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

41. Section 1636.3(a) is revised to read:

§ 1636.3 Basis for classification in Class 1-A-O.

(a) A registrant must be conscientiously opposed to participation in combatant training and service in the Armed Forces.

* * * * *

42. Section 1636.6, the section heading is revised to read:

§ 1636.6 Analysis of belief.

* * * * *

43. Section 1636.8(a)(3) is revised to read:

§ 1636.8 Considerations relevant to granting or denying a claim for classification as a conscientious objector.

(a) * * *

(3) The oral statements of the registrant's witnesses, if any, at his personal appearance(s) before the local board; and

* * * * *

PART 1639—CLASSIFICATION OF REGISTRANTS PREPARING FOR THE MINISTRY

44. The authority citation for Part 1639 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

45. Section 1639.3(a)(1) is revised to read:

§ 1639.3 Basis for classification in Class 2-D.

(a)* * *

(1) Who is satisfactorily pursuing a full-time course of instruction required for entrance into a recognized theological or divinity school in which he has been pre-enrolled or accepted for admission; or

* * * * *

46. Section 1639.6 the section heading is revised to read as follows:

§ 1639.6 Considerations relevant to granting or denying claims for Class 2-D.

* * * * *

Section 1639.7(c) is revised to read:

§ 1639.7 Types of decisions.

* * * * *

(c) The board may deny a claim for Class 2-D when the evidence fails to merit any of the criteria established in this section.

PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO OTHERS

48. The authority citation for Part 1642 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

49. Part 1642 heading is revised to read:

PART 1642—CLASSIFICATION OF REGISTRANTS DEFERRED BECAUSE OF HARDSHIP TO DEPENDENTS

50. Section 1642.3 is revised to read:

§ 1642.3 Basis for classification in Class 3-A.

(a) In Class 3-A shall be placed any registrant:

(1) Whose induction would result in extreme hardship to his wife when she alone is dependent upon him for support; or

(2) Whose deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support; or

(3) Whose deferment is advisable because his wife and child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support.

(b) In its consideration of a claim by a registrant for classification in Class 3-A, the board will first determine whether the registrant's wife, child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon the registrant for support. Support may be financial assistance, personal care or companionship. If financial assistance is the basis of support, the registrant's contribution must be a substantial portion of the necessities of the dependent. Under most circumstances 40 to 50% of the cost of the necessities may be considered substantial. If that determination is affirmative, the board will determine whether the registrant's induction would result in extreme hardship to his wife when she is the only dependent, or whether the registrant's deferment is advisable because his child(ren), parent(s), grandparent(s), brother(s), or sister(s) is dependent upon him for support, or because his wife and his child(ren), parent(s), grandparent(s), brother(s), or sister(s) are dependent upon him for support. A deferment is advisable whenever the registrant's induction would result in hardship to his dependents.

(c) The registrant's classification shall be determined on the basis of the written information in his file, oral statements, if made by the registrant at his personal appearance before a board, and oral statements, if made by the registrant's witnesses at his personal appearances.

51. Section 1642.4(a)(4) is revised to read as follows, and (b) is removed and reserved.

§ 1642.4 Ineligibility for Class 3-A.

(a) * * *

(4) There are other persons willing and able to assume the support of his dependents; or

* * * * *

52. Section 1642.5 is added to read as follows:

§ 1642.5 Impartiality.

(a) Boards shall consider all questions in a claim for classification in Class 3-A with equal consideration of race, creed, color, sex or ethnic background.

(b) Boards may not give precedence to one type of dependency hardship over another.

53. Section 1642.7(a) is revised to read as follows, and (c) is removed and reserved.

§ 1642.7 Types of decisions.

(a) A board may grant a classification into Class 3-A for such period of time it deems appropriate but in no event the period exceed one year.

* * * * *

(c) [Reserved]

* * * * *

PART 1648—CLASSIFICATION BY LOCAL BOARD

54. The authority citation for Part 1648 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

55. Section 1648.1 is revised to read:

§ 1648.1 Authority of local board.

A local board shall consider and determine all claims which it receives in accord with § 1633.2 or § 1648.6 of this chapter. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

§ 1648.2 [Removed]

56. Section 1648.2 is removed.

57. Section 1648.3 (a) and (c) are revised to read as follows:

§ 1648.3 Opportunity for personal appearance.

(a) A registrant who has filed a claim for classification in Class 1-A-O or Class 1-O shall be scheduled for a personal appearance in accord with § 1648.4 before his claim is considered.

* * * * *

(c) Any registrant who has filed a claim for classification in an administrative class and whose claim has been denied, shall be afforded an opportunity to appear before the board if he requests that the denial of such claim be reviewed by the board.

58. Section 1648.4(b) is revised to read:

§ 1648.4 Appointment for personal appearances.

* * * * *

(b) Should the registrant who has filed a claim for classification in Class 1-A-O or Class 1-O fail to appear at his scheduled personal appearance, the board will not consider his claim for classification in Class 1-A-O or Class 1-O. The board shall consider any written explanation of such failure that has been filed within 5 days (or extension thereof granted by the board) after such failure to appear. It the board determines that the registrant's failure to appear was for good cause it shall reschedule the registrant's personal appearance. If the board does not receive a timely written explanation of the registrant's failure to appear for his scheduled personal appearance or if the board determines that the registrant's failure to appear was not for good cause,

the registrant will be deemed to have abandoned his claim for Class 1–A–O or 1–O and will be notified that his claim will not be considered. The board will notify the registrant in writing of its action under this paragraph.

59. Section 1648.5 (a) and (i) are revised to read:

§ 1648.5 Procedures during personal appearance before the local board.

(a) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

(i) Proceedings before the local boards shall be open to the public only upon the request of or with the permission of the registrant. The board chairman may limit the number of persons attending the hearing in order to maintain order. If during the hearing the presence on nonparticipants in the proceeding becomes disruptive, the chairman may close the hearing.

60. Section 1648.6(a) is revised to read:

§ 1648.6 Registrants transferred for classification.

(a) Before a board of jurisdiction has undertaken the classification of a registrant, the file may, at his request, be transferred for classification to a local board nearer to his current address than is the local board of jurisdiction.

* * * * *

PART 1651—CLASSIFICATION BY DISTRICT APPEAL BOARD

61. The authority citation for Part 1651 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

62. Section 1651.1(b) is revised to read:

§ 1651.1 Who may appeal to a district appeal board.

* * * * *

(b) The registrant may appeal to a district appeal board the denial of his claim for a judgmental classification by the local board. The registrant may appeal to a district appeal board the denial of his claim for an administrative classification by the local board whenever its decisions is not unanimous.

63. Section 1651.4 (a), (j), (n)(3) and (r) are revised to read as follows:

§ 1651.4 Review by district appeal board.

(a) An appeal to the district appeal board is determined by the classification of the registrant in a class other than 1-A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

* * * * *

(j) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

(n) * * *

(3) Has abandoned his right to an opportunity to appear; or

* * * * *

(r) Proceedings before the appeal boards shall be open to the public only upon the request of or with the permission of the registrant. The board chairman may limit the number of persons attending the hearing in order to maintain order. If during the hearing the presence of non-participants in the proceedings becomes disruptive the chairman may close the hearing.

PART 1653—APPEAL TO THE PRESIDENT

64. The authority citation for Part 1653 continues to read:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

65. Section 1653.3 the section heading and paragraphs (a) and (k) are revised to read:

§ 1653.3 Review by the National Appeal Board.

(a) An appeal to the President is determined by the National Appeal Board by its classification of the registrant in a class other than 1-A or by its refusal to take such action. No action shall be taken by the board in the absence of a quorum of its prescribed membership.

* * * * *

(k) A quorum of the prescribed membership of a board shall be present during all personal appearances. Only those members of the board before whom the registrant appears shall classify him.

* * * * *

66. Part 1657 is revised to read:

PART 1657—OVERSEAS REGISTRANT PROCESSING

Secs.

Authority: Military Selective Service Act, 50 U.S.C. 451 *et seq.*; E.O. 11623.

§ 1657.1 Purpose; definition.

(a) The provisions of this part apply to the processing of overseas registrants, and, where applicable, they supersede inconsistent provisions in this chapter.

(b) An overseas registrant is a registrant whose bona fide current address most recently provided by him to the Selective Service System is outside the United States, its territories or possessions, Commonwealth of Puerto Rico, Canada and Mexico.

§ 1657.2 Local boards.

The Director shall establish local boards with jurisdiction to determine claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board, and designate or establish an area office to support it.

§ 1657.3 District appeal boards.

The Director shall establish district appeal boards with jurisdiction to determine appeals of claims of overseas registrants. Such boards shall consist of three or more members appointed by the President. The Director shall prescribe the geographic jurisdiction of each board.

§ 1657.4 Consideration of claims.

An overseas registrant's claim shall be determined by a local board (or its supporting area office) or appeal board as may be established in accord with this part or, upon the request of the registrant filed no later than the filing of his claim for reclassification, by the board having geographic jurisdiction over his permanent address within the United States last reported by him to the Selective Service System prior to issuance of his induction order.

§ 1657.5 Place of induction.

The Director may order an overseas registrant to any place in the world for induction.

§ 1657.6 Transportation.

(a) The Director shall furnish transportation for an overseas registrant from the place at which the registrant's order to report for induction was sent to the place he is required to report for induction. If such registrant is not inducted, the Director shall furnish him transportation from the place he reported for induction to the place to which his order to report for induction was sent.

(b) In the event the personal appearance before a local board or appeal board of an overseas registrant is required or permitted by regulation,

travel expenses incurred in personally appearing before the board shall be at the registrant's own expense.

67. Part 1698 is added to read:

PART 1698—ADVISORY OPINIONS

Secs.

Authority: Military Selective Service Act, 50 U.S.C. 451 *et seq.*; E.O. 11623.

§ 1698.1 Purpose.

The provisions of this part prescribe the procedures for requesting and processing requests for advisory opinions relative to a named individual's liability for registration under the Military Selective Service Act (MSSA), 50 U.S.C. App. 451 *et seq.*

§ 1698.2 Requests for advisory opinions.

(a) Any male born after December 31, 1959 who has attained 18 years of age may request an advisory opinion as to his liability to register under MSSA. A parent or guardian of such person who is unable to make a request for an advisory opinion may request an advisory opinion for him. Any Federal, state or municipal governmental agency may request an advisory opinion as to the liability of any male person born after December 31, 1959 who has attained 18 years of age to register under MSSA.

(b) Requests for advisory opinions shall be in writing and addressed to Director of Selective Service, ATTN: GCAO, Washington, DC 20435. With respect to the person concerning whom an advisory opinion is requested, the following should be furnished: full name, address, date of birth, Social Security Account Number, basis for the opinion that the registration requirement is inapplicable to him, and, if applicable, basis for his assertion that his failure to register ". . . was not a knowing and willful failure to register."

§ 1709.3 Requests for additional information.

(a) The Director may request additional appropriate information from the requester for an advisory opinion.

(b) The Director will forward a copy of the request by a Federal, state or municipal governmental agency for an advisory opinion to the person to whom the request pertains and invite his comments on it.

§ 1698.4 Confidentiality of advisory opinions and requests for advisory opinions.

Advisory opinions will be confidential except as provided in § 1698.6. Requests for advisory opinions will be confidential except as provided in § 1698.3.

§ 1698.5 Basis of advisory opinions.

Advisory opinions will be based on the request therefor, responses to requests for information, and matters of which the Director can take official notice.

§ 1698.6 Issuance of advisory opinions.

A copy of the advisory opinion will be furnished, without charge, to the requester therefor and to the individual to whom it pertains. A copy of an advisory opinion will be furnished, without charge, to any Federal, state, or municipal governmental agency upon request.

§ 1698.7 Reconsideration of advisory opinions.

Whenever the Director has reason to believe that there is substantial error in the information on which an advisory opinion is based, he may reconsider it and issue an appropriate revised opinion.

§ 1698.8 Effect of advisory opinion.

The Selective Service System will not take action with respect to any person concerning whom the Director has issued an advisory opinion insonsistent with that advisory opinion.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42050D; FRL-32263]

Certain Chlorinated Benzenes; Final Test Standards and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under section 4 of the Toxic Substances Control Act (TSCA), EPA is issuing a final Phase II rule that specifies test standards and reporting requirements for environmental effects testing of 1,2,3- and 1,2,4-trichlorobenzene (CAS Nos. 87-61-6 and 120-82-1, respectively). The chemical fate testing requirements in the final Phase I test rule have been satisfied and are hereby withdrawn.

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on July 15, 1987. This rule shall become effective on August 14, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 7, 1986 (51 FR 11728), EPA issued a final Phase I test rule under section 4(a) of TSCA to require manufactures and processors of certain chlorinated benzenes to test for chemical fate and environmental effects. Also contained in that **Federal Register** issue were proposed Phase II test standards and reporting requirements for the required testing (51 FR 11756, April 7, 1986). The Agency is now promulgating under 40 CFR 799.1053, the final Phase II rule for certain chlorinated benzenes specifying the test standards and reporting requirements for the environmental effects testing. The chemical fate testing requirements under the final Phase I rule have been satisfied and are hereby withdrawn.

I. Background

The Phase I final rule specified the following testing requirements for the chlorinated benzenes: (1) for 1,2- and 1,4-dichlorobenzene, chemical fate testing, specifically, soil adsorption coefficient tests; (2) for 1,2,4-trichlorobenzene, chemical fate testing (soil adsorption coefficient test) and environmental effects testing to include acute and chronic toxicity to mysid shrimp (*Mysidopis bahia*); (3) for 1,2,3-trichlorobenzene, environmental effects testing to include: 96-hour LC50 for the fathead minnow *(Prime-phales promelas)*, 96-hour EC50 for *Gammarus sp.*, acute toxicity to mysid shrimp and silversides *(Menidia menidia)*, and chronic toxicity to mysid shrimp if the mysid shrimp LC50 is <1ppm.

Sections 790.50 and 790.52 of Title 40 of the Code of Federal Regulations describe the typical test rule development process. In the case of the chlorinated benzenes chemical fate and environmental effects test rule, which was initiated under the two-phase process, EPA modified the process. The reasons for this change in the test rule process for the chlorinated benzenes were discussed in the test standards proposal (51 FR 11756; April 7, 1986). As a result, EPA proposed the relevant

TSCA test guidelines as the test standards, concurrent with the publication of the chlorinated benzenes final Phase I test rule. In addition, EPA proposed that the data from the required studies be submitted within certain time periods, these time periods serving as the data submission deadlines required by TSCA section 4(b)(1).

II. Proposed Phase II Test Rule

A. Test Standards

On April 7, 1986, the Agency proposed (51 FR 11756) that the chemical fate and environmental effects testing on the chlorinated benzenes be conducted in accordance with specific guidelines proposed for 40 CFR Parts 796, 797, and 798 in the **Federal Register** of September 27, 1985 (50 FR 39252) and modified as specified in the **Federal Register** of January 14, 1986 (51 FR 1522).

For the purpose of developing data on the acute toxicity of the 1,2,4- and 1,2,3-trichlorobenzene to aquatic invertebrates, EPA proposed that testing using flow-through systems and measured concentrations be conducted with mysid shrimp according to 40 CFR 797.1930, and additionally be conducted for 1,2,3-trichlorobenzene, with one species of *Gammarus sp.* according to 40 CFR 797.1310. To develop data on the chronic toxicity of these two substances to aquatic invertebrates, EPA proposed that testing, using flow-through systems, be conducted with the mysid shrimp according to 40 CFR 797.1950.

For the purpose of developing data on acute effects of 1,2,3-trichlorobenzene to aquatic vertebrates, the Agency proposed that testing be conducted with the fathead minnow (*Pimephales promelas*) and silversides (*Menidia menidia*) according to 40 CFR 797.1400.

Finally, EPA proposed that the soil adsorption coefficient tests be conducted according to 40 CFR 796.2750.

B. Reporting Requirements

EPA proposed that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) standards in 40 CFR Part 792.

The specific reporting requirements for each of the proposed test standards were as follows:

All studies would be completed and the final report submitted to the Agency within 1 year of the effective date of the final Phase II rule. The only exception to this requirement would be the chronic toxicity study on mysid shrimp with 1,2,3-trichlorobenzene which would be required to be completed and the final report submitted within 15 months of the effective date of the final Phase II rule. This schedule was to allow data on the acute study to be developed and evaluated before starting the chronic study.

III. Response to Public Comments

The proposed chemical fate and environmental effects test standards for the chlorinated benzenes included soil adsorption coefficient testing for 1,2- and 1,4-dichlorobenzene and 1,2,4-trichlorobenzene. The Chemical Manufacturers Association (CMA) has reported results (Ref. 4) of sediment adsorption coefficient tests with 1,2-dichlorobenzene and 1,2,4-trichlorobenzene. The Agency has reviewed the study and believes the data are reliable and can be used to estimate the extend of adsorption of these substances onto soil and sediment. For 1,4-dichlorobenzene, the Agency used a measured log K_{ow} value and a predictive model to reliably estimate the log K_{oc} (Ref. 5) These data allow EPA to reasonably predict the soil adsorption coefficients of 1,2- and 1,4-dichlorobenzene and 1,2,4-trichlorobenzene. Therefore, the Agency is eliminating the soil adsorption testing requirements for the chlorinated benzenes.

EPA received no other comments from industry or other members of the public regarding the use of the proposed TSCA test guidelines as the test standards for the proposed chemical fate or environmental effects test standards for the chlorobenzenes or the proposed schedules for the required testing. However, the Agency has received, from industry representatives, letters of intent to sponsor the required environmental effects testing (Refs. 1 and 2).

IV. Final Phase II Test Rule

A. Test Standards

The TSCA test guidelines cited in the proposed Phase II test standards rule, with the exception of the chemical fate guidelines which have been deleted from this final test standard, shall be the test standards for the required environmental effects testing of 1,2,3- and 1,2,4-trichlorobenzene in 40 CFR 799.1053. The test guideline for the *Gammarus sp.* acute toxicity test, proposed as 40 CFR 797.1310 (51 FR 490, January 6, 1986) and now promulgated here as 40 CFR 795.120, shall be the test standard for the required *Gammarus sp.* testing for 1,2,3-trichlorobenzene. The Agency believes that all testing must be conducted in accordance with these test standards in order to ensure that the results are reliable and adequate.

The revisions to 40 CFR Parts 796, 797, and 798, issued in the **Federal Register** May 20, 1987 (52 FR 19056), for tests included in this Phase II rule are adopted as the test standards for the environmental effects testing of the chlorinated benzenes. EPA has responded to comments concerning these guideline revisions in the record for that rulemaking (Ref. 3).

B. Reporting Requirements

Under 40 CFR 799.10, the Agency requires that all data developed under this rule be developed and retained in accordance with the TSCA Good Laboratory Practice (GLP) standards (40 CFR Part 792).

Test sponsors are required to submit individual study plans at least 45 days prior to the initiation of each study in accordance with 40 CFR Part 79050.

The Agency is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. On the basis of its experience with environmental effects testing, EPA is adopting the schedule that was proposed on April 7, 1986 (51 FR 11756) for the submission of final test reports in this final Phase II rule.

The Agency has revised the reporting requirement for the submission of interim progress reports for testing under section 4 of TSCA. Accordingly, the Agency is now requiring only 6-month interim progress reports on all studies for the chlorinated benzenes as opposed to the quarterly reporting schedule contained in the proposed test standard rule.

TSCA section 14(b) governs Agency disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, the Agency will publish a notice of receipt in the **Federal Register** as required by section 4(d).

C. Conditional Exemptions Granted

The final rule for test rule development and exemption procedures (49 FR 39774; October 10, 1984) indicates that, when certain conditions are met, applicants for exemption will be notified by certified mail or in the final Phase II test rule that they have received conditional exemptions from test rule requirements for a given substance. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that

one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if any test sponsor has not complied with the test rule.

Since sponsors have indicated to EPA by letters of intent (Refs. 1 and 2) their agreement to sponsor all of the environmental effects tests required for the chlorinated benzenes included in the final Phase I test rule according to the test standards and reporting requirements established in this final Phase II test rule for the chlorinated benzenes, the Agency is hereby granting conditional exemptions to all such applicants for all of the environmental effects testing required for the chlorinated benzenes in 40 CFR 799.1053.

D. Judicial Review

The promulgation date for the chlorinated benzenes chemical fate and environmental effects Phase I final rule was established as 1 p.m. eastern standard time on April 21, 1986 (51 FR 11728; April 7, 1986). To EPA's knowledge, there are no petitions for judicial review of that Phase I final rule. Accordingly, any petition for judicial review of this Phase II final rule will be limited to a review of the test standards and reporting requirements for the chlorinated benzenes established in this rule.

E. Other Provisions

Section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and a summary of the economic analysis are presented in the final Phase I rule for the chlorinated benzenes.

V. Rulemaking Record

A. Supporting Documentation

EPA has established a record for this rulemaking [docket number (OPTS–42050D]. This record includes basic information considered by the Agency in developing this final rule, and appropriate **Federal Register** notices, as described in the proposal published on April 7, 1986 (51 FR 11756).

B. References

(1) Chemical Manufacturers Association. Letter Indicating CMA Will Conduct Testing of Chlorobenzenes Required Under the Final Environmental Effects Test Rule (51 FR 11728). (June 20, 1986.)

(2) Chemical Manufacturers Association. Letter Indicating CMA Will Conduct Chronic Mysid Shrimp Test on 1,2,4-Trichlorobenzene; Omitted From June 20, 1986 Letter. (July 14, 1986.)

(3) USEPA. Revision of TSCA Test Guidelines (52 FR 19056; May 20, 1987).

(4) Chemical Manufacturers Association. Letter Reporting Study "Transfer Coefficients of Selected Sediment-Bound Organic Chemicals In A Model Aquatic System" and Request for Agency Review. (December 8, 1986.)

(5) Memorandum. Asa Leifer, Exposure Assessment Branch, Exposure Evaluation Division, to John Walker, Test Rules Development Branch, Existing Chemicals Assessments Division. An Evaluation of Sediment Sorption Data for 1,2-Dichlorobenzene and 1,2,4-Trichlorobenzene and the Ability to Predict the Sorption of Chlorobenzenes to Soil. (February 2, 1987.)

The record is open for inspection from 8 a.m. to 4 p.m., Monday through Friday except legal holidays, in Rm. NE G–004, 401 M St., SW., Washington, DC 20460.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of the chlorinated benzenes was discussed in the Phase I test rule.

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any comments received from OMB are included in the record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, (15 U.S.C. 601 *et seq.*, Pub. L. 96–354, September 19, 1980), EPA is certifying that this rule, will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There are not a significant number of small businesses manufacturing the chlorinated benzenes.

(2) Small processors are not expected to perform testing themselves, or to participate in the organization of the testing efforts.

(3) Small processors are unlikely to be affected by reimbursement requirements, and any testing costs passed on to small processors through price increases will be small.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. No public comments on these requirements were submitted to the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: June 17, 1987.

J.A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

Therefore, Chapter I of Title 40 CFR is amended as follows:

PART 795—[AMENDED]

1. In Part 795: a. The authority citation for Part 795 continues to read as follows:

Authority: 15 U.S.C. 2603.

b. By adding § 795.120 to Subpart C, to read as follows:

§ 795.120 Gammarid acute toxicity test.

(a) *Purpose.* This guideline is intended for use in developing data on the acute toxicity of chemical substances and mixtures subject to environmental effects test regulations under the Toxic Substances Control Act (TSCA) (Pub. L. 94–469, 90 Stat. 2003 (15 U.S.C. 2601 *et. seq.*)). This guideline describes a test to develop data on the acute toxicity of chemicals to gammarids. The United States Environmental Protection Agency (EPA) will use data from this test in assessing the hazard of a chemical to aquatic organisms.

(b) *Definitions.* The definitions in section 3 of TSCA and in Part 792 of this chapter, Good Laboratory Practice Standards, apply to this test guideline. The following definitions also apply to this guideline:

"Death" means the lack of reaction of a test organism to gentle prodding.

"Flow-through" means a continuous or an intermittent passage of test solution or dilution water through a test chamber or a holding or acclimation tank, with no recycling.

"LC50" means the median lethal concentration, i.e., that concentration of a chemical in air or water killing 50 percent of the test batch of organisms within a particular period of exposure (which shall be stated).

"Loading" means the ratio of the biomass of gammarids (grams, wet weight) to the volume (liters) of test solution in either a test chamber or passing through it in a 24-hour period.

"Solvent" means a substance (e.g., acetone) which is combined with the test substance to facilitate introduction

of the test substance into the dilution water.

"Static system" means a test chamber in which the test solution is not renewed during the period of the test.

(c) *Test procedures*—(1) *Summary of the test.* In preparation for the test, test chambers are filled with appropriate volumes of dilution water. If a flow-through test is performed, the flow of dilution water through each chamber is adjusted to the rate desired. In a static test, the test substance is introduced into each test chamber. In a flow-through test, the rate in which the test substance is added is adjusted to establish and maintain the desired concentration of test substance in each test chamber. The test is started by randomly introducing gammarids, which have been acclimated to the test conditions, into the test chambers. Gammarids in the test chambers are observed periodically during the test; the dead gammarids are removed and the findings recorded. Dissolved oxygen concentration, pH, temperature, and the concentration of test substance in test chambers are measured at specified intervals. Data collected during the test are used to develop concentration—response curves and LC50 values for the test substance.

(2) [Reserved].

(3) *Range-finding test.* (i) A range-finding test should be conducted to establish test substance concentrations to be used for the definitive test.

(ii) The gammarids shall be exposed to a wide-range of concentrations of the test substance (e.g., 1, 10, 100 mg/1, etc.), usually under static conditions.

(iii) A minimum of five gammarids should be exposed to each concentration of test substance for a period of 96 hours. The exposure period may be shortened if data suitable for determining concentrations in the definitive test can be obtained in less time. Nominal concentrations of the test substance may be acceptable.

(4) *Definitive test.* (i) The purpose of the definitive test is to determine the 24, 48, 72, and 96—hour LC50 values and the concentration-response curves.

(ii) A minimum of 20 gammarids per concentration shall be exposed to five or more concentrations of the test substance chosen in a geometric series in which the ratio is between 1.5 and 2.0 (e.g., 2, 4, 8, 16, 32, 64 mg/L). The range and number of concentrations to which the organisms are exposed shall be such that in 96 hours there is at least one concentration resulting in mortality greater than 50 and less than 100 percent, and one concentration causing greater than zero and less than 50 percent mortality. An equal number of gammarids may be placed in two or more replicate test chambers. Solvents should be avoided, if possible. If solvents have to be used, a solvent control, as well as a dilution control, shall be tested at the highest solvent concentration employed in the treatments. The solvent should not be toxic or have an effect on the toxicity of the test substance. The concentration of solvent should not exceed 0.1 ml/L.

(iii) Every test shall include a concurrent control using gammarids from the same population or culture container. The control group shall be exposed to the same dilution water, conditions and procedures, except that none of the test substance shall be is added to the chamber.

(iv) The dissolved oxygen concentration, temperature and pH of the test solution shall be measured at the beginning of the test and at 24, 48, 72 and 96 hours in at least one replicate each of the control, and the highest, lowest and middle test concentrations.

(v) The test duration is 96 hours. The test is unacceptable if more than 10 percent of the control organisms die during the test.

(vi) In addition to death, any abnormal behavior or appearance shall also be reported.

(vii) Gammarids shall be randomly assigned to the test chambers. Test chambers shall be positioned within the testing area in a random manner or in a way in which appropriate statistical analyses can be used to determine whether there is any variation due to placement.

(viii) Gammarids shall be introduced into the test chambers after the test substance has been added.

(ix) Observations on compound solubility shall be recorded. The investigator should record the appearance of surface slicks, precipitates, or material adhering to the sides of the test chambers.

(5) [Reserved].

(6) *Analytical measurements*—(i) *Water quality analysis.* The hardness, acidity, alkalinity, pH, conductivity, TOC or COD, and particulate matter of the dilution water shall be measured at the beginning of each definitive test.

(ii) *Collection of samples for measurement of test substance.* Each sample to be analyzed for the test substance concentrations shall be taken at a location midway between the top, bottom, and sides of the test chamber. Samples should not include any surface scum or material dislodged from the bottom or sides. Samples shall be analyzed immediately or handled and stored in a manner which minimizes loss of test substance through microbial degradation, photogradation, chemical reaction, volatilization, or sorption.

(iii) *Measurement of test substance.* (A) For static tests, the concentration of dissolved test substance (that which passes through a 0.45 micron filter) shall be measured in each test chamber at least at the beginning (zero-hour, before gammarids are added) and at the end of the test. During flow-through tests, the concentration of dissolved test substance shall be measured in each test chamber at least at 0 and 96-hours and in at least one chamber whenever a malfunction of the test substance delivery system is observed.

(B) The analytical methods used to measure the amount of test substance in a sample shall be validated before beginning the test. This involves adding a known amount of the test substance to each of three water samples taken from a chamber containing dilution water and the same number of gammarids as are placed in each test chamber. The nominal concentrations of the test substance in these samples should span the concentration range to be used in the test. Validation of the analytical method should be performed on at least two separate days prior to starting the test.

(C) An analytical method is not acceptable if likely degradation products of the test substance give positive or negative interferences, unless it is shown that such degradation products are not present in the test chambers during the test.

(D) Among replicate test chambers, the measured concentrations shall not vary more than 20 percent. The measured concentration of the test substance in any chamber during the test shall not vary more than plus or minus 30 percent from the measured concentration in that chamber at zero time.

(E) The mean measured concentration of dissolved test substance shall be used to calculate all LC50's and to plot all concentration-response curves.

(d) *Test conditions for definitive test*—(1) *Test species*—(i) *Selection.* (A) The amphipods, *Gammarus fasciatus, G. pseudolimnaeus,* and *G. lacustris* are specified for this test.

(B) Gammarids can be cultured in the laboratory or collected from natural sources. If collected, they must be held in the laboratory for at least 14 days prior to testing.

(C) Gammarids used in a particular test shall be of similar age and/or size and from the same source or culture population.

(ii) *Acclimation.* If the holding water is from the same source as the dilution water, acclimation to the dilution water

shall be done gradually over a 48-hour period. The gammarids then shall be held at least 7 days in the dilution water prior to testing. Any changes in water temperature should not exceed 2 °C per day. Gammarids should be held for a minimum of 7 days at the test temperature prior to testing.

(iii) *Care and handling.* Gammarids shall be cultured in dilution water under similar environmental conditions to those used in the test. Organisms shall be handled as little as possible. When handling is necessary it should be done as gently, carefully and quickly as possible. During culturing and acclimation, gammarids shall be observed carefully for signs of stress and mortality. Dead and abnormal individuals shall be discarded.

(iv) *Feeding.* The organisms shall not be fed during testing. During culturing, holding, and acclimation, a sufficient quantity of deciduous leaves, such as maple, aspen, or birch, should be placed in the culture and holding containers to cover the bottom with several layers. These leaves should be aged for at least 30 days in a flow-through system before putting them in aquaria. As these leaves are eaten, more aged leaves should be added. Pelleted fish food may also be added.

(2) *Facilities*—(i) *Apparatus*—(A) Facilities needed to perform this test include:

(*1*) Containers for culturing, acclimating and testing gammarids;

(*2*) Containers for aging leaves under flow-through conditions;

(*3*) A mechanism for controlling and maintaining the water temperature during the culturing, acclimation and test periods;

(*4*) Apparatus for straining particulate matter, removing gas bubbles, or aerating the dilution water, as necessary; and

(*5*) An apparatus for providing a 16-hour light and 8-hour dark photoperiod with a 15- to 30-minute transition period.

(B) Facilities should be well ventilated and free of fumes and disturbances that may affect the test organism.

(C) Test chambers shall be covered loosely to reduce the loss of test solution or dilution water due to evaporation and to minimize the entry of dust or other particulates into the solutions.

(ii) *Construction materials.* Construction materials and equipment that may contact the stock solution, test solution or dilution water should not contain substances that can be leached or dissolved into aqueous solutions in quantities that can alter the test results. Materials and equipment that contact stock or test solutions should be chosen to minimize sorption of test substances. Glass, stainless steel, and perfluorocarbon plastic should be used wherever possible. Concrete, fiberglass, or plastic (e.g., PVC) may be used for holding tanks, acclimation tanks, and water supply systems, but they should be aged prior to use. Rubber, coopper, brass, galvanized metal, and lead should not come in contact with the dilution water, stock solution, or test solution.

(iii) *Test substance delivery system.* In flow-through tests, diluters, metering pump systems or other suitable devices shall be used to deliver the test substance to the test chambers. The system used shall be calibrated before each test. The general operation of the test substance delivery system shall be checked twice daily during a test. The 24-hour flow shall be equal to at least five times the volume of the test chamber. During a test, the flow rates should not vary more than 10 percent from one test chamber to another.

(iv) *Test chambers.* Test chambers shall contain at least one liter of test solution. Test chambers made of stainless steel should be welded, not soldered. Test chambers made of glass should be glued using clear silicone adhesive. As little adhesive as possible should be left exposed in the interior of the chamber. A substrate, such as a bent piece of stainless steel screen, should be placed on the bottom of each test chamber to provide cover for the gammarids.

(v) *Cleaning of test system.* Test substance delivery systems and test chambers should be cleaned before each test. They should be washed with detergent and then rinsed sequentially with clean water, pesticide-free acetone, clean water, and 5-percent nitric acid, followed by two or more changes of dilution water.

(vi) *Dilution water.* (A) Clean surface or ground water, reconstituted water, or dechlorinated tap water is acceptable as dilution water if gammarids will survive in it for the duration of the culturing, acclimating, and testing periods without showing signs of strees. The quality of the dilution water should be constant enough that the month-to-month variation in hardness, acidity, alkalinity, conductivity, TOC or COD, and particulate matter is not more than 10 percent. The pH should be constant within 0.4 unit. In addition, the dilution water should meet the following specifications measured at least twice a year:

Substance	Maximum concentration
Particulate matter	20 mg/L
Total organic carbon (TOC) or	2 mg/L
chemical oxygen demand (COD)	5 mg/L
Boron, fluoride	100 ug/L
Un-ionized ammonia	1 ug/L
Aluminum, arsenic, chromium, cobalt, copper, iron, lead, nickel, zinc.	1 ug/L
Residual chlorine	3 ug/L
Cadmium, mercury, silver	100 ng/L
Total organophosphorus pesticides	50 ng/L
Total organochlorine pesticides plus:	
polychlorinated biphenyls (PCBs) or	50 ng/L
organic chlorine	25 ng/L

(B) If the dilution water is from a ground or surface water source, conductivity and total organic carbon (TOC) or chemical oxygen demand (COD) shall be measured. Reconstituted water can be made by adding specific amounts of reagent-grade chemicals to deionized or distilled water. Glass-distilled or carbon-filtered deionized water with a conductivity less than 1 micromho/cm is acceptable as the diluent for making reconstituted water.

(C) The concentration of dissolved oxygen in the dilution water shall be between 90 and 100 percent saturation. If necessary, the dilution water can be aerated before the addition of the test substance. All reconstituted water should be aerated before use.

(3) *Test parameters.* Environmental parameters during the test shall be maintained as specified below:

(i) Water temperature of 18 ± 1°C.

(ii) Dissolved oxygen concentration between 60 and 105 percent saturation.

(iii) The number of gammarids placed in a test chamber shall not be so great as to affect the results of the test. Ten gammarids per liter is the recommended level of loading for the static test. Loading requirements for the flow-through test will vary depending on the flow rate of dilution water. The loading should not cause the dissolved oxygen concentration to fall below the recommended levels.

(iv) Photoperiod of 16 hours light and 8 hours darkness.

(e) *Reporting.* The sponsor shall submit to the EPA all data developed by the test that are suggestive or predictive of toxicity. In addition, the test report shall include, but not necessarily be limited to, the following information:

(1) Name and address of the facility performing the study and the dates on which the study was initiated and completed.

(2) Objectives and procedures stated in the approved protocol, including any changes in the original protocol.

(3) Statistical methods employed for analyzing the data.

(4) The test substance identified by name, Chemical Abstracts (CAS) number or code number, source, lot or batch number, strength, purity, and composition, or other appropriate characteristics.

(5) Stability of the test substance under the conditions of the test.

(6) A description of the methods used, including:

(i) The source of the dilution water, its chemical characteristics (e.g., hardness, pH, etc.) and a description of any pretreatment.

(ii) A description of the test substance delivery system, test chambers, the depth and volume of solution in the chamber, the way the test was begun (e.g., test substance addition), the loading, the lighting, and the flow rate.

(iii) Frequency and methods of measurements and observations.

(7) The scientific name, weight, length, source, and history of the organisms used, and the acclimation procedures and food used.

(8) The concentrations tested, the number of gammarids and replicates per test concentration. The reported results should include:

(i) The results of dissolved oxygen, pH and temperature measurements.

(ii) If solvents are used, the name and source of the solvent, the nominal concentration of the test substance in the stock solution, the highest solvent concentration in the test solution and a description of the solubility determination in water and solvents.

(iii) The measured concentration of the test substance in each test chamber just before the start of the test and at all subsequent sampling periods.

(iv) In each test chamber at each observation period, the number of dead and live test organisms, the percentage of organisms that died, and the number of test organisms that showed any abnormal effects in each test chamber at each observation period.

(v) The 48, 72 and 96-hour LC50's and their 95 percent confidence limits. When sufficient data have been generated, the 24-hour LC50 value also. These calculations should be made using the mean measured test substance concentrations.

(vi) The observed no-effect concentration (the highest concentration tested at which there were no mortalities or abnormal behavioral or physiological effects), if any.

(vii) Methods and data for all chemical analyses of water quality and test substance concentrations, including method validations and reagent blanks.

(9) A description of all circumstances that may have affected the quality or integrity of the data.

(10) The names of the sponsor, study director, principal investigator, names of other scientists or professionals, and the names of all supervisory personnel involved in the study.

(11) A description of the transformations, calculations, or operations performed on the data, a summary and analysis of the data, and a statement of the conclusions drawn from the analysis. Results of the analysis of data should include the calculated LC50 value, 95 percent confidence limits, slope of the transformed concentration-response line, and the results of a goodness-of-fit test (e.g., chi-square test).

(12) The signed and dated reports prepared by any individual scientist or other professional involved in the study, including each person who, at the request or direction of the testing facility or sponsor, conducted an analysis or evaluation of data or specimens from the study after data generation was completed.

(13) The locations where all specimens, raw data, and the final report are stored.

(14) The statement prepared and signed by the quality assurance unit.

PART 799—[AMENDED]

2. In Part 799:

a. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

§ 799.1052 [Amended]

b. Section 799.1052 is amended by removing and reserving paragraph (c).

c. Section 799.1053 is amended by removing and reserving paragraph (c) and adding paragraphs (d)(1)(ii) and (iii), (2)(ii) and (iii), (3)(ii) and (iii), (4)(ii) and (iii), and (5)(ii) and (iii), and (g) to read as follows:

§ 799.1053 Trichlorobenzenes.

* * * * *

(c) [Reserved]

(d) * * *

(1) * * *

(ii) *Test standards.* The marine invertebrate (mysid shrimp, *Mysidopis bahia*) acute toxicity testing for 1,2,3- and 1,2,4-trichlorobenzenes shall be conducted in accordance with § 797.1930 of this chapter.

(iii) *Reporting requirements.* (A) The acute toxicity tests on marine invertebrates shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II test rule.

(B) An interim progress report shall be submitted to the Agency within 6 months after the effective date of the final Phase II rule.

(2) * * *

(ii) *Test standard.* The marine fish (silverside minnow, *Menida menidia*) acute toxicity test shall be conducted for 1,2,3-trichlorobenzene in accordance with § 797.1400 of this chapter.

(iii) *Reporting requirements.* (A) The marine fish (silversides minnow, *Menidia menidia*) acute toxicity test shall be completed and the final results submitted within 1 year of the effective date of the Phase II final test rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(3) * * *

(ii) *Test standard.* The freshwater fish (fathead minnow, *Pimephales promelas*) acute toxicity test shall be conducted for 1,2,3-trichlorobenzene in accordance with § 797.1400 of this chapter.

(iii) *Reporting requirements.* (A) The freshwater fish acute toxicity study shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II test rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(4) * * *

(ii) *Test standard.* The freshwater invertebrate (Gammarus sp.) acute toxicity test shall be conducted for 1,2,3-trichlorobenzene in accordance with § 795.120 of this chapter.

(iii) *Reporting requirements.* (A) The freshwater invertebrate acute toxicity test shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II rule.

(B) An interim progress report shall be submitted to EPA 6 months after the effective date of the final Phase II rule.

(5) * * *

(ii) *Test standards.* The mysid shrimp (*Mysidopis bahia*) chronic toxicity test shall be conducted for 1,2,4-trichlorobenzene in accordance with § 797.1950 of this chapter. Testing shall also be conducted according to § 797.1950 for 1,2,3-trichlorobenzene should the results of testing required by (d)(1)(ii) of this section yield an acute LC50 for this chemical substance of less than 1 ppm.

(iii) *Reporting requirements.* (A) The mysid shrimp chronic toxicity test for 1,2,4-trichlorobenzene shall be completed and the final report submitted to EPA within 1 year of the effective date of the final Phase II rule. The mysid shrimp chronic toxicity test for 1,2,3-trichlorobenzene, (required if the LC50 is less than 1 ppm), shall be completed and final report submitted to EPA within 15

months of the effective date of the final Phase II rule.

(B) Progress reports shall be submitted to EPA at 6-month intervals, beginning 6 months after of the effective date of the final Phase II rule and until the final report is submitted to EPA.

(g) *Effective date.* The effective date of the final Phase II rule is August 14, 1987.

[FR Doc. 87-44912 Filed 6-30-87; 8:45 am]

BILLING CODE 6560-50-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

Misconduct in Science and Engineering Research

AGENCY: National Science Foundation.

ACTION: Final regulations.

SUMMARY: The National Science Foundation is issuing final regulations establishing what the NSF and its staff should do if they learn of possible misconduct under an NSF award and if they find actual misconduct under an NSF award. Responsibilities of grantee institutions, which play a major role in handling misconduct cases, are also set out.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen or Arthur J. Kusinski, National Science Foundation, Office of the General Counsel, Room 501, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357-9435. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Although the National Science Foundation (NSF) has received relatively few allegations of misconduct or fraud occurring in NSF-supported research, or in proposals for the support of research, allegations of this nature are serious enough to warrant establishing formal policies and procedures to handle them. The Foundation believes that grantee institutions bear primary responsibility for preventing and detecting misconduct, and the proposed regulations set forth the role that institutions are expected to perform. The regulations, in establishing policies and internal NSF procedures for handling allegations of misconduct, provide for interim administrative actions, final actions and appeals procedures. The regulations are similar to misconduct policies and procedures of the Public Health Service (PHS) of the Department of Health and Human Services.

Analysis of Comments

NSF published proposed regulations in the **Federal Register** on February 10, 1987 (52 FR 4158) for public comment. The comment period ended on April 13, 1987. NSF received eleven letters, including one letter submitted after April 13 for which an extension had been granted. Three letters were from professional associations, seven letters from universities, and one from an individual who was familiar with the issues by virtue of his work experience.

Most letters were supportive of the proposed regulations in general. In particular, several applauded the recognition that the primary responsibility for preventing, detecting, investigating, and correcting misconduct lies with the awardee university.

Specific comments were on the following:

1. *Definition of "Misconduct".* Several letters commented that the definition of "misconduct" in § 689.1(a) was too vague or over-reaching.

Response: The definition is based on the Public Health Service (PHS) proposed definition and was adopted for the purposes of uniformity. The NSF definition does go somewhat further to reach misconduct in proposing research to the Foundation and "failure to meet other material legal requirements governing research".

NSF added the first clause so that the regulations covered misconduct at every stage of the research process, from proposals through publication of final results. PHS's failure to provide for misconduct at the proposal stage was deemed anomalous or an oversight. The addition makes it clear that plagiarism, fabrication, or other misconduct associated with proposing research for NSF funding is misconduct.

NSF added the final clause to reach serious misconduct not covered by § 689.1(a)(1) and (2). Since a violation of a specific legal requirement governing research must be shown to support a finding of misconduct under 689.1(a)(3), that provision is not impermissibly vague. Moreover, a breach of legal requirements governing research must be material to constitute misconduct.

2. *Anonymity of an informant and protection of the accused.* Several letters were concerned that maintaining the anonymity of an informant under § 689.4(b) could lead to malicious, frivolous, or unsubstantiated allegations of misconduct. Other letters asserted that the regulations give insufficient protection to accused individuals and institutions. Several argued that an accused had a right, founded on traditional notions of due process, to confront his or her accusers.

Response: Confidentiality for informants under § 689.4(b) is not absolute. NSF has added confidentiality provisions for the subjects of inquiries and investigations as a result of the comments. In addition, several amendments have clarified the rights of subjects of inquiries and investigations.

An informant's name will be kept confidential only "to the extent possible." During the initial stages of an investigation, it may be essential to keep all sources of information confidential so that the subject of the investigation does not take actions designed to frustrate the investigative process. Moreover, maintaining the confidentiality of sources prevents retaliation against "whistle blowers" and others who may be working under the supervision of the subject of the investigation. Confidentiality may not, however, be possible or desirable throughout the entire course of the misconduct proceeding.

We recognize that someone formally accused of misconduct has a right to know fully the charges, the evidence supporting the charges, and the source of the allegations. For more serious forms of misconduct, which might require imposition of stringent sanctions, the full procedures of the debarment and suspension regulations are afforded the accused under § 689.1(e).

In most other cases the accusers will be the Government or the awardee institution and the charges will be based on evidence developed from an investigation and administrative proceeding that affords the accused due process both in procedure and substance. Where this would require that an individual informant or supplier of evidence be named, we expect that it will be done.

NSF will also afford the subjects of inquiries or investigations discrete and confidential treatment, to the extent practicable and allowed by law. This intent is already conveyed by § 689.4(a). For clarity, we have added the following sentence to § 689.4(b): "To the extent allowed by law, documents and files maintained by NSF during the course of an inquiry or investigation of misconduct will be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act."

Some commenters apparently believe that the rights of a subject of inquiry or investigation should be coextensive with those of an accused in a criminal

proceeding. While we cannot agree that a civil misconduct proceeding is the equivalent of a criminal prosecution, we realize how serious charges of misconduct are, and the important implications that a finding of misconduct may have for a career. Therefore, NSF has *added* the following clarification regarding the rights of subjects of misconduct proceedings *to § 689.2:*

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

3. *Use of qualifying words or phrases.* Several letters objected to the use of qualifying words or phrases in provisions which establish notification and other rights for the accused, such as "normally" in § 689.1(d), and "except in unusual circumstances" in § 689.8(c)(1). The fear was expressed that such qualifiers could be used to deprive an accused of fundamental rights of procedural due process.

Response: The procedural right of due process is inherently flexible. What procedural safeguards must be afforded depends on the circumstances of individual cases. The qualifying words, such as those cited above, are used to provide for those cases where a criminal investigation may be or is involved. Under such circumstances, a right to demand certain information could compromise the criminal proceedings of other law enforcement bodies.

Moreover, immediate NSF action, based on the court conviction of a researcher for criminal conduct under an NSF grant, requires little in the way of additional due process. The doctrines of *res judicata* and issue preclusion apply.

There is no intent to deprive an individual or institution of any due process rights, and where the Foundation can make information available, it will do so. To clarify NSF's intent in this regard, and to distinguish between situations where NSF is conducting the investigation rather than relying on the investigation of institutions of other agencies, *a technical amendment has been made to § 689.1(d). The amended section now reads:*

(d) Before NSF makes any final finding of misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating the same allegation of misconduct.

4. *Time limitations.* Two letters commented that the time limitations set out in § 689.3(c) may be too short.

Response: The time limitations were based on the PHS proposal and adopted for the sake of uniformity. We do not think, however, that extending the time limits, thus making the NSF and PHS regulations different in that respect, would cause any difficulties. *The regulations have been changed to increase the time in § 689.3(c) from 30 days and 120 days to 90 days and 180 days, respectively.*

5. *Requirement that university notify NSF of misconduct.* Two letters questioned the conditions of § 689.3(b) under which the university should notify NSF of its own inquiry into an allegation of misconduct, thereby deferring an independent inquiry or investigation by NSF. One commented that NSF should be notified of such an inquiry only when it is completed and a final report issued. The other suggested that NSF be notified only when a serious charge is made against a principal investigator/project director, and no others; there is substantive evidence of serious misconduct; and the evidence indicates that the misconduct would have an on-going material effect on the project in which NSF has a legitimate concern.

Response: We cannot accept the suggestion that NSF be notified only after an investigation has been completed and final action taken by the university. This would be a serious abrogation of our responsibility to protect Federal property and to oversee the proper administration of awards of public funds. The suggestion is unrealistic, too, because these matters often do become public before any final determinations are made.

The Foundation fully recognizes that not every minor complaint involving trivial matters made to a university need be reported to NSF. Institutional handling of allegations is divided into two phases: an inquiry phase and an investigatory phase. Only cases which proceed beyond the inquiry phase must be brought to NSF's attention. Section 689.3(b)(1) is intended to convey our belief that NSF should be notified only after the university determines, *following its own initial inquiry*, that the evidence is sufficient to support a formal investigation. If the evidence is otherwise, or if there is no evidence at all, then the matter may be closed without notification to NSF, assuming none of the conditions in § 689.3(b)(3) are present. These procedures assume that the university will have used its best judgment and discretion; we do not intend to substitute our judgment for that of the university's unless the evidence is clearly to the contrary.

6. *Interim Actions.* One letter expressed concern that since interim actions are not appealable, an institution was unprotected from unreasonable extensions of the effective period of the interim action. The commenter suggested a time limit which could be extended if the university or other investigational period were extended.

Response: Section 689.7(b) provides for periodic reviews of interim actions and their modification as warranted. This is a flexible procedure, and if a university (or any other interested party) believes that continuation of an interim action is unreasonable, it can request a review and modification or termination of the action. For clarity, *we have added a final sentence to § 689.7(b): "An interested party may request a review and modification of any interim action."*

7. *Integration of misconduct procedures with debarment and suspension procedures.* One commenter noted that based on his experience as a lawyer working in this area, if a debarment action is likely or anticipated, the regulations should be modified to permit the integration of the preliminary procedures under the misconduct regulations with the formal debarment proceedings under debarment regulations. Otherwise, the procedures of the misconduct regulations could unduly delay a debarment action.

Response: The suggestion is accepted. *Section 689.1(e) has been changed to add a new final sentence stating: "Nothing in these regulations shall preclude integrated and concurrent procedures under these regulations and the debarment and suspension regulations."*

8. *General vagueness of the regulations.* One commenter, comparing the proposed PHS policies and procedures with the NSF proposal, stated that the NSF regulations were "vague and open-ended, and therefore subject to several interpretations." The commenter suggested several sections which should be clarified.

Response: Several of the commenter's suggestions have already been discussed in the preceding analysis. We also should note that NSF deliberately streamlined the provisions of the PHS proposal. Reasonable men and women can disagree over what should remain and what may be left out. In our best judgment, the regulations as drafted are flexible, preserve the essential

requirements of due process, are understandable by the average, educated person who must use them, and are not so vague as to be constitutionally or legally flawed. Moreover, the more elaborate and detailed procedures for debarment and suspension are automatically invoked when serious sanctions might be invoked against an individual or institution.

9. *Conflict with human subjects and animal welfare regulations.* Two letters stated that procedures established under other authority for handling and reporting treatment of human subjects in research and for animal welfare were duplicative and perhaps contrary.

Response: We did not intend to override or contradict provisions of other regulations or policies, specifically the human subject and the animal welfare regulations or policies. The notification and other procedures set out in these regulations or policies will govern (see NSF Grant Policy Manual (77–47, as revised 4–15–83), paragraph 710). However, a finding of a substantive violation of those regulations or policies will be considered to be "misconduct" under these regulations and grounds for taking action under § 689.2.

Determinations.

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

I have determined that this regulation will not have a significant economic impact on a substantial number of small entities because it affects primarily the internal procedures of a Federal agency.

List of Subjects in 45 CFR Part 689

Misconduct, Debarment and suspension, Fraud.

Dated: June 24, 1987.
National Science Foundation.

Erich Bloch,

Director.

Accordingly, the National Science Foundation adds a new Part 689 of Title 45 of the Code of Federal Regulations as follows:

TITLE 45—CODE OF FEDERAL REGULATIONS—PUBLIC WELFARE

CHAPTER VI—NATIONAL SCIENCE FOUNDATION

PART 689—MISCONDUCT IN SCIENCE AND ENGINEERING RESEARCH

Sec.

Authority: Sec. 11(a) of the National Science Foundation Act of 1950, as amended (42 U.S.C. 1870(a)).

§ 689.1 General policies and responsibilities.

(a) "Misconduct" means (1) fabrication, falsification, plagiarism, or other serious deviation from accepted practices in proposing, carrying out, or reporting results from research; (2) material failure to comply with Federal requirements for protection of researchers, human subjects, or the public or for ensuring the welfare of laboratory animals; or (3) failure to meet other material legal requirements governing research.

(b) The NSF will take appropriate action against individuals or institutions upon a determination that misconduct has occurred under an NSF award. It may also take interim action during an investigation. Possible actions are described in section 689.2.

(c) NSF will find misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An "inquiry" consists of information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation. An "investigation" is a formal examination and evaluation of relevant facts to determine whether misconduct has taken place or, if misconduct has already been confirmed, to assess its extent and consequences or determine appropriate NSF action.

(d) Before NSF makes any final finding of misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account procedures already followed by other entities investigating the same allegation of misconduct.

(e) Debarment, suspension, or termination of an award for misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations. Nothing in these regulations shall preclude integrated and concurrent procedures under these regulations and the debarment and suspension regulations.

(f) The Division of Adult and Oversight (DAO) in the Office of Budget, Audit, and Control, oversees and coordinates NSF activities related to misconduct, conducts any NSF inquiries and investigations into suspected or alleged misconduct, and except where otherwise provided, speaks and acts for NSF with affected individuals and institutions. The Office of the General Counsel (OGC) advises DAO and represents NSF on any current or potential criminal prosecution, current or potential litigation, or significant legal questions that arise.

§ 689.2 Actions.

(a) Possible final actions listed below for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) *Group I Actions.* (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual, department, or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) *Group II Actions.* (i) Restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual, department, or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(3) *Group III Actions.* (i) Immediately suspend or terminate an active award under appropriate NSF regulations.

(ii) Debar or suspend an individual, department, or institution from participation in NSF programs for a specified period after further proceedings under applicable regulations.

(iii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(b) In deciding what actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) Whether it was deliberate or merely careless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it is relevant only to certain funding requests or awards or to all requests or awards involving an institution or individual found guilty of misconduct.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Totally or partially suspending eligibility for NSF awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending use of individuals as NSF reviewers, advisors, or consultants.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in those regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.3 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged misconduct;

(2) Conduct a subsequent investigation, if warranted; and

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities.

(b) If an institution wishes NSF to defer independent inquiry or investigation, NSF expects it to:

(1) Inform NSF immediately if an initial inquiry supports a formal investigation.

(2) Keep NSF informed during such an investigation.

(3) Notify NSF even before deciding to initiate an investigation or as required during an investigation (i) if the seriousness of apparent misconduct warrants; (ii) if immediate health hazards are involved; (iii) if NSF's resources, reputation, or other interests need protecting; (iv) if Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or (v) if the scientific community or the public should be informed.

(4) Provide NSF with the final report from any investigation.

(c) If an institution wishes NSF to defer independent inquiry or investigation, it should complete any inquiry and decide whether an investigation is warranted within 90 days. It should similarly complete any investigation and reach a disposition within 180 days. If completion of an inquiry or investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to misconduct, which should indicate when NSF must or should be notified.

§ 689.4 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform DAO or refer informants to DAO.

(b) To the extent possible the identity of informants who wish to remain anonymous will be kept confidential. To the extent allowed by law, documents and files maintained by NSF during the course of an inquiry or investigation of misconduct will be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(c) If alleged misconduct may involve a crime, DAO will promptly consult with OGC, which will determine whether any criminal investigation is already pending or projected. If not, OGC and DAO will determine whether the matter should be referred to the Department of Justice.

(d) Otherwise DAO may:

(1) Inform the awardee institution of the alleged misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency;

(3) At any time proceed with its own inquiry.

(e) If DAO proceeds with its own inquiry it will normally complete the inquiry no more than 60 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, DAO will decide whether a formal NSF investigation is warranted.

§ 689.5 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, DAO may defer any NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, DAO will ordinarily proceed with its own investigation.

(b) If DAO decides to initiate an NSF investigation, it must give prompt written notice to the individuals or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active considerationby these agencies or the NSF, OGC will advise DAO what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation *may* include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratories, laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies;

(6) Opportunity for the subject of the investigation to be heard; and

(7) Full adjudicatory hearings or other formal proceedings, as described in appropriate regulations.

(e) NSF may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) DAO will make every reasonable effort to complete an NSF investigation and to report within 120 days after initiating it. If DAO cannot report within 120 days, it should submit to the Deputy Director within 90 days an interim report and an estimated schedule for completion of the final report.

§ 689.6 Pending proposals and awards.

(a) Upon learning of alleged misconduct DAO will identify potentially implicated awards or proposals and, when appropriate, will ensure that program and DGC officials handling them are informed (subject to § 689.5(c)).

(b) Neither a suspicion or allegation of misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will *not* be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Assistant Director may, in consultation with DAO, either defer review or inform reviewers of the status of the matter.

§ 689.7 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.2(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged misconduct. Such an order will normally be issued on recommendation from DAO and in consultation with DGC, OGC, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) Such interim actions may be taken whenever information developed during an investigation indicates a need to do so. Any interim action will be reviewed periodically during an investigation and modified as warranted. An interested party may request a review and modification of any interim action.

(c) The Deputy Director will make and DAO will retain a record of interim actions taken and the reasons for taking them.

(d) Interim administrative actions are not final agency actions subject to appeal.

§ 689.8 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency DAO will assess the accuracy and completeness of the report and whether the investigating entity followed usual and reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct and the Deputy Director concurs,

(1) DAO will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct, (1) Except in unusual circumstances, the investigation report will be provided by DAO to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally thirty days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(2) Normally within 45 days after completing an NSF investigation or receiving the report from a satisfactory external investigation, DAO will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.2 lists possible final actions and considerations to be used in determining them.

(d) The Deputy Director will review the investigative report and DAO's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within thirty days after receiving DAO's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal.

§ 689.9 Appeals.

(a) In case of debarment, suspension, or termination of an award for misconduct, the appeals provided for in NSF regulations will be available. In all other cases, an affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Dirctor's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will inform the appellant of a final decision within 30 days after receiving the appeal. That decision will be the final administrative action of the Foundation. Findings from completed investigations may be shared with scientific review groups if the information bears directly on an investigator's scientific integrity or if necessary to provide an accurate account of relevant facts.

[FR Doc. 87-14863 Filed 6-30-87; 8:45 am]
BILLING CODE 7555-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-313; RM-5342]

Radio Broadcasting Services; Grand Marais, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allocates Channel 263 to Grand Marais, Minnesota, as that community's first broadcast service, in response to a petition filed by Timothy D. Martz. Supporting comments were filed by the petitioner. Concurrence of the Canadian government has been obtained for the allotment of Channel 263 at Grand Marais. With this action, this proceeding is terminated.

DATES: Effective August 10, 1987. The window period for filing applications will open on August 11, 1987, and close on September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-313, adopted March 27, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Minnesota is amended by adding Grand Marais, Channel 263.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-14917 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-377; RM-5470; RM-5666]

Radio Broadcasting Services; Manteo and Hatteras, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 256C2 for Channel 257A at Manteo, NC, and modifies the license of Station WVOD-FM to specify operation on the higher powered channel, at the request of the licensee, Orbit Communications, Inc. d/b/a Women in Technical Communications. The substitution of channels could enable expanded radio service to Manteo and its environs by Station WVOD-FM. Channel 256C2 can be allocated in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. At the request of Inez Calerno d/b/a Pamlico Sound Company, the Commission has allocated Channel 248C2 to hatteras, NC, as the community's first local FM service. Channel 248C2 can be allocated to Hatteras in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. With this action, this proceeding is terminated.

DATES: Effective August 10, 1987. The window period for filing applications for Channel 248C2 at Hatteras will open on August 11, 1987, and close on September 9, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-377, adopted May 18, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for North Carolina is amended by adding Hatteras, Channel 248C2, and removing Channel 257A and adding Channel 256C2 at Manteo.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-14918 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-435; RM-5516]

Radio Broadcasting Services; Morehead City, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document, at the request of Curtis Radio Group, Inc.; substitutes Channel 242C2 for Channel 240A at Morehead City, NC, and modifies its license for Station WRHT(FM) to specify the higher powered channel. Channel 242C2 can be allocated to Morehead City in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. As indicated in the *Notice of Proposed Rule Making*, Channel 240A is allocated to Morehead City-Beaufort, NC, although used at Morehead City. We are, therefore, amending the Table of Allotments to reflect the use of the channel at Morehead City by deleting it from Morehead City-Beaufort. With this action, this proceeding is terminated.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-435, adopted May 29, 1987, and released June 24, 1987. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for North Carolina is amended by removing Morehead City-Beaufort, Channel 240A, and adding Morehead City, Channel 242C2.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-14919 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-387; RM-5413]

Radio Broadcasting Services; Germantown, TN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298A to Germantown, Tennessee, as that community's second FM service, at the request of Heart of America Broadcasting. A site restriction of 5.2 kilometers (3.3 miles) southeast of the community is required. With this action, this proceeding is terminated.

DATES: Effective August 7, 1987. The window period for filing applications will open on August 10, 1987, and close on September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-387, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments in the entry for Germantown, Tennessee, Channel 298A is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-14920 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-304; RM-5318]

Radio Broadcasting Services; Wilmington, VT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 264A to Wilmington, Vermont, as that community's first FM service as requested by Robin Rothschild. A site restriction of 6 kilometers (3.8 miles) northwest of the community is required. Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective August 7, 1987. The window period for filing applications will open on August 10, 1987, and close on September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-304, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202(b) [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended to add Channel 264A to Wilmington, Vermont.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-14921 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-374; RM-5470, RM-5660]

Radio Broadcasting Services; Cashmere and Rock Island, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 266A to Cashmere, Washington and Channel 258A to Rock Island, Washington as requested by Robin P. Calhoun and Fine Arts Broadcasting, respectively. The allotments could provide a first FM service at both communities. Canadian government has concurred. With this action, this proceeding is terminated.

DATES: Effective August 7, 1987. The window period for filing applications will open on August 10, 1987, and close on September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-374, adopted May 29, 1987, and released June 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended by adding under Washington the entries of Cashmere, Channel 266A and Rock Island, Channel 258A.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-14922 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-291; RM-5288]

Radio Broadcasting Services; Spooner, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 292A to Spooner, Wisconsin, as that community's first FM service as requested by Indianhead Radio, Inc. Canadian concurrence has been obtained. With this action, this proceeding is terminated.

DATES: Effective August 7, 1987. The window period for filing applications will open on August 10, 1987, and close on September 8, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-291, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended to add Channel 292A to Spooner, Wisconsin.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-14923 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Part 235

Department of Defense Federal Acquisition Regulation Supplement; Cost Sharing

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Defense Acquisition Regulatory Council is revising the Defense Federal Acquisition Regulation Supplement to change section 235.003 regarding cost sharing in DoD contracts. The purpose of the change is to clarify existing coverage with respect to cost sharing policy.

EFFECTIVE DATE: June 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, (202) 697–7266.

SUPPLEMENTARY INFORMATION

A. Background

Original proposed revised coverage was published as a proposed rule on November 13, 1985 (50 FR 46796). Based on public comments received in response to that notice, the original proposed coverage has been revised to more prominently discourage the consideration of cost sharing arrangements in the case of educational institutions and nonprofit organizations while still allowing for their use when agreeable to the parties. Specific revisions are at 235.003 (b)(S–71)(iv) and (b)(S–72)(v).

B. Regulatory Flexibility Act

The Department of Defense certifies that the final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, because the rule merely clarifies existing coverage to comport with current DoD policy regarding cost sharing with educational institutions.

C. Paperwork Reduction Act

This rule does not contain any new information collection requirements which require OMB approval under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 235

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Adoption of Amendments

Therefore the DoD FAR Supplement is amended as set forth below.

1. The authority for 48 CFR Part 235 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 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.003 is amended by revising paragraphs (a) and (b) to read as follows:

235.003 Policy.

(a) *Use of Contracts.* Grants are authorized under 42 U.S.C. 1891 for basic research at educational institutions and other nonprofit organizations whose primary purpose is the conduct of scientific research. The policies and procedures for grants are prescribed by other Department of Defense Directives as implemented in Departmental procedures.

(b) *Cost Sharing.* This section provides guidelines for the use of cost sharing type contracts, as defined in FAR 16.303, for research and development type contracts (see FAR 35.003(b)).

(b)(S–70) *Scope.*

(i) These guidelines are applicable to research contracts.

(ii) These guidelines may be applied to development projects (i.e., projects for which the principal purpose is the production of, or design, testing or improvement of, products, materials, devices, systems or methods).

(b)(S–71) *Cost Participation by Contractors.* Contractor contribution to the cost of performing research should be considered unless it is concluded that cost sharing would not be appropriate for one of the following reasons:

(i) The particular research objective or scope of effort for the contract is specified by the Government rather than proposed by the contractor; this would usually include any formal Government request for proposals for a specific project;

(ii) The research effort has only minor relevance to the commercial activities of the contractor, and the organization is proposing to undertake the research primarily as a service to the Government; or

(iii) The contractor has few or no private sources of funds from which to make a cost contribution. Cost sharing should generally not be requested if cost sharing would mean that the Government would have to provide funds through some other means (such as fees) to enable the contractor to cost share. Those contractors predominantly engaged in research and development and having little or no production or other service activities may not be in a favorable position to make a cost contribution.

(b)(S–72) *Amount of Cost Sharing.* When cost sharing, the amount of cost participation by the contractor may vary in accordance with a number of factors related to the contractor's organization (profit or nonprofit) and the character of the research effort such as the following:

(i) The amount of cost participation by contractors should depend to a large extent on whether the research effort or results are likely to enhance the contractor's capability, expertise, or competitive position and the value of such enhancement to the contractor (but see subparagraph (v) below).

(ii) If the contractor will not acquire title or the right to use inventions, patents, or technical information resulting from the research project, less contractor cost sharing is appropriate than in cases in which the contractor acquires such rights.

(iii) Less contractor cost sharing is appropriate when an area of research requires special stimulus in the national interest.

(iv) The amount of contractor cost sharing may be reduced to reflect the fact that the organization is foregoing a normal fee or profit on the research.

(v) When an educational institution or nonprofit organization agrees to absorb a portion of the research costs in the expectation of substantial compensating benefits, the amount of sharing should normally be between 1% and 5% of the total contract cost.

* * * * *

[FR Doc. 87–14889 Filed 6–30–87; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 171

[Docket No. HM–145F; Amdt. No. 171–90]

Hazardous Substances

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Revision to the final rule (Amendment No. 171–90).

SUMMARY: This document revises the definition of "hazardous substance" in 49 CFR 171.8, as adopted in a final rule published on November 21, 1986 (51 FR 42174; Amendment No. 171–90), to clarify that the definition does not apply to petroleum products that are

lubricants or fuels. The revision reinstates an exception for petroleum products that appeared in the definition of "hazardous substance" prior to the November 21 final rule.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Lee Jackson, (202) 366–4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: This document revises the definition in 49 CFR 171.8 of a "hazardous substance", as adopted in a final rule published on November 21, 1986 (Amendment No. 171–90; 51 FR 42174). The final rule revised DOT's definition for a "hazardous substance" by deleting both the reference to the § 172.101 Hazardous Materials Table and the exception for petroleum products that are lubricants or fuels. Deletion of the exception was based on the fact that such an exception is contained in the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA; Pub. L. 96–510). As defined in section 101(14) of CERCLA, the term "hazardous substance" does not include ". . . petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance . . . and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas)".

The deletion of the petroleum products exception from DOT's definition of a "hazardous substance" has generated numerous inquiries. It appears that removing this exception from the definition has caused confusion and led many people to the conclusion that the exception no longer exists. This is not what RSPA intended.

Upon further consideration, RSPA believes that despite the fact that an exception for petroleum products exists in CERCLA, it is appropriate to include a similar exception in the definition of a "hazardous substance" in 49 CFR 171.8. Therefore, RSPA is reinstating the exception in the hazardous substance definition essentially as it appears prior to the November 21 final rule, with the addition of a reference to applicable EPA regulations in 40 CFR 300.6.

The revision contained in this rule imposes no new regulatory requirement, will not affect the cost of regulatory enforcement nor impose added costs on industry, consumers, Federal, state or local governments. Consequently, public notice is dispensed with this rule is effective immediately.

Administrative Notices

The RSPA has determined that this amendment (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures [44 FR 11034]; (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) will not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 et seq.). Based on limited information concerning the size and nature of entities likely affected, I certify that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 171

Hazardous materials transportation, Definitions.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

In consideration of the foregoing, 49 CFR Part 171 is amended as follows:

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, and 1808; Pub. L. 99–499; and 49 CFR Part 1, unless otherwise noted.

2. In § 171.8, the definition for "hazardous substance" is amended by adding the following sentence after the table which appears in the definition:

§ 171.8 Definitions and abbreviations.

* * * * *

This definition does not apply to petroleum products that are lubricants or fuels (see 40 CFR 300.6).

* * * * *

Issued in Washington, DC on June 26, 1987 under authority delegated in 49 CFR Part 1.

M. Cynthia Douglas,

Administrator, Research and Special Programs Administration.

[FR Doc. 87–14604 Filed 6–30–87; 8:45 am]

BILLING CODE 4910–60–M

Proposed Rules

Federal Register
Vol. 52, No. 126
Wednesday, July 1, 1987

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

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS Number: 1036-87]

Bonds; Elimination of Surety Bonds as Acceptable Security on Immigration Appearance, Public Charge and Maintenance of Status and Departure

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to eliminate surety bonds as acceptable security on immigration appearance, public charge and maintenance of status and departure bonds. This change is necessary to and intended to increase alien appearances and minimize dollar losses to the United States.

DATE: All comments must be received by July 31, 1987.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: James H. Walsh, Office of the General Counsel, Immigration and Naturalization Service, Room 7048, 425 I Street, NW., Washington, DC 20536. Telephone: (202) 633-2895.

SUPPLEMENTARY INFORMATION: The proposed rule would establish and define a cash bond system for bonds under 8 CFR 103.6, replacing the present provision which also allows surety bonds.

This would eventually prevent the loss of millions of dollars due to liquidation proceedings of surety companies writing immigration bonds and the cost for litigation to collect monies owed by the surety companies.

Litigation involving surety companies takes years to effectuate. In the past, prior to a final judgment, various sureties have been placed in receivership and liquidation by the State Insurance Commissioners, thus compounding the waste of resources.

It has also become characteristic of the agents who are seeking to make a quick dollar, without close scrutiny of the regulating state authority, to post bonds in one state for release of an alien in another state ("long arming"). Agents often carry out such activities without either the knowledge or the permission of the surety. Thus, neither the surety nor INS has an accurate count of bonds being written on behalf of a particular surety.

Currently, outstanding delinquent breached surety bonds owed the Service are substantial ($11.4 million) imposing additional costs upon the Service in collection efforts. Sureties and their agents are incurring large debts and even larger potential liabilities on expired bonds written without effectie internal controls.

The failure of the present surety bond provisions to ensure alien appearance and minimize monetary loss to the government is clear. Internal audits of INS recommend that the Service consider revision of 8 CFR 103.8. The insolvency of five sureties in three years, causing a loss of at least $9.5 million to the government, is a demonstrated failure of the surety bond system.

Therefore, the purpose of the proposed procedure is to eliminate surety bonds as acceptable security on 8 CFR 103.6, immigration bonds.

In accordance with 5 U.S.C. 605(b), the Commissioner, INS, certifies that the rule will not have a significant economic impact on a substantial numbrer of small entities.

This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291.

If legal action is taken to enjoin or in any way delay the effective date of this regulation, the present regulation will remain in effect.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Bonds, Reporting and recordkeeping requirements.

According, it is proposed to amend Chapter I of Title 8 of the Code of Federal Regulations as follows:

PART 103—POWER AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 is revised to read as follows:

Authority: 5 U.S.C. 552(A); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243, 31 U.S.C. 9701.

2. Section 103.6 would be amended by revising the heading and paragraphs (a) (1) and (b) to read as folllows:

§ 103.6 Bonds.

(a) *Posting of bonds*—(1) *Extension agreements.* All bonds posted in immigration cases shall be in cash as defined in § 103.6(b) and excecuted on Form I-352, a copy of which, and any rider attached thereto, shall be furnished the obliger. A district director is authorized to approve a bond, a formal agreement to extension of liability of obligor, a request for delivery of cash to a duly appointed and undischarged administrator or executor of the estate of a deceased depositor. All other matters relating to bonds, including a power oa attorney, and a request for delivery of the cash to other than the depositor or his approved attorney in fact shall be forwarded to the regional commissioner for approval.

* * * * *

(b) *Cash.* Cash is legal tender as defined in 31 U.S.C. 5703 or U.S. Postal money orders, cashiers checks, certified checks, or U.S. bonds or notes of the class described in 31 U.S.C. 9303 and Treasury Department regulations issued pursuant thereto.

* * * * *

Dated: June 4, 1987.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 87-14944 Filed 6-30-87; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 85-029P]

9 CFR Parts 317 and 381

Random Weight Packaging

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend § 317.2(h)(5) of the Federal meat inspection regulations and § 381.121(c)(5) of the Federal poultry products inspection regulations. Currently, the net weight statements on random weight packages of meat and poultry products may be stated in pounds and decimal fractions of the pound, with the decimal fraction of the pound not to exceed two decimal places. The proposed rule would allow these statements on random weight packages to be expressed to three or more decimal places. The proposed rule would facilitate the use of modern weighing equipment and permit the statement of net weight on packages to be expressed in accordance with the weighing equipment's capabilities.

DATE: Comments must be received on or before August 31, 1987.

ADDRESS: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3168, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided by the Poultry Products Inspection Act should be directed to Mr. Bill Dennis, Director, Processed Products Inspection Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3840.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Meat and Poultry Inspection Technical Service, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–3840.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined that the proposed rule is not a major rule under Executive Order 12291. It would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers; individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposal, while it would allow for some recapture of lost profit to businesses that would use more accurate equipment, would not result in recapture in an amount exceeding $100 million. FSIS may incur some incidental costs in training, staff time, and development of verification procedures to enforce the proposed rule.

Effects on Small Entities

Under the circumstances mentioned above, the Administrator, Food Safety and Inspection Service, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. § 601).

The proposed rule treats all businesses alike. Businesses are not required to label to three or more decimal places and may choose not to use the weighing equipment described in this proposal. Market pricing of meat and poultry products tends to minimize the economic impacts resulting from the use of different weighing equipment

Comments

Interested persons are invited to submit written comments concerning this proposal. Written comments should be sent in duplicated to the Policy Office. Any person desiring an opportunity for an oral presentation of views should make such a request to Mr. Dennis so that arrangements can be made for such views to be presented. All comments submitted in response to the proposal will be available for public inspection at the Policy Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

The National Conference on Weights and Measures (NCWM) has requested that both FDA and FSIS allow declarations in pounds on random weight packages to be stated in terms of three decimal places. FDA has responded that it cannot change its regulations without an enabling amendment to the FPLA. Products under FSIS jurisdiction are specifically exempted from those limitations under the FPLA, and FSIS has responded to the NCWM's request with this proposed regulation.

Until now, USDA and the Food and Drug Administration (FDA) have promulgated similar regulations concerning statements of net weight on random weight packages. However, consumer products regulated by FDA are subject to the Fair Packaging and Labeling Act (FPLA), 15 U.S.C. 1451 *et seq.*, which provides that net weights on packages random weight of such products not be carried out to more than two decimal places. 15 U.S.C. 1453 (a)(3)(A)(ii) Meat, meat products, poultry, and poultry products are specifically exempt from the provisions of the FPLA. 15 U.S.C. 1459(a)(1).

In a letter to FSIS, dated July 5, 1985, Ezio F. Delfino, Chairman of NCWM stated, "It is the opinion of the NCWM that three decimal places will permit better inventory control for the scale user and better resolution of tare and less money value error for the consumer. For products with extremely high per pound prices, the precision is warranted."

These considerations were probably taken into account when the shift was made from analog (fractional pounds and ounces) to digital scales and measuring in hundredths of a pound. These justifications are still true in theory, and the proposed rule would not have as critical an impact on the market place as previous refinements.

In instances where state-of-the-science measuring equipment enables accurate net weight labeling to thousandths of pound, producers could gain some advantage because of better inventory control and because the amount of "giveaway" would be reduced. Giveaway occurs when the weight is rounded off. For example, rounding 1.099 pounds down to 1.09 pounds results in the producer/seller to lose nine thousandths of a pound of inventory in giveaway. Reading 1.0999 pounds down to 1.099 pounds results in a loss of only nine ten thousandths of a pound, or one tenth of the amount. These are very small amounts, and even in a very large scale operation, would probably not add up to a large amount of money. In any event, pricing generally accommodates the potential loss due to rounding down. The proposed rule would allow large producers to recover some profits otherwise lost to a larger scale giveaway while costing little to individual consumers because of smaller amounts usually purchased.

If the proposed rule is adopted, equipment proposed for use in performing net weights to more than two decimal places would first be reviewed by FSIS, which would determine the acceptability and any necessary use conditions of a weighting device depending upon its intended use in a meat or poultry plant, e.g., on-line poultry weighing or on-line cured pork products. 9 CFR 308.5 and 381.53. In evaluating these types of equipment, headquarters Agency personnel generally have focused on sanitation, ease of cleaning, and other similar factors to a greater extent than they are evaluated for precision and accuracy. Precision and accuracy have usually been evaluated at the point of inspection. These certifications of

weights and measures are usually conducted by State and local officials.

In view of the considerations mentioned above, FSIS is proposing to amend the Federal meat and poultry products inspection regulations by eliminating the requirement that net weights on random weight packages be stated in terms of pounds and/or decimal fractions of the pound to no more than two decimal places, thereby allowing net weight statements on these to be stated in terms of three or more decimal places.

List of Subjects in 9 CFR

Part 317

Labeling, Marking devices, Containers.

Part 381

Mandatory Poultry Products Inspection, Labeling, Containers.

PART 317—[AMENDED]

1. The authority citation for Part 317 would be revised to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*, 601 *et seq.*

§ 317.2 [Amended]

2. Section 317.2(h)(5), (9 CFR 317.2(h)(5)) would be amended by deleting the words "carried out to not more than two decimal places."

PART 381—[AMENDED]

3. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

§ 381.121 [Amended]

4. Section 381.121(c)(5) (9 CFR 381.121(c)(5)) would be amended by deleting the words "carried out to not more than two decimal places."

Done at Washington, DC on: June 26, 1987.

Lester M. Crawford,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 87-14953 Filed 6-30-87; 8:45 am]

BILLING CODE 3410-D-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1245

Patents and Other Intellectual Property Rights

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: NASA is amending 14 CFR Part 1245 by revising Subpart 1, "Patent Waiver Regulations." This revision will consolidate the Patent Waiver Regulations published in the **Federal Register** on July 17, 1981 (46 FR 37023), and the Interim Patent Waiver Regulations published in the **Federal Register** on May 17, 1983 (48 FR 22132). The purpose of these proposed regulations is to assure that the requirements of Pub. L. 96-517 and Pub. L. 98-620, the February 18, 1983, Presidential Memorandum on Government Patent Policy, and the Department of Commerce rule on Government Patent Policy 37 CFR 401, March 18, 1987, are followed to the maximum extent possible under Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457). This is intended to increase clarity and provide for an improved reading and understanding of the regulations. These changes do not alter any rights enuring to either the Government or to a NASA contractor.

DATE: Comments must be submitted in writing within 45 days of publication of this proposed rule.

ADDRESS: General Counsel, Code G, National Aeronautics and Space Administration, Washington, DC 20546. Comments received may be inspected in Room 7035 between 8:00 am and 4:30 pm.

FOR FURTHER INFORMATION CONTACT: Robert F. Kempf, 202-453-2424.

SUPPLEMENTARY INFORMATION: As of July 1, 1981, Pub. L. 96-517 (35 U.S.C. 200-211; 94 Stat. 3019, 3020, 3022-3024, 3026 and 3027) revises Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457) with respect to the disposition of rights to inventions made under any grant, contract, or cooperative agreement with a nonprofit organization or small business firm. Accordingly, the NASA Patent Waiver Regulations were revised on July 17, 1981, to reflect that fact. In particular § 1245.100, "Scope," and § 1245.101, "Applicability," were amended by the July 17, 1981 revision to make it clear that this subpart applies only to inventions subject to the provisions of 42 U.S.C. 2457, and not to inventions subject to 35 U.S.C. 200 et seq., Pub. L. 96-517. Thereafter the issuance of the Presidential Memorandum on Government Patent Policy on February 18, 1983, directed all agencies to adopt for all contracts to the extent permitted by law the policies of 35 U.S.C. 200 et seq. This requirement has been reinforced by Executive Order 12591 dated April 10, 1987. The Interim Regulations of May 19, 1983, provided that requests for waiver of rights normally will be granted pursuant to the Presidential Memorandum, as set forth in § 1245.104 and § 1245.105. In addition, 35 U.S.C. 200 et seq. has been amended by Pub. L. 98-620 and an implementing regulation issued by the Department of Commerce in 37 CFR 401, of March 18, 1987. The reservation of march-in rights consistent with 37 CFR 401.6 has therefore been included in § 1245.107(b) and § 1245.117 by this revision.

Thus, the overall effect of the proposed regulations is to update and consolidate all these changes, in order to make the NASA waiver process as consistent and uniform as possible with Government wide policies and regulations to the extent permitted by law.

List of Subjects in 14 CFR Part 1245

Inventions and Contributions Board, Inventions and patents, Scientific and technical contributions, Space Act Monetary Awards Program.

PART 1245—PATENTS AND OTHER INTELLECTUAL PROPERTY RIGHTS

For reasons set out in the Preamble, 14 CFR Part 1245 is amended to read as follows:

1. The authority for 14 CFR Part 1245 Subpart 1 is revised to read as follows:

Authority: 42 U.S.C. 2457, 35 U.S.C. 200 et seq.

2. Subpart 1 is revised to read as follows:

Subpart 1—Patent Waiver Regulations

Sec.

Subpart 1—Patent Waiver Regulations

§ 1245.100 Scope.

This subpart prescribes regulations for the waiver of rights of the Government of the United States to inventions made under NASA contract in conformity with section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457).

§ 1245.101 Applicability.

The provisions of the subpart apply to all inventions made or which may be made under conditions enabling the Administrator to determine that the rights therein reside in the Government of the United States under section 305(a) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2457(a). The provisions do not apply to inventions made under any contract, grant, or cooperative agreement with a nonprofit organization or small business firm that are afforded the disposition of rights as provided in 35 U.S.C. 200–204 (Pub. L. 96–517, 94 Stat. 3019, 3020, 3022 and 3023; and Pub. L. 98–620, 98 Stat. 3364–3367).

§ 1245.102 Definitions and terms.

As used in this subpart:

(a) "Contract" means any actual or proposed contract, agreement, understanding, or other arrangement with the National Aeronautics and Space Administration (NASA) or another Government agency on NASA's behalf, including any assignment, substitution of parties, or subcontract executed or entered into thereunder, and including NASA grants awarded under the authority of 42 U.S.C. 1891–1893.

(b) "Contractor" means the party who has undertaken to perform work under a contract or subcontract.

(c) "Invention" includes any art, method, process, machine, manufacture, design, or composition or matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the Patent Laws of the United States of America or any foreign country.

(d) "Made," when used in relation to any invention, means the conception or first actual reduction to practice of such invention.

(e) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

(f) "Board" means the NASA Inventions and Contributions Board established by the Administrator of NASA within the Administration under section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)).

(g) "Chairperson" means Chairperson of the NASA Inventions and Contributions Board.

(h) "Petitioner" means a contractor or prospective contractor who requests that the Administrator waive rights in an invention or class of inventions made or which may be made under a NASA contract. In the case of an identified invention, the petitioner may be the inventor(s).

(i) "Government agency" includes any executive department, independent commission, board, office, agency, administration, authority, Government corporation, or other Government establishment of the executive branch of the Government of the United States of America.

(j) "Administrator" means the Administrator of the National Aeronautics and Space Administration or the Administrator's duly authorized representative.

§ 1245.103 Policy.

(a) In implementing the provisions of section 305(f) of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457(f)), and in determining when the interests of the United States would be served by waiver of all or any part of the rights of the United States in inventions made in the performance of work under NASA contracts, the Administrator will be guided by the objectives set forth in the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2451–2477) and by the basic policy of the Presidential Memorandum and Statement of Government Patent Policy to the Heads of the Executive Departments and agencies dated February 18, 1983. Among the most important goals are to provide incentives to foster inventiveness and encourage the reporting of inventions made under NASA contracts, to provide for the widest practicable dissemination of new technology resulting from NASA programs, and to promote early utilization, expeditious development, and continued availability of this new technology for commercial purposes and the public benefit. In applying this regulation, both the need for incentives to draw forth private initiatives and the need to promote healthy competition in industry must be weighed.

(b) Several different situations arise when waiver of all or any part of the rights of the United States may be requested and are prescribed in §§ 1245.104–1245.106. Under § 1245.104, advance waiver of rights to any or all of the inventions which may be made under a contract may be requested prior to the execution of the contract, or within 30 days after execution of the contract. Waiver of rights to an identified invention made and reported under a contract are to be requested under § 1245.105, and may be requested under this provision even though a request under § 1245.104 was not made, or if made, was not granted. Waiver of foreign rights under § 1245.106 may be requested concurrently with domestic rights under § 1245.104 or § 1245.105, or may be made independently.

(c) With respect to inventions which may be or are made or conceived in the course of or under contracts for research, development, or demonstration work awarded by NASA on behalf of the Department of Energy (DOE) or in support of a DOE program, on a reimbursable basis pursuant to agreement between DOE and NASA, the waiver policy, regulations, and procedures of DOE will be applied. NASA will normally grant waiver of rights to inventions made under contracts awarded by NASA on behalf of, or in support of, programs funded by another Government agency, unless the funding agency recommends and justifies denial of the waiver. See § 1245.110(c) and § 1245.111(b).

§ 1245.104 Advance waivers.

(a) The provisions of this section apply to petitions for waiver of domestic rights to any or all of the inventions which may be made under a contract.

(b) The NASA Inventions and Contributions Board normally will recommend grant of a request for advance waiver of domestic rights submitted prior to execution of contract or within 30 days after executive of the contract unless the Board finds that the interests of the United States will be better served by restricting or eliminating all or part of the rights of the contractor in one or more of the following situations:

(1) When the contractor is not located in the United States or does not have a place of business in the United States or is subject to the control of a foreign government;

(2) When a determination has been made by Government authority which is authorized by statute or Executive Order to conduct foreign intelligence or counter-intelligence activities that the

restriction or elimination of the right to retain title to any inventions made in the performance of work under the contract is necessary to protect the security of such activities; or

(3) Where the Board finds that exceptional circumstances exist, such that restriction or elimination of the right to retain title will better promote one or more of the following objectives:

(i) Promoting the untilization of invention arising from federally supported research and development;

(ii) Encouraging maximum participation of industry in federally-supported research and development;

(iii) Ensuring that inventions are used in a manner to promote free competition and enterprise;

(iv) Promoting the commercialization and public availability of inventions made in the United States by United States industry and labor; and

(v) Ensuring that the Government obtains sufficient rights in federally-supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c)(1) An advance waiver, when granted, will be subject to the reservations set forth in § 1245.107. Normally, the reservations of § 1245.107(a), License to the Government, and § 1245.107(b), March-in rights, will apply. However, should one or more of the situation set forth in paragraphs (b)(10 through (b)(3), of this section exist, rather than denying the advance waiver request, the Board may recommend restricting or eliminating only part of the rights of the contractor to the extent necessary to address the particular situation, consistent with the policy and goals of § 1245.103. In that event, the waiver grant will be subject to additional reservations as provided for in § 1245.107(c).

(2) An advance waiver, when granted, will apply only to inventions reported to NASA under the applicable terms of the contract and a designation made within 6 months of the time of reporting (or a reasonable time thereafter permitted for good cause shown) that the contractor elects title to the invention and intends to file or has filed a U.S. patent application. Such election will be made by notification in writing to the patent representative designated in the contract. Title to all other inventions made under the contract are subject to Section 305(a) of the National Aeronautics and Space Act of 1958, as amended, 42 U.S.C. 2457(a). The granting of the advance waiver does not otherwise relieve a contractor of any of the invention identification or reporting requirements set forth in the applicable patent rights clause in the contract.

(3) The waiver shall extend to the invention claimed in any patent application filed on the reported invention, including any subsequent divisional or continuation application thereof, provided the claims of the subsequent application do not substantially change the scope of the reported invention.

(d) When a petition for waiver is submitted under paragraph (b) of this section, prior to contract execution, it will be processed expeditiously so that a decision on the petition may be reached prior to execution of the contract. However, if there is insufficient time or insufficient information is presented, or for other reasons which do not permit a recommendation to be made without unduly delaying execution of the contract, the Board will inform the contracting officer that no recommendation has been made and the reasons therefor. The contracting officer will then notify the petitioner of the Board's action.

(e) After notification by the contracting officer under paragraph (d) or this section, the petitioner may, upon its execution of the contract, or within 30 days, request the Board to reconsider the matter under paragraph (b) of this section either on the record or with any additional statements submitted in the subpart of the original petition.

(f) A waiver granted pursuant to a petition submitted under this section shall extend to any contract changes, modifications, or supplemental agreements, so long as the purpose of the contract or the scope of work to be performed is not substantially changed.

§ 1245.105 Waiver after reporting inventions.

(a) The provisions of this section apply to petitions for waiver of domestic rights to identified inventions which have been reported to NASA and to which a waiver of rights has not been granted pursuant to § 1245.104.

(b)(1) When an individual indentified invention has been reported to NASA under the applicable terms of the contract and waiver of rights had not been granted under § 1245.104, the Board normally will recommend grant of a request for waiver of domestic rights to such invention if the request is received within 8 months of first disclosure to NASA (or such longer period that the Board may permit for good cause shown), unless the Board finds that one or more of the situations set forth in § 1245.104(b)(3)(i-v) exist. When granted, the waiver will be subject to the reservations set forth in § 1245.107 in the same manner as discussed in § 1245.104(c)(1).

(2) The waiver shall extend to the invention claimed in the patent application filed on the reported invention, including any subsequent divisional or continuation application thereof, provided the claims of the subsequent application do not substantially change the scope of the reported inventions.

§ 1245.106 Waiver of foreign rights.

(a) The Board will consider the waiver of foreign rights in any designated country concurrently with the waiver of demestic rights when so requested under § 1245.104 or § 1245.105.

(b) The Board will also consider a separate request for foreign rights for an individual identified invention in any designated country if a request was not made pursuant to paragraph (a) of this section, or for countries not designated pursuant to paragraph (a) of this section.

(c) Waiver of foreign rights will normally be granted under paragraph (a) or paragraph (b) of this section in any designated country unless; (1) the Board finds that the economic interests of the United States will not be served thereby; or unless (2) in the case of an individual identified invention under paragraph (b) of this section, NASA has determined, prior to the request, to file a patent application in the designated country.

(d) If, subsequent to the granting of the petition for foreign rights, the petitioner requests and designates additional countries in which it wishes to secure patents, the Chairperson may grant such request, in whole or in part, without further action by the Board.

§ 1245.107 Reservations.

(a) *License to the Government.* Any invention for which waiver of domestic or foreign rights has been granted under this subpart shall be subject to the reservation by the Administrator of an irrevocable, nonexclusive, nontransferable, royalty-free license for the practice of the invention throughout the world by or on behalf of the United States or any foreign government pursuant to any treaty or agreement with the United States.

(b) *March-in rights.* For any invention for which waiver of rights has been granted under this subpart, NASA has the right in accordance with 35 U.S.C. 203 and 210, and with the procedures set forth in § 1245.117 and 37 CFR 401.6, to require the contractor, an assignee, or exclusive licensee of the invention to grant a nonexclusive, partially exclusive, or exclusive license in any

field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the contractor, assignee, or exclusive licensee refuses such a request, NASA has the right to grant such a license itself if NASA determines that:

(1) Such action is necessary because the contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by the "Preference for United States industry" has not been obtained or waived or because a licensee of the exclusive right to use or sell any invention in the United States is in breach of such agreement.

(c) *Additional reservations.* In the event one or more of the situations set forth in § 1245.104(b)(1) through (b)(3) exist, the Board may determine to recommend partial grant of the waiver request (rather than denial) by making the grant subject to additional reservations (than those set forth in paragraphs (a) and (b) of this section) to the extent necessary to address the particular situation. Such additional reservations may include, but not be limited to, field-of-use or terrestrial-use limitations, or additions to the march-in rights.

§ 1245.108 License to contractor.

(a) Each contractor reporting an invention is granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on the invention and in any resulting patent in which the Government acquires title. The license extends to the contractor's domestic subsidiaries and affiliates, if any, within the corporate structure of which the contractor is a party and includes the right to grant sublicenses of the same scope to the extent the contractor was legally obligated to do so at the time the contract was awarded. The license and right is transferable only with the approval of the Administrator except when transferred to the successor of that part of the contractor's business to which the invention pertains.

(b) The contractor's domestic license may be revoked or modified by the Administrator to the extent necessary to achieve expeditious practical application of the invention pursuant to an application for an exclusive license submitted in accordance with the Licensing of NASA Inventions (14 CFR 1245.2). This license will not be revoked in that field of use and/or the geographical areas in which the contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the Administrator to the extent the contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(c) Before revocation or modification of the license, the contractor will be provided a written notice of the Administrator's intention to revoke or modify the license, and the contractor will be allowed 30 days (or any other time as may be allowed by the Administrator for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor shall have the right to appeal, under the Licensing of NASA Inventions (14 CFR 1245.2), any decision concerning the revocation or modification of its license.

§ 1245.109 Assignment of title to NASA.

(a) The instrument of waiver set forth in § 1245.115(c) shall be voided by NASA with respect to the domestic title to any invention for which a patent application has not been filed within 1 year (or a reasonable time thereafter for good cause shown) from notification to NASA of election of title, as required by § 1245.104(c)(2), for an advanced waiver pursuant to § 1245.104, or within 1 year from the granting of a waiver for an individual invention granted pursuant to § 1245.105.

(b) The instrument of waiver set forth in § 1245.115(c) shall be voided by NASA with respect to title in any foreign country for which waiver has been granted pursuant to § 1245.106, if a patent application has not been filed in that country (or in the European Patent Office or under the Patent Cooperation Treaty and that country designated) within either 10 months (or a reasonable time thereafter for good cause shown) from the date a corresponding U.S. patent application has been filed or 6 months (or a reasonable time thereafter for good cause shown) from the date a license is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(c) In any country in which the waiver recipient decides not to continue prosecution of any application, to pay maintenance fees on, or defend in reexamination or opposition proceedings on a patent on a waived invention, the waiver recipient shall notify the patent representative within sufficient time for NASA to continue prosecution, pay the maintenance fee or defend the reexamination or opposition, and upon written request, convey title to NASA and execute all papers necessary for NASA to proceed with the appropriate action.

§ 1245.110 Content of petitions.

(a) Each request for waiver of domestic or foreign rights under § 1245.104, § 1245.105, or § 1245.106 shall be by petition to the Administrator and shall include:

(1) An identification of the petitioner, its place of business, and address;

(2) If the petitioner is represented by counsel, the name, address, and telephone number of the counsel;

(3) A citation to the section (§ 1245.104, § 1245.105, or § 1245.106) under which the petition is submitted, the nature and extent of the rights requested, and a positive statement that waiver of rights under the cited section is being requested;

(4) If the petitioner is an employee inventor of the contractor, a statement from the contractor that the contractor does not object to this petition.

(5) Information identifying the proposed contract or resulting contract, if any;

(6) A designation of the country or countries, the United States of America and/or foreign, in which waiver of title is requested;

(7) A copy of the invention disclosure if the request is for an individual identified invention (under § 1245.105);

(8) The name, address, and telephone number of the party with whom the Board is to communicate when the request is acted upon;

(9) Whether the petitioner is an entity of or under the control of the foreign government.

(10) the signature of the petitioner or its authorized representative; and

(11) The date of the petition.

(b) No specific forms need be used. Requests for advanced waiver should, preferably, be included with the proposal, but in any event in advance of negotiations.

(c) *Petitions for waiver under contracts funded by another agency.*

The content of the petitions for waiver of title to inventions made under contracts awarded by NASA on behalf of the Department of Energy under § 1245.103(c) shall follow the procedures and form prescribed by and shall be acted on by that agency. Petitions under contracts awarded by NASA on behalf of other agencies will be coordinated with the agency before action is taken by the Board.

§ 1245.111 Submission of petitions.

(a) Petitions for advance waiver of domestic rights under § 1245.104 or for advance waiver of foreign rights under § 1245.106 presented prior to contract execution, must be submitted to the contracting officer. Any petition submitted by a prospective contractor and selected for negotiation of a contract will be processed and forwarded to the Board for consideration. All other petitions will be submitted to the patent representative designated in the contract for processing prior to forwarding to the Board.

(b) A copy of any waiver petitions submitted under § 1245.103(c) should be forwarded to the appropriate NASA field installation patent counsel, if not supplied earlier, for (1) transmittal to the Department of Energy for processing by that agency, or (2) coordination with other agencies, as applicable.

§ 1245.112 Notice of proposed Board action and reconsideration.

(a) *Notice.* Except as provided by § 1245.104(d), the Board will notify the petitioner, through the countracting officer, with respect to petitions for advance waiver prior to contract execution, and directly to the petitioner for all other petitions:

(1) Whether it proposes to recommend to the Administrator that the petition be:

(i) Granted in the extent requested;

(ii) Granted in an extent different from that requested; or (iii) Denied.

(2) Of the reasons for any recommended action adverse to or different from the waiver of rights requested by the petitioner.

(b) *Request for reconsideration and statements required.*

(1) If, under paragraph (a) of this section, the Board notifies the petitioner that the Board proposes to recommend action adverse to or different from the waiver requested, the petitioner may, within the period as the Board may set, but not less than 15 days from the notification, request reconsideration by the Board.

(2) If reconsideration has been requested within the prescribed time, the petitioner shall, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file its statement setting forth the points, authorities, arguments, and any additional material on which it relies.

(3) Upon filing of the reconsideration statement by the petitioner, the petition will be assigned for reconsideration by the Board upon the contents of the petition, the record, and the reconsideration statement submitted by the petitioner.

(4) The Board, after its reconsideration, will promptly notify the petitioner of its proposed recommendation to the Administrator. If the Board's proposed action is adverse to, of different from, the waiver requested, the petitioner may request an oral hearing within the time as the Board has set.

§ 1245.113 Hearing procedure.

(a) If the petitioner requests an oral hearing within the time set, under § 1245.112(b)(4), the Board shall set the time and place for the hearing and shall notify the petitioner.

(b) Oral hearings held by the Board shall be open to the public and shall be held in accordance with the following procedures:

(1) Oral hearings shall be conducted in an informal manner, with the objective of providing the petitioner with a full opportunity to present facts and arguments in support of the petition. Evidence may be presented through means of witnesses, exhibits, and visual aids as are arranged for by the petitioner. Petitioner may be represented by any person including its attorney. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the petitioner, and the Board may, at its option, enlist the aid of technical advisors or expert witnesses. Any person present at the hearing may make a statement for the record.

(2) A transcript or equivalent record of the proceeding shall be arranged for by the Board. The petitioner shall submit for the record a copy of any exhibit or visual aid utilized during the hearing.

§ 1245.114 Findings and recommendations of the Board.

(a) *Findings of the Board.* The Board shall consider the petition, the NASA contract, if relevant, the goals cited in § 1245.103(a), the effect of the waiver on the objectives of the related NASA programs, and any other available facts and information presented to the Board by an interested party. The Board shall document its findings.

(b) *Recommendation of the Board.* (1) Except as provided in § 1245.104(d), after making the findings of fact, the Board shall formulate its proposed recommendation to the Administrator as to the grant of waiver as requested, the grant of waiver upon terms other than as requested, or denial of waiver.

(2) If the Board proposes to recommend, initially or upon reconsideration or after oral hearing, that the petition be granted in the extent requested or, in other cases, where the petitioner does not request reconsideration or a hearing during the period set for the action or informs the Board that the action will not be requested, or fails to file the required statements within the prescribed time, the Board shall transmit the petition, a summary record of hearing proceedings, if applicable, its findings of fact, and its recommendation to the Administrator.

§ 1245.115 Action by the Administrator.

(a) After receiving the transmittal from the Board, the Administrator shall determine, in accordance with the policy of § 1245.103, whether or not to grant any petition for waiver of rights to the petitioner.

(b) In the event of denial of the petition by the Administrator, a written notice of such denial will be promptly transmitted by the Board to the petitioner. The written notice will be accompanied with a statement of the grounds for denial.

(c) If the waiver is granted by the Administrator, the petitioner shall be sent for execution, an instrument of waiver confirmatory of the conditions and reservations of the waiver grant. The petitioner shall promptly return the executed copy of the instrument of waiver to the Chairperson.

§ 1245.116 Miscellaneous provisions.

(a) *Filing of patent applications and reimbursement of costs.* In order to protect the interests of the Government and the petitioner in inventions, a petitioner may file United States patent applications for such inventions prior to the Administrator's determination on a petition for waiver. If an application on an identified invention is filed during the pendency of the petition, or within 60 days prior to the receipt of a petition, NASA will reimburse the petitioner for any reasonable costs of the filing and patent prosecution that may have occurred, *provided*:

(1) Similar patent filing and prosecution costs are not normally reimbursed to the petitioner as direct or indirect costs chargeable to the Government contracts;

(2) The petition is ultimately denied with respect to domestic rights, or with respect to foreign and domestic rights, if both are requested; and

(3) Prior to reimbursement, petitioner assigns the application to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

(b) *Statement of Government rights.* The waiver recipient shall include, within the specification of any United States patent application and any patent issuing thereon for a waived invention, the following statement:

The invention described herein was made in the performance of work under NASA Contract No. 67 _____, and is subject to the provisions of Section 305 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2457).

(c) *License to the Government.* The waiver recipient shall return to NASA a duly executed and approved license to the Government (which will be prepared by the Government) fully confirming of all the rights, domestic and foreign, to which the Government is entitled.

(d) *Patent filing and issuance information.* The waiver recipient shall furnish to either the Chairperson or the patent representative, the filing date, serial number and title, and upon request, a copy of any domestic or foreign patent application including an English language version if filed in a language other than English, and a copy of the patent or patent number and issue date, for any waived invention.

(e) *Transfer of rights.* The waiver recipient shall notify the Chairperson prior to any transfer of principal rights in any waived invention to any party. Such transfer shall be subject to all rights reserved by the Government, and all obligations of the waiver recipient, as set forth in this subpart.

(f) *Utilization reports.* (1) The waiver recipient shall provide to the Chairperson upon request, and no more frequently than annually, reports on the utilization of a waived invention or on efforts at obtaining such utilization being made by the waiver recipient or its licensees or assigns. Such reports shall include information regarding the status of the development, date of first commercial sale or use, and such other data and information as the Chairperson may reasonably specify. No utilization reports need be submitted after the term of the patent.

(2) Such reports on the utilization of a waived invention, as well as information on the utilization or efforts at obtaining utilization obtained as part of a march-in proceeding under § 1245.117, shall be treated by NASA as commercial and financial information obtained from a person and privileged and confidential and not subject to disclosure under 5 U.S.C. 552.

(Approved by the Office of Management and Budget under control number 2700–0050)

(g) *Communications.* Under otherwise specifically set forth in this subpart, all communications relating to waived inventions, and all information and documents required to be submitted to NASA in this subpart, shall be furnished to the patent representative designated in the contract under which the waived invention was made.

§ 1245.117 March-in and waiver revocation procedures.

(a) The exercise of march-in procedures shall be governed by 35 U.S.C. 203 and by the applicable provisions of 37 CFR 401.6, entitled "Exercise of march-in rights for inventions made by nonprofit organizations and small business firms."

(b) Whenever NASA receives information that it believes might warrant the exercise of march-in rights, before initiating any march-in proceeding, it shall notify the waiver recipient in writing of the informaiton and request informal written or oral comments from the waiver recipient as well as information relevant to the matter. In the absence of any comments from the waiver recipient within 30 days, NASA may, at its discretion, proceed with the procedures set forth in 37 CFR 401.6. If a comment is received within 30 days, or later if NASA has not initiated the procedures, then NASA shall, within 60 days after it receives the comment, either initiate the procedures or notify the waiver recipient, in writing, that it will not pursue march-in rights on the basis of the available information.

(c) If march-in procedures are to be initiated, the Administrator of NASA, or designee, shall undertake or refer the matter for fact finding to the NASA Board of Contract Appeals (BCA) and its Chairperson.

(d) Fact-finding shall be conducted by the NASA BCA and its Chairperson in accordance with its procedures that are consistent with the procedures set forth in 37 CFR 401.6. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the waiver recipient, its assignee, or licensees shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), NASA shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the waiver recipient (assignee or licensee).

(e) The preparation of written findings of fact and recommended determination by the Chairperson of the NASA BCA and the determination by the Administrator, or designee, of NASA, shall be in accordance with 37 CFR 401.6.

(f) NASA may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

§ 1245.118 Record of decisions.

The findings of fact and recommendations made to the Administrator by the Board with respect to each petition for waiver shall be recorded by the Board and be available to the public.

James C. Fletcher,

Administrator.

June 2, 1987.

[FR Doc. 87–14768 Filed 6–30–87; 8:45 am]

BILLING CODE 7510–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

National Flood Insurance Program; Rating System Changes

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Emergency Management Agency (FEMA) is interested in developing two kinds of rating system improvements for use in the National Flood Insurance Program (NFIP): A community rating system that grades a community's flood plain management for use in determining the flood insurance rates to be applied in calculating the premiums for properties located in that community, and a system to use a community's current Flood Insurance Rate Map (FIRM) for rating of insurance, subject to a rate ceiling if the building was built in compliance with the flood plain management requirements in effect at the time of original construction and at the time of any substantial improvement.

Since 1981, the Federal Insurance Administration (FIA) has taken the position that insurance rates should provide an economic incentive to property owners to reduce risk. Discounts on flood insurance rates for a property owner in a community that has

adopted effective flood plain management programs that provide the type of information and enforcement needed to reduce future flood damage would appear to be justified. In 1983, the FIA published its long range plan for becoming actuarially sound. The section of the plan designed to promote reduction of flood damage to buildings and their contents called for development in 1987 of a system of rating communities on the basis of their record of flood plain management. The community rating system would be designed to recognize circumstances within local communities that mitigate or might exacerbate the flood risk, such as the performance of a community that goes beyond minimum NFIP floodplain management requirements or, on the other hand, inaction of a community in addressing flood problems.

The use of current FIRM's in the rating of insurance applied for after the effective date of the current FIRM for coverage on a building built prior to the effective date of the current FIRM would enable the NFIP to replace the current practice of allowing the premium for such properties to be based on the FIRM in existence at the time of construction as long as the construction met the flood plain management requirements in force at that time. The increasing administrative expenses that would result from maintaining an insurance rating system dependent upon insurance agents and communities retaining available historical versions of FIRM's that would exend over many decades do not appear to be warranted. However, a ceiling on the flood insurance rates to avoid the application of unreasonably high rates would appear to be reasonable and would reduce future operating expenses of insurance agents, communities and the government.

DATE: Comments must be received on or before August 31, 1987.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Francis V. Reilly, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472; telephone number (202) 646–2782.

SUPPLEMENTARY INFORMATION: FEMA's goal for the NFIP continues to be achieving a fiscally sound insurance program that promotes the public interest by providing appropriate protection against flood losses and by encouraging sound flood plain management that minimizes exposure of property to flood losses.

Over the past six years, FEMA has had made a series of insurance rate changes and has implemented changes in the coverage of the insurance policy itself. Pricing the insurance to reflect the risk creates a direct economic incentive for the property owner or developer to consider the flood risk potential prior to construction or substantial improvement of the building (the greater the risk, the greater the direct flood insurance cost to the property owner). This type of direct economic incentive has brought about a new focus on the flood problem associated with the improper use of the nation's flood plains and unsafe building practices. Thus, the program has been strengthened, thereby making it more effective in advancing the goal of flood loss reduction.

Community Rating

For community rating, FEMA plans to establish a system that grades a community's flood plain management for use in determining the flood insurance rates to be applied in calculating the premiums for properties located in that community. This system will not require a detailed assessment of each property's unique circumstance but will recognize communitywide actions that reduce future flood damage to buildings and their contents.

The NFIP currently uses countrywide classifications of risk in determining flood insurance rates. However, within local areas there may be circumstances that can mitigate or exacerbate that risk. These circumstances include hazards unique to an area, the inaction of a community in addressing flood problems, and the performance of a community that goes beyond minimum NFIP flood plain management requirements. It is postulated that dollar savings to a community's citizens purchasing flood insurance will provide community officials with an incentive to adopt local programs to reduce the community's future exposure to flood. A system of this type has been in effect many years for fire insurance protection and is considered successful. Because it is not practical to reflect these factors contributing to the risk assessment of an individual basis while rating policies, FEMA will be exploring a rating system that will:

(1) Foster community actions that will reduce the growing Federal exposure to economic loss resulting from insurance claims payments and tax write-offs, and reduce the need for disaster relief for communities and individuals;

(2) Minimize unknowns, such as urban drainage problems affecting areas not identified as special flood hazard areas on the community's FIRM, that might increase the aggregate amount of potential flood damage in the community; and

(3) Facilitate the accurate insurance rating of properties in the community.

Use of Current Maps for Rating

FEMA plans to establish a rating system that relies on current Flood Insurance Rate Maps (FIRM's) and that provides a rate ceiling in those instances where the property owner can provide reasonable evidence that (1) the building has not been altered in a manner that caused its current adverse rating and (2) the building complied with the program requirements when it was constructed. The rate ceiling should be sufficiently high so that only those properties that are extremely adversely affected by FIRM revisions will be submitted for eligibility determination. In this manner the need for individual risk rating based on old risk criteria could be eliminated.

The National Flood Insurance Act of 1968, as amended, provides for the use of subsidized rates in lieu of full risk premium rates in the determination of insurance premiums for buildings constructed or substantially improved prior to the effective date of the initial FIRM or January 1, 1985, whichever is later, and the contents located therein.

Since 1970, the NFIP has established two categories of subsidized rates: Emergency Program rates made effective under the rulemaking process that can be applied to all construction and substantial improvement started prior to either the effective date of the initial FIRM or January 1, 1975, whichever is later; and individual property rates when it is determined that the construction initially adhered to or exceeded the NFIP requirements in effect at the time of construction but subsequent revisions of the FIRM have changed the risk zone and/or the elevation requirement. The administration of individual property risk rates for changed risk conditions relies on the availability of community records and the availability of old FIRM's. As time passes, the availability of these old records becomes less certain, and with the ever increasing flood potential the taxpayer subsidy also increases.

Comments

Comments are solicited on the advisability of undertaking these changes and on ways to undertake them. All comments received will be given careful consideration and addressed in any proposed rulemaking

or other action necessary for their implementation.

Impacts

FEMA has determined, based upon an Environmental Assessment, that the proposed rule likely to result from this advance notice of proposed rulemaking would not have a significant impact upon the quality of the human environment. The Environmental Assessment and a finding of no significant impact are included in the formal docket file and are available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

The regulations likely to result from this advance notice of proposed rulemaking would not have a significant economic impact on a substantial number of small entities, and, hence, no regulatory flexibility analysis has been prepared.

The rule likely to result from this advance notice of proposed rulemaking would not be a "major rule" as defined in Executive Order 12291, dated February 17, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has detemined that the proposed rule likely to result from this advance notice of proposed rulemaking would not contain a collection of information requirement as defined in section 3502 of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 61

Flood insurance.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

Dated: June 17, 1987.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 87-14878 Filed 6-30-87; 8:45 am]

BILLING CODE 6718-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-218, RM-5753]

Radio Broadcasting Services; Alamogordo, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KINN, Inc. to substitute Channel 287C2 for Channel 288A at Alamogordo, NM, and modify its license for Station KINN-FM to specify operation on the higher powered channel. Channel 287C2 can be allocated to Alamogordo in compliance with the Commission's minimum distance separation requirements. Concurrence by the Mexican government is required since Alamogordo is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before August 14, 1987 and reply comments on or before August 31, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James A. Koerner, Esq., Baraff, Koerner, Olender & Hochberg, P.C., 2033 M St., NW., #203, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-218, adopted May 29, 1987, and released June 25, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-14924 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-217, RM-5721]

Radio Broadcasting Services; Myrtle Beach, SC

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Pursuant to a request by Grand Strand Broadcasting Corp. the Commission proposes to substitute Channel 269C2 for Channel 269A at Myrtle Beach, SC, and modify the license of Station WKZQ to specify operation on the higher powered channel. Channel 269C2 can be allocated to Myrtle Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 21.7 kilometers (13.5 miles) northeast to accommodate petitioner's desired site. In accordance with § 1.420 of the Rules, the Commission will not accept competing expressions of interest in use of Channel 269C2 at Myrtle Beach nor require Grand Strand to demonstrate the availability of an additional equivalent channel. The allocation could provide Myrtle Beach with expanded radio service.

DATES: Comments must be filed on or before August 14, 1987, and reply comments on or before August 31, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Thomas J. Rogers, President, Grand Strand Broadcasting Corporation, P.O. Box 2005, Myrtle Beach, SC 29577 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K, Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-217, adopted May 29, 1987, and released June 24, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87-14925 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 204, 205, 206, 219 and 252

Department of Defense Federal Acquisition Regulation Supplement; Set-Asides for Small Disadvantaged Business Concerns

AGENCY: Department of Defense.

ACTION: Notice of Intent to develop a proposed rule to help achieve a goal of awarding 5 percent of contract dollars to small disadvantaged businesses; Notice of extension of comment period.

SUMMARY: The Defense Acquisition Regulatory Council published on May 4, 1987 (52 FR 16289), a notice of intent to develop a proposed rule to help achieve a goal of awarding 5 percent of contract dollars to small disadvantaged businesses, with a 30-day comment period to end June 3, 1987. The purpose of this document is to extend the comment period for an additional 60 days.

DATE: Comments on this subject should be submitted in writing to the Executive Secretary, DAR Council, at the address shown below, on or before August 3, 1987, to be considered in the DAR Council's deliberations. Please cite DAR Case 87-33 in all correspondence related to this issue.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, ODASD(P)/DARS, c/o OUSD(A) Mail Room, Room 3D139, The Pentagon, Washington, DC 20301-3062.

Note.—If commenters choose to hand-carry comments to the DAR Council Office at 1211 South Fern Street, Arlington, VA, arrangements for hand-carried comments must be made with the DAR Council Staff Members. Security Guards at this location are not permitted to accept or sign for hand-delivered comments of any kind.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202)697-7266.

SUPPLEMENTARY INFORMATION: The DAR Council issued a notice of intent to develop a proposed rule to help achieve a goal of awarding 5 percent of contract dollars to small disadvantaged businesses. Comments were to be submitted within 30 days, ending June 3, 1987. The DAR Council has determined that, due to the nature of the issue involved, the comment period should be extended for an additional 60 days, ending August 3, 1987.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 87-14888 Filed 6-30-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Findings on Petitions and Initiation of Status Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings and status review.

SUMMARY: The Service announces two 90-day petition findings and seven 12-month findings for petitions to amend the Lists of Endangered and Threatened Wildlife and Plants. A status review is initiated for the white-necked crow, *Corvus leucognaphalus*, historically distributed in Hispaniola and Puerto Rico.

DATES: The findings announced in this notice were made during the period from September 14, 1986, to March 10, 1987. Comments and information may be submitted until further notice.

ADDRESSES: Information, comments, or questions should be submitted to the Assistant Director—Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Washington, DC 20240. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 North Glebe Road, Arlington, Virginia. Additional information and comments regarding unlisted populations of the desert tortoise should be addressed to Mr. Wayne White, Endangered Species Specialist, U.S. Fish and Wildlife Service, Lloyd 700 Building, Suite 550, 700 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: William Knapp, Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235-2771 or FTS 235-2771).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended in 1982 (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register. If the finding is positive, the Service is also required to promptly commence a review of the status of the involved species.

Section 4(b)(3)(B) of the Act, as amended, requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information, a finding be made within 12 months of the date of receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted, but precluded from immediate proposal by other pending proposals. Section 4(b)(3)(C) requires that petitions for which the action requested is found to be warranted but precluded should be treated as though resubmitted on the date of such finding, i.e. requiring a subsequent finding to be made within 12 months. Such 12-month findings are to be published promptly in the Federal Register. The most recent announcement of miscellaneous petition findings was published on June 30, 1987, and included all findings made by October 31, 1986, except for the desert tortoise finding. That finding, made September 25, 1986, and others made subsequent to November 1, 1986, are announced below.

In recent months the Service has received and made 90-day findings on the following two petitions:

A petition from Alexander R. Brash, of the Rutgers University Graduate School, New Brunswick, New Jersey, was dated July 20, 1986, and was received by the Service on July 25, 1986. It requested the Service to list *Corvus leucognaphalus*, a bird it identified as the Puerto Rican crow, as an endangered species. The name most commonly used for this bird is the white-necked crow, although Puerto Rican crow has been used on occasion in the literature. This crow was historically only known to inhabit the islands of Hispaniola and Puerto Rico and is now known only from the highlands of the island of Hispaniola; the last reported sighting in Puerto Rico was in 1963.

The petition indicated that (a) combined habitat remaining in Hispaniola (Haiti and the Dominican Republic) probably is not able to support more than one to four thousand pairs as a most optimistic estimate, (b) realistic estimates would not exceed half of those numbers, and (c) the same kinds of threats that evidently resulted in extirpation of this species from Puerto Rico are increasing rapidly now in Hispaniola. It also contained interesting but somewhat speculative hypotheses about habits of this bird and the possible ecological role it may play as a major seed disperser of important forest tree species, some of which are now showing low dispersal rates in Puerto Rico. The petition did not include enough information to warrant listing the species at this time, but it provided a definite case for further consideration by the Service. The finding was therefore that the petition presented substantial information that the action requested may be warranted. A formal status review of the white-necked crow's status in Hispaniola and Puerto Rico is initiated herewith.

A second petition, from Mr. Rodney Bartgis and Mr. D. Daniel Boone of the Maryland Natural Heritage Program, was dated July 22, 1986, and was received by the Service on August 13, 1986. It requested the Service to list the Appalachian population of Bewick's wren, *Thryomanes bewicki altus*, as endangered. Although it followed the subspecific designation *T. b. altus* Aldrich, the petition pointed out that not all authorities agree on the exact geographic limits of the various subspecies. The petition included extensive data to indicate that this population is extirpated from much of its historic range, and that the Appalachian population of Bewick's wren appears to be nearly extirpated from the few remaining States in which it has been reported since 1980. The finding was that this petition presented substantial information indicating that the action requested may be warranted.

Formal status review for the Appalachian Bewick's wren is already in progress, having been initiated in a 1982 **Federal Register** notice (47 FR 58454), and continued in the September 18, 1985, update of that notice (50 FR 37958). At this time the Service is also considering a somewhat larger eastern population of Bewick's wren for possible listing that would include the Appalachian population as a subunit.

In the last few months the Service has made one-year findings for the following three petitions:

A petition from the Department of Game and Fish, State of New Mexico, was signed by Mr. Harold F. Olson, Director. It was dated November 20, 1985, and was received by the Service on November 22, 1985. It requested that the following 11 taxa of New Mexico mollusks be added to the List of Endangered and Threatened Wildlife: the Socorro spring snail (*Fontelicella neomexicana*), the Chupadera spring snail (*Fontelicella* sp.), the Roswell spring snail (*Fontelicella* sp.), the Alamosa spring snail (*Tryonia* sp.), the Pecos assiminea snail (*Assiminea* sp.), the Gila spring snail (*Fontelicella* sp.), the New Mexico hot spring snail (*Fontelicella* sp.), the Pecos spring snail (*Fontelicella* sp.), the Koster's spring snail (*Tryonia* sp.), the New Mexico ramshorn snail (*Pecosorbis kansasensis*), and the Sangre de Cristo pea-clam (*Pisidium* sp.). The Service made a 90-day finding that the petition presented substantial information that the requested action may be warranted, and announced the finding in the **Federal Register** for August 20, 1986 (51 FR 29671). That publication initiated formal status review for the last six species listed above, the first five having been subjects of the Service's earlier comprehensive invertebrate notice of review on May 22, 1984 (49 FR 21664).

A status review of the available information conducted by the Service during 1986 did not produce contrary evidence regarding the status of any species mentioned by this petition. The 12-month finding was therefore that the action requested by this petitioner is warranted, but precluded by work on other species having higher priority for listing.

In a petition dated March 18, 1986, and received March 20, 1986, the Service was requested by Mr. Richard Parsons, representing the Safari Club International, to reclassify the Nile crocodile from its current status of endangered, to threatened. An administrative finding that the action requested may be warranted was made on June 20, 1986, and announced in the **Federal Register** for January 21, 1987. Concurrently with that finding the Service initiated a status review of the Nile crocodile.

During the latter half of 1986 the Service made a substantial effort to pull together information on the status of the Nile crocodile throughout its range. As part of this effort, the Service contacted and queried several leading authorities on Nile crocodile biology. All African nations having Nile crocodiles were requested by airgram to furnish information on the status of these animals. Responses were obtained from 15 countries, including Burkina Faso, Burundi, Cote D'Ivoire, Kenya, Madagascar, Malawi, Mali, Mozambique, Nigeria, Rwanda, Senegal, Sudan, Tanzania, Zaire, and Zambia. Only three of these countries (Burundi, Kenya, and Rwanda) estimated their Nile crocodile populations on the basis of field survey work, and four other countries (Mozambique, Nigeria, Senegal, and Zambia) furnished population estimates that were not based on a biological survey (best professional guess). Burkina Faso, Sudan, and Tanzania indicated only that their crocodile populations were either large or not threatened.

All data received from African nations, information obtained from crocodile authorities, and data submitted with the petition were reviewed and considered by the Service's Office of Scientific Authority, Federal Wildlife Permit Office, Division of Law Enforcement, and Office of Endangered Species. Representatives from each of the agency divisions met on December 3, 1986, and concluded unanimously that existing biological and commercial data do not support a reclassification of the Nile crocodile from endangered to threatened. Although populations of Nile crocodiles in nine African countries were moved from Appendix I to Appendix II of CITES, these changes were made pursuant to Resolution 7.21, which was adopted at the 1985 meeting of the parties. Resolution 7.21 relaxed some of requirements of the Berne Criteria, including that setting standards for biological data necessary to support the transfer of populations from Appendix I to Appendix II.

To the best of the Service's knowledge, none of the nine African nations that had their Nile crocodile populations transfered from Appendix I to Appendix II at the 1985 meeting submitted accurate estimates of

population size and trend to the CITES Secretariat, as requested. The Endangered Species Act requires the Service to evaluate listings, reclassifications, and delistings based on the best biological and commercial data available. The Service's status review indicates that most African countries have no qualitative or quantitative estimates of Nile crocodiles. The Service therefore found the action requested by this petition for the Nile crocodile to be not warranted according to the best scientific and commercial information available.

The third petition was a memorandum from the refuge staff of Caribbean Islands National Wildlife Refuge dated November 21, 1985, and taken under consideration on November 22, 1985. It requested that the Puerto Rican population of the white-cheeked pintail, *Anas bahamensis*, be added to the List of Endangered and Threatened Wildlife. The petition included documentation of a serious island-wide decline in this species in Puerto Rico since the 1950's, from a former condition of being one of the most abundant waterfowl there. Habitat losses and illegal taking were suggested as causes for the decline. The Service announced a 90-day finding that the petition presented substantial information that the requested action may be warranted in the **Federal Register** for August 20, 1986 (51 FR 29671). That publication also initiated formal status review for the white-cheeked pintail.

The status of the white-cheeked pintail appears to be comparable to that of the three other waterfowl species under prior petition for Federal listing from the Puerto Rican Department of Natural Resources, as described in the next petition below. As in the case of the other three, some questions are still unanswered about whether or not the species are threatened or endangered rangewide, or whether the Puerto Rican populations constitute separately definable entities not mixing significantly with stocks of other islands, data that are difficult to obtain. The Service found the action requested by this petition to be warranted according to the best information available, but precluded by work on other species having higher priority for listing.

The following three petitions required subsequent one-year findings to be made:

In a petition dated December 27, 1984, and received January 3, 1984, the Service was requested by the Department of Natural Resources of the Commonwealth of Puerto Rico to list the Puerto Rican populations of the following three water bird species: the Caribbean coot, *Fulica caribea*, the ruddy duck, *Oxyura jamaicensis*, and the West Indian whistling duck, *Dendrocygna arborea*. All three species have declined significantly in Puerto Rico, but information on their status throughout the rest of their respective ranges and the relationships between various island stocks is still inadequate. An administrative finding that the action requested may be warranted was announced in a **Federal Register** notice published on July 5, 1985 (50 FR 27637). A 12-month finding that the requested action was warranted but precluded by other actions to add species to the Lists of Endangered and Threatened Wildlife and Plants was announced in the **Federal Register** of August 20, 1986 (51 FR 29671).

The same petition requested listing for a fourth species, the Puerto Rican crested toad (*Peltophryne lemur*), which the Service subsequently proposed for listing as a threatened species on December 23, 1986 (51 FR 45923). That proposal constituted the final petition finding for *Peltophryne lemur* that the action requested is warranted. The action requested by this petition for the three Puerto Rican waterfowl species was found to be warranted according to the best information available, but precluded by work on other species having higher priority for listing.

In a petition dated February 8, 1985, and received February 12, 1985, the Service was requested by Mr. Patrick Hartigan, on behalf of Travis (Texas) Audubon Society, to list the following six cave invertebrate species: *Microcreagris texana, Leptoneta reddelli, Texella reddelli, Rhadine persephone, Texamaurops reddelli*, and *Cylindropsis* sp. (Tooth Cave blind rove beetle). These species are all believed to be endemic to a small, isolated group of caves in Travis and Williamson Counties, Texas. An administrative finding that the action requested may be warranted was announced in a **Federal Register** notice published on July 18, 1985 (50 FR 29238). A 12-month finding that the requested action was warranted but precluded by other actions to add species to the Lists of Endangered and Threatened Wildlife and Plants was announced in the **Federal Register** of August 20, 1986 (51 FR 29671).

Special problems stand in the way of considering the Tooth Cave blind rove beetle for listing. One female specimen in poor condition when collected in the 1960's represents the only available material. Although appearing to be an undescribed representative of a genus not previously known from North America, the material is inadequate for satisfactory taxonomic understanding or description. It has, however, been repeatedly searched for in Tooth Cave and other caves in the general area, and can be assumed to be extinct unless information to the contrary becomes available. At the same time, rediscovery of adequate material together with continuation or increase of existing threats could give it a high priority for listing. It will therefore be listed in category 3A in the next invertebrate notice of review. On the basis of the best scientific information available, the action requested by this petitioner in respect to the Tooth Cave blind rove beetle was found to be not warranted, because the species is presumed to be extinct.

The other five species mentioned in this petition are taxonomically well-defined. The action requested by the petition was found to be warranted, according to the best information available, for *Microcreagris texana, Leptoneta reddelli, Texella reddelli, Rhadine persephone*, and *Texamaurops reddelli*, but precluded by work on other species having higher priority for listing.

In a petition dated September 11, 1984, and received September 14, 1984, the Service was requested by Martha L. Stout (Defenders of Wildlife), Faith T. Campbell (Natural Resources Defense Council), and Michael J. Bean (Environmental Defense Fund) to list the desert tortoise (*Gopherus agassizii*) as an endangered species throughout its remaining range. The species occurs in Arizona, California, and Nevada (the Beaver Dam slope population of the desert tortoise in Utah was listed as threatened with critical habitat in 1980) and in adjacent Mexico (Sonora and Sinaloa). A recent scientific name change accepted by many authorities recognizes the desert tortoise as *Xerobates agassizii*. A 90-day finding that the petition had presented substantial information indicating that the requested action may be warranted was made on December 14, 1984, and announced in the **Federal Register** for April 2, 1985 (50 FR 13054). The Service found on September 20, 1985, that the petitioned action was warranted but precluded by other pending proposals of higher priority, and anounced that finding in the **Federal Register** for December 5, 1985 (50 FR 49868).

The petitioners submitted as supporting information the Desert Tortoise Council's 838 page report "The Status of the Desert Tortoise (*Gopherus agassizii*) in the U.S." Subsequently the Service has received numerous comments, some including additional data, from members of the Desert

Tortoise Council and others. These tortoises are found primarily on flats and bajadas of the Colorado and Mojave deserts, and predominately on slopes in the Sonoran Desert. They are long-lived herbivores not reaching sexual maturity until 12 to 20 years of age. Most studies indicate that some desert tortoise populations in the southwestern United States are declining, with the highest mortalities and habitat losses occurring in the western Mojave Desert of California. Permanent trend study plots have shown either declines in numbers of tortoises or a shift in population structure toward a predominance of adult individuals. Some areas of the western Mojave Desert appear to have desert tortoise mortality rates as high as 18 percent per year, a rate that would quickly lead to disappearance of a population of animals reproducing this slowly. Impacts have been identified from overgrazing, trespass grazing, land development, road kill, off-road vehicle use, wanton shooting, collection of tortoises as pets, and heavy predation from opportunistic predators such as ravens. Such avian predators utilize fences and other human structures as perches and are attracted and sustained at high population levels by road-killed animals.

The Service believes that for certain areas of the species' range (Arizona and Mexico) additional data are necessary to determine accurately the species' status. Different interpretations of some data (Arizona and Nevada) exist. Consequently, the Service intends to retain the species in Category 2 of the next Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (an updated version is expected in 1987). An option exists, however, to list those populations that currently face the highest degree of threat, while studies proceed to resolve existing questions regarding remaining portions of the species' range. The action requested by this petition was found to be warranted, but precluded by other pending proposals of higher priority.

Section 4(b)(3)(B)(iii) of the Act states that petitioned actions may be found to be warranted but precluded by other listing actions when it is also found that the Service is making expeditious progress in revising the lists. Expeditious progress in listing endangered and threatened species is being made, and is reported annually in the **Federal Register**. The most recent progress report was published on June 30, 1987.

The Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of the white-necked crow, *Corvus leucognaphalus* of Hispaniola and Puerto Rico.

Author

This notice was prepared by Dr. George Drewry, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975 or FTS 235–1975).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–14770 Filed 6–30–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 126
Wednesday, July 1, 1987

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

June 26, 1987.

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. The list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s); if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Deparment 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, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
South Texas Lettuce—Marketing Order No. 971
On occasion; Annually
Farms; Businesses or other for-profit; 342 responses; 31 hours; not applicable under 3504(h)
James M. Scanlon (202) 475–3914
• Agricultural Marketing Service
Food Facility Survey
MRD 1 and MRD 2
On occasion
Businesses or other for-profit; 625 responses; 375 hours; not applicable under 3504(h)
Richard K. Overheim (202) 447–8317

Revision

• National Agricultural Statistics Service
Farm-Raised Catfish Surveys
Monthly; Quarterly.
Farms; Small businesses or organizations; 1,220 responses; 345 hours; not applicable under 3405(h)
Larry Gambrell (202) 447–7737

Reinstatement

• Food and Nutrition Service
7 CFR 250 Food Distribution Regulations
Recordkeeping; On occasion; Monthly; Quarterly; Semi-annually; Annually; Biennially
State or local governments; Non-profit institutions; 28,679 responses; 53,806 hours; not applicable under 3504(h)
Barbara Batts (703) 756–3660

Jane A. Benoit,
Department Clearance Officer.

[FR Doc. 87–14951 Filed 6–30–87; 8:45 am]
BILLING CODE 3410–01–M

Federal Grain Inspection Service

Designation Renewal of the State of Georgia and Schneider Agency (IN)

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewal of Georgia Department of Agriculture (Georgia) and Schneider Inspection Service, Inc. (Schneider), as official agencies responsible for providing official services under the U.S. Grain Standards Act, as Amended (Act).

EFFECTIVE DATE: August 1, 1987.

ADDRESS: James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service announced that Georgia's and Schneider's designations terminate on July 31, 1987, and requested applications for officia1 agency designation to provide official services within specified geographic areas in the February 3, 1987, **Federal Register** (52 FR 3300). Applications were to be postmarked by March 5, 1987. Georgia and Schneider were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency. Georgia is currently designated for inspection and weighing services; however, there have been no requests for official weighing services for the past few years. Accordingly, Georgia applied for designation renewal for inspection services only.

The Service announced the applicant names in the April 1, 1987, **Federal Register** (52 FR 10391) and requested comments on the designation renewal of Georgia and Schneider, and the official services to be provided within the State of Georgia. Comments were to be postmarked by May 18, 1987; none were received.

Based upon available information, it has been determined there is no need for weighing services within the State of Georgia. The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and in accordance with section 7(f)(1)(B), determined that Georgia and Schneider are able to provide official services in the geographic area for which the Service is renewing their designation. Effective August 1, 1987, and terminating July 31,

1990, Georgia and Schneider will provide official inspection services in their entire specified geographic area, previously described in the February 3 Federal Register.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency for the performance of official inspection or Class X or Class Y weighing services and where the agency and one or more of its inspectors or weighers is located. In addition to the specified service points within the assigned geographic area, an agency will provide official services not requiring an inspector or weigher to all locations within its geographic area.

Interested persons may receive a listing of an agency's specified service points by contacting either the Review Branch, Compliance Division, at the address listed above or the agencies at the following addresses:

Georgia Department of Agriculture, Capitol Square, Room 604, Atlanta, GA 30334

Schneider Inspection Service, Inc., 15406 White Oak, Lowell, IN 46356

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: June 25, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–14830 Filed 6–30–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Hastings Agency (NE) and State of New York; Request for Comments

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the geographic area currently assigned to Hastings Grain Inspection, Inc. (Hastings), and the New York State Department of Agriculture and Markets (New York).

DATE: Comments to be postmarked on or before August 17, 1987.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., Information Resources Staff, FGIS, USDA, Room 1661 South Building, 1400 Independence Avenue, SW., Washington, DC 20250.

Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail.

Telex users may respond as follows: TO: Lewis Lebakken TLX:7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the May 1, 1987, Federal Register (52 FR 15967). Applications Were to be postmarked by June 1, 1987. Hastings and New York were the only applicants for designation in their geographic area and each applied for designation renewal in the area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the designation of the applicants. Commenters are encouraged to submit reasons for support or objection to these designation actions, and include pertinent data to support their views and comments. All comments must be submitted to the Information Resources Staff, Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the Federal Register, and the applicants will be informed of the decision in writing.

Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 25, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87–14831 Filed 6–30–87; 8:45 am]

BILLING CODE 3410–EN–M

Request for Designation Applicants to Provide Official Services in the Geographic Area Currently Assigned to the Agri Seed Agency (AZ), Decatur Agency (IL), and State of South Carolina

AGENCY: Federal Grain Inspection Service (Service); USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of three agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Agricultural Seed Laboratories, Inc., Decatur Grain Inspection, Inc., and South Carolina Department of Agriculture.

DATE: Applications to be postmarked on or before July 31, 1987.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250. All applications received will be made available for public inspection at this address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Agricultural Seed Laboratories, Inc. (Agri Seed), 212 S. 25th Avenue, P.O. Box 6363, Phoenix, AZ 85005; Decatur Grain Inspection, Inc. (Decatur), 3434 East Wabash Avenue, Decatur, IL 62521; and South Carolina Department of Agriculture (South Carolina), P.O. Box 5286, North Charleston, SC 29406, were each designated under the Act as an official agency to provide inspection functions on January 1, 1985.

Each official agency's designation terminates on December 31, 1987. Section 7(g)(1) of the Act states that official agencies' designations shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Agri Seed, in the State of Arizona, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: Maricopa, Pinal, and Yuma Counties.

The geographic area presently assigned to Decatur, in the State of Illinois, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows:

Bounded on the North by the northern and eastern DeWitt County lines; the eastern Macon County line south to Interstate 72; Interstate 72 northeast to the eastern Piatt County line;

Bounded on the East by the eastern Piatt, Moultrie, and Shelby County lines;

Bounded on the South by the southern Shelby County line; a straight line running along the southern Montgomery County line west to State Route 16 to a point approximately one mile northeast of Irving; and

Bounded on the West by a straight line from this point northeast to Stonington on State Route 48; a straight line from Stonington northwest to Elkhart on Interstate 55; a straight line from Elkhart northeast to the west side of Beason on State Route 10; State Route 10 east to DeWitt County; the western DeWitt County line.

Exceptions to the described geographic area are the following locations situated inside Decatur's area which have been and will continue to be serviced by the following official agencies:

1. Champaign-Danville Grain Inspection Departments, Inc.: Moultrie Grain Association, Cadwell, Moultrie County; Tabor and Company, Weedman Grain Company, and Pacific Grain Company, Farmer City, DeWitt County; Moultrie Grain Association, Lovington, Moultrie County; and Monticello Grain Company, Monticello, Piatt County;

2. Southern Illinois Grain Inspection Service, Inc.: Sigel Elevator Company, Inc., Sigel, Shelby County; and

3. Springfield Grain Inspection Department: Chestervale Elevator Co., Chestervale, Logan County; and Stonington Coop Grain Company, Stonington, Christian County.

The geographic area presently assigned to South Carolina, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is as follows: the entire State of South Carolina except those export port locations within the State.

Interested parties, including Agri Seed, Decatur, and South Carolina, are hereby given opportunity to apply for official agency designation to provide the official services in each geographic area, as specified above, under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in each specified geographic area is for the period beginning January 1, 1988, and ending December 31, 1990. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above, for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: June 25, 1987.

J.T. Abshier,

Director, Compliance Division.

[FR Doc. 87-14832 Filed 6-30-87; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: Franchising in the Economy
Form Number: Agency—ITA-910; OMB—0625-0146
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1,800 respondents; 900 burden hours
Needs and Uses: Franchising makes a significant contribution to the American economy. The Department of Commerce receives a large number of requests from Congress, other U.S. Government agencies, State and local governments, the business sector, franchising companies, colleges and private individuals for data and information on recent developments and new directions for franchising. The survey fulfills the needs of business and government to document the scope, volume and patterns of franchising in the economy.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395-7340
Agency: International Trade Administration
Title: Franchise Opportunities Handbook, Franchisor Participation Agreement
Form Number: Agency—ITA-908; OMB—0625-0144
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 200 respondents; 100 burden hours
Needs and Uses: The Franchise Opportunities Handbook identifies those franchisors who affirm their interest and willingness to franchise without regard to race, color, sex or national origin. The information is used by a variety of government agencies to promote business opportunities and is useful to individuals who are interested in owning their own business. The Participation Agreement must be completed by firms requesting to be included in the publication.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395-7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6628, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 26, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87-14850 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-CW-M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Application for License to Enter Watches and Watch Movements into the Customs Territory of the U.S.
Form Number: Agency—ITA–334P; OMB—0625–0040
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 8 respondents; 8 burden hours
Needs and Uses: Public Law 97–446 requires the Commerce and Interior Departments to administer the distribution of duty-exemptions and duty-refunds to watch producers in the U.S. Territories and the Northern Mariana Islands. The collection of information is used for the enforcement of this law, and to permit a fair and equitable distribution of its benefits.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: Annually
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Agency: International Trade Administration
Title: Reports on General License Exports of U.S.-Origin Commodities Imported for Servicing
Form Number: Agency—EAR 371.17(a)(4); OMB—0625–0066
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 200 respondents; 36 burden hours
Needs and Uses: In order to prevent abuse of the export control program, reports on commodities imported into the U.S. for servicing are required. Specifically, exporters must submit reports when a commodity is reexported after being serviced. The reports eliminate the requirement for exporters to submit an application for a validated license when returning U.S. serviced commodities to a communist country.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations
Frequency: On occasion/Recordkeeping
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: John Griffen, 395–7340

Agency: National Oceanic and Atmospheric Administration
Title: National Ocean Service's Circulation Product Adequacy Survey
Form Number: Agency—N/A; OMB—N/A
Type of Request: New Collection
Burden: 200 respondents; 100 burden hours
Needs and Uses: The National Ocean Service's Circulation Program measures the tides and tidal currents around the U.S. and its possessions. User information about the accuracy of the predictions and the overall quality of the products will be collected. The information will be used to help establish circulation survey priorities and to improve the utility of the products.
Affected Public: Individuals; state or local governments; businesses or other for-profit institutions; federal agencies; small businesses or organizations
Frequency: One-time only
Respondent's Obligation: Voluntary
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: June 26, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–14849 Filed 6–30–87; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[A–489–602]

Final Determination of Sales at Less Than Fair Value: Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have determined that acetylsalicylic acid (aspirin) from Turkey is being, or is likely to be, sold in the United States at less than fair value.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel (202–377–3530) or John R. Brinkmann (202–377–3965), Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We have determined that aspirin from Turkey is being, or is likely to be, sold in the United States at less than fair value as provided in section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a) (the Act). We sent questionnaires to two companies which comprise at least 60 percent of all exports of the merchandise to the United States. One of those companies did not respond. We made fair value comparisons for the period of investigation, May 1 to October 31, 1986. Comparisons were based on United States price and foreign market value. The margin of sales at less than fair value is shown in the "Suspension of Liquidation" section of this notice. On April 9, 1987, we made an affirmative preliminary determination (52 FR 12222, April 15, 1987). Since then, as required by the Act, we afforded interested parties an opportunity to submit oral and written comments addressing the issues arising in this investigation. On May 7, 1987, we held a public hearing to allow the parties to address the issues.

Scope of Investigation

The product covered by this investigation is acetylsalicylic acid (aspirin), containing no additives, other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the Handbook of Non-Prescription Drugs, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under item 410.72 of the *Tariff Schedules of the United States* (TSUS).

Fair Value Comparisons

Because Atabay Kimya Sanayi ve Ticaret (Atabay) and Proses Kimya Sanayi ve Ticaret (Proses) accounted for at least sixty percent of all exports of the subject merchandise from Turkey, we limited our investigation to them. 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 to the foreign market value. Since Proses did not respond, we made comparisons only on the sales of Atabay. For Proses we used the best information available which was the information contained in the petition.

United States Price

As provided in section 772(b) of the Act, we based the United States price on purchase price because the merchandise was sold to unrelated purchasers prior to the date of importation in the United States. In this case the merchandise was sold to a trading company in Turkey. At the time of sale to the trading company, Atabay was aware that the merchandise was destined for shipment to the United States. Terms of sale to the trading company were C & F United States port.

From the total C & F price we made deductions for ocean freight, brokerage and handling, foreign inland freight and bank charges.

Foreign Market Value

In accordance with section 773(a)(1)(B) of the Act, we determined that there were sufficient home market sales of such or similar merchandise to be used as a basis for determining foreign market value for aspirin. Therefore, in accordance with section 773(a)(1)(A) of the Act, we based foreign market value for aspirin on sales to unrelated customers in the home market. We made deductions from the home market C & F prices for inland freight. The value added tax was not included in the price of the aspirin in either market, therefore, we did not adjust for it. We made adjustments to account for differences in the credit expenses for the merchandise in each market in accordance with § 353.15 of the Commerce Regulations. Since we could not tie U.S. sales to any specific loans, we used the average compounded interest rate on short-term loans in Turkish lira in order to calculate a credit cost in each market.

Normally, we use certified daily exchange rates furnished by the Federal Reserve Bank of New York as the official exchange rates, but no certified rates were available for Turkey. Therefore, in place of the official certified rates, we used the rates published by the International Monetary Fund, as the best information available.

Verification

As provided in section 776(a) of the Act, we verified all information provided by Atabay in making this determination using standard verification procedures, including examination of relevant information on selected sales.

Petitioner's Comments

Comment 1: Petitioner contends that the Department should base United States price on the price charged to the U.S. customer by the trading company, rather than the price Atabay charges the trading company because the trading company is merely Atabay's agent. In using the price between the trading company and the U.S. customer, adjustments, including the trading company's selling expenses, should be made because the trading company is engaged in middleman dumping.

If the Department decides to use the price to the trading company, the petitioner argues that the Department should ignore the second payment Atabay received from the trading company because the payment represents a tax rebate and export subsidy.

Finally, the petitioner questions the differing manner in which this payment has been treated in the antidumping and countervailing duty investigations. In the antidumping case, the Department has reduced dumping margins by adding the subsidies to United States price. In the countervailing duty investigation, the Department has reduced the deposit rate by subtracting those subsidies which were terminated after the period of investigation. To be consistent, the Department should either not add the subsidies to the U.S. price in the antidumping investigation, or not reduce the deposit rate in the countervailing duty investigation.

DOC Position: We disagree that we should base United States price on the price being charged by the middleman to the U.S. customer. When the producer is unrelated to the middleman, it is our longstanding practice to use the price the producer charges the middleman when, as here, the producer knows that the good is destined for the United States (*Elemental Sulphur from Canada* 48 FR 53592 (1983); *Fuel Ethanol from Brazil*, 51 FR 5572 (1986)). There is nothing in the record to indicate that the middleman is an agent of the exporter.

With respect to the petitioner's charge of middleman dumping, petitioner has not provided adequate information to support this allegation.

The Department has also continued to include the second payment Atabay receives from the middleman in calculating United States price. This payment is part of Atabay's return on its U.S. sales and, hence, is properly accounted for in comparing home market and U.S. prices. Moreover, Atabay's contract with this unrelated middleman to sell aspirin to the United States was entered into at arms length. It specified that payment would be in two parts. The second part of the payment was to be received after the middleman received export tax rebates from the Turkish government for its resales of this merchandise to the U.S. customer. Since the contract was between two unrelated parties and made at arms length, we have rejected petitioner's request to exclude the second payment in the determination of the United States Price.

Finally, our treatment of this payment in the companion countervailing duty investigation is consistent with our practice of taking into account program-wide changes. If the elimination of the subsidy has resulted in increased dumping by Atabay, then it will be captured in any 751 review.

Comment 2: Petitioner contends that the adjustment for differences in credit costs should be calculated on the basis of the weighted average short-term cost of all credit to Atabay and not merely those loans denominated in Turkish lira.

DOC Position: We disagree. While it is our general policy to average the interest rates on all short-term loans, we do not average rates on loans in different currencies since nominal interest rates in different currencies cannot reasonably be compared unless account is taken of costs incurred as a result of changes in the exchange rate during the period the loan is outstanding. When we have loans in different currencies, we generally will use only those loans denominated in the domestic currency. Since we could not tie loans to any specific sales, and most of Atabay's operations are in Turkish lira, we believe the lira interest rate is the most appropriate rate to use for credit expenses.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to continue to suspend liquidation of all entries of aspirin from Turkey 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 amount by which the foreign market value of the merchandise subject to this investigation exceeded the United States price, as shown in the table below. The margins are listed below.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties in the portion of the margin attributable to export

subsidies. We made an affirmative determination in the final countervailing duty determination on aspirin from Turkey. Therefore, the bonding rate will be reduced by the amount of the export subsidies found in that determination.

Manufacturer/seller/exporter	Weighted-average margin percentage
Atabay Kimya Sanayi ve Ticaret	27.35
Proses Kimya Sanayi ve Ticaret	38.60
All others	32.98

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

June 23, 1987.

[FR Doc. 87-14824 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-489-603]

Final Affirmative Countervailing Duty Determination: Acetylsalicylic Acid (Aspirin) From Turkey

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers or exporters in Turkey of acetylsalicylic acid (aspirin) as described in the "Scope of Investigation" section of this notice. The estimated net subsidy for the review period is 19.54 percent *ad valorem* for all producers or exporters in Turkey of aspirin. However, consistent with our stated policy of taking into account program-wide changes that occur before our preliminary determination, we are adjusting the duty deposit rate to reflect changes in the Export Tax Rebate Program, the Supplemental Tax Rebate Program, the Resource Utilization Support Fund and the Export Revenue Tax Deduction Program. Accordingly, the duty deposit rate is 6.54 percent *ad valorem* for all producers or exporters in Turkey of aspirin, except for Proses Kimya Sanayi ve Ticaret A.S. (Proses) which is excluded from this determination.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to continue to suspend liquidation of all entries of aspirin from Turkey, except that produced and exported by Proses, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the duty deposit rate as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose 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) 377-2815 or 377-2438.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to producers or exporters in Turkey of aspirin. For purposes of this investigation, the following programs are found to confer subsidies:

- Export Tax Rebate and Supplemental Tax Rebate;
- Payments to Exporters from the Resource Utilization Support Fund; and
- Export Revenue Tax Deduction.

Case History

Since the last **Federal Register** publication pertaining to this case [the notice of extension of the deadline date for this final determination (52 FR 10788, April 3, 1987)], the following events have occurred. We conducted verification in Turkey between April 9 and 16, 1987. We verified the Government of Turkey questionnaire response and the questionnaire responses of Atabay Kimya Sanayi ve Ticaret A.S. (Atabay) and Proses. We did not verify any information from other producers or exporters of aspirin in Turkey because we either did not receive a response to our questionnaire or we received an inadequate response. In addition to Atabay, according to Government of Turkey export statistics, the following companies exported aspirin in 1985 or 1986: Birlesik Alman Ilac Fabrikarlari (Birlesik), Temel Pazaralama Ithalat Ihracat A.S. (Temel), Eksel Dis Ticaret A.S. (Eksel), and Fepas Dis Ticaret A.S. (Fepas). Furthermore, we obtained information at verification which indicates that Bayer Turk Kimya Sanayi Ltd. Sirketi (Bayer) is also a producer of aspirin in Turkey.

At the request of petitioner and the Government of Turkey, a public hearing was held on May 22, 1987, to afford interested parties an opportunity to present views orally, in accordance with section 355.35 of our regulations.

Scope of Investigation

The product covered by this investigation is acetylsalicylic acid (aspirin), containing no additives other than inactive substances (such as starch, lactose, cellulose, or coloring material), and/or active substances in concentrations less than that specified for particular non-prescription drug combinations of aspirin and active substances as published in the *Handbook of Non-Prescription Drugs*, 8th edition, American Pharmaceutical Association, and is not in tablet, capsule or similar forms for direct human consumption. This product is currently classified under item 410.72 of the *Tariff Schedule of the United States* (TSUS).

Analysis of Programs

Throughout this notice we refer to certain general principles applied to the facts of the current investigation. These general 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 Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

It is the Department's policy to take into account program-wide changes when they are implemented after the review period, but before the preliminary determination and when the effect of the change in terms of the benefits bestowed on current exports to the United States is verifiable. Where this condition is met, the rate for duty deposit or bonding purposes is raised or lowered as appropriate. This policy is desirable because it promotes the expeditious elimination or curtailment of subsidies and permits the Department to adjust the duty deposit rate to correspond as nearly as possible to the eventual duty liability.

In this investigation, we verified that subsequent to the review period, but prior to the preliminary determination, a number of programs were either eliminated or altered in such a way as to result in a fundamental change in the bestowal of benefits. Description of these program-wide changes, and of our treatment of them, follow in the description of the programs.

For purposes of this final determination, the period for which we

are measuring subsidization ("the review period") is calendar year 1985. Based upon our analysis of the petition, the responses to our questionnaires, verification, the public hearing, and comments filed by petitioner and the Government of Turkey, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to producers or exporters in Turkey of aspirin under the following programs:

A. Export Tax Rebate and Supplemental Tax Rebate

The Government of Turkey provides tax rebates to exporters of certain products, pursuant to Law number 261 of July 1963, and Decree number 7/10624 of September 16, 1975, as amended by Decree numbers 8/2625 (April 23, 1981), 8/4397 (April 22, 1982) and 83/7542 (December 29, 1983).

In 1975, Turkey's State Planning Organization conducted a study of the tax incidence on exported products. The government obtained information on the costs of production and tax incidence from producers on a product-by-product basis. The competitive position of a product in international markets, and thus its need for a rebate, was also taken into account. Rates of rebate were not to exceed the tax incidence on the product and could be lower where the full amount of the rebate was not necessary to make a product internationally competitive. The taxes intended to be rebated, which are set out in List A in Decree number 75/10624, are primarily indirect taxes, although several direct taxes are also included. The nominal rate of rebate for aspirin during the review period was 17.5 percent. However, this rebate was paid only on the amount of foreign currency repatriated.

In order to determine whether export payments, purportedly operating as a rebate of indirect taxes, are in fact a bona fide rebate of indirect taxes the Department examines whether: (1) The program operates for the purpose of rebating indirect taxes; (2) there is a clear link between eligibility for export payments and indirect taxes paid; and (3) the government has reasonably calculated and documented the actual indirect tax incidence borne by the product concerned and has demonstrated a clear link between such tax incidence and the rebate amount paid on export.

Where these conditions are met, the Department considers that the rebate system does not confer a subsidy to the extent that it rebates prior stage indirect taxes on inputs that are physically incorporated in the exported products and indirect taxes levied at the final stage. To the extent that the rebates exceed the payment of such indirect taxes, we would find that a countervailable benefit is being provided.

In *Certain Welded and Carbon Steel Pipe and Tube Products from Turkey: Final Affirmative Countervailing Duty Determinations* (51 FR 1268, January 10, 1986), we determined that this program was a bona fide rebate of indirect taxes. Therefore, in this investigation we focused on whether the rebate accurately reflects the indirect tax incidence for aspirin.

At verification, we found that the rebate is no longer linked to the actual indirect tax incidence because the Government of Turkey has changed its system of indirect taxes since the 1975 study was conducted and no new study has been prepared. With the introduction in Turkey on January 1, 1985, of the value-added tax, most or all indirect taxes on inputs physically incorporated into aspirin (except import duties, from which exporters are largely exempt) and indirect taxes on the final stage of production have been abolished while the export tax rebates remained unchanged. Therefore, we determine that the second part of our test is not met and that the full amount of the rebate is an export subsidy under section 771(5)(A) of the Act.

In addition to basic export tax rebates described above, the Government of Turkey also provides supplemental tax rebates to exporters that have annual exports of more than $2 million. The rates of supplemental rebates increase as the value of a company's annual exports increases. Because eligibility for this program is also contingent upon export performance, we determine that it is an export subsidy under section 771(5)(A) of the Act.

To calculate the benefit for Atabay and Proses, we divided the value of the companies' rebates received on exports of aspirin to the United States by the value of the companies' exports of aspirin to the United States. For the non-respondents, we used as the best information available the nominal percentage rebate and assumed that all foreign currency earned was repatriated. We then weight-averaged the *ad valorem* benefits of Atabay, Proses and the non-responding companies by each company's proportion of the value of Turkish exports of aspirin to the United States. On this basis, we calculated an estimated net subsidy of 12.49 percent *ad valorem*.

However, we verified that Communique No. 87/5 eliminated all export tax rebates and supplemental tax rebates on exports of aspirin to the United States exported after February 7, 1987. Accordingly, we have taken this elimination into account by not including the program in the duty deposit rate.

B. Payments to Exporters from the Resource Utilization Support Fund (RUSF)

The RUSF was created by Decree number 84/8860 which was published in the Official Journal on December 15, 1984, and became effective January 1, 1985. This fund provides direct payments to exporters. During the review period, exporters were eligible to receive payments in the amount of four percent of that part of the FOB value of the exported goods which is repatriated into Turkish lira. (Two other programs under RUSF are described below under the "Programs Determined Not To Be Used" section of this notice.) Because this program provides for payments on the basis of export performance, we determine that it is an export subsidy under section 771(5)(A) of the Act.

To calculate the benefit for Atabay and Proses, we divided the amount of the payments received by the companies for exports of aspirin to the United States by the value of the companies' aspirin exports to the United States. For the non-responding companies, we used as the best information available the nominal percentage payment and assumed that all foreign currency earned was repatriated. We then weight-averaged the ad valorem benefits of Atabay, Proses and the non-responding companies by each company's proportion of the value of Turkish exports of aspirin to the United States. On this basis, we calculated an estimated net subsidy of 3.41 percent *ad valorem*.

However, we verified that pursuant to Decree 85/11085, direct payments to exporters from the RUSF have been eliminated for goods exported after November 1, 1986. Accordingly, we have taken this elimination into account by not including the program in the duty deposit rate.

C. Export Revenue Tax Deduction

Section 8 of Law No. 5422, as amended by Section 6 of Law No. 2362, permits producers that export industrial products valued in excess of $250,000 annually to deduct 20 percent of their export revenues from taxable corporate income. A five percent deduction is allowed for exporters that are not

producers. Thus, for products exported through a trading company, a total of 25 percent of the value of the exports could be used as a deduction.

However, under Article 94 of the Turkish Income Tax Law, as amended by Law No. 2772, tax deductions are also taxed, but at a lower rate than the standard corporate tax rate. In tax year 1984, if the savings from the export revenue deduction were distributed to shareholders, the deduction was taxed at the rate of 25 percent; if the income was retained, it was taxed at the rate of 20 percent. Given that the corporate tax rate in tax year 1984 was 40 percent, the effective tax rate on deductions was either 15 percent or 20 percent, depending on whether the savings from the deduction were distributed to shareholders or retained by the company.

We determine that this program is countervailable as an export subsidy because it provides a benefit which is contingent upon export performance. The benefit is the amount of tax savings realized by using the deduction. Further, our tax methodology is based on a cash flow basis which for countervailing duty purposes means that the subsidy occurs when the benefit is effectively realized. Therefore, we focus on the tax return filed during the review period, which will normally cover the company's previous tax year.

With respect to Proses, we verified that the company was not able to use the deduction under the program. The tax return of Proses for 1984, which was filed during the review period, shows that the company did not have sufficient income to benefit from the program. Furthermore, the tax return of Proses for 1985 demonstrates that the company continued to have insufficient income to benefit from the program. Therefore, no benefit is attributed to Proses for this program in either the estimated net subsidy or duty deposit rate.

For the remaining companies, we did not receive in the responses information concerning the tax returns filed during the review period. In the absence of information on the utilization of this program during the review period, we are assuming that all the producers and exporters of aspirin exported, directly or indirectly, more than $250,000 annually, paid corporate tax at the rate of 40 percent, paid a tax of 20 percent on their tax deductions, and were profitable to the extent that they were able to use the full amount of the deduction permitted under the program.

We verified that during the review period Atabay exported aspirin directly to the United States and that Proses exported aspirin to the United States using two trading companies, Temel and Eksel. We assume, based on information available to us and in the absence of verified information to the contrary, that Bayer exported its aspirin to the United States through Birlesik.

We calculated the tax savings realized by each company during the review period by subtracting the amount of tax the company would have paid using the deduction for export revenues from the amount the company would have paid if it did not use the program. For each producer, except for Proses, we assumed that the company utilized the full amount of the 20 percent deduction. For each trading company, we assumed that the entire five percent deduction was taken. In the case of Bayer and Birlesik, we aggregated the benefits received by both companies. We then weight-averaged the *ad valorem* benefit of all the companies by each company's proportion of the value of Turkish exports of aspirin to the United States. On this basis, we calculated an estimated net subsidy of 3.64 percent.

However, we verified that the corporate tax has risen to 46 percent since the review period but prior to our preliminary determination. Moreover, pursuant to Decree No. 86/10415, effective March 7, 1986, the rate at which deductions are taxed has decreased to 10 percent. These tax law modifications have resulted in a fundamental change in the bestowal of benefits under this program. We verified that for tax year 1985, Atabay's tax liability was calculated according to these changes. Since the changes went into effect with respect to tax returns filed after the review period but prior to our preliminary determination, we are able to measure adequately the effect on current exports to the United States. Accordingly, we have adjusted the duty deposit rate to reflect the changes in the tax rates.

Taking into account the modifications in the tax laws, we used the same methodology and made the same assumptions described above to calculate the benefit for duty deposit purposes. We then weight-averaged the *ad valorem* benefit using the same calculation described above. On this basis, we calculated a duty deposit rate of 6.54 percent *ad valorem* for all producers and exporters of aspirin in Turkey, except for Proses.

II. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to producers or exporters in Turkey of aspirin under the following programs

A. Accelerated Depreciation

Petitioner alleges that under the General Incentive Program (GIP), the Government of Turkey allows a higher rate of depreciation for particular industries. The ceiling on such depreciation, according to petitioner, is 50 percent and may reach twice the rate normally permitted.

We verified that special depreciation rules in Turkey are not included under GIP. General Communique on Tax Procedural Law No. 153 specifies the various rates and methods of depreciation allowable in Turkey. The general rule is that an asset may be depreciated 25 percent per year over four years. Further, we verified that all companies are free to depreciate assets at the rate of 50 percent using the declining balance method. Since the 50 percent rate is not limited to a specific enterprise or industry or group of enterprises or industries, we determine that this program is not countervailable.

B. Revaluation of Fixed Assets

Petitioner alleges that under GIP certain companies may revalue their depreciable fixed assets at the end of each calendar year. The tax depreciation is then calculated on the newly assessed values.

We verified that the ability to revalue fixed assets does not exist as a special benefit under GIP. Pursuant to Law No. 3094, companies in Turkey may revalue the undepreciated value of their assets by the increase in the wholesale price index, published by the State Statistical Institute, less 10 percent. We verified that all companies may revalue assets. Since the ability to revalue fixed assets is not limited to a specific enterprise or industry or group of enterprises or industries, we determine that the program is not countervailable.

III. Programs Determined Not To Be Used

We verified that the programs described below were not used by the producers or exporters of aspirin in Turkey.

A. General Incentives Program

GIP is designed to implement the targets of Turkey's five-year development plan and annual development programs. The goals of GIP are to remove development disparities among different regions, to assure economically efficient investments by region and by sector, and to direct savings to the most economically suitable investment areas.

GIP is administered by the State Planning Organization (SPO) which

establishes the policies for incentives under GIP and has the power to approve or deny applications. Upon approval for GIP benefits, SPO issues an investment incentive certificate. This certificate describes the nature of the investment, lists the GIP sub-programs for which the holder is eligible and states the duration of the certificate. We verified that none of the producers or exporters in Turkey of aspirin received an investment incentive certificate for the production or exportation of the subject merchandise. Communique 85/1 and Communique 86/1 describe the various GIP programs and eligibility criteria for 1985 and 1986, respectively.

Petitioner alleged a number of programs under GIP. Based on the government questionnaire response and verification, the following programs existed under GIP for 1985 and 1986.

1. Exemptions from Customs Duties

Holders of investment incentive certificates may be entitled to the duty-free import of capital goods and raw materials necessary to realize qualified investments.

2. Investment Allowance

At the initiation of this investigation this program was alleged by petitioners as the "Income and Corporate Tax Allowance". The investment allowance permits an eligible company to deduct from taxable income 30 to 100 percent of the cost of approved investments, depending on the sector and region in which the investment is made.

3. Employee Tax Exemption

Under this program, employees of eligible certificate holding companies located in priority development regions are exempt from the payment of personal income tax.

4. Investment Financing Fund

Eligible certificate holding companies can deposit their profits in the Investment Financing Fund of the Central Bank and postpone the payment of taxes on those monies for one year.

5. Building Construction Licensing Charge Immunity

Eligible certificate holding companies are exempt from the payment of municipal construction licensing charges for the construction of factories, mills, shipbuilding yards, etc. At the initiation of this investigation, this program was alleged by petitioner under the general heading "Other Tax Exemptions".

6. Tax, Duty and Charge Exemptions

At the initiation of this investigation, petitioner alleged this program as "Exemption on Loan Fees". Since 1985, this is the only benefit in GIP that still requires an export commitment. Exemptions are provided for various charges on both domestic and foreign sourced credits taken out to finance the approved investment.

7. Foreign Exchange Allocation

Under the terms of this program, certificate holders are permitted to purchase foreign currency necessary to carry out the proposed investment.

8. Other Tax, Duty and Charge Exemptions

Eligible certificate holders are exempt from payment of various loan fees and charges on loans for building construction in priority development regions.

9. Interest Spread Return

Certificate holders may be eligible for two benefits under this program: short-term credits for export and medium- or long-term credits for investment. Companies apply for rebates through commercial banks, which in turn apply for rediscounts through the Central Bank. This program was terminated as of January 1, 1985 by Decree No. 84/8860, although loans outstanding will continue to receive rebates until maturity. Pursuant to Communique 86/1 five other programs were created under GIP for 1986.

1. *Deferment of Value-Added Tax.* An eligible certificate holder under this program can defer the payment of the value-added tax on machinery and equipment until the end of the investment period.

2. *Incentive Premium on Domestically Obtained Goods.* Under this program an eligible certificate holder can obtain a 15 percent rebate on the fixed assets purchased domestically which are listed on the certificate.

3. *Incentive Credit for Investment Goods Manufacturers.* To qualify for this program a company must obtain an "Investment Goods Manufacturer's Certificate of Qualification" from SPO. Successful exporting applications may provide "seller's credit" to their customers through the use of the Investment Goods Incentive Fund or rediscount resources of the Central Bank. Certificate of Qualification holders are also eligible for an exemption from customs duties up to 25 percent of the cost of inputs into the production process.

4. *Wharfage Exemption.* Eligible certificate holders are exempt from the normal wharfage fees for unloading goods at Turkish ports.

5. *Authorization to Seek Foreign Financing.* Although not a separate GIP program *per se*, pursuant to Communique 86/1, eligible certificate holders can obtain foreign credits. Interest rates and other expenses pertaining to the foreign credits are freely determined by the parties concerned.

B. Resource Utilization Support Fund (RUSF)—Reimbursement for Investments and Rebates on Investment Credits

In addition to direct payments of four percent on exports, benefits provided under RUSF also include partial reimbursement for certain investments in excess of 600 million Turkish lira, and investment credit rebates of seven percent for investments under 600 million Turkish lira.

Only those companies holding investment incentive certificates under GIP are eligible for these RUSF benefits. We verified that none of the producers or exporters in Turkey of aspirin received investment incentive certificates for the production or exportation of the subject merchandise.

Depending on their regional location, companies may be eligible for partial reimbursement for investments at rates of seven to 20 percent. At the initiation of this investigation petitioner alleged this program as "Premium to Support Investment". Investment credit rebates are provided to banks loaning money to certificate holders at prescribed rates of interest.

C. Export Credits

Under Communique No. 1, effective December 1, 1986, certain exporters are eligible for export credits at below market interest rates. Eligibility for benefits under this program is limited to exporters who have shipped at least five million dollars in exports over the past three years, with no single year's export value less than one million dollars. We verified that this program was not used by the producers or exporters of aspirin in Turkey.

D. Export Promotion Program

Under Decree No. 85/10183, exporters can apply to SPO for an export incentive certificate. The certificate can provide the exporter with a customs duty exemption on raw materials used in the production of goods to be exported. In addition, the certificate can provide for an allocation of foreign exchange. We verified that none of the producers or exporters in Turkey of aspirin benefited from this program for the production or

exportation of aspirin during the review period.

IV. Programs Determined To Be Terminated

We verified that the programs described below have been terminated.

A. Customs Duty Deferrals

Petitioner alleges that, during 1980, the Government of Turkey permitted delayed payment of up to six months of duties and fees on imported materials. We verified that deferrals ended after 1984 and were not part of GIP under Communique 85/1 or Communique 86/1.

B. Preferential Export Financing

Petitioner alleges that the Government of Turkey, through the Interest Equalization Fund of the Central Bank, provided short-term export credits at preferential rates. We verified that this program was terminated by Decree No. 84/8861 on December 15, 1984. Thus, any benefits provided are no longer accruing to current exports to the United States.

V. Programs Determined Not To Exist

We verified that the programs described below never existed.

A. Credit for Operational Requirements

Petitioner alleged that investors with incentive certificates are eligible to receive credit with a maturity of five years for their operational requirements on terms inconsistent with commercial considerations.

B. Preferential Interest Rates on Loans of Foreign Origin

Petitioner alleged that the Government of Turkey sets the interest rate on loans of foreign origin with a maturity of eight years and a three-year grace period at rates inconsistent with commercial considerations.

C. Exemptions from Taxes on Payments to Foreign Suppliers

Petitioner alleged that holders of incentive certificates are exempted from payment of taxes or other charges normally assessed against payments made to foreign suppliers for imported goods.

Petitioner's Comments

Comment 1: Petitioner points out that verification of the Atabay response revealed a lower level of aspirin exports to the United States than had been reported, and argues that the Department should re-calculate the *ad valorem* rate based on the verified export total.

DOC Position: We agree. For purposes of the export and supplement tax rebate programs and RUSF payments, we used the information verified at Atabay as the basis for our estimated net subsidy calculations.

Comment 2: Petitioner argues that the Department's treatment of the termination of the Export Tax Rebate and Supplemental Tax Rebate programs for exports of aspirin to the United States as a "program-wide change" is incorrect. Petitioner contends that termination affects exports to the U.S. only, and therefore should not be considered program-wide. Further, petitioner asserts that, because exports to third countries may continue to receive benefits, producers of aspirin in Turkey receive countervailable benefits to the extent that the rebates reduce overall production costs.

DOC Position: We disagree. We consider the termination of rebates on aspirin exports to the United States to be a program-wide change. Consistent with Department practice, we have determined the changes in certain programs to be program-wide changes because they have resulted in a fundamental change in the bestowal of benefits, are government-mandated, were not company-specific, and occurred after the review period but prior to the preliminary determination. With respect to petitioner's second point, it is the Department's policy not to include export subsidies that are specifically tied to exports to countries other than the United States in our subsidy determination [See *Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review* (52 FR 833, January 9, 1987)]. Moreover, we note that the Government of Turkey has entered into a bilateral agreement with the Government of United States in which it agreed to eliminate the tax rebate programs in their entirety by the end of 1988.

Comment 3: Petitioner speculates that residual benefits from the rebate and RUSF programs earned prior to the termination of the programs may possibly be received by exporters of aspirin after the termination of the programs. Accordingly, petitioner argues that the full amount of the benefit calculated for the review period should be included in the duty deposit rate.

DOC Position: We disagree. We verified that benefits under the terminated programs cannot accrue to exports made after termination. We have consistently held that where a subsidy program has been terminated prior to the preliminary determination and the program can no longer benefit exports of the merchandise which are subject to suspension, the benefits under the program should not be included in the duty deposit rate [See *Final Affirmative Countervailing Duty Determinations and Orders: Certain Textile Mill Products and Apparel from Peru* (50 FR 9871, March 12, 1985)].

Comment 4: Petitioner questions whether termination of the tax rebate programs for exports to the United States necessarily applies to products routed through third countries that are destined for the United States market.

DOC Position: At verification, we thoroughly examined the customs documentation used by Turkish customs officials. In cases of transshipments ultimately destined for the United States, the customs declaration forms clearly specified the United States as the country of final destination. Further, we note that the government treats such transshipments as exports to the United States for statistical reporting. Therefore, we believe that the customs declaration forms, which must be presented to apply for benefits, will be used to deny benefits related to all shipments of aspirin exported, directly or indirectly, to the United States. However, the use of this program will be examined in the section 751 administrative review, if one is requested.

Comment 5: Petitioner argues that based on company financial statements the total amount of tax rebates received by producers and exporters of aspirin during the review period was significantly higher than reported in company responses.

DOC Position: As is normal Department practice, we verified the specific level of benefits related to exports of the subject merchandise to the United States. When this can be done, it is not relevant if the actual total amount of benefits on all products exported to all countries is higher than the benefits reported.

Comment 6: Petitioner argues that direct payments to exporters from RUSF should be treated as grants and that the benefit should be allocated over time rather than expensed in the year of receipt.

DOC Position: We disagree. The RUSF program of direct payments to exporters was established as a recurring benefit program under which companies could expect to receive payments year after year provided they continued to export. Therefore, although RUSF was terminated after only two years of operation, the benefits received by companies during its existence cannot be considered "one time, shot-in-the-arm" grants. As is Department practice with respect to recurring benefits, we

allocated these grants to the year of receipt.

Comment 7: Petitioner argues that, as a result of the Export Incentive Certificates issued by the Government of Turkey to Atabay, the company received import duty exemptions on raw materials used in the production of aspirin which was never exported. Furthermore, petitioner asserts that Atabay may have received a port charge exemption under the certificates.

DOC Position: Subsequent to the review period, Atabay received two Export Incentive Certificates relating to the importation of raw materials for the production of aspirin. The terms of the first certificate were changed to allow for the importation of non-aspirin raw materials and the exportation of a non-aspirin product. Atabay also obtained a change in the terms of the second certificate. Nonetheless, even under the changed terms of the second certificate the company was still obligated to export the final product produced from the raw materials. With respect to port charges, we verified that the company did not receive any port charge exemptions by examining the regulatory authority and the terms of Atabay's certificates.

Comment 8: Petitioner argues that the Department should reject as untimely information received from Proses during verification which corrects information submitted in the company's response and assume that it received the maximum level of rebates allowable.

DOC Position: We disagree. Although the verification of the Proses questionnaire response disclosed certain minor discrepancies, all the information used for this final determination regarding Proses was verified. To assume that the company received the maximum level of rebates, in contradiction to verified information, would be incorrect.

Respondent's Comments

Comment 1: The Government of Turkey argues that not all companies under investigation are eligible for a 20 percent export revenue tax deduction. Temel, Eksel and Fepas, as export trading companies, are eligible for no greater than a five percent export revenue deduction.

DOC Position: We agree. In the calculation of the duty deposit rate, we took into account the two levels of benefits under the Export Revenue Tax Deduction program. Furthermore, we note that the export revenue tax deduction for trading companies is in addition to the deduction for producers. This is also reflected in our calculations.

Comment 2: The Government of Turkey argues that the Department should use the tax returns of the non-responding companies, provided by the Government of Turkey at verification, as the basis for the final determination.

DOC Position: After receiving only one company response to our questionnaire, we requested a meeting with counsel for the Government of Turkey and a representative of the Turkish Embassy. We emphasized the importance of all producers and exporters of aspirin in Turkey responding to our questionnaire. Prior to verification, after receiving only two proper company responses, we again requested a meeting. At this second meeting, we suggested ways to verify the Government of Turkey's assertion that certain alleged programs were not used. At verification, we were provided with the tax returns of the non-responding companies, but we clearly stated to counsel for the Government of Turkey that we could not make a commitment to use the information on the returns. We have determined that the Department cannot use the tax returns of the non-responding companies as a matter of law and policy. The Department is under a statutory obligation to use only verified information in its final determinations. We cannot consider the tax returns obtained from the non-responding companies to be verified. The non-responding companies did not cooperate in this investigation. They did not provide proper responses to our questionnaires, nor did they agree to on-site verification by Department officials. Furthermore, the statutory and regulatory scheme of a countervailing duty investigation requires that the petitioner be provided with an opportunity to comment on all information submitted to the Department. The provision of business proprietary information, such as a tax return, at verification, without a proper questionnaire response, denies the petitioner the opportunity to examine and to comment on the substance of the information submitted.

Moreover, as a matter of policy, we cannot use the tax returns obtained from the non-responding companies. To do so in this case would undoubtedly encourage future company respondents not to cooperate and to provide only that information helpful to their cause. Finally, we note that the submitted returns of the non-responding companies were not those filed during the review period. While the Department recognizes and appreciates the efforts made by the Government of Turkey to obtain the information in question, the Department is bound by law and policy not to use the tax returns provided at verification in our final determination.

Comment 3: The Government of Turkey argues that the Department incorrectly assumed full use of the 20 percent export revenue tax deduction by all companies, while the tax returns of the non-responding companies provided by the government at verification showed that certain eligible companies used less than the full amount to which they were entitled.

DOC Position: As explained in response to Comment 2, we cannot and did not accept the tax returns of the non-responding companies.

Comment 4: The Government of Turkey argues that company-specific rates should be applied because a "significant differential" exists between the individual company rates.

DOC Position: We disagree. For the Export Revenue Tax Deduction program, the sole program upon which the duty deposit rate is based, we used the best information available for all companies which did not adequately respond. As is the Department's policy, a significant differential for an individual company is found to exist when there is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis. Since the difference in rates for producers and exporters of aspirin in Turkey is less than ten percentage points from the weighted-average duty deposit rate calculated on a country-wide basis, a significant differential does not exist. See "Proposed Countervailing Duty Regulations" (50 FR 24207, 24225, June 10, 1985).

Verification

In accordance with section 776(a) of the Act, except where noted in this determination, we verified the information used in making our final determination. During verification, we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, and trading information in the response to source documents, accounting ledgers, and financial statements.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of aspirin from Turkey, except aspirin produced and exported by Proses, which are entered, or withdrawn from warehouse, for

consumption on or after March 3, 1987. As of the date of publication of this notice in the **Federal Register**, the Customs Service shall require a cash deposit or bond of 6.54 percent *ad valorem* for each entry of this merchandise from Turkey. The subject merchandise produced by Proses is not included in this determination. The suspension of liquidation ordered in our preliminary affirmative countervailing duty determination shall be terminated with respect to Proses. All estimated countervailing duties shall be refunded and all appropriate bonds shall be released for entries of aspirin produced and exported by Proses.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary 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 written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted, as a result of the suspension of liquidation, will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs officers to assess countervailing duties on all entries of aspirin from Turkey entered, or withdrawn from warehouse, for consumption, as described in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act [19 U.S.C. 1671d(d)].

Paul Freedenberg,

Assistant Secretary for Trade Administration.

June 23, 1987.

[FR Doc. 87-14825 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Amendment to an Export Trade Certificate of Review, Application # 84-A0033.

SUMMARY: The Department of Commerce has issued an amendment to the export trade certificate of review of International Continental Agri-Tech, Inc. This notice summarizes the amendment.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11,1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a certificate in the **Federal Register**. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amendment

The Export Trade Certificate of Review issued on December 31, 1984 to International Continental Agri-Tech, Inc. ("Agri-Tech") (50 FR 871) is amended as follows: (1) The section captioned "Export Trade," at subsection "a" captioned "Products," is amended to read "All Products." (2) Mr. G.F. Corcoran, of New Orleans, Louisiana, is no longer a "member" of Agri-Tech within the meaning of § 325.2(l) of the Regulations, and the section captioned "Members" is amended to read: "Mr. R.S. Norsworthy, Florence, Mississippi, is a 'member' within the meaning of § 325.2(l) of the Regulations." (3) The following sentence under the caption "Disclaimer" is deleted: "This certificate does not apply to sales to the United States Government or to any sale more than half the cost of which is borne by the United States Government." The following sentence is inserted in place of the deleted sentence: "The application of this certificate to conduct in export trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985)."

In accordance with section 304(a)(2) of the Act, this amendment is effective from March 26, 1987, the date on which the application for the amendment was deemed submitted.

A copy of the amendment to the certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: June 25, 1987.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 87-14873 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DR-M

[A-580-008]

Final Results of Changed Circumstances Review and Determination Not to Revoke Antidumping Duty Order; Color Television Receivers From Korea

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Final Results of Changed Circumstances Administrative Review and Determination Not to Revoke Antidumping Duty Order.

SUMMARY: On March 5, 1987, the Department of Commerce published its intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke in part its antidumping duty order on color television receivers from Korea (52 FR 6840) (CEG). We gave interested parties an opportunity to submit oral or written comments on the preliminary results and tentative revocation. We received written comments from the petitioners and two of the respondents.

We have now completed our review and have decided not to revoke in part the antidumping duty order on color television receivers from Korea.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Laura Merchant or David Mueller, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1987, the Department of Commerce ("the Department") published in the **Federal Register** (52 FR 6840) an intention to review and preliminary results of changed circumstances administrative review and tentative determination to revoke in part the antidumping duty order on color television receivers from Korea (49 FR 18336). The Department has now completed that review.

Scope of the Review

Imports covered by the review are shipments of incomplete color television receivers imported in individual components, and subsequently assembled in the United States, currently classified under items 684.9864, 685.9866, 687.3518, and 687.3520 of the Tariff Schedules of the United States Annotated.

Final Results of Review and Determination Not to Revoke

As a result of our review, we have determined not to revoke in part the antidumping duty order on color television receivers from Korea. Our decision is based upon a thorough analysis of the issues presented by the overlapping scope of the antidumping duty order on color television receivers from Korea and the Korean color picture tube investigation. The overlapping coverage stems from the earlier inclusion of certain color picture tubes within the scope of the antidumping duty order on color television receivers from Korea. On October 17, 1986, the Department issued a clarification of the scope of is antidumping duty order on color television receivers from Korea (hereinafter "Scope Ruling"). In that scope ruling, the Department expressly stated that an incomplete television receiver, consisting of a color picture tube and a printed circuit board, would be viewed as such regardless of the form in which its components were imported. Thus, if a color picture tube and a printed circuit board were imported in different packages, as opposed to being imported in the same package, they nevertheless would constitute an incomplete television receiver for purposes of the collection of antidumping duties. The subsequent filing of a petition on color picture tubes from Korea and the Department's initiation of an investigation created the potential for an overlap in the scope of the two proceedings.

While the Department has maintained throughout that it has no intention of assessing double antidumping duties on imports of color picture tubes, the initiation of the color picture tubes investigation raised the novel question whether merchandise currently covered under an existing antidumping duty order should instead be included within the scope of a new investigation. In other words, even though the Department had previously determined that certain color picture tubes were included within the scope of the antidumping duty order on color television receivers from Korea (see "Scope Ruling"), the Department questioned whether, in light of the subsequent filing of a petition on color picture tubes from Korea, it would be more appropriate to remove color picture tubes from the color television receiver order and include them within the scope of the new investigation.

While the Department tentatively determined that a partial revocation of the color television receiver order would best harmonize the two proceedings and avoid the problem of the overlapping scope coverage of the two proceedings, the Department, upon further reflection, has determined that a partial revocation of the television receiver order is not the appropriate means by which to resolve the issue of double coverage. Instead, the Department has determined that it will continue to include those color picture tubes and printed circuit boards imported for assembly by a related party in the United States within the scope of the antidumping duty order on color television receivers from Korea. The scope of the later color picture tube investigation will, therefore, exclude those color picture tubes which fall within the scope of the color television receiver order.

The Department's decision in this regard was influenced by a number of factors, including the strong rationale for the original scope determination in color television receivers from Korea (see "Scope Ruling"), and the likelihood of inadequate protection for the domestic color television industry if color picture tubes and printed circuit boards are removed from the scope of the color television receiver order. These considerations have reinforced our concern over the substantive impact of a determination to partially revoke the antidumping duty order on television receivers from Korea, as well as our resolve to prevent circumvention of antidumping duty orders. Since the Department has determined that color picture tubes and printed circuit boards imported separately for final assembly in the United States constitute incomplete color television receivers for purposes of collection of antidumping duties, color picture tubes destined for that purpose may appropriately be excluded from the scope of the current color picture tube investigation.

The Department's determination regarding the definite scope of the color picture tube investigation is appropriate and necessary at this time in light of the issuance of the preliminary affirmative determination of sales at less than fair value on color picture tubes from Korea. Section 733(d)(1) of the Tariff Act of 1930, as amended, requires that upon the issuance of a preliminary determination, the administering authority shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of determination in the **Federal Register**. This provision requires the Department to suspend liquidation on all imports of the class or kind of merchandise included within the scope of the investigation. The Department has decided, therefore, that it is appropriate to determine at this time whether or not those color picture tubes that have been included within the scope of the television receiver order will continue to be included within that order or will be subject to a suspension of liquidation under the scope of the color picture tube preliminary determination. The failure to make such a determination at this point would in effect amount to a determination that certain color picture tubes fall within the scope of both the color television receiver order and the color picture tube investigation.

Petitioner's Comments

Comment One: Zenith contends that a final determination to revoke in part the antidumping duty order on color television receivers from Korea would be premature, unnecessary and inappropriate. According to Zenith, a partial revocation of the television receiver order would strip the domestic television industry of important protection to which it has shown itself entitled. Thus, although Zenith appreciates the Department's concern over the potential administrative problems that may emerge from the color picture tube investigation, Zenith does not believe that the appropriate solution to the problem lies in the abandonment of the Department's carefully constructed and sound policy that seeks to combat blatant evasion of United States trade laws.

DOC Position: For the reasons stated in the final determination section of this notice, we agree with Zenith that a partial revocation of the color television

receiver order does not provide the most appropriate solution to the overlap in coverage of the two proceedings.

Comment Two: The Unions contend that a partial revocation of the color television receiver order would be an appropriate solution to the overlapping scope of the two proceedings, but that such a revocation need not, and should not, take place until the Department's issuance of a final determination in the color picture tube investigation. Even then, according to the Unions, the partial revocation should be conditioned upon an affirmative injury finding by the International Trade Commission in the color picture tube investigation.

DOC Position: The Department disagrees with the Unions both as to the propriety of a partial revocation of the color television receiver order, and as to the appropriate time for a final determination on the revocation. As explained in detail in the final determination section of this notice, the Department has decided not to revoke in part the antidumping duty order on color television receivers from Korea. It has made this determination concurrently with the issuance of its preliminary affirmative determination of sales at less than fair value of color picture tubes in order to avoid the suspension of liquidation on identical merchandise under two separate proceedings.

Respondents' Comments

Comment One: Gold Star contends that the only way to harmonize the overlapping scope of the two proceedings is to eliminate from the color picture tube investigation all color picture tubes which are already subject to the existing Korean television receiver order. According to Gold Star, since the Department determined in its scope ruling on Korean television receivers that separately imported color picture tubes and printed circuit boards which are attached together for sale as incomplete receivers are within the scope of that order, the Department has no choice but to exclude those color picture tubes from its subsequently initiated investigation of color picture tubes from Korea. Furthermore, Gold Star argues that the Department has a consistent practice of narrowing the scope of a new investigation to avoid double coverage when faced with a petition to investigate mechandise already covered by an outstanding antidumping duty order (citing *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From Japan; Initiation of Antidumping Duty Investigation,* 51 FR 33286 (Sept. 19, 1986); *Preliminary Affirmative Countervailing Duty Determination; Certain Textile Mill Products from Mexico and Rescission of Initiation With Respect To Certain Articles of Sisal,* 50 FR 301, 302 (Jan. 3, 1985).

DOC Position: While we do not necessarily agree with Gold Star's claim that the cited cases are dispositive with respect to the unique facts presented in the instant case, we agree with Gold Star and are not partially revoking the color television receiver order, but instead, are narrowing the scope of the subsequently initiated color picture bube investigation.

Comment Two: Samsung contends that the Department's tentative determination to revoke the scope decision in the television receiver proceeding as of the preliminary determination in the color picture tube case does not correct the problem presented by the overlap in the two proceedings. According to Samsung, the Department must either revoke the scope ruling in its entirety, or limit the color picture tube investigation to those tubes not already defined as televisions.

DOC Position: While the Department agrees with Samsung that color picture tubes must either fall within the scope of one proceeding or the other, it has not conclusively determined whether, under the appropriate circumstances, it might not be reasonable, from an administrative standpoint, to remove a product from the scope of an earlier investigation and include it instead within the scope of a subsequently initiated investigation.

This administrative review, determination not to revoke, and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 353.53 and 353.54 of the Commerce Regulations (19 CFR 353.53, 353.54).

Dated: June 25, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-14949 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Haiti

June 26, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 26, 1987. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive dated December 31, 1986 (52 FR 1317) established import limits for certain cotton and man-made fiber textile products, produced or manufactured in Haiti and exported during the twelve-month period which began January 1, 1987 and extends through December 31, 1987.

During consultations held on May 11 and 12, 1987 between the Governments of the United States and Haiti, agreement was reached to amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 26 and 30, 1986, to increase the designated consultation levels for Categories 340/640 and 341/641, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The letter to the Commissioner of Customs which follows this notice implements the foregoing adjustments.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), 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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 26, 1987.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 31, 1986, which directed you to

prohibit entry of certain cotton and man-made fiber textile products, produced or manufactured in Haiti and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on June 26, 1987, the directive of December 31, 1986 is hereby amended to increase the levels for cotton and man-made fiber textile products in the following categories.[1]

Category	Amended twelve-month level
340/640	320,000 dozen
341/641	320,000 dozen

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-14908 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 26, 1987.

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 July 2, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

[1] The limits have not been adjusted to reflect any imports exported after December 31, 1986.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, the 1987 limits for Categories 341 and 636 are being increased by application of swing. The limit for Category 359-V is being reduced to account for the swing applied to Categories 341 and 636. The limits for Categories 341 and 636 have been filled.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established limits for Categories 341 and 636.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), 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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 26, 1987.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on July 2, 1987, the directive of December 23, 1986 is further amended to include the following adjustments to the previously established restraint limits for cotton and man-made fiber textile products in Categories 341, 359-V [1] and 636, as provided under the terms of the bilateral agreement of August 19, 1983, as amended [2]:

Category	Adjusted twelve-month limit [1]
341	539,791 dozen
359-V	596,998 pounds
636	373,486 dozen

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-14909 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 359, only TSUSA numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

Establishing Import Limits for Certain Silk Blends and Other Vegetable Fibers in Categories 833 and 847, Produced or Manufactured in the People's Republic of China

June 26, 1987.

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 July 2, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

Background

CITA directives published in the **Federal Register** on October 20, 1986 and February 13, 1987 (51 FR 37214 and 52 FR 4645) which announced that, on

[2] The agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of the increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

September 30, 1986 and December 31, 1986, respectively, the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles and in accordance with Section 204 of the Agricultural Act of 1956, had requested the Government of the People's Republic of China to enter into consultations concerning exports to the United States of suit-type coats (Category 833) and trousers (Category 847) of silk blends and other vegetable fibers.

The United States has decided, inasmuch as no solution has been reached with the Government of the People's Republic of China on mutually satisfactory limits for these categories, to control imports of silk blends and other vegetable fibers in Categories 833 and 847, produced or manufactured in China and exported during the twelve-month periods which began, in the case of Category 833, on September 30, 1986 and extends through September 29, 1987; and, in the case of Category 847, on December 31, 1986 and extends through December 30, 1987.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in Categories 833 and 847 during the designated twelve-month periods.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), 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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 26, 1987.

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

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 2, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in Categories 833 and 847, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began, in the case of Category 833, on September 30, 1986 and extends through September 29, 1987; and in the case of Category 847, on December 31, 1986 and extends through December 30, 1987, in excess of the following limits [1]:

Category	12-month restraint limit
833	11,210 dozen.
847	703,358 dozen.

Textile products in Categories 833 and 847 which have been exported to the United States prior to September 30, 1986 for Category 833 and December 31, 1986 for Category 847 shall not be subject to this directive.

Textile products in Categories 833 and 847 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

Also effective on July 2, 1987, you are directed to charge the following amounts to the restraint limits established in this directive for Categories 833 and 847.

Category	Amount to be charged	Import period
833	8,305 dozen	Sept. 30, 1986-Apr. 30, 1987.
847	465,947 dozen	Dec. 31, 1986-Apr. 30, 1987.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-14907 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limits have not been adjusted to account for any imports exported after September 29, 1986 for Category 933 and December 30, 1986 for Category 847.

Announcing Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia Effective on July 1, 1987

June 25, 1987.

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 July 1, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, between the Governments of the United States and the Republic of Indonesia, establishes specific limits for Group I and within it Categories 313, 314, 315, 317, 317-S, 319, 320-P, 331, 334, 335, 336, 337, 338, 339, 340, 341, 347/348, 351, 369-S, 445/446, 604-A, 613, 614, 631pt., 635, 638, 639, 640, 641, 645/646, 647 and 648, as a group; and a limit for Group II Categories, 300, 301, 310-312, 316, 318, 320-0, 330, 332, 333, 342/642, 345, 349, 350, 352-354, 359-363, 369-D, 369-0, 400-444, 447, 448, 459-469, 600-603, 604-0, 605, 610-612, 625-627, 630, 631-0, 632-634, 636, 637, 643, 644, 649-654, 659, 665, 666, 669 and 670, as a group, including specific limits for Categories 342/642, 350, 345, 369-D, 636, 637 and 651, exported during the twelve-month period which begins on July 1, 1987 and extends through June 30, 1988. The agreements also establishes a wool subgroup limit within Group II for categories 400-444, 447, 448 and 459-469, as a group, produced or manufactured in Indonesia and exported during the same twelve month period. Categories 639 and 342/642 have had limits decreased for carryforward used. Categories 369-D and 369-S will each have charges of 192,483 pounds sent as a result of oversight for the current year.

Accordingly, in the letter below the Chairman of the Committee for the implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry of cotton, wool and man-made fiber textile products in the

foregoing categories, produced or manufactured in Indonsesia and exported during the twelve-month period which begins on July 1, 1987 and extends through June 30, 1988, in excess of the designated levels.

A description of the Textile categories in terms of T.S.U.S.A. members was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), 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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 25, 1987.

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

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Agreement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated September 25 and October 3, 1985, between the Governments of the United States and the Republic of Indonesia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on July 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of textile products in the following categories produced or manufactured in Indonesia and exported during the twelve-month period which begins on July 1, 1987 and extends through June 30, 1988, in excess of the restraint limits indicated:

Category	12-month restraint limit
Group I	264,158,884 square yards equivalent.
313	17,977,600 square yards.
314	15,730,400 square yards.
315	17,865,240 square yards.
317	11,236,000 square yards of which not more than 2,359,560 yards shall be in sateens in TSUS items 320.—through 331.—with statistical suffixes 50, 87 and 93.
319	5,910,136 square yards.
320-P [1]	12,022,520 square yards.
331	449,440 dozen pairs.
334	31,461 dozen.
335	80,899 dozen.
336	73,034 dozen.
337	84,270 dozen.
338	308,990 dozen.
339	297,754 dozen.
340	415,732 dozen.
341	449,440 dozen.
347/348	786,520 dozen.
351	123,596 dozen.
369-S [2]	1,001,240 pounds.
445/446	51,005 dozen.
604-A [3]	786,520 pounds.
613	16,854,000 square yards.
614	16,854,000 square yards.
631-W [4]	730,340 dozen pairs.
635	84,270 dozen.
638	337,080 dozen.
639	388,400 dozen.
640	370,788 dozen.
641	1,179,780 dozen.
645/646	393,260 dozen.
647	280,900 dozen.
648	1,348,320 dozen.
Group II: 300, 301, 310-312, 316, 318, 320-O [5], 330, 332, 333, 342/642, 345, 349, 350, 352-354, 359-363, 369-D [6], 369-O [7], 400-444, 447, 448, 459-469, 600-603, 604-O [8], 605, 610-612, 625-627, 630, 631-O [9], 632-634, 636, 637, 643, 644, 649-654, 659, 665, 666, 669 and 670, as a group.	60,295,510 square yards equivalent.
Subgroup: 400-444, 447, 448 and 459-469, as a group.	3,060,300 square yards equivalent.
342/642	154,600 dozen.
345	217,300 dozen.
350	61,480 dozen.
369-D	901,000 pounds.
636	222,600 dozen.
637	137,800 dozen.
651	109,180 dozen.

[1] In Category 320, only TSUS items 320.—, 321.—, 322.—, 326.—, 327.— and 328.— with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[2] In Category 369, only TSUSA number 366.2840.

[3] In Category 604, only TSUSA numbers 310.5049 and 310.6045.

[4] In Category 631, only TSUSA numbers 704.3215, 704.8525, 704.8550 and 704.9000.

[5] In Category 3209, all TSUSA numbers except those listed in footnote 1.

[6] In Category 369, only TSUSA numbers 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860.

[7] In Category 369, all TSUSA numbers except 365.6615, 366.1720, 366.1740, 366.2020, 366.2040, 366.2420, 366.2440 and 366.2860 in 369-D and 366.2840 in 369-S.

[8] In Category 604, all TSUSA numbers except 310.5049 and 310.6045.

[9] In Category 631, all TSUSA numbers except 704.3215, 704.8525, 704.8550 and 704.9000.

In carrying out this directive, entries of cotton, wool and man-made fiber textile products listed in the table above, which have been exported during the previously established restraint periods which began on July 1, 1986 and January 1, 1987 and extend through June 30, 1987, shall to the extent of any unfilled balances, be charged against the restraint limits established for those periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement between the Governments of the United States and the Republic of Indonesia, which provide, in part, that specific limits may be increased by designated percentages for swing, carryover and carryforward; and administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the bilateral agreement. Appropriate adjustments, referred to above, will be made to you by letter.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-14905 Filed 6-30-87; 8:45am]

BILLING CODE 3510-DR-M

Amendment to the Export Visa and Exempt Certification Requirement for Certain Textiles and Textile Products From the Republic of Korea

June 26, 1987.

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, and the Bilateral Textile Agreement of December 1, 1982, as amended, between the Governments of the United States and the Republic of Korea, has issued the directive published below to the Commissioner of Customs to be effective on July 1, 1987. For further information contact Eve Anderson, International Trade Specialist (202) 377–4212.

Background

CITA directives dated May 19, 1972, as amended, and November 4, 1982, as amended (37 FR 10605 and 47 FR 50940), and as further amended on May 20, 1987 (52 FR 19563), established export visa and exempt certification requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Korea. The Governments of the United States and the Republic of Korea have reached agreement to further amend the visa and exempt certification requirements to reflect that, effective on July 1, 1987, only shipments of cotton, wool and man-made fiber, silk blend and other vegetable fiber textiles and textile products exported from Korea on and after July 1, 1987, which are imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less, do not require a visa or exempt certification for entry and shall not be charged to the agreement levels. All other commercial shipments, regardless of value, require a visa or exempt certification for entry.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), 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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States annotated (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directives of May 19, 1972, as amended, and November 4, 1982, as amended, and as further amended on May 20, 1987, concerning export visa and exempt certification requirements for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the Republic of Korea.

Effective on July 1, 1987, the directives of May 19, 1972 and November 4, 1982, as amended, are further amended to reflect that only shipments of cotton, wool, man-made fibers, silk blend and other vegetable fiber textiles and textile products exported from Korea on and after July 1, 1987 which are imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S. $250 or less do not require a visa or exempt certification for entry and shall not be charged to the agreement levels.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–14903 Filed 6–30–87; 8:45 am]
BILLING CODE 3510–DR–M

Amending Export Visa Requirement for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

June 26, 1987.

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 July 15, 1987. For further information contact Pamela Smith, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

Under the terms of the visa and certification system, effected by letters dated August 16, 1972, September 20, 1972 and March 22, 1973, as amended and extended, concerning textiles and textile products from Taiwan, agreement has been reached to further amend the existing export visa requirement to provide for the use of visas for cotton and man-made fiber textile products in Categories 359–C (coveralls and overalls), 659–C (coveralls and overalls), 640–Y (shirts with two or more colors in the warp and/or filling) and 641–Y (blouses with two or more colors in the warp and/or filling), previously visaed within Categories 359–O, 659–O, 640 and 641, respectively. Man-made fiber textile products from Taiwan in Categories 640 and 641, not included in Categories 640–Y and 641–Y, shall be visaed as Categories 640–O and 641–O, respectively. Accordingly, in the letter which follows this notice, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to permit entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products visaed as Categories 359–C, 359–O, 659–O, 659–C, 640–Y, 640–O, 641–Y and 641–O, effective on July 15, 1987 for goods exported on and after July 15, 1987. Cotton and man-made fiber coveralls and overalls (Categories 359 and 659) and man-made fiber shirts and blouses with two or more colors in the warp and/or filling (Categories 640 and 641), exported before July 15, 1987 may be visaed as 359–O, 659–O, 640–O and 641–O, respectively, provided all other requirements established under this visa arrangement have been met.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), 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), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits

affected by adoption of the HCC will be published in the **Federal Register.**

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 26, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of September 27, 1972, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which established an export visa requirement for certain cotton, wool and man-made fiber textiles and textile products, produced or manufactured in Taiwan.

Effective on July 15, 1987 and until further notice, the existing export visa requirement established by the directive of September 27, 1972, as amended, is hereby further amended to include the following part-category designations: 359–C; 640–Y; 640–O); 641–Y; 641–O; 659–C.

Accordingly, you are directed to prohibit, effective for shipments of cotton and man-made fiber textile products entered for consumption or withdrawn from warehouse for consumption into the Customs territory of the United States (i.e., the 50 States, the District of Columbia and the Commonwealth of Puerto Rico) on or after July 15, 1987, which have been produced or manufactured in Taiwan and exported on and after July 15, 1987 from Taiwan for which the Government of Taiwan has not issued an appropriate visa with the correct subpart category designation (e.g., 359–C). The part-category designations are as follows:

Category and TSUSA Numbers

359–C—381.0822, 381.6510, 384.0928 and 384.5222
359–H—702.0600 and 702.1200
359–I—384.0439, 384.0441, 384.0442, 384.0444, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.3451, 384.3452, 384.3453, 384.3454, 384.5162 384.5163, 384.5167, 384.5169 384.5172
359–V—381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 384.0651, 384.0652, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422
359–O—All remaining TSUSAs in Category 359
640–Y—381.3132, 381.3142 381.3152, 381.9535, 381.9547 and 381.9550.
640–O—All remaining TSUSAs in Category 640
641–Y—384.9110 and 384.9120
641–O—All remaining TSUSAs in Category 641
659–B—384.1815 and 384.8022
659–C—381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, 384.9310
659–H—703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650
659–I—384.2105 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365
659–S—381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384.8300, 384.8400 and 384.9353
659–O—All remaining TSUSAs in Category 659

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–14904 Filed 6–30–87; 8:45 am]

BILLING CODE 3510-DR-M

Adjustment of an Import Limit of Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

June 26, 1987.

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 in June 26, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port of call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive dated December 24, 1985 (50 FR 53182) established import restraint limits for certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, and at the request of the Goverment of the People's Republic of China, the 1986 limit for Category 335 is being increased by application of carryover. Imports of 1986 overshipment charges, amounting to 13,403 dozen, charged to the 1987 restraint limit established for Category 335 for the period January 1, 1987 through December 31, 1987 will be deducted and charged to the 1986 restraint limit for Category 335. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the previously established limit for Category 335.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), 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), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 26, 1987.

Committee for the Implementation of Textile Agreements

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

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 24, 1985, concerning imports into the United States of certain cotton, wool and mand-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

Effective on June 26, 1987, the directive of December 24, 1985 is further amended to include an adjusted limit of 332,702 dozen [1] for the previously established restraint limit for cotton textile products in Category 335, as provided under the terms of the bilateral agreement of August 19, 1983, as amended.[2]

[1] The limit has not been adjusted to account for any imports exported after December 31, 1985.

[2] The agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of the increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the the implementation of the agreement.

Also effective on June 26, 1987, you are directed to deduct charges for goods exported in 1986, amounting to 13,403 dozen, from the import restraint limit established in the directive of December 23, 1986 for Category 335 for the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. This same amount should be charged to the 1986 restraint limit for Category 335.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-14906 Filed 6-30-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Information Collection.

SUMMARY: The Commodity Futures Trading Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511.

ADDRESS: Persons wishing to comment on this information collection should contact Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503, (202) 395-7231. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Stocks of Grain in Licensed Warehouses.

Abstract: This data collection enables the Commission to obtain information on the amount of a commodity available for delivery, the Act specifies that as a condition of designation, contract markets must require warehouse operators that are regular for delivery to make such reports.

Control Number: 3038-0019.

Action: Extention.

Respondents: Businesses (excluding small businesses).

Estimated Annual Burden: 1,768 hours.

Estimated Number of Respondents: 50.

Issued in Washington, DC, on June 25, 1987.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87-14881 Filed 6-30-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Organization of the Joint Chiefs of Staff; National Defense University Board of Visitors Meeting

AGENCY: National Defense University, DOD.

ACTION: Notice of meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors.

DATE: The meeting will be held between 1200-1800, September 8, 1987 and 0800-1145, September 9, 1987.

ADDRESS: The meeting will be held in the Hill Conference Center of Theodore Roosevelt Hall (Building 61), Fort Lesley J. McNair, Washington, DC.

FOR FURTHER INFORMATION CONTACT: The Director, University Plans and Programs, National Defense University, Fort Lesley J. McNair, Washington, DC 20319-6000, phone 475-1145, to reserve space.

SUPPLEMENTARY INFORMATION: The agenda will include present and future educational and research plans for the National Defense University and its components. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 25, 1987.

[FR Doc. 87-14887 Filed 6-30-87; 8:45 am]

BILLING CODE 3810-01-M

Per Diem Travel; Publication of Changes in Rates

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DOD.

ACTION: Publication of Changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 140. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and possessions of the United States. Bulletin Number 140 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: July 1, 1987.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 140 to the Heads of the Executive Departments and Establishments

SUBJECT: Maximum per diem rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and possessions of the United States by Federal government civilian employees.

1. This bulletin is issued in accordance with Executive Order 12561, dated July 1, 1986, which delegates to the Secretary of Defense the authority of the President in 5 U.S. Code 5702 (a) to set maximum per diem rates and actual expense reimbursement ceilings for Federal civilian personnel traveling on official business in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates and ceilings may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 139 except for the cases identified by asterisks which rates are effective on the date of this Bulletin unless otherwise indicated.

3. Each Department or establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
*Adak [1]	$25
Anaktuvuk Pass	140
Anchorage	125
Atqasuk	215
Barrow	150
Bethel	124
*Bettles	110
Cold Bay	120
Coldfoot	122
College	105
Cordova	118
Deadhorse	113
Dillingham	114
Dutch Harbor-Unalaska	127
Eielson AFB	105
Elmendorf	125
Fairbanks	105
Ft. Richardson	125
Ft. Wainwright	105
Homer	115
Juneau	109
Katmai National Park	148
Kenai	104
Ketchikan	105
King Salmon [3]	134
Kodiak	118
Kotzebue [3]	136
*Kuparuk Oilfield	127
Murphy Dome [3]	105
Noatak	136
Nome	129
Noorvik	136
Petersburg	113
Point Hope	160
Point Lay	179
Prudhoe Bay	113
St. Paul Island	115
Sand Point	103
Shemya AFB [3]	30
Shungnak	136
Sitka-Mt. Edgecombe	110
Skagway	113
Spruce Cape	118
St. Mary's	100
Tanana	129
*Umiat	160
*Unakakleet	105
Valdez	147
Wainwright	165
*Walker Lake	136
Wrangell	113
Yakutat	110
*All Other Localities [3] [4]	91
American Samoa	81
Guam M.I	93
*Hawaii:	
Hawaii, Island of:	
Hilo	66
Other	88
Kauai, Island of:	
12-20—3-31	127
4-1—12-19	91
Oahu, Island of	102
All Other Islands	88
Johnston Atoll [2]	23
Midway Islands [1]	13
Northern Mariana Islands:	
Rota	76
Saipan	92
Tinian	68
All Other Islands	20
Puerto Rico:	
Bayamon:	
12-16—5-15	134
5-16—12-15	107
Carolina:	
12-16—5-15	134
5-16—12-15	107
Fajardo (Including Luquillo):	
12-16—5-15	134
5-16—12-15	107
Ft. Buchanan (Incl GSA Service Center, Guaynabo):	
12-16—5-15	134
5-16—12-15	107
Roosevelt Roads:	
12-16—5-15	134
5-16—12-15	107
Sabana Seca:	
12-16—5-15	134
5-16—12-15	107
San Juan (Including San Juan Coast Guard Units):	
12-16—5-15	134
5-16—12-15	107
All Other Localities	107
Virgin Islands of U.S.:	
12-1—4-30	156
5-1—11-30	126
Wake Island [2]	20
All Other Localities	20

* [1] Commercial facilities are not available. The per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler. For Adak, Alaska: on any day when Government quarters are not used and quarters are obtained at a construction camp, a daily travel per diem allowance of $69 is prescribed to cover the costs of lodging, meals and incidental expenses.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $13 is prescribed to cover meals and incidental expenses at Shemya AFB and the followng Air Force Stations: Cape Lisburne, Cape Newenham, Cape Romanzof, Clear, Cold Bay, Fort Yukon, Galena, Indian Mountain, King Salmon, Kotzebue, Murphy Dome, Sparrevohn, Tatalina and Tin City. This rate will be increased by the amount paid for US Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

* [4] On any day when US Government or contractor quarters and US Government or contractor messing facilities are used, a per diem rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 25, 1987.

[FR Doc. 87-14890 Filed 6-30-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

June 22, 1987.

The USAF Scientific Advisory Board Minuteman III Penetration Aids Study will conduct a closed meeting at Headquarters Ballistic Missile Office, San Bernadino, CA on July 27 and 28, 1987 from 8:00 a.m. to 5:00 p.m. each day.

The purpose of this meeting is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

This meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-14885 Filed 6-30-87; 8:45 am]

BILLING CODE 3910-01-M

USAF Scientific Advisory Board; Meeting

June 22, 1987.

The USAF Scientific Advisory Board Minuteman III Penetration Aids Study will conduct a closed meeting at the Pentagon, Washington, DC on July 31, 1987 from 8:00 a.m. to 5:00 p.m.

The purpose of this meeting is to review, discuss and evaluate the effectiveness of penetration aids being developed for the Minuteman III.

This meeting concerns matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-8845.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-14872 Filed 6-30-87; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent to Prepare a Joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR) for the Proposed Ballona Lagoon Improvement Project; Los Angeles County, CA

AGENCIES: Los Angeles District, U.S. Army Corps of Engineers, Department of Defense and the Los Angeles City Planning Department.

ACTION: Notice of Intent to prepare a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR).

SUMMARY: A joint Environmental Impact Statement (EIS)/Environmental Impact Report will be prepared to evaluate alternatives to the proposed Ballona Lagoon Improvement Project. The project proponent is the Silver Strand Marina Association (SSMS). The SSMS has applied to the Los Angeles District for a permit under Section 10 of the Rivers and Harbors Act and under Section 404 of the Clean Water Act.

1. *Alternatives.* The proposed project consists of deepening Ballona Lagoon, providing an opening to the Marina del Rey main channel, constructing bulkheads and moorings for 450 recreational water craft, and providing improved walkways for pedestrian traffic. Alternatives to be evaluated will include, but not necessarily be limited to, no project, other sites on the Southern California coast, fewer (350) boat slips and a portion of Ballona Lagoon retained as intertidal habitat, the proposed project with no bridge, the proposed project with a fixed bridge, and greater inclusion of onsite or offsite public uses such as public boat slips or open space.

2. *Scoping Process.* A scoping meeting will be held on July 7, 1987 at Anchorage Street School in Marina del Rey to obtain community input to assure that all concerns are identified and addressed in the EIS/EIR. Formal coordination with appropriate Federal, State, and local agencies has begun. A public meeting will be held during the review period of the draft Environmental Impact Statement/ Environmental Impact Report. Specific meeting date, time, and place will be published in local newspapers.

3. *Potentially Significant Issues.* Potentially significant issues so far identified include impacts to water quality, biological resources, endangered species, land use, public safety, recreation values, and esthetics.

4. *Availability of Joint EIS/EIR.* The Draft Environmental Impact Statement/ Environmental Impact Report is expected to be available to the public in late 1987 or early 1988.

5. *Comments.* Comments and questions regarding the project may be addressed to: U.S Army Corps of Engineers, Los Angeles District, Attn: Ms. Joan Drake, CESPL–PD–RP, P.O. Box 2711, Los Angeles, CA 90053, (213) 894–3395.

Dated: June 25, 1987.

Daniel Waldo,

Lieutenant Colonel, Corps of Engineers, Deputy District Engineer.

[FR Doc. 87–14950 Filed 6–30–87; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2893–008, et al.]

Applications Filed With the Commission: Hydroelectric Applications (B.S.R. Company, Inc., et al.)

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Surrender of License.

b. Project No.: 2893–008.

c. Date Filed: May 7, 1987.

d. Applicant: B.S.R. Company, Inc.

e. Name of Project: Saxton River.

f. Location: Saxton River in the Village of Bellows Falls, Windham County, Vermont.

g. Filed pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. David F. Buckley, 18 Bridge Street, P.O. Box 493, Bellows Falls, VT 05101–0493, (802) 463–3271.

i. FERC Contact: Steven H. Rossi—(202) 376–9819.

j. Comment Date: July 31, 1987.

k. Description of Proposed Surrender: The proposed project would have consisted of: (1) A new concrete-faced rockfill dam, 65 feet high and 375 feet long, with 1.3 H:1V upstream and downstream slopes; (2) a 120-acre reservoir at an elevation of 300 feet m.s.l. with a usable storage capacity of 250 acre-feet at a drawdown of 2 feet; (3) a new concrete lined chute spillway controlled by a 32 x 18-foot tainter gate at the right end of the dam; (4) a new intake structure at the left end of the dam; (5) a new steel penstock, 6.5 feet in diameter and 840 feet long; (6) a new powerhouse which would have contained a tube type turbine-generator unit with a rated capacity of 1,500 kW; (7) a tailrace channel; (8) and existing 300-foot-long, 34.5kV transmission line; and associated electrical and mechanical equipment; and (9) associated electrical and mechanical equipment; and (9) appurtenant facilities. The proposed project would have generated up to 4,100,000 kWh annually. Energy produced at the project would have been sold to a public utilty.

The licensee states that due to delays in obtaining necessary State approvals for various certifications and a long-term sales contact, it wishes to surrender its license.

1. 1. This notice also consists of the following standard paragraphs: B, C, and D2.

2 a. Type of Application: Exemption (5 MW or Less).

b. Project No.: 3320–002.

c. Date Filed: April 10, 1987.

d. Applicant: William B. Ruger, Jr.

e. Name of Project: Sugar River I Hydroelectric Project.

f. Location: On Sugar River, near town of Newport, in Sullivan County, New Hampshire.

g. Filed Pursuant to: Energy Security Act of 1980 Section 408 16 U.S.C. 2705 and 2708).

h. Applicant Contact: Mr. Duncan S. Broatch, Summit Hydropower, P.O. Box 122, Putnam, CT 06260, (203) 928–2002.

i. FERC Contact: Sat Goel (202) 376–9816.

j. Comment Date: July 31, 1987.

k. Description of Project: This is an existing project which was exempted from licensing under the categorical exemption rule on April 4, 1983 (23 FERC ¶ 62,008). The project is presently operating without flashboards, and the applicant proposes to install 2-foot-high flashboards as a modification to the project. The proposed project consists of: (1) An existing 16-foot-high, 175-foot-long concrete dam owned by the applicant; (2) an existing 93-foot-long concrete spillway at an elevation of 839 feet; (3) new 2-foot-high flashboards; (4) an existing 7-foot-diameter, 123-foot-long steel penstock; (5) an existing powerhouse containing a single generating unit with a rated capacity of 150 kW at a head of 19 feet; and (6) an existing 100-foot-long, 2.3–kV transmission line connecting to the existing Public Service Company of New Hampshire transmission line. The applicant estimates an average annual generation to be 650,000 kWh.

l. Purpose of Exemption: An exemption, if issued, gives the exemptee

priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the exemptee from permit or license applicants that would seek to take or develop the project.

m. This notice also consists of the following standard paragraphs: B, C and D3a.

13. a. Type of Application: Exemption from Licensing (5 MW or Less).

b. Project No.: 6273–000.

c. Date Filed: November 16, 1984.

d. Applicant: Western Hydro Electric Incorporated.

e. Name of Project: Big Creek.

f. Location: On Big Creek, tributary of the Suiattle River within the Snoqualmie-Mt. Baker National Forest in Skagit County, Washington near the town of Rockport. T.33N., R.11., W.M., sec 8, SE ¼ of SE ¼; sec. 18, SW ¼ of SE ¼.

g. Filed Pursuant to: Energy Security Act of 1980 16 U.S.C. 2705 and 2708).

h. Applicant Contact:

Mr. Donald J. White, President, Western Hydro Electric, Incorporated, 4702 Hillside Drive, (801) 224–9800

D. Michael Preston, P.E., J-U-B Engineers, Inc., 250 South Beechwood Ave. Suite 1, Boise, ID 83709, (208) 376–7330.

i. FERC Contact: Deborah Frazier-Stutely, (202) 376–9527.

j. Comment Date: July 30, 1987.

k. Description of Project: The proposed project would consist of: (1) A 7.5-foot-high, 64-foot-long channel-intake structure to be located along the bank of Big Creek at elevation 1,540 feet with fish screens; (2) a 48-inch-diameter, 9,000-foot-long pipeline; (3) a 48-inch-diameter, 750-foot-long penstock; (4) a powerhouse containing a single generating unit within an installed capacity of 2,600 kW, producing an annual energy output of 11.7 GWh, (5) a tailrace at elevation 995 feet; and (6) a 7-mile-long, 138-kV transmission line tying into an existing intertie 7 miles west of the project.

This application has been accepted for filing as of April 30, 1982, the submittal date of the applicant's originally accepted exemption application pursuant to Snowbird Ltd., et. al., 28 FERC ¶ 61,062, issued July 18, 1984.

l. Purpose of Project: Project power will be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D3A.

4 a. Type of Application: Exemption from Licensing (5–MW or less)

b. Project No: 6448–000

c. Date Filed: November 16, 1984

d. Applicant: Western Hydro Electric, Incorporated

e. Name of Project: Grade Creek

f. Location: On Grade Creek, tributary of Big Creek, within the Snoqualmie–Mt. Baker National Forest in Skagit County, Washington near the town of Rockport. T.33N., R.11E., W.M., sec. 7, SE ¼ of NE ¼ sec. 18, SW ¼ of SE ¼

g. Filed Pursuant to: Energy Security Act of 1980 (16 U.S.C. 2705 and 2708)

h. Applicant Contact:

Mr. Donald J. White, President, Western Hydro Electric, Incorporated, 4702 Hillside Drive, Provo, Utah 84601, (801) 224–9800

D. Michael Preston P.E., J–U–B Engineers, Inc., 250 South Beechwood Ave., Suite 1, Boise, ID 83709, (208) 376–7330.

i. FERC Contact: Deborah Frazier-Stutely, (202) 376–9527.

j. Comment Date: July 30, 1987.

k. Description of Project: The proposed project would consist of: (1) A 7.5-foot-high, 51-foot-long channel-intake structure to be located along the bank of Grade Creek at elevation 2,160 feet, with fish screens; (2) a 40-inch-diameter, 8,000-foot-long buried penstock; (3) a powerhouse containing a single generating unit with an installed capacity of 2,890 kW, producing an average annual energy output of 14.7 GWh; (4) a tailrace at elevation 990 feet; and (5) a 7-mile-long, 138-kV transmission line tying into an existing intertie located approximately 7 miles west of the project.

This application has been accepted for filing as of June 18, 1982, the submittal date of the applicant's originally accepted exemption application pursuant to Snowbird Ltd., et. al., 28 FERC ¶ 61,062, issued July 18, 1984.

l. Proposes of Project: Project power will be sold to a local utility.

m. This notice also consists of the following standard paragraphs: A4, B, C, and D3A.

5 a. Type of Application: Minor License.

b. Project No: 8612–000.

c. Date Filed: September 24, 1984.

d. Applicant: George and Bonnie Arkoosh.

e. Name of Project: Geo-Bon I.

f. Location: On Little Wood River, tributary of Big Wood River in Lincoln County, Idaho near the town of Shoshone T.5S, R.17E., sec. 33, NW ¼ of NW ¼ of NW ¼ N ½ of NW ¼.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact:

Mr. George Arkoosh, Route 1, Gooding, ID 83330, (208) 934–5014

Mr. Gary Bachman, Van Ness, Fieldman, Sutcliff, and Curtis, 1050 Thomas Jefferson St., NW, Washington, DC 20007, (202) 311–9400.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 376–9527.

j. Comment Date: August 3, 1987.

k. Competing Application: Project No. 9967–000, Date Filed: April 9, 1986.

l. Description of Project: The proposed project would consist of: (1) A 6-foot-high, 45-foot-long rock rubble diversion dam consisting of a spillway at elevation 3,916-feet m.s.l.; (2) an intake gate structure with bar screens; (3) a 1,700-foot-long rock and compacted earthfill open canal; (4) a 6-foot-high, 150-foot-long intake structure at elevation 3,919.50 feet consisting of trashracks, a bypass sluice gate and a 5-foot-diameter bypass pipe; (5) an 84-inch-diameter, 805-foot-long steel penstock bifurcating into two 60-inch-diameter, 58-foot-long penstocks terminating at the generating units; (6) a 12 foot by 16 foot concrete block powerhouse containing two generating units with a total installed capacity of 1.12 MW, an average net head of 47 feet and a total hydraulic capacity of 350 cfs, producing approximately an average annual energy output of 5,598,000 kWh; (7) a tailrace at elevation 3,869 feet m.s.l.; (8) two 4.16-kV generator leads; (9) a three-phase 4.16/34.5-kV, 1500-kVA step-up transformer; and (10) appurtenant facilities.

The estimated project cost in 1987 dollars is $1,714,000.

m. Proposes of Project: Project power would be sold to Idaho Power Company or another suitable utility.

n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

6 a. Type of Application: Minor License.

b. Project No.: 9967–000.

c. Date Filed: April 9, 1986.

d. Applicant: Shorock Hydro, Inc.

e. Name of Project: Shoshone.

f. Location: On Little Wood River a tributary of Big Wood River in Lincoln County, Idaho near the town of Shoshone. T5S R17E Section 32, 33.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. Applicant Contracts:

Mr. John J. Straubhar, Shorock Hydro, Inc., 340 Blue Lakes Boulevard N., Twin Falls, ID 83303, (208) 733–5200

Mr. H. Wayne Gibbs, J–U–B Engineers, Inc., 250 South Beechwood Avenue, Boise, ID 83709, (208) 376–7330

i. FERC Contact: Deborah Frazier-Stutely, (202) 376–9527.

j. Comment Date: August 3, 1987.

k. Competing Application: Project No. 8612–000, Date Filed: Sept. 24, 1984.

l. Description of Project: The applicant proposes to expand its exempted hydro site Project No. 4182. The expanded project would consist of: (1) An existing 2.5-foot-high, 40-foot-long diversion weir with a crest elevation of 498.0 feet; (2) an existing 6-foot-high, 16-foot-long control structure with a 14-foot by 3-foot breastwall radial gate, to be heightened 2 feet; (3) an 8.5-foot-high, 25-foot-long control structure with slide gates; (4) an existing 22-foot-wide, 1,200-foot-long enlarged trapezoidal-shaped power canal; (5) a 125-foot-long, 8-foot-high headrace overflow spillway and sediment removal facilities; (6) a 17-foot-high, 42-foot-long, 34-foot-wide three chamber penstock intake; (7) a 60-inch-diameter, 250-foot-long steel penstock connecting to; (8) an existing 60-inch-diameter, 650-foot-long buried penstock; (9) an 84-inch-diameter, 900-foot-long steel penstock; (10) two reinforced concrete powerhouses, an existing 20-foot-wide, 30.5-foot-long powerhouse containing three generating units rated at 92-kW, 92-kW, and 148-kW and a proposed 43-foot-long, 22-foot-wide powerhouse containing three generating units each rated at 283-kW, with an average net head of 44 feet and a total hydraulic capacity of 405 cfs; (11) an existing 400-foot-long enlarged tailrace channel with a minimum power-plant tailwater elevation of 449.5 feet; and (12) a 34.5-kV transmission line tying into the existing line at the existing powerhouse.

The estimated project expansion cost is $950,000.

m. Purpose of Project: Generation and sale of electric energy to Idaho Power Company.

n. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

7 a. Type of Application: Preliminary Permit.

b. Project No.: 10331–000.

c. Date Filed: February 24, 1987.

d. Applicant: UEK Corporation & Kinetic Hydro Energy Corporation.

e. Name of Project: East River Kinetic Hydroelectric.

f. Location: On East River, City of New York, in New York and Queens Counties, New York.

g. Filed Pursuant to: Federal Power Act. 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. William D. Lese, 160 Chambers Street, New York, NY 10007, (212) 608–1484.

i. FERC Contact: Sat Goel (202) 376–9816.

j. Comment Date: August 24, 1987.

k. Description of Project: The proposed project would not involve any dam or penstock. It would utilize seven Kinetic turbo-generators, each with a rated capacity of 300 kW and with a total installed capacity of 2.1 MW. Each turbine unit would have a diameter of 21 feet and would be connected in series with the other units. The units would be installed below the surface of the East River in the area bordered by the east side of Roosevelt Island and Queens. The Generators would be activated by the natural tide flow and would generate an estimated average annual energy of 11.7 million kWh. The energy would be transmitted via underwater electric cable to a protective circuit which would connect to consolidated Edison Vernon Substation. The project power would be sold to Consolidated Edison Electric Company or to a nearby utility. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $89,000.

l. This notice also consists of the following standard paragraph: A5, A7, A9, A10, B, C and D2.

8 a. Type of Application: Preliminary Permit.

b. Project No.: 10343–000.

c. Date Filed: March 9, 1987.

d. Applicant: Middleville Dam Company.

e. Name of Project: Middleville Dam.

f. Location: Thornapple River, Barry County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact: Mr. Robert J. Daverman, Middleville Dam Company, 82 Ionia Avenue, NW., Grand Rapids, MI 49503, (616) 456–3505.

i. Comment Date: August 24, 1987.

j. FERC Contact: Dean Wight, (202) 376–9820.

k. Description of Project: The proposed project would consist of: (1) An existing earth-fill dam 80 feet long and 15 feet high; (2) an existing impoundment of 30 acres surface area and 120 acre-feet storage capacity at a normal maximum surface elevation of 715 feet mean sea level; (3) an existing reinforced concrete powerhouse 26 feet long, 26 feet wide, and housing one existing turbine-generator of 350 kW capacity; (4) a proposed 4.8-kV transmission line 100 feet long; and (5) appurtenant facilities.

The estimated annual energy generation is 1.2 GWh. Project power would be sold to Consumer Power Company. The existing facilities are owned by the applicant. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $25,000.

l. This notice also consists of the following standards paragraphs: A5, A7, A9, A10, B, C, D2.

9 a. Type of Application: Preliminary Permit.

b. Project No: 10392–000.

c. Date Filed: April 17, 1987.

d. Applicant: Sauk River Hydro.

e. Name of Project: Falls Creek.

f. Location: On Falls Creek within the Snoqualmie-Mt. Baker National Forest in T30N, R10 and 11E, T31N, R10 and 11E and T32N, R9E, near Darrington in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122–196th Avenue N.E., Redmond, WA 98052, (206) 885–3986.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: August 24, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) Three 24-inch-wide concrete intake structures in the streambed on tributaries of Falls Creek at elevation 2,400 feet; (2) a 17,000-foot-long, 36-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 3,460 kW; and (4) an 11-mile-long transmission line. Applicant estimates the average annual energy production to be 15.45 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

l. Purpose of Project: The power produced is to be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

10 a. Type of Application: Preliminary Permit.

b. Project No.: 10396–000.

c. Date Filed: April 24, 1987.

d. Applicant: Gem Irrigation District.

e. Name of Project: North Fork Payette River.

f. Location: On the North Fork Payette River in Valley, Boise, and Gem Counties, Idaho. T7N, R1W, T7N, R1E, T8N, R1E, T9N, R1E, T9N, R2E, T10N, R3E, T11N, R3E, T11N, R4E, T12N, R3E, T12N, R4E, and T13N, R4E.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336–1425.

i. FERC Contact: Mr. William Roy-Harrison, (202) 376–9773.

j. Comment Date: July 31, 1987.

k. Competing Application: Project No. 10342–001, Date Filed: March 10, 1987.

l. Description of Project: The proposed project would consist of an upper and lower development.

The upper development would consist of: (1) A 10-foot-high, 80-foot-long diversion structure at elevation 4,700 feet ms1; (2) a pumping plant; (3) a 7.5-foot-diameter, 2.9-mile-long discharge pipe; (4) an 80-foot-high, 400-foot-long dam at elevation 4,880 feet east of the North Fork Payette River forming; (5) a reservoir with a surface area of 6,700 acres and a gross storage capacity of 380,000 acre-feet; (6) a 12-foot-diameter, 2.9-mile-long pressure tunnel; (7) a powerhouse containing a generating unit with a rated capacity of 30 MW; (8) a 60-foot-long tailrace channel discharging into the North Fork Payette River; and (9) a 69-kV, 15-mile long transmission line tying into the powerhouse of the lower development.

The lower development would consist of: (1) A 30-foot-high, 60-foot-long diversion structure at elevation 4,520 feet msl; (2) a 23-foot-diameter, 65,000-foot-long gravity tunnel; (3) four 7.5-foot-diameter, 6,300-foot-long penstocks; (4) a powerhouse containing a generating unit with a rated capacity of 320 MW; (5) a tailrace discharging into the North Fork Payette River; and (6) a 230-kV, 10-mile-long transmission.

The applicant estimates an average annual energy production of 1,100,000 MWh with a total rated combined capacity of 350 MW.

m. Purpose of Project: Power would be sold to local utilities.

n. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 10404–000.

c. Date Filed: May 1, 1987.

d. Applicant: Greybull Valley Irrigation District.

e. Name of Project: Sunshine Dam Hydroelectric Project.

f. Location: On Sunshine Creek near the town of Meeteetse, in Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Douglas A. Spaulding, Warzyn Engineering, Inc., 715 Florida Ave. South, Suite 306, Minneapolis, MN 55426, (612) 593–5650.

i. FERC Contact: Thomas Dean, (202) 376–9275.

j. Comment Date: August 19, 1987.

k. Description of Project: The proposed project would consist of: (1) The Upper Sunshine Dam approximately 700 feet long and 172 feet high; (2) a 1,158-acre reservoir with a normal water surface elevation of 6,595 feet msl; (3) a penstock approximately 1.75 miles long leading to; (4) a powerhouse containing a single generating unit with an installed capacity of 7,000 kW operating at 300 feet of hydraulic head; and (5) a 2-mile-long, 13.5-kV transmission line. The applicant estimates the average annual energy generation to be 12.9 GWh. The approximate cost of the studies under the permit would be $200,000.

l. Purpose of Project: The applicant intends to sell the power generated at the proposed facility to Western Area Power Administration.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10407–000.

c. Date Filed: May 6, 1987.

d. Applicant: Independence Electric Corporation.

e. Name of Project: Oliver Lock and Dam Replacement Hydro Project.

f. Location: On the Black Warrior River near Tuscaloosa, Tuscaloosa County, Alabama.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: G. William Miller, President, Independence Electric Corporation, 1215 19th Street, NW., Washington, DC 20036, (202) 429–1780.

i. FERC Contact: Eddie Lee, (202) 376–9828.

j. Comment Date: August 20, 1987.

k. Description of Project: The proposed project would utilize the new U.S. Army Corps of Engineers Oliver Lock and Dam, and would consist of: (1) A new 110-foot-wide and 800-foot-long intake channel; (2) a proposed powerhouse housing two 7.5–MW generators for a total installed capacity of 15 MW; (3) a new 110-foot-wide and 700-foot-long tailrace channel; (4) a proposed 2,000-foot-long 115-kV transmission line; and (5) appurtenant facilities. Applicant estimates the average annual generation would be 60,000 MWh. All energy produced would be sold to a local utility company. Applicant estimates that the cost of the work under the terms of the preliminary permit would be $125,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10410–000.

c. Date Filed: May 12, 1987.

d. Applicant: Aero Construction Incorporated.

e. Name of Project: Arkabutla Lake and Dam.

f. Location: On the Coldwater River near Coldwater, DeSoto & Tate Counties, Mississippi.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ralph L. Laukhuff, Jr., Post Office Box 64844, Baton Rouge, LA 70896, Phone: 504/927–9321.

i. FERC Contact: Michael Dees, (202) 376–9830.

j. Comment Date: August 24, 1987.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Arkabutla Dam and reservoir and would consist of: (1) A proposed lined bifurcated penstock 15 feet in diameter; (2) a proposed powerhouse 40 feet by 40 feet housing two hydropower units with a total capacity of 10,000-kw; (3) a proposed tailrace 30 feet by 20 feet by 75 feet; (4) a proposed 115-kV transmission line 12.6 miles long; and (5) appurtenant facilities. The applicant proposes to sell the energy to local utilities or municipalities, and estimates that the average annual energy generation would be 29 GWh and that the cost of the work to be performed under the permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No.: 10412–000.

c. Date Filed: May 12, 1987.

d. Applicant: Aero Construction Incorporated.

e. Name of Project: Grenada Lake and Dam.

f. Location: On the Yalobusha River near Grenada, Grenada County, Mississippi.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ralph L. Laukhuff, Jr., Post Office Box 64844, Baton Rouge, La 70896, Phone: 504/927–9321.

i. FERC Contact: Michael Dees, (202) 376–9830.

j. Comment Date: August 20, 1987.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Grenada Dam and reservoir and would consist of: (1) A proposed lined bifurcated penstock 16 feet in diameter: (2) a proposed powerhouse 60 feet by 60 feet housing two hydropower units with a total capacity of 17,000-kW; (3) a proposed tailrace 30 feet by 12 feet by 100 feet; (4) a proposed 115-kV transmission line 6.5 miles long; and (5) appurtenant facilities. The applicant proposes to sell the energy to local utilities or municipalities,

and estimates that the average annual energy generation would be 50 GWh and that the cost of the work to be performed under the permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. Type of Application: Preliminary Permit.

b. Project No.: 10413–000.

c. Date Filed: May 12, 1987.

d. Applicant: Aero Construction Incorporated.

e. Name of Project: Sardis Lake and Dam.

f. Location: On the Little Tallahatchie River near Sardis, Panola County, Mississippi.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ralph L. Laukhuff, Jr., Post Office Box 64844, Baton Rouge, LA 70896, Phone: 504/927–9321.

i. FERC Contact: Michael Dees, (202) 376–9830.

j. Comment Date: August 24, 1987.

k. Description of Project: The proposed project would utilize the existing Corps of Engineers' Sardis Dam and reservoir and would consist of: (1) A proposed lined bifurcated penstock 16 feet in diameter; (2) a proposed powerhouse 60 feet by 60 feet housing two hydropower units with a total capacity of 21,000-kW; (3) a proposed tailrace 30 feet by 20 feet by 100 feet; (4) a proposed 115-kV transmission line 6.6 miles long; and (5) appurtenant facilities. The applicant proposes to sell the energy to local utilities or municipalities, and estimates that the average annual energy generation would be 60 GWh and that the cost of the work to be performed under the permit would be $15,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16 a. Type of Application: Preliminary Permit.

b. Project No: 10414–000.

c. Date Filed: May 12, 1987.

d. Applicant: Northwest Power Company.

e. Name of Project: Genesse Hydroelectric Project.

f. Location: On Last Chance and Red Clover Creeks, near the town of Taylorsville, within Plumas National Forest, in Plumas County, California (In Sections 3, 5, 6, 8, 9, and 10 of T25 N, R12E, MDB&M, and Sections 11 and 12 of T25N, R11E, MDB&M).

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. James R. Doolittle, Vice President, Northwest Power Company, 201 Spear Street, San Francisco, CA 94105, (415) 543–7272.

i. FERC Contact: Ahmad Mushtaq, (206) 376–1900.

j. Comment Date: August 21, 1987.

k. Description of Project: The proposed project would consist of: (1) A 16-foot-high, 90-foot-long diversion dam on Last Chance Creek at elevation 4,840 feet msl; (2) a 13-foot-high, 70-foot-long diversion dam on Red Clover Creek at elevation 4,840 feet; (3) a 6-foot-diameter, 3,100-foot-long Red Clover Creek diversion pipeline; (4) a 6-foot-diameter, 1,700-foot-long Last Chance Creek diversion pipeline; (5) a 10.2-foot-diameter, 3,250-foot-long Red Clover Creek branch tunnel; (6) a 10.2-foot-diameter, 1,650-foot-long Last Chance Creek branch tunnel; (7) a 10.2-foot-diameter, 9,800-foot-long tunnel; (8) a 6.5-foot-diameter, 2,300-foot-long penstock; (9) a powerhouse with a total installed capacity of 35 MW operating under a head of 1,100 feet; and (10) a 13-mile-long, 60-kV transmission line interconnecting with an existing Pacific Gas and Electric Company (PG&E) transmission line west of the project. The Applicant estimated average annual generation of 66 GWh is to be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

17 a. Type of Application: Preliminary Permit.

b. Project No: 10416–000.

c. Date Filed: May 13, 1987.

d. Applicant: Washington Hydro Development Company.

e. Name of Project: Anderson Creek.

f. Location: On Anderson Creek within the Snoqualmie-Mt. Baker National Forest in T36N and T37N, R9E, near Concrete in Whatcom County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122—196th Avenue, N.E., Redmond, WA 98052, (206) 885–3986.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: August 21, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: A 36-inch-wide concrete intake structure buried in the streambed at elevation 2,000 feet; (2) a 5,000-foot-long, 24-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 3,094 kW, and (4) a 2-mile-long transmission line. Applicant estimates the average annual energy production to be 14.94 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

l. Purpose of Project: The power produced is to be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

18 a. Type of Application: Preliminary Permit.

b. Project No: 10417–000.

c. Date Filed: May 13, 1987.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Rapid River.

f. Location: On Rapid River within the Snoqualmie-Mt. Baker National Forest in T26 and 27N, R11, 12 and 13E, near Index in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122—196th Avenue, N.E., Redmond, WA 98052, (206) 885–3986.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: August 21, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: Six concrete intake structures buried in the streambed on tributaries of the Rapid River at elevation 2,520 feet; (2) a 144-inch-diameter penstock which branches to each diversion and which has a total length of 26,000 feet; (3) a powerhouse containing one generating unit with a rated capacity of 17,360 kW; and (4) an 8-mile-long transmission line. Applicant estimates that the average annual energy production would be 76.04 GWh and the cost of the work to be performed under the preliminary permit would be $40,000.

l. Purpose of Project: The power produced is to be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

19 a. Type of Application: Major License (over 5 MW).

b. Project No: 10066–000.

c. Date Filed: August 15, 1986.

d. Applicant: STS Energenics Ltd., Inc.

e. Name of Project: R.D. Bailey.

f. Location: Guyandotte River, Wyoming County, West Virginia.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Granville J. Smith II, STS Energenics Ltd., Inc., 1725 K Street, NW. Suite 1112, Washington, DC 20006, (202) 463–8620.

i. FERC Contact: Dean Wight, (202) 376–9820.

j. Comment Date: August 10, 1987.

k. Description of Project: The proposed project would use the existing R.D. Bailey Dam and Lake, owned and

operated by the U.S. Army Corps of Engineers, and would consist of: (1) Modifications to the existing intake structure; (2) a 90-inch-diameter steel penstock 1,800 feet long, to be installed in the existing outlet tunnel; (3) a reinforced concrete powerhouse 40 feet wide, 100 feet long, and 45 feet high; (4) two turbine-generators of 8.4-MW total capacity at a net hydraulic head of 134 feet; (5) a 46-kV transmission line 2.5 miles long, and (6) appurtenant facilities. The estimated annual energy production would be 28.1 GWh. Project power would be sold to Appalachian Power Co. or American Electric Power Co., Inc.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C.

20 a. Type of Application: Preliminary Permit.

b. Project No: 10390–000.

c. Date Filed: April 17, 1987

d. Applicant: Sauk River Hydro.

e. Name of Project: Falls Creek.

f. Location: On Falls Creek within the Snoqualmie-Mt. Baker National Forest in T30N, R10 and 11E, T31N, R 10 and 11E and T32N, R9E, near Darrington in Snohomish County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98052, (206) 885–3986.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: August 10, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) Three 24-inch-wide concrete intake structures in the streambed on tributaries of Index Creek at elevation 2,400 feet; (2) an 17,000-foot-long, 36-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capactiy of 3,460 kW; and (4) an 11-mile-long transmission line. Applicant estimates the average annual energy production to be 15.45 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

l. Purpose of Project: The power produced is to be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No: 10391–000.

c. Date Filed: April 17, 1987

d. Applicant: Skykomish River Hydro.

e. Name of Project: Money Creek.

f. Location: On Money Creek within the Snoqualmie-Mt Baker National Forest in T26N, R10E, new Skykomish in King County, Washington.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Lawrence J. McMurtrey, 12122—196th Avenue NE., Redmond, WA 98052, (206) 885–3986.

i. FERC Contact: Julie Bernt, (202) 376–9812.

j. Comment Date: August 10, 1987.

k. Description of Project: The proposed run-of-the-river project would consist of: (1) Two 36-inch-wide concrete intake structures in the streambed on Money Creek and its tributary at elevation 1,600 feet; (2) a 12,000-foot-long, 48-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 3,013 kW; and (4) a 3-mile-long transmission line. Applicant estimates the average annual energy production to be 13.20 GWh and the cost of the work to be performed under the preliminary permit to be $40,000.

l. Purpose of Project: The power produced is to be sold to the local power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C and D2.

22 a. Type of Application: Transfer of License.

b. Project No: 7242–007.

c. Date Filed: April 17, 1987.

d. Applicants: Television Communications, Inc. and Richard D. Spight.

e. Name of Project: Kanaka Hydroelectric Project.

f. Location: On Sucker Run Creek, a tributary of the South Fork Feather River, near the town of Feather Falls, Butte County, California.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Richard D. Spight, 500 Miner Road, Orinda, California 94563, (415) 254–5590.

i. FERC Contact: Don Wilt, (202) 376–9807.

j. Comment Date: August 17, 1987.

k. Proposed Action: Television Communications, Inc. proposes to transfer its license for Project No. 7242 to Richard D. Spight since Television Communications, Inc., a California corporation, was liquidated and the assets distributed to its only shareholder, Richard D. Spight. Transferee has proposed to construct, operate, and utilitize the full output of the project in accordance with the license.

l. This notice also consists of the following standard paragraphs: B and C.

23 a. Type of Application: Conduit Exemption.

b. Project No: P–10376–000.

c. Date Filed: April 13, 1987

d. Applicant: City of Walla Walla, Washington.

e. Name of Project: Twin Reservoirs.

f. Location: At Twin Reservoirs, the terminus of the City of Walla Walla's water supply system, in Walla Walla County, Washington.

g. Filed Pursuant to: Section 407 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Applicant Contact: Howard R. Laughery, Water System Manager, P.O. Box 478, Walla Walla, WA 993 62, (509) 527–4463.

i. FERC Contact: Thomas Dean, (202) 376–9275.

j. Comment Date: July 27, 1987.

k. Description of Project: The proposed project would consist of: (1) A 150-foot-long, 30-inch-diameter pipeline leading to; (2) a powerhouse approximately 50 feet by 32 feet containing a single generator unit with an installed capacity of 2,100 kW operating at a net hydraulic head of 930 feet; and (3) a 40-foot-long, 54-inch-diameter return flow pipeline. The applicant estimates the average annual energy production to be 14,200 kWh.

l. Purpose of Project: Applicant intends to sell the power generated at the proposed facility.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C and D3b.

24 a. Type of Application: Preliminary Permit.

b. Project No.: 10398–000.

c. Date Filed: April 24, 1987.

d. Applicant: Skykomish River Hydro.

e. Name of Project: Goblin Creek Project.

f. Location: In Snoqualmie-Mt. Baker National Forest, on Goblin Creek, in Snohomish County, Washington. Township 28N and Range 12E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Lawrence J. McMurtey, 12122—196th N.E., Redmond, WA 98053, (206) 885–3986.

i. FERC Contact: Thomas A. Dean, (202) 376–9275.

j. Comment Date: August 17, 1987.

k. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet elevation of 2,200 feet msl; (2) a penstock 3,000 feet long and 24 inches in diameter leading to; (3) a powerplant at elevation 1,840 feet msl containing a single generating unit with a capacity of 759 kW operating at 360 feet of hydraulic head; and (4) a 15-mile-long, 115-kV transmission line. The applicant estimates the average annual energy production to be 3.3 GWh. The

approximate cost of the studies under the permit would be $40,000.

l. Purpose of Project: The applicant intends to sell the power generated at the proposed facility.

m. This notice also consists of the follow standard paragraphs: A5, A7, A9, A10, B, C, and D2.

25 a. Type of Application: Preliminary Permit.

b. Project No.: 10403–000.

C Date Filed: May 1, 1987.

d. Applicant: Greybull Valley Irrigation District.

e. Name of Project: Lower Sunshine Dam Hydroelectric Project.

f. Location: On Sunshine Creek near the town of Meeteetse, in Park County, Wyoming.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Mr. Douglas A. Spaulding, Warzyn Engineering, Inc., 715 Florida Ave. South, Suite 306, Minneapolis, MN 55426, (612) 593–5650.

ı. FERC Contact: Thomas Dean, (202) 376–9275.

j. Comment Date: August 17, 1987.

k. Description of Project: The proposed project would consist of: (1) The Lower Sunshine Dam approximately 1,700 feet long and 180 feet-high: (2) a 1,049-acre reservior with a normal water surface elevation of 6,227 feet msl; (3) a bifurcated penstock approximately 50 feet long leading to; (4) a powerhouse containing two generating units with a total installed capacity of 6,600 kW operating at 170 feet of hydraulic head; and (5) a 1-mile-long, 13.5-kV transmission line. The applicant estimates the average annual energy generation to be 13.0 GWh. The approximate cost of the studies under the permit would be $200,000.

1. Purpose of Project: The applicant intends to sell the power generated at the proposed facility to Western Area Power Administration.

m. This notice also consists of the follow standard paragraphs: A5, A7, A9, A10, B, C, and D2.

26 a. Type of Application: Preliminary Permit.

b. Project No: 10411–000.

c. Date Filed: May 12, 1987.

d. Applicant: Aero Construction Incorporated.

e. Name of Project: Enid Lake and Dam.

f. Location: On the Yocona River near Enid, Yalobusha County, Mississippi.

g. Filed pursuant to: Federal Power Act. 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Ralph L. Laukhuff, Jr., Post Office Box 64844, Baton Rouge, LA 70896, Phone: 504/927–9321

i. FERC Contact: Michael Dees (202) 376–9830.

j. Comment Date: August 17, 1987.

k. Description of Project: The proposed project would utlize the existing Corps of Engineers' Enid Dam and reservoir and would consist of: (1) A proposed lined bifurcated penstock 15 feet in diameter; (2) a proposed powerhouse 30 feet by 30 feet housing two hydropower units with a total capacity of 10,400–kW; (3) a proposed tailrace 20 feet by 10 feet by 75 feet; (4) a proposed 13.8–kV transmission line 4 miles long: and (5) appurtenant facilities. The applicant proposes to sell the energy to local utilities or municipalities, and estimates that the average annual energy generation would be 25.0 GWh and that the cost of the work to be performed under the permit would be $15,000.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

27 a. Type of Application: Preliminary Permit.

b. Project No.: 10236–000.

c. Date Filed: January 7, 1987.

d. Applicant: Sheep Falls.

e. Name of Project: Lower Cedar Creek.

f. Location: On Lower Cedar Creek and an unnamed tributary of Lower Cedar Creek in Custer County, Idaho, near the town of McKay. The project would be located within the Challis National Forest and on land administered by the Bureau of Land Management. T. 8 N., R. 24 E., sections 25, 26, 35, 36. T. 7 N., R. 24 E., sections 2, 11, 14, 28, 26, 27, 22, 21.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. Applicant Contacts:

Mr. John C. Arkoosh, Attorney at Law, P.O. Box 32, Gooding, ID 83330, (208) 934–8401

Ms. Rita Weaver, P.O. Box 604, Gooding, ID 83330

i. FERC Contact: Deborah Frazier-Stutely, (202) 376–9527.

j. Comment Date: August 17, 1987.

k. Description of Project: The proposed project would consist of: (1) Two 6-foot-high intake diversion structures at elevation 8,000 feet, m.s.l.; (2) a 16-inch-diameter, 6,600-foot-long penstock from the diversion on Lower Cedar Creek; (3) a 20-inch-diameter, 2,650-foot-long penstock from the unnamed tributary of Lower Cedar Creek; (4) a 26-inch-diameter, 26,400-foot-long penstock; (5) a powerhouse containing a single generating unit with an installed capacity of 2,660 kW, producing an average annual energy output of 14,630 MWh; (6) a 5,280-foot-long tailrace; (7) an 8,200-foot-long, 12.5-kV transmission line tying into an existing Utah Power and Light Company line; No new roads will be constructed for the purpose of conducting these studies.

The applicant estimates that the cost of conducting these studies under the preliminary permit would be between $50,000 and $60,000.

l. Purpose of Project: Project power would be sold to Utah Power and Light Company

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intend allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a

competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intend to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10 and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies requried by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Divison of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act Pub. L No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825*l* (b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resourses are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are

requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordiantion Act. General comments concerning the project and its resources are requested; however specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants representatives.

Dated: June 26, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-14956 Filed 6-30-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP87-396-000, et al.]

Natural Gas Certificate Filings; Northwest Pipeline Corp., et al.

Take notice that the following filings have been made with the Commission:

1. Northwest Pipeline Corporation

[Docket No. CP87-396-000, et al.]

June 22, 1987.

Take notice that on June 17, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP87-396-000 an application pursuant to section 7(c) of the Natural Gas Act and the Commission's Regulations thereunder for a certificate of public convenience and necessity authorizing the transportation of up to 70,000 Mcf of natural gas per day for Amoco Production Company U.S.A. (Amoco), of Northwest's purchased gas supplies in Wyoming and for the construction and operation of certain pipeline facilities related to the delivery of said gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northwest states that it purchases gas from Amoco and Chevron U.S.A. (Chevron) from the Ryckman Creek Field and the Painter Reservoir Field located in southwestern Wyoming. The gas reserves from these fields is casinghead gas associated with the production of crude oil, it is stated. Northwest asserts that Amoco and Chevron are presently using a nitrogen injection program for oil field pressure maintenance and a portion of the injection nitrogen is produced in increasing amounts over time with the gas reserves currently being purchased by Northwest. In order to process the raw gas stream to pipeline quality, Northwest proposes to deliver the raw gas to Amoco's newly constructed natural gas liquids/nitrogen rejection unit plant near the Painter Field in Uintah County, Wyoming, for the reduction of the nitrogen in the raw gas stream to pipeline quality. To accomplish the delivery of gas to and the receipt of the residue gas from Amoco's plant, Northwest proposes to construct and operate (1) a pipeline tap to interconnect Amoco's 10-inch inlet pipeline to its processing plant and Northwest's existing 10-inch Painter Lateral; (2) a meter station adjacent to Amoco's plant; (3) a tap and approximately 1,200 feet of 10-inch pipeline extending from the tailgate of Amoco's plant to an interconnection with Northwest's existing 10-inch Painter Lateral (these facilities are in the near vicinity of Amoco's processing plant); (4) a 16-inch block valve at the northern terminus of Northwest's Painter Lateral, in Lincoln County, Wyoming, to permit the delivery of gas into its 22-inch Ignacio-Sumas mainline. Northwest estimates the cost of this construction, including filing fees, will be $886,000.

Comment date: July 7, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Lone Star Gas Company, a Division of ENSERCH Corporation

[Docket No. CP87-396-000]

June 24, 1987.

Take notice that on May 29, 1987, Lone Star Gas Company, a Division of ENSERCH Corporation (Lone Star), 301 South Harwood Street, Dallas, Texas 75201, filed in Docket No. CP87-369-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities for the transportation of natural gas in interstate commerce. Lone Star further requests, on behalf of certain producer-suppliers, permission and approval for the abandonment of certain sales of gas which currently flow through the facilities for which Lone Star requests abandonment authorization, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Lone Star requests permission and approval to abandon facilities from interstate commerce as indicated in Appendix A.

Lone Star states that is has filed a prior notice request under Blanket Authorization, which has been assigned Docket No. CP87-290-000, to construct and operate the following facilities in interstate service.

(1) Sales tap and appurtenant facilities on Line FF at Sta. 1369+01 to provide residential gas service to Terry Dyson.

(2) Sales tap and appurtenant facilities on Line FF at Sta. 852+50 to provide residential gas service to Joe Shelton.

(3) Sales tap and appurtenant facilities on Line EBB at Sta. 130+82 to provide commercial service to Billy Patterson.

Lone Star further states that if authorization for the construction and operation of these facilities becomes effective prior to the date the Commission's Order respecting the instant Application is issued, Lone Star further requests that the Commission grant authorization for the abandonment of these facilities from interstate commerce.

Lone Star states that after the issuance of the requested abandonment authorization by the Commission, a two foot section would be removed from Lines EA, E5, E32-1-3, E32-3-1 and G at the Texas/Oklahoma state line. A valve and flange would then be constructed at the end of these lines to permit installation of a two foot spool in the event of an emergency on either the interstate or intrastate portion of Lone Star's facilities.

It is asserted that after issuance of the requested abandonment authorization by the Commission, Lone Star proposes to integrate the facilities for which abandonment authorization is sought into its intrastate operations by installing a spool between the Texas portion of Line E31-1-3 and Line E16 to connect these two lines. The Texas portion of Line E32-3-1 would be connected to Line E26 by installing a spool between the two lines. Lines EE and E would be connected by constructing approximately 1.86 miles of 10-inch pipeline. An existing crossover from Line FF to F would be modified to allow bi-directional flow for off-peak delivery of gas to Denton, Sherman and Denison, Texas and for the injection of

gas into Lake Dallas Storage. A crossover from Line F to Line W would be modified to increase flow capacity and allow for bi-directional flow.

Lone Star further requests, on behalf of certain producer-suppliers, abandonment authorization for sales authorized and made under the rate schedules and dockets set forth in Appendix B.

Lone Star maintains that the proposed realignment would reduce its operating expenses for compression and that it would allow Lone Star to postpone the construction of a proposed multimillion dollar pipeline in Collin County, Texas for several years. It is further stated that the proposed realignment would enable Lone Star to reduce or eliminate future accrual of liabilities arising from inability to fulfill contractural obligations to take gas, by allowing additional gas to be moved through the facilities for which abandonment authorization is sought. It is stated that the proposed realignment of facilities would make additional gas available to the North Dallas area from Lake Dallas Storage and increase the supply of gas to Line D9 from Line E through Lines O and D17. It is further stated that the proposed realignment would enhance service to customers served from Lone Star's facilities in Oklahoma by increasing supplies available for consumption by those customers. Lone Star states that the proposed realignment would not result in diminution of service to any existing customers.

It is stated that the proposed realignment would also enhance Lone Star's ability to move gas from East to West across the Dallas-Fort Worth metroplex. Lone Star indicates that its facilities located in the metroplex area were originally designed to bring gas into the metroplex, and the enhanced East-West transmissibility brought about by the proposed realignment would allow Lone Star additional operating flexibility.

Appendix A

1. Line EA (Sta. 0+00 to Sta. 332+05, State Line) Approximately 6.370 miles of 6-inch, 8-inch, and 10-inch pipeline off of Line EE at Sta. 2250+36 in Grayson County, Texas.

2. Line EA2 (Sta. 0+00 to Sta. 26+10, end) Approximately 0.494 miles of 4-inch pipeline off of Line EA at Sta. 285+00 in Grayson County, Texas.

3. Line EB (Sta. 0+00 to Sta. 417+10, end) Approximately 7.921 miles of 6-inch, 8-inch, 10-inch and 12-inch pipeline off of Line EE at Sta. 1257+89 in Grayson County, Texas.

4. Line EBA (Sta. 0+00 to Sta. 144+85, end) Approximately 2.743 miles of 8-inch pipeline off of Line EB at Sta. 151+05 in Grayson County, Texas.

5. Line EBB (Sta. 0+00 to Sta. 319+84, end) Approximately 6.054 miles of 8-inch pipeline off of Line EB at Sta. 414+09 in Grayson and Cook Counties, Texas.

6. Line EE (Formerly Line E) (Sta. 0+00 to Sta. 2701+98, end) Approximately 52.047 miles of 10-inch pipeline from Gainesville Compressor Station, eastward, in Cooke and Grayson Counties, Texas.

7. Line E1 (Sta. 0+00 to Sta. 57+90, end) Approximately 1.097 miles of 6-inch and 10-inch pipeline off of Line EE at Sta. 2024+93 in Cooke County, Texas.

8. Line E2 (Sta. 0+00 to Sta. 0+63, end) Approximately 63 feet of 8-inch pipeline off of Line EE at Sta. 1865+41 in Grayson County, Texas.

9. Line E3 (Sta. 0+00 to Sta. 47+62, end) Approximately 0.902 miles of 4-inch pipeline off of Line EE at Sta. 952+33 in Cooke County, Texas.

10. Line E4 (Sta. 0+00 to Sta. 96+08, end) Approximately 1.827 miles of 3-inch and 4-inch pipeline off of Line EE at Sta. 383+69 in Cooke County Texas.

11. Line E5 (Sta. 0+00 to Sta. 213+11, State line) Approximately 4.039 miles of 6-inch pipeline off of Line EE at Sta. 2382–73 in Cooke County, Texas.

12. Line E9 (Sta. 0+00 to Sta. 0+97, end) Approximately 0.018 miles of 6-inch pipeline off of Line F & G Crossover at Sta. 0+38 in Cooke County, Texas.

13. Line E15 (Sta. 0+00 to Sta. 249+10, end) Approximately 4.718 miles of 3-inch pipeline off of Line EE at Sta. 886+67 in Grayson County, Texas.

14. Line E23 (Sta. 0+00 to Sta. 215+25, end) Approximately 4.269 miles of 3-inch and 4-inch pipeline off of Line EE at Sta. 1755+36 in Grayson County, Texas.

15. Line E23–1 (Sta. 0+00 to Sta. 0+69, end) Approximately 0.013 miles of 4-inch pipeline off of Line E23 at Sta. 37+33 in Grayson County, Texas.

16. Line E31 (Sta. 0+00 to Sta. 0+03, end) Approximately 3 feet of 2-inch pipeline off of Line EE at Sta. 2701+89 in Grayson County, Texas.

17. Line E32–1–3 (Formerly Line E16 (Sta. 412+47 to Sta. 742+97, State Line) Approximately 6.272 miles of 6-inch and 8-inch pipeline in Lamar County, Texas.

18. Line E32–3–1 (Sta. 856+25 to Sta. 856+30) Approximately 10 feet of 2-inch pipe in Red River County, Texas.

19. Line FA (Sta. 0+00 to Sta. 17+59, end) Approximately 0.333 miles of 6-inch and 8-inch pipeline off of Line FF at Sta. 1456+39 in Denton County, Texas.

20. Line FF (Formerly Line F) (Sta. 0.00to Sta. 1456+39, end) Approximately 27.656 miles of 12-inch, 14-inch, and 10-inch pipeline off of Line G at Sta. 0+00 in Cooke and Denton Counties, Texas.

21. Line F1 (Sta. 0+00 to Sta. 75+88, end) Approximately 1.444 miles of 6-inch pipeline off of Line FF at Sta. 1355+28 in Denton County, Texas.

22. Line F5 (Sta. 0+00 to Sta. 0+72, end) Approximately 0.014 miles of 2-inch pipeline off of Line FF at Sta. 366+45 in Cooke County, Texas.

23. Line F7 (Sta. 0+00 to Sta. 136+87), end) Approximately 2.588 miles of 4-inch pipeline off of Line FF at Sta. 861–50 in Denton County, Texas

24. Line F10 (Sta. 0+00 to Sta. 920+95, end) Approximately 17.604 miles of 3-inch and 4-inch pipeline off of Line FF at Sta. 1081+77 in Denton, Cooke and Grayson County, Texas.

25. Line F10–1 (Sta. 0+00 to Sta. 0+32, end) Approximately 0.006 miles of 2-inch and 3-inch pipeline off of Line F10 at Sta. 320+36 in Denton County, Texas.

26. Line F10–2 (Sta. 0+00 to Sta. 0+25, end) Approximately 0.005 miles of 3-inch pipeline off of Line F10 at Sta. 641+62 in Denton County, Texas.

27. Line G (Sta. 0+00 to Sta. 1058+72, State Line) Approximately 20.398 miles of 10-inch, 12-inch and 16-inch pipeline off of Line FF at Sta. 0+00 in Cooke County, Texas.

28. Line G3 (Sta. 0+00 to Sta. 1100+65, end) Approximately 20.987 miles of 3-inch and 4-inch pipeline off of Line G at Sta. 197+42 in Cooke and Montague Counties, Texas.

29. Line G3–1 (Sta. 0+00 to Sta. 0+08, end) Approximately 8 feet of 2-inch pipeline off of Line G3 at Sta. 167+59 in Cooke County, Texas.

30. Line G3–2 (Sta. 0+00 to Sta. 0+15, end) Approximately 0.003 miles of 2-inch pipeline off of Line G3 at Sta. 447+90 in Cooke County, Texas.

31. Line G3–3 (Sta. 0+00 to Sta. 0+25, end) Approximately 0.005 miles of 2-inch pipeline off of Line G3 at Sta. 643+39 in Cooke County, Texas.

32. Line G3–4 (Sta. 0+00 to Sta. 181+15, end) Approximately 3.431 miles of 2-inch pipeline off of Line G33 at Sta. 617+64 in Cooke County, Texas.

33. Line G3–4 (2nd) (Sta. 0+00 to Sta. 178+82, end) Approximately 3.398 miles of 3-inch pipeline off of Line G3 at Sta. 617+52 in Cooke County, Texas.

34. Line G7 (Sta. 0+00 to Sta. 58+26, end) Approximately 1.103 miles of 3-inch pipeline off of Line G at Sta. 293+06 in Cooke County, Texas.

35. Line GH (Sta. 0+00 to Sta. 56+56, end) Approximately 1.071 miles of 4-inch pipeline off of Line G at Sta. 1017+01 in Cooke County, Texas.

36 Line G3 (2nd) (Sta. 0+00 to Sta. 195+66, end) Approximately 3.706 miles

of 4-inch pipeline off of Line G3 at Sta. 447+88 in Cooke County, Texas.

37. Right of way tap and metering facilities on Line EA2 at Sta. 15+35 to provide industrial gas service to Johns Manville Plant.

38. Right-of-way tap and matering facilities on Line EB at Sta. 331+88 to provide residential gas service to Dennis McCray.

39. Right-of-way tap and metering facilities on Line EB1 at Sta. 2+58 to provide residential gas service to James Dolezalek.

40. Right-of-way tap and metering facilities on Line EBB at Sta. 26+99 to provide commercial gas service to G. C. Scarbrough.

41. Right-of-way tap and metering facilities on Line EBB at Sta. 47+30 to provide commercial gas service to B. L. Scarbrough.

42. Right-of-way tap and metering facilities on Line EE at Sta. 283+52 to provide commercial gas service to McMurrey-Hipke.

43 Right-of-way tap and metering facilities on Line EE at Sta. 369+80 to provide commercial gas service to Burke Royalty.

44 Right-of-way tap and metering facilities on Line EE at Sta. 466+74 to provide commercial gas service to Burke Royalty.

45. Right-of-way tap and metering facilities on Line EE at Sta. 629+09 to provide commercial gas service to Petroleum Corp. of Texas.

46. Right-of-way tap and metering facilities on Line F10 at Sta. 26+44 to provide residential gas service to a residential development.

47. Right-of-way tap and metering facilities on Line F10 at Sta. 41+64 to provide residential gas service to Fred Lynch.

48. Right-of-way tap and metering facilities on Line F10 at Sta. 430+22 to provide residential gas service to Russell Wood.

49. Right-of-way tap and metering facilities on Line F10 at Sta. 440+97 to provide residential gas service to Joe Edge.

50. Right-of-way tap and metering facilities on Line FF at Sta. 100+32 to provide residential gas service to Nelda Holigan.

51. Right-of-way tap and metering facilities on Line FF at Sta. 1402+86 to provide residential gas service to Robert M. Mills.

52. Right-of-way tap and metering facilities on Line FF at Sta. 15+84 to provide residential gas service to Doyle Payne.

53. Right-of-way tap and metering facilities on Line G at Sta. 535+70 to provide residential gas service to Gene Blevins.

54. Right-of-way tap and metering facilities on Line G3 at Sta. 107+00 to provide commercial gas service to Doran Boring Company.

55. Right-of-way tap and metering facilities on Line G3 at Sta. 32+48 to provide commercial gas service to Halliburton, Inc.

56. Right-of-way tap and metering facilities on Line G3 at Sta. 68+49 to provide commercial gas service to Gainesville Ford Tractor.

57. Right-of-way tap and metering facilities on Line G3–4 at Sta. 180+94 to provide commercial gas service to Hess, Seltzer, Knobe, et al.

58. Right-of-way tap and metering facilities on Line G7 at Sta. 58+26 to provide commercial gas service to Borden Company.

59. Right-of-way tap and metering facilities on Line GH at Sta. 55+68 to provide industrial gas service to Standard Oil of Texas.

60. Crossover, Line F8 to Line F8 (2nd) approximately .003 miles of 4-inch pipeline from Sta. 82+49 on Line F8 to Sta. 82+90 on Line F8 (2nd) in Denton County, Texas.

61. Lake Dallas Storage (on Line FA at Sta. 17+59) One (1) 1,100 H.P. compressor station, One (1) dehydration plant and five (5) storage wells.

62. Line GN–60–T (Sta. 0.00 to Sta. 3+72, end) Approximately 0.070 miles of 2-inch pipeline off of Line EE at Sta. 1691+30 in Grayson County, Texas.

Producer-Perry E. Larson and Max L. Thomas Well-John McCullough No. 2–LT

63. Line GN–61–T (Sta. 0+00 to Sta. 3+11, end) Approximately 0.059 miles of 2-inch pipeline off of Line E23 at Sta. 162+28 in Grayson County, Texas.

Producer-Perry E. Larson and Max L. Thomas Well–W.L. Picken No. 1–C

64. Line GN–95–T (Sta. 0+00 to Sta. 0+20, end) Approximately 0.004 miles of 2-inch pipeline off of Line EBB at Sta. 242+65 in Grayson County, Texas.

Seller-Staltz, Wagner and Brown

65. Gainesville compressor station (on Line G at Sta. 197+35) Two (2) 660 H.P. compressor units.

Appendix B

Producer	Docket No.	Gas Rate Schedule No.
Arco Oil & Gas Company	C175-361	549
Union Texas Petroleum Corp.	C173-145	10
Union Texas Production Corp.	G-4875	1
Perry E. Larson & Max L. Thomas et al.	CI62-1015	2
Perry E. Larson	CS71-379	N/A
Moss Petroleum Company	CS74-223	N/A
Chevron U.S.A. Inc	G-7215	15
Sun Exploration & Production Company.	C168-33	220
	CI68-32	219
Mobil Producing Texas & New Mexico, Inc.	G-18731	56
Texas, Inc	CI66-93	356
Walter Grant	CS72-586	N/A
Langford Drilling Company	G-9577 and G-15354.	1
Gordon Oil Company, Inc	CI68-291	291
Stolz, Wagner and Brown	CS69-22	N/A
CCGP Ltd	CS78-712	N/A
Devon Energy Corp	CS76-842	N/A

Comment date: July 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

3. Midwestern Gas Transmission Company

[Docket No. CP87–378–000]

June 24, 1987.

Take notice that on June 2, 1987, Midwestern Gas Transmission Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed pursuant to section 7(c) of the Natural Gas Act and § 157.7 of the Commission's Regulations an abbreviated application for a certificate of public convenience and necessity authorizing Applicant to provide additional points of delivery for Northern States Power Company (Wisconsin) and Northern States Power Company (Minnesota) (jointly NSP), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant currently transports certain quantities of natural gas for NSP to the following delivery points:

1. East Grand Forks in Polk County, Minnesota;

2. Grand Forks in Grand Forks County, North Dakota;

3. Dilworth in Clay County, Minnesota;

4. Moorehead in Clay County, Minnesota;

5. Fargo in Cass County, North Dakota;

6. Menomonie in Dunn County, Wisconsin;

7. Chippewa Falls in Chippewa County, Wisconsin;

8. Control Data in Chippewa County, Wisconsin;

9. Eau Claire in Eau Claire County, Wisconsin.

Applicant requests authorization to add two points of delivery to NSP, located at Cambride, Isanti County, Minnesota, and North Branch, Chisago County, Minnesota. It is stated that upon Commission approval, Applicant would amend its Rate Schedule T–9 to reflect the addition of the delivery points.

Comment date: July 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Southern Natural Gas Company

[Docket Nos. CP87–391–000 and CP87–392–000]

June 24, 1987.

Take notice that on June 11, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket Nos. CP87–391–000 and CP87–392–000 applications pursuant to section 7(c) of the Natural Gas Act for limited-term certificates of public convenience and necessity authorizing the transportation on an interruptible basis of up to 62,000 MMBtu of natural gas per day for a limited term expiring October 31, 1988, for distribution customers in Mississippi and Georgia, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Southern proposes in Docket No. CP87–391–000 to transport up to 2,000 MMBtu of gas per day for the City of Tallapoosa, Georgia (Tallapoosa). It is stated that Southern would receive gas purchased by Tallapoosa from five producer-suppliers (See attached Appendix) at existing points on Southern's system in Louisiana, offshore Louisiana, Mississippi, Alabama and Texas. It is further stated that Southern would redeliver equivalent volumes of gas less 3.25 percent for compressor fuel and company-use gas at the City of Tallapoosa Meter Station in Haralson County, Georgia.

Southern proposes in Docket No. CP87–392–000 to transport up to 60,000 MMBtu of gas per day for Mississippi Valley Gas Company (MVGC). It is stated that Southern would receive gas purchased by MVGC from eighteen producer-supplier (see attached Appendix) at existing points on Southern's system in Louisiana, offshore Louisiana, Mississippi, Alabama, and Texas. It is further stated that Southern would redeliver equivalent volumes of gas less 3.25 percent for compressor fuel and company-use gas to MVGC at 22 points on Southern's and MVGC's systems in Mississippi, as specified in the Service Agreement between Southern and MVGC dated September 12, 1969.

Ink Docket No. CP87–392–000 Southern proposes to charge Tallapoosa a transportation rate of 77.6 cents per MMBtu of gas redelivered by Southern.

In Docket No. CP87–392–000 Southern proposes to charge MVGC the following transportation rates:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to MVGC under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to MVGC does not exceed the daily contract demand of MVGC, the transportation rate shall be 25.0 cents per MMBtu; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to MVGC under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's Rate Schedule OCD on such day to MVGC exceeds the daily contract demand of MVGC, the transportation rate for the excess volumes shall be 34.8 cents per MMBtu.

It is asserted that the transportation agreements between Southern and Tallapoosa in Docket No. CP87–391–000 and between Southern and MVGC in Docket No. CP87–392–000 both provide for collection of the GRI surcharge of 1.52 cents per Mcf of gas transported. It is further asserted that Southern would receive take-or-pay credit for all volumes of gas transported by Southern.

Appendix

Docket Number and Producer-Supplier

CP87–391–000
- SNG Trading Inc.
- Texican Natural Gas Company
- Panhandle Trading Company
- Consolidated Fuel Supply, Inc.
- Trans American Natural Gas Corporation

CP87–392–000
- SNG Trading Inc.
- Eastex Hydrocarbons, Inc.
- Yankee Resources Inc.
- TXO Gas Marketing Corporation
- Tenngasco Corporation
- Koch Hydrocarbon Company
- Arkla Energy Resources
- Phentex Enterprises, Ltd.
- PeopleService, Inc.
- Bishop Pipeline Corporation
- Seagull Energy Corporation
- PGC Marketing Inc.
- Entrade Corporation
- Enron Gas Marketing, Inc.
- Hadson Gulf Inc.
- Natural Gas Clearinghouse Inc.
- MVG Marketing Inc.
- Excel Resources Inc.

Comment date: July 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP87–358–000]

June 24, 1987.

Take notice that on May 20, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87–358–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing Tennessee (1) to increase its firm natural gas sales service to ten existing customers in New England under its existing Rate Schedule CD–6 by an aggregate maximum daily quantity (MDQ) of 91,358 dekatherms (Dth) of natural gas per day and by an aggregate annual sales entitlement (Annual Quantity Limitation or AQL) of 24,418,257 Dth, and (2) to construct and operate the facilities necessary to provide the increased service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Background

Tennessee explains that on April 1985, in Docket No. CP84–441–003 (the AVL–III Project), Tennessee applied for authority to reallocate its existing certificate and delivery obligations over its entire system through reductions in obligations to some customers, increases in delivery obligations to other customers, and the construction of $162 million in facilities. Tennessee states that numerous changes in natural gas markets and the regulatory environment have made the AVL–III project unworkable as a total project. These changes include the following: contract reductions, now available to customers unilaterally under 18 CFR Section 284.10; energy price relationships altering demand forecasts; and new options for customers to serve their markets with pipeline sales, transportation, or some combination thereof. As a result, Tennessee states that it will shortly file to withdraw its application in Docket No. CP84–441–003.

Tennessee further states that the changes which have made the AVL–III project obsolete did not eliminate the need of many of Tennessee's customers for increased gas service. Accordingly, Tennessee states that it surveyed its customers to obtain their current requests for new contract entitlements. Based on these requests supported by customer forecasts of market requirements and Tennessee's own market analysis, Tennessee explains that it evaluated what system expansions were economical in the new market environment. Tennessee states that it focused this effort first on its New England customers, because they represented the largest concentration of requests for service increase and

because all such expansions would be based on the expansion of Tennessee's 200 mainline into New England. Ten of these New England customers requested increased service from Tennessee, and Tennessee has designed the subject project, called the NOREX Project, to meet their needs, it is stated.

Firm Sales Increases

It is stated that the firm sales service increases requested by Tennessee in this application are in lieu of the increases sought for these same New England customers in the AVL–III project. These customers have requested, and Tennessee herein requests an in-service date of November 1, 1989, for the facilities and increased gas sales service.

The specific customers and quantities for which Tennessee seeks increased sales authority are:

	MDQ increase (Dth/d)	Proposed MDQ (Dth/d)	AQL increase (Dth)	Proposed AQL (Dth)
Berkshire Gas Co	5,105	25,572	1,304,261	6,697,585
Boston Gas Co	39,645	135,999	10,020,994	34,424,000
Colonial Gas Co	14,418	50,000	4,500,000	15,511,032
Concord Gas Co	2,136	7,718	545,775	2,052,000
EnergyNorth, Inc	8,641	32,954	2,203,567	7,838,155
Essex County Gas Co	6,004	20,900	1,534,022	5,740,826
Fitchburg Gas & Electric Co	2,545	10,246	200,000	3,005,306
Holyoke Gas & Electric Dept	1,920	10,000	540,538	3,400,000
South Connecticut Gas Co	7,869	47,040	2,783,438	13,735,680
Valley Gas Co	3,075	23,590	785,662	7,057,395
Total	91,358		24,418,257	

Tennessee states that deliveries of these volumes would be made at Tennessee's existing points of delivery, except that a new delivery point at Londonderry, New Hampshire is being established for EnergyNorth, Inc.

Optional Firm Transportation

Tennessee explains that it declared itself open to transportation on a non-discriminatory basis on December 8, 1986, and accepted new self-implementing transportation under section 311 starting on December 10, 1986. Tennessee states that it filed an unconditioned application for an Order No. 436 blanket certificate on December 8, 1986, in Docket No. CP87–115–000, but as yet the Commission has taken no action on that application.

Tennessee states further, that under 18 CFR 284.10, firm sales customers of an open-access pipeline, such as Tennessee, have the option to reduce, or to convert to transportation, their sales entitlements under eligible firm sales service agreements. Because the new gas sales agreements incorporating the increased gas sales service requested herein would be executed after December 10, 1986 (the date Tennessee became an open-access transporter), Tennessee alleges that those agreements are not eligible firm sale agreements and no contract reduction or conversion rights are available to the NOREX customers. However, Tennessee states that it has agreed to allow the NOREX customers the option to convert to transportation, in any year of the new gas sales agreements, up to 20 percent of the original MDQ and AQL set forth in the new NOREX sales agreements. Tennessee explains that this conversion option is subject to: (1) the receipt of Commission authority (in a separate proceeding) to abandon the sales service and to provide the firm transportation service requested; (2) to the availability of capacity from the specific receipt points requested by the customer; and (3) authorization of transportation rates equivalent to the non-gas components of Tennessee's Rate Schedule CD–6 sales rates. Tennessee states that no reduction rights are offered herein due to each customer's election to increase its firm sales service and Tennessee's construction of facilities to render that increased service.

Copies of the Precedent Agreements with each customer are attached in Exhibit I. Tennessee has also provided in Exhibit I the market studies of each of the NOREX customers, as well as Tennessee's own market analysis, allegedly demonstrating the market support for the gas service increases sought herein.

Transportation Agreement

In lieu of construction of additional mainline and compression facilities required to deliver the increased NOREX quantities on Tennessee's system, Tennessee states that it has executed a Gas Transportation Agreement with Consolidated Gas Transmission Corporation (Consolidated). Under this agreement, Consolidated would receive from Tennessee a maximum quantity of 92 MDth per day at North Sheldon, New York, and redeliver that quantity, less .3 percent fuel, downstream to Tennessee near Morrisville, New York. For this transportation service Consolidated would assess Tennessee a monthly charge of $218,300, allegedly substantially below the cost applicable to the Tennessee facilities which otherwise would be required. A copy of this transportation agreement is attached in Exhibit Z of the application. Tennessee states Consolidated will shortly file an application for authority to provide this transportation service.

Facilities

To accomplish the increased sales service Tennessee proposes to construct and operate approximatley $47,698,000 in facilities detailed in the Appendix to this notice. It is indicated that the proposed facilities would initially be financed with funds on hand, funds generated internally, and borrowings under revolving credit agreements or shortterm financing which would be rolled-in to permanent financing.

Rate and Revenue Impact

Tennessee states that it would render the increased sales services under its existing Rate Schedule CD–6. Tennessee alleges that by using its currently effective CD–6 rates, the increased revenues generated by the increased NOREX sales service would recover the incremental cost of service of the NOREX expansion. Tennessee states that it intends to include the NOREX facilities in its rate base in its next general NGA section 4 rate case and allocate the costs of these facilities on a system-wide basis except for the facilities costs related to pipeline laterals in New England Rate Zone (CD–6 rate zone). Tennessee contends that in light of the favorable economics of the project, it does not anticipate an adverse effect to its customers from this rolled-in treatment.

Gas Supply

Tennessee alleges that it has adequate domestic and Canadian supplies currently under contract initially to provide the increase service sought in this application, and would contract for additional supplies in later years as required to supply market demands throughout Tennessee's system. Tennessee also notes that it has received from five of its customers notifications of reduction in their sales entitlements under 18 CFR 284.10. These contract reductions reduce Tennessee's existing AQL by 25,273,585 Dth, a quantity greater than the increased AQL

sought for the NOREX customers in this application. Therefore, it is explained that the increased sales service to the NOREX customers would not increase Tennessee's current aggregate sales obligation.

Project: Summary: Norex Project, Construction cost Estimate.
Prepared 05/15/87.

TENNESSEE GAS PIPELINE COMPANY; CONSTRUCTION COST ESTIMATE

Schedule No. and Description	Units	Quantity'	Unit Cost	Total Amount
2. 30" O.D. X 760 PSIG pipeline loop from M.P. 253+3.93 to M.P. 253+6.87, Rensselaer County, New York	Miles	2.9	949,310.34	$2.753,000
3. 30" O.D. X 760 PSIG pipeline loop from MLV 260 to M.P. 260+2.91, Hampden County, Massachusetts	Miles	2.9	1,139,655.17	3,305,000
4. 30" O.D. X 750 PSIG pipeline loop from M.P. 261+7.23 to MLV 262, Hampden County Massachusetts	Miles	5.7	1,123,508.77	6,404,000
5. 30" O.D. X 750 PSIG pipeline loop from M.P. 264+9.0 to M.P. 265+0.8 Worcester County, Massachusetts	Miles	3.0	1,085,666.67	3,257,000
6. Compressor modifications and relief valve installation, Station 245, Herkimer County, New York	Lot	1.0		198,000
7. Compressior modificaitons, Station 249, Schoharie County, New York	Lot	1.0		434,000
8. Compressor modifications and H.P. gas pulsation bottle replacements, Station 254, Colubia County, New York	Lot	1.0		2,161,000
9. Compressor modifications, Station 261, Hampden County, Massachusetts	Lot	1.0		493,000
10. Turbine compressor uprate, Station 264, Worcester County, Massachusetts	HP	1,000.0	818.00	818,000
11. 10,750" O.D. X 760 PSIG pipeline loop, Adams Lateral, from M.P. 265C-101.1+3.83 to valve 256C-102, Berkshire County, Massachusetts.	Miles	6.1	369,180.33	2,252,000
12. 12,750" O.D. X 760 PSIG pipeline replacement, Northampton Lateral, from valve 260A-103 to valvue 206A-105A, Hampshire County, Massachusetts.	Miles	7.9	367,848.10	2,906,000
13. 10,750" O.D. X 750 PSIG Pipeine replacement, Fitchburg Lateral, from valve 268A-102 to valve 268A-103, Worcester County, Massachusetts.	Miles	7.5	382,000.00	2,865,000
14. 12.750" O.D. X 750 PSIG pipeline loop, Concord Lateral, from valve 270B-105 to M.P. 270B-105+10.5 Hillsboro and Merrimack Counties, New Hampshire.	Miles	10.5	376,857.14	3,957,000
15. 24" O.D. X 750 PSIG pipeline replacement, Beverly-Salem Lateral, from M.P. 270C-101.1+2.0 to M.P. 270C-101+4.31, Middlesex County, Massachusetts.	Miles	2.3	1,067,391.30	2,455,000
16. 12,750" O.D. X 750 PSIG pipeline loop Beverly-Salem Lateral, from valve 270C-102 to valve 270C-103, Essex County, Massachusetts.	Miles	2.5	554,000.00	1,385,000
17. Measurement facilities at M.P. 230+8.5, Erie County, New York	Lot	1.0		443,000
18. Upgrade 27 measurement facilities in the New England Area	Lot	1.0		3,194,000
19. Measurement facilities, Londenderry, Rockingham County, New Hampshire	Lot	1.0		180,000
Total direct cost—1988				39,460,000
Overheads	Lot	1.0		5,524,000
Allowance for funds used during construction	Lot	1.0		2,699,000
Regulatory Fees	Lot	1.0		15,000,
Total project cost—1988				47,698,000

Comment date: July 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company

[Docket No. CP87-380-000]

June 24, 1987.

Take notice that on June 2, 1987, Texas Eastern Transmission Corporation (Texas Eastern), P.O. Box 2521, Houston, Texas 77252, and Angonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135 (Applicants) filed in Docket No. CP87-380-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the exchange of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants request authorization to exchange a contract quantity of up to 30,000 dt equivalent of natural gas per day, on a firm basis, and such additional interruptible quantities as the Applicants may mutually agree upon. Applicants indicate that they would render the proposed exchange service for a primary term commencing November 15, 1988, and continuing through April 1, 2011, and from year-to-year thereafter, pursuant to a gas exchange agreement between the parties dated April 7, 1987, submitted in the application as Exhibit P.

Applicants state that Texas Eastern would deliver natural gas to Algonquin at Texas Eastern's M&R Station 1078 located in Hanover, New Jersey, and Algonquin would deliver equivalent quantities of natural gas received for exchange to PennEast Gas Services Company (PennEast) for the account of Texas Eastern at the proposed Bridgewater, New Jersey measuring facilities to be owned by PennEast.

It is indicated that the exchange of natural gas between Texas Eastern and Algonquin is part of an overall project outlined in the Capacity Restoration Program in Docket No. CP87-92-001 which is a joint application by Texas Eastern and PennEast. It is further indicated that the proposed exchange herein would commence with the completion of the second year of construction of facilities in November 1988, as proposed in Docket Nos. CP-87-92-000 and CP87-92-001. Applicants state that the proposed exchange would allow the implementation of deliveries of natural gas to Public Service Electric and Gas Company (Public Service) pursuant to a proposed sales agreement between PennEast and Public Service filed in application in Docket No. CP87-4-000.

Comment date: July 15, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Trunkline Gas Company

[Docket No. CP87-368-000]

June 24, 1987.

Take notice that on May 27, 1987, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77001, filed in Docket No. CP87-368-000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act requesting authorization to transport natural gas on behalf of CanadianOxy Offshore Production Company (CanadianOxy) and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to a transportation agreement between Trunkline and CanadianOxy dated February 25, 1987, as amended on April 23, 1987, Trunkline proposes to receive for transportation a volume of natural gas of up to 4,000 Mcf per day on an interruptible basis on behalf of CanadianOxy. Trunkline would receive volumes for CanadianOxy's account from Conoco Inc. located in Vermilion Parish, Louisiana. Trunkline would utilize its capacity in High Island Offshore System

and would redeliver to Tennessee Gas Pipeline Company (Tennessee) at an existing point of pipeline interconnection between Trunkline and Tennessee located in Jefferson Davis Parish, Louisiana. It is stated that the ultimate destination of such gas is the system supply of Tennessee. It is indicated that for this transportation service, CanadianOxy would pay Trunkline 13.53 cents per dt of natural gas received.

Comment date: July 15, 1987, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., 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 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time 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 the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-14955 Filed 6-30-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[PP 6G3445/T547; FRL-3226-2]

Ethephon; Establishment of Temporary Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established temporary tolerances for residues of the plant growth regulator ethephon in or on certain raw agricultural commodities. These temporary tolerances were requested by Union Carbide Agricultural Products Co., Inc.

DATE: These temporary tolerances expire May 4, 1989.

FOR FURTHER INFORMATION CONTACT: By mail: Robert Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.
Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1800).

SUPPLEMENTARY INFORMATION: Union Carbide Agricultural Products Co., Inc., T.W. Alexander Drive, P.O. Box 12014, Research Triangle Park, NC 27709, has requested in pesticide petition PP 6G3445 the establishment of temporary tolerances for residues of the plant growth regulator ethephon (2-chloroethyl) phosphonic acid in or on the raw agricultural commodities corn, field (grain) at 0.2 part per million (ppm); corn, field (fodder [stover]) at 3.0 ppm; corn, field (forage) at 3.0 ppm; corn, fresh (Inc. Sweet K (+) CWHR) at 1.0 ppm; and corn, sweet (forage) at 5.0 ppm.

These temporary tolerances will permit the marketing of the above named raw agricultural commodities when treated in accordance with the provisions of the experimental use permit 264-EUP-74, which is 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 the 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 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. Union Carbide Agricultural Products Co., Inc., 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 May 4, 1989. Residues not in excess of these amounts 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 Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 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. 346(j)).

Dated: June 23, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-14913 Filed 6-30-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3224-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that EPA has

forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate incudes the actual data collection instrument. The ICRs that follow are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Patricia Minami, (202) 382–2712 (ETS 382–2712) or Jackie Rivers, (202) 382–2740 (FTS 382–2740).

Office of Pesticides and Toxic Substances

Title: Application for Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only/Final Reports on EUPs (EPA ICR #0276). (This is an extension of the expiration date of a currently approved collection without any change in the substances or in the method of collection.)

Abstract: To enable pesticide users to accumulate the data needed to register a pesticide, section 5 of FIFRA emplowers EPA to issue experimental use permits (EUPs). To apply for an EUP, a pesticide user must complete EPA form 8570–17. An EUP allows a pesticide company to ship and use an unregistered pesticide product. EPA reviews final reports on the experiments to monitor the EUP program.

Respondents: Owners and operators of pesticide companies.

Frequency: Annual reporting.

Estimated annual burden: 3,900 hours.

Agency PRA Clearance Requests Completed by OMB

EPA ICR #0270; State Drinking Water Supply Program Information (Fluoride Rule Amendment); was approved 4/01/87 (OMB #2040–0090; expires 4/30/88).

EPA ICR #0314; Fuel Manufacturer Notification for Motor Vehicle Fuel; was changed (expiration date) 5/29/87 (OMB #2080–0013; expires 10/31/87).

EPA ICR #0574; Premanufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances; was approved 6/03/87 (OMB #2070–0012; expires 6/30/90).

EPA ICR #0595; Section 24(C) Special Local Needs Registration; was approved 6/01/87 (OMB #2070–0055; expires 6/30/90).

EPA ICR #0616; Compliance Requirement for the Child Resistant Packaging Act; was approved 6/05/87 (OMB # 2070–0052; expires 6/30/90).

EPA ICR #0783; Refueling Emission Regulations for 1990 and Later Model Year Gasoline-Fuel Light-Duty Vehicles, Light-Duty Trucks and Heavy-Duty Vehicles; was not approved; withdrawn at request of Agency, 5/29/87.

EPA ICR #0934; National Human Adipose Tissue Survey; was approved 6/05/87 (OMB # 2070–0050; expires 11/30/88).

EPA ICR #0940; Ambient Air Quality Networks—Monitoring and Quality/Precision Data; was approved 5/29/87 (OMB # 2060–0084; expires 8/31/87).

EPA ICR #1039; Technical and Financial Progress Reports Submitted in Accordance with Contract Requirements; was approved 4/06/87 (OMB # 2030–0005; expires 10/31/87).

EPA ICR #1089; National Emissions Standards for Inorganic Arsenic Emissions from Primary Copper Smelters; was approved 6/05/87 (OMB # 2060–00444, expires 6/30/90).

EPA ICR #1132; NSPS for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels); was approved 5/29/87 (OMB # 2060–0074, expires 5/31/90).

EPA ICR #1139; TSCA Section 4 Test Rules and Exemptions; was approved 6/01/87 (OMB # 2070–0033, expires 6/30/90).

EPA ICR #1233; Asbestos School Hazard Abatement Act Grant and Loan Program Application Form; was approved 2/13/87 (OMB # 2070–0062, expires 2/29/88).

EPA ICR #1280; Call-In of Confidential Statements of Formula and Product Chemistry Data—Pretest; was changed (expiration date) 5/29/87 (OMB # 2070–0083, expires 8/31/87).

EPA ICR #1284; New Source Performance Standards for Polymeric Coating of Supporting Substrates; was not approved; withdrawn at request of Agency, 5/29/87).

EPA ICR #1352; Community Right To Know, Title III of the Superfund Amendments of 1986; was approved 6/05/87 (OMB # 2050–0072, expires 8/31/87).

EPA ICR #1356; Measurement of Soil Ingestion in Children Ages 2½ to 7; was approved 6/05/87 (OMB # 2080–0029, expires 6/30/88).

EPA ICR #1357; Toxic Chemical Release Inventory Petitions (Section 313(E) of SARA Title III); was approved 5/20/87 (OMB # 2070–0090, expires 5/31/90).

EPA ICR #1358; Pretest of Section 312 Forms under SARA, Title III; was approved 5/28/87 (OMB # 2010–0015, expires 12/31/87).

EPA ICR #1359; RCRA Financial Responsibility Requirements for Underground Storage Tanks; was approved 6/01/87 (OMB # 2050–0066, expires 1/31/88).

EPA ICR #1364; Survey of Hazardous Waste Treatment, Storage, Disposal and Recycling Facilities (TSDR's); was approved 6/03/87 (OMB # 2050–0070, expires 6/30/88).

EPA ICR #1366; Pretest of Section 313 Toxic Chemical Release Inventory Form under SARA, Title III; was approved 6/05/87 (OMB # 2010–0016, expires 9/30/87).

EPA ICR #0309; Fuel Additive Manufacturer Notification; was transferred 5/14/87 (from ORD, OMB # 2080–0014 to OAR, OMB # 2060–0087).

Send comments on the above abstract(s) to: Patricia Minami, PM–223, U.S. Environmental Protection Agency, Information and Regulatory Systems Division, 401 M Street, SW., Washington, DC 20460 and Susan Dudley, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, 726 Jackson Place, NW, Washington, DC 20503.

Dated: June 22, 1987.

Daniel J. Fiorino,

Director, Information and Regulatory Systems Division.

[FR Doc. 87–14916 Filed 6–30–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51681; FRL–3225–1]

Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty-three such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1262, 87–1263 and 87–1264—September 9, 1987.

P 87–1265, 87–1266 and 87–1267—September 12, 1987.

P 87–1268, 87–1269, 87–1270, 87–1271, 87–1272, 87–1273, 87–1274, 87–1275, 87–1276, 87–1277, 87–1278, 87–1279, 87–1280,

87–1281, 87–1282, 87–1283, 87–1284 and 87–1285—September 13, 1987.

P 87–1286, 87–1287, 87–1288 and 87–1289—September 14, 1987.

P 87–1286, 87–1287, 87–1288 and 87–1289—August 15, 1987.

P 87–1290, 87–1291, 87–1292, 87–1293 and 87–1294—September 15, 1987.

Written comments by:

P 87–1262, 87–1263 and 87–1264—August 10, 1987.

P 87–1265, 87–1266 and 87–1267—August 13, 1987.

P 87–1268, 87–1269, 87–1270, 87–1271, 87–1272, 87–1273, 87–1274, 87–1275, 87–1276, 87–1277, 87–1278, 87–1279, 87–1280, 87–1281, 87–1282, 87–1283, 87–1284 and 87–1285—August 14, 1987.

P 87–1290, 87–1291, 87–1292, 87–1293 and 87–1294—August 16, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51681]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Rm. E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1262

Manufacturer. Sanncor Industries, Incorporated.

Chemical. (G) Water dispersible polyester urethane.

Use/production. (G) Coating. Prod. range: Confidential.

P 87–1263

Manufacturer. Confidential.

Chemical. (G) Fluorinated polyol.

Use/production. (G) Protective coatings. Prod. range: Confidential.

P 87–1264

Manufacturer. Confidential.

Chemical. (G) Fluorinated polyol.

Use/production. (G) Protective coatings. Prod. range: Confidential.

P 87–1265

Manufacturer. Confidentlal.

Chemical. (G) 2-Naphthalene carboxamide-N-aryl-3-hydroxy-4-aryl azo.

Use/production. (G) Colorant for plastic. Prod. range: Confidential.

Toxicity data. Acute oral: >5 g/kg; Irritation: Skin—Non-irritant, Eye—Slight; Ames test: Positive.

P 87–1266

Importer. Marubeni America Corporation.

Chemical. (S) Benzamide, N-[4-[(4-hydroxy[1,1'-biphenyl]-3-yl)azo] phenyl]-.

Use/import. (S) Commercial dye for polyester fibers. Import range: 10,000 kg/yr.

Toxicity data. Acute oral: >5,000 mg/kg; Ames test: Negative; TLμ 48 hrs (Orange Medaka): >100 parts per million (ppm).

P 87–1267

Importer. Marubeni America Corporation.

Chemical. (S) Cuprate(7-), [.mu.-[[2,2'-[(2,4,6-trimethyl-5-sulfo-1-,3-phenylene)bis[imino(6-chloro-1,3,5,-triazine-4,2-diyl)imino(2-hydroxy-5-sulfo-3,1-phenylene) azo (phenylmethylene)azo]]bis[4-sulfobenzoato]](11-)]]di-, pentasodium dihydrogen.

Use/import. (S) Commercial dye for cellulosic fibers. Import range: 10,000 kg/yr.

Toxicity data. Acute oral: >5,000 mg/kg; Ames test: Negative; TL_m 48 hrs (Orange medaka): >200 ppm.

P 87–1268

Manufacturer. Confidential.

Chemical. (G) Polyether.

Use/production. (S) Industrial thermoplastic additve. Prod. range: Confidential.

P 87–1269

Manufacturer. Mazer Chemicals, Incorporated.

Chemical. (G) Organic esters.

Use/production. (G) Metalworking lubricant/coolant component. Prod. range: Confidential.

P 87–1270

Importer. Pacific Anchor Chemical Corporation.

Chemical. (G) Arylaliphatic polyamine epoxy adduct.

Use/import. (S) Curing agent for epoxy resin coating systems, and adhesives, putties, mortars, sealants and jointing compounds. Import range: Confidential.

P 87–1271

Importer. Confidential.

Chemical. (S) 2-Naphthalenecarboxamide, 3-hydroxy-4-[[2-methoxy-5-[(phenylmethyl)sulfonyl]phenyl]azo]-N-phenyl-.

Use/import. (G) Open, non-dispersive use. Import range: Confidential.

P 87–1272

Manufacturer. Boehme Filatex, Inc.

Chemical. (S) 1-Heptadecanol, 16-methyl, phosphate, potassium salt.

Use/production. (G) Lubricant component for synthetic fibers. Prod. range: Confidential.

P 87–1273

Importer. Ameribrom, Incorporated.

Chemical. (S) 2,2,6,6-Tetrakis(bromomethyl)-4-oxa-heptane-1,7-diol.

Use/production. Industrial flame retardant-additive in polypropylene and high impact polystyrene. Prod. Range: Confidential.

Toxicity date. Acute Oral: >5,000 mg/kg; Irritation: Skin–Mild, Eye–Mild; Ames test: Non-mutagenic.

P 87–1274

Manufacturer. Confidential.

Chemical. (G) Ethoxylated alkyloxyalkylamine.

Use/production. (G) Petroleum additive. Prod. rangle: Confidential.

P 87–1275

Importer. Confidential.

Chemical. (G) Acrylate acrylonitrile copolymer.

Use/import. (S) Industrial surface protection. Import range: Confidential.

P 87–1276

Importer. Confidential.

Chemical. (G) Polyacrylate.

Use/import. (S) Industrial laminating adhesives. Import range: Confidential.

P 87–1277

Importer. Confidential.

Chemical. (G) Vinylacetate acrylate copolymer.

Use/import. (S) Industrial production of adhesives. Import range: Confidential.

P 87–1278

Importer. Confidential.

Chemical. (G) Acrylate acrylonitrile copolymer.

Use/import. (S) Industrial adhesives production. Import range: Confidential.

P 87–1279

Importer. Confidential.

Chemical. (G) Acrylate acrylonitrile copolymer.
Use/import. (G) Production aid. Import range: Confidential.

P 87–1280

Manufacturer. Colloids/North Chemical Company.
Chemical. (G) Isophthalic acid, terephthalic acid, diethylene glycol, trimellitic anhydride polymer, mono isopropanol amine neutralized.
Use/production. (S) Binder for starch on spun yarn. Prod. range: 1,000,000 to 3,000,000 kg/yr.

P 87–1281

Manufacturer. National Distillers and Chemical Corporation.
Chemical. (S) 3-Acetyl-5-butyl-dihydro-2(3H)-furanone.
Use/production. (S) Industrial, commercial and consumer fragrance ingredient. Prod range: 900 to 50,000 kg/yr.

P 87–1282

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl dicarboxylic acids plus alkane diols.
Use/import. (S) Industrial ingredient in a paint formulated to provide low temperature impact resistance. Import range: Confidential.

P 87–1283

Manufacturer. Confidential.
Chemical. (G) Patty alcohol ester.
Use/production. (G) Iron ore beneficiation aid. Prod. range: 51,200 to 104,000 kg/yr.

P 87–1284

Manufacturer. Confidential.
Chemical. (G) Fatty alcohol ester.
Use/production. (G) Iron ore beneficiation aid. Prod. range: 51,200 to 104,000 kg/yr.

P 87–1285

Manufacturer. Confidential.
Chemical. (G) Fatty alcohol ester.
Use/production. (G) Iron ore beneficiation aid. Prod. range: 51,200 to 104,000 kg/yr.

P 87–1286

Importer. Dynamit Nobel Chemicals.
Chemical. (G) Polyester resin of aryl and fatty acids with alkane diols.
Use/import. (S) Industrial clear overprint coating for exteriors of cans. Import range: Confidential.

P 87–1287

Manufacturer. Confidential.
Chemical. (S) 1,5-Pentanediamine,N,N'-bis-(1,3-dimethylbutylidene)-2-methyl-.
Use/production. (G) Polymer additive for open, non-dispersive use. Prod. range: Confidential.

P 87–1288

Manufacturer. Confidential.
Chemical. (G) Alkylphosphate salt of an acylated polyamine.
Use/production. (G) Oil additive. Prod. range: Confidential.

P 87–1289

Importer. Confidential.
Chemical. (G) Phenolated rosin ester.
Use/import. (G) Printing inks. Import range: Confidential.

P 87–1290

Manufacturer. Confidential.
Chemical. (G) Acrylic resin.
Use/production. (G) Resin for paint manufacture. Prod. range: Confidential.

P 87–1291

Manufacturer. Confidential.
Chemical. (G) Aliphatic polyester polyurethane.
Use/production. (S) Industrial, commercial and consumer leather adhesive and modifier for coatings, inks and adhesives. Prod. range: Confidential.

P 87–1292

Manufacturer. Monsanto Company.
Substance. (G) Genetically engineered strain of *Pseudomonas fluorescens* which contains *Escherchia coli lac*ZY genes.
Use/production. (G) Small-scale field trial to test the sensitivity and reliability of the *lac*ZY marker for monitoring genetically engineered fluorescent pseudomonads in soil and to evaluate the performance and survival of *lac*ZY marked *Pseudomonas fluorescens* under field conditions. Prod range: 2×10^{14} cells.
Toxicity data. Non-pathogenic or non-toxic to various non-target organisms such as mice, quail, fish and daphnids. Not a plant pest or pathogen to wheat, soybean, or corn.
Exposure. Human: Field application (maximum): 12 personnel.
Environmental: Persistence and survival of *P. fluorescens* in soil: The added *lac*ZY genes have no effect on the growth of the host bacteria, or on the ability of the host bacteria to colonize soybean or wheat. The colonization abilities of this strain were not found to be statistically different from the non-engineered organism, indicating that the inserted marker genes neither conferred an advantage or significant disadvantage in the ability of the recombinant organism to develop or maintain population levels on roots. *E. coli lac*ZY retention in *P. fluorescens* in the laboratory: The recombinant organism was grown for 110 generations and then 8,500 progeny were examined. No progeny were found which had not retained the *lac*ZY genes. E *coli lacZY* transmissibility to other bacteria: A mating system for the host organism is not known. Plasmids of the appropriate incompatability group (P–1, W and N) cannot be introduced into and/or replicate in the host and no evidence for endogenous plasmids could be found.
Environmental release. Production and processing: Cultures sterilized before disposal. *Media release:* Air and water. *Small-scale field trial:* Winter wheat seeds and a liquid inoculum of the bacteria are delivered directly into a furrow and then immediately covered with soil. In this way a total of approximately 4.8×10^{13} colony forming units of each bacterial strain will be applied to the test site (less than 2 acres) located in the Edisto Research and Education Center, Clemson University, Blackville, SC in the fall of 1987.
Disposal: Solid materials generated in the production and application of the bacteria are placed sanitary landfill after sterilizing. Soil and possible groundwater are released at the field site.

P 87–1293

Manufacturer. Confidential.
Chemical. (S) 1-Octadecanamine oleate.
Use/production. (G) Emulsifier in a wax emulsion. Prod. range: Confidential.

P 87–1294

Manufacturer. Confidential.
Chemical. (G) Dialkyldithiophosphoric acid, metal salt.
Use/production. (G) Open, non-dispersive use. Prod. range: Confidential.

Dated: June 24, 1987.

Denise Devoe,

Acting Division Director, Information Management Division.

[FR Doc. 87–14914 Filed 6–30–87; 8:45 am]
BILLING CODE 6560–50–M

[OPTS–00083; FRL–32249]

Biotechnology Science Advisory Committee; Meeting of the Subcommittee on Premanufacture Notification Review; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 1-day meeting of the Biotechnology Science Advisory Committee's Subcommittee on Premanufacture Notification Review. This subcommittee will advise EPA on a premanufacture notification (PMN) submitted to EPA by Monsanto Company, in compliance with the Toxic Substances Control Act (TSCA). This PMN concerns Monsanto's development of a genetically engineered strain of a microorganism and plans to conduct a small-scale field trial. The small-scale field trial will test the ability of the genetically engineered strain to provide an accurate and practical means of monitoring the survival and location of the strain under actual field conditions. The meeting will be open to the public. None of the submission is confidential business information.

DATES: The meeting will be held on Wednesday, August 26, 1987 from 9 a.m. to 5 p.m. It will be open to the public at all times. Requests to speak at the subcommittee meeting, and written comments for consideration by the subcommittee should be submitted by August 14, 1987.

ADDRESS: The meeting will be held at: Environmental Protection Agency, Rm. 1112, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Written comments for consideration by the subcommittee and requests to speak at the subcommittee meeting should be identified with the docket control number "[OPTS–00083]" and should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Rm. L–100, 401 M St., SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404.

SUPPLEMENTARY INFORMATION: This is a notice in accordance with the Federal Advisory Committee Act (FACA) [5 U.S.C. App. I (1982)] which requires that timely notice of each meeting of an advisory committee be published in the **Federal Register.** This notice announces that the EPA will convene a 1-day meeting of the Biotechnology Science Advisory Committee (BSAC) Subcommittee on Premanufacture Notification Review on August 26, 1987.

I. Announcement of the Receipt of Premanufacture Notification

Elsewhere in this notice of the **Federal Register** a notice announcing the receipt of the PMN designated as P 87–1292 appeared as part of the weekly notice of PMNs received. This PMN is the subject of this meeting of the Subcommittee on Premanufacture Notification Review of the BSAC. Please consult that notice for specific information on the PMN to be discussed. Copies of the PMN are available in the public file identified with the docket control number OPTS–[ ], and copies are available on request from the TSCA Assistance Office by calling (202) 554–1404.

II. Purpose of the Meeting

The Subcommittee on Premanufacture Notification Review of the BSAC will meet to advise EPA in its review of the PMN under the authority of section 5 of TSCA. EPA has decided that such expert assistance is necessary for this review because risk assessment of genetically modified microorganisms released to the environment is a new area in which the Agency is just beginning to develop its expertise. EPA plans to consult with experts outside the Agency during its review of certain microorganisms until the Agency develops additional expertise and experience in this specialized area.

Members of the BSAC Subcommittee on Premanufacture Notification Review will advise EPA on the risks that may be associated with the microorganism. They will assist in assessing data available on the potential hazards and likely exposures to the microorganism, and will review any comments provided by the public in writing in advance of the meeting. Members of the Subcommittee will also assist in identifying additional information that may be necessary to determine whether the environmental release of the microorganism may present an unreasonable risk to human health or the environment.

After the meeting of the BSAC Subcommittee, EPA may request additional information from Monsanto. EPA will develop a risk assessment, estimate the benefits associated with the new substances, and reach a regulatory decision. EPA will develop a risk assessment based on the advice of the BSAC Subcommittee, the information submitted in the PMN, and other available information. It will estimate the benefits associated with the use of the new microorganism, and will use this estimate to evaluate whether any risk associated with the new microorganism may be unreasonable. After considering these evaluations, the Agency has authority to allow manufacture and use, to prohibit release of the microorganism, or to impose restrictions on its manufacture and use. EPA has 90 days to review the PMN. The review period may be extended by agreement between Monsanto and EPA, or unilaterally by EPA under section 5(c) of TSCA. As discussed above, EPA maintains a public file for each PMN. EPA has also established a file, OPTS–00083, that specifically concerns this meeting of the Subcommittee on Premanufacture Notification Review.

III. Public Comment and Participation

The meeting will be open to the public. Members of the BSAC Subcommittee will hear the comments of individuals who have requested the opportunity to speak. EPA will also describe in more detail its approach to risk assessment for the microorganism.

IV. Subject of the Meeting

The microorganism being reviewed by EPA in this PMN is a strain of *Pseudomonas fluorescens* in which *Escherchia coli lac*ZY genes have been genetically engineered into the chromosome. Monsanto has previously conducted research on this microorganism in contained facilities such as laboratories, growth chambers, and greenhouses. Monsanto, in cooperation with Clemson University, now wishes to continue its research and development (R&D) activities by conducting a small-scale field trial in a small plot of wheat followed by soybeans at the Edisto Research & Education Center, Clemson University, Blackville, South Carolina.

The purpose of the test is to verify the ability of this strain to provide an accurate and practical means to monitor the survival and location of bacteria under actual field conditions. In addition, the company will evaluate the performance of the well-characterized soil bacterium, *Pseudomonas fluorescens,* representative of the type intended for future use in delivering natural pesticidal agents or plant enhancing agents in agricultural applications.

Monsanto has submitted information concerning the identity of the organism, genetic engineering techniques used, toxicity and exposure data, human health considerations, the location of the proposed field test, design and supervision of the test, methods of application, monitoring and control procedures, and environmental fate and effects.

Monsanto submitted the PMN on June 18, 1987, and voluntarily cooperated with EPA by submitting the PMB for this substances while it is still the focus of R&D activities. The company took this action in compliance with the "Statement of Policy: Microbial Products

published in the **Federal Register** of June 26, 1986 (51 FR 23313). In that notice, EPA stated that microbial products were subject to TSCA, and requested commercial researches intending to release new, living microorganisms into the environment to report their activities to the Agency, rather than to conduct such activities under the exemption for R&D provided by section 5(h)(3) of TSCA. The microorganism being developed by Monsanto is subject to PMN requirements, because it contains genetic material from more than one taxonomic genus, and is therefore a new microorganism, as defined by the Statement of Policy.

Date: June 25, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 87-14915 Filed 6-30-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Applications for Consolidated Hearing; Ernestine R. Miller, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Ernestine R. Miller	Grove City, Ohio	BPH-851210MD	87-178
B. Belfry Broadcasting Company, Inc	Grove City Ohio	BPH-851211ME	
C. Grove City Broadcasting Group	Grove City Ohio	BPH-851213MF	
D. Earl T. Brown	Grove City Ohio	BPH-851213MG	
E. FM Grove City Limited Partnership	Grove City Ohio	BPH-851216MS	
F. Don H. Barden	Grove City Ohio	BPH-851216MT	
G. John M. McKinley d/b/a Ohio Broadcast Services	Grove City Ohio	BPH-851216MU	
H. Video Services Broadcasting Corporation	Grove City Ohio	BPH-851216MV	
I. Joanne Roach	Grove City Ohio	BPH-851216MW	
J. Grove City Broadcasting Foundation	Grove City Ohio	BPH-851216MY	
K. Saunders Broadcasting, Inc	Grove City Ohio	BPH-851216MZ	
L. Minority Broadcasting Corporation	Grove City Ohio	BPH-851216NA	
M. Mae Broadcasting Company	Grove City Ohio	BPH-851216MX (Dimissed)	

2. Pursuant to 47 U.S.C. 309(e) the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Headings and Applicant(s)

1. Main Studio—G
2. Air Hazard—G, J
3. Comparative—A, B, C, D, E, F, G, H, I, J, K, L
4. Ultimate—A, B, C, D, E, F, G, H, I, J, K, L

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87-14927 Filed 6-30-87; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Gerald J. Robinson, et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant	City/State	File No.	MM Docket No.
A. Gerald J. Robinson	Sumter, S.C	BPCT-861222KH	87-210
B. Sumter Television, Inc	Sumter, S.C	BPCT-870316KG	
C. Tantamount Communications, Inc	Sumter, S.C	BPCT-870317KL	
D. Channel 63, Ltd. Partnership	Sumter, S.C	BPCT-870317KM	
E. C. Fred McLaughlin	Sumter, S.C	BPCT-870317KN	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard—A, B, C, D, E
2. Comparative—A, B, C, D, E
3. Ultimate—A, B, C, D, E

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW.,

Washington, DC 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 87–14928 Filed 6–30–87; 8:45 am]

BILLING CODE 6712–01–M

[Report No. W–17]

Window Notice for the Filing of FM Broadcast Applications; Helena, et al.

Release: June 24, 1987.

Notice is hereby given that applications for vacant FM broadcast allotment listed below may be submitted for filing during the period beginning June 24, 1987 and ending July 30, 1987 inclusive. Selection of a permittee from a group of acceptable applicants will be by the Comparative Hearing process.

Channel—233 A

Helena—AR
Hanford—CA
Hayden—ID
Long Beach—MS
Silver City—NM
Ravena—NY
Murrell's Inlet—SC

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–14926 Filed 6–30–87; 8:45 am]

BILLING CODE 6712–01–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.: 224–010802–001
Title: City of Long Beach Terminal Agreement
Parties: City of Long Beach, Salen Shipping Agencies
Synopsis: The proposed agreement amendment provides that Salen Shipping Agencies, Inc. will exercise an option to extend the term of the basic preferential assignment agreement to September 19, 1989.

Agreement No.: 224–002118–003
Title: City of Long Beach Terminal Agreement
Parties: City of Long Beach, Petro-Diamond Terminal Company
Synopsis: The proposed agreement amendment provides that Petro-Diamond Terminal Company will exercise an option to extend the term of the agreement to September 30, 1997, with a new rental for the extended term.

Agreement No.: 224–004174–002
Title: Port of Palm Beach Lease and Terminal Agreement
Parties: Port of Palm Beach District, Birdsall, Inc.
Synopsis: The proposed agreement amends the basic Lease and Terminal agreement to: (1) Address the construction of certain improvements upon certain property within the terminal area and (2) allow Birdsall, Inc. to lease an additional portion of the real property subject to the basic Agreement.

Agreement No.: 224–200007
Title: Port of Salem New Jersey Lease and Terminal Use Agreement
Parties: The City of Salem Municipal Port Authority (Port) Horizons Shipping and Trading Ltd., Inc. (Company)
Synopsis: The proposed agreement provides that the Company will pay the Port a specified annual guaranteed rental and a percentage of dockage and wharfage and related charges, as specified in the Agreement, for the lease and the Port facilities (Block 7, Lot 1) and equipment. The term of the Agreement is twenty years from February 1, 1986.

By Order of the Federal Maritime Commission.

Dated: June 26, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–14938 Filed 6–30–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 25, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 C.F.R. § 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instruments(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received intial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register.**

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in 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).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Nancy Steele—Divison of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822).

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. *Report title:* Application to become a bank holding company.
Agency form number: FR Y–1.
OMB Docket number: 7100–0119.
Frequency: Event-generated.
Reporters: Corporation seeking to become a bank holding company.
Annual reporting hours: 24,960 hours. Small businesses are not affected.
General description of the report: This application provides systematic data on the structure of the proposal to acquire one or more banks, on the financial condition of the applicant, and on competitive and convenience factors. The information is necessary to enable the Board to fulfill its responsibilities under the Bank Holding Company Act. The proposed revisions request more information on capital instruments to reflect revisions made in the Board's capital guidelines; ask respondents to discuss any recent material changes affecting financial condition; and clarify language in the form and instructions.
This report is required in order to engage in the activity and is authorized by law [12 U.S.C. 1842 section 3(a)(1)]. Individual respondent data are available to the public except any portions granted confidential treatment at applicant request [5 U.S.C. 552(b)(4) and (8)].

2. *Report title:* Application for prior approval to acquire more than 5 percent of the stock of an additional bank or acquire additional stock (up to 50 percent) of an existing subsidiary bank.
Agency form number: FR Y–2.
OMB Docket number: OMB No. 7100–0171.
Frequency: Event-generated
Reporters: Registered bank holding companies.
Annual reporting hours: 35,743 hours. Small businesses are not affected.
General description of report: This report is an application for prior approval of the acquisition of direct or indirect ownership, control, or power to vote a certain percentage of the voting shares of a bank, and requests financial and managerial information on the applicant, and data on competition, public convenience and needs. The proposed revisions include a request for separate information on goodwill and other intangibles, and for additional information on debt instruments, loan commitments and other data affecting capital ratios; and a request for discussion of material recent changes affecting financial condition.
This report is required and is authorized by law [12 U.S.C. 1842 section 3(a)(3)]. Individual respondent data are available to the public except any portions which have been granted confidential treatment at applicant request [5 U.S.C. 552(b)(4) and (8)].

3. *Report title:* Application to engage directly or indirectly in certain nonbanking activities.
Agency form number: FR Y–4.
OMB Docket number: 7100–0121.
Frequency: Event-generated
Reporters: Bank holding companies.
Annual reporting hours: 550 hours. Small businesses are not affected.
General description of the report: This form is completed by a bank holding company seeking prior approval to acquire or retain the assets or shares of a nonbank company. The proposed revisions request more information on debt instruments and intangible assets, on any debt incurred in connection with the proposed transaction, and the source of funding for any proposed leveraged activity.
This report is required and authorized by law [12 U.S.C. 1843 section 4(c)(8)]. Individual respondent data are available to the public except any poritons granted confidential treatment at applicant request [5 U.S.C. 552(b)(4) and (8)].

4. *Report title:* Application to become a bank holding company, by any company organized under the laws of a foreign country and seeking initial entry into the United States through acquisition of a U.S. subsidiary bank.
Agency form number: FR Y–1F.
OBM Docket number: 7100–0119.
Frequency: Event-generated.
Reporters: Companies organized under the laws of a foreign country and proposing to become a U.S. bank holding company.
Annual reporting hours: 616 hours. Small businesses are not affected.
General description of the report: This application provides systematic data on the structure of the proposal, on the financial condition of the applicant and its proposed subsidiary (ies), and on competition, public convenience and needs. The information is required to enable the Federal Reserve to fulfill its responsibilities under the Bank Holding Company Act. The proposed revisions involve clarifications and item changes to conform the application to the FR Y–1 application filed by domestic bank holding companies (including proposed revisions to that application), and elimination of certain items requesting information obtainable elsewhere.
This application is required and authorized by law [12 U.S.C. 1842 section 3(a)(1)]. Individual respondent information is available to the public except those portions granted confidential treatment at applicant request [5 U.S.C. 552(b)(4)].

5. *Report title:* Report of Intercompany Transactions for Foreign Banking Organizations and Their U.S. Bank Subsidiaries.
Agency form number: FR Y–8f.
OMB Docket number: 7100–0127.
Frequency: Semiannual.
Reporters: Foreign banking organizations.
Annual reporting hours: 1170 hours. Small businesses are not affected.
General description of the report: This report provides the Federal Reserve with information on intercompany transactions between foreign banking organizations and their U.S. bank subsidiaries. It enables the System to monitor and supervise intercompany flows of funds to ensure that U.S. subsidiary banks are not engaging in any unsafe and unsound practices with their foreign owners. The proposed revisions include certain changes in terminology and an increase in the size criteria for interim reporting of certain large asset transfers and for separate reporting and explanation of large asset transfers that were "delinquent, nonperforming, or renegotiated."
This report is mandatory and authorized by law [12 U.S.C. 1844(5)(c)] and [12 CFR 225.5(b)]. Individual respondent data are given confidential treatment [5 U.S.C. 552(b)(8)].

6. *Report title:* Report of Condition for Edge and Agreement Corporations.
Agency form number: FR 2886b.
OMB Docket number: 7100–0086.
Frequency: Semiannual.
Reporters: Edge and Agreement Corporations.
Annual reporting hours: 6204 hours. Small businesses are not affected.
General description of the report: This report is used to supplement examination reports and support the applications process, to monitor aggregate institutional trends, and to measure the effect of and compliance with the Board's Regulation K. The proposed revisions consist of changes in wording and clarifications to Schedule E.
This report is required and authorized by law [12 U.S.C. 602 and 605]. Certain respondent data are given confidential treatment [5 U.S.C. 552(b)(4) and (8)].

Board of Governors of the Federal Reserve System, June 25, 1987

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–14867 Filed 6–30–87; 8:45 am]
BILLING CODE 6210–01–M

Citizens Investment, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. § 1824(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 23, 1987.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Citizens Investment, Inc.*, Vineland, New Jersey; to acquire 100 percent of the voting shares of Sun National Bank, Medford, New Jersey.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Fir-Ban, Inc.*, Verona, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Verona Bank, Verona, Kentucky.

Board of Governors of the Federal Reserve System, June 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14868 Filed 6-30-87; 8:45 am]

BILLING CODE 6210-01-M

The Hongkong and Shanghai Banking Corp.; Application To Engage in Certain Nonbanking Activities

The company listed has applied under § 225.23(a) of Regulation Y (49 FR 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (49 FR 794) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 31, 1987.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President), 33 Liberty Street, New York, New York 10045:

1. *The Hongkong and Shanghai Banking Corporation*, Hong Kong, B.C.C., Kellett N.V., Curacao, Netherlands Antilles, HSBC Holdings B.V., Amsterdam, Netherlands and Marine Midland Banks, Inc., Buffalo, New York, for Marine Midland Banks, Inc., through a newly-formed, wholly-owned subsidiary, Marine Midland Payment Services, Inc., to engage *de novo* in the issuance and sale of general purpose, variably denominated payment instruments as follows: (1) Money orders up to a maximum face value of $10,000; and (2) official checks with no limitation on the maximum face amount, but subject to certain conditions.

Board of Governors of the Federal Reserve System, June 25, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-14869 Filed 6-30-87; 8:45 am]

BILLING CODE 6210-01-M

Keystone Bancshares, Inc., Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application Y (12 CFR 225.23(a)(1)) under § 225.23(a)(1) of the Boards regulation for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless othewise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 320 South LaSalle Street, Chicago, Illinois 60690:

1. *Keystone Bancshares, Inc.*, Monona, Iowa; to engage *de novo* in lending activities pursuant to

§ 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14870 Filed 6-30-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies; E.D. Vickery

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. One the notices have been accepted for processing, they will also the be available for inspection at the offices of the Board of Governors. Insterested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 16, 1987.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *E.D. Vickery*, Houston, Texas; to acquire 28.71 percent of the voting shares of Alief Alamo Bank, Houston, Texas.

Board of Governors of the Federal Reserve System, June 25, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-14871 Filed 6-30-87; 8:45 am]

BILLING CODE 8210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Preliminary Determination of Funds Available for Reallotment

SUMMARY: Notice is hereby given that a preliminary determination has been made that FY 1986 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment. Section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621), as amended by the Human Services Reauthorization Act of 1984, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount allotted to a Tribe for any fiscal year will not be used by that Tribe during the fiscal year, the Secretary must notify the Grantee and publish a notice in the **Federal Register** that such funds may be realloted. As the Secretary's designee, I have determined that a total of $16,706 of FY 1986 LIHEAP funds may be subject to reallotment. I have based that determination on reports from the Narragansett Indian Tribe of Rhode Island, the Delaware Tribe of Oklahoma, and the Quinault Tribe of Washington which were submitted to the Office of Family Assistance as required by 45 CFR 96.81. The Narragansett Indian Tribe was notified by certified mail that $15,880 of its FY 1986 LIHEAP funds may be reallotted. The Delaware Tribe was notified by certified mail that $494 of its FY 1986 LIHEAP funds may be reallotted. The Quinault Tribe was notified by certified mail that $332 of its FY 1986 LIHEAP funds may be realloted. In accordance with section 2607(b)(3), the Chief Executive Officer of each of these tribes has 30 days from the date of the letters to submit comments to me. That 30-day period will expire August 3, 1987. After considering any comments submitted, I will notify the Chief Executive Officer of any decision to reallot funds and will publish my decision in the **Federal Register.** If funds are realloted, they will be allocated in accordance with section 2604 and will be treated as an amount appropriated for FY 1987.

FOR FURTHER INFORMATION CONTACT: Pera Daniels, Director, Formula and Entitlement Grants Branch (202) 245-0710.

Dated: June 23, 1987.

Wayne A. Stanton,

Administrator, Family Support Administration.

[FR Doc. 87-14900 Filed 6-30-87; 8:45 am]

BILLING CODE 4150-04-M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency holding the meeting: President's Committee on Mental Retardation.

Time and Date: Executive Committee, Sunday, August 23, 1987, 1:00 P.M.-5:00 P.M. Full committee, August 24-25, 1987, 9:00 A.M.-5:00 P.M., August 24, 1987, 9:00 A.M.-5:00 P.M., August 25, 1987.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citzensip, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that effect the mentally retarded.

Contact person for more information: Susan Gleeson, R.N., M.S.N., 330 Independence Ave., SW., Room 4725—North Building, Washington, DC 20201, (202) 245-7634.

Dated: June 25, 1987.

Jim F. Young,

Acting Executive Director, PCMR.

[FR Doc. 87-14942 Filed 6-30-87; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

National Advisory Council on Health Care Technology Assessment; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory Council scheduled to meet during the month of August 1987:

Name: National Advisory Council on Health Care Technology Assessment.

Date and Time: August 6-7, 1987, 1:30 PM.

Place: Park Terrace Hotel, Terrace Ball Room, 1515 Rhode Island Avenue, Northwest, Washington, DC.

Closed August 7, 11:30 am to 12:00 Noon.

Open for remainder of meeting.

Purpose: The Council is charged to provide advice to the Secretary and to the Acting Director of the National Center for Health Services Research and Health Care Technology Assessment (NCHSR) with respect to the performance of the health care

technology assessment functions prescribed by Section 305 of the Public Health Service Act, as amended.

Agenda: The agenda for the open session will center on public policy aspects of medical coverage issues involving health care technology. During the closed session, the Council will be reviewing research grant applications relating to health care technology. These applications contain research protocols, design, raw research data, technical information, and preliminary research reports. The meeting involves discussion of salaries and the professional competence of applicants, information of a personal nature, disclosure of which would constitute a clearly-unwarranted invasion of personal privacy. In accordance with the Federal Advisory Committee Act, Title 5, U.S. Code, Appendix 2 and Title 5, U.S. Code 552b(c)(6), I have made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a Roster of Members, Minutes of Meetings, or other relevant information should contact Ms. Nancy Blustein, National Center for Health Services Research and Health Care Technology Assessment, Room 1805, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone (301) 443–5652.

Agenda items are subject to change as priorities dictate.

Dated: June 19, 1987.

Samuel Lin,

Assistant Surgeon General, Acting Director, National Center for Health Services Research and Health Care Technology Assessment.

[FR Doc. 87–14892 Filed 6–30–87; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–87–1709]

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.

ACTION: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, 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 description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (9) 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 proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Hospital—Section 242 Contractor's Requisition
Office: Housing
Description of the need for the information and its proposed use: Construction disbursements for the Section 242 Mortgage Insurance Program for Hospitals are made by the mortgagee only with the approval of HUD. It is necessary that monthly payments be made for the contractor to meet his obligation. This form authorizes the mortgagee to make progress payments.
Form Number: FHA–2448 (Hosp)
Respondents: Businesses or Other For-Profit and Federal Agencies or Employees
Frequency of Response: Monthly
Estimated Burden Hours: 768
Status: Reinstatement
Contract: C. Edward Lewis, HUD, (202) 755–6223; John Allison, 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).

Proposal: Survey of New Mobile Home Placements (Supplemental Questionnaire)
Office: Policy Development and Research
Description of the Need for the Information and its Proposed Use: Mobile home placement data, collected from dealers, are used to monitor trends in this type of low-cost housing. The principal user, HUD, uses the statistics produced to formulate policy, draft legislation, and evaluate programs.
Form Number: Form C–MH–X and Form C–MH–9B
Respondents: Businesses or Others For-Profit and Small Businesses or Organizations
Frequency of Response: Single-Time
Estimated Burden Hours: 170
Status: New
Contact: Connie H. Casey, HUD, (202) 755–5060; Steven Berman, Census, (301) 763–7842; John Allison, 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).

Proposal: Public Housing—Life Cycle Cost Analysis of Utility Combinations
Office: Public and Indian Housing
Description of the Need for the Information and Its Proposed Use: A PHA collects information in order to compare and recommend the most cost-effective utility combination for the new construction or rehabilitation projects. The completed information is submitted to HUD as part of the PHA proposal.
Form Number: HUD–51994
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of Response: On Occasion
Estimated Burden Hours: 1,562
Status: Reinstatement
Contact: William C. Thorson, HUD, (202) 755–6460; John Allison, 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: June 23, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87-14974 Filed 6-30-87; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA-150-07-4830-11-ADVB-2410]

Call for District Advisory Council Nominations

AGENCY: Bureau of Land Management, Interior.

ACTION: Call for Nominations for District Advisory Councils.

SUMMARY: The purpose of this notice is to solicit public nominations to fill those positions for which terms expire this year on each of the Bureau of Land Management's 52 district advisory councils. Each council has three such positions to fill, except the California Desert District Advisory Council, which has five such positions to fill.

Each affected council comprises 10 members, except the California Desert District Advisory Council, which comprises 15 members. Under the staggered-term arrangement instituted by the Secretary of the Interior in 1982, the terms of five members on the California Desert District Advisory Council and the terms of three members on each of the remaining 51 councils will expire on December 31, 1987. Current council members may be reappointed or new members may be appointed. However, the eligibility of current council members for reappointment may be affected by regulations published by the Department of the Interior on October 29, 1986 (51 FR 39528), as corrected on February 20, 1987 (52 FR 5284). Appointments made by the Secretary pursuant to this call will assure continued representation of specific categories of interest on each council. The new terms will expire December 31, 1990.

To ensure council membership that is balanced in terms of categories of interest represented and functions performed, nominees must be qualified to provide advice in specific areas identified with each council position now up for appointment. Categories for specific councils will be announced through local news releases in the appropriate States and Districts and will include the following: Elected General Purpose Government, Environmental Protection, Recreation, Renewable Resources (livestock, forestry, agriculture), Non-Renewable Resources (mining, oil and gas, extractive industries), Transportation/Rights-of-Way (or occupancy issues), Wildlife, and Public-at-Large.

The purpose of the councils is to provide informed advice to the respective District Managers on the management of the public lands. Members will serve without salary, but will be reimbursed for travel and per diem expenses at current rates for Government employees.

Each council normally will meet at least twice annually. Additional meetings may be called by the District Manager or his designee in connection with special needs for advice.

Persons wishing to nominate individuals or to be nominated to serve on an advisory council should contact the appropriate District Manager of the Bureau of Land Management at the corresponding District Office address below to ascertain which categories of interest are to be represented. They should then provide the District Manager with the names, addresses, professions, and other biographic data of qualified nominees.

DATE: All nominations should be received by July 31, 1987.

ADDRESSES: The Districts and their mailing addresses are as follows:

Alaska

Arctic, Kobuk, and Steese-White Mountain (jointly served by the Northern Alaska Advisory Council): c/o Public Affairs Staff, Fairbanks Support Center, 1541 Gaffney Rd., Fairbanks, AK 99703

Anchorage and Glennallen (jointly served by the Southern Alaska Advisory Council): c/o Public Affairs Staff, Alaska State Office, Box 13, Anchorage, AK 99513

Arizona

Arizona Strip: 196 E. Tabernacle, St. George, UT 84770

Phoenix: 2015 W. Deer Valley Rd., Phoenix, AZ 85027

Safford: 425 E. 4th St., Safford, AZ 85546

Yuma: Box 5680, Yuma, AZ 85364

California

Bakersfield: 800 Truxtun Ave., Room 302, Bakersfield, CA 93301

California Desert: 1695 Spruce St., Riverside, CA 92507

Susanville: 705 Hall St., Susanville, CA 96130-3730

Ukiah: Box 940, Ukiah, CA 95482

Colorado

Canon City: Box 311, Canon City, CO 81212

Craig: 455 Emerson St., Craig, CO 81625

Grand Junction: 764 Horizon Dr., Grand Junction, CO 81506

Montrose: 2465 S. Townsend Ave., Montrose, CO 81401

Idaho

Boise: 3948 Development Ave., Boise, ID 83705

Burley: Route 3, Box 1, Burley, ID 83318

Coeur d'Alene: 1808 N. 3rd St., Coeur d'Alene, ID 83814

Idaho Falls: 940 Lincoln Rd., Idaho Falls, ID 83401

Salmon: Box 430, Salmon, ID 83467

Shoshone: Box 2B, Shoshone, ID 83352

Montana

Butte: Box 3388, Butte, MT 59702

Lewistown: 80 Airport Rd., Lewistown, MT 59457-9699

Miles City: Box 940, Miles City, MT 59301

Nevada

Battle Mountain: Box 1420, Battle Mountain, NV 89820

Carson City: 1535 Hot Springs Rd., Suite 300, Carson City, NV 89701

Elko: Box 831, Elko, NV 89801

Ely: Star Route 5, Box 1, Ely NV 89301

Las Vegas: Box 26569, Las Vegas, NV 89126

Winnemucca: 705 E. 4th St., Winnemucca, NV 89445

New Mexico

Albuquerque: 435 Montano Rd., Albuquerque, NM 87107

Las Cruces: 1800 Marquess St., Las Cruces, NM 88005

Roswell: Box 1397, Roswell, NM 88201-1397

North Dakota

Dickinson: Box 1229, Dickinson, ND 58602

Oregon

Burns: 74 S. Alvord St., Burns, OR 97720

Coos Bay: 333 S. 4th St., Coos Bay, OR 97420

Eugene: Box 10226, Eugene, OR 97401

Lakeview: Box 151, Lakeview, OR 97630-0055

Medford: 3040 Biddle Rd., Medford, OR 97504

Prineville: Box 550, Prineville, OR 97754

Roseburg: 777 N.W. Garden Valley Blvd., Roseburg, OR 97470

Salem: 1717 Fabry Rd., S.E., Salem, OR 97302

Vale: Box 700, Vale, OR 97918

Utah

Cedar City: Box 724, Cedar City, UT 84720
Moab: Box 970, Moab, UT 84532
Richfield: 150 E. 900 N., Richfield, UT 84701
Salt Lake: 2370 S. 2300 W., Salt Lake City, UT 84119
Vernal: 170 S. 500 E., Vernal, UT 84078

Washington

Spokane: E. 4217 Main Ave., Spokane, WA 99202

Wyoming

Casper: 1701 East "E" Street, Casper, WY 82601
Rawlins: Box 670, Rawlins, WY 82301
Rock Springs: Box 1869, Rock Springs, WY 82902–1869
Worland: Box 119, Worland, WY 82401.

FOR FURTHER INFORMATION CONTACT: The appropriate District Managers.

Robert F. Burford,

Director.

June 11, 1987.

[FR Doc. 87–14775 Filed 6–30–87; 8:45 am]

BILLING CODE 4310–84–M

[AA220–07–4322–12]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's Clearance Officer and the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, Telephone (202) 395–7340.

Title: Grazing Application—Preference Summary and Transfer, Supplemental Information 43 CFR 4110

Abstract: The combined grazing application is submitted by individuals requesting grazing privileges. It is used to verify qualifications and maintain records on legal permittees.

Bureau Form Number: 4130–1a and 4130–1b

Frequency: Occasionally

Description of Respondents: Applicants stating qualifications for livestock permits

Annual Responses: 10,000

Annual Burden Hours: 2,500

Bureau Clearance Officer (alternate): Rick Iovaine (202)653–8853

Dated: May 29, 1987.

Guy E. Baier,

Deputy Assistant Director, Land and Renewable Resources.

[FR Doc. 87–14852 Filed 6–30–87; 8:45 am]

BILLING CODE 4310–84–M)

[I–22300; ID–040–07–4212–13]

Realty Action; Exchange of Public Land; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Exchange of Public Lands for Private Lands in Lemhi County, Idaho.

SUMMARY: The following public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 176:

Boise Meridian, Idaho

Township 20 North, Range 24 East,
Section 29 S½SW¼NW¼;
Section 30 SE¼SE¼NE¼, SW¼SW¼, SW¼NE¼, SW¼NE¼NW¼.
Containing 42.5 acres, more or less.

In exchange for these lands, the United States will acquire the following described private land from Fay Andrews, of Rt. 1, Box 40B, Salmon, ID 83467:

Boise Meridian, Idaho

Township 19 North, Range 23 East,
Section 24 SE¼SW¼.
Containing 40 acres, more or less.

The purpose of the exchange is to acquire private land that contains valuable wildlife habitat, a one-quarter mile stretch of riparian habitat as well as excellent rangeland with potential for good water developments. The public lands have been primarily devoted to agricultural use and have further potential for this use. The exchange is consistent with the Bureau's planning for the lands involved and the public interest will be well served by making the exchange.

The above lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may change to reflect equal values upon completion of the final appraisal.

The public lands to be transferred from the United States will be subject to the following reservations, terms and conditions:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. All valid existing rights of record, including rights-of-way I–20154 and I–20158.

Private lands to be acquired by the United States will be subject to all valid existing rights on record including any right-of-way, easement and oil and gas lease.

Mineral estates will be transferred with the surface on both the public and private land.

Publication of this notice in the **Federal Register** segregates the subject public lands from all appropriations under the public land laws, including the mining laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, whichever occurs first.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, including the environmental assessment and the record of public contact is available for review at the Salmon District Office, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467. For a period of 45 days from the date of this Notice, interested parties may submit comments to the Salmon District Manager at the above address. Any adverse comments will be evaluated by the Idaho State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any modification by the State Director, this realty action will become the final determination of the Department of the Interior.

Dated: June 19, 1987.

Jerry W. Goodman,

District Manager.

[FR Doc. 87–14853 Filed 6–30–87; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

Procedure for Determining Natural Gas Value for Royalty Purposes

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Proposed Modification to Notice to Lessees-5, Reopening of Public Comment Period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is reopening the public comment period on its Notice of Proposed Modification to Notice to Lessees-5 (NTL–5, which establishes the value for royalty purposes of gas production from onshore Federal and Indian leases) which was published in the **Federal**

Register on January 15, 1987 (52 FR 1671). MMS is reopening the comment period so that it may receive and consider additional public comments on its proposal to modify NTL–5 retroactively.

DATES: Comments must be received by 4:30 p.m. MST July 15, 1987.

ADDRESS: Written comments should be sent to: Minerals Management Service, Building 85, Denver Federal Center, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, Attention: Dennis C. Whitcomb.

FOR FURTHER INFORMATION CONTACT: Dennis Whitcomb, Chief, Rules and Procedures Branch, telephone (303) 231–3432, (FTS) 326–3432.

Dated: June 26, 1987.

William D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87–14910 Filed 6–30–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERNATIONAL TRADE COMMISSION

Agency Forms Submitted for OMB Review

AGENCY: In accordance with the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Commission has submitted a proposal for the collection of information to the Office of Management and Budget (OMB) for review.

Purpose of Information Collection: The proposed information collection is for use by the Commission in connection with investigation No. 332–245, Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade, instituted under the authority of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332).

Summary of Proposals: (1) Number of forms submitted: One.

(2) Title of forms: Questionnaire For Companies That Benefit From Intellectual Property Protection.

(3) Type of request: New.

(4) Frequency of use: Nonrecurring.

(5) Description of respondents: Firms which have operations relying more than a nominal degree on the protection any kind of intellectual property, including patents, trademarks, copyrights, mask works, trade secrets, or proprietary technical data.

(6) Estimated number of respondents: 900.

(7) Estimated total number of hours to complete the forms: 36,000.

(8) Information obtained from the forms that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment: Copies of the proposed form and supporting documents may be obtained from Mark Estes (tel. no. 202–724–0977) or Deborah Ladomirak (tel. no. 202–523–0131). Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: Francine Picoult, Desk Officer for U.S International Trade Commission. Any comments should be specific, indicating which part of the questionnaire or study plan is objectionable, describing the problem in detail, and including specific suggested revisions or language changes.

Submission of Comments: Comments should be submitted to OMB within two weeks of the date this notice appears in the *Federal Register*. If you are unable to submit them promptly you should advise OMB within the two week period of your intent to comment on the proposal. Ms. Picoult's telephone number is 202–395–7340. Copies of any comments should be provided to Charles Ervin (United States 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 our TDD terminal on (202) 724–0002.

By order of the Commission.

Issued: June 24, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–14965 Filed 6–30–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–371 (Final)]

Fabric and Expanded Neoprene Laminate From Taiwan; Revised Schedule

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202–523–0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–724–0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202–523–0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION: Effective May 14, 1987, the Commission instituted the subject investigation and established a schedule for its conduct (52 FR 22010, June 10, 1987). Subsequently, the Department of Commerce extended the date for its final determination in the investigation from July 22, 1987, to September 28, 1987 (52 FR 21339, June 5, 1987). The Commission, therefore, is revising its schedule in the investigation to conform with Commerce's new schedule.

The Commission's new schedule for the investigation is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than September 29, 1987; the prehearing conference will be held in room 117 of the U.S. International Trade Commission Building at 9:30 a.m. on September 30, 1987; the public version of the prehearing staff report will be placed on the public record on September 15, 1987; the deadline for filing prehearing briefs is September 30, 1987; the hearing will be held in room 331 of the U.S. International Trade Commission Building at 9:30 a.m. on October 6, 1987; and the deadline for filing all other written submissions, including posthearing briefs, is October 13, 1987.

For further information concerning this investigation see the Commission's notice of investigation cited above and the Commission's rules of practice and procedure, part 207, subparts A and C (19 CFR Part 207), and part 201, subparts A through E (19 CFR part 201).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: June 25, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–14967 Filed 6–30–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–354 (Final)]

Stainless Steel Pipes and Tubes From Sweden; Final Antidumping Investigation and Scheduling of Hearing

AGENCY: United States International Trade Commision.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–354 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673(d)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Sweden of stainless steel pipes, tubes, hollow bars, and blanks therefor, all the foregoing of circular cross-section, whether welded or seamless, provided for in items 610.37, 610.51, and 610.52 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce was scheduled to make its final LTFV determination on or before July 29, 1987; however, on June 5, 1987, Commerce decided, upon request from the foreign producers, to postpone its final determinaiton and is now scheduled to make its final determination on or before October 5, 1987. The Commission will make its final injury determination by November 18, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673(a) and 1673(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and C (19 CFR part 207), and Part 201, Subparts A through E (19 CFR part 201).

EFFECTIVE DATE: June 22, 1987.

FOR FURTHER INFORMATION CONTACT: Judith C. Zeck (202-523-0339), 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. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contract the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of stainless steel pipes and tubes from Sweden are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. § 1673). The investigation was requested in a petition filed on October 20, 1986, by the Specialty Tubing Group. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information development during the course of that investigation, determined that there was a reasonable indication that industries in the United States were materially injured by reason of imports of the subject merchandies (51 FR 44536, December 10, 1986).

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.111), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who 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 this investigation 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 the 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.

Staff report.—A public version of the prehearing staff report in this investigation will be placed in the public record on September 24, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on October 13, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 1, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a perhearing conference to be held at 9:30 a.m. on October 7 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 8, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of materials contained in prehearing briefs and to informaton not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions.—All legal arguments, economic analyses, and factual materials relevant to the public heaing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on October 20, 1987. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 20, 1987.

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 Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business informaiton 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).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20)

By order of the Commission.

Issued: June 25, 1987.

Kenneth R. Mason.

Secretary.

[FR Doc. 87-14966 Filed 6-30-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigations No. 751-TA-12 and 751-TA-13]

Bicycle Tires and Tubes From Taiwan and the Republic of Korea

AGENCY: International Trade Commission.

ACTION: Institution of review investigations concerning the Commission's determinations in investigations Nos. 731-TA-166 (F) and AA1921-193, Bicycle Tires and Tubes from Taiwan and the Republic of Korea and tentative determinations to recommend revocation of the outstanding antidumping orders.

SUMMARY: The Commission hereby gives notice that it has instituted investigations pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) to review its determinations in investigations Nos. 731-TA166 (F) and AA1921.193. The purpose of the investigations is to determine whether an industry in the United States would be materially injured, or would be threatened with material injury, or the establishment of an industry in the United States would be materially retarded, by reason of imports of bicycle tires and tubes from Taiwan and the Republic of Korea (Korea) if the antidumping orders regarding such merchandise were to be modified or revoked. Bicycle tires and tubes are provided for in items 771.48 and 772.57, respectively, of the Tariff Schedules of the United States.

The information provided to date confirms the allegations of Taiwan and Korean petitioners that U.S. production of bicycle tires and tubes has ceased. Further, the original domestic petitioner in the antidumping investigations, Carlisle Tire & Rubber Co., has stated it has no objection to the revocation of the antidumping orders. Therefore, the Commission notes its tentative determinations that an industry in the United States would not be materially injured or threatened with material injury, and that the establishment of an industry in the United States would not be materially retarded, by reason of imports of bicycle tires and tubes from Taiwan and Korea if the antidumping order regarding such merchandise were to be revoked. The Commission invites public comment on its intended determinations.

For further information concerning the conduct of these investigations and rules of general application, consult Part 207, Subparts A and E (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201) of the Commission's rules.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Daniel Leahy (202-523-1376), 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

On April 4, 1979, the Commission published in the **Federal Register** (44 FR 20308) its determination that an industry in the United States was being or was likely to be injured by reason of the importation of bicycle tires and tubes from Korea which the Department of Treasury had determined were being, or were likely to be sold at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on April 13, 1979, a dumping finding with respect to bicycle tires and tubes from Korea was published in the **Federal Register** as Treasury Decision 79-115 (44 FR 22051).

On May 31, 1984, the Commission published in the **Federal Register** (49 FR 22720) its determination that an industry in the United States was materially injured by reason of imports of bicycle tires and tubes from Taiwan which the Department of Commerce had determined to be sold or likely to be sold at LTFV. Accordingly, the Department of Commerce ordered that dumping duties be imposed on such imports (49 FR 24157, June 12, 1984).

On April 2, 1987, the Commission received a request, pursuant to section 751(b) of the Tariff Act of 1930, to review its affirmative determination in investigation No. 731-TA-166, Bicycle Tires and Tubes from Taiwan. This request was filed by counsel on behalf of the Taiwan producers of bicycle tires and tubes. On April 28, 1987, the Commission received a second request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. AA1921-193, Bicycle Tires and Tubes from the Republic of Korea (Korea). This request was filed by counsel on behalf of Korea Inoue Kasai Co., Ltd. (KIK), a Korean manufacturer and exporter of bicycle tires and tubes.

Counsel for the Taiwan producer provided the following alleged changed circumstances: Carlisle Tire & Rubber Co., the sole U.S. producer of bicycle tires and tubes at the time of the antidumping investigation, has terminated its production of such merchandise effective February 27, 1987; has informed Taiwan producers that it does not plan to resume production in the United States; and is presently importing bicycle tires and tubes from Taiwan. Consequently, no U.S. industry remains to be materially injured by imports of the subject merchandise. Counsel for the Korean firm KIK provided similar changed circumstances as follows: Carlisle Tire & Rubber Co., the sole U.S. producer of bicycle tires and tubes at the time of the antidumping investigation, has terminated its production of such merchandise effective February 27, 1987. KIK is not aware of any other domestic producer of these products. Consequently, no U.S. industry remains to be materially injured or threatened with injury by reason of imports of the subject merchandise.

On April 23, 1987, the Commission published a request for comments concerning the institution of a section 751(b) review investigation on bicycle tires and tubes from Taiwan (52 FR 13532). On May 6, 1987, a similar request concerning bicycle tires and tubes from Korea was published (52 FR 16923). The 30-day comment period for the Taiwan case closed on May 26, 1987, while the comment period for the Korea case closed June 6, 1987. In response to the Commission's request for comments, statements were filed by four parties:

(1) Counsel for petitioners in the Taiwan case restated their contention that there is no longer any production of bicycle tires and tubes in the United States and that the Commission should expedite its investigation and determination. Counsel also stated that the revocation of the order should be retroactive to the last date of U.S. production, or March 1, 1987.

(2) Counsel for the Bicycle Manufacturers Assocation of America, Inc. (BMA) lamented the demise of the U.S. bicycle tire and tube industry. However, BMA stated that there are clearly changed circumstances sufficient to warrant institution of a review investigation. BMA urged the prompt revocation of the antidumping order against bicycle tires and tubes from both Taiwan and Korea.

(3) Midway Sales, Inc., an importer of bicycle tires and tubes from Taiwan, supported the removal of the antidumping order.

(4) Hedstrom Corporation, a manufacturer of children's bicycles,

submitted a letter on June 3, 1987, opposing the revocation of the antidumping duties on bicycle tires and tubes from Korea. The firm indicated that it had the resources and the technology to be a bicycle tire producer. On June 18, 1987, Hedstrom submitted a letter withdrawing its objection to the possible elimination of antidumping duties for bicycle tires from Korea. The firm also stated that it had decided not to pursue the manufacture of bicycle tires in the United States.

In addition to these comments, staff counsel for Carlisle Corporation submitted a letter on April 27, 1987, advising the Commission that Carlisle Tire & Rubber Co., the original petitioner in both the Taiwan and Korean case, would interpose no objection to the revocation of the injury determination and dumping finding with respect to bicycle tires and tubes from Korea. In a subsequent telephone conversation with Commission staff, counsel extended his comments to include bicycle tires and tubes from Taiwan.

Public Hearing

Any person with an interest in these investigations may request in writing that the Commission hold a public hearing in connection with these investigations. Any such request must be received by the Commission within 14 days of the date of publication of this notice in the **Federal Register.**

Written Submissions

All comments must be filed no later than 30 days after the date of publication of this notice in the **Federal Register.** The Commission will consider all comments received during this period before issuing its final determinations. 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 Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired 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).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.45 of the Commission's rules (19 CFR 207.45).

Issued: June 26, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-14969 Filed 6-30-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-260]

Certain Feathered Fur Coats and Pelts, and Process for the Manufacture Thereof; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Papadopoulis Kevrekidis (Papadopoulis).

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 officers's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on June 26, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, 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.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, 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.

Issued: June 26, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-14912 Filed 6-30-87; 8:45 am]

BILLING CODE 7020-02-M

[Report to the President Investigation No. TA-203-17]

Heavyweight Motorcycles

June 19, 1987.

To the President:

In accordance with section 203(i)(2) of the Trade Act of 1974 (19 U.S.C. 2253(i)(2)), the United States International Trade Commission herein reports the results of an investigation concerning heavyweight motorcycles.

Summary of Advice of the Commission

Chairman Liebeler, Vice Chairman Brunsdale, and Commissioners Eckes, Lodwick, and Rohr advise, on the basis of information obtained in the investigation, that termination of the import relief program provided for in Presidential Proclamation 5050 would have no significant economic effect on the domestic industry producing heavyweight motorcycles.

Background

The Commission instituted this investigation on April 15, 1987, following receipt of a letter from the United States Trade Representative, requesting that the Commission institute an investigation in order that it might advise the President of its judgment as to the probable economic effect on the domestic heavyweight motorcycle industry of the termination of the import relief provided to the heavyweight motorcycle industry by Presidential Proclamation 5050. Public notice of the investigation and hearing was given by posting copies of the notice at the office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 22, 1987 (52 FR 13325). A public hearing was held in

connection with this investigation on May 21, 1987, in Washington, DC. All interested person were afforded an opportunity to be present, to present evidence, and to be heard.

The information in this report was obtained from field work, questionnaires sent to domestic producers and importers, the Commission's files, other government agencies, briefs filed by interested parties, and other sources.

The Commission transmitted its advice in this investigation to the President on June 19, 1987. The views of the Commission are contained in USITC Publication 1988 (June 1987), entitled "Heavyweight Motorcycles: Report to the President on Investigation No. TA–203–17, Under Section 203 of the Trade Act of 1974."

Issued: June 19, 1987.

By Order of the Commission:

Kenneth R. Mason,

Secretary.

[FR Doc. 87–14964 Filed 6–30–87; 8:45 am]

BILLING CODE 7020–02–M

Stainless Steel Plate From Sweden

AGENCY: International Trade Commission.

ACTION: Dismissal of a request to institute a section 751(b) review investigation concerning the Commission's affirmative determination in investigation No. AA1921–114, stainless steel plate from Sweden.

SUMMARY: The Commission determines, pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)) and rule 207.45 of the Commission's rules (19 CFR 207.45), that the petition does not show changed circumstances sufficient to warrant institution of an investigation to review the Commission's affirmative determination in investigation No. AA1921–114 regarding stainless steel plate from Sweden provided for in items 607.76 and 607.90 of the Tariff Schedules of the United States.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0300), 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

On May 1, 1973, the Commission determined that an industry in the United States was injured within the meaning of the Antidumping Act of 1921 by reason of imports of stainless steel plate from Sweden which the Secretary of Treasury had determined to be sold or likely to be sold at less than fair value (LTFV). On June 5, 1973, the Department of Treasury issued a finding of dumping (T.D. 73–157) and published a notice of such a finding in the **Federal Register** (38 FR 15079).

On July 8, 1985, the Commission received a request to review its affirmative determination in investigation No. AA1921–114. The request was filed pursuant to section 751(b) of the Tariff Act of 1930 by counsel on behalf of Avesta AB, the sole Swedish producer and exporter of stainless steel plate, and its affiliated company, Avesta Stainless Inc., a U.S. producer of stainless steel plate. The Commission published a notice in the **Federal Register** requesting comments as to whether the alleged changed circumstances were sufficient to warrant instituion of a review investigation. Comments were supplied by counsel on behalf of Allegheny Ludlum Steel Corp., Armco Inc., LTV Steel Co., Washington Steel Corp., and the United Steelworkers of America opposing the institution of a review investigation. After review of the petition and the responses to the notice inviting comments, the Commission determined that the petition did not show changed circumstances sufficient to warrant institution of a review investigation (50 FR 43613).

On February 25, 1987, the Commisson received a second request, pursuant to section 751(b) of the Act, to review its affirmative determination in investigation No. AA1921–114. This request was again filed by counsel on behalf of Avesta AB, the sole Swedish producer the exporter of stainless steel plate, and its affiliated company, Avesta Stainless Inc., a U.S. producer of stainless steel plate. On March 25, 1987, the Commission requested written comments in the **Federal Register** (52 FR 9551) as to whether the changed circumstances alleged by the petitioner were sufficient to warrant a review investigation. Comments were supplied by counsel on behalf of Allegheny Ludlum Steel Corp., Armco Inc., LTV Steel Co., Washington Steel Corp., and the United Steelworkers of America opposing the institution of a review investigation and by counsel on behalf of the petitioner supporting the institution of a review investigation.

After review of the petition for review and the responses to the notice inviting comments, the Commission has determined (Chairman Liebler and Vice Chairman Brunsdale dissenting), pursuant to 19 U.S.C. 1675(b) and rule 19 CFR 207.45, that the petition does not show changed circumstances sufficient to warrant instituion of a review investigation regarding stainless steel plate from Seden. A Memorandum Opinion, setting forth the reasons for dismissing this request, will be made available in the Secretary's office.

Issued: June 26, 1987.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc 87–14970 Filed 6–30–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31054]

The Kansas City Southern Railway Co.—Operation Exemption—Burlington Northern Railroad Co.

The Kansas City Southern Railway Company has filed a notice of exemption to acquire and operate Burlington Northern Railroad Company's line between milepost 453.14 at Wister, Le Flore County, OK, and milepost 422.50 near Fort Smith, Sebastian County, AR, a distance of 30.64 miles. Any comments must be filed with the Commission and served on W. J. Wochner, 301 West 11th Street, Kansas City, MO 64105, (816) 556–0324.[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. The United Transportation Union joins in RLEA's request. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. RLEA's request is denied, because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I C.C.2d 810 (1985).

Decided: June 19, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-14757 Filed 6-30-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Pacific Bell and Integrated Network Corp.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, Pub. L. 98-462 (the "Act"), Pacific Bell and Integrated Network Corporation have filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing: (1) The identities of the two companies that have entered into a venture and (2) the nature and objectives of that venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to single damages under specified circumstances. Pursuant to section 6(b) of the act, the identities of the parties to the venture and its general areas of planned activities are given below.

The parties to this venture are:

Pacific Bell, 140 New Montgomery Street, San Francisco, CA 94104.

Integrated Network Corporation, 755 Route 202/206, Bridgewater, NJ 08807.

The purpose of the venture is to conduct research and development activities directed toward Pacific Bell's provision of exchange, exchange access, and data telecommunications services. The venture will conduct research and development activities directed to telecommunications technology, including transmission facilities and processes used by Pacific Bell in providing exchange, exchange access, and data telecommunications services. This work will be accomplished through analytical studies, laboratory testing and field experimentation, with appropriate consideration given at each stage to determine the technical and economic feasibility of going forward with the venture.

Judy Whalley,

Deputy Director of Operations Antitrust Division.

[FR Doc. 87-14975 Filed 6-30-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

National Endowment for the Humanities

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before July 31, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 and Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category Extension

Title: Process of Application, Evaluation, Award, and Report for NEH Faculty Graduate Study Program for Historically Black Colleges and Universities.

Form Number: 3136-0108.

Frequency of collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: College and university faculty.

Use: Application, evaluation, and award process for participants in the Faculty Graduate Study program.

Estimated number of respondents: 280.

Estimated hours for respondents to provide information: 392.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 87-14911 Filed 6-30-87; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Bi-weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.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 notices of amendments issued, or proposed to be issued from June 8, 1987 through June 19, 1987. The last bi-weekly notice was published on June 17, 1987 (52 FR 23092).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 31, 1987, 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 in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, 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 *(Project Director):* 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 Office of the General Counsel-Bethesda, 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 presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of 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 & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: December 12, 1986

Description of amendment request: The proposed amendment would: (1) change the maximum core enrichment specification in Technical Specification (TS) Section 5.3.1.6 from "...shall not exceed an enrichment of 3.5 percent of 235_U" to "...shall be of low enrichment."; and (2) change the active height value of the core in TS 5.3.1.2 from "...144 inches" to "...approximately 142 inches."

Basis for proposed no significant hazards consideration determination: The inclusion of the maximum enrichment of the fuel is not a direct input to the reactor safety analysis. The fuel enrichment is used in an indirect manner in conjunction with a number of other parameters in performing the nuclear design of the reactor fuel cycle. The nuclear design is used in turn to derive measurable core parameters important to safe operation which are included in the TS as Limiting Conditions for Operation. In addition, the reload fuel enrichment is included in the fuel storage TS and gives the maximum enrichment of new fuel which can be stored in the spent fuel pool.

The active height of the core varies slightly from reload to reload. Core heights are identified and evaluated as part of the safety analysis for each core.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. 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 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.

A discussion of these standards as they relate to the proposed change follows:

(1) Consideration of Probability and Consequences of Accident: The fuel enrichment is included along with other factors in performing the nuclear design of fuel which in turn is subjected to a safety analysis prior to reload in accordance with NRC methodology. The specification of fuel enrichment in the core design section above does not uniquely determine the values of the reactor core parameters which are important to safety. Small changes in core height (2 to 3 inches out of 142 inches) are identified and evaluated as part of the core reload report. Because changes in the core are already included in a safety analysis and must be in accordance with specific criteria, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the Probability of a New or Different Accident: As noted earlier, the enrichment and core height are factors which are already included in the derivation of core parameters which are included in the Technical Specifications. Therefore the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a Significant Reduction in a Margin of Safety: Fuel enrichment and core height are considered during the core reload calculations and in the derivation of measurable core parameters important to safe operation. The core parameters important to safety must be within specified limits as stated in the Technical Specifications. Then, the proposed changes will not involve a significant reduction in the margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes involve no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street, NW, Washington, DC 20036

NRC Project Director: Jose A. Calvo

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; and Docket No. STN 50-456 Braidwood Station, Unit No. 1 Will County, Illinois

Date of application for amendments: May 20, 1987

Description of amendments request: The amendment would revise Technical Specification Tables 4.3-1 and 4.3-2 to eliminate setpoint verification when performing the monthly and quarterly Trip Activating Device Operational Test for the undervoltage and underfrequency relays. The current Technical Specifications contain a note (Note 3 in Table 4.3-2) that indicates that setpoint verification is not required during the Monthly Trip Actuating Device Operational Test for the Grid Degraded Voltage. The intent of this note was that setpoint verification was not required for any of the undervoltage and underfrequency relays more often than every eighteen months (during an outage). It is the staff's intention to apply this amendment, if it is found acceptable, to Braidwood Station Unit 2, when it receives its operating license.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated this proposed amendment and has determined that it involves no significant hazards consideration. According to 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 any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment adds notes to Tables 4.3-1 and 4.3-2, to clarify the requirements of the Trip Actuating Device Operational Test as it pertains to undervoltage and underfrequency relays. The proposed amendment more explicitly defines the requirements of the Trip Actuating Device Operational Test as it pertains to undervoltage and underfrequency relays. The relay operability verification remains unaffected. The amount of time that the plant is in a degraded condition would be increased if setpoint verification was done monthly. Therefore, this does not increase the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve any hardware changes. The type and frequency of the surveillance remains unchanged. FSAR analyses and system design envelope the loss of Engineered Safety Feature or Reactor Protection System Functions. Therefore, this does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The intent of the requirement does not encompass setpoint verification at a frequency greater than eighteen (18) months. The proposed amendment serves to clarify the understanding of the surveillance frequency. Therefore, this does not involve a significant reduction in a margin of safety.

Therefore, based on the above considerations, the staff has determined that these changes involve no significant hazards considerations.

Local Public Document Room location: For Byron Station the Rockford

Public Library, 215 N. Wyman Street, Rockford, Illinois 61103; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael Miller, Isham, Lincoln & Beal, One First National Plaza, 42nd Floor, Chicago, Illinois 60603.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 1, 1987

Description of amendment request: During the 1987 outage, modifications, including the installation of new motor-operated valves, will be made to the existing emergency core cooling systems (ECCS) to assure the capability of adequate core cooling over the entire range of pipe breaks. The proposed license amendment will require (1) new periodic surveillance requirements to ensure correct valve position, (2) post-maintenance surveillance requirements for the new throttle valves, and (3) new valve and ECCS system retest requirements following modifications to any ECCS subsystem that would alter ECCS flow characteristics.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has reviewed the proposed changes and has concluded that it does not involve a significant hazards consideration. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised; a conclusion which is supported by the licensee's determinations made pursuant to 10 CFR 50.59. The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. As stated above, these changes ensure that the present system configuration is maintained, therefore, the probability of occurrence of the design basis accidents is unchanged. Since adequate LOCA mitigation is maintained, the consequences of the design basis accidents are not impacted.

2. Create the possibility of a new or different kind of accident from any previously evaluated. There are no new failure modes associated with this proposed change. No new systems or designs are introduced by these proposed changes; therefore, no new failure modes are created. In addition, operating characteristics are unchanged. Thus, no new accident possibilities are created.

3. Involve a significant reduction in a margin of safety. As stated above, the proposed changes do not diminish ECCS LOCA mitigation capability and thereby do not impact the consequences to the protective boundaries. Thus, these changes will not reduce the margin of safety as defined as in any Technical Specifications.

Moreover, the Commission has provided guidance concerning the application of standards set forth in 10 CFR 50.92 by providing certain examples (March 6, 1986, 51 FR 7751) of amendments that are considered not likely to involve significant hazards consideration. The proposed license amendment is most closely enveloped by example (ii), a change that constitutes an additional control not presently included in the Technical Specifications. The proposed amendment would require new periodic surveillance requirements to ensure valves are in the correct position, new post-maintenance surveillance requirements for the throttle valves, and new system retest requirements following significant modifications to any ECCS subsystem.

Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 1, 1987

Description of amendment request: The proposed license amendment will revise the heat-up curve (Figure 3.4-8) to provide a larger interval over which the low-temperature pressurization protection system (LTOPS) must be placed into operation. More specifically, the proposed heat-up rate change results in a pressure/temperature limit curve shift. This shift increases the temperature range over which the LTOPS can effectively be placed into operation and decreases the probability of operator error during plant heat-up and cooldown operations.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has reviewed the proposed license amendment and has concluded that it does not involve a significant hazards consideration. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised; a conclusion which is supported by the licensee's determinations made pursuant to 10 CFR 50.59. The proposed change does not involve a significant hazards consideration because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety previously evaluated in the Safety Analysis Report is not increased since the proposed change results in more restrictive heat-up limitations than presently required while reducing the probability of operator error during LTOPS actuation.

2. Create the possibility of a new or different kind of accident from any previously evaluated. The possibility for an accident or malfunction of a different type than any evaluated previously in the Safety Analysis Report is not created since the failure to satisfy the requirements of the pressure temperature limitations is similar to a pressurized thermal shock event which has been thoroughly evaluated and documented.

3. Involve a significant reduction in a margin of safety. The margin of safety, as defined in the basis for any Technical Specifications is not reduced since the margin of safety for the present and the new proposed temperature limit curves are identical.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards considerations and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: June 1, 1987

Description of amendment request: The proposed license amendment will revise Technical Specification Section 4.10.D.1 to provide a long-term acceptance criteria for the steam generator tubes with defects in the rolled region (bottom four inches of the tube) and update the bases for this criteria. This proposed change will not affect repair criteria for flaw indications located outside of the roll expansion region. The proposed license amendment will also modify the current requirement that "The plugging limit for sleeves will be determined prior to the 1987 refueling outage for Cycle 15," to, "The plugging limit for sleeves will be determined prior to the first refueling outage following sleeve installation," since, to date, no sleeves have been installed at the Haddam Neck Plant. The proposed license amendment will also revise Technical Specification Section 4.10.D.2 to delete the exclusion of tube row 37, column 73 in Steam Generator 2 from plugging, since this tube has subsequently been plugged during a mid-cycle shutdown in July, 1986.

Basis for proposed no significant hazards consideration determination: In accordance with 10 CFR 50.92, the licensee has reviewed the attached proposed changes and has concluded that they do not involve a significant hazards consideration. The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised; a conclusion which is supported by the licensee's determinations made pursuant to 10 CFR 50.59. The proposed changes do not involve a significant hazards consideration because these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. As stated above, since these changes meet the safety margins of Regulatory Guide 1.121, the probability of the design basis accidents remains unchanged. Since the leakage is less than allowed by the existing technical specification, the consequences of the design basis accidents are not impacted.

2. Create the possibility of a new or different kind of accident from any previously evaluated. No new systems or designs are introduced by these proposed changes; therefore, no new failure modes are created. In addition, the plant operating characteristics remain unchanged. Thus, no new accidents are created.

3. Involve a significant reduction in a margin of safety. As stated above, the proposed changes would maintain existing structural margins and the total leakage (primary to secondary) would remain within the acceptable limits of the existing technical specification. Thus, these changes will not reduce the margin of safety as defined in any plant technical specification.

The staff has reviewed the licensee's determination that the proposed license amendment involves no significant hazards considerations and agrees with the licensee's analyses. Accordingly, the staff proposes to determine that the proposed license amendment does not involve significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: Cecil O. Thomas

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: June 5, 1987

Description of amendment request: This request modifies a previous request for a change in the augmented in-service inspection requirements for the steam generators dated September 28, 1984 (50 FR 20975). This request would maintain the interval for such inspections at each refueling but not to exceed 24 months except that the interval could be extended to 30 months provided the mean degradation increase during the previous inspection interval was less than 1 percent.

Basis for proposed no significant hazards consideration determination: Inspection results, that show for the previous operating interval that there was essentially no degradation of steam generator tubes, would ensure that the probability and consequences of the accident previously evaluated in the FSAR, i.e., steam generator tube rupture, are unchanged. The possibility of an accident not previously analyzed is not created because this change only affects steam generator tube integrity, and the rupture of these tubes has been previously analyzed. Since the inspection results showed no significant degradation in the previous interval, no significant reduction in the margin of safety is caused by this extension. Based on the foregoing, the staff proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Martin J. Virgilio, Acting.

Dairyland Power Cooperative, Docket No. 50-409, LaCrosse Boiling Water Reactor, LaCrosse, Wisconsin

Date of amendment request: May 22, 1987

Description of amendment request: The licensee proposes that License No. DPR-45 for the LaCrosse Boiling Water Reactor (LACBWR) be amended to possess-but-not-operate status. The licensee stated in a letter dated April 29, 1987 that LACBWR would be permanently shut down and a decommissioning plan submitted to the NRC. LACBWR was permanently shut down on April 30, 1987.

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 in 10 CFR Part 50.92 by providing certain examples (51 FR 7751). One of the examples (ii) of actions not likely to involve a significant hazards consideration relates to changes that constitute additional restrictions or controls not presently included in the license.

The proposed action to amend License No. DPR-45 to possess-but-not-operate status is more restrictive than the present license because the present license would permit operation of the facility. Therefore, since the proposed amendment is encompassed by example (ii) of actions that are considered not likely to involve significant hazards consideration, the Commission has made a proposed determination that the proposed action does not involve a significant hazards consideration.

Local Public Document Room location: LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin 54601.

Attorney for licensee: Kevin Gallen, Esquire, Newman and Holtzinger, 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: January 28, 1987, as superseded May 26, 1987

Description of amendment request: The proposed amendment would revise the Fermi-2

Facility Operating License No. NPF-43, License Condition 2.C.(10) entitled, "Emergency Diesel Generator Lube Oil Surveillance Program (Section 9.5.7, SSER 5)", to: (1) incorporate the requirement for periodic gap checks of the Emergency Diesel Generator (EDG) engine main bearings; and (2) delete the requirement for the disassembly and removal of oil filters and substitute the requirement for a monthly analysis of EDG engine lube oil samples. The inspections and analyses required in the revised license condition will supplement the action and surveillance requirements pertaining to the EDGs in Section 3/4.8.1 of the Fermi-2 Technical Specifications (Appendix A to NPF-43).

The license amendment proposed by the licensee's May 26, 1987 letter supersedes the licensee's earlier proposal dated January 28, 1987, and was submitted in response to the Commission's safety evaluation dated April 7, 1987.

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; 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's staff has reviewed the licensee's January 28, 1987 application as supplemented, and has determined that the proposed amendment involves no significant hazards consideration for the reasons stated below:

(1) The initial EDG engine lube oil surveillance program referenced in the present license condition was developed as a result of bearing failures which occurred in January 1985, and required the quarterly disassembly and inspection of the engine lube oil filter. Evaluation of data obtained by the licensee in the performance of filter disassembly and inspection (submitted by the licensee's January 28, 1987 letter) indicates that this inspection method is ineffective and inconclusive in predicting incipient bearing failure. An augmented bearing surveillance program instituted by the licensee as a result of subsequent bearing failures in late 1985, and not encompassed in the present license condition, is considered to be a more direct and effective means for detecting incipient bearing failure. This method involves the periodic measurement of the main bearing gaps in each engine. The proposed revised license condition incorporates the bearing gap check inspection. The proposed license condition also continues to require periodic analysis of lube oil filter samples (without filter disassembly and removal), which the staff agrees will reduce the probability of filter damage and the introduction of foreign material into the lube oil system which could eventually damage engine bearings. The revised license condition will require periodic inspections which will more effectively provide indications of bearing performance and consequently better ensure the availability of the EDGs when needed. Therefore, the proposed license condition amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) As stated in (1) above, operating experience has shown that the frequent disassembly of the oil filter as currently required has not been effective in predicting incipient bearing failure. Further, the frequent disassembly of the oil filter increases the likelihood of damaging the filter and/or introducing foreign material into the lube oil system that could possibly damage the engine bearings. The addition of the bearing gap checks as a part of the revised proposed license condition is considered to be a more positive method of determining bearing performance, minimizing the occurrence of bearing failure, and better ensuring the availability of the EDGs when needed. Therefore, the proposed license condition amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) As stated in (1) and (2) above, the new license condition, which incorporates bearing gap checks as an inspection requirement, and retains the requirement for the analysis of engine lube oil samples, will increase the margin of safety, providing more reliable information on bearing performance, wear, etc. As such, the proposed license condition amendment does not involve a significant reduction on the margin of safety.

The Commission proposes to determine that the revised license condition proposed by the licensee does not involve a significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 Custer Road, Monroe, Michigan 48161.

Attorney for the licensee: John Flynn, Esq., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio, Acting.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: May 27, 1987 (NRC-87-0068)

Description of amendment request: The proposed license amendment would change the Fermi-2 Facility Operating License No. NPF-43, Technical Specification 3/4.8.2, Table 4.8.2.1-1 entitled, "Battery Surveillance Requirements" to delete Table Notations (7) and (8) and the applicable Bases which specify battery surveillance parameters for a nominal specific gravity electrolyte of 1.250. These parameters are no longer considered necessary by the licensee due to the replacement of the Division II batteries with cells containing 1.210 nominal specific gravity electrolyte.

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; 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 licensee has determined that the changes proposed to Technical Specification 3/4.8.2, Table 4.8.2.1-1:

(1) Would not involve a significant increase in the probability or consequences of an accident previously evaluated since the parameters for a nominal specific gravity electrolyte of 1.250 have been superseded by the parameters for a nominal specific gravity electrolyte of 1.210, which are already specified in Technical Specification Table 4.8.2.1-1 of the Plant Technical Specifications. The change is an editorial correction and

administrative in nature and therefore falls into the category of amendments that are considered not likely to involve significant hazards consideration (51 FR 7751). Deletion of Table Notations (7) and (8) does not involve a physical change to the facility, change a limiting condition of operation (LCO), or change any operating practice; nor does removal of Table Notations (7) and (8) change any safety analysis or design basis at Fermi-2.

(2) Would not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated in (1) above, the proposed change is administrative in nature and the removal of Table Notations (7) and (8) from Table 4.8.2.1-1 of the Technical Specifications does not involve a physical change to the facility, change an LCO, change any operating practice, or change any safety analysis or design basis at Fermi-2.

(3) Would not involve a significant reduction in a margin of safety. As stated in (1) and (2) above, the proposed change is administrative, and the removal of Table Notations (7) and (8) from Table 4.8.2.1-1 of the Technical Specifications does not involve a physical change to the plant or its operation, or any safety analysis or design basis which would cause a significant reduction in safety.

The Commission has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Attorney for the licensee: John Flynn, Esq, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio, Acting.

Duke Power Company, Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: June 10, 1987 as supplemented June 11 and 16, 1987

Description of amendment request: The proposed amendments would allow the extension, on a one-time basis, of several 18-month Technical Specification (TS) surveillance intervals until the first refueling outage for Catawba Unit 2. This extension is needed because these surveillances can only be performed with the Unit in Hot Shutdown (Mode 4), Cold Shutdown (Mode 5), or Refueling (Mode 6). Although the proposed amendments were requested for both Units 1 and 2, changes are proposed for Unit 2 only. Unit 1 is included in this notice only because the TSs are combined in one document for both Units.

Normally, since refueling outages occur about every 18 months, extension beyond the 18-month interval required by the TSs for such surveillances is usually not necessary. However, due to the extended length of the Unit 2 startup program and cycle 1, the licensee must either request and receive an extension or shut down prior to the first scheduled refueling outage. Similar extension was approved for Catawba Unit 1 by amendments issued July 3, 1986 (Amendment No. 8 for Unit 1 and No. 1 for Unit 2). Unit 2 is currently scheduled to enter its first refueling outage on December 30, 1987. Most of these surveillances must be performed on August 15, 1987, or later. Therefore, the longest extension entails a period of 4.5 months. Furthermore, the tests required will be performed if an outage of sufficient duration occurs prior to the first scheduled refueling outage.

The particular surveillances and the time at which the surveillance interval (including the 25% grace period allowed by TS 4.0.2) will expire are discussed below.

1. Feedwater Isolation on receipt of a high doghouse water level signal, TS Table 4.3-2, item 5.d. The trip actuating device operational test would be extended from August 15, 1987, and would be performed prior to entering startup (Mode 2) or Hot Standby (Mode 3), as applicable, following Unit 2 first refueling. There have been no failures of this circuitry and no actuations since preoperational testing.

2. Turbine Trip on loss of all main feedwater pumps, TS Table 4.3-2, item 6.d. the trip actuating device operational test would be extended from August 15, 1987, and would be performed prior to entering Startup (Mode 2) or Hot Standby (Mode 3), as applicable, following Unit 2 first refueling outage. This instrumentation is reliable and has operated satisfactorily due to one challenge after completion of preoperational testing.

3. Turbine Trip on reactor trip, TS 4.3-2, item 6.e. The trip actuating device operational test would be extended from August 15, 1987, and would be performed prior to entering Startup (Mode 2) or Hot Standby (Mode 3), as applicable, following Unit 2 first refueling. This instrumentation is reliable and has responded satisfactorily in response to seven challenges.

4. Turbine Trip on steam generator water level-high-high, TS 4.3.2.2, Table 3.3-5, item 7.a. The response time test would be extended from August 15, 1987, and would be performed prior to entering Hot Shutdown (Mode 4) following Unit 2 first refueling. This instrumentation is reliable and has responded satisfactorily in respone to three challenges.

5. Feedwater Isolation on steam generator water level-high-high, TS 4.3.2.2, Table 3.3-5, item 7.b. The response time test would be extended from August 15, 1987, and would be performed prior to entering Hot Shutdown (Mode 4) following Unit 2 first refueling. This instrumentation is reliable and has responded satisfactorily in response to three challenges.

6. Feedwater Isolation on a reactor trip coincident with low reactor coolant system average temperature, TS 4.3.2.2, Table 3.3-5, item 8. The response time test would be extended from August 15, 1987, and would be performed prior to entering Hot Shutdown (Mode 4) following Unit 2 first refueling. This instrumentation is reliable and has responded satisfactorily in response to three challenges.

7. Turbine-driven Auxiliary Feedwater Pump Steam Supply Valves Surveillance to verify that they open upon receipt of an auxiliary feedwater actuation test signal, TS 4.7.1.2.1b.3). The test would be extended from August 15, 1987, and would be performed prior to entering Hot Standby (Mode 3) following Unit 2 first refueling. These equipment and instrumentations are highly reliable and have responded successfully in response to eleven challenges.

8. Containment Valve Injection Water System Surveillance to verify injection flow to containment isolation valves, TS 4.6.6.2. The test would be extended from October 29, 1987, and would be performed prior to entering Hot Shutdown (Mode 4) following Unit 2 first refueling. This system is reliable with a good operating history and only three valves have not been tested.

9. Diesel Generator Inspection, during shutdown, in accordance with the manufacturer's recommendations, TS 4.8.1.1.2g.1). The inspection would be extended from January 9, 1988, and would be performed prior to entering Hot Shutdown (Mode 4) following Unit 2 first refueling. A complete inspection in accordance with the TDI diesel generator owners group inspection program was conducted on Unit 2 engines with satisfactory results.

Routine surveillance activities will continue to be conducted on schedule.

10. System Response Time tests for the primary RTDs associated with the Overtemperature Delta T and Overpower Delta T Reactor Trips, TS 4.3.1.2, Table 3.3-2, items 7. and 8. These tests would be extended from September 11, 1987, and would be performed prior to entering Startup (Mode 2) following Unit 2 first refueling. Only the RTDs remain to be tested. The rest of the circuitry has been tested satisfactorily within the required surveillance interval. These RTDs are reliable and have successfully met the required response time during the last three previous tests (two on Unit 1 and one on Unit 2).

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (51 FR 7744) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated. The probability of an accident is not significantly increased because these changes will not affect the design or operation of the Unit. The consequences of an accident will not be significantly increased since the systems affected are required to be operable through other applicable TS requirements. Furthermore, the extension to the surveillance intervals is for a brief period (4.5 months), and should not significantly affect the ability of the sytems to function properly. Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the design and operation of the Unit will not be affected. Therefore, no new kinds of accidents are introduced. Finally, it would not (3) involve a significant reduction in a margin of safety because the surveillance interval extension is for a brief period (4.5 months), and the systems are required to be operable through other applicable TS requirements. In addition, the equipment has proven to be reliable through satisfactory responses to actuations and prior inspections.

Based on the above, the Commission proposes to determine that the changes do 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. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: B.J. Youngblood

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: April 13, 1987

Description of amendment request: The proposed amendment would remove technical specifications of the Waste Gas Decay Tank Monitor, and revise certain surveillance requirements as follows:

1. Table 3.3-13, delete items 4.b and 4.c which reference the monitor and the associated sampler flow rate measuring device.

2. Table 3.3-13, delete Action 35 since this action statement only applies to the monitor.

3. Table 4.3-13, delete items 4.b and 4.c to reflect the change to Table 3.3-13.

4. Surveillance requirement 4.11.2.5.1, would be clarified by modifying reference to the Waste Gas Decay Tank Monitor.

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 licensee stated that the proposed changes do not involve a significant hazards consideration because:

1. The revision to surveillance requirement 4.11.2.5.1 would require verification of the quantity of radioactive material contained in each gas storage tank at least once per 24 hours when radioactive materials are being added to the tank and the concentration of the primary coolant is greater than 100 micro curies/ml. The licensee stated that this action would ensure the accident analysis value in the FSAR would not be exceeded and that NUREG-0472, Revision 2 does not list a radiation monitor or a sampler flow rate measuring device on the waste gas holdup system. The licensee stated that operation of the monitor provides no additional information that would increase the level of safety. Therefore, deleting this monitor from the technical specifications would not affect the probability of occurrence or the consequences of an accident previously evaluated.

2. The proposed changes are bounded by the FSAR waste gases release accident analysis (Section 14.2.3). Specifically, proposed surveillance requirement 4.11.2.5.1 would ensure that appropriate sampling is performed so that the FSAR accident analysis results would not be reached or exceeded. Thus, no adverse safety considerations would be introduced by this proposed change to the technical specifications. Therefore, the probability for an accident or malfunction of a type different from the previously evaluated waste gas release accident would not be created.

3. Specification 3.11.2.5 would restrict the quantity of radioactivity contained in each gas storage tank. This would provide assurance that in the event of an uncontrolled release of the tank's contents, the resulting total body exposure to an individual located at the nearest exclusion area boundary for two hours immediately following the onset of the release would not exceed 0.5 rem. The specified limit restricting the quantity of radioactivity contained in each gas storage tank was specified to ensure that the total body exposure resulting from the postulated release remained a suitable fraction of the reference value set forth in 10 CFR 100.11(a)(i). Therefore, the proposed changes would not affect the margin of safety and would be consistent with the FSAR accident analyses.

The staff concurs with the licensee's assessment and proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: April 29, 1987

Brief description of amendment request: The Technical Specifications for Beaver Valley Unit 2 were developed

based on those for Unit 1. In the process of development, the staff and the licensee discovered errors and needs for clarification in the Unit 1 Technical Specifications. Errors that involve technical review are being addressed by the licensee and the staff separate from the subject request.

The requested amendment would correct editorial errors (spelling, capitalization, grammatical etc.) and restate some specifications in the same way they are stated in the Unit 2 Technical Specifications. In addition, the amendment would relocate license condition 2.C(6), concerning secondary water chemistry monitoring program, to Section 6.8.5 of the Technical Specifications. This relocation does not change the nature of the requirement and is only an editorial change.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of these standards by providing certain examples (51 FR 7751). One of these, Example (i), involving no significant hazards considerations is "A purely administrative change to technical specifications." The requested changes all match this example. On such basis, the staff proposes to characterize these changes as involving no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20036

NRC Project Director: John F. Stolz

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 10, 1987 as supplemented June 9, 1987.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to extend the surveillance interval for certain Surveillance Tests. The proposed amendment would revise the Technical Specifications as follows:

(1) TS 4.4.2.1.1(b) would be changed to require a channel calibration of the acoustic monitor for each safety/relief valve to be performed at least once per refueling cycle instead of at least once per 18 months as required in the current TSs.

(2) TS 4.6.2.2 would be modified, on a one-time basis, to extend the surveillance schedule for testing the drywell bypass leakage by three (3) days until the first refueling outage scheduled to begin on September 15, 1987.

(3) TSs 4.4.3.2.2a, 4.6.1.3d, 4.6.1.3f, 4.6.1.3i, 4.6.2.3.d.2, and 4.6.2.1.e.2 would be modified, on one-time basis, to extend the schedule for the required surveillance leak rate tests by a period of time that ranges from 5 days to a maximum of 41 days until the first refueling outage scheduled to begin on September 15, 1987. The current Technical Specifications require a surveillance test to be performed at intervals no greater than 24 months for TS 4.6.1.3d and at intervals no greater than 18 months for the other TSs that are proposed to be modified. The types of leak rate tests involved are Type B and C tests specified in Appendix J to 10 CFR Part 50, reactor system boundary valve tests, and tests of air systems providing a seal against drywell bypass leakage. The request for extensions of the surveillance interval includes a total of 52 valves. An exemption to Appendix J to 10 CFR Part 50, Section III.D.3 is also required. This section requires Type C testing of isolation valves at intervals not to exceed 2 years, which is the basis of Section 4.6.1.3d of the TSs.

The licensee's request for a one-time extension of the surveillance schedule for the primary containment/drywell hydrogen mixing trains is the subject of a separate **Federal Register** notice.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 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; 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 licensee addressed the above three standards in the amendment application.

(1) Change in the surveillance interval for performing a channel calibration of the acoustic monitor for each safety/relief valve. With regard to the three standards, the licensee stated;

a. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change in the surveillance interval will not result in a decrease in the instrument accuracy. This position is supported by the manufacturer's information that there are no time related drift effects on the instrument, as a result the extension will not result in a decrease in the Safety Relief Valve acoustic monitor accuracy and therefore, the response to previously evaluated events will be unchanged. Since the revision does not involve a design, configura tion or operational change to the plant and the response to events is unchanged. There is no increase in the probability or consequence of any accident previously evaluated.

b. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the change in the frequency of calibration of the acoustic monitors is consistent with the design specification for the system and the safety analysis, and does not involve a design change or physical change, and therefore does not alter the design response of the instrumentation. Thus, no new accident scenario is introduced by this revised frequency of calibration of the acoustic monitors.

c. The proposed change to the acoustic monitors surveillance period does not involve a significant reduction in a margin of safety because the change in the frequency of calibration for the acoustical monitor sensor is consistent with the design specification of the system and the sensor design is not sensitive to the surveillance period. Additionally, as delineated in the justification, the proposed change will not effect the performance requirements in the Limiting Conditions of Operation contained in the Technical Specifications. Thus, the margin of safety is not impacted.

(2) One-time modification of the surveillance interval for testing the drywell bypass leakage. With regard to the three standards, the licensee stated:

a. The proposed amendment to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated because there is no change in the design or performance of plant systems or components from those evaluated in the Final Safety Analysis Report (FSAR). The proposed revision is consistent with the accident analyses described in the FSAR. Due to the near passive nature of the drywell structure, allowing the Drywell Bypass Leak Test to be performed at the refueling outage will not result in any additional loss of structural integrity. Test data previously obtained reveals that the current drywell bypass leakage is a small fraction of the allowed leakage hence removing further the possibility of exceeding the design analysis. No increase in the probability or consequences of an accident, therefore, exists.

b. The proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated because this change does not involve a design change or involve a change in the operating mode of existing equipment. Thus, no new accident scenario is introduced.

c. The proposed change does not involve a significant reduction in the margin of safety because the margin of safety discussed in the

FSAR Section 6.2.1.1.3.4 assumes the drywell bypass test to be conducted at each refueling outage. Allowing the technical specification to agree with the statement in the FSAR does not, therefore, cause a reduction in the margin of safety previously evaluated. Item a. above furthermore, discussed the passive nature of the drywell and it is because of this passive nature that it can also be stated that no reduction in the margin of safety exist.

(3) Change in the surveillance intervals, on a one-time basis, for performing leak rate tests. With regard to the three standards, the licensee stated:

1. The proposed amendment would not involve a significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

a. The valves were last tested satisfactorily and due to the short period of the extension, no significant increase in the probability of equipment failure is postulated.

b. The LLRT testing provides verification of valve seating integrity and does not provide assurance of the actuation of the valve when called on to perform its isolation function. The increase in surveillance frequency does not affect the probabilities of the valve actuating when called upon to perform its required isolation. Isolation function testing are satisfactory and current.

c. The change increases allowable surveillance interval less than 6% beyond the current conservative surveillance requirements and has no affect on the assumptions of valve leakages assumed in the present accident analysis.

2. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed change introduces no new systems, modes of operation, failure modes or other changes to any equipment. The proposed change does not change the system functional analysis and therefore, new accident scenarios are not credible based on scheduling of testing alone.

3. This change would not involve a significant reduction in the margin of safety because, based on the enclosed technical justification which indicates the number of valves and penetrations involved, their current leakage rates and estimated leakage rates at proposed 09-15-87 refueling date, the following can be stated:

a. Those valves for which extensions are being requested have for the most part, based on initial and subsequent LLRT results, exhibited a high degree of leak tight reliability.

b. Overall LLRT shows a very tight containment.

c. The drywell airlock and the personnel door in the drywell equipment hatch have demonstrated a high degree of leak tight reliability and are infrequently used.

d. The requested extension does not significantly increase the allowable frequency interval provided in the Technical Specifications. (The maximum increase is approximately 6%.)

e. There will be no identified increase in postulated individual offsite or cumulative occupational radiation exposure as a result of the requested amendment which merely requests to delay testing.

f. The requested amendment concerns schedule relief for surveillance testing of a limited number of containment isolation valves and drywell access doors will not result in a significant change in the amounts or types of effluents that may be released offsite.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: March 18, 1987 as supplemented June 9, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to extend the surveillance intervals for the automatic depressurization system (ADS) and the calibration frequency of the drywell air cooler condensate flow. The proposed amendment would modify the TSs as follows:

(1) TS 4.5.1.e.1, 4.3.3.1-1.B.2.h, 4.3.3.1-1.A.2.i, and 4.3.3.2 would be changed to extend the surveillance interval for the ADS, on a one-time basis, to the refueling outage scheduled for September 15, 1987. The surveillances will become overdue on August 16 and 18, 1987 in accordance with the current TSs which require that the surveillances be performed once per 18 months. The TSs require manual initiation and functional testing of the ADS.

(2) TS 4.4.3.1.c would be changed to extend the surveillance interval for performing the drywell air cooler condensate flow rate monitoring system channel calibration from at least once per 18 months to at least once per 24 months.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 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; 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 licensee addressed the above three standards in the amendment application.

(1) One-time extension of the surveillance interval for the ADS. With regard to the three standards, the licensee states:

a. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the increase in the surveillance interval will not result in a reduction in system reliability nor will it effect the ability of the system to perform its design function. This change will not effect system configuration or operation. This change in surveillance interval is supported by successful completion of start-up test, successful performance of SRVs during plant operation, the high reliability of the system components, and by completion of monthly functional tests of system components as required by Technical Specifications.

b. This change will not create the possibility of a new or different kind of accident from any accident previously evaluated because it does not involve any changes to system configuration or operation. A change in surveillance interval will not create any new accidents.

c. The proposed change will not significantly reduce a margin of safety because the reliability of the system to perform its function is not significantly effected. The system design, operation, and ability to function when required remain unchanged. Additionally, as delineated in the justification, the proposed change will not effect the performance requirements in the Limiting Conditions of Operation contained in the Technical Specification. Thus, the margin of safety is not impacted.

(2) Extension of the surveillance interval for performing the drywell air cooler condensate flow rate monitoring system calibration. With regard to the three standards, the licensee states:

a. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the change in the surveillance interval will not result in a decrease in the required instrument accuracy. This position is supported by the purpose of this system is to alert and aid the operator in defining an event, no credit is taken in the Safety Analysis for the alarms for high drywell air cooler drain flow. Operator action results from information received from the drywell sump flow not the air cooler condensate flow and therefore, the response to previously evaluated events will be unchanged. Since the revision does not involve a design, configuration or operational change to the plant and the response to events is unchanged. There is no increase in the probability or consequence of any accident previously evaluated.

b. The proposed change does not create the possibility of a new or different kind of accident from any accident previously

evaluated because the change in the frequency of calibration of the drywell air cooler drain flow indication will remain within the present design criteria and respond as previously evaluated and does not involve a design change or physical change, and therefore does not alter the design response of the instrumentation. Thus, no new accident scenario is introduced by this revised frequency of calibration of the acoustic monitors.

c. The proposed change to the surveillance period does not involve a significant reduction in a margin of safety because the change in the frequency of calibration for the drywell air cooler drain flow indication is not used in the accident analysis and therefore no reduction in the analyzed margin of safety will be created. Additionally, as delineated in the justification, the proposed change will not effect the performance requirements in the Limiting Conditions of Operation contained in the Technical Specification. Thus, the margin of safety is not impacted.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: May 11, 1987.

Description of amendment request: The proposed amendment would revise the technical specifications (TSs) to extend the surveillance intervals, on a one-time basis, for the penetration valve leakage control system, the main steam line radiation-high isolation actuation instrumentation, and Division I and Division II 18 month ECCS surveillance tests. The proposed amendment would modify the TSs as follows:

(1) TS 4.6.1.10.c would be modified to extend the interval for performing the functional test of the penetration valve leakage control system, on a one-time basis, from every 18 months until the first cycle refueling outage scheduled to begin September 15, 1987. The current surveillance overdue date is September 8, 1987; hence, the extension is for a period of up to 7 days.

(2) TS 4.3.1.1, 4.3.1.2, 4.3.2.1, 4.3.2.2, and Tables 4.3.1.1-1 and 4.3.2.1-1 would be modified to extend the interval for performing the main steam line radiation-high channel calibration (Table 4.3.1.1-1, Item 7, page 3/4 3-7 Reactor Protection Instrumentation), the main steam line radiation-high isolation actuation instrumentation channel calibration (Table 4.3.2.1-1, Item 2.b), and logic system functional tests (TSs 4.3.1.2 and 4.3.2.2). The surveillance interval would be extended, on a one-time basis, by 11 days until the first cycle refueling outage scheduled to begin on September 15, 1987.

(3) TSs 4.3.2.2, 4.3.3.2, 4.3.3.3, 4.3.9.2, 4.5.1, 4.6.3.2, 4.6.4.2, 4.6.5.3, 4.6.5.4, 4.6.5.5, 4.6.5.6, 4.7.1.1, 4.7.2, and 4.8.1.1 would be modified to extend the surveillance interval, on a one-time basis, for Division I and Division II emergency core cooling systems surveillance tests from August 1987 to the completion of the first refueling outage which is scheduled to begin on September 15, 1987. The affected surveillance tests are logic system functional tests and simulated automatic operation of all channels for the isolation actuation instrumentation (TS 4.3.2.2, Table 4.3.2.1-1, Items 6.d and 6.f); logic system functional tests and simulated automatic operation of all channels for Division I trip system LPCI mode and LPCS systems (TS 4.3.3.2, Table 4.3.3.1-1, Item A.1), Division II trip system LPCI B and LPCI C systems (TS 4.3.3.2, Table 4.3.3.1-1, Item B.1) and Division I and II loss of power (TS 4.3.3.2, Table 4.3.3.1-1, Item D.1); ECCS response time for each trip function (TS 4.3.3.3); logic system functional tests and simulated automatic operation of all channels for primary containment ventilation system - unit cooler A and B (TS 4.3.9.2 Table 4.3.9.1-1, Items 1.a and 1.c); system functional test for LPCS pump, LPCI A pump, LPCI B pump and LPCI C pump (TS 4.5.1); system functional test of the containment unit coolers (TS 4.6.3.2.c); verification that each automatic isolation valve actuates to its isolation position on an isolation test signal (TS 4.6.4.2, Table 3.6.4-1); verification that each secondary isolation system automatic isolation damper actuates to its isolation system on a containment isolation test signal (TS 4.6.5.3.b, Table 3.6.5.3-1); system functional test of the standby gas treatment system and demonstration that the filter train starts and isolation dampers open on a simulated automatic initiation signal (TS 4.6.5.4, Items d.1.a and d.3.b); system functional test of the shield building annulus mixing subsystem and verification that the subsystem starts and isolation dampers open on a simulated automatic initiating signal (TS 4.6.5.5, Items b.1.a and b.3.b); system functional test of each fuel building ventilation charcoal filtration subsystem and verification that the subsystem starts and isolation dampers actuate correctly on a simulated automatic initiation signal (TS 4.6.5.6, Items e.1.a and e.3.b); verification that each automatic valve of the standby service water subsystem actuates to the correct position and the pump starts on a normal service water low pressure signal (TS 4.7.1.1.b); verification that each main control room air conditioning subsystem automatically switches to the emergency mode of operation on a LOCA emergency mode actuation test signal and that the isolation valves close within 30 seconds and that the control room is maintained at a positive pressure (TS 4.7.2.e.2.a); and electrical power systems surveillances (TS 4.8.1.1.2, Item f).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 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; 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 licensee addressed the above three standards in the amendment application.

(1) Extension of the interval for performing the functional test of the penetration valve leakage control system. The licensee stated the following with regard to the three standards:

a. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the increase in surveillance interval will not result in a reduction in system reliability nor will it effect the ability of the system to perform its design function. This is demonstrated by the continued monthly and quarterly functional and operational testing as required by the technical specifications as discussed above. The system operation and design will therefore remain as described in the FSAR and as a result the response to an event will remain as analyzed.

b. This change will not create the possibility of a new or different kind of accident from any accident previously evaluated because it does not involve any changes to the system configuration or operation. A change in surveillance interval will not create any new accidents.

c. The proposed change will not significantly reduce a margin of safety because the reliability of the system to perform its function is not significantly effected. The system design, operation, and ability to function when required remain

unchanged. Additionally, as delineated in the justification, the proposed change will not affect the performance requirements in the Limiting Conditions of Operation contained in the Technical Specification. Thus, the margin of safety is not impacted.

(2) Extension of the interval for performing the main steam line radiation-high channel calibrations and logic system functional tests. The licensee stated the following with regard to the three standards:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The system design, function and configuration are not changed or affected. The detector channels continue to be checked each shift. This check will identify any drift or degradation of the system. Drift associated with the detector would be insignificant when compared to the radiation levels associated with a failed fuel event. The logarithmic radiation monitor, which is the primary source of drift will continue to receive the current 30 day surveillance testing. With the change in the surveillance interval for the MSLRH isolation actuation instrumentation, the loop remains fully operable and responds with the necessary accuracy to detect high radiation and initiate an isolation actuation. There is no significant increase for the probability of failure of the tested components with the change to the surveillance interval. There is no increase in the probability or consequences of an accident previously evaluated because the system will continue to respond as designed.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The design response of the instrumentation and the system remains the same and is unaffected. No change is made in the design operation or configuration of the instrumentation therefore, previously analysis and evaluations remain valid. No credit is taken for the MSLRH instrumentation in any design basis FSAR analysis.

c. This change would not involve a significant reduction in the margin of safety because:

The functional response of the system will remain as designed during the extended surveillance period because of the redundant design and the reliability of the components. As discussed in the justification above, the detectors have been found to not drift a significant amount during this extended surveillance period and will continue to receive functional testing each month of operation. A review of the equipment design, FSAR and SER commitments, and system performance requirements has confirmed the surveillance extension is within the component capability and does not conflict with present system requirements. Since the design and performance is not sensitive to the requested change and the response of the system will remain as designed and as described in the safety analysis report the margin of safety has not been significantly reduced.

(3) Division I and II emergency core cooling systems surveillance tests. The licensee stated the following regard to the three standards:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

Previous testing recently conducted at this facility during the preoperational test phase and during the power ascension test phase demonstrated indepth, the reliability and performance capability of the ECCS systems during various initiating modes of a LOP/LOCA event. In addition, an extensive surveillance program exists at this plant to demonstrate continued operability and performance of the ECCS systems required to mitigate the occurrence of such an event. Due to the reliability proven by the previous testing and the continued proven operability obtained by frequent ongoing surveillance testing, extension of the 18 month ECCS surveillances will not result in a significant increase in the probability or consequences of a LOP/LOCA event.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

This change allows one time extension in the allowed interval for which the surveillance is to be performed. This extension therefore, does not introduce a new mode of operation. Since no new or different kinds of accidents are introduced by extending the surveillance interval, then the possibility of creating an accident not previously evaluated does not exist.

c. This change would not involve a significant reduction in the margin of safety because:

The demonstrated reliability caused by recently conducted testing during the start-up phase of this plant, as well as extensive ongoing surveillance testing designed to determine operability and to measure performance of ECCS systems, ensures a margin of safety is maintained to offset the effects that would be caused if a LOP/LOCA event occurred. In addition, recent changes made to the plants protective tonal trip system resulting from the January 1986 LOP event, has reduced significantly the possibility of a similar event happening again. A LOCA event, being classified as a limiting fault condition, maintains a probability of less than one tenth of one percent chance of occurring over the 40 year cycle of this plant. Leak detection systems and ISI inspection programs exist to detect and prevent pipe and vessel failures which could allow a LOCA event to occur. Extending the performance date of the 18 month ECCS surveillance until after commencement of refueling would therefore, not impose a measurable reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Jose A. Calvo

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of amendment request: May 15, 1987.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to extend the surveillance intervals, on a one-time basis, until the refueling outage scheduled to begin on September 15, 1987, for the reactor vessel steam dome pressure-high reactor protection system instrumentation and isolation actuation instrumentation, the main steam line flow-high instrument loops, the primary containment, secondary containment, and reactor water cleanup level 2 and main steam line level, isolation actuation instrumentation, and the automatic depressurization system (ADS) trip system reactor vessel water level-low level 3 and the reactor core isolation cooling (RCIC) system reactor water level-high level 8 actuation instrumentation. The proposed amendment would modify the TSs as follows:

(1) TSs 4.3.1.2, Table 4.3.1.1-1, 4.3.2.2, and Table 4.3.2.1-1 would be modified to extend the interval for channel calibration and logic system functional test for the reactor vessel steam dome pressure-high reactor protection instrumentation and the reactor vessel pressure-high isolation actuation instrumentation. These surveillance tests are currently to be performed every 18 months. This one-time extension request is for approximately 31 days until the forthcoming refueling outage.

(2) TS 4.3.2.2 and Table 4.3.2.1-1 would be modified to extend the channel calibration and logic system functional test surveillance intervals for the main steam line flow-high instrument loops. These surveillance tests are currently to be performed every 18 months. This one-time extension request is for approximately 24 days (from August 21, 1987) until the forthcoming refueling outage.

(3) TS 4.3.2.2 and Table 4.3.2.1-1 would be modified to extend the interval for channel calibration and logic system functional testing for the primary containment, secondary containment, and reactor water cleanup level 2 and main steam line level 1 isolation actuation instrumentation. These surveillance tests are currently to be

performed every 18 months. This one-time extension request is for approximately 36 days (from August 16, 1985) until the forthcoming refueling outage.

(4) TSs 4.3.3.2, Table 4.3.3.1-1, 4.3.5.2, Table 4.3.5.1-1, and 4.5.1 would be modified to extend the ADS trip system reactor vessel water level-low level 3, and RCIC system reactor vessel water level-high level 8 actuation instrumentation surveillance frequency. These surveillance tests are currently to be performed every 18 months. This one-time extension request is for approximately 21 days (from August 25, 1987) until the forthcoming refueling outage.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 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; 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 licensee addressed the above three standards in the amendment application.

(1) Reactor vessel steam dome pressure-high reactor protection instrumentation and reactor vessel pressure-high isolation actuation instrumentation surveillance extension. With regard to the three standards, the licensee stated:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The system design, function and configuration are not changed. The requested extension may result in greater transmitter drift. This drift has been calculated to be 12.7 psig. The drift used in the FSAR analysis is 15 psig. Channel function is assured by surveillance of channel instruments. This request will not result in any change in setpoints, allowable value or FSAR analysis. In addition, a NPRDS search indicated a very low probability for equipment failures with regard to manual switches and auxiliary relays. Since there is no change in the loop's operation, or setpoints there is no significant increase in the probability or consequence of previously evaluated accidents.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

This request will not result in new modes or configurations of plant operations. The design and operation of the instrumentation and the system remains the same, therefore, previous analysis and evaluations remain valid.

c. This change would not involve a significant reduction in the margin of safety because:

Performance of the system and the components remain consistent with the requirements of the Technical Specifications and FSAR. Current setpoints allow for channel drift of up to 15 psig. The calculated drift including this extension is 12.7 psig. Therefore there is no change to the allowable value or nominal trip setpoint and the margin of safety is not reduced.

(2) Channel calibration and logic system functional (LSFT) test surveillance interval extension for the main steam line flow-high instrument loops. With regard to the three standards, the licensee stated:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The existing Technical Specification Trip Setpoint and Allowable Value can accommodate an additional calculated drift for a 30 month channel calibration interval. Furthermore, the increased LSFT surveillance interval results in no significant probability of an MSIV isolation logic failure.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

This change does not delete or reduce the functional capability of the MSL Flow-High instrumentation. Therefore, no new kind of accident can result from this change and the response to an event will be as analyzed.

c. This change would not involve a significant reduction in the margin of safety because:

The instrument setpoint is not changed nor should it change as a result of this surveillance extension. The current setpoint has an allowance for 5 psid of drift. The calculated drift for a 30 month (24 months plus twenty-five percent) surveillance interval is 1.41 psid. Therefore, the calculated drift is well within the allowance for drift as assumed in the analysis. The intent of the Technical Specification basis is met because no significant reduction in the margin of safety or effectiveness of the MSL Flow-High instrumentation in mitigating the consequences of an MSL break outside containment is involved.

(3) Channel calibration and logic system functional testing surveillance extension for the primary containment, secondary containment, and reactor water cleanup level 2 and main steam line level 1 isolation actuation instrumentation. With regard to the three standards, the licensee stated:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

It will not result in a significant reduction in system reliability nor effect the ability of the system to perform its design function. The increased calibration interval does not effect current instrument setpoints due to existing design margin. The system will continue to function within the existing design bases and analysis. The change in LSFT surveillance interval is supported by successful operation of the instrumentation during startup testing and initial operation. In addition, NPRDS reports no manual switch failures and a MTBF of 239,278 hours for auxiliary relays; thus, showing high reliability.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

There is no change to system configuration or analysis. The change in surveillance interval does not create any new types of accidents.

c. This change would not involve a significant reduction in the margin of safety because:

The change in calibration test interval does not impact instrument setpoints. The calculated drift is within the allowable value as given in the Technical Specifications. Current setpoints allow for channel drift of up to 4 inches of water. The calculated drift including this extension is 3.76 inches. There is no change to analytical limit used in any analysis. Delay in the logic system functional test does not significantly effect the probability of system failure. Therefore, this change does not significantly reduce the margin of safety.

(4) Extension of the surveillance frequency for the ADS trip system reactor vessel water level-low level 3, and RCIC system reactor vessel water level-high level 8. With regard to the three standards, the licensee stated:

a. No significant increase in the probability or the consequences of an accident previously evaluated results from this change because:

The requested change to the surveillance interval has been found to be within the present design value for the setpoint drift and will remain within technical specification allowable values for the requested extension. The change is also found to have no significant effect on the system logic function because of the system design and reliability of the components. In addition, NPRDS reports show the LSFT and auxiliary relays to be highly reliable and not sensitive to test interval. Therefore, there is no change to the current safety analysis required.

b. This change would not create the possibility of a new or different kind of accident from any accident previously evaluated because:

The increase in the reactor water level instrumentation surveillance interval does not increase the possibility of an accident or a malfunction of a different type than previously evaluated since there is no change in function or hardware.

c. This change would not involve a significant reduction in the margin of safety because:

The change in this reactor vessel water level instrumentation surveillance interval does not involve a reduction in the margin of safety since the instruments setpoints and

allowable values are not changed and the calculated drifts are well within the allowable values. Since the change maintains the present safety analysis, there is no significant reduction to the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the analysis.

Local Public Document Room Location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

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NRC Project Director: Jose A. Calvo

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of amendment request: April 24, 1987

Description of amendment request: These proposed changes consist of modifications of certain emergency diesel generator license conditions as described in attachment 3 to the Operating License NPF-36. These changes allow the licensee to implement the staff's requirements which establish the basis for the continued qualification, reliability and operability of the TDI engines over the entire life of the plant and involve detailed maintenance and surveillance activities for critical engine components. These proposed license changes incorporate all of the TDI Owner's Group or Pacific Northwest Laboratory (PNL) recommendations, which were reviewed and approved by the Staff in NUREG-1216.

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 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. The proposed license conditions as mandated through the Staff's Final SER (NUREG-1216), establish the basis for the continued design adequacy and qualification of the SNPS TDI engines for nuclear standby service, as required by GDC 17 of Appendix A to 10 CFR Part 50. The incorporation of the most critical periodic maintenance/surveillance inspections for certain Phase I engine components as license conditions will ensure continued reliability and operability of these units over the life of the plant. These proposed license conditions do not involve any changes in the system's design and operability requirements nor in the plant operating conditions or parameters. (2) create the possibility of an accident that is different than already evaluated in the USAR. The proposed license conditions involve maintenance and surveillance activities for critical engine components in order to ensure proper and safe operation of the engines and maintain the adequacy and availability of these units for nuclear standby service. These proposed license condition amendments do not affect any plant conditions or parameters nor do they alter the system design and operability requirements. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated cannot be created. (3) involve a significant reduction in the margin of safety as defined in the bases to Technical Specifications 3/4.8. All required inspections for critical engine components that are incorporated in these proposed license conditions meet or exceed those recommended by the vendor and the TDI EDG Owner's Group DR/QR program. These inspections do not alter the functional safety requirements of the emergency diesel generators, thus there is no impact on the results and conclusions of the USAR Chapter 15 analyses and no impact on the margin of safety. Also, all requirements of the existing license conditions as imposed by the NRC are maintained until startup from the first refueling outage. Furthermore, all proposed new license conditions for post first fuel cycle have been reviewed and approved by the NRC staff and documented in NUREG-1216. Therefore, the proposed license changes do not involve a significant reduction in the margin of safety.

Accordingly, the Commission proposes to determine that the proposed changes to the license involve no significant hazards considerations.

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786

Attorney for licensee: W. Taylor Reveley, III, Esq., Hunton and Williams, P. O. Box 1535, Richmond, Virginia 23212

NRC Project Director: Walter R. Butler

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: February 4, 1987.

Description of amendment request: The application for amendment proposes new Rod Block Monitor (RBM) setpoints as a result of Monticello specific analyses performed by General Electric. The setpoints replace existing RBM setpoints that were determined from a generic analysis. Table 3.2-3 of the Technical Specifications would be changed to reflect the new RBM Upscale Setpoints. The minimum critical power ratio (MCPR) would be changed in the associated bases.

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; 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 licensee has evaluated the proposed RBM setpoint changes and has concluded that no significant hazards consideration exists because of the following reasons:

General Electric has performed an analysis supporting the proposed setpoints for an initial MCPR of 1.30. This analysis used the same methodology used to calculate the existing setpoints. The only change is a different value of initial MCPR—1.30 instead of 1.20. Since the current cycle's lowest allowed MCPR is 1.36 and the analysis allows setpoints actually slightly higher than those proposed, the proposed setpoints are conservative. Therefore, the proposed setpoints will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change in RBM setpoints will not create the possibility of a new or different kind of accident since the change makes relatively minor changes to the existing setpoints.

Since the proposed setpoints have been determined by approved NRC methodology, this change will not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's evaluation and agrees with their conclusions. Accordingly, the staff proposes to determine that the requested action does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department,

300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: February 18, 1987.

Description of amendment request: The proposed changes would clarify the Technical Specification requirements for IRM and APRM scram instrumentation operability by revising Table 3.1.1 to eliminate the requirement for IRM operability while in the Run Mode and to delete the APRM downscale scram. Table 3.1.1 note 2 would be changed to read: "For an IRM channel to be considered operable, its detector shall be fully inserted." Note c would be deleted; and other clarifying changes would be made.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a 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.

A literal interpretation of the affected sections now requires placing the plant in a "half-scram" condition to perform required testing and maintenance. This makes the plant more susceptable to spurious trips and initiation of safeguards equipment.

The proposed changes would clarify the intent of the original specification by clearly defining the scram functions needed to be operable in each mode of operation. The allowable bypasses assure that the single failure criteria are satisfied for the required scram function of the IRMs and APRMs. These changes do not involve modifications of the reactor protection system wiring or circuitry thus, by design, overlap between the IRMs and APRMs is assured. Therefore, the requested changes will not involve a significant increase in the probability or consequence of any accident previously evaluated. For the same reasons, the proposed changes will not create the possibility of a new or different kind of accident, nor will they involve a significant reduction in the margin of safety.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

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 application for amendments: January 21, 1987

Description of amendment request: The proposed amendments would change the Technical Specifications (TSs) for the Peach Bottom Atomic Power Station, Units 2 and 3 by (a) providing an extension of 30 days in the current 60 day requirement of TS 6.9.2.h(2) on Page 259 for filing the Semiannual Effluent Release Report, and (b) eliminate a reporting requirement in TS 6.9.2.a on page 257 of loss of shutdown margin that is redundant to the Licensee Event Report (LER) requirements.

The current TS 6.9.2.h(2) requires that the Semiannual Effluent Release Report covering the previous six months of operation shall be submitted within 60 days after January 1 and July 1 of each year. The licensee states that the extension is appropriate since the amount of time required to complete the steps in preparing the report is not sufficient to allow adequate review of the report prior to the 60 day deadline. Consequently, the licensee encounters the need to file followup reports for corrections and to supplement the original report. The licensee states that the additional 30 days to submit the Semiannual Effluent Release Report will ensure that an adequate period of time is available to send the effluent samples to a vendor for analysis, receive and review the data and prepare a complete report. Additionally, this will provide a reasonable amount of time for review by the licensee's technical staffs and management, and to identify and correct errors.

The current TS 6.9.2.a on page 257 requires that a Special Report be submitted to the NRC for loss of shutdown margin. The licensee requests that the reporting requirement in Technical Specification 6.9.2.a be deleted since it is redundant, except for the reporting schedule, to the new LER Rule. The licensee further states that loss of shutdown margin is reportable under the provisions of the LER Rule (10 CFR 50.73(a)(2)(i)(B)). Consequently, the reporting requirement of Technical Specification 6.9.2.a is redundant to the reporting requirements of 10 CFR 50.73.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration 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 any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment to TS 6.9.2.h(2) against standards in 10 CFR 50.92 and has determined the following:

Operation of Peach Bottom Units 2 and 3 in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously evaluated because the collection and analysis of routine plant data, and the preparation time to transmit the information to the NRC is independent of plant design and operational characteristics that can impact potential accidents;

(2) create the possibility of a new or different kind of accident from any previously analyzed because the routine collection and transmittal of data does not establish a potential new accident precursor;

(3) involve a significant reduction in the margin of safety because the additional 30 days to submit this routine plant data does not impact the health and safety of the public since significant increases in radiological effluent releases that may be indicative of an inherent defect in plant design or operation, are reported promptly under the provision of 10 CFR 50.72 and 10 CFR 50.73 and are therefore not impacted by this amendment request.

The licensee has evaluated the proposed amendment to TS 6.9.2.a

against the standards in 10 CFR 50.92 and has determined the following:

Operation of Peach Bottom Units 2 and 3 in accordance with this change would not:

(1) involve a significant increase in the probability or consequences of an accident previously calculated because the change does not diminish reporting requirements but merely eliminates a redundant reporting requirement for Loss of Shutdown Margin;

(2) create the possibility of a new or different kind of accident from any previously analyzed because reporting requirements do not establish a potential new accident precursor;

(3) involve a significant reduction in a margin of safety because the current reporting requirements in 10 CFR 50.72 and 10 CFR 50.73 covers all events, including Loss of Shutdown Margin, that may impact the margin of safety, and require the NRC to be notified.

Based on the above reasoning, the licensee has determined that the proposed amendment does not involve a significant hazards consideration. The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Based on this review, the staff, therefore, proposes to determine that the requested amendment does not involve a 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: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 30, 1987

Description of amendment request: The amendment would modify Technical Specification Figure 3.2.3.1 to increase the minimum critical power ratio (MCPR) versus tau at rated flow. The current Technical Specification provides a single MCPR limit of 1.20 for all values of tau from 0 to 1.0 at rated flow. The proposed change would increase the MCPR linearly from a limit of 1.20 for tau equal to zero to a limit of 1.23 for tau equal to 1.0. This change to increase the MCPR limit is in the conservative direction and is more restrictive than the current limit.

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 by providing certain examples (51 FR 7751). One of the examples, (ii), of an amendment likely to involve no significant hazards consideration relates to "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement." The proposed amendment relates to this example because it would impose more restrictive limits on the allowed MCPR for any value of tau above tau equal to zero.

Therefore, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 1, 1987

Description of amendment request: The proposed amendment would revise the numbering of current Technical Specification Sections 3.7.8 through 3.7.10 and of Tables 3.7.9-1 and 3.7.10-1 by renumbering them Sections 3.7.9 through 3.7.11 and Tables 3.7.10-1 and 3.7.11-1 respectively. In addition, the section numbers referenced in the text of these sections and in the text of Section 11.2.6 will be changed to correspond with the appropriate new section numbers. These numbering changes are proposed in order that the Technical Specification section numbers will be consistent with the numbers referenced in the Hope Creek Generating Station procedures. A new Section 3.7.8 will be added which will be blank except for a note to indicate that the purpose of the section is to maintain numerical continuity of the section numbers.

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 by providing certain examples (51 FR 7744). One of the examples, (i), of an amendment likely to involve no significant hazards consideration 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." The proposed amendment as discussed above relates to this example because it only changes the section numbers.

Therefore, the Commission proposes to determine that the proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 22, 1987

Description of amendment request: The amendment would modify the Technical Specifications to permit temporary adjustment of the setpoints for the Main Steam Line Radiation-High, High trip function. The change would permit the normal full power background radiation level associated with the Main Steam Line Radiation scram and isolation setpoints to be increased during hydrogen injection testing. The purpose of the hydrogen injection test is to determine the feasibility of hydrogen water chemistry control as a means of reducing intergranular stress corrosion cracking (IGSCC) of stainless steel piping. The setpoint increases are needed to compensate for anticipated increases in the main steam line radiation level during hydrogen injection. The background radiation level increase during hydrogen injection is caused by higher levels of short half-life N-16 carry-over into the steam line.

The proposed modification would allow this temporary adjustment to the setpoints to be made only when above 22 percent of rated power and would require that it be made within 24 hours prior to planned start of hydrogen injection. It would also require that normal setpoints be established within 24 hours of reestablishing normal radiation levels after completion of the hydrogen injection and prior to establishing power levels below 22 percent rated power.

A similar change was approved for the purpose of hydrogen injection tests at the Edwin I Hatch Nuclear Plant, Unit

1 by Amendment No. 125 to the Hatch license, dated May 21, 1986.

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; 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 licensee provided the following evaluation with its May 22, 1987 amendment request:

The proposed changes to the HCGS Technical Specifications:

(a) Do not involve a significant increase in the probability or consequences of an accident previously evaluated. The only design basis accident which takes credit for the main steam line high radiation scram and isolation setpoint is the Control Rod Drop Accident (CRDA) as described in FSAR Section 15.4.9. Specifically, the Main Steam Isolation Valves (MSIVs) are assumed to receive an LCR automatic closure signal at 0.5 seconds after detection of high radiation in the main steam lines and to be fully closed at 5 seconds from the receipt of the closure signal. The main steam line radiation monitors are provided to detect a gross failure of the fuel cladding. When high radiation is detected, a trip is initiated to reduce the continued failure of fuel cladding. At the same time, the main steam isolation valves are closed to limit the release of fission products. The trip setting is high enough above background radiation levels to prevent spurious trips yet low enough to promptly detect gross failures in the fuel cladding.

As indicated in the NEDO Report (Reference 1), the consequences of the CRDA are most severe under Hot Standby conditions. In fact, the consequences of the CRDA are increasingly less severe above 10 percent due to a faster Doppler response and a lower rodworth. Most importantly, above 20 percent power, the consequences of the CRDA are minimal. Since the Main Steam Line Radiation Monitor setpoint will only be adjusted for the purposes of the hydrogen injection test at power levels above 22 percent, there is no significant impact on the probability or consequences of the CRDA. Therefore, the change to the footnotes in the referenced TS tables have no affect on the probability or consequences of an accident previously evaluated.

(b) Does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not affect the design of any safety-related systems and as such do not affect the performance of any safety functions. The proposed changes do permit the performance of a hydrogen injection test; however, this test does not introduce a new kind of accident since the presence of hydrogen in the primary system has already been analyzed (see FSAR Section 6.2.5, 10.4.2 and 11.3.2.1) and is already monitored and controlled (see TS 3/4.3.7.10 and 3/4.11.2.6, respectively). Further, as discussed in Paragraph V above, additional protective measures are being applied which assure that the physical presence of test equipment does not create the potential for a different kind of accident to occur.

Since the TS changes themselves do not affect existing system function, nor do they create a situation which has not been previously analyzed and appropriately designed for, the change to the TS footnotes shown in Attachment 2 do not create new or different accidents than previously evaluated.

(c) Does not involve a significant reduction in a margin of safety. The proposed temporary increase in the Main Steam Line Radiation - High - High scram and isolation setpoints will be permissible only when reactor thermal power is above 22 percent. As discussed in Paragraph VI.a above, the only design basis accident which takes credit for this scram and isolation trip function is the CRDA. However, above 20 percent power, the consequences of a CRDA are so minimal that they may be considered negligible (Ref. 1), and hence, the change in the TS setpoints has no significant effect on the margins of safety for this accident scenario.

The proposed change is necessary to conduct a hydrogen injection test which will increase the carry-over of N-16. This in turn, will cause the background radiation levels in the main steam system to be increased. As discussed in Paragraph IV above, several precautionary and preplanning measures are being taken to maintain plant personnel exposures ALARA. In addition, radiation levels will be monitored to assure measured radiation levels are within acceptable site ALARA. Due to the relatively short half-life of N-16 (approximately 7 seconds), gaseous effluent release rates will not be significantly affected. Therefore, it can be concluded that the proposed change will not present a risk to the public health and safety nor significantly reduce a margin of safety for plant personnel.

Based upon the discussions in the above three subparagraphs, PSE&G concludes that the proposed change does not involve a significantly safety hazard.

Reference 1 referred to above by the licensee is NEDO-10527, Supplement 1, "General Electric Rod Drop Accident Analysis for Large Boiling Water Reactors" dated July 1972.

The staff agrees with the licensees evaluation and conclusion as stated above. Accordingly, the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: October 3, 1986

Description of amendment request: The proposed change would revise Technical Specification 4.2.2.2.e and Basis 3/4.2.2. The change replaces the F_{xy} limits with statements referring to the Radial Peaking Factor Limit Report, which provides for a cycle-by-cycle determination of the F_{xy} (Z) limits without the need to submit F_{xy} Technical Specification changes. The F_{xy} limit is a review criterion which is used to verify that the design neutronic calculations associated with the Reload Safety Evaluation are conservative. The Radial Peaking Factor Limit Report allows for cycle-by-cycle changes in the F_{xy} limit, which reflect the variations to be expected based on the design calculations.

A similar change request for Unit 2 was submitted as LCR 83-02, dated January 31, 1983, and was approved by the Commission in Amendment 19, dated May 5, 1983. The proposed change makes the Unit 1 specification identical to that of Unit 2, and brings it into conformance with the Westinghouse Standard Technical Specifications (NUREG-0452, Revision 4).

Basis for proposed no significant hazards consideration determination: The licensee provided the following significant hazards evaluation per 10 CFR 50.92.

The proposed change to the Technical Specifications is administrative in nature in that it is being made to achieve consistency to a previously approved change. The change does not involve a significant hazards consideration because operation in accordance with this change would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The change involves only the surveillance of F_{xy} as a verification of the design models and only changes the method of documenting F_{xy} limits.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. There are no equipment, instrument, or setpoint changes related to the proposed change to Technical Specifications.

(3) Involve a significant reduction in a margin of safety. The actual margin of safety as defined in the basis for the F_Q technical specification remains unchanged, since the F_Q limit is unchanged. The radial peaking factor $F_{xy}(z)$ is measured periodically to provide

assurance that the hot channel factor $F_Q(z)$ remains within its limit.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists (51 FR 7744, dated March 6, 1986). The proposed change corresponds to Example (i) for purely administrative changes to achieve consistency.

Therefore, on the basis of the licensee's evaluation, with which we agree, and because the proposed change corresponds to Example (i), noted above, the Commission proposes to determine that the amendment does not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of amendment request: April 20, 1987

Description of amendment request: The proposed change requests modification of Facility Operating License DPR-70 to incorporate Attachment 1 (the Facility Attachment No. 13, dated October 1, 1986 to the US/IAEA Safeguards Agreement) along with clarifications as identified in Attachment 2 (Salem Nuclear Generating Station, Unit 1 (SNG S1) IAEA Safeguards License Conditions, Revised) into the license.

Basis for proposed no significant hazards consideration determination: The licensee has determined that the proposed change involves no significant hazards consideration under the provisions of 10 CFR Part 50.92. Based on the licensee's evaluation, we conclude that the proposed change is administrative in nature and as such conforms to Example (i) of (51 FR 7744). The proposed amendment implements an IAEA Safeguards inspection program and does not in any way affect the design bases or operation of the facility. The purpose of the IAEA safeguards inspection is to permit the IAEA to verify that special fissionable material at the facility is not withdrawn (except as provided in the US/IAEA Safeguards Agreement) from the facility while such material is being safeguarded under the agreement. As such, the proposed amendment would not: (1) involve a significant increase in the probability or consequence of an accident previously evaluated; or (2) create the probability of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. Therefore, the proposed amendment does not constitute a significant hazards consideration.

Accordingly, on the basis of the licensee's analysis, with which we agree, and because the circumstances seem to fit Example (i) above, the Commission proposes to determine that the amendment will not involve a significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW, Washington, DC 20006

NRC Project Director: Walter R. Butler

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: December 17, 1986 (TS 76)

Description of amendment requests: Tennessee Valley Authority proposes to modify the Sequoyah Nuclear Plant Units 1 and 2 Technical Specifications to revise the containment spray response time, item 7.a of Table 3.3-5, 'Engineered Safety Features Response Times.' The amendments would change the containment spray response time, for diesel generator loading, from 58 seconds to 208 seconds. This notice supersedes a previous notice dated February 11, 1987 (52 FR 4420).

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). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

(1) Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased?

No. The containment spray (CS) system is part of the Containment Heat Removal System. The primary design of the Containment Heat Removal Spray Systems is to spray cold water into the containment atmosphere when appropriate in the event of a loss of coolant accident (LOCA) and thereby ensure that containment pressure does not exceed the containment shell design pressure of 12 psig. Temperature and pressure transients shown in the Final Safety Analysis Report (FSAR) for the worst case LOCA remain relatively constant until switchover to sump recirculation. At this point, containment temperature drops sharply because the cold air exiting the ice condenser is no longer being warmed by the spray water. The temperature recovers and stabilizes at the outlet temperature of the spray heat exchangers once the spray pumps have been restarted. The temperature increases further after ice bed meltout, but remains within design limits. Substantial margin still exists between the time sump recirculation begins and ice bed meltout occurs. Delaying actuation of CS to 208 seconds will not have any significant effect on the containment temperatures and pressures as previously evaluated in the FSAR.

(2) Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created?

No. The proposed change makes a minor modification to an accident previously evaluated in the FSAR. The only change being made is the system response time. The evaluation of the proposed delay for CS actuation concludes that system operation and performance will be as presently expected in maintaining containment pressure and temperature design limits.

(3) Is the margin for safety significantly reduced?

No. The evaluation of the proposed delay for CS actuation concludes that containment pressure mitigation will remain within the safety limits. The delay for CS actuation will also delay the time before switchover to containment sump recirculation occurs. However, adequate safety margin still exists between recirculation flow actuation and ice depletion.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: April 14, 1987 (TS 87-02)

Description of amendment requests: Tennessee Valley Authority (TVA) proposed to modify the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS) to delete the functional test surveillance requirement (SR) 4.3.3.9 for testing automatic isolation of the release pathway from the steam generator blowdown (R-90-120 and R-90-121) and condensate demineralizer (R-90-225) liquid effluent radiation monitors due to instrument downscale failure. Also proposed is the addition of a functional test to SR 4.3.3.9 to demonstrate that a control room alarm annunciation results should these instruments incur downscale failure.

The radiation monitors in question were neither designed nor intended to initiate an automatic isolation of the release pathway from an instrument downscale failure. Automatic isolation of the release pathway and control room alarm annunciation is required, and the TS remain unchanged, for an indication of measured levels above the alarm/trip setpoint or a circuit failure. The proposed change only affects the requirement for automatic isolation of the release pathway due to an instrument downscale failure. Control room annunication remains a requirement, as proposed, for an instrument downscale failure.

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). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided following analysis.

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated? No. The proposed amendment does not result in a change to the current plant configuration; rather, the proposed amendment corrects and clarifies a surveillance requirement for hardware as currently installed in the plant. Thus, the proposed technical specification change involves no significant increase in the probability or consequences of an accident that has been previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated? No. The proposed amendment is not a result of changes in plant hardware, nor does it affect operating limits, normal operating procedures, or emergency operating instructions for the plant. Thus, the proposed technical specification change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety? No. The proposed amendment corrects and clarifies a surveillance requirement for hardware currently installed in the plant, thereby eliminating possible confusion with performing that surveillance requirement. The proposed technical specification, therefore, does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 15, 1987, as supplemented June 16, 1987 (TS 87-29)

Description of amendment requests: Tennessee Valley Authority (TVA, the licensee) proposed to modify the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS) to delete the reference to active motor- operated valves (MOVs) which will have their thermal overload (TOL) protection devices bypassed. In addition, MOVs are also deleted which are no longer active, because of 10 CFR Part 50, Appendix R considerations or because their movement is not required for safety. Several active MOVs which were previously omitted are added to the TS table. A typographical error in the Unit 1 TS table is also corrected. The TS table is also reordered by system and valve number. By letter dated June 16, 1987, TVA provided four attachments which were inadvertantly omitted from the original submittal. This letter also provides additional justification for the proposed changes.

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). 10 CFR 50.91 requires at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

(1) Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased? No. The intent of Regulatory Guide (RG) 1.106, "Thermal Overload Protection for Electric Motors on Motor-Operated Valves," is to ensure that the motor-operated valve (MOV) performs its intended function under accident conditions and that some protection against MOV degradation is provided during normal operations. As stated in Regulatory Position 1.a, continuously bypassing the thermal overload (TOL) device is an acceptable method of ensuring that the MOV performs its safety function. MOV degradation can be detected through the use of Motor-Operated Valve Analysis and Testing System (MOVATS) and the preventive maintenance (PM) programs under development. MOVATS, PMs, and ASME Section XI testing will ensure that the probability of MOV failures (motor-operator or valve) is not increased. The intent of RG 1.106 is satisfied. MOVATS testing is significantly more reliable as a tool for detecting MOV degradation than are TOL devices. The changes to the table are made to reflect the active MOVs with TOL devices in force. As such, there is a decrease in the probability of occurrence or the consequences of an accident previously evaluated in the safety analysis report because of the increase in MOV reliability.

(2) Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created? No. The continuous bypassing of the TOL devices and the MOVATS testing and PM programs are simply an alternative method for meeting the intent of RG 1.106. The possibility of MOV failure, either motor-operator or valve, is not created by removal of the TOL devices because of the known sensitivities of the TOL devices. Component operation will remain the same in terms of its intended function. The deletions and changes to the table are made to reflect the active MOVs with TOL devices in force. Therefore, the changes do not create the possibility for an accident of a new or different type than evaluated previously in the safety analysis report.

(3) Is the margin of safety significantly reduced? No. The bypass of the TOL device is to ensure that the MOVs will perform their intended function under accident conditions. Also, testing is performed to identify MOV degradation, meeting the intent of RG 1.106; and MOVATS testing is more sensitive for detecting MOV degradation than are the TOL

devices. This results in higher MOV reliability. The changes to the table are made to reflect the active MOVs with TOL devices in force. Thus, there is an increase in the margin of safety because of the higher MOV reliability.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the Commission has provided certain examples (51 FR 7751) of amendments not likely to involve significant hazards considerations. The remaining proposed changes to add active MOVs omitted from the TS table, to correct a typographical error in the Unit 1 TS table, and to reorder the TS table by system and valve number are encompassed by example (1), e.g., a purely administrative change to TS: for example, a change to achieve consistency through out the TS, correction of an error, or a change in nomenclature. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment requests: May 18, 1987, supplemented on June 4, 1987 (TS 87-34)

Description of amendment requests: Tennessee Valley Authority (TVA, the licensee) proposed to extensively modify Section 6, "Administrative Controls," of the Sequoyah Nuclear Plant, Units 1 and 2 Technical Specifications (TS). For clarity, the proposed change has been divided into five areas as follows: (1) Office of Nuclear Power (ONP) Reorganization, (2) Plant Operations Review Committee (PORC), (3) Independent Safety Evaluation Group (ISEG), (4) Radiological Assessment Review Committee (RARC), and (5) Fire Brigade Members. A separate description for each area is provided below.

(1) ONP Reorganization administrative change is being made to change the title of Plant Superintendent to Plant Manager. The Plant Manager would report directly to the Site Director. The title of Assistant Director of Nuclear Power (Operations) is being changed to Site Director. The chief officer of the ONP is now titled Manager of Nuclear Power and the Health Physicist is now titled Site Radiological Control Superintendent. The reference to the offsite organization for radiological environmental monitoring program and dose calculations is being removed. The site organization includes the new Plant Operation Review Staff (PORS). PORS is a staff reporting to the Assistant Plant Manager.

(2) PORC—The proposed changes affecting PORC would delete several items from PORC responsibility and place them under the new "technical review and control" process. The process would establish required "independent qualified review" and cross-disciplinary review and approval to support changes currently under PORC review responsibility. PORC would then be responsible for providing an oversight review of selected safety evaluations reviewed under the new process. This change would also clarify PORC responsibilities for review of violations of the TS and reportable events. By letter dated June 4, 1987, TVA withdrew a portion of the May 18, 1987 submittal retaining the requirement for proposed TS changes being reviewed by the PORC. Also withdrawn, as stated in the June 4, 1987 letter, is the proposed removal of Special tests and experiments from PORC review. Therefore, the June 4, 1987 letter narrows the scope of the original request. The May 18, 1987 submittal also proposes changes to accurately reflect the titles of the regular PORC members.

Temporary procedure changes are now provided for in only unusual circumstances, provided final approval is implemented within 14 days. A typographical error is also being corrected.

(3) ISEG—The proposed composition of ISEG for the Sequoyah Nuclear Plant (SQN) is a change from five dedicated full-time onsite engineers to three dedicated full-time onsite engineers supplemented by two full-time engineers located in corporate headquarters and shared by all TVA nuclear facilities. ISEG would report to the Director of Nuclear Safety and Licensing Division.

(4) RARC—An administrative change is proposed to change the titles of the members of RARC to be consistent with the positions responsible for those functions under the new organization. RARC would provide reports to the Manager of Radiological Control (formerly the Chief, Radiological Hygiene Branch) and the Plant Manager.

(5) Fire Bridgade Members—For the Sequoyah Nuclear Plant Unit 1 TS only, TVA proposed to change the specification of the shift supervisor as one of the three excluded personnel from membership in the fire brigade. Unit 2 has previously been changed to this requirement.

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). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92 about the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis.

(1) Is the probability of an occurrence or the consequences of an accident previously evaluated in the safety analysis report significantly increased? No. This change is intended to accurately reflect the changes to the Administrative Controls Section (section 6) of the technical specifications due to the realignment of the ONP. The functions specified in section 6 important to the safe operation of SQN have not been altered or deleted. The changes to this section merely reflect the new positions that hold the expertise to perform these functions. The roles of PORC, RARC, NSRB, and the ISEG are advisory roles to provide technical assistance to those individuals changed with the responsibility of safe operation of this facility. This change better identifies those positions occupied by individuals qualified to provide this technical assistance. There are no hardware, procedure, personnel, or analysis changes represented by this amendment proposal which adversely affect the probability of occurrence or the consequences of an accident previously evaluated in the safety analysis report.

The proposed changes to PORC responsibilities will significantly reduce the number of items that must be reviewed by PORC, thus allowing the PORC members to focus their attention on the more important safety-related issues. Those items being removed from PORC review will still receive a detailed technical review by qualified individuals.

The revision to unit one fire brigade membership serves only to make the technical specifications for both units consistent. This change, in excluding the shift supervisor from membership in the brigade, ensures that the individual specified in 6.1.3 as being responsible for the control room command function is not distracted by this peripheral responsibility. This change does not adversely affect the safety analysis.

(2) Is the possibility for an accident of a new or different type than evaluated previously in the safety analysis report created? No. This change represents only a change in the administrative process in that new positions and responsibilities are identified for review functions of

organizations such as PORC, RARC, NSRB, and ISEG. This review function will continue to be performed by those individuals who are technically competent to perform these review or advisory roles; therefore, the potential for the increase of a possibility of an accident or a new or different type accident from an inadequate review is reduced rather than increased due to having the appropriate personnel designated for these functions.

(3) Is the margin of safety significantly reduced? No. The changes in this amendment proposal serve only to clarify those positions responsible for key safety functions specified in section 6 of technical specifications. No function has been impaired or deleted by this change. On the contrary, these functions are enhanced by additional clarity afforded by the reorganization.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: John A. Zwolinski

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: August 5, 1983 (48 FR 49596) and March 4, 1985

Description of amendment request: The licensee has requested that a requirement for reactor protective system RPS power protection panel operability be added to the Technical Specifications, and that a requirement be added to the Technical Specifications to trip an RPS protective panel if it is found inoperable. The licensee has also proposed surveillance tests of RPS protective panel overvoltage, undervoltage, and underfrequency relays be added to the Technical Specifications. The licensee has proposed these changes in order to meet NRC requirements for Technical Specification assurances of operability for recently-installed RPS power protection panel operability. The RPS power protection panels were installed to alleviate NRC concerns that voltage could be varied sufficiently by a seismic event to cause failure of the RPS.

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 (51 FR 7751). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change which constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement.

The changes included in this application add limitations not presently included in the Technical Specifications. The proposed changes add words to the Technical Specifications requiring that surveillance be performed on RPS power protection equipment and action be taken if equipment is found inoperable. Therefore these changes are similar to example (ii).

Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room Location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esq., Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Victor Nerses, Acting Director

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.

Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: December 15, 1986, as amended February 10, 1987

Brief description of amendment: The amendment makes several editorial changes and corrections, and administrative changes, including deleting the requirement that NRC approval of items involving unreviewed safety questions shall be obtained prior to licensee internal approval for implementation. The amendment also makes several technical changes: using of Unit 2 divisional batteries as an alternate DC power source for Unit 1 shutdown, increasing the number and changing the location of drywell average air temperature instruments, changing the automatic depressurization system instrument air low pressure alarm setpoint, deleting an obsolete footnote, and changing the containment vacuum breaker isolation valve opening setpoint The Commission has denied the portion of the amendment application requesting an administrative change related to corporate and staff organization charts. A Notice of Denial of Amendment has been published separately in the Federal Register.

Date of issuance: June 9, 1987

Effective date: June 9, 1987

Amendment No. 6

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7678)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: February 10, 1986, as supplemented on August 20, 1986

Brief description of amendments: These amendments revise the Station's common Technical Specifications (TSs) to (1) revise TS 3.1.12.1(a), (b) and (d) to indicate that three subcooling margin monitors are now available over the previous two monitors and reflect the actual plant design and (2) delete TS 3.1.12.1(c) to no longer require a 30-day report for outages of less than 4 hours of the Operational Aid Computer. Also TS 3.1.12.1(d) has been redesignated as TS 3.1.12.1(c) because TS 3.1.12.1(c) has been deleted.

Date of Issuance: June 8, 1987

Effective date: June 8, 1987

Amendment Nos.: 159, 159 and 156

Facility Operating Licenses Nos. DPR-38, DPR-47, and DPR-55. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16942)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application of amendment: April 21, 1986, as supplemented October 7, 1986 and April 10, 1987.

Brief description of amendment: The amendment deletes License Condition 2.C.(19) which limited the burnup of spent fuel in the spent fuel pool to 38,000 MWD/MTU.

Date of Issuance: May 29, 1987

Effective Date: May 29, 1987

Amendment No.: 21

Facility Operating License No. NPF-16: Amendment revised the License.

Date of initial notice in **Federal Register:** May 21, 1986 (52 FR 18682)

The licensee provided additional information subsequent to the initial notice published in the **Federal Register.** The October 7, 1986 submittal provided clarification. The April 10, 1986 submittal provided minor corrections to the analysis. This additional information does not alter our proposal of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendments: May 7, 1986, as supplemented on February 20, 1987, and April 23, 1987.

Brief description of amendments: These amendments delete the specifications for the Auxiliary Feedwater (AFW) System and the Condensate Storage Tanks (CST) in current Technical Specification 3.8, Steam and Power Conversion Systems. Requirements for the AFW System and CST are included in the new Technical Specifications 3.18 and 3.19. The specifications provide explicit limiting conditions for operation (LCO), applicability requirements, and Action requirements for operation of the AFW System and CST. The format (i.e., LCO, applicability, Action requirements) is that of NUREG-0452, Standard Technical Specifications for Westinghouse Pressurized Water Reactors (WSTS), although the requirements in the proposed Specifications differ from the WSTS because of the uniqueness of the Turkey Point Plant AFW System design (i.e., shared system, three turbine driven pumps, etc.)

The amendments also provide surveillance requirements for the CST which were not included in the existing Technical Specifications, correct errors in the valve numbers for two primary coolant system pressure isolation valves, and update the Bases to support the changes for the AFW System and CST.

Date of issuance: June 8, 1987

Effective date: June 8, 1987

Amendment Nos. 124 and 118

Facility Operating Licenses Nos. DPR-31 and DPR-41: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1986 (51 FR 22235) and renoticed on May 8, 1987 (52 FR 16945)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: February 3, 1987

Brief description of amendment: This amendment revised the Technical Specifications to account for a new condenser vent stack iodine sampler. The new iodine sampler provides for continuous sampling unrestricted areas to determine compliance with 10 CFR 20 and 10 CFR 50, Appendix I. The amendment also made an editorial change in Table 4.22-2.

Date of issuance: June 8, 1987

Effective date: June 8, 1987

Amendment No.: 130

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13337)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: June 20, 1986 as supplemented July 22, 1986 and January 2, 1987

Brief description of amendments: The amendments modify the Technical Specifications to permit operation with only one recirculation loop in operation and to implement the jet pump surveillance recommendations of

NUREG/CR-3052 "BWR Jet Pump Assembly Failure."

Date of issuance: June 10, 1987

Effective date: June 10, 1987

Amendment Nos.: 141 and 77

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 27, 1986 (51 FR 30572)

The Applicant's January 2, 1987, supplement was merely to correct a typographical error.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of application for amendment: January 28, 1987 as supplemented February 13 and April 16, 1987.

Brief description of amendment: The amendment modified the Scram Discharge Volume Water Level - High trip setpoint for the Float Switches LSN013A, B, C and D in the Technical Specifications.

Date of issuance: June 6, 1987.

Effective date: June 6, 1987.

Amendment No. 6

Facility Operating License No. NPF-47. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16948).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Indiana and Michigan Electric Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: March 26, 1987 (Partial).

Brief description of amendments: The amendments changed the Technical Specifications (TS) to revise the refueling operation boron concentrations, increase the boron concentrations in the refueling water storage tank (RWST) and accumulators, increase the usable water volumes required in the RWST, increase the RWST temperature at all times to prevent precipitation, make the moderator temperature coefficient a ramp function with power rather than a step function, and add footnotes such that addition of water from the RWST does not constitute a boron deletion. The remaining items from the licensee's March 26, 1987 submittal will be the subject of a separate action.

Date of issuance: June 10, 1987.

Effective date: June 10, 1987.

Amendment Nos.: 111 and 94.

Facility Operating License Nos. DPR-58 and DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16949).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 10, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Louisiana Power and Light Company, Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: February 23, 1987

Brief description of amendment: The amendment revised the Technical Specifications by: (1) raising the emergency feedwater initiation setpoint from 30% to 36.3% of wide range level; (2) raising the required refueling water storage pool level from 82% to 83%; and (3) raising the required safety injection tank level from 60% to 61%.

Date of issuance: June 15, 1987

Effective date: June 15, 1987

Amendment No.: 19

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9574-6)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: February 24, 1987

Brief description of amendment: This amendment modifies the Technical Specifications to reflect revised Loss of Coolant (LOCA) Limits. These revised LOCA Limits were determined using a revised delta P injection penalty factor during the reflood phase of LOCA's and limiting axial power shapes. The revised delta P injection penalty factor and the method to select the limiting axial power shapes were proposed and justified in the Maine Yankee Atomic Power Company (MYAPCo) letter to NRC dated November 10, 1986. These proposed revisions to the Emergency Core Cooling system (ECCS) Evaluation Model were reviewed and found acceptable in the NRC letter to MYAPCo dated January 6, 1987.

Date of issuance: June 15, 1987

Effective date: June 15, 1987

Amendment No.: 98

Facility Operating License No. DPR-36. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9577)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Wiscasset Public Library, High Street Wiscasset, Maine 04578

Northeast Nuclear Energy Company, et al., Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendment: January 20, 1987

Brief description of amendment: The amendment adds six (6) fire protection water suppression systems to the list of fire protection systems in Technical Specification 3.12.B.1. Four (4) of the proposed suppression systems are located in the turbine building. The other two (2) are located in the reactor building. The proposed additions are new requirements for suppressing fires in the lube oil systems of the condensate booster pumps, reactor feedwater pumps and motor generator sets, as well as in the curbed area of the motor generator sets, turbine building unloading area and the mezzanine level cable tray.

Date of issuance: June 5, 1987

Effective date: June 5, 1987

Amendment No.: 3

Facility Operating License No. DPR-21. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7686).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: December 10, 1986

Brief description of amendment: The amendment revised the Technical Specifications Sections 4.6.1.2.d, 4.6.1.2.g, 4.6.1.7.2 and Technical Specification Bases Section 3/4.6.1.7 to delete the requirement to leak test the containment purge supply and exhaust isolation valves every six months. Instead, these valves would be leak tested at intervals no greater than 24 months in acordance with Technical Specification Section 4.6.1.2.d and 10 CFR 50, Appendix J in conjunction with a valve seat replacement program.

Date of issuance: June 15, 1987

Effective date: June 15, 1987

Amendment No.: 5

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7688)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Northeast Nuclear Energy Company, Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, Town of Waterford, Connecticut

Date of amendment request: December 5, 1986

Description of amendment request: The amendment revised Millstone Unit No. 3 Technical Specification Figure 6.2-2, Unit Organization, by changing the depiction of the Millstone Station Services Organization as individual Security, Quality Services and Radiological Services groups reporting to the Station Services Superintendent to depiction as one group of staff including QA, Security, Health Physics, Chemistry and other Site Support Services Staff reporting to the Station Services Superintendent.

Date of issuance: June 15, 1987

Effective date: June 15, 1987

Amendment No.: 6

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7688).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385

Pacific Gas and Electric Company, Docket No. 50-323, Diablo Canyon Nuclear Power Plant, San Luis Obispo County, California

Date of application for amendment: March 17, 1987, as supplemented May 6, 1987.

Brief description of amendment: The amendment extends the time for submittal of a steam generator tube rupture analysis to April 1988.

Effective date: June 12, 1987

Amendment No.: 12

Facility Operating License No. DPR-82: Amendment revised the license.

Date of initial notice in **Federal Register:** May 12, 1987 (51 FR 17864)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 12, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 10, 1987

Brief description of amendments: These amendments allow replacement of fuel rods in fuel assemblies with filler rods or vacancies on a limited basis provided that such replacement is demonstrated to be acceptable by a cycle-specific reload analysis.

Date of Issuance: June 8, 1987

Effective date: June 8, 1987

Amendment Nos: 13 and 11

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13344).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 8, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: March 25, 1987, as supplemented May 26, 1987

Brief description of amendments: The amendments revised the Technical Specifications to accommodate Cycle 2 and later operation of Unit 2, and Cycle 3 and later operation of Unit 1.

Date of Issuance: June 12, 1987

Effective date: June 12, 1987

Amendment Nos: 14 and 13

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16949)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated June 12, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of application for amendment: March 27, 1986, as revised April 18, 1986, March 2, and April 3, 1987

Brief description of amendment: This amendment revised the SSES Unit 2 Technical Specifications to include operational control on equipment which must be operable to ensure proper functioning of the newly installed drywell cooling fans.

Date of issuance: June 5, 1987

Effective date: June 5, 1987

Amendment No. 36

Facility Operating License No. NPF-22. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16932)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 5, 1987.

No significant hazards consideration comments 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. 50-286, Indian Point Unit No. 3, Westchester County, New York

Date of application for amendment: March 10, 1987.

Brief description of amendment: The amendment revises the Technical Specification requirement for control bank insertion limits. The revision is being made to reflect a more conservative insertion position for the C and D control banks.

Date of issuance: June 8, 1987

Effective date: June 8, 1987

Amendment No.: 75

Facilities Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 6, 1987 (52 FR 16954)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10610.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 3, 1987, as supplemented May 8, 1987

Brief description of amendment: The amendment has granted relief from an ASME Boiler and Pressure Vessel Code, Section XI, valve leakage test requirement for the Hope Creek Generating Station. The amendment also extended the current Technical Specification surveillance intervals for 27 reactor coolant system pressure isolation valves and primary containment isolation valves, on a one-time-only basis, from once every 18 months and once every 24 months, until the first refueling outage (currently scheduled to begin on February 1, 1988). The code relief allows leak tests of the 27 valves, required by the code to be performed no less than once every two years, to be deferred until the first refueling outage.

Date of issuance: June 9, 1987

Effective date: June 9, 1987

Amendment No. 4

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** (52 FR 16954) May 6, 1987

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: March 27, 1987.

Brief description of amendment: The amendment modified Section 5.3.1 of the Technical Specifications to allow for limited replacement of fuel rods with filler rods or vacancies if supported by a cycle-specific reload analysis.

Date of issuance: June 8, 1987.

Effective date: June 8, 1987.

Amendment No.: 24.

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 22, 1987 (52 FR 13350)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

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, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been 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 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 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, NW, 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 July 31, 1987, 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 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.

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 *(Project Director):* 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 Office of the General Counsel-Bethesda, 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, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: May 29, 1987

Brief description of amendment: The amendment revises the steam tunnel and turbine building main steam line high temperature trip setpoints and allowable values, items 2.f, 2.g, 2.h, 4.f, 4.g, 5.f and 5.g of Table 3.3.2-2 of the Technical Specifications.

Date of issuance: June 10, 1987

Effective date: May 29, 1987

Amendment No. 7

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, consultation with the State of Ohio, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 29, 1987.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW, Washington, DC 20037

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

NRC Project Director: Martin J. Virgilio, Acting.

Dated at Bethesda, Maryland this 25th day of June, 1987.

For the Nuclear Regulatory Commission.

Bruce A. Boger, Acting Director

Division of Reactor Projects-I/II 0[FR Doc. 87-14808 Filed 6-30-87; 8:45 am]

BILLING CODE 7590-01-D

[Docket Nos. 50-443-OL-01, 50-444-OL-1]

Atomic Safety and Licensing Appeal Board; Public Service Co. of New Hampshire, et al.; (Seabrook Station, Units 1 and 2); (Onsite Emergency Planning and Safety Issues); Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of June 24, 1987, oral argument on the pending appeals from the Licensing Board's March 25, 1987 partial initial decision in the onsite emergency planning and safety issues phase of this operating license proceeding involving the Seabrook nuclear facility will be heard at *9:30 a.m. on Friday, July 24, 1987, in Courtroom No. 2, United States District Court for the District of New Hampshire, 55 Pleasant Street, Concord, New Hampshire.*

Dated: June 26, 1987.

For The Appeal Board.

C. Jean Shoemaker,

Secretary to the Appeal Board.

[FR Doc. 87-14947 Filed 6-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-133]

Availability of the Final Environmental Statement for Decommissioning of Humboldt Bay Power Plan Unit No. 3; Correction

This document corrects a notice of availability appearing in the **Federal Register** on May 12, 1987 (52 FR 17863). The second sentence of the second paragraph of this document is corrected to read as follows:

Copies of NUREG-1166 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy is available for inspection or copying for a fee in the NRC Public Document Room, 1717 H Street, NW., Washington, DC 20555.

Dated at Bethesda, Maryland this 25th day of June 1987.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-14940 Filed 6-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-410]

Niagara Mohawk Power Corp.; Nine Mile Point Nuclear Station Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuing an exemption from the requirements of 10 CFR Part 50 to Niagara Mohawk Power Corporation (the licensee) for the Nine Mile Point Nuclear Station Unit 2 (NMP-2), located in Oswego County, New York.

Environmental Assessment

Identification of Proposed Action: The exemption would allow the licensee to delay installation of certain Class 1E protective devices required to meet 10 CFR 50.55a(h), until completion of the first refueling outage.

10 CFR 50.55a(h), "Protective Systems", states that, for construction permits issued after January 1, 1971, [the NMP-2 construction permit was issued June 24, 1974], protective systems shall meet the requirements set forth in editions or revisions of the Institute of Electrical and Electronics Engineers Standard: "Criteria for Protective Systems for Nuclear Power Generating Stations," (IEEE-279) in effect on the formal docket date of the application for construction permit. The subject standard states, in part, that equipment used for both protective (Class 1E) and control (non-Class 1E) functions shall be classified as part of the protective system.

The NMP-2 neutron monitoring system (NMS) uses non-Class 1E protective devices for isolation purposes between Class 1E and non-Class 1E circuits, thereby not meeting the requirements of the regulations discussed above.

The licensee has committed to replace these non-Class 1E devices with Class 1E protective devices for those non-Class 1E circuits connected to Class 1E buses in the NMS.

The applicant's request for a schedular exemption from the requirements of 10 CFR 50.55a(h) for the RPS and the basis therefore, are contained in its letters of June 23, 1987, and June 25, 1987.

Need for proposed Action: The exemption to 10 CFR 50.55a(h) would allow the licensee to operate NMP-2 before the completion of the first refueling outage before replacing the non-Class 1E devices as discussed above. Without this exemption, full power operation of NMP-2 would be delayed.

Environmental Impact of the Proposed Action: This exemption would allow opertion of NMP-2 until completion of the first refueling outage before replacing the non-Class 1E devices. The licensee has stated that the non-Class 1E devices discussed above: (1) Are currently installed in low-energy circuits, (2) are similar to other qualified Class 1E devices, and (3) have satisfactory performance history in currently operating boiling water reactors. For the above reasons, the Commission has determined that the probability of these devices failing in a mode that would jeopardize the ability of this plant to operate and to shut down safely during the period through the completion of the first refueling outage is extremely low. Because of the extremely low probability of such an event, the Commission has determined that there is not a significant increase in the probability of radiological releases associated with this exemption over that previously determined for Nine Mile Point Nuclear Station Unit 2. Likewise, the relief does not affect non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: Because the staff has concluded that there is no measurable environmental impact associated with the exemption, any alternative to the exemption will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. Such action would not reduce environmental impacts of Nine Mile Point Nuclear Station Unit 2 operations, but would result in unwarranted delays in full power operation.

Alternative Use of Resources: This action in the granting of the above exemption does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Nine Mile Point Nuclear Station, Unit No. 2" dated May 1985.

Agencies and Persons Contacted: The NRC staff reviewed the licensee's request that support the requested exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

On the basis of the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the requested exemption.

For further details with respect to this action, see the request for the exemption dated June 23, 1987, as supplemented June 25, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555, and at the Penfield Library, State University College, Oswego, New York 13125.

Dated at Bethesda, Maryland, this 25th day of June 1987.

Robert A. Capra,

Acting Director, Project Directorate I-1, Division of Reactor Projects, I/II.

[FR Doc. 87-14939 Filed 6-30-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-445 and 50-446]

Texas Utilities Electric Company et al. (Comanche Peak Steam Electric Station, Units 1 and 2)

Notice is hereby given that the Director, Office of Special Projects, has denied a petition under 10 CFR 2.206 filed by Robert A. Jablon, Esq., on behalf of the Brazos Electric Power Cooperative, Inc. (Brazos). This petition is related to the Comanche Peak Steam Electric Station Units 1 and 2 (Comanche Peak Project). In its petition, Brazos requested that the Nuclear Regulatory Commission order the licensee and license applicant Texas Utilities Electric Company to assume co-owner/co-applicant Brazos' ownership interest in the Comanche Peak Project by purchase at Brazos' net book cost, and for such other relief as may be appropriate.

The reasons for the denial of Brazos' petition are fully described in the "Director's Decision Under 10 CFR 2.206" issued on this date, which is available for public inspection in the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555, and in the local public document rooms for the Comanche Peak Project located at the Documents Department, University of Texas, 701 South Cooper, Post Office Box 19497, Arlington, Texas 76019, and the Glen Rose Somervell Library, Barnard and Highway 144, Post Office Box 417, Glen Rose, Texas 76043. A copy of the decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c).

Dated at Bethesda, Maryland this 25th day of June 1987.

For the Nuclear Regulatory Commission.

James G. Keppler,

Director, Office of Special Projects.

[FR Doc. 87-14941 Filed 6-30-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15824; 813-79]

Partner Wealth Fund I, L.P.; Notice of Application

June 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: Partner Wealth Fund I, L.P.

Relevant 1940 Act Sections: Exemption is requested under Sections 6(b) and 6(e) and confidential treatment is requested under Section 45(a).

Summary of Application: Applicant seeks an order as an employees' securities company within the meaning of Section 2(a)(13) of the 1940 Act exempting itself and each successive limited partnership from all provisions of the 1940 Act, except Sections 9, 36 and 37, certain provisions of Sections 17 and 30 of the 1940 Act, and certain rules and regulations thereunder, and granting it confidential treatment for certain documents.

Filing Date: The application was filed on April 2, 1987, and amended on June 8, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 17, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary fo the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington DC 20549. Applicant, 1633 Broadway, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-3037 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant is a Delaware limited partnership formed as an "employees' securities company" within the meaning of Section 2(a)(13) of the 1940 Act. The general partner of Applicant is Touche Holdings, Inc. (the "Initial General Partner"), a Delaware corporation wholly-owned by Touche Ross & Co. (the "Firm"); the limited partners will be the Firm and partners and principals of the Firm (collectively, the "Firm Partners").

2. It is anticipated that the Firm will organize successive limited partnerships (the "Subsequent Partnerships") similar to Applicant approximately every two years (the period during which the funds of the immediately preceding partnership would become fully invested). Applicant and each Subsequent Partnership (collectively, the "Partnerships") will register under the 1940 Act as a closed-end, non-diversified, management investment company.

3. Applicant asserts that each Partnership will be an "employees" securities company" within the meaning of Section 2(a)(13) of the 1940 Act, inasmuch as participation in each Partnership will be limited to Firm Partners and former Firm Partners. Applicant also asserts that (a) Firm Partners will be experienced and sophisticated in accounting and business and financial matters as evidenced by their having achieved partnership status in a "big eight" accounting firm, and all Firm Partners will be equipped by experience and education to understand the nature and structure of the Partnerships and their investment plan as well as to evaluate the risks and investment opportunity afforded by the Partnerships compared to other investment opportunities; (b) all Firm Partners will understand that (i) interests in the Partnerships will be sold under a claim of exemption under Section 4(2) of the Securities Act of 1933 ("1933 Act") and, thus, are offered without registration under the 1933 Act and the protections afforded by that law, and (ii) although registered under the 1940 Act, the Partnerships will be

exempt from most provisions of the 1940 Act; (c) substantially all Firm Partners earned in excess of $70,000 in 1986 and are expected to earn in excess of $70,000 in 1987, and a majority of the individuals earned in excess of $140,000 in 1986 and are expected to earn in excess of $150,000 in 1987; (d) a substantial community of interest will exist among the Firm Partners by virtue of their common association in the Firm, which obviates the need for the protections provided by the 1940 Act; and (e) the Partnerships will be organized by the Firm and not promoted by persons seeking to profit from fees for investment advice or from the distribution of securities.

4. Each Partnership's purpose is to enable Firm Partners to pool investment resources to take advantage of investment opportunities that come to the attention of the Firm and the Firm Partners. Each Partnership is intended to achieve long-term capital appreciation, with expected realization of its investment objectives within approximately seven years. The Firm intends to invest a portion of its capital (and, therefore, a portion of each Firm Partner's capital in the Firm) in each Partnership. In addition, each Firm Partner would be permitted to make capital contributions to the Partnerships on an individual basis. The Firm intends to extend credit, on a subordinated basis, to Applicant in a principal amount equal to the amount it invests as a Firm partner. The Initial General Partner will contribute one percent to the capital of the Applicant.

5. Neither the Initial General Partner nor the Firm will be compensated by Applicant for services to it, except for an annual one percent management fee to the Initial General Partner. This fee is intended to reimburse the Initial General Partner with respect to the costs incurred by it in connection with Applicant's organization, including, but not limited to, legal fees, and the day-to-day management of Applicant, including, but not limited to, general overhead expenses and legal, consulting and accounting fees. This fee is not expected to exceed the amount of the actual costs incurred by the Initial General Partner on behalf of Applicant. Applicant will bear all other fees and expenses directly related to its investments. No sales load will be charged.

6. The general partner of each Partnership will be a corporation wholly-owned by the Firm, will manage the day-to-day business of the Partnership, and will make all decisions relating to the acquisition, management and disposition of its investments. The directors and officers of each general partner will be Firm Partners selected by the Firm. The general partner of each Partnership will have an investment advisory committee appointed by the general partner's board of directors and consisting of members of its board and other Firm Partners. The investment advisory committee will be responsible for evaluating investment opportunities for the Partnership and making recommendations regarding those investment opportunities to the general partner's board of directors. The directors, officers and members of the investment advisory committee will be Firm Partners who have purchased a minimum of a $25,000 interest in the respective Partnership.

7. Upon withdrawing from the Firm for any reason, other than death, a Firm Partner will remain as such, unless the general partner, in its sole discretion, requires or permits withdrawal from the Partnership. Withdrawal would be required if the general partner determines, in its sole discretion, that the Firm Partner's continued participation in the Partnership (i) would, in view of his subsequent business activities, cause the Firm to lose or appear to lose its "independence" with respect to one or more clients from whom it is required to remain "independent," or (ii) is otherwise not in the Partnership's best interests. Withdrawal may be permitted in certain other cases, including hardship. If a Firm Partner dies, the Firm Partner's estate would continue to participate in the Partnership(s) in which the deceased had invested.

8. Except for transfers to an estate upon death, Firm Partners will not be permitted to transfer interests in a Partnership without the prior written consent of the general partner, which may withhold its consent for any reason. Such transfers will be permitted only to other Firm Partners in that Partnership and in no event would the general partner permit a transfer that would cause the Partnership to cease to be an "employees' securities company" within the meaning of the 1940 Act.

9. Each Firm Partner of a Partnership will receive an annual report containing the unaudited financial statements of that Partnership, information as to that Firm Partner's share of the net income or net loss of that Partnership and required tax information.

10. Applicant seeks exemption from Sections 17(a) and 17(d) of the 1940 Act to allow the Partnerships to purchase from or sell to the Firm, any Firm Partner, or any entity in which the Firm or any Firm Partner has an owership interest ("Affiliated Entities"), securities or interests in properties owned by the Partnership, the Firm, any Firm Partner or any Affiliated Entity; to purchase or sell interests in a company or other investment vehicle in which the Firm, any Firm Partner or any Affiliated Entity already owns securities or controls that investment vehicle; and to engage in transactions in which one or more of the Firm, any Firm Partner or any Affiliated Entity also participates. Any such transaction by a Partnership would only be effected upon a determination by the board of directors of the relevant general partner that the terms of the transaction are reasonable and fair to the Partnership and the respective Firm Partners and do not involve overreaching by any party concerned. Furthermore, prior to making any joint investment with the Firm, a Firm Partner or an Affiliated Entity, the general partner would be required to obtain a commitment from the Firm, the Firm Partner or the Affiliated Entity, and the case may be, that such party not dispose of its interest in the joint investment without giving sufficient prior notice to the general partner (which in no event shall be less than one day's prior notice) so that the Partnership has the opportunity to dispose of its interest in the joint investment prior to or concurrently with, and on the same terms as, that party. The general partner's officers and directors would be subject to Section 36 of the 1940 Act and would comply with the requirements of Sections 57(f)(3) and 57(h) of the 1940 Act with respect to all transactions for which approval of the SEC would have been required under Section 17(a) or 17(d) of the 1940 Act if the Partnership were not granted an exemption from those sections. In addition, minutes of meetings of the general partner's board of directors in which these matters are considered, including the procedures adopted by the general partner in connection with its evaluation of investments, would be available for inspection by the Firm Partners. Applicant has also requested that the Partnerships be granted limited exemptions from Sections 17(f), 17(g) and 17(j) of the 1940 Act and Rules 17f–2, 17g–1 and 17j–1 thereunder.

11. Applicant also seeks exemption from Sections 30(a), 30(b) and 30(d) of the 1940 Act and the rules thereunder which would require the Partnership to mail to their partners and file with the SEC certain periodic reports and financial statements, so as to permit each Partnership to report annually to its Firm Partners. The exemption is

requested because the forms prescribed by the SEC for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Firm Partners. In addition, because interests in the Partnerships would not be available to the public, the purposes intended to be served by Sections 30(a) and 30(b) are not relevant to the Partnerships. Each Partnership would file with the SEC a copy of the financial statements and narrative report required to be provided annually to the Firm Partners pursuant to the Partnership Agreement. Applicant further requests that such filings and any other of its filing to the SEC under Section 30 of the 1940 Act which may be made by the Partnerships be afforded confidential treatment under Section 45(a) of the 1940 Act. Confidential treatment is requested because there would be no public trading in interests of the Partnerships, and the Firm Partners, who are the only people with a legitimate interest in the information that might be provided pursuant to Section 30, would receive that information.

12. Applicant further requests exemption from Section 30(f) filing requirements for the officers, directors and others who may be deemed officers, directors or members of the advisory board of a Partnership since no trading market for any Partnership interests will exist and transferability of the interest will be severely restricted.

Applicant's Legal Conclusions

Accordingly, the Applicant submits that the exemptive order requested pursuant to sections 6(b) and 6(e) of the 1940 Act and the order granting confidential treatment pursuant to section 45(a) of the 1940 Act is consistent with the protection of investors. The exemptions requested are also necessary and reasonable given the nature of the Partnerships as employees' securities companies under the 1940 Act and their intended manner of operation. Moreover, because the Partnerships would be managed for the benefit of Firm Partners by individuals who are themselves Firm Partners in the Partnerships they manage, a substantial community of interest would exist between the management of each Partnership and other Firm Partners, which obviates the need for the protections provided by the 1940 Act as set forth above.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-14961 Filed 6-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15825; 812-6711]

Pioneer Bond Fund, et al.; Notice of Application

June 24, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order to Amend an Existing Order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Pioneer Money Market Trust ("No Load Fund"), Pioneer Bond Fund and Pioneer Municipal Bond Fund (collectively, the "Reduced Load Funds"), and Pioneer Fund, Pioneer II and Pioneer Three (collectively, the "Load Funds") (collectively with the No Load Fund and Reduced Load Funds, the "Funds"), and The Pioneer Group, Inc. (the "Underwriter") on behalf of all existing and subsequently created series of the Funds and any other investment company or series which will be distributed by the Underwriter on substantially the same basis as the Funds' shares ("Additional Funds").

Relevant 1940 Act Section: Approval of exchange offer requested under Section 11(a).

Summary of Application: Applicants seek an order amending an existing order [Investment Company Act Release No. IC-14956, February 25, 1986] ("Current Order") to approve the exchange of shares among the Funds and any Additional Funds pursuant to a modified incremental sales charge formula, and the imposition of a $5.00 service fee on such exchanges.

Filing Date: The application was filed on May 6, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on July 17, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington D.C. 20549. Applicants, c/o Hale and Dorr, 60 State Street, Boston, Massachusetts 02109. Attention: Michael E. Lytton, Esq.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney (202) 272-3037 or Brion R. Thompson, Special Counsel (202) 272-3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each Fund is registered under the 1940 Act as an open-end, management investment company, except for the No Load Fund whose registration statement was filed on April 6, 1987. The Underwriter, the principal underwriter for each of the Funds, maintains or will maintain a continuous public offering of (i) shares of each of the Load Funds at its respective net asset value plus a maximum sales charge of 8.5 percent of the offering price, (ii) shares of each of the Reduced Load Funds at its respective net asset value plus a maximum sales charge of 4.5 percent, and thus, lower than the corresponding charge for the Load Funds, and (iii) shares of the No Load Fund at its net asset value without a sales charge.

2. From time to time, the sales charges applicable to one or more of the Funds may change. In addition, the Underwriter may from time to time become principal underwriter for certain Additional Funds, which at such time may be considered Load, Reduced Load or No Load Funds, as the case may be.

3. Under the Current Order, exchanges of shares of certain Funds for shares of other Funds are permitted based upon the relative net asset value of such shares at the time of the exchange plus an incremental sales charge imposed on the transfer of shares from a Reduced Load Fund (the "Initial Fund") to a Load Fund (the "Successor Fund") equal to the sales charge applicable to the shares of the Successor Fund less the greater of (i) the sales charges paid in connection with the purchase of shares of the Initial

Fund, and (ii) the sales charge which would be applicable to a purchase of shares of the Initial Fund at the time of the exchange (the "Current Formula").

4. Applicants propose to modify the Current Formula and redefine the incremental sales charge on an exchange as being equal to the difference between (i) the sales charge applicable to a purchase of shares of the Successor Fund and (ii) the maximum sales charge applicable to the shares of the Initial Fund held at the time of the exchange (the "Proposed Formula"). Under the Proposed Formula, exchanges of shares accumulated through reinvestment of capital gains or dividend distributions since the time of the shareholder's investment in the Initial Fund will be effected at relative net asset value; no incremental sales charge would be applicable. Thus, the Proposed Formula would simply consist of taking the difference between the subsequent and preceding sales charge categories, eliminating the necessity for a "greater than comparison."

5. Applicants also intend to impose a $5.00 service fee on all exchanges (the "Service Fee") in order to compensate the Funds' shareholder servicing agent, Pioneer Services Corporation (the "Agent"), a wholly-owned subsidiary of the Underwriter, for the costs incurred in facilitating exchanges among the Funds.

6. The foregoing exchange transactions would be subject to the condition that the shares to be exchanged must have a net asset value of the minimum initial amount required for investment in the shares of the Fund to be acquired. Letters of intention, rights of accumulation and other arrangements described in the prospectuses of the Funds which allow for reduced sales charges would be applied to determine the sales charge applicable to shares of a Fund acquired by exchange.

7. Applicants request that the order also be applicable to any No Load Fund, Reduced Loan Fund or Load Fund which in the future changes the level of its sales charge, as well as any Additional Fund so long as such Fund or Additional Fund has sales charge features consistent with those described above. Applicants undertake to limit any future offers of exchange involving any Fund or Additional Fund to the terms and conditions described in the application.

Applicants' Legal Conclusions

1. Applicants submit that (i) the Proposed Formula is fair and equitable to shareholders of all the Funds while at the same time giving such shareholders flexibility in their financial planning and (ii) the order requested is in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Also, the Proposed Formula is consistent with the guidelines set forth in proposed Rule 11a–3 under the 1940 Act.

2. Furthermore, the Proposed Formula serves the same objectives as the Current Formula since it (i) permits a shareholder whose investment goals change to switch his investment to a different Fund within the complex of Funds without incurring the expense of an additional full sales charge, and (ii) treats shareholders exchanging into a Fund and its existing shareholders equitably, without disrupting the distribution system of the Funds. In addition, the Proposed Formula provides shareholders with the additional benefit that shares acquired through reinvestment of dividend and capital gains distributions may be exchanged without an incremental sales charge. Also, the Service Fee is fair since it treats all shareholders of the Funds in an equal manner and is designed to compensate the Agent.

3. Under the exchange plan, the commissions payable to sales representatives in connection with such exchanges would typically be less than commissions payable on a direct purchase of the shares being acquired. In view of this fact, there is not a sufficient financial incentive for a sales representative of the Underwriter to initiate such exchanges for his own benefit.

Applicants' Condition

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of proposed Rule 11a–3 under the 1940 Act if and when it is adopted by the SEC.

2. Applicants undertake to limit any future offers of exchange involving any Fund or Additional Fund to the terms and conditions described in this application.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–14962 Filed 6–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24622; File No. SR–NASD–87–16]

Self-Regulatory Organizations; Proposed Rule Changes by National Association of Securities Dealers, Inc. Relating to Rules of Fair Practice and By-Laws

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on May 8, 1987, the National Association of Securities Dealers, Inc. ("NASD") or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change to section 33(d) of the Rules of Fair Practice redefines the term "option" by reference to "security" as defined in section 3(a)(10) of the Securities Exchange Act of 1934, as amended, rather than section 2(1) of the Securities Act of 1933, as amended.

The proposed rule change to Appendix E of the Rules of Fair Practice rearranges definitions in alphabetical order, makes them consistent with definitions elsewhere in the Rules of Fair Practice and By-Laws and adds certain definitions relating to stock options. The proposed rule change also makes expicit that violations of rules, regulations or by-laws of The Options Clearing Corporation ("OCC") or the Association are violations of Article III, section 1 of the Rules of Fair Practice that may result in imposition of sanctions pursuant to Article V, section 1 of the Rules of Fair Practice.

The proposed rule change to Part IV, Schedule D of the By-Laws incorporates non-side-by-side stock option rules and procedures previously approved in principle by the Commission under File No. SR–NASD–80–10 subject to certain additions and changes approved by the Commission under File No. SR–NASD–85–21. In File No. SR–NASD–87–8 the Association proposed that Part IV be renumbered Part VIII. The proposed rule change also rearranges definitions in alphabetical order, makes them consistent with definitions elsewhere in the By-Laws and Rules of Fair Practice and adds certain definitions relating to stock options. The proposed rule change

also adds section 19 paralleling section 21 of Appendix E that makes explicit that violations of rules, regulations or by-laws of The Options Clearing Corporation or the Association are violations of Article III, section 1 of the Rules of Fair Practice that may result in imposition of sanctions pursuant to Article V, section 1 of the Rules of Fair Practice in addition to sanctions otherwise imposed under Part IV, Schedule of the By-Laws. The proposed rule change also adopts stock option opening strike prices and strike price intervals similar to those approved by the Commission for other options markets.

The proposed rule change to Part IV, Schedule D completes the Association's stock options rules for non-side-by-side market making, although the Association does not seek authority at this time to commence such market making in any specific option contract.

The proposed rule change to Part IV, Schedule D also seeks to initiate a one year pilot program pursuant to proposed section 12(b) of Part IV, Schedule D to expand the concept of the Internalized Trade Transaction ("ITT") message function approved in principle by the Commission for stock and index options in Securities Exchange Act Release No. 22026 (May 8, 1985) 50 FR 20310 and approved by the Commission for index options in Securities Exchange Release No. 22404 (September 13, 1985) 50 FR 38235. The ITT function approved by the Commission in Release No. 22404 permits member firms effecting transactions in standardized index options contracts issued by OCC in a NASDAQ market making environment to utilize the ITT message function within two minutes of the transaction for automatic trade reporting and clearing. Proposed section 12(b), for a pilot program of one year, would authorize the Corporation in a trading environment without NASDAQ market making to permit member firms effecting transactions in standardized option contracts on underlying NASDAQ/NMS stocks to utilize the ITT function for timely and automated trade reporting and clearing. Member firms using the ITT function in a trading environment without NASDAQ market making would be obligated to effect the transaction at the best market price and to make a contemporaneous notation on the trade ticket reflecting the source of the best market price. Pursuant to proposed section 19, a member firm or person associated with a member firm that failed to comply with the best market price or contemporaneous notation requirements of section 12(b) would be in violation of Article III, section 1 of the Rules of Fair Practice and subject to sanctions including censure, bar, suspension, fine or any other fitting sanction.

The proposed rule change to Part IV, Schedule D also makes explicit that member firms subject to sanctions pursuant to proposed sections 4 and 7 may seek redress through Article IX of the Code of Procedure.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-reglatory organization has prepared summaries, set forth in sections (A), (B), and (C) below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NASD states that the amendment to Article III, Section 33(d) of the Rules of Fair Practice has been proposed pursuant to the suggestion of the Commission in Securities Exchange Act Release No. 22404 (September 13, 1985), 50 FR 38235, 38237, n. 27 and repeated in a letter from Richard T. Chase, Associate Director, Division of Market Regulation, SEC, to Peter Canada, Assistant Director, NASDAQ, dated March 4, 1986, that because the NASD is a National Securities Association registered pursuant to section 15 of the Exchange Act whose rules comply with section 15A of the Securities Exchange Act, the definition of "security" in section 33(d) should refer to the Securities Exchange Act.

The NASD also states that the amendments to Appendix E have been proposed to achieve two purposes: first, to enhance the clarity and scope of Appendix E by rearranging definitions in alphabetical order, by making them consistent with definitions elsewhere in the Rules of Fair Practice and By-Laws, and by adding certain definitions relating to stock options; second, to make explicit that violations of rules, regulations or by-laws of The Options Clearing Corporation or the Association are violations of Article III, Section 1 of the Association's Rules of Fair Practice that may result in sanctions pursuant to Article V, Section 1 of the Rules of Fair Practice.

The NASD further states that the amendments to Part IV, Schedule D of the By-Laws have been proposed to achieve several purposes: First, to enhance the clarity of Part IV, Schedule D by rearranging definitions in alphabetical order and by making them consistent with definitions elsewhere in the By-Laws and Rules of Fair Practice; second, to make explicit that violations of rules, regulations or by-laws of The Options Clearing Corporation or the Association are violations of Article III, Section 1 of the Rules of Fair Practice that may result in sanctions pursuant to Article V, Section 1 of the Rules of Fair Practice in addition to sanctions elsewhere provided in Part IV, Schedule D; third, to incorporate non-side-by-side stock option rules and procedures previously approved in principle by the Commission under File No. SR–NASD–80–10 subject to certain additions and changes approved by the Commission under File No. SR–NASD–85–21; fourth, to adopt stock option opening strike prices and strike price intervals similar to those adopted by the other options markets; fifth, to make explicit that member firms subject to sanctions pursuant to section 7 of Part IV, Schedule D may seek redress through Article IX of the Code of Procedure; sixth, to initiate a one year pilot program pursuant to proposed section 12(b) of Part IV, Schedule D to expand the concept of the Internalized Trade Transaction ("ITT") message function to an environment without NASDAQ market making to permit member firms to effect transactions in standardized option contracts on underlying NASDAQ stocks by utilizing the ITT message function for timely and accurate trade reporting and clearing subject to a requirement that the member firm effect the transaction at the best market price and make a contemporaneous notation on the trade ticket reflecting the source of the best market price. Pursuant to proposed section 19(b) of Part IV, Schedule D a member firm or person associated with a member firm that failed to comply with proposed section 12(b) would be in violation of Article III, Section 1 of the Rules of Fair Practice and subject to sanctions including censure, bar, suspension, fine or any other fitting sanction.

Although the ITT pilot program has been developed to respond to member firms that have been unable to effect customer transactions in existing options markets, the Association believes that the utility of the ITT

message function should be determined by market forces during a one-year pilot program and not be artificially restricted to anticipated uses enumerated below. The following examples prepared by the NASD illustrate some but not all of the potential uses of the ITT message function pursuant to section 12(b) of Part IV, Schedule D:

1. A NASDAQ options participant is asked to facilitate a customer order to buy 5,000 shares of XYQ stock and sell 50 XYQ April 30 calls for a debit of 27. The inside market for XYQ stock is 32½–32⅝. XYQ April 30 calls are quoted at 5½–5⅝ in the best options market with a last sale of 5⅝. The options participant sells the 5,000 shares of XYQ stock to the customer out of inventory at 32⅝, the inside price, and reports this trade. The options participant then buys 50 XYQ April 30 calls from the customer at 5⅝, within the current bid and ask price in the best options market, and utilizes the ITT message function to report the options trade at 5⅝. At the end of the trading day, NASDAQ reports to OCC an opening long position in the call option in the options participant's account and an opening short position in the option participant's customer account.

2. A NASDAQ options participant receives a customer market order to buy 50 ABQ December 80 calls and a market order from a second customer to sell 50 ABQ December 80 calls. The best market for the ABQ calls is at 6–6⅛. After probing that market, the participant learns that the offer at 6⅛ is being made by a market professional for 10 contracts and that there are no public customers offering 6⅛. The options participant then fills the buy order at 6⅛ and the sell order at 6⅛. The options participant utilizes the ITT message function to report the trades at 6⅛. At the end of the trading day, NASDAQ reports to OCC an opening buy and a closing sale in the options participant's customer account.

3. A NASDAQ options participant who is a market maker in ABQ stock has been forced into a substantial long position through its market making activities. The options participant receives a customer order to buy 200 in the money ABQ calls. Upon probing the best market, the options participant learns that the transaction cannot be accommodated by that market. The options participant writes the calls to the customer at the best best market price thereby accommodating the customer transactions and enabling the options participant to establish a partially hedged position for the long stock position. The options participants utilizes the ITT message function to report the trade. At the end of the trading day, NASDAQ reports to OCC an opening buy in the options participant's customer account and an opening sale in the options participant's account.

4. A customer wishes to execute a time spread in ABQ options. With ABQ stock selling at 66, the customer would like to buy ABQ July 65 calls and sell ABQ April 65 calls for a debit of 4⅛ per spread. The best market for ABQ July 65 calls is 8–8⅜ and the best market for ABQ April 65 calls is 4–4⅜. To facilitate the customer, the NASDAQ options participant buys April ABQ 65 calls from the customer for 4⅛ and sells July ABQ 65 calls to the customer at 8¼, and utilizes the ITT message function to report the trades at the best market price. At the end of the trading day, NASDAQ reports these positions to OCC.

During the pilot and at its end, the Association states that it would evaluate utilization of the ITT message function and determine whether to seek approval to discontinue, extend or modify such use of the ITT message function pursuant to proposed section 12(b) of Part IV, Schedule D of the By-Laws.

The proposed amendment to section 33(d) of the Rules of Fair Practice suggested by the Commission in Securities Exchange Act Release No. 22404 (September 13, 1985) 50 FR 38235, 38237 N. 27 is consistent with Sections 15 and 15A of the Securities Exchange Act of 1934, as amended.

The proposed amendments to Appendix E of the Rules of Fair Practice and Part IV, Schedule D of the By-Laws are consistent with sections 11A and 15A(b) (9) and (11) of the Securities Exchange Act of 1934, as amended, in that the rules are designed to establish a NASDAQ options market with economically efficient execution of transactions, fair competition, and enhanced practicability of executing investors' orders at the best market price. The NASDAQ options market, with automated trade reporting and clearing, enhances the electronic linkage of all markets for options through communication and data processing facilities that will foster efficiency, enhance competition, increase information available to securities professionals and investors, facilitate the offsetting of investor orders and contribute to the best execution of investor orders.

The proposed amendments to Appendix E and Schedule D are consistent with section 15A(b)(2) of the Securities Exchange Act, as amended, in that they enable the Association to enforce compliance by its members and persons associated with its members with the statute and rules and regulations thereunder. The Commission, in Securities Exchange Act Release No. 22026 (May 8, 1985) 50 FR 20310, 20324, n. 147, has stated that the Association would have to develop and propose pursuant to Rule 19b–4 under the Act, acceptable frontrunning restrictions for side-by-side market making. This rule filing does not propsoe side-by-side market making. The Commission approved the NASD's index option rules in Securities Exchange Act Release No. 22404 (September 13, 1985) 50 FR 38235, 38237, n. 24, noting that even though the Association has not formally issued a frontrunning circular, the NASD has always taken the position that Article III, Section 1 of the Rules of Fair Practice prohibits frontrunning to the same extent as do the frontrunning circulars of the options exchanges. The Intermarket Surveillance Group, which includes the NASD, recently has concluded discussions to amend existing frontrunning circulars and NASD will present a comprehensive frontrunning circular to its committees and Board of Governors in the near future.

The proposed amendments to Appendix E and Schedule D are consistent with section 15A(b)(6) of the Securities Exchange Act of 1934, in that the rules of the Association are designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The proposed amendments to Appendix E and Schedule D are consistent with sections 15A(b) (7) and (8) in that the rules are designed to provide fair procedures to appropriately discipline members and persons associated with members for violation of the statute and rules and regulations thereunder as well as the rules and regulations of the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not anticipate that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received by the Association. The Association's original proposed rule change, contained in File No. SR–NASD–80–10 relating to stock options was noticed for comment in Securities Exchange Act Release No. 16979 (July 15, 1980), 45 FR 53295. Amendments Nos. 1 and 2 relating to index options were noticed for comment in Securities Exchange Act Release Nos. 19817 and 19330 (July 26 and December 31, 1982), 47 FR 33575 and 57812. Amendment No. 3 relating to stock and index options was noticed for comment in Securities Exchange Act Release No. 21891 (March 25, 1985), 50 FR 12673. The Commission considered all comments received pursuant to such notices for comment in Securities Exchange Act Release No. 22026 (May 8, 1985) 50 FR 20310, which, among other things, approved in concept the Association's stock and index option proposals and indicated that the Association would have to submit certain additional rules as well as an adequate surveillance plan.

Subsequently, the Association submitted a proposal rule change, contained in File No. SR–NASD–85–21 incorporating the index options rules and procedures previously contained in SR–NASD–80–10 and making certain additions and changes to such rules and procedures as well as submitting a surveillance plan. The proposed rule change contained in File No. SR–NASD–85–21 was noticed for comment in Securities Exchange Act Release No. 22292 (August 6, 1985), 50 FR 32936 (August 15, 1985). The Commission, in Securities Exchange Act Release No. 22404 (September 13, 1985) 50 FR 38235, among other things, approved the Association's index option proposals as modified from File No. SR–NASD–80–10 after finding the Association's surveillance plan adequate, its index option rules complete, and that certain deleted features, including automatic execution and a three-contract quote commitment rule, were not required by section 15A(b)(6) or 11(A) of the Securities and Exchange Act.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. In addition, the Commission is particularly interested in receiving comments on a number of issues concerning the proposed ITT function contained in the rule proposal.

The Commission's determination to approve a NASDAQ market for options on over-the-counter securities was based, in part, on the potential benefits inherent in the NASDAQ competitive market making system. The NASD now proposes to permit its member firms to trade options on OTC Securities off the floor of the exchange even though those firms will not regularly disseminate quotations in those options. The Commission believes such a proposal raises a number of structural questions regarding market fragmentation and best execution. In particular, the Commission requests comment on:

(1) Whether increased efficiencies would result in the handling of institutional and large retail orders off-floor through the ITT.

(2) Whether the proposal might reduce liquidity on the exchange floor by eliminating participation of these orders in the exchange auction market and eliminating exchange options specialist or market maker participation in those trades.

(3) Whether customer orders routed to the floor would have a reduced opportunity of receiving a favorable execution because they cannot interact with the internalized orders. In this connection, the Commission would appreciate commentators to discuss:

(a) Whether as a prerequisite to internalizing a customer options order, it would be appropriate for the NASD to require member firms, (i) to determine that the order cannot be accommodated by an exchange options specialist, market maker, or other trading interest on the floor of an options exchange trading the particular class of option; (ii) to expose the customer order to the exchange markets at a price superior to the best bids or offer disseminated over the Options Price Reporting Authority or (iii) to match or better the best bid or offer quoted in the exchange markets for the particular option in its execution of a customer's options order through the ITT; and

(b) Whether the proposal should take into account the priority of orders on the limit order book on the exchange trading the particular option. For example, should a member firm be required to accommodate all orders on the limit order book that have time and/or price priority over its customer order before executing that order through the ITT function?

(4) Whether the ITT should be restricted to customer orders of a certain size, *e.g.*, block-sized order, or of a certain type, *e.g.*, spread or stock option combination orders or whether it should be available to all types of orders.

(5) Whether permitting internalization by NASD member firms of customer options orders in the absence of NASDAQ market making in those options would have an impact on competition in the markets for options on NASDAQ stocks.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 22, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 19, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–14930 Filed 6–30–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-24625; File No. SR-NYSE-87-18]

Self-Regulatory Organizations; Proposed Rule Change by New York Stock Exchange, Inc., Relating to Off-Floor Telephone Communication

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 12, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 36 by adding a new paragraph (Rule 36.20) which will permit members and member organizations to maintain telephone lines which will permit non-members located off the trading floor to communicate with members and member organizations on the floor but only at the booth locations of members and member organizations. The new paragraph will specifically disallow the use of portable telephones on the trading floor.

The proposed rule change also adds a second new paragraph to Rule 36 (Rule 36.30). That new paragraph, in the interests of completeness, sets forth the existing Exchange policy as to telephone wires connecting the trading posts of the specialists with off-floor locations. In accordance with present policy, that paragraph states that, with Exchange approval, a specialist unit may maintain a telephone line at its trading post location linking it to the off-floor offices of the specialist unit or to the off-floor offices of the unit's clearing firm. However, the telephone line may not be used for the purpose of transmitting to the floor orders for the purchase or sale of securities.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose.* The purpose of the proposed rule change is to state explicitly the policy of the Exchange with respect to the installation and maintenance by members and member organizations of the Exchange of telephone (voice) communications between the trading floor of the Exchange and off-floor locations.

Background

Rule 36 of the Exchange expressly requires members and member organizations who wish to establish telephonic or electronic communication between the Exchange trading floor and the off-floor offices of the member or member organization to first receive the approval of the Exchange. Rule 36 does not specifically address the subject of telephonic communication between the Exchange trading floor and the off-floor premises of non-members of the Exchange. Traditionally, the Exchange has interpreted Rule 36 and other provisions of its Constitution and Rules as prohibiting any telephonic communication link between its trading floor and the off-floor premises of a non-member. On May 6, 1987, the Securities and Exchange Commission (the "Commission") issued its opinion in the Matter of the (*see* Securities Exchange Act Release No. 24429, May 6, 1987). In that opinion, the Commission concluded that the Exchange has no rule, or policy enforceable as a rule, which prohibits members from establishing and maintaining telephone communication links between the Exchange trading floor and non-members located off the floor. The Commission concluded that, because the Exchange has no such rule, the action of the Exchange in refusing to permit two members who had sought permission to establish telephonic communication links between the trading floor and the off-floor premises of non-members should be set aside. Accordingly, the Commission ordered the Exchange to comply with the requests of the two members for the installation of telephone connections to enable them to communicate from the Exchange floor with non-members located off the floor.

The Commission's order was stayed until June 10, 1987 and commencing that date, Mr. Higgins has been allowed to maintain a portable radio telephone on the trading floor pursuant to his earlier request and Mr. Robbins has been permitted to maintain a wired telephone to his booth space on the trading floor. In each case, the telephone instruments have the capability of permitting voice communication between the trading floor and any off-floor location, including the premises of non-members of the Exchange.

Booth Communication

The trading floor of the Exchange is a carefully delineated area that includes within it (a) the various trading posts at which trading occurs under the supervision of Exchange specialists, and (b) booth spaces that are assigned by the Exchange to members and member organizations that apply for them. The booth spaces ring the trading floor and house the facilities that connect the off-floor premises of members and member organizations with brokers and their clerks on the trading floor.

The Exchange has concluded it is appropriate to allow telephones located at the booth spaces to provide two-way voice communication between the booth spaces and the off-floor premises of non-members. Under the proposed rule change, members on the floor will be able to speak directly with non-member customers located off the floor and, subject to their compliance with all other applicable Exchange rules, such members will be able to accept orders from the non-member for execution on the floor. The Exchange believes that this facility may enable floor brokers to compete more effectively for order flow than has heretofore been possible. Permitting non-member customers to carry on two-way voice communication directly with members at the booth spaces might also benefit the non-member customer. Some institutional traders have indicated to the Exchange that this might tend to exert downward pressure on the overall commission rates they pay. In addition, the customer's ability to "control the order" is viewed by some institutional customers as a benefit that might result from the proposal. According to this view, direct two-way voice communication between the off-floor trading desk of an institutional non-member customer and the broker on the floor could eliminate uncertainty as to how the order was executed and would enable the institutional trader to alter instructions as market conditions might change.

Portable Telephones

As noted, the proposed rule will not permit the use of a portable telephone

on the trading floor.[1] The Exchange does not believe it is either necessary or appropriate to allow the use of a portable phone on the floor. Such a phone if permitted would, of course, enable the member-user to communicate directly with a non-member customer from the trading crowd itself, thereby providing the non-member with access to the very point of the trade, an access which the Exchange believes should remain a prerogative of membership.[2]

The primary consideration that has caused the Exchange to conclude that mobile phones should not be permitted on the trading floor relates to market integrity and principles of fundamental fairness. The Exchange believes that a non-member customer who is allowed to engage directly in two-way voice communication with his broker in the trading crowd at the trading post might have, at least on some occasions, significant advantages over the customer who has the ability to speak only with his registered representative, or the off-floor trading desk of a member firm, or the booth space of a member or member organization at the edge of the trading floor. These advantages could benefit some limited number of non-member customers, but the vast majority could be disadvantaged by their lack of voice access to the point of the trade. Should such access be provided, it seems reasonable to assume that the largest, most active non-member customers, probably institutions rather than individuals for the most part, would be offered the advantage. Under these circumstances, the Exchange believes that customers generally might justifiably feel that they were unfairly treated and unfairly discriminated against. In their eyes, the basic integrity of the Exchange's market might seem eroded. This reaction could, of course, further discourage investors, especially smaller investors, from investing in Exchange listed securities. Any such result would be most unfortunate and wholly at oods with the Exchange's long standing reputation as a highly visible market, open to all investors and operating under fair procedures. The Exchange believes it is essential that public investors continue to perceive the Exchange in this light.

Specialist Telephones

The purpose of the prohibition on the use of telephone lines at the specialist's trading post to transmit orders to the floor is, of course, to avoid giving any customer the advantage that might flow should he be able to give his order directly to the specialist for execution in the trading crowd. This limitation is also consistent with the provision discussed above that precludes the use of portable phones on the trading floor.

(2) *Statutory Basis.* The statutory basis for the proposed rule change is the requirement under section 6(b)(5) of the Act that an exchange have rules that remove impediments to and perfect the mechanism of a free and open market. The proposed rule change is also consistent with section 6(b)(8) of the Act which provides that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the purposes of the Act can be fulfilled notwithstanding the ability of non-members to communicate by voice telephone with the booth spaces of members and member organizations located on the trading floor. Finally, the Exchange believes that the proposed rule change is consistent with the provisions of section 11A(a)(1)(C)(ii) of the Act which states the Congressional finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure fair competition among brokers and dealers. The Exchange believes that telephonic links between the floor and non-member customers will permit brokers located on the floor to more fairly compete with the off-floor premises of members and member organizations for order flow.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments on the proposed rule change from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-87-18 and should be submitted by July 22, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 22, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-14931 Filed 6-30-87; 8:45 am]

BILLING CODE 8010-01-M

[1] Consequently, if the proposed rule change is approved by the Commission, Mr. Higgins will no longer be permited to maintain a portable telephone on the trading floor.

[2] The Exchange notes that even its "electronic access members" do not have the ability to communicate by voice with the trading post. Section 1 of Article II of the Exchange Constitution provides for telephonic access by electronic access members to "the floor facilities of a member or member organization", that is to say, to the booth spaces, not to the trading posts.

[Release No. 34-24638; File No. SR-PSDTC-87-05]

Self-Regulatory Organization; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Securities Depository Trust Company Waiving Fees for Automatic Journaling of Accounts

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 11, 1987, the Pacific Securities Depository Trust Company ("PSDTC") filed with the Commission the proposed rule change described below. The Commission is publishing this notice to solicit comments on the proposed rule change.

PSDTC's proposed rule change amends its fee schedule policy for the automatic journaling of accounts. Due to its impending shutdown, PSDTC has been working on a timetable to ensure a smooth transition of accounts to the participant's choice of depository. PSDTC states that as long as the automatic journaling of accounts is done according to PSDTC's schedule, fees normally applied to automatic journaling will be waived. However, if for some reason the participant moves its account off schedule or through manually keyed entries, the standard fees will be levied.

Furthermore, PSDTC states that the proposed rule change is consistent with section 17A(b)(F) of the Act in that the proposal promotes the prompt and accurate clearance and settlement of securities transactions.

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the change if it appears to the Commission that it is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the proposal. Persons making written submissions should file six copies with the Secretary, Securities and Exchange Commission, 450 Fifth St., NW., Washington, DC 20549. Copies of the filing, all subsequent amendments, all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth St., NW, Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of PSDTC. All submissions should refer to File No. SR-PSDTC-87-05 and should be submitted by July 22, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

Dated: June 24, 1987.

[FR Doc. 87-14932 Filed 6-30-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24636; File No. SR-PHLX-87-14]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc; Order Approving Proposed Rule Change

On April 27, 1987, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a proposed rule change to designate a new Standing Committee of the Board of Governors, the Foreign Currency Options Committee.

The proposed rule change was noticed in Securities Exchange Act Release No. 24442 (May 11, 1987), 52 FR 18765 (May 19, 1987). No comments were received on the proposed rule change.

The rule change is designed to facilitate transactions in foreign currency options. The purpose of the proposed rule change is to create a new standing committee that will handle the significant policy and structural decisions that will be made in the future regarding foreign currency options trading. In addition, the committee will have responsibility for interpreting the Exchange's rules as they apply to foreign currency options trading. Also, since foreign currency option trading is a separate and distinct market from the market for equity and index options, the foreign currency options committee was created to oversee the operations of the foreign currency options floor. The Exchange contends that the statutory basis for the proposed rule change is section 6(b)(5) [3] of the Act in that it will facilitate growth of foreign currency options trading while fostering the protection of investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 [4] and the rules and regulations thereunder. The Commission notes that the market for index and equity options differs in many ways from the foreign currency options market. Consequently, it is logical for the Phlx to create a special committee that will interpret the Phlx's rules as they specifically apply to foreign currency options trading and address policy matters that affect foreign currency options trading.

It is therefore ordered, pursuant to section 19(b)(2) [5] of the Act, that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Dated: June 24, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-14933 Filed 6-30-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 24, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Compania Telefonica Nacional De Espana S.A.
American Depositary Shares (File No. 7-0232)
Glaxo Holding PLC
American Depositary Receipts (File No. 7-0233)
Hills Department Stores Inc.
Common Stock, $0.01 Par Value (File No. 7-0234)
Rockaway Corp.
Common Stock, $.01 Par Value (File No. 7-0235)

These securities are listed and registered on one or more other national

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[1] 15 U.S.C. 78s(b) (1) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] 15 U.S.C. 78f(b) (5) (1982).

[4] 15 U.S.C. 78f (1982)

[5] 15 U.S.C. 78s(b) (2) (1982)

[6] 17 CFR 200 30-3(a) (12) (1986).

securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 16, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-14934 Filed 6-30-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 24, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities and Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities.

Nuveen Municipal Value Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0235)
Scudder New Asia Fund Inc.
Common Stock, $.01 Par Value (File No. 7-0236)
Swift Energy Co.
Common Stock, $.01 Par Value (File No. 7-0237)
Bormans, Incorporated
Class "B", Common Stock (File No. 7-0238)
Plantronics, Inc. (Delaware)
Common Stock, No Par Value (File No. 7-0239)
Standard Brands Paint Company (Delaware
Common Stock, $1.00 Par Value (File No. 7-0240)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before July 16, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-14935 Filed 6-30-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-6-59; Docket Nos. 44643 and 44986]

Information Directives Concerning Computer Reservations Systems and Nonpublic Investigation of Computer Reservations Systems; Order

Issued by the Department of Transportation on the 26th day of June, 1987.

By Order 87-2-1 (February 2, 1987), we announced the initiation of an informal investigation into airline-owned computer reservations systems ("CRS's"). In issuing the order, we concluded that questions of "CRS market power, possible abuses of such power, and the effectiveness of existing CRS rules in curbing any abuses have important implications for airline competition." Order 87-2-1 at 2.

We issued Order 87-2-1 under section 407 of the Federal Aviation Act of 1958 ("Act"), 49 U.S.C. 1377, which authorizes us to require air carriers to file special reports and answer questions when we deem the information necessary. Section 407 does not authorize us to require such reports or other documents from persons who are not air carriers. However, under section 1004 of the Act, 49 U.S.C. 1484, we are authorized to issue subpenas compelling non-carriers to produce documents and testimony "relating to any matter under investigation."

We have now determined that additional information from persons who are not airlines is necessary for us to review several of the issues before us. In that connection, it is necessary to compel the production of such information through the issuance of subpenas, and we find it appropriate to invoke, with minor variations, the procedures of 14 CFR Part 305 ("Rules of Practice in Informal Nonpublic Investigations"). By this order we are instituting such an investigation in conjunction with the previously instituted CRS investigation.

This investigation is not primarily enforcement-oriented. As described in Order 87-2-1, though, the initiation of enforcement action is one possible outcome of our overall investigation. In addition, the procedures of Part 305 provide a useful framework for the issuance of subpenas and the resolution of any questions that may arise under them.

Because of the somewhat unusual nature of this investigation, there will be two minor variations from the procedures set forth in Part 305. First, attorneys of the Office of the Assistant General Counsel for Litigation, as well as attorneys from the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, will be participating in this investigation. We are therefore designating the attorneys from both offices as Investigation Attorneys under section 305.5. Second, as noted in Order 87-2-1, the uses to which we may put the subpenaed information could include the preparation of reports, in addition to the uses described in 14 CFR 305.10. Our use of the information will, of course, be consistent with any rulings made pursuant to 14 CFR 302.39.

Accordingly:

1. The Department institutes an informal nonpublic investigation under Part 305 of the Department's procedural regulations for the purpose of obtaining information to assist in the examination of airline-owned computer reservations systems that was initiated by Order 87-2-1.

2. The Department designates attorneys of the Office of the Assistants General Counsel for Litigation, as well as attorneys of the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, as Investigation Attorneys for purposes of this investigation.

3. Pursuant to 14 CFR 305.10, this order shall be published in the **Federal Register.**

Vance Fort,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-14971 Filed 6-30-87; 8:45 am]

BILLING CODE 4190-62-M

Federal Aviation Administration

U.S. National Aviation Standard for the NDB/ADF System; Availability of Draft

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of availability of document; request for comments.

SUMMARY: This notice announces the availability of a draft U.S. National Aviation Standard for the Nondirectional Beacon/Automatic Direction Finder (NDB/ADF) System. This Standard defines the system performance characteristics for ground and aviation components. This Standard identifies signal, functional, and performance characteristics required to meet operational requirements and to provide compatibility between components of the system. It is intended to satisfy current operational needs and assure compatibility with elements of the National Airspace System (NAS). The U.S. National Aviation Standards are not regulatory standards that impose rights and duties on the public. While not regulatory, the Standard may provide the basis for later rulemaking affecting airborne equipment.

DATE: Comments must be received on or before July 31, 1987.

ADDRESS: Copies of the draft standard are available from and comments on the draft may be mailed in duplicate to: Director, Systems Engineering Service, Attn: AES–310, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591, or delivered in duplicate to: Room 723, 800 Independence Avenue, SW., Washington, D.C. 20591. Comments may be inspected in AES–310, Room 723 weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Director, Systems Engineering Service, Attn: Mr. Thomas H. Higgins, AES–310, Federal Aviation Administration, Department of Transportation, 800 Independence Avenue, SW., Washington, D.C. 20591, telephone (202) 267–9844. Additional copies of this notice may be obtained from the same address.

Invitation to Public Comment

Interested persons are invited to submit written data and comments on this U.S. National Aviation Standard as they may desire. Communications should be submitted in duplicate to the address above. Copies of comments received will be made available through AES–310 for examination before and after the closing date for comments.

Supplementary Information

NDB/ADF System Description. The NDB/ADF system is a short distance air navigation system. The ground component provides properly equipped aircraft with bearing and identification referenced to the selected ground component. The system provides navigational signals to all civil and military aviation for the safe and efficient conduct of aircraft operations, exercise of air traffic control, and use of airspace. The NDB is an International Civil Aviation Organization standard navigational aid. The NDB/ADF system has been allocated radio spectrum in the aeronautical radionavigation service. The primary purpose of the NDB/ADF system is for navigation. While other services may be provided by the system, they are less important than the navigational information. The identification signal is an integral part of the navigational signal since, without the identification, the navigational information cannot be validated.

During the early 1960's, many thought that NDB's would disappear with the wide implementation of VOR/DME/TACAN. However, while the NDB has evolved from a primary to a secondary navigational aid, it has hardly disappeared. Quite to the contrary, it now outnumbers VOR stations by a factor of more than 2 to 1. No end of service is foreseen between now and the year 2000 because of the wide and increasing acceptance by aviation users and the lack of an acceptable replacement system.

The NDB/ADF system, like most aeronautical systems, will continue to evolve in response to user needs. The number of FAA NDB's will remain stable and future growth will primarily be non–Federal in nature. As the system evolves, proper operation and compatibility among elements of the system must be maintained. This order is intended to provide guidance in this endeavor.

Under The Federal Aviation Act of 1958, as amended, 49 USC Section 1301 *et seq.*, the FAA is charged with providing for the regulation and promotion of civil aviation in order to best foster its development and safety and to provide for the safe and efficient use of the airspace by both civil and military aircraft. Explicitly, the Administrator shall develop, modify, test, and evaluate systems, procedures, facilities, and devices defining their performance characteristics as needed. This effort is directed toward meeting the need for safe and efficient navigation and traffic control of all civil and military aircraft operating in a common civil/military NAS.

History

This is the first time the NDB/ADF system documentation in the format of a U.S. National Aviation Standard has been made available for public comment.

Definition of U.S. National Aviation Standard

U.S. National Aviation Standards are system standards embodying descriptions of system characteristics. They are issued by the Administrator of the FAA in accordance with Section 312(c) of the Federal Aviation Act (42 USC 1353(c)). They describe the performance characteristics (the technical parameters, tolerances, and techniques) of major elements of the system to the extent necessary to assure proper operation and interface compatibility among elements of the NAS. U.S. National Aviation Standards, generally, are limited to cooperative air-to-ground subsystems involving government-owned ground equipment and private airborne equipment. They are not equipment specifications or standards pertaining to planning, programming, siting, installation, availability, reliability, or maintainability.

Relationship of U.S. National Aviation Standards to Federal Aviation Regulations

US.S. National Aviation Standards issued by the Administrator in agency orders are binding only on FAA organizational elements. They establish the technical basis and description of the NAS and component subsystems. A National Aviation Standard is not a standard of general or particular applicability designed to implement or prescribe law or policy. It does not fall within the definition of "rule" contained in the Administrative Procedures Act (5 U.S.C. 551). There is no requirement that a National Aviation Standard be published as a notice of proposed rulemaking in the **Federal Register.** However, U.S. National Aviation Standards may serve as the basis for subsequent rulemaking actions. Accordingly, because of the relationship between the standards and possible subsequent regulatory actions, FAA makes available such standards to the public by a notice in the **Federal Register** and solicits public comment prior to approval by the Administrator.

Issued in Washington, DC, on June 25, 1987.

John E. Turner,

Director, Systems Engineering Service, AES-1.

[FR Doc. 87-14851 Filed 6-30-87; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Burleigh County, ND

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Bismarck, North Dakota.

FOR FURTHER INFORMATION CONTACT: John C. Kliethermes, Division Administrator, Federal Highway Administration, P.O. Box 1755, Bismarck, ND 58502. Telephone Number is (701)255-4011. (FTS 783-4204)

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Dakota State Highway Department and the city of Bismarck, will prepare an Environmental Impact Statement (EIS) on a proposal for improvements to the Washington Street Corridor.

The proposed improvement would involve the reconstruction of Washington Street from Sweet Avenue to Avenue D. The proposed improvement would provide a new underpass at the Burlington Northern Railroad tracks and possibly a grade separation structure at Main Street, depending on the selected alternative. It would also involve widening the existing 30' wide street from Avenue D to Rosser Avenue to 48 feet. This widening will occur in the Cathedral Historic district. The proposed improvement is intended to provide for improved safety, increased traffic capacity, and reduced travel times and distances.

Two alternate concepts involving the Washington Street Main Avenue intersection, and the "No Action" alternate are under consideration.

Letters soliciting views and comments on the proposed project were sent to various federal, state and local agencies. The project has been discussed at local meetings in Bismarck. The Draft EIS will be available for public and agency review and comment. A public hearing will be held to discuss alternates and impacts of the proposed action. Public notice will be given for the time and place of the public hearing. No formal scope meeting will be held.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program)

Issued on June 17, 1987.

John C. Kliethermes,

Division Administrator, Federal Highway Administration.

[FR Doc. 87-14864 Filed 6-30-87; 8:45 am]

BILLING CODE 4910-22-M)

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Supplement to Department Circular—Public Debt Series—No. 16-87]

Treasury Notes, Series Z-1989

Washington, June 24, 1987.

The Secretary announced on June 23, 1987, that the interest rate on the notes designated Series Z-1989, described in Department Circular—Public Debt Series—No. 16-87 dated June 18, 1987, will be 7-⅜ percent. Interest on the notes will be payable at the rate of 7-⅜ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-14907 Filed 6-30-87; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

Renegotiation Board and Prompt Payment Interest Rates; Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92-41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95-563) and the Prompt Payment Act (Pub. L. 97-177) are required to calculate interest due on claims ". . . at a rate established by the Secretary of the Treasury pursuant to Pub. L. 92-41 (85 Stat. 97) for the Renegotiation Board."

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning July 1, 1987 and ending on December 31, 1987, is 8⅞ per centum per annum.

Dated: June 24, 1987.

B.A. Derrick,

Acting Fiscal Assistant Secretary.

[FR Doc. 87-14983 Filed 6-30-87; 8:45 am]

BILLING CODE 4810-35-M

Internal Revenue Service

Art Advisory Panel Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, DC.

DATE: The meeting will be held July 28-29, 1987.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, CC:AP:V, 1111 Constitution Avenue, NW., Room 2575, Washington DC 20224, Telephone No. (202) 566-9259, (not a toll free number).

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), that a closed meeting of the Art Advisory Panel will be held on July 28-29 in Room 3411 beginning at 9:30 a.m., Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of Title 5 of the United States Code, and that the meeting will not be open to the public.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978. (43 F.R. 52122.)

Lawrence B. Gibbs,

Commissioner.

[FR Doc. 87-14954 Filed 6-30-87; 8:45 am]

BILLING CODE 4830-01-M

Sunshine Act Meetings

Federal Register
Vol. 52. No. 126
Wednesday, July 1, 1987

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).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Monday, July 6, 1987.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding the Board's internal audit function.
2. Any items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend.

Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: June 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–14957 Filed 6–26–87; 4:13 pm]

BILLING CODE 6210–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 10:30 a.m., Monday, July 6, 1987, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Building proposals and budget regarding the Helena Branch of the Federal Reserve Bank of Minneapolis.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximaely 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: June 26, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–14958 Filed 6–26–87; 4:13 am]

BILLING CODE 6210–01–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE–87–22A]

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 21792—dated June 9, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Thursday, June 25, 1987.

ADDITION OF AGENDA ITEM FOR THE MEETING:

7. Inv. 731–TA–238 (Preliminary) (Remand) (12-Volt Motorcycle Batteries from Taiwan)

In conformity with 19 CFR 201.37(b), Commissioners Liebeler, Brunsdale, Eckes, Lodwick, and Rohr determined that Commission business required the change in subject matter of the meeting on June 25, 1987 by addition to the agenda item, and affirmed that no earlier announcement of the addition 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.

June 24, 1987.

[FR Doc. 87–14963 Filed 6–26–87; 4:37 pm]

BILLING CODE 7020–02–M

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, July 1, 1987 at 10:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain high intensity retroreflective sheeting (Docket Number 1397).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523–0161.

Kenneth R. Mason,

Secretary.

June 26, 1987.

[FR Doc. 87–14968 Filed 6–26–87; 4:37 pm]

BILLING CODE 7020–02–M

Corrections

Federal Register
Vol. 52, No. 126
Wednesday, July 1, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 74 and 81

[Docket No. 83C-0127]

D&C Red No. 8 and D&C Red No. 9; Permanent Listing for Use in Ingested Drug and Cosmetic Lip Products and Externally Applied Drugs and Cosmetics; Confirmation of Effective Date and Further Amendment

Correction

In rule document 87-12798 beginning on page 21302 in the issue of Friday, June 5, 1987, make the following correction:

On page 21302, in the second column, the subject heading should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1195-87]

Fee Regulation Implementing Fee and Fee Waiver Provisions of Freedom of Information Reform Act of 1986

Correction

In proposed rule document 87-13571 beginning on page 22795 in the issue of Tuesday, June 16, 1987, make the following correction:

§ 16.10 [Corrected]

On page 22797, in § 16.10(d)(2)(iii), in the sixth line insert "public at large, as opposed to the individual understanding of the" after "of the".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8144]

Income Taxes; Low-Income Housing Credit

Correction

In rule document 87-14093 beginning on page 23432 in the issue of Monday, June 22, 1987, make the following corrections:

§ 1.42-1T [Corrected]

1. In § 1.42-1T(d)(8)(i), on page 23437, in the first column, in the third line from the bottom of the paragraph, after "shall" insert "not".

2. In § 1.42-1T(d)(8)(ii)(B), on the same page, in the second column, in the third line, after "making" insert "the".

3. In § 1.42-1T(e)(2), on page 23438, in the first column, in the 12th line, "of local" should read "or local"; in the 24th line, "(e)(2)" should read "(e)(1)".

BILLING CODE 1505-01-D

federal register

Wednesday
July 1, 1987

Part II

Department of the Treasury

Financial Management Service

Circular 570; 1987 Revision; Surety Companies Acceptable on Federal Bonds; Notice

4810-35
4-00236

DEPARTMENT OF THE TREASURY

FISCAL SERVICE

(Dept. Circular 570; 1987 Rev.)

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE SURETIES ON FEDERAL BONDS AND AS ACCEPTABLE REINSURING COMPANIES

Effective: July 1, 1987

This Circular is published annually, as of July 1, solely for the information of Federal bond-approving officers and persons required to give bonds to the United States. Copies of this Circular and other information pertinent to Federal sureties may be obtained from: Surety Bond Branch, Financial Management Service, Department of the Treasury, Washington, DC 20226. Telephone: (202) 634-2214. Interim changes are published in the FEDERAL REGISTER as they occur.

The following companies have complied with the law and the regulations of the Treasury Department and are acceptable as sureties and reinsurers on Federal bonds under Sections 9304 to 9308 of Title 31 of the United States Code (See Note a/).

Mitchell A. Levine
Assistant Commissioner, Comptroller
Financial Management Service

IMPORTANT INFORMATION IS CONTAINED IN THE NOTES AT THE END OF THIS CIRCULAR. PLEASE READ THE NOTES CAREFULLY.

Accredited Surety and Casualty Company, Inc. BUSINESS ADDRESS: 918 South Orange Avenue, Orlando, FL 32806. UNDERWRITING LIMITATION b/: $288,000. SURETY LICENSES c/: AL, FL, GA, IN, LA, MS, VA. INCORPORATED IN: Florida.

AEGON REINSURANCE COMPANY OF AMERICA.1* BUSINESS ADDRESS: 127 John Street, New York, NY 10038. UNDERWRITING LIMITATION b/: $3,188,000. SURETY LICENSES c/: AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, LA, MD, MA, MS, NY, OK, TX. INCORPORATED IN: New York.

The Aetna Casualty and Surety Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $181,602,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Connecticut.

Aetna Casualty and Surety Company of Illinois. BUSINESS ADDRESS: 1020 31st Street, Downers Grove, IL 60515. UNDERWRITING LIMITATION b/: $34,861,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

Aetna Life and Casualty Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $310,090,000. SURETY LICENSES c/: CT, DC. INCORPORATED IN: Connecticut.

Aetna Reinsurance Company.2*

Affiliated FM Insurance Company. BUSINESS ADDRESS: Allendale Park, P.O. Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $3,865,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Alaska Pacific Assurance Company. BUSINESS ADDRESS: 4040 "B" Street, Anchorage, AK 99503. UNDERWRITING LIMITATION b/: $2,140,000. SURETY LICENSES c/: AK, CA, ID, MS, SD. INCORPORATED IN: Alaska.

Allegheny Mutual Casualty Company. BUSINESS ADDRESS: 485 Chestnut Street, Meadville, PA 16335. UNDERWRITING LIMITATION b/: $343,000. SURETY LICENSES c/: DC, FL, IL, IN, LA, MD, MI, NJ, OH, OK, PA, TN, TX, WI. INCORPORATED IN: Pennsylvania.

Allendale Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 7500, Johnston, RI 02919. UNDERWRITING LIMITATION b/: $24,805,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Allied Mutual Insurance Company. BUSINESS ADDRESS: 701 Fifth Avenue, Des Moines, IA 50309. UNDERWRITING LIMITATION b/: $10,898,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, ID, IL, IN, IA, KS, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

Allstate Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $353,376,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois.

*See footnotes at end of Circular.

American Automobile Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $9,553,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Missouri.

AMERICAN BANKERS INSURANCE COMPANY OF FLORIDA. BUSINESS ADDRESS: 11222 Quail Roost Dr., Miami, FL 33157. UNDERWRITING LIMITATION b/: $5,493,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Florida.

American Bonding Company.3* BUSINESS ADDRESS: 8601 Beverly Boulevard, Los Angeles, CA 90048. UNDERWRITING LIMITATION b/: $410,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, HI, ID, IA, KS, MO, MT, NE, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: Nebraska.

American Casualty Company of Reading, Pennsylvania. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $8,347,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Pennsylvania.

American Credit Indemnity Company. BUSINESS ADDRESS: 300 St. Paul Place, Baltimore, MD 21202. UNDERWRITING LIMITATION b/: $4,987,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

American Economy Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $14,154,000. SURETY LICENSES c/: All except AS, CT, GU, NH, NJ, PR, VI. INCORPORATED IN: Indiana.

American Employers' Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $6,709,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Massachusetts.

American Fidelity Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $911,000. SURETY LICENSES c/: AK, CT, DC, IA, ME, MD, MA, MS, NE, NH, ND, OK, RI, SD, UT, VT, WV. INCORPORATED IN: Vermont.

American Fidelity Insurance Company. BUSINESS ADDRESS: P.O. Box 25523, Oklahoma City, OK 73125. UNDERWRITING LIMITATION b/: $1,414,000. SURETY LICENSES c/: AR, CA, CO, FL, GA, ID, IN, IA, KS, KY, LA, MS, MO, MT, NE, NV, NM, ND, OK, OR, PA, SD, TN, TX, UT, VA, WA, WI, WY. INCORPORATED IN: Oklahoma.

American Fire and Casualty Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $5,376,000. SURETY LICENSES c/: AL, AR, CO, DC, FL, GA, KS, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA. INCORPORATED IN: Florida.

American General Fire and Casualty Company. BUSINESS ADDRESS: Post Office Box 1502, Houston, TX 77001. UNDERWRITING LIMITATION b/: $3,145,000. SURETY LICENSES c/: AR, LA, NM, OK, TX. INCORPORATED IN: Texas.

*See footnotes at end of Circular.

American Guarantee and Liability Insurance Company. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $3,274,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

American Home Assurance Company. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $35,780,000. SURETY LICENSES c/: All except AS, PR. INCORPORATED IN: New York.

American Indemnity Company. BUSINESS ADDRESS: Post Office Box 1259, Galveston, TX 77553. UNDERWRITING LIMITATION b/: $2,314,000. SURETY LICENSES c/: AL, AZ, CA, CO, DC, FL, GA, IL, IN, IA, KS, KY, LA, MS, MO, MT, NE, NM, NC, OH, OK, SC, TN, TX, WI, WY. INCORPORATED IN: Texas.

The American Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $31,396,000. SURETY LICENSES c/: All except AS, VI. INCORPORATED IN: New Jersey.

American Manufacturers Mutual Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $12,822,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

American Motorists Insurance Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $21,944,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Illinois.

American Mutual Liability Insurance Company. BUSINESS ADDRESS: Quannapowitt Parkway, Wakefield, MA 01880. UNDERWRITING LIMITATION b/: $1,250,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: Massachusetts.

American National Fire Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $803,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New York.

American Re-Insurance Company. BUSINESS ADDRESS: One Liberty Plaza, 91 Liberty Street, New York, NY 10006. UNDERWRITING LIMITATION b/: $30,589,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Delaware.

American Resources Insurance Co., Inc. BUSINESS ADDRESS: P.O. Box 91149, Mobile, AL 36691. UNDERWRITING LIMITATION b/: $418,000. SURETY LICENSES c/: AL, GA, IN, KY, MS, TN, VA. INCORPORATED IN: Alabama.

American Southern Insurance Company. BUSINESS ADDRESS: Post Office Box 7369, Station C, Atlanta, GA 30357. UNDERWRITING LIMITATION b/: $869,000. SURETY LICENSES c/: AL, FL, GA, SC. INCORPORATED IN: Georgia.

*See footnotes at end of Circular.

American States Insurance Company. BUSINESS ADDRESS: 500 North Meridian Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $62,738,000. SURETY LICENSES c/: All except AS, CT, GU, NH, NY, PR, VI. INCORPORATED IN: Indiana.

American Surety and Casualty Company. BUSINESS ADDRESS: Post Office Box 52326, Jacksonville, FL 32201. UNDERWRITING LIMITATION b/: $225,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

Amwest Surety Insurance Company. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: $852,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, FL, GA, HI, ID, IN, IA, LA, MA, MN, MO, MT, NV, NM, OH, OK, OR, TX, UT, WA, WY. INCORPORATED IN: California.

Antilles Insurance Company. BUSINESS ADDRESS: Post Office Box 3507, Old San Juan, Puerto Rico 00904. UNDERWRITING LIMITATION b/: $858,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

ANVIL INSURANCE COMPANY. BUSINESS ADDRESS: 18021 Cowan Street, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $689,000. SURETY LICENSES c/: AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA, WY. INCORPORATED IN: California.

Argonaut Insurance Company.3* BUSINESS ADDRESS: 250 Middlefield Road, Menlo Park, CA 94025. UNDERWRITING LIMITATION b/: $7,112,000. SURETY LICENSES c/: All except AS, ME, PR, VI. INCORPORATED IN: California.

Arkwright-Boston Manufacturers Mutual Insurance Company.4*

Arkwright Mutual Insurance Company.3* 4* BUSINESS ADDRESS: 225 Wyman Street, Waltham, MA 02154. UNDERWRITING LIMITATION b/: $38,600,000. SURETY LICENSES c/: All except AS, GU, HI, ME, PA, PR, TN, VI, WV. INCORPORATED IN: Massachusetts.

Associated Indemnity Corporation. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $4,187,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: California.

Atlantic Mutual Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $22,143,000. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York.

The Automobile Insurance Company of Hartford, Connecticut. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $3,212,000. SURETY LICENSES c/: All except AL, AS, DE, GU. INCORPORATED IN: Connecticut.

*See footnotes at end of Circular.

Auto-Owners Insurance Company. BUSINESS ADDRESS: Post Office Box 30660, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $45,234,000. SURETY LICENSES c/: AL, AZ, CA, FL, GA, IL, IN, IA, MI, MN, MO, NE, NC, ND, OH, SC, SD, TN, TX, UT, WI. INCORPORATED IN: Michigan.

Balboa Insurance Company. BUSINESS ADDRESS: Post Office Box 19702, Irvine, CA 92713-9702. UNDERWRITING LIMITATION b/: $6,131,000. SURETY LICENSES c/: All except AS, LA, PR. INCORPORATED IN: California.

Bankers Multiple Line Insurance Company. BUSINESS ADDRESS: 4810 North Kenneth Avenue, Chicago, IL 60630. UNDERWRITING LIMITATION b/: $2,247,000. SURETY LICENSES c/: All except AS, DE, GU, HI, ME, PR, VI. INCORPORATED IN: Iowa.

Binford Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $104,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

BOND SAFEGUARD INSURANCE COMPANY. BUSINESS ADDRESS: 246 E. Janata Blvd., Lombard, IL 60148. UNDERWRITING LIMITATION b/: $95,000. SURETY LICENSES c/: IL. INCORPORATED IN: Illinois.

Boston Old Colony Insurance Company.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,193,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Massachusetts.

The Buckeye Union Insurance Company.3* BUSINESS ADDRESS: Post Office Box 1499, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $31,912,000. SURETY LICENSES c/: DC, FL, IL, IN, KY, MI, MO, NY, OH, PA, VA, WV. INCORPORATED IN: Ohio.

CIM Insurance Corporation.3* BUSINESS ADDRESS: 3044 West Grand Blvd., Detroit, MI, 48202. UNDERWRITING LIMITATION b/: $2,786,000. SURETY LICENSES c/: AL, AK, DC, ID, IL, IA, ME, MD, MI, MN, MS, NV, NY, NC, ND, OH, RI, SC, SD, TN, TX, VT, WY. INCORPORATED IN: New York.

CNA CASUALTY OF PUERTO RICO. BUSINESS ADDRESS: Call Box 70128, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $1,096,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

The Camden Fire Insurance Association. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $30,045,000. SURETY LICENSES c/: All except AL, AK, AS, AZ, AR, DE, GA, GU, HI, ID, LA, ME, MS, MT, NE, NH, OK, OR, PR, SC, SD, TN, TX, VT, VI, WA, WY. (Fidelity only in AL, SC.) INCORPORATED IN: New Jersey.

Capitol Indemnity Corporation. BUSINESS ADDRESS: P.O. Box 5900, Madison, WI 53705. UNDERWRITING LIMITATION b/: $743,000. SURETY LICENSES c/: AZ, FL, ID, IL, IN, IA, LA, MI, MN, MO, MT, NM, ND, OK, SD, TX, WI, WY. INCORPORATED IN: Wisconsin.

*See footnotes at end of Circular.

Centennial Insurance Company. BUSINESS ADDRESS: Atlantic Building, 45 Wall Street, New York, NY 10005. UNDERWRITING LIMITATION b/: $5,636,000. SURETY LICENSES c/: All except AL, GU, VI. INCORPORATED IN: New York.

Central Mutual Insurance Company. BUSINESS ADDRESS: 800 South Washington Street, Van Wert, OH 45891. UNDERWRITING LIMITATION b/: $3,258,000. SURETY LICENSES c/: All except AS, AR, GU, HI, ND, OR, PR, SD, VI, WI. INCORPORATED IN: Ohio.

Century Indemnity Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,046,000. SURETY LICENSES c/: All except AS, GU, HI, OR, PR, VI. INCORPORATED IN: Connecticut.

Century Reinsurance Company.2* BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA 19102. UNDERWRITING LIMITATION b/: $2,263,000. SURETY LICENSES c/: AL, CA, DE, GA, HI, IN, IA, KS, LA, MS, NJ, NY, OK, TX, UT. INCORPORATED IN: Delaware.

CENTURY SURETY COMPANY. BUSINESS ADDRESS: 1889 Fountain Square Court, Columbus, OH 43224. UNDERWRITING LIMITATION b/: $374,000. SURETY LICENSES c/: IN, OH, WV. INCORPORATED IN: Ohio.

The Charter Oak Fire Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $5,486,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Connecticut.

CHILTON INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 7750, Burbank, CA 91510-7750. UNDERWRITING LIMITATION b/: $480,000. SURETY LICENSES c/: DC, TX. INCORPORATED IN: Texas.

CHRYSLER INSURANCE COMPANY. BUSINESS ADDRESS: 901 Wilshire Drive, Troy, MI 48084. UNDERWRITING LIMITATION b/: $6,015,000. SURETY LICENSES c/: All except AS, GU, KS, NC, PR, VI. INCORPORATED IN: Michigan.

CIGNA INSURANCE COMPANY. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $10,805,000. SURETY LICENSES c/: All except AS, HI, LA. INCORPORATED IN: California.

CIGNA Reinsurance Company.5* BUSINESS ADDRESS: One Franklin Plaza, Philadelphia, PA. 19102. UNDERWRITING LIMITATION b/: $13,654,000. SURETY LICENSES c/: All except AS, GU, ME, VI. INCORPORATED IN: Delaware.

The Cincinnati Insurance Company. BUSINESS ADDRESS: Post Office Box 145496, Cincinnati, OH 45214-5496. UNDERWRITING LIMITATION b/: $23,295,000. SURETY LICENSES c/: All except AS, CT, GU, HI, LA, ME, NH, SD, VT, VI. INCORPORATED IN: Ohio.

Commercial Insurance Company of Newark, New Jersey.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $6,499,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Jersey.

*See footnotes at end of Circular.

Commercial Union Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $15,630,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Massachusetts.

Consolidated Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $1,112,000. SURETY LICENSES c/: FL, ID, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Continental Casualty Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $161,648,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Illinois.

The Continental Insurance Company.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $28,508,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire.

Continental Reinsurance Corporation.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $6,295,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, HI, ID, IL, IN, IA, MI, MT, NV, NJ, NM, NY, NC, OK, OR, TX, UT, VA, WA. INCORPORATED IN: California.

Continental Surety and Fidelity Insurance Company. BUSINESS ADDRESS: 1120 Lincoln Street, Suite 1401, Denver, CO 80203. UNDERWRITING LIMITATION b/: $406,000. SURETY LICENSES c/: AK, CO, MT, NM, UT. INCORPORATED IN: Colorado.

Continental Western Insurance Company. BUSINESS ADDRESS: Post Office Box 1594, Des Moines, IA 50306. UNDERWRITING LIMITATION b/: $4,085,000. SURETY LICENSES c/: AZ, AR, CO, ID, IL, IN, IA, KS, KY, ME, MI, MN, MO, MT, NE, NV, NM, ND, OH, OK, SD, UT, WI, WY. INCORPORATED IN: Iowa.

Contractor's Bonding and Insurance Company. BUSINESS ADDRESS: 1213 Valley Street, Seattle, WA 98109-0271. UNDERWRITING LIMITATION b/: $436,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, FL, ID, IN, KS, KY, LA, MD, MO, MT, NE, NV, NM, ND, OH, OK, OR, SC, SD, TX, UT, VA, WA. INCORPORATED IN: Washington.

Cooperativa de Seguros Multiples de Puerto Rico. BUSINESS ADDRESS: G.P.O. Box 3846, San Juan, Puerto Rico 00936. UNDERWRITING LIMITATION b/: $3,530,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Cornhusker Casualty Company. BUSINESS ADDRESS: 9140 West Dodge Road, Omaha, NE 68114. UNDERWRITING LIMITATION b/: $1,308,000. SURETY LICENSES c/: CO, IA, KS, NE, SD, WY. INCORPORATED IN: Nebraska.

Cumis Insurance Society, Inc. BUSINESS ADDRESS: Post Office Box 1084, Madison, WI 53701. UNDERWRITING LIMITATION b/: $5,164,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Wisconsin.

DELTA CASUALTY COMPANY. BUSINESS ADDRESS: 4711 North Clark Street, Chicago, IL 60640. UNDERWRITING LIMITATION b/: $606,000. SURETY LICENSES c/: IL, IA. INCORPORATED IN: Illinois.

*See footnotes at end of Circular.

DEVELOPERS INSURANCE COMPANY. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $372,000. SURETY LICENSES c/: AZ, CA, NV. INCORPORATED IN: California.

Empire Fire and Marine Insurance Company. BUSINESS ADDRESS: 1624 Douglas Street, Omaha, NE 68102. UNDERWRITING LIMITATION b/: $2,049,000. SURETY LICENSES c/: All except AS, CT, DE, DC, GU, LA, MA, NJ, NY, OK, OR, PR, RI, TN, VA, VI, WV. INCORPORATED IN: Nebraska.

The Employers' Fire Insurance Company. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $2,875,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Massachusetts.

EMPLOYERS INSURANCE OF WAUSAU A Mutual Company. BUSINESS ADDRESS: 2000 Westwood Drive, Wausau, WI 54401. UNDERWRITING LIMITATION b/: $11,222,000. SURETY LICENSES c/: All. INCORPORATED IN: Wisconsin.

Employers Mutual Casualty Company. BUSINESS ADDRESS: Post Office Box 712, Des Moines, IA 50303-0712. UNDERWRITING LIMITATION b/: $10,241,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Iowa.

Employers Reinsurance Corporation. BUSINESS ADDRESS: 5200 Metcalf, Post Office Box 2991, Overland Park, KS 66201. UNDERWRITING LIMITATION b/: $67,871,000. SURETY LICENSES c/: All except AS, GU, HI, VI. INCORPORATED IN: Missouri.

ENNIA REINSURANCE COMPANY OF AMERICA.1*

Erie Insurance Company. BUSINESS ADDRESS: 100 Erie Insurance Place, Erie, PA 16530. UNDERWRITING LIMITATION b/: $614,000. SURETY LICENSES c/: DC, IN, KY, MD, OH, PA, TN, VA, WV. INCORPORATED IN: Pennsylvania.

EVANSTON INSURANCE COMPANY. BUSINESS ADDRESS: Shand Morahan Plaza, Evanston, IL 60201. UNDERWRITING LIMITATION b/: $5,110,000. SURETY LICENSES c/: DC, IL. INCORPORATED IN: Illinois.

THE EXPLORER INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 85563, San Diego, CA 92138-5563. UNDERWRITING LIMITATION b/: $309,000. SURETY LICENSES: AZ, CA. INCORPORATED IN: Arizona.

FAIRMONT INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 7750, Burbank, CA 91510-7750. UNDERWRITING LIMITATION b/: $5,052,000. SURETY LICENSES c/: All except AL, AS, CT, GU, HI, ME, MA, MN, NH, NJ, PA, PR, RI, VT, VA, VI. INCORPORATED IN: California.

Farmers Alliance Mutual Insurance Company. BUSINESS ADDRESS: 1122 North Main Street, McPherson, KS 67460. UNDERWRITING LIMITATION b/: $1,858,000. SURETY LICENSES c/: AZ, CA, CO, ID, IN, IA, KS, MN, MO, MT, NE, NM, NY, ND, OK, OR, SD, TX, WA. INCORPORATED IN: Kansas.

*See footnotes at end of Circular.

Farmland Mutual Insurance Company. BUSINESS ADDRESS: 1963 Bell Avenue, Des Moines, IA 50315. UNDERWRITING LIMITATION b/: $2,598,000. SURETY LICENSES c/: AR, CO, IL, IN, IA, KS, KY, MN, MO, MT, NE, NV, ND, OH, OK, SD, TX, UT, WI, WY. INCORPORATED IN: Iowa.

FAR WEST INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 4500, Woodland Hills, CA 91365-4500. UNDERWRITING LIMITATION b/: $122,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

Federal Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $69,392,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New Jersey.

FEDERATED MUTUAL INSURANCE COMPANY. BUSINESS ADDRESS: 129 East Broadway, Owatonna, MN 55060. UNDERWRITING LIMITATION b/: $26,280,000. SURETY LICENSES c/: All except AK, AS, GU, HI, NH, RI, VI. INCORPORATED IN: Minnesota.

The Fidelity and Casualty Company of New York.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $13,444,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New Hampshire.

Fidelity and Deposit Company. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $347,000. SURETY LICENSES c/: KS, MD, MO, TX. INCORPORATED IN: Maryland.

Fidelity and Deposit Company of Maryland. BUSINESS ADDRESS: Charles and Lexington Streets, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $18,141,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Maryland.

Fidelity and Guaranty Insurance Underwriters, Inc. BUSINESS ADDRESS: 100 Light Street, P.O. Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $4,901,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: Ohio.

Fireman's Fund Insurance Company. BUSINESS ADDRESS: 777 San Marin Drive, Novato, CA 94998. UNDERWRITING LIMITATION b/: $112,724,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: California.

Firemen's Insurance Company of Newark, New Jersey.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $43,223,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Jersey.

First Financial Insurance Company. BUSINESS ADDRESS: 401-417 Fayette Avenue, Springfield, IL 62704-2788. UNDERWRITING LIMITATION b/: $441,000. SURETY LICENSES c/: All except AL, AS, CT, GU, ME, NE, NH, NJ, NY, OK, PA, PR, VT, VI. INCORPORATED IN: Illinois.

*See footnotes at end of Circular.

First Insurance Company of Hawaii, Ltd. BUSINESS ADDRESS: Post Office Box 2866, Honolulu, HI 96803. UNDERWRITING LIMITATION b/: $2,612,000. SURETY LICENSES c/: GU, HI. INCORPORATED IN: Hawaii.

First National Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $3,129,000. SURETY LICENSES c/: All except AS, GU, HI, ME, NH, PR, VT, VI. INCORPORATED IN: Washington.

Fremont Indemnity Company. BUSINESS ADDRESS: 1709 West Eighth Street, Los Angeles, CA 90017. UNDERWRITING LIMITATION b/: $3,767,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, DC, GA, ID, IL, IN, IA, KS, KY, MI, MS, MO, MT, NV, NJ, NM, ND, OH, OK, OR, PA, SC, SD, TX, VA, WA, WV, WI, WY. INCORPORATED IN: California.

Fritz Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $114,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

General Accident Insurance Company of America. BUSINESS ADDRESS: 436 Walnut Street, Philadelphia, PA 19105-1109. UNDERWRITING LIMITATION b/: $95,571,000. SURETY LICENSES c/: All except AL, AS, AR, GU, ME, SC, VI. (Fidelity only: AL, SC). INCORPORATED IN: Pennsylvania.

GENERAL CASUALTY COMPANY OF WISCONSIN. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $6,265,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, SD, WI. INCORPORATED IN: Wisconsin.

General Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $22,517,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Washington.

General Reinsurance Corporation. BUSINESS ADDRESS: 695 East Main Street, P.O. Box 10350, Stamford, CT 06904-2350. UNDERWRITING LIMITATION b/: $107,303,000. SURETY LICENSES c/: All except AS, GU, HI, VI. INCORPORATED IN: Delaware.

The Glens Falls Insurance Company.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $2,023,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Delaware.

Global Surety & Insurance Co. BUSINESS ADDRESS: 160 Kiewit Plaza, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $1,755,000. SURETY LICENSES c/: AZ, CA, CO, MT, NE, SD. INCORPORATED IN: Nebraska.

Globe Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd. Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $16,271,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Delaware.

*See footnotes at end of Circular.

Grain Dealers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 1747, Indianapolis, IN 46206. UNDERWRITING LIMITATION b/: $2,396,000. SURETY LICENSES c/: All except AL, AK, AS, CT, DE, DC, FL, GU, HI, ID, ME, MD, MA, MT, NH, NJ, NY, ND, PA, PR, RI, UT, VT, VI, WV. INCORPORATED IN: Indiana.

GRAMERCY INSURANCE COMPANY.3* BUSINESS ADDRESS: 1001 Texas Avenue, Suite 240, Houston, TX 77002. UNDERWRITING LIMITATION b/: $230,000. SURETY LICENCES c/: DE, MD, TX. INCORPORATED IN: Texas.

Granite State Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $881,000. SURETY LICENSES c/: All except CT, DE, HI, PR, VI. INCORPORATED IN: New Hampshire.

Great American Insurance Company. BUSINESS ADDRESS: 580 Walnut Street, Cincinnati, OH 45202. UNDERWRITING LIMITATION b/: $44,072,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Ohio.

Great Northern Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $2,442,000. SURETY LICENSES c/: All except AS, CA, CT, DE, GU, ID, NC, PR, TN, VI. INCORPORATED IN: Minnesota.

Greater New York Mutual Insurance Company. BUSINESS ADDRESS: 215 Lexington Avenue, New York, NY 10016. UNDERWRITING LIMITATION b/: $6,200,000. SURETY LICENSES c/: All except AK, AS, GU, HI, VI. INCORPORATED IN: New York.

Gulf Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $5,838,000. SURETY LICENSES c/: All except AS, GU, NJ, PR, VI. INCORPORATED IN: Missouri.

The Hamilton Mutual Insurance Company of Cincinnati, Ohio. BUSINESS ADDRESS: 1520 Madison Road, Cincinnati, OH 45206. UNDERWRITING LIMITATION b/: $208,000. SURETY LICENSES c/: IN, KY, MI, OH. INCORPORATED IN: Ohio.

The Hanover Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $23,969,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Hampshire.

HARCO NATIONAL INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 68309, Schaumburg, IL 60168-0309. UNDERWRITING LIMITATION b/: $2,027,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

Harleysville Mutual Insurance Company. BUSINESS ADDRESS: 355 Maple Avenue, Harleysville, PA 19438. UNDERWRITING LIMITATION b/: $13,755,000. SURETY LICENSES c/: CA, CO, DE, DC, GA, IL, IN, IA, KS, MD, MI, MS, MO, NJ, NM, NC, OH, OK, PA, SC, TN, TX, UT, VA, WV, WI. INCORPORATED IN: Pennsylvania.

*See footnotes at end of Circular.

Hartford Accident and Indemnity Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $71,568,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Connecticut.

Hartford Casualty Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $7,856,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New Jersey.

Hartford Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $148,295,000. SURETY LICENSES c/: All except AS, VI. INCORPORATED IN: Connecticut.

Hartford Insurance Company of Alabama. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $843,000. SURETY LICENSES c/: AL, PA. INCORPORATED IN: Alabama.

Hartford Insurance Company of Illinois. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $2,867,000. SURETY LICENSES c/: IL, PA. INCORPORATED IN: Illinois.

Hartford Insurance Company of the Midwest. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $1,172,000. SURETY LICENSES c/: AK, AR, CT, DC, FL, GA, ID, IL, IN, IA, KS, KY, LA, MD, MI, MT, NM, NY, ND, OR, PA, SC, TX, UT, VA, WA, WV, WI. INCORPORATED IN: Indiana.

Hartford Insurance Company of the Southeast. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $893,000. SURETY LICENSES c/: FL, GA, LA, PA. INCORPORATED IN: Florida.

THE HAWAIIAN INSURANCE & GUARANTY COMPANY, LIMITED. BUSINESS ADDRESS: P.O. Box 2255, Honolulu, HI 96804. UNDERWRITING LIMITATION b/: $586,000. SURETY LICENSES c/: AK, AZ, CA, HI, NV, OR, WA. INCORPORATED IN: Hawaii.

Highlands Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: $22,519,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Texas.

Highlands Underwriters Insurance Company. BUSINESS ADDRESS: 600 Jefferson Street, Houston, TX 77002-7392. UNDERWRITING LIMITATION b/: $1,651,000. SURETY LICENSES c/: AL, AZ, AR, CA, FL, GA, LA, MS, NM, OK, TX. INCORPORATED IN: Texas.

The Home Indemnity Company.3* BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $4,275,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: New Hampshire.

The Home Insurance Company.3* BUSINESS ADDRESS: 59 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $48,078,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New Hampshire.

*See footnotes at end of Circular.

Houston General Insurance Company. BUSINESS ADDRESS: Post Office Box 2932, Fort Worth, TX 76113-2932. UNDERWRITING LIMITATION b/: $1,802,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, MN, NE, NH, NJ, NC, PA, PR, RI, VT, VI, WV, WI. INCORPORATED IN: Texas.

INA Reinsurance Company.5*

ITT Lyndon Property Insurance Company. BUSINESS ADDRESS: 12555 Manchester Road, St. Louis, MO 63131. UNDERWRITING LIMITATION b/: $3,585,000. SURETY LICENSES c/: All except AS, GU, ME, NH, NY, PR, WY. INCORPORATED IN: Missouri.

Illinois National Insurance Co. BUSINESS ADDRESS: 133 South 4th Street, Springfield, IL 62701. UNDERWRITING LIMITATION b/: $1,563,000. SURETY LICENSES c/: AK, IL, IN, IA, KY, MD, MO, MT, NE, NH, NM, NY, ND, OH, SD, TX, UT, VT, WA. INCORPORATED IN: Illinois.

Indemnity Company of California. BUSINESS ADDRESS: 333 Wilshire Avenue, Anaheim, CA 92801. UNDERWRITING LIMITATION b/: $568,000. SURETY LICENSES c/: AZ, CA, NV. INCORPORATED IN: California.

Indemnity Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $10,920,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New York.

Indiana Insurance Company. BUSINESS ADDRESS: 115 North Pennsylvania Street, Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $6,834,000. SURETY LICENSES c/: FL, ID, IL, IN, IA, KY, MI, OH, OR, TN, WA, WI. INCORPORATED IN: Indiana.

Indiana Lumbermens Mutual Insurance Company.3* BUSINESS ADDRESS: Post Office Box 68600, Indianapolis, IN 46268. UNDERWRITING LIMITATION b/: $1,020,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, ME, MA, NH, NJ, NY, PR, RI, VT, VI, WY. INCORPORATED IN: Indiana.

Industrial Indemnity Company. BUSINESS ADDRESS: Post Office Box 7468, San Francisco, CA 94120. UNDERWRITING LIMITATION b/: $18,199,000. SURETY LICENSES c/: All except AS, PR, VI, WV. INCORPORATED IN: California.

Industrial Indemnity Company of the Northwest. BUSINESS ADDRESS: 2121 4th Avenue, Suite 1500, Seattle, WA 98121. UNDERWRITING LIMITATION b/: $503,000. SURETY LICENSES c/: AK, AZ, CA, DC, HI, ID, MT, NV, OR, UT, WA. INCORPORATED IN: Washington.

Inland Insurance Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $1,813,000. SURETY LICENSES c/: AZ, CO, IA, KS, MN, MT, NE, ND, SD, WY. INCORPORATED IN: Nebraska.

*See footnotes at end of Circular.

Insurance Company of North America. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $53,044,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Pennsylvania.

Insurance Company of the State of Pennsylvania. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $9,387,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Pennsylvania.

Insurance Company of the West. BUSINESS ADDRESS: Post Office Box 85563, San Diego, CA 92138-5563. UNDERWRITING LIMITATION b/: $3,296,000. SURETY LICENSES c/: AZ, CA, NV, NM, OK, OR, TX, UT, WA. INCORPORATED IN: California.

Integon Indemnity Corporation. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $1,233,000. SURETY LICENSES c/: AL, AK, AZ, AR, FL, GA, ID, IN, IA, KS, KY, LA, MS, MO, NE, NV, NM, NC, OH, OK, OR, SC, TN, TX, UT, VA, WA, WV. INCORPORATED IN: North Carolina.

International Cargo and Surety Insurance Company. BUSINESS ADDRESS: 1501 Woodfield Road, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $115,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

International Fidelity Insurance Company.3* BUSINESS ADDRESS: 24 Commerce Street, Suite 333, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $636,000. SURETY LICENSES c/: All except AS, CA, CT, GU, HI, KY, ME, NE, NH, RI, VT, VI, WV, WI. INCORPORATED IN: New Jersey.

International Insurance Company. BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $4,733,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

John Deere Insurance Company. BUSINESS ADDRESS: 34th Avenue and 80th Street, Moline, IL 61265. UNDERWRITING LIMITATION b/: $9,398,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Illinois.

The Kansas Bankers Surety Company. BUSINESS ADDRESS: Post Office Box 1654, Topeka, KS 66601. UNDERWRITING LIMITATION b/: $523,000. SURETY LICENSES c/: CO, IA, KS, MO, NE, OK, SD, WI, WY. INCORPORATED IN: Kansas.

Kansas City Fire and Marine Insurance Company.3* BUSINESS ADDRESS: 180 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $1,279,000. SURETY LICENSES c/: All except AS, PR, VI. INCORPORATED IN: Missouri.

Kentucky Central Insurance Company. BUSINESS ADDRESS: Kincaid Towers, Lexington, KY 40507. UNDERWRITING LIMITATION b/: $610,000. SURETY LICENSES c/: AL, GA, IN, KS, KY, MD, MS, MO, NM, TN, UT, VA. INCORPORATED IN: Kentucky.

*See footnotes at end of Circular.

Lawyers Surety Corporation. BUSINESS ADDRESS: 1221 River Bend Drive, Dallas, TX 75247. UNDERWRITING LIMITATION b/: $449,000. SURETY LICENSES c/: AL, AR, CA, FL, GA, KY, MS, NC, OK, SC, TN, TX. INCORPORATED IN: Texas.

Liberty Mutual Insurance Company. BUSINESS ADDRESS: 175 Berkeley Street, Boston, MA 02117. UNDERWRITING LIMITATION b/: $144,917,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Massachusetts.

Lumbermens Mutual Casualty Company. BUSINESS ADDRESS: Long Grove, IL 60049. UNDERWRITING LIMITATION b/: $126,494,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

MIC Property and Casualty Insurance Corporation. BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $2,875,000. SURETY LICENSES c/: All except AL, AS, CA, DE, GU, HI, IL, ME, NH, NC, OR, PR, RI, VT, VI, WY. INCORPORATED IN: Michigan.

Maine Bonding and Casualty Company. BUSINESS ADDRESS: Post Office Box 448, Portland, ME 04112. UNDERWRITING LIMITATION b/: $996,000. SURETY LICENSES c/: ME, MA, NH, RI, VT. INCORPORATED IN: Maine.

Maryland Casualty Company. BUSINESS ADDRESS: Post Office Box 1228, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $70,336,000. SURETY LICENCES c/: All except AS, GU. INCORPORATED IN: Maryland.

Massachusetts Bay Insurance Company. BUSINESS ADDRESS: 100 North Parkway, Worcester, MA 01605. UNDERWRITING LIMITATION b/: $873,000. SURETY LICENSES c/: All except AK, AS, AZ, DE, GU, HI, ID, MT, NV, NM, ND, OR, PR, SD, UT, VI, WV, WY. INCORPORATED IN: Massachusetts.

The Mercantile and General Reinsurance Company of America. BUSINESS ADDRESS: 310 Madison Avenue - CN1930, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $5,313,000. SURETY LICENSES c/: All except AL, AK, AS, AZ, DC, GU, HI, ME, MN, MO, MT, NM, NC, ND, OR, RI, SD, VA, VI, WA. INCORPORATED IN: New York.

Merchants Bonding Company (Mutual). BUSINESS ADDRESS: 2100 Grand Avenue, Des Moines, IA 50312. UNDERWRITING LIMITATION b/: $462,000. SURETY LICENSES c/: AZ, CA, FL, IA, KS, MI, MN, MO, NE, OK, PA, TX, WA. INCORPORATED IN: Iowa.

Meritplan Insurance Company. BUSINESS ADDRESS: Post Office Box 19702, Irvine, CA 92713-9702. UNDERWRITING LIMITATION b/: $1,507,000. SURETY LICENSES c/: AL, AZ, CA, CO, DE, FL, HI, IN, IA, KY, LA, MI, MN, MS, MT, NE, NV, NM, NY, NC, OH, OR, SC, TX, UT, WA, WI. INCORPORATED IN: California.

*See footnotes at end of Circular.

Michigan Millers Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 30060, Lansing, MI 48909. UNDERWRITING LIMITATION b/: $5,583,000. SURETY LICENSES c/: AZ, AR, CA, CO, DC, FL, IN, KS, KY, MI, MO, NE, NJ, NY, NC, OH, OK, PA, TX, VA, WA. INCORPORATED IN: Michigan.

Michigan Mutual Insurance Company. BUSINESS ADDRESS: 28 West Adams Avenue, Detroit, MI 48226. UNDERWRITING LIMITATION b/: $16,036,000. SURETY LICENSES c/: All except AS, DE, DC, GU, HI, OR, PR, VI. (DC - Fidelity only.) INCORPORATED IN: Michigan.

Mid-Century Insurance Company. BUSINESS ADDRESS: Post Office Box 2478, Terminal Annex, Los Angeles, CA 90051. UNDERWRITING LIMITATION b/: $1,910,000. SURETY LICENSES c/: AZ, AR, CA, CO, FL, GA, ID, IL, IA, KS, MD, MI, MO, MT, NE, NV, NM, ND, OH, OK, OR, SD, TX, WA. INCORPORATED IN: California.

MID-CONTINENT CASUALTY COMPANY. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $9,446,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, IN, IA, KS, MN, MS, MO, MT, NE, NM, ND, OK, OR, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

The Millers Mutual Fire Insurance Company of Texas. BUSINESS ADDRESS: Post Office Box 2269, Fort Worth, TX 76113. UNDERWRITING LIMITATION b/: $4,797,000. SURETY LICENSES c/: CO, DC, ID, IL, IN, IA, LA, MT, NM, OK, OR, PA, TX, UT, WA, WY. INCORPORATED IN: Texas.

Millers' Mutual Insurance Association of Illinois. BUSINESS ADDRESS: 111 East Fourth Street, Alton, IL 62002. UNDERWRITING LIMITATION b/: $3,806,000. SURETY LICENSES c/: AL, AR, CO, DC, GA, IL, IN, IA, KS, LA, MN, MS, MO, NE, NC, OH, OK, SD, TN, WI. INCORPORATED IN: Illinois.

Minnesota Trust Company of Austin. BUSINESS ADDRESS: 107 West Oakland Avenue, Post Office Box 463, Austin, MN 55912. UNDERWRITING LIMITATION b/: $117,000. SURETY LICENSES c/: MN, MT, ND. INCORPORATED IN: Minnesota.

MOTORS INSURANCE CORPORATION.3* BUSINESS ADDRESS: 3044 West Grand Boulevard, Detroit, MI 48202. UNDERWRITING LIMITATION b/: $56,605,000. SURETY LICENSES c/: All except AS, AZ, CA, CO, CT, GU, HI, KS, MA, MO, OH, PR, UT, VI. INCORPORATED IN: New York.

Munich American Reinsurance Company. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $15,151,000. SURETY LICENSES c/: AR, CA, CO, DE, DC, FL, GA, HI, IL, IN, IA, LA, MI, NY, OH, PA, SC, TX, VA. INCORPORATED IN: New York.

National Automobile and Casualty Insurance Company. BUSINESS ADDRESS: Post Office Box 7040, Pasadena, CA 91109. UNDERWRITING LIMITATION b/: $295,000. SURETY LICENSES c/: AK, AZ, CA, NV, WA. INCORPORATED IN: California.

*See footnotes at end of Circular.

National-Ben Franklin Insurance Company of Illinois.3* BUSINESS ADDRESS: 200 South Wacker Drive, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $12,607,000. SURETY LICENSES c/: DC, IL, IN, IA, KY, MN, NY, NC, ND, WI. INCORPORATED IN: Illinois.

National Fire Insurance Company of Hartford. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $16,667,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Connecticut.

National General Fire & Casualty Insurance Company. BUSINESS ADDRESS: 855 South Plaza Drive, Jackson, MS 39204. UNDERWRITING LIMITATION b/: $275,000. SURETY LICENSES: LA, MS, TN. INCORPORATED IN: Mississippi.

National Grange Mutual Insurance Company.3* BUSINESS ADDRESS: 55 West Street, Keene, NH 03431. UNDERWRITING LIMITATION b/: $4,510,000. SURETY LICENSES c/: CT, DE, DC, ME, MD, MA, NH, NY, OH, PA, RI, SC, TN, VT, VA, WV, WI. INCORPORATED IN: New Hampshire.

National Indemnity Company. BUSINESS ADDRESS: 3024 Harney Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $82,381,000. SURETY LICENSES c/: All except AL, AS, GU, HI, MA, NJ, NY, PR, VI. INCORPORATED IN: Nebraska.

The National Reinsurance Corporation. BUSINESS ADDRESS: 777 Long Ridge Road, Stamford, CT 06904-2167. UNDERWRITING LIMITATION b/: $14,961,000. SURETY LICENSES c/: All except AL, AS, CT, FL, GA, GU, LA, ME, MS, MO, NC, OR, SC, SD, TN, WA, WV. INCORPORATED IN: Delaware.

National Surety Corporation. BUSINESS ADDRESS: 200 West Monroe Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $9,081,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: Illinois.

National Union Fire Insurance Company of Pittsburgh, PA. BUSINESS ADDRESS: 70 Pine Street, New York, NY 10270. UNDERWRITING LIMITATION b/: $35,402,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Pennsylvania.

NATIONAL UNITED INSURANCE COMPANY. BUSINESS ADDRESS: 305 S. Andrews Ave., Suite 206, Fort Lauderdale, FL 33301. UNDERWRITING LIMITATION b/: $168,000. SURETY LICENSES: FL. INCORPORATED IN: Florida.

Nationwide Mutual Insurance Company. BUSINESS ADDRESS: One Nationwide Plaza, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $173,069,000. SURETY LICENSES c/: All except AS, GU, NJ. INCORPORATED IN: Ohio.

The Netherlands Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH 03431. UNDERWRITING LIMITATION b/: $1,021,000. SURETY LICENSES c/: AZ, CA, DC, ID, IN, IA, ME, MD, MA, MI, NV, NH, NJ, NY, NC, OH, RI, SC, UT, VT, VA, WA, WI. INCORPORATED IN: New Hampshire.

*See footnotes at end of Circular.

New Hampshire Insurance Company. BUSINESS ADDRESS: Post Office Box 960, Manchester, NH 03107. UNDERWRITING LIMITATION b/: $24,374,000. SURETY LICENSES c/: All. INCORPORATED IN: New Hampshire.

New South Insurance Company. BUSINESS ADDRESS: Post Office Box 3199, Winston-Salem, NC 27152. UNDERWRITING LIMITATION b/: $616,000. SURETY LICENSES c/: IN, MS, NC, OH, TX, VA, WA, WV. INCORPORATED IN: North Carolina.

New York Underwriters Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $6,913,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: New York.

Newark Insurance Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $4,314,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New Jersey.

North American Reinsurance Corporation. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $13,486,000. SURETY LICENSES c/: All except AS, GU, VI, WY. INCORPORATED IN: New York.

NORTH AMERICAN SPECIALTY INSURANCE COMPANY. BUSINESS ADDRESS: 650 Elm St., Manchester, NH 03101. UNDERWRITING LIMITATION b/: $1,547,000. SURETY LICENSES c/: All except AL, AS, CA, GU, HI, OK, PR, VI, WI. INCORPORATED IN: New Hampshire.

The North River Insurance Company. BUSINESS ADDRESS: 305 Madison Ave., CN-1932, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $13,636,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New Jersey.

North Star Reinsurance Corporation. BUSINESS ADDRESS: Morris Corporate Center 1, 300 Interpace Parkway, Parsippany, NJ 07054. UNDERWRITING LIMITATION b/: $4,898,000. SURETY LICENSES c/: All except AS, GU, HI, ME, NC, PR, VI, WY. INCORPORATED IN: Delaware.

Northbrook Property and Casualty Insurance Company. BUSINESS ADDRESS: Allstate Plaza, Northbrook, IL 60062. UNDERWRITING LIMITATION b/: $10,131,000. SURETY LICENSES c/: All except GU, VI. INCORPORATED IN: Illinois.

The Northern Assurance Company of America. BUSINESS ADDRESS: One Beacon Street, Boston, MA 02108. UNDERWRITING LIMITATION b/: $8,889,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: Massachusetts.

NORTHWESTERN PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Rd., P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $1,409,000. SURETY LICENSES c/: CA, OK, OR, TX, WA. INCORPORATED IN: Oregon.

*See footnotes at end of Circular.

Oceanic Insurance and Surety Company. BUSINESS ADDRESS: 1501 Woodfield Drive, Suite 204S, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $89,000. SURETY LICENSES c/: NM. INCORPORATED IN: New Mexico.

The Ohio Casualty Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $45,250,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Ohio.

Ohio Farmers Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $19,535,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, KS, NH, PR, VI. (Restricted to existing business only in NH.) INCORPORATED IN: Ohio.

Oklahoma Surety Company. BUSINESS ADDRESS: Post Office Box 1409, Tulsa, OK 74101. UNDERWRITING LIMITATION b/: $484,000. SURETY LICENSES c/: KS, OK, TX. INCORPORATED IN: Oklahoma.

Old Republic Insurance Company. BUSINESS ADDRESS: Post Office Box 789, Greensburg, PA 15601. UNDERWRITING LIMITATION b/: $16,682,000. SURETY LICENSES c/: All except AS, VI. INCORPORATED IN: Pennsylvania.

Old Republic Surety Company. BUSINESS ADDRESS: P.O. Box 1635, Milwaukee, WI 53201. UNDERWRITING LIMITATION b/: $1,333,000. SURETY LICENSES c/: DC, IL, IN, OR, WI. INCORPORATED IN: Wisconsin.

Omaha Property and Casualty Insurance Company. BUSINESS ADDRESS: 3102 Farnam Street, Omaha, NE 68131. UNDERWRITING LIMITATION b/: $1,216,000. SURETY LICENSES c/: All except AS, AR, CA, GA, GU, LA, ME, MA, NH, NJ, NY, NC, OH, OK, PR, RI, VI, WI. INCORPORATED IN: Delaware.

Pacific Employers Insurance Company. BUSINESS ADDRESS: 1600 Arch Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $8,970,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: California.

Pacific Indemnity Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $10,511,000. SURETY LICENSES c/: All except AS, GU, PR. INCORPORATED IN: California.

Pacific Insurance Company, Limited. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $3,055,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

PACIFIC STATES CASUALTY COMPANY. BUSINESS ADDRESS: 5757 Wilshire Blvd., Suite 670, Los Angeles, CA 90036-3636. UNDERWRITING LIMITATION b/: $515,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

Peerless Insurance Company. BUSINESS ADDRESS: 62 Maple Avenue, Keene, NH, 03431. UNDERWRITING LIMITATION b/: $5,695,000. SURETY LICENSES c/: All except AS, GU, HI, NJ, PR, VI. INCORPORATED IN: New Hampshire.

*See footnotes at end of Circular.

Pekin Insurance Company. BUSINESS ADDRESS: 2505 Court Street, Pekin, IL 61558. UNDERWRITING LIMITATION b/: $1,405,000. SURETY LICENSES c/: IL, IN, IA, WI. INCORPORATED IN: Illinois.

Pennsylvania Manufacturers' Association Insurance Company. BUSINESS ADDRESS: 925 Chestnut Street, Philadelphia, PA 19107. UNDERWRITING LIMITATION b/: $17,029,000. SURETY LICENSES c/: All except AL, AS, AR, CT, GU, HI, KS, ME, MN, ND, OR, PR, VI, WY. INCORPORATED IN: Pennsylvania.

Pennsylvania Millers Mutual Insurance Company. BUSINESS ADDRESS: P.O. Box-P, Wilkes-Barre, PA 18773-0016. UNDERWRITING LIMITATION b/: $3,034,000. SURETY LICENSES c/: AR, CT, DC, FL, GA, ID, IN, KS, KY, ME, MD, MA, MS, MO, NH, NJ, NY, NC, ND, PA, RI, SC, TN, UT, VT, VA. INCORPORATED IN: Pennsylvania.

Pennsylvania National Mutual Casualty Insurance Company. BUSINESS ADDRESS: 1900 Derry Street, Harrisburg, PA 17105. UNDERWRITING LIMITATION b/: $6,565,000. SURETY LICENSES c/: All except AS, AR, CO, GU, HI, NV, NH, ND, PR, VI, WY. INCORPORATED IN: Pennsylvania.

The Personal Service Insurance Co. BUSINESS ADDRESS: P.O. Box 1226, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $1,519,000. SURETY LICENSES c/: IN, OH. INCORPORATED IN: Ohio.

Phoenix Assurance Company of New York. BUSINESS ADDRESS: 1270 Avenue of the Americas, Suite 2920, New York, NY 10020. UNDERWRITING LIMITATION b/: $7,095,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: New Hampshire.

The Phoenix Insurance Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $42,721,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Connecticut.

PINNACLE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 1919, Carrollton, GA 30117. UNDERWRITING LIMITATION b/: $291,000. SURETY LICENSES c/: AK, GA. INCORPORATED IN: Georgia.

PLANET INSURANCE COMPANY. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $736,000. SURETY LICENSES c/: All except PR, VI. INCORPORATED IN: Wisconsin.

Progressive Casualty Insurance Company.3* BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143. UNDERWRITING LIMITATION b/: $19,312,000. SURETY LICENSES c/: All except AL, AS, CT, GU, HI, IL, KS, LA, MS, NE, NH, NC, PA, PR, SC, UT, VA, VI, WV, WI. INCORPORATED IN: Ohio.

The Progressive Mutual Insurance Company.3* BUSINESS ADDRESS: 6300 Wilson Mills Road, Mayfield Village, OH 44143. UNDERWRITING LIMITATION b/: $923,000. SURETY LICENSES c/: DC, NJ, OH. INCORPORATED IN: Ohio.

*See footnotes at end of Circular.

Protective Insurance Company. BUSINESS ADDRESS: 3100 North Meridian Street, Indianapolis, IN 46208. UNDERWRITING LIMITATION b/: $7,252,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Indiana.

Prudential Reinsurance Company. BUSINESS ADDRESS: 100 Mulberry Street, Newark, NJ 07102. UNDERWRITING LIMITATION b/: $38,353,000. SURETY LICENSES c/: All except AS, GU, NV, NC, VI, WV, WY. INCORPORATED IN: Delaware.

Puerto Rican-American Insurance Company.3* BUSINESS ADDRESS: Post Office Box S-112, San Juan, PR 00902. UNDERWRITING LIMITATION b/: $3,775,000. SURETY LICENSES c/: PR, VI. INCORPORATED IN: Puerto Rico.

Ranger Insurance Company. BUSINESS ADDRESS: Post Office Box 2807, Houston, TX 77252-2807. UNDERWRITING LIMITATION b/: $2,551,000. SURETY LICENSES c/: All except AS, CT, GU, VI. INCORPORATED IN: Delaware.

Regent Insurance Company. BUSINESS ADDRESS: One General Drive, Sun Prairie, WI 53596. UNDERWRITING LIMITATION b/: $2,782,000. SURETY LICENSES c/: IL, IN, IA, KS, MN, MO, NE, ND, SD, WI. INCORPORATED IN: Wisconsin.

The Reinsurance Corporation of New York. BUSINESS ADDRESS: 80 Maiden Lane, New York, NY 10038. UNDERWRITING LIMITATION b/: $5,918,000. SURETY LICENSES c/: All except AS, GU, HI, PR, VI. INCORPORATED IN: New York.

Reliance Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $44,266,000. SURETY LICENSES c/: All. INCORPORATED IN: Pennsylvania.

Reliance Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,391,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

Republic-Franklin Insurance Company. BUSINESS ADDRESS: Post Office Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: $756,000. SURETY LICENSES c/: IN, MI, NY, OH, VA. INCORPORATED IN: Ohio.

REPUBLIC INSURANCE COMPANY. BUSINESS ADDRESS: Post Office Box 660560, Dallas, TX 75266-0560. UNDERWRITING LIMITATION b/: $6,643,000. SURETY LICENSES c/: All except AL, AS, FL, GU, HI, ME, MA, MT, NH, ND, RI, SD, VT, VI, WY. INCORPORATED IN: Delaware.

Republic Western Insurance Company. BUSINESS ADDRESS: 2721 North Central Avenue, Phoenix, AZ 85004. UNDERWRITING LIMITATION b/: $4,251,000. SURETY LICENSES c/: All except AS, CT, GU, HI, LA, ME, NH, PR, VI, WY. INCORPORATED IN: Arizona.

Rockwood Insurance Company.3* BUSINESS ADDRESS: 654 Main Street, Rockwood, PA 15557. UNDERWRITING LIMITATION b/: $481,000. SURETY LICENSES c/: All except AS, CA, CT, DC, GU, HI, IL, ME, MI, MN, NH, NJ, NY, NC, PR, RI, VT, VI, WI. INCORPORATED IN: Pennsylvania.

*See footnotes at end of Circular.

Royal Indemnity Company. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $10,994,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Delaware.

Royal Insurance Company of America. BUSINESS ADDRESS: 9300 Arrowpoint Blvd., Charlotte, NC 28217-5599. UNDERWRITING LIMITATION b/: $25,986,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Illinois.

SAFECO Insurance Company of America. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $30,796,000. SURETY LICENSES c/: All except AS, NY, PR, VT, VI. INCORPORATED IN: Washington.

SAFECO Insurance Company of Illinois.3* BUSINESS ADDRESS: 1900 West Hassel Rd., Hoffman Estates, IL 60196. UNDERWRITING LIMITATION b/: $3,050,000. SURETY LICENSES c/: AZ, CO, IL, MD, MA, MN, NE, NM, OR, TN, TX, UT, WI. INCORPORATED IN: Illinois.

SAFECO National Insurance Company. BUSINESS ADDRESS: SAFECO Plaza, Seattle, WA 98185. UNDERWRITING LIMITATION b/: $2,262,000. SURETY LICENSES c/: MO, NY. INCORPORATED IN: Missouri.

St. Paul Fire and Marine Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $81,551,000 SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Minnesota.

St. Paul Mercury Insurance Company. BUSINESS ADDRESS: 385 Washington Street, St. Paul, MN 55102. UNDERWRITING LIMITATION b/: $2,795,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Minnesota.

Seaboard Surety Company.3* BUSINESS ADDRESS: Burnt Mills Road and Route 206, Bedminster, NJ 07921. UNDERWRITING LIMITATION b/: $5,774,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: New York.

Security National Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: $775,000. SURETY LICENSES c/: AL, AR, CA, CO, IL, IN, KS, KY, NM, OH, OK, TX, WA, WI, WY. INCORPORATED IN: Texas.

Select Insurance Company. BUSINESS ADDRESS: Post Office Box 1771, Dallas, TX 75221. UNDERWRITING LIMITATION b/: $2,283,000. SURETY LICENSES c/: All except AS, AZ, CT, GU, HI, LA, ME, MA, NH, NJ, NY, ND, PA, PR, RI, UT, VI. INCORPORATED IN: Texas.

Selective Insurance Company of America. BUSINESS ADDRESS: Wantage Avenue, Branchville, NJ 07890. UNDERWRITING LIMITATION b/: $12,416,000. SURETY LICENSES c/: AL, DE, DC, FL, GA, MD, MS, NJ, NC, PA, SC, TX, VA. INCORPORATED IN: New Jersey.

SENTINEL INSURANCE COMPANY, LTD. BUSINESS ADDRESS: Post Office Box 1140, Honolulu, HI 96807. UNDERWRITING LIMITATION b/: $746,000. SURETY LICENSES c/: HI. INCORPORATED IN: Hawaii.

*See footnotes at end of Circular.

Sentry Insurance a Mutual Company. BUSINESS ADDRESS: 1800 North Point Drive, Stevens Point, WI 54481. UNDERWRITING LIMITATION b/: $17,717,000. SURETY LICENSES: All except AS, GU, VI. INCORPORATED IN: Wisconsin.

Skandia America Reinsurance Corporation. BUSINESS ADDRESS: 280 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $20,761,000. SURETY LICENSES c/: All except AL, AK, AS, AR, CT, GU, HI, ID, KS, KY, LA, ME, MN, NV, NH, NJ, NM, NC, ND, OR, PR, RI, SD, TN, TX, VI, WV. INCORPORATED IN: Delaware.

South Carolina Insurance Company. BUSINESS ADDRESS: P.O. Box 1, Columbia, SC 29202. UNDERWRITING LIMITATION b/: $1,190,000. SURETY LICENSES c/:All except AS, GU, HI, ME, NH, NJ, PR, RI, VT. INCORPORATED IN: South Carolina.

SOUTHEASTERN CASUALTY AND INDEMNITY INSURANCE COMPANY, INC. BUSINESS ADDRESS: 499 N.W. 79th Street, #200, Plantation, FL 33317. UNDERWRITING LIMITATION b/: $322,000. SURETY LICENSES c/: FL, GA, LA, MA, OH, SC. INCORPORATED IN: Florida.

SOUTHEASTERN REINSURANCE COMPANY, INC. BUSINESS ADDRESS: 499 N.W. 79th Street, #200, Plantation, FL 33317. UNDERWRITING LIMITATION b/: $2,653,000. SURETY LICENSES c/: FL. INCORPORATED IN: Florida.

The Standard Fire Insurance Company. BUSINESS ADDRESS: 151 Farmington Avenue, Hartford, CT 06156. UNDERWRITING LIMITATION b/: $17,163,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Connecticut.

State Automobile Mutual Insurance Company. BUSINESS ADDRESS: 518 East Broad Street, Columbus, OH 43216. UNDERWRITING LIMITATION b/: $16,181,000. SURETY LICENSES c/: AL, AR, FL, GA, IN, KY, MD, MI, MS, MO, NC, OH, PA, SC, TN, WV. INCORPORATED IN: Ohio.

State Farm Fire and Casualty Company. BUSINESS ADDRESS: 112 East Washington Street, Bloomington, IL 61701. UNDERWRITING LIMITATION b/: $229,152,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Illinois.

State Surety Company. BUSINESS ADDRESS: P. O. Box 1976, Des Moines, IA. 50306. UNDERWRITING LIMITATION b/: $422,000. SURETY LICENSES c/: AZ, CO, DC, IL, IA, KS, MN, MO, MT, NE, NM, ND, OK, SD, WI, WY. INCORPORATED IN: Iowa.

STATEWIDE INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 799, Waukegan, IL 60079. UNDERWRITING LIMITATION b/: $233,000. SURETY LICENSES c/: AZ, AR, IL. INCORPORATED IN: Illinois.

Surety Company of the Pacific. BUSINESS ADDRESS: Post Office Box 2105, Santa Monica, CA 90406. UNDERWRITING LIMITATION b/: $222,000. SURETY LICENSES c/: CA. INCORPORATED IN: California.

*See footnotes at end of Circular.

TEXAS PACIFIC INDEMNITY COMPANY. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $433,000. SURETY LICENSES c/: AR, TX. INCORPORATED IN: Texas.

Transamerica Insurance Company. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, CA 90015. UNDERWRITING LIMITATION b/: $31,457,000. SURETY LICENSES c/: All except AS, PR, VI. INCORPORATED IN: California.

Transamerica Insurance Company of Michigan. BUSINESS ADDRESS: 1150 South Olive Street, Los Angeles, CA 90015. UNDERWRITING LIMITATION b/: $2,350,000. SURETY LICENSES c/: AR, IL, IN, IA, KS, MI, MN, OH, SD. INCORPORATED IN: Michigan.

Transamerica Premier Insurance Company. BUSINESS ADDRESS: 17671 Cowan Avenue, Irvine, CA 92714. UNDERWRITING LIMITATION b/: $6,618,000. SURETY LICENSES c/: All except AS, NH, NY, PR, VI. INCORPORATED IN: California.

Transcontinental Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $5,240,000. SURETY LICENSES c/: All except AS, GU, HI, VI. INCORPORATED IN: New York.

Transportation Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $2,108,000. SURETY LICENSES c/: All except AS, GU, PR, VI, WV. INCORPORATED IN: Illinois.

The Travelers Indemnity Company. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $75,862,000. SURETY LICENSES c/: All except AS. INCORPORATED IN: Connecticut.

THE TRAVELERS INDEMNITY COMPANY OF AMERICA. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $3,763,000. SURETY LICENSES c/: All except AS, AR, FL, GU, KS, MA, OR, VI. INCORPORATED IN: Georgia.

The Travelers Indemnity Company of Illinois. BUSINESS ADDRESS: 200 West Madison Street, Chicago, IL 60606. UNDERWRITING LIMITATION b/: $1,292,000. SURETY LICENSES c/: All except AS, AR, CT, DE, GU, KS, LA, MA, NH, NJ, NC, OR, PA, PR, VI, WV, WI, WY. INCORPORATED IN: Illinois.

The Travelers Indemnity Company of Rhode Island. BUSINESS ADDRESS: One Tower Square, Hartford, CT 06183. UNDERWRITING LIMITATION b/: $13,798,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Rhode Island.

Trinity Universal Insurance Company. BUSINESS ADDRESS: Post Office Box 225028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: $51,264,000. SURETY LICENSES c/: AL, AZ, AR, CA, CO, GA, ID, IL, IN, IA, KS, KY, LA, MI, MO, NE, NM, OH, OK, OR, TX, WI, WY. INCORPORATED IN: Texas.

*See footnotes at end of Circular.

Trinity Universal Insurance Company of Kansas, Inc. BUSINESS ADDRESS: P.O. Box 225028, Dallas, TX 75265. UNDERWRITING LIMITATION b/: $479,000. SURETY LICENSES c/: AL, AZ, CO, KS, KY, LA, NE, OH, OK, TX. INCORPORATED IN: Kansas.

Tri-State Insurance Company. BUSINESS ADDRESS: Post Office Box 3269, Tulsa, OK 74102. UNDERWRITING LIMITATION b/: $3,647,000. SURETY LICENSES c/: AL, AZ, AR, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MO, MT, NE, NM, ND, OK, SD, TN, TX, UT, WA, WY. INCORPORATED IN: Oklahoma.

Tri-State Insurance Company of Minnesota. BUSINESS ADDRESS: One Roundwind Road, Luverne, MN 56156. UNDERWRITING LIMITATION b/: $1,831,000. SURETY LICENSES c/: IA, MN, NE, ND, SD, WI. INCORPORATED IN: Minnesota.

Twin City Fire Insurance Company. BUSINESS ADDRESS: Hartford Plaza, Hartford, CT 06115. UNDERWRITING LIMITATION b/: $4,149,000. SURETY LICENSES C/: All except AS, GU, PR, VI. INCORPORATED IN: Minnesota.

ULICO CASUALTY COMPANY. BUSINESS ADDRESS: 111 Massachusetts Avenue, NW, Washington, DC 20001. UNDERWRITING LIMITATION b/: $2,527,000. SURETY LICENSES c/: All except AL, AS, CA, GU, ME, NH, NC, PR, RI, VI, WI, WY. INCORPORATED IN: Delaware.

Unigard Security Insurance Company. BUSINESS ADDRESS: 15805 N.E. 24th Street, Bellevue, WA 98008-2409. UNDERWRITING LIMITATION b/: $1,765,000. LICENSES c/: All except AS, GU, NJ, PR, VI. INCORPORATED IN: Washington.

Union Insurance Company.3* BUSINESS ADDRESS: P.O. Box 80439, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $4,367,000. SURETY LICENSES c/: AR, CO, IA, KS, MN, NE, ND, SD, TX. INCORPORATED IN: Nebraska.

United Fire & Casualty Company. BUSINESS ADDRESS: Post Office Box 4909, Cedar Rapids, IA 52407. UNDERWRITING LIMITATION b/: $4,828,000. SURETY LICENSES c/: AK, AZ, AR, CA, CO, ID, IL, IN, IA, KS, KY, LA, MD, MN, MS, MO, MT, NE, NJ, NM, NY, ND, OH, OK, OR, SC, SD, TX, UT, WA, WI, WY. INCORPORATED IN: Iowa.

UNITED NATIONAL INSURANCE COMPANY.3* BUSINESS ADDRESS: 1737 Chestnut Street, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $4,473,000. SURETY LICENSES c/: PA. INCORPORATED IN: Pennsylvania.

United Pacific Insurance Company. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $8,330,000. SURETY LICENSES c/: All. INCORPORATED IN: Washington.

United Pacific Insurance Company of New York. BUSINESS ADDRESS: 4 Penn Center Plaza, Philadelphia, PA 19103. UNDERWRITING LIMITATION b/: $1,398,000. SURETY LICENSES c/: NY. INCORPORATED IN: New York.

*See footnotes at end of Circular.

United States Fidelity and Guaranty Company. BUSINESS ADDRESS: Post Office Box 1138, Baltimore, MD 21203. UNDERWRITING LIMITATION b/: $101,785,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: Maryland.

United States Fire Insurance Company. BUSINESS ADDRESS: 305 Madison Ave., CN-1932, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $23,300,000. SURETY LICENSES c/: All except AS, GU. INCORPORATED IN: New York.

UNIVERSAL INSURANCE COMPANY. BUSINESS ADDRESS: G.P.O. Box 71338, San Juan, PR 00936. UNDERWRITING LIMITATION b/: $1,578,000. SURETY LICENSES c/: PR. INCORPORATED IN: Puerto Rico.

Universal Surety Company. BUSINESS ADDRESS: Post Office Box 80468, Lincoln, NE 68501. UNDERWRITING LIMITATION b/: $1,019,000. SURETY LICENSES c/: AZ, CO, ID, IL, IA, KS, MI, MN, MO, MT, NE, NM, ND, OH, OR, SD, UT, WI, WY. INCORPORATED IN: Nebraska.

Universal Surety of America. BUSINESS ADDRESS: 1812 Durham, Houston, TX 77007. UNDERWRITING LIMITATION b/: $225,000. SURETY LICENSES c/: TX. INCORPORATED IN: Texas.

UNIVERSAL UNDERWRITERS INSURANCE COMPANY. BUSINESS ADDRESS: 5115 Oak Street, Kansas City, MO 64112. UNDERWRITING LIMITATION b/: $16,010,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: Missouri.

Utica Mutual Insurance Company. BUSINESS ADDRESS: Post Office Box 530, Utica, NY 13503. UNDERWRITING LIMITATION b/: $8,046,000. SURETY LICENSES c/: All except AS, GU, VI. INCORPORATED IN: New York.

Valley Forge Insurance Company. BUSINESS ADDRESS: CNA Plaza, Chicago, IL 60685. UNDERWRITING LIMITATION b/: $4,332,000. SURETY LICENSES c/: All except AK, AS, GU, HI, PR, VI. INCORPORATED IN: Pennsylvania.

Vigilant Insurance Company. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $4,027,000. SURETY LICENSES c/: All except AS, PR. INCORPORATED IN: New York.

VOYAGER GUARANTY INSURANCE COMPANY. BUSINESS ADDRESS: P.O. Box 2918, Jacksonville, FL 32203. UNDERWRITING LIMITATION b/: $428,000. SURETY LICENSES c/: AL, FL, ID, LA, MD, MS, SC, TN, VA. INCORPORATED IN: Florida.

Washington International Insurance Company. BUSINESS ADDRESS: 1900 East Golf Road, Schaumburg, IL 60195. UNDERWRITING LIMITATION b/: $492,000. SURETY LICENSES c/: AZ, CA, FL, IL, MD, MA, MO, NY, OH, OR, TX, VA, WA. INCORPORATED IN: Arizona.

*See footnotes at end of Circular.

West American Insurance Company. BUSINESS ADDRESS: 136 North Third Street, Hamilton, OH 45025. UNDERWRITING LIMITATION b/: $42,333,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, ME, MT, NH, PR, RI, VT, VI, WV. INCORPORATED IN: California.

Westchester Fire Insurance Company. BUSINESS ADDRESS: 305 Madison Avenue, CN-1932, Morristown, NJ 07960. UNDERWRITING LIMITATION b/: $15,306,000. SURETY LICENSES c/: All except AS, FL, GU, VI. INCORPORATED IN: New York.

The Western Casualty and Surety Company. BUSINESS ADDRESS: 500 N. Meridian St., Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $16,428,000. SURETY LICENSES c/: All except AS, CT, GU, HI, ME, MA, NH, NY, PR, RI, VT, VA, VI. INCORPORATED IN: Kansas.

The Western Fire Insurance Company. BUSINESS ADDRESS: 500 N. Meridian St., Indianapolis, IN 46204. UNDERWRITING LIMITATION b/: $13,721,000. SURETY LICENSES c/: All except AL, AS, CT, DE, DC, GA, GU, HI, IN, IA, ME, MA, NH, NJ, PR, RI, SC, VT, VI. INCORPORATED IN: Kansas.

Western Surety Company. BUSINESS ADDRESS: 101 South Phillips Avenue, Sioux Falls, SD 57192. UNDERWRITING LIMITATION b/: $906,000. SURETY LICENSES c/: All except AS, GU, PR, VI. INCORPORATED IN: South Dakota.

Westfield Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $8,262,000. SURETY LICENSES c/: All except AK, AS, CT, GU, HI, ME, NH, PR, VI. (Existing business only in NH.) INCORPORATED IN: Ohio.

Westfield National Insurance Company. BUSINESS ADDRESS: Westfield Center, OH 44251. UNDERWRITING LIMITATION b/: $3,226,000. SURETY LICENSES c/: IA, OH. INCORPORATED IN: Ohio.

Information related to Federal process Agents and the service of process can be found in Note d/.

*See footnotes at end of Circular.

COMPANIES HOLDING CERTIFICATES OF AUTHORITY AS ACCEPTABLE REINSURING COMPANIES UNDER 31 CFR, Part 223.3(b) REVISED SEPTEMBER 1, 1978 (See Note (e))

Alliance Assurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $3,532,000.

Frankona Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: P.O. Box 1069, Kansas City, MO 64141. UNDERWRITING LIMITATION b/: $1,550,000.

The London Assurance, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $6,188,000.

Munich Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 560 Lexington Avenue, New York, NY 10022. UNDERWRITING LIMITATION b/: $18,817,000.

The Sea Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $3,510,000.

Sun Insurance Office, Limited, U.S. Branch. BUSINESS ADDRESS: 15 Mountain View Road, P.O. Box 1615, Warren, NJ 07061-1615. UNDERWRITING LIMITATION b/: $5,555,000.

Swiss Reinsurance Company, U.S. Branch. BUSINESS ADDRESS: 237 Park Avenue, New York, NY 10017. UNDERWRITING LIMITATION b/: $16,028,000.

The Tokio Marine and Fire Insurance Company, Limited, U.S. Branch. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: $6,967,000.

Trans Pacific Insurance Company. BUSINESS ADDRESS: 55 Water Street, New York, NY 10041. UNDERWRITING LIMITATION b/: $578,000.

"Winterthur" Swiss Insurance Company, U.S. Branch. BUSINESS ADDRESS: One World Trade Center, Suite 8911, New York, NY 10048. UNDERWRITING LIMITATION b/: $9,681,000.

Zurich Insurance Company, U.S. Branch. BUSINESS ADDRESS: 231 North Martingale Road, Schaumburg, IL 60196. UNDERWRITING LIMITATION b/: $29,566,000.

*See footnotes at end of Circular.

FOOTNOTES

1* ENNIA REINSURANCE COMPANY OF AMERICA changed its name to AEGON REINSURANCE COMPANY OF AMERICA, effective January 1, 1987.

2* Aetna Reinsurance Company changed its name to Century Reinsurance Company, effective June 30, 1987.

3* License information is not current. Confirmation regarding whether a company is licensed for surety in a particular state may be obtained from that State's Department of Insurance.

4* Arkwright-Boston Manufacturers Mutual Insurance Company changed its name to Arkwright Mutual Insurance Company, effective March 19, 1987.

5* INA Reinsurance Company changed its name to CIGNA Reinsurance Company, effective June 30, 1987.

NOTES

(a) All Certificates of Authority expire June 30, and are renewable July 1, annually. Companies holding Certificates of Authority as acceptable sureties on Federal bonds are also acceptable as reinsuring companies.

(b) Treasury requirements do not limit the penal sum (face amount) of bonds which surety companies may provide. However, when the penal sum exceeds a company's Underwriting Limitation, the excess must be protected by co-insurance, reinsurance, or other methods in accordance with Treasury Circular 297, Revised September 1, 1978 (31 CFR Section 223.10, Section 223.11). Treasury refers to a bond of this type as an Excess Risk. When Excess Risks on bonds in favor of the United States are protected by reinsurance, such reinsurance is to be effected by use of a Treasury reinsurance form to be filed with the bond or within 45 days thereafter. In protecting such excess, the limitation in force on the day in which the bond was provided will govern absolutely.

(c) A surety company must be licensed in the State or other area in which it provides a bond, but need not be licensed in the State or other area in which the principal resides or where the contract is to be performed (28 Op. Atty. Gen. 127, Dec. 24, 1909; 31 CFR Section 223.5(b)). The term "other area" includes the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.

(d) FEDERAL PROCESS AGENTS: Treasury approved surety companies are required to appoint Federal process agents in accord with 31 U.S.C. 9306 and 31 CFR 224 in the following districts: Where the principal resides; where the obligation is to be performed; and in the District of Columbia where the bond is returnable or filed. No process agent is required in the State or other area where the company is incorporated (31 CFR Section 224.2). The name and address of a particular surety's process agent in a particular Federal Judicial District may be obtained from the Clerk of the U.S. District Court in that district. (The appointment documents are on file with the clerks.) (NOTE: A surety company's underwriting agent who furnishes its bonds may or may not be its authorized process agent.)

SERVICE OF PROCESS: Process should be served on the Federal process agent appointed by a surety in a judicial district, except where the appointment of such agent is pending or during the absence of such agent from the district. Only in the event an agent has not been duly appointed, or the appointment is pending, or the agent is absent from the district, should process be served directly on the Clerk of the court pursuant to the provisions of 31 U.S.C. 9306.

(e) Companies holding Certificates of Authority as acceptable reinsuring companies are acceptable only as reinsuring companies on Federal bonds.

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federal register

Wednesday
July 1, 1987

Part III

Environmental Protection Agency

40 CFR Parts 51, 52, 53 and 58

Ambient Air Quality Standards for Particulate Matter; Final Rules

40 CFR Parts 50 and 52

Air Programs; Fugitive Dust Policy and Review of National Secondary Ambient Air Quality Standards for Particulate Matter; Proposed Policy Statement and Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD-FRL 3141-9(a)]

Revisions to the National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In 1971, EPA promulgated primary and secondary national ambient air quality standards for particulate matter, measured as "total suspended particulate matter" or "TSP." The primary standards were set at 260 $\mu g/m^3$, 24-hour average not to be exceeded more than once per year, and 75 $\mu g/m^3$, annual geometric mean. The secondary standard, also measured as TSP, was set at 150 $\mu g/m^3$, 24-hour average not to be exceeded more than once per year. In accordance with sections 108 and 109 of the Clean Air Act, EPA has reviewed and revised the health and welfare criteria upon which these primary and secondary particulate matter standards were based.

On March 20, 1984 (49 FR 10408), EPA proposed changes in the standards based on its review and revision of the criteria. Today's notice announces EPA's final decisions regarding these changes. The final decisions include: (1) replacing TSP as the indicator for particulate matter for the ambient standards with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), (2) replacing the 24-hour primary TSP standard with a 24-hour PM_{10} standard of 150 $\mu g/m^3$ with no more than one expected exceedance per year; (3) replacing the annual primary TSP standard with a PM_{10} standard of 50 $\mu g/m^3$, expected annual arithmetic mean; and (4) replacing the secondary TSP standard with 24-hour and annual PM_{10} standards that are identical in all respects to the primary standards.

Today's notice also announces a new Federal Reference Method for measurement of PM_{10} in the ambient air. The method is contained in a new Appendix J to Part 50. This notice also announces a new Appendix K to Part 50, which provides rules for applying the statistical form of the revised standards. In addition, certain clarifying changes to Appendix B and Appendix G are set out.

Related notices published elsewhere in today's **Federal Register** set out final regulations concerning Ambient Air Monitoring Reference and Equivalent Methods (40 CFR Part 53), Ambient Air Quality Surveillance (40 CFR Part 58), Regulations for Implementing Revised Particulate Matter Standards (40 CFR Part 51) with associated guidelines, Approval and Promulgation of Implementation Plans (40 CFR Part 52), and Prevention of Significant Deterioration (Parts 51 and 52).

EFFECTIVE DATE: This action is effective July 31, 1987.

ADDRESSES: A docket (No. A–82–37) containing information related to EPA's review and revision of the particulate matter standards is available for public inspection between 8:00 a.m. and 3:00 p.m. on weekdays at EPA's Central Docket Section, South Conference Center, Room 4, 401 M St., SW., Washington, DC. A reasonable fee may be charged for copying. The information in the docket constitutes the complete basis for the decisions announced in this notice. For the availability of related information see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. John Haines, Strategies and Air Standards Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5531 (FTS 629–5531).

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The revised criteria document, Air Quality Criteria for Particulate Matter and Sulfur Oxides (three volumes, EPA–600/8–82–029af–cf, December, 1982; Volume I NTIS #PB–84–120401, $24.95 paper copy and $6.50 microfiche; Volume II NTIS #PB–84–120419, $48.95 paper copy and $6.50 microfiche; Volume III NTIS #PB–84–120427, $48.95 paper copy and $13.50 microfiche, the Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information, (EPA/600/8–86–020–F, NTIS #PB–87–176574, $24.95 paper copy and $6.50 microfiche), the 1982 staff paper, Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information-OAQPS Staff Paper (EPA–450/5–82–001, January, 1982; NTIS #PB–82–177874, $24.95 paper copy and $6.50 microfiche), and the staff paper addendum, Review of the National Ambient Air Quality Standards for Particulate Matter: Updated Assessment of Scientific and Technical Information (EPA–450/ 5–86–012, December 1986; NTIS #PB–87–176871, $18.95 paper copy and $6.50 microfiche) are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (add $3.00 handling charge per order). A limited number of copies of other documents generated in connection with this standard review, such as the control techniques document, can be obtained from: U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, N.C. 27711, telephone (919) 541–2777 (FTS 629–2777).

Table of Contents

I. Background

A. Legislative Requirements Affecting This Rule

1. The Standards

Two sections of the Clean Air Act govern the establishment and revision of national ambient air quality standards (NAAQS). Section 108 [42 U.S.C. 7408) directs the Administrator to identify pollutants which may reasonably be anticipated to endanger public health or welfare and to issue air quality criteria for them. These air quality criteria are to reflect the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of a pollutant in the ambient air.

Section 109 [42 U.S.C. 7409) directs the Administrator to propose and promulgate "primary" and "secondary" NAAQS for pollutants identified under section 108. Section 109(b)(1) defines a primary standard as one the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria and allowing for an adequate margin of safety, is requisite to protect the public health. A secondary standard, as defined in section 109(b)(2), must specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on the criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of the pollutant in the ambient air. Welfare effects are defined in section 302(h) (42 U.S.C. 7602(h)) to include effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, climate, damage to and deterioration of property, hazards to transportation, and effects on economic values and on personal comfort and well-being.

The U.S. Court of Appeals for the D.C. Circuit has held that the requirement for an adequate margin of safety for primary standards was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association v. EPA*, 647 F.2d 1130, 1154 (D.C. Cir. 1980), *cert. denied*, 101 S. Ct. 621 (1980); *American Petroleum Institute v. Costle*, 665 F.2d 1176, 1177 (D.C. Cir. 1981), *cert. denied*, 102 S. Ct. 1737 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, by selecting primary standards that provide an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful, but also to prevent lower pollutant levels that he finds pose an unacceptable risk of harm, even if that risk is not precisely identified as to nature or degree.

In selecting a margin of safety, EPA has considered such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. Given that the "margin of safety" requirement by definition only comes into play where no conclusive showing of harm exists, such factors, which involve unknown or only partially quantified risks, have their inherent limits as guides to action. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead Industries Association v. EPA, supra*, 647 F.2d at 1161–62.

Section 109(d) of the Act (42 U.S.C. 7409(d)) requires periodic review and, if appropriate, revision of existing criteria and standards. The process by which EPA has reviewed the original criteria and standards for particulate matter under section 109(d) is described in Sections I.C. and I.D. of this notice.

2. Related Control Requirements

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the Act (42 U.S.C. 7410), States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. Other Federal programs provide for nationwide reductions in emissions of these and other air pollutants through the Federal Motor Vehicle Control Program under Title II of the Act [42 U.S.C. 7501 to 7534), which involves controls for automobile, truck, bus, motorcycle, and aircraft emissions, and through the development of New Source Performance Standards under section 111 (42 U.S.C. 7411) and National Emission Standards for Hazardous Air Pollutants under section 112 (42 U.S.C. 7412).

B. Particulate Matter and Original Standards for TSP

"Particulate matter" is the generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. Particles originate from a variety of stationary and mobile sources. They may be emitted directly or formed in the atmosphere by transformations of gaseous emissions such as sulfur oxides, nitrogen oxides, and volatile organic substances. The chemical and physical properties of particulate matter vary greatly with time, region, meteorology and source category, thus complicating the assessment of health and welfare effects. The characteristics, origins, concentrations, and potential effects of particulate matter are discussed in more detail in the staff paper (SP) (EPA, 1982a), in the revised criteria document (CD) (EPA, 1982b), in the criteria document addendum (CDA) (EPA, 1986a) and in the staff paper addendum (SPA) (EPA, 1986b). The executive summary of the staff paper addendum is reprinted in Addendum III to this notice.

On April 30, 1971 (36 FR 8186), EPA promulgated the original primary and secondary NAAQS for particulate matter under section 109 of the Clean Air Act. The reference method for measuring attainment of these standards is the "high-volume" sampler (40 CFR Part 50, Appendix B), which collects particulate matter up to a nominal size of 25 to 45 micrometers (μm) (so-called "total suspended particulate," or "TSP"). Thus, TSP is the current indicator for the particulate matter standards. The existing primary standards for particulate matter (measured as TSP) are 260 $\mu g/m^3$, 24-hour average not to be exceeded more than once per year, and 75 $\mu g/m^3$, annual geometric mean. The secondary standard (measured as TSP) is 150 $\mu g/m^3$, 24-hour average not to be exceeded more than once per year. The scientific and technical bases for these standards are contained in the original criteria document, Air Quality Criteria for Particulate Matter (DHEW, 1969).

C. Development of Revised Air Quality Criteria for Particulate Matter

In 1976, as a result of internal Agency review and the recommendations of a committee of EPA's Science Advisory Board, EPA decided to revise the existing criteria document for particulate matter. Because of competing priorities regarding revision of other criteria documents, and because of the need to complete additional research on particulate matter, the process was scheduled to commence in 1979. With the endorsement of the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board, EPA decided to review and revise the criteria document for particulate matter concurrently with that for sulfur oxides and to produce a combined particulate matter/sulfur oxides (PM/SO_x) criteria document. On October 2, 1979 (44 FR 56731), EPA announced that it was in the process of revising the criteria document and reviewing the existing air quality standards for possible revisions.

In developing the revised criteria document, EPA has provided a number of opportunities for review and comment by organizations and individuals outside the Agency. Three drafts of the revised particulate matter/sulfur oxides criteria document, prepared by EPA's Environmental Criteria and Assessment Office (ECAO), were made available for external review on April 11, 1980 (45 FR 24913), January 29, 1981 (46 FR 9746), and October 28, 1981 (46 FR 53210). EPA received and considered numerous and often extensive comments on each of these drafts. CASAC held three public meetings to review successive drafts of the document on August 20–22, 1980 (45 FR 5164, August 4, 1980), July 7–9, 1981 (46 FR 31746, June 17, 1981), and November 16–18, 1981 (46 FR 53210, October 28, 1981). These reetings were open to the public and were attended by many individuals and representatives of organizations who provided critical reviews and new information for consideration. In accordance with CASAC recommendations made after the first review meeting, five additional public meetings were held at which EPA, its consulting authors and reviewers, and other scientifically and technically qualified experts selected by EPA discussed the various chapters of the draft document and suggested ways of resolving outstanding issues (45 FR 74047, November 7, 1980; 45 FR 78224, November 25, 1980; 45 FR 76790, November 20, 1980; 45 FR 80350, December 4, 1980; 46 FR 1775, January 7, 1981).

The comments received on the successive drafts of the revised criteria document were considered in the final document, issued simultaneously with the proposal of revisions to the standards. A summary of EPA's responses to the comments on the three external review drafts of the documents is in the public docket (Docket No. A–82–37). Transcripts of the three CASAC meetings are also in the docket. In accordance with its established procedures, CASAC prepared a "closure" memorandum to the Administrator indicating its satisfaction with the final draft (December, 1981) of the criteria document and outlining key issues and recommendations. The closure memorandum, dated January 29, 1982, stated that the EPA office that prepared this document was "responsive to Committee advice as well as to comments provided by the general public . . ." The closure memorandum further stated that the criteria document "fulfills the requirements set forth in section 108 of the Clean Air Act, which requires that the criteria document 'shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare' from sulfur oxides and particulates in the ambient air." The CASAC closure memorandum on the criteria document is reprinted in its entirety in Addendum I to this notice. Following closure, minor technical and editorial refinements were made to the criteria document for printing (EPA, 1982b).

A number of scientific and technical issues were raised during the public review process. With respect to the particulate matter portions of the criteria document, the major issues included the relationship among various measures of particulate matter air quality, the implications of particle deposition and other studies for selecting a particulate matter indicator, and the development and application of criteria for deciding which epidemiological studies are most appropriate for use in revising air quality standards. A summary of these and other major scientific issues, as well as CASAC's conclusions, is included in the closure memorandum on the criteria document (Addendum I).

D. Review of the Standards: Development of Staff Paper

In the evolving process of revising the national ambient air quality standards, EPA has found it useful to prepare a document that helps bridge the gap between the scientific review of health and welfare effects contained in the criteria document and the judgments required of the Administrator in setting ambient standards. This document, known as the staff paper, has become an important element in the standards review process, providing an opportunity for public comment on proposed staff recommendations before they are presented to the Administrator.

In the spring of 1981, EPA's Office of Air Quality Planning and Standards (OAQPS) prepared the first draft of the staff paper, Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information. This draft staff paper, based on the then existent draft of the revised criteria document, evaluated and interpreted the available scientific and technical information most relevant to the review of the air quality standards for particulate matter and presented staff recommendations on alternative approaches to revising the standards. This and a second draft of the paper were reviewed at two CASAC meetings on July 7–9, 1981 (46 FR 31746, June 17, 1981), and November 16–18, 1981 (46 FR 53210, October 28, 1981). Numerous written and oral comments were received on the drafts from CASAC, representatives of organizations, individual scientists, and other interested members of the public. A summary of major revisions made in response to comments on the first draft is contained in an October 31, 1981 letter to CASAC (Padgett, 1981). Following the second CASAC meeting, the staff made further revisions in response to comments and prepared an executive summary that was reviewed by CASAC members before preparation of the closure memorandum on the staff paper. In January, 1982, EPA released the final OAQPS staff paper (EPA, 1982a), which reflects the various suggestions made by CASAC and members of the public. The January 29, 1982, CASAC closure memorandum states that the staff paper "has been modified in accordance with recommendations made by CASAC," is consistent with the criteria document, and provides the Administrator "with the kind and amount of technical guidance that will be needed to make appropriate revisions to the standard." This closure memorandum is reprinted in Addendum II to this notice.

A number of major issues were raised during the public review process. The more important issues are outlined below.

1. Substantial discussion concerned the maximum size of particles (or particle size fraction) to be used in measuring particulate matter for regulatory purposes. Some groups favored retaining TSP as an indicator;

others called for alternative size-specific standards with nominal "size cuts" ("D_{50}"; see discussion in Section III.A.) of 15 μm, 10 G6mm, 5–7 C6mm, and 2.5 C6mm. After CASAC closure on the staff paper and criteria document, comments were received from one group favoring a so-called "D_6" of 10 μm (approximately equivalent to a nominal size cut [D_{50}] of 6 μm).

2. Much attention was focused on selecting the level of the primary standards and on the question of which health effects studies were most appropriate for this purpose. Significant criticisms were received on the major epidemiological studies of particulate matter exposures, highlighting their limitations for use in standard setting. In a number of comments, specific suggestions for standards were made.

3. With respect to secondary standards, most attention focused on the possible need for a fine (≦2.5 G6m) particle standard designed to protect visibility.

These and other major issues are discussed more fully in the executive summary of the staff paper and in later sections of this notice. CASAC's discussion of these issues and its recommendations are contained in the closure memorandum on the staff paper (Addendum II).

E. Proposed Revisions to the Standards

On March 20, 1984 (49 FR 10408) EPA proposed a number of revisions to the primary and secondary particulate matter standards. The proposed revisions, based on the revised criteria, included:

(1) Replacing TSP as the indicator for particulate matter for the primary standards with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10});

(2) Changing the level of the 24-hour primary standard to a value to be selected from a range of 150 to 250 μg/m³ and replacing the deterministic form of the standard, which permitted not more than one observed exceedance of the standard per year, with a statistical form that would permit one expected exceedance per year;

(3) Changing the level of the annual primary standard to a value to be selected from a range of 50 to 65 μg/m³, and changing the form from an annual geometric mean to an expected annual arithmetic mean; and

(4) Replacing the current 24-hour secondary TSP standard by an annual TSP standard selected from a range of 70 to 90 μg/m³, expected annual arithmetic mean.

The Administrator expressed an inclination to select the primary standards from the lower portions of the above ranges. With respect to the secondary standards, the Administrator was inclined to select the final standard from the upper portion of the range, but also called for comment on the alternative of using PM_{10} as the particulate matter indicator for the secondary standards and making the secondary standards identical in all respects to the primary standards. The proposal notice sets forth the rationale for these and other proposed revisions of the particulate matter NAAQS and background information related to the proposal.

F. Supplemental Criteria Revisions and Standards Review Following Proposal

Following publication of the proposal, EPA held a public meeting in Washington, D.C. on April 30, 1984 to receive comments on the proposed standards revisions. A transcript of the meeting has been placed in the public docket (Docket No. A–82–37). After the close of the original public comment period (June 5, 1985), the CASAC met on December 16–17, 1985 to review the proposal and to discuss the relevance of certain new scientific studies on the health effects of particulate matter that had emerged since the Committee completed its review of the criteria document and staff paper in January, 1982. A transcript of this meeting is also available in the Docket. Based on its preliminary review of these new studies, the Committee recommended that the Agency prepare separate addenda to the criteria document and staff paper for the purpose of evaluating the relevant new studies and discussing their potential implications for standard-setting. The Agency announced its acceptance of these recommendations on April 1, 1986 (51 FR 11058). On July 3, 1986, EPA announced (51 FR 24392) the availability of the external review draft document entitled: Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information. At the same time, the Agency announced a supplementary comment period on the March 20, 1984 proposal to provide the public an opportunity to comment on the implications of the new studies and addenda for the final standards. On September 16, 1986, EPA announced (51 FR 32878) the availability of the draft staff paper addendum entitled Review of the National Ambient Air Quality Standards for Particulate Matter: Updated Assessment of Scientific and Technical Information. CASAC held a public meeting on October 15–16, 1986 to review both the criteria document addendum and the staff paper addendum. At this meeting, CASAC members as well as representatives of several organizations, provided critical review of both EPA documents. A transcript of the CASAC meeting has been placed in the public docket (A–82–37).

The CASAC sent a closure letter on the criteria document addendum to the Administrator dated December 15, 1986, which concludes "that this 1986 Addendum along with the 1982 Criteria Document, previously reviewed by CASAC, represent a scientifically balanced and defensible summary of the extensive scientific literature on these pollutants" (Lippmann, 1986b). The closure letter on the criteria document addendum is reprinted in Addendum I of this notice. The Committee sent their closure letter on the staff paper addendum to the Administrator dated December 16, 1986, stating "The Committee believes that this document provides you with the kind and amount of technical guidance that will be needed to make appropriate revisions to the standards" (Lippmann, 1986c). The closure letter on the staff paper addendum, which also discusses major issues addressed by the CASAC and the Committee's recommendations concerning these issues, is reprinted in Addendum II to this notice. The final addenda to the criteria document (EPA, 1986a) and the staff paper (EPA, 1986b), which include revisions to reflect comments from CASAC and the public, are available from the address listed above. Where there are differences between the 1982 Criteria Document and staff paper and the more recent addenda, the addenda supersede the earlier document. The executive summary of the staff paper addendum is reprinted in Addendum III to this notice.

II. Summary of Public Comments

The following discussion summarizes in general terms the comments received from the public and from governmental agencies regarding the proposed revisions to the indicator, form, averaging times, and levels of the primary and secondary standards. Many of these comments had been made previously by the public during public deliberations on drafts of the criteria document and staff paper and were reviewed and addressed by EPA in revisions to those documents. Salient comments on all aspects of the proposal and Agency responses to those comments are summarized by category in Section VI of this notice. A more

detailed description of individual comments and Agency responses has been entered in the public docket (No. A–82–37).

A. Comments on 1984 Proposal

Extensive written comments were received during the original comment period on the proposal, which closed June 5, 1985. Of some 312 written submissions, 153 were provided by individual industrial concerns or industry groups, 93 by State, local, and Federal government agencies and organizations, 32 by environmental and public interest groups, and 34 by individual private citizens.[1] The comments on the key elements of the proposed standards are summarized below:

(1) *Indicator for the Primary Standard:* The overwhelming majority of the comments received on this issue favored a size-selective indicator for the PM standard. Of the 147 written comments received on this issue, 108 supported the PM_{10} indicator proposed by the Agency. Most of the remaining comments were in support of alternative smaller particle size indicators including PM_6 (28 comments) and $PM_{2.5}$ (8 comments). The principal support for PM_6 came from mining and related industries.

(2) *Levels of the Primary Standards:* Comments on the proposed levels for the two primary standards were more polarized than those on the indicator. Most industry comments favored selecting the level of the standards at the upper end of the proposed ranges or above, while most of the remaining commenters favored standard levels at the lower bound of the ranges, and in some cases lower. Additional comments from individual citizens, environmental groups, and government agencies urged that the level of protection afforded by the current particulate matter standards be maintained or strengthened.

(3) *Secondary Standards:* Of the 105 written comments received on the proposed secondary standard, 44 supported retaining TSP as the indicator and 61 opposed the use of TSP. Most of the latter commenters supported the proposed alternative of making the secondary standards equal in all respects to the primary standards. Industry commenters were virtually unanimous in opposing a TSP secondary standard, while a majority (35 of 47) of government agency comments on this issued favored retaining the TSP indicator. Some of the latter commenters, however, recommended testing attainment of the TSP standard with PM_{10} monitors. Environmental groups commenting on this issue favored retaining the TSP indicator.

(4) *Form of the Standards:* A majority of the 52 comments received on this subject supported some kind of statistical 24-hour standard, but a number of industry and State and local agency commenters raised concerns with aspects of the specific form proposed. The principal concern was that the proposed form could result in misclassification of areas as non-attainment. Some industry and governmental commenters favored alternative forms for the 24-hour standards including multiple exceedance (9 comments) and percentile (8 comments) forms. These forms would permit five or more exceedances per year of the 24-hour standard. Environmental groups and other government agencies opposed multiple exceedance forms. Of 38 submissions from industry and government agencies, 26 favored a geometric mean for the annual standard over the proposed arithmetic mean.

(5) *Federal Reference Method:* While most of the comments generally supported the performance-based approach to the Federal Reference Method, many commenters favored more stringent specifications for PM_{10} samplers to ensure accurate and reliable performance under all ambient sampling conditions. Other comments and recommendations addressed specific requirements of Appendix J such as flow calibration and measurement, flow regulation, filter media, humidity control and sampler maintenance.

B. Comments on Subsequent Notice

As discussed earlier in this notice, EPA announced an additional public comment period on July 3, 1986 to address the implications of new scientific studies on the health effects of particulate matter [51 FR 24392]. Approximately 20 additional written submissions were received by the close of this comment period on November 17, 1986, 17 of which were provided on behalf of industry groups or companies, 2 from environmental groups, and 1 from a state agency. Much of the material related to evaluations of specific studies and their treatment in the staff paper addendum. The industry comments, which included submissions from consulting scientists and analysts, generally found that the new studies suffered from deficiencies that preclude placing much weight on them in standard setting. These commenters concluded that their original recommendations (summarized above) with respect to the standards remained valid. The two environmental groups felt that the findings in these new studies necessitated standards below the lower bounds of the proposed ranges.

III. Rationale for the Primary Standards

In selecting primary standards for particulate matter, the Administrator must specify: (1) the particle size fraction that is to be used as an indicator of particulate pollution; (2) the appropriate averaging times and form(s) of the standards; and (3) the numerical levels of the standards. These specifications must be considered collectively in evaluating the margin of safety afforded by particulate matter standards. Based on the assessment of relevant scientific and technical information in the criteria document and addendum, the staff paper and staff paper addendum (hereinafter "SP" and "SPA," respectively) outline a number of key factors to be considered in making decisions in each of these areas (SP, Section VI; SPA, Section IV). Both the staff and CASAC made recommendations to focus consideration on a discrete range of options. In most respects, the Administrator has adopted the recommendations and supporting reasons contained in the staff paper and addendum and the CASAC closure statements (Friedlander, 1982; Lippmann, 1986c). Rather than reiterating those discussions at length, the following discussion of the standards revisions focuses primarily on those considerations that were most influential in the Administrator's selection of particular options, or that differ in some respect from considerations that influenced the staff and/or CASAC recommendations.

A. Pollutant Indicator

Based on the staff assessment of the available scientific information, EPA concludes that (1) a separate particulate matter standard (as opposed to a combination standard for particulate matter and SO_2) remains a reasonable public health policy choice, and (2) given current scientific knowledge and uncertainties, a size-specific (rather than chemical-specific) indicator should be used. In assessing the information in the criteria document, the staff reached several conclusions summarized here (see SP, pp. 71–75):

[1] This numerical distribution of comments in each category should be compared with caution. For example, the American Iron and Steel Institute and the American Petroleum Institute submitted comments on behalf of 63 and 230 individual companies respectively, in lieu of having each of their member companies send separate comments. Similarly, comments from interest groups such as NRDC represent the views of a number of individuals.

(1) Health risks posed by inhaled particles are influenced both by the penetration and deposition of particles in the various regions of the respiratory tract, and by the biological responses to these deposited materials. Smaller particles penetrate furthest in the respiratory tract. The largest particles are deposited in the extrathoracic (head) region with somewhat smaller particles depositing in the tracheobronchial region. Still smaller particles can reach the deepest portion of the lung, the alveolar region.

(2) The risks of adverse health effects associated with deposition of typical ambient fine and coarse particles [2] in the thorax (tracheobronchial and alveolar regions of the respiratory tract) are markedly greater than those associated with deposition in the extrathoracic (head) region. Maximum particle penetration to the thoracic region occurs during oronasal or mouth breathing.

(3) The size-specific indicator for primary standards should represent those particles small enough to penetrate to the thoracic region (both the tracheobronchial and alveolar regions). The risks of adverse health effects from extrathoracic deposition of typical ambient particulate matter are sufficiently low that particles depositing only in that region can safely be excluded from the indicator.

Considering these conclusions together with other information on air quality composition, respiratory tract deposition and health effects, the need to provide protection for sensitive individuals who may breathe by mouth and/or oronasally, and the similar convention on particles penetrating the thoracic region recently adopted by the International Standards Organization (ISO, 1981), the staff recommended that the size-specific indicator include particles of diameters less than or equal to a nominal 10 μm "cut point."[3] The factors considered in the original staff recommendations for a 10 μm cut point are outlined in the staff paper (SP, pp. 75–79). This indicator is referred to as "thoracic particles" (TP) in the 1982 staff paper; it is now generally referred to as "PM_{10}." Such an indicator is conservative with respect to health protection in that it includes all of the particles small enough to penetrate to the sensitive alveolar region, and includes approximately the same proportion of larger particles as would be expected to reach the tracheobronchial region. It places substantially greater emphasis on controlling smaller particles than does a TSP indicator, but does not completely exclude larger particles from all control.

The assessment of more recent information on respiratory tract deposition in the criteria document and staff paper addenda reinforces the conclusions reached in the original staff assessment. In particular, the staff paper addendum found that: (1) the recent data do not provide support for an indicator that excludes all particles larger than 10 μm in diameter; [4] (2) the analysis used to support an alternative indicator with a nominal size cut of 6 G6mm (Swift and Proctor, 1982) significantly underestimated thoracic deposition of particles larger than 6 μm in diameter under natural breathing conditions; (3) the PM_{10} indicator generally includes a similar or larger fraction of the range of particles that can deposit in the tracheohronchial region, although it appears to be somewhat less conservative in this regard than previously thought with respect to large (G6<10 μm) particle deposition under conditions of natural mouthbreathing; and (4) the studies of tracheobronchial deposition generally involved adult subjects; recent information indicating even greater tracheobronchial deposition of particles in children than in adults provides an additional reason for an indicator that includes particles capable of penetration to the tracheobronchial region (SPA, p. 36). Consideration of these and the earlier conclusions led the staff to reaffirm its recommendation for a PM_{10} indicator (SPA, pp. 36–37). The CASAC also restated its recommendation for PM_{10} in its review of the proposal and the closure letter to the Administrator (Lippmann, 1986 a, c).

The Administrator accepts the recommendations of the staff and CASAC and their underlying rationale and has decided to replace TSP as the particle indicator for the primary standards with a new indicator that includes only those particles less than a nominal 10 μm in diameter, as specified in the Federal Reference Method (Appendix J to 40 CFR Part 50) being promulgated today. In defining the standards for particulate matter, this new indicator is termed PM_{10}.

B. Averaging Time and Form of the Standards

Few comments on the proposed standards contested the need for both 24-hour and annual primary standards for particulate matter. EPA's assessment of more recent scientific information found that the new data confirm the need for both short- and long-term standards. The alternative of a single averaging time would not provide adequate protection against potential effects from both long- and short-term exposures without being unduly restrictive. The forms for the 24-hour and annual standards are discussed below.

1. 24-hour Standard

EPA proposed that the 24-hour standard be stated in a statistical form that uses more than one year of data and accounts for variations in sampling frequency in order to predict the actual number of exceedances to be expected in an average year. When used with an appropriate standard level, the statistical form can provide improved health protection that is less sensitive to changes in sampling frequency than the deterministic form, and also can offer a more stable target for control programs. Recognition of the limitations of the deterministic form has led EPA to promulgate a statistical form for the ozone standard (44 FR 8202).

The interpretation of the statistical form of the particulate matter standard is detailed in Appendix K of the proposed regulation. The standard would be attained when the expected number of exceedances of the 24-hour standard level is no more than one per year. The expected number of exceedances per year is equivalent to the long-term average number of exceedances per year, assuming no changes in underlying emissions. Generally, the determination of the expected number of exceedance will be based on three consecutive years of data.

As a result of EPA's evaluations of evidence submitted and comments received during the public review process, the following changes have

[2] Particles in ambient air usually occur in two somewhat overlapping size distributions, fine (diameter less than 2.5 μm) and coarse (diameter larger than 2.5 pm). The two size fractions tend to have different origins and composition (SP, Appendix D).

[3] The more precise term is 50% cut point or 50% diameter (D_{50}). This is the aerodynamic particle diameter for which the efficiency of particle collection is 50%. Larger particles are not excluded altogether, but are collected with substantially decreasing efficiency and smaller particles are collected with increasing (up to 100%) efficiency. Ambient samplers with this cut point provide a reliable estimate of the total mass of suspended particulate matter of aerodynamic size less than or equal to 10 μm. See additional discussion regarding the Federal Reference Method in section V below and in the accompanying notice revising 40 CFR Part 53.

[4] The American Mining Congress (AMC, 1982) had recommended such an indicator, with a "D_o" of 10 μm. EPA estimated that the "D_{50}" of this indicator would be 6 μm.

been made to Appendix K of the proposed rule regarding:

(1) Data Capture Requirements—Appendix K to the proposed standards contained minimum data capture requirements for determining attainment of the standards. The amount of data required varies with the sampling frequency and the number of years of record. The Ambient Air Quality Surveillance regulations (40 CFR Part 58) proposed in 1984 and being promulgated today require that sampling be performed every day or every other day in areas where there is a substantial probability of nonattainment of the standards. The proposed Appendix K to the standards, however, would have permitted states to demonstrate attainment of the standards with only 12 samples per calendar quarter, even in those areas where everyday or every other day sampling is required. Commenters have argued that, for the same reasons that everyday or every other day sampling is required in areas with a substantial probability of nonattainment, 12 samples per quarter are not sufficient to establish attainment in those areas. These commenters also argued that 75 percent data capture is achievable at all sampling frequencies. EPA agrees, and therefore the final rule requires that 75 percent of the required samples must be captured each calendar quarter to establish attainment of the NAAQS.

Additional criteria for situations in which less than 3 years of representative data are available are also contained in the final rule. These criteria are intended to permit areas to determine their air quality status in a reasonable time frame during the period in which new PM_{10} monitoring is initiated, while minimizing the probability of errors in classification. Appendix K specifies that the various data requirements do not apply when the data available establishes nonattainment unambiguously. Furthermore, data not meeting the various criteria may also be sufficient to show attainment; however, such exceptions will have to be approved by the Regional Administrator in accordance with established guidance.

(2) Exceedance Calculations—EPA is modifying the formulas used to account for incomplete data in the estimation of the expected number of exceedances per year. In the proposal, these calculations were based on the assumption that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above that level for the entire calendar year. In the final rule, these calculations will be required on a quarterly basis, thereby taking into account possible seasonal differences in exceedance rates as well as differences in sampling frequency or data capture. The estimated annual number of exceedances is defined as the sum of the estimated exceedances for each calendar quarter. This change will accommodate situations in which sampling frequency has been increased to everyday according to the requirements of Part 58.13, and situations in which the Regional Administrator has granted a waiver of increased sampling frequency requirements for part of the calendar year under provisions of those monitoring regulations.

(3) Interpretation of the First Observed Exceedance—EPA is additionally modifying Appendix K with respect to the treatment of the first observed exceedance in order to reduce the chance of misjudging attainment status. Under the aforementioned formulas which adjust for incomplete data, a single observed exceedance could cause a site to fail the test for attainment, even if the true expected number of exceedances is less than or equal to one. Such an occurrence is especially likely if sampling is performed less frequently than everyday. In order to reduce the chances of occurrence of this situation, the final rule contains a provision that the first observed exceedance shall not be adjusted for incomplete sampling if (1) everyday sampling had not been required previously by 40 CFR 58.13, (2) there was only one observed exceedance in the calendar quarter, and (3) sampling frequency has been subsequently increased for the next 4 calendar quarters in accordance with 40 CFR 58.13. The associated reduction in misclassification errors is discussed in "Revising the National Ambient Air Quality Standards for Particulate Matter—A Selective Sampling Monitoring Strategy" which has been placed in the public docket.

With this change, the first observed exceedance can be interpreted as the only true exceedance which has occurred in the calendar quarter. This assumption is believed to be reasonable since incomplete sampling is permitted only in areas for which state implementation plans are not initially required and in areas in which maximum PM_{10} concentrations are estimated to be less than 80 percent of the level of the standard. If an area is truly in nonattainment, additional exceedances would be expected during the subsequent year of everyday sampling. If, however, everyday sampling is not initiated as required by the monitoring regulations, all observed exceedances shall be adjusted for incomplete sampling and accordingly considered in the evaluation of PM_{10} air quality status.

2. Annual Standard

The Administrator has decided to change the form of the annual standard from the current annual geometric mean to a statistical form expressed as an expected annual arithmetic mean. The expected annual arithmetic mean is equivalent to the long-term arithmetic average concentration level, assuming no changes in underlying emissions. The expected arithmetic mean is more directly related to the available health effects information than is the annual geometric mean, which is the current form of the standard. Because the arithmetic mean concentration is proportional to the sum of the daily means, it reflects the total cumulative dose of particulate matter to which an individual is exposed. Therefore, it is an appropriate indicator to protect against any health effect that depends on total dose. It is also a reasonable indicator for protecting against health effects that depend on repeated short-term high concentrations; short-term peaks have an influence on the arithmetic mean that is proportional to their frequency, magnitude, and duration. The geometric mean, on the other hand, deemphasizes the effect of short-term peak concentrations, and is heavily influenced by days of relatively clean air. For these reasons, the staff and CASAC recommended the change to an arithmetic mean.

The interpretation of the statistical form of the standard is detailed in Appendix K to the proposed regulation. Under the statistical form, the expected annual arithmetic average is determined by averaging the annual arithmetic averages from three successive years of data. The current deterministic form of the standard does not adequately take into account the random nature of meteorological variations. In general, annual mean particulate matter concentrations will vary from one year to the next, even if emissions remain constant, due to the random nature of meteorological conditions that affect the formation and dispersion of particles in the atmosphere. If only one year of data is considered, compliance with the standard and, consequently, emission control requirements, may be determined on the basis of a year with unusually adverse or unusually favorable weather conditions. The

problem of year-to-year variability is, however, reduced by averaging three years of data.

C. Level of the Standards

The original staff paper and CASAC recommendations set forth a framework for determining the levels for the proposed particulate matter standards that would protect public health with an adequate margin of safety. The discussion that follows relies heavily on that framework and on the supporting material in the staff paper and its addendum as well as the CASAC closure letters. The essential steps in this framework are summarized here.

1. Assessment of the quantitative epidemiological studies.

The criteria document and its addendum identify a small number of community epidemiological studies that are useful in determining concentrations at which particulate matter is likely to affect public health. The staff used these quantitative studies to examine concentration-response relationships and to develop numerical "ranges of interest" for possible PM_{10} standards.

A number of uncertainties associated with use of these studies must be considered in selecting an appropriate margin of safety. As discussed in the staff paper and the criteria document, and the addenda to those documents, epidemiological studies are generally limited in sensitivity and suhject to inherent difficulties involving confounding variables. Moreover, many of the quantitative studies were conducted in times and places where pollutant composition may have varied considerably from current U.S. atmospheres. Most also have used British Smoke [5] or TSP as particle indicators. None of the published studies used the proposed PM_{10} indicator. Thus, assumptions must be used to convert the various results to common (PM_{10}) units (SP, pp. 96–100; SPA pp. 9–11).

2. Identification of additional margin of safety considerations.

The criteria document identifies an additional substantial body of scientific literature that, while not providing reliable concentration-response relationships for ambient exposures, does provide important qualitative insights into the health risks associated with human exposure to particles. This literature includes both quantitative and qualitative epidemiological studies, controlled human exposure experiments, and animal toxicological studies. The staff assessed this literature to identify additional factors and uncertainties that should be considered in selecting the most appropriate margin of safety (SP, pp. 100–101; 107–111, SPA pp. 52–53; 59).

3. Selection of the levels that might be considered to provide an adequate margin of safety.

The intent of the margin of safety requirement was to direct the Administrator to set air quality standards at pollution levels below those at which adverse health effects have been found or might be expected to occur in sensitive groups. Experience with the requirement has shown that the scientific data are often so inconclusive that it is difficult to identify with confidence the lowest pollution level at which an adverse effect will occur. Moreover, in cases such as the present one, the evidence suggests that there is a continuum of effects, with the risk, incidence, or severity of harm decreasing, but not necessarily vanishing, as the level of pollution is decreased.

In the absence of clearly identified thresholds for health effects, the selection of a standard that provides an adequate margin of safety requires an exercise of informed judgment by the Administrator. The level selected will depend on the expected incidence and severity of the potential effects and on the size of the population at risk, as well as on the degree of scientific certainty that the effects will in fact occur at any given level of pollution. For example, if a suspected but uncertain health effect is severe and the size of the population at risk is large, a more cautious approach will be appropriate than would be if the effect were less troubling or the exposed population smaller.

EPA staff originally recommended a range of potential standards for the Administrator's consideration (SP, pp. 111–114). The recommended range was below the levels at which the staff, with the concurrence of CASAC, had concluded from the available data that adverse health effects were "likely," but in the domain where the data suggested that such effects were "possible." The Administrator proposed refined ranges of standard levels that were based on the original staff and CASAC recommendations. After consideration of the new scientific evidence contained in the criteria document addendum, the staff revised its recommendations for ranges of standards (SPA, pp. 60–62). The Administrator has considered the revised assessments and the recommendations of CASAC (Lippmann, 1986b) in making his final decision on the standard levels. The rationales for the levels of the 24-hour and annual standards are presented below.

1. 24-Hour Standard

The revised staff assessment of the short-term epidemiological data is summarized in Table 1; particulate matter levels are expressed in both the original (British Smoke ["BS"] or TSP) and PM_{10} units. The "effects likely" row in Table 1 denotes concentration ranges derived from the criteria document and its addendum at or above which a consensus judgment suggests greatest certainty that the effects studied would occur, at least under the conditions that occurred in the original studies. In the "effects possible" range, the staff found credible scientific evidence suggesting the existence of adverse health effects in sensitive populations, but substantial uncertainty exists regarding the conclusions to be drawn from such evidence.

[5] British Smoke (BS) is a pseudo-mass indicator related to small particle (aerodynamic diameter less than a nominal 4.5 μm) darkness. This particulate matter indicator was widely used in British and other European studies. See the criteria document for a more detailed treatment of BS (CD, pp. 1–88 to 1–90 and 14–8 to 14–11).

TABLE 1.—UPDATED STAFF ASSESSMENT OF SHORT-TERM EPIDEMIOLOGICAL STUDIES

(After Table 4–1, SPA)

Effects/Study	Measured British smoke levels (as μg/m³) (24-hr. avg.)			Measured TSP levels (μg/m³) (24/hr. avg.)	Equivalent PM_{-10} Levels (μg/m³)
	Daily Mortality in London [1]	Aggravation of bronchitis [2]	Combined range	Small, reversible declines in lung function in children [3, 4]	Combine range [5]
Effects Likely	1000	250–*500*	250–500		350–600
Effects Possible	?	<250*	<250	220*–420 [3]—200–250 [4]	140–350

TABLE 1.—UPDATED STAFF ASSESSMENT OF SHORT-TERM EPIDEMIOLOGICAL STUDIES—Continued

(After Table 4-1, SPA)

Effects/Study	Measured British smoke levels (as $\mu g/m^3$) (24-hr. avg.)			Measured TSP levels ($\mu g/m^3$) (24/hr. avg.)	Equivalent PM_{10} Levels ($\mu g/m^3$)
	Daily Mortality in London [1]	Aggravation of bronchitis [2]	Combined range	Small, reversible declines in lung function in children [3, 4]	Combine range [5]
No Significant Effects Noted				125* [4]—160 [3]	<125

*Indicates levels used for upper and lower bound of range.

[1] Various analyses of daily mortality encompassing the London winter of 1958–59, 14 winters from 1958–72, in aggregate and individually. Early winters dominated by high smoke and SO_2 from coal combustion with frequent fogs. From 1982 CD: Martin and Bradley (1960); Ware et al., (1981); Mazumdar et al. (1981). From 1986 CD Addendum: Mazumdar et al. (1982); Ostro (1984); Schwartz and Marcus (1986). Later studies show association across entire range of smoke, with no clear delineation of "likely" effects or threshold of response possible.

[2] Study of symptoms reported by bronchitis patients in London, mid-50's to early 70's; Lawther et al. (1970).

[3] Study of pollution "episodes" in Steubenville, Ohio, 1978–80; Dockery et al. (1982).

[4] Study of 1985 pollution episode in Ijmond, The Netherlands; Dassen et al. (1986).

[5] (a) *Conversion of BS readings to PM_{10} levels:* Assumes for London conditions and BS readings in the range 100–500 $\mu g/m^3$, $BS < PM_{10} < TSP$. Precise conversions are not possible. Uncertainty in measurements of BS and conversion relationships preclude quantitative estimates of range for lower BS levels. The upper bound assumption ($PM_{10} = TSP = BS + 100$ $\mu g/m^3$) overestimates PM_{10} levels, while the lower bound assumption ($PM_{10} = BS$) understates PM_{10} levels.

(b) *Conversion of TSP to PM_{10} for Dockery et al. results:* Based on analysis of particle size fraction relationships in Steubenville (Spengler et al. 1986). The lower bound TSP of 220 $\mu g/m^3$ was the peak reported for the Spring 1980 study. A PM_{15}/TSP ratio of about 0.8 occurred at a nearby site on days surrounding this peak. Using lower bound of PM_{10}/PM_{15} ratio from later year (0.8), the PM_{10} to TSP ratio estimate used in 0.64. The 160 $\mu g/m^3$ reflects peak level in Fall 1980 from episode with no significant functional decline noted.

(c) *Conversion of Dassen et al. results to PM_{10}:* Both PM indices (Respirable Suspended Particles [RSP] and TSP) reached similar levels. Results suggest TSP levels too low, but PM_{10} levels unlikely to be much higher than RSP. Thus $RSP = PM_{10}$ assumed for conditions of higher concentrations in this study. The 125 $\mu g/m^3$ entry reflects an excursion occurring 2 days prior to date on which no decrements noted.

The data do not provide evidence of clear thresholds in expnsed populations. Instead, they suggest a continuum of response for a given number of exposed individuals with both the likelihood (risk) of any effects occurring *and* the extent (incidence and severity) of any potential effect decreasing with concentration. This is particularly true for the statistical analyses of daily mortality in London. Substantial agreement exists that wintertime pollution episodes produced premature mortality in elderly and ill populations, but the range and nature of association provide no clear basis for distinguishing any particular lowest "effects likely" levels or for defining a concentration below which no association remains. The recent lung function studies in children also provide evidence of effects at concentrations in the range listed in Table 1, but the relationships are not certain enough to derive "effects likely" levels for PM_{10}. The lung function studies do, however, suggest levels below which detectable functional changes are unlikely to occur in exposed populations. Following CASAC recommendations, the staff used the combined range listed in the "effects possible" row as a starting point for developing alternative standards.

The original range proposed by the Administrator, drawn from the 1982 staff analysis, was 150 to 250 $\mu g/m^3$ PM_{10}, 24-hour average with no more than one expected exceedance per year. The lower bound of this range was derived from the original assessment of the London mortality studies. As a result of its updated assessment of reanalyses of the London mortality and more recent U.S. morbidity studies, the staff reduced the level of the lower bound of the range of interest to 140 $\mu g/m^3$ (SPA, p. 51), while noting that the difference between it and original lower bound (150 $\mu g/m^3$) is within the range of uncertainty associated with converting the morbidity study results from TSP to PM_{10}.

As indicated in Table 1, the study of Lawther et al. (1970) judged to provide evidence that health effects are likely at particulate matter concentrations above 250 $\mu g/m^3$ (as BS). The effects observed in this study (related to aggravation of bronchitis) are of concern both because of their immediate impact and because of the potential for inducing longer-term deterioration of health status in a significant sensitive group. There were approximately 6.5 million bronchitics in the U.S. in 1970 (DHEW, 1973). Based on the uncertain conversion between smoke and PM_{10} outlined in Table 1, the lowest "effects likely" level derived from the Lawther study (250 $\mu g/m^3$ as BS) should be in the range of 250 to 350 $\mu g/m^3$, in PM_{10} units.

The assessment of this study formed the basis for the upper bound of the range of PM_{10} standards proposed by the Administrator in 1984. Considering this study alone, a PM_{10} standard of 250 $\mu g/m^3$ might appear to contain some margin of safety, even for the sensitive bronchitics studied, because it incorporates a conservative British Smoke/PM_{10} conversion factor and because of differences between exposure conditions in the British study and current U.S. air quality (SP, pp. 100–101). Because bronchitics are identified as a group particularly sensitive to particulate pollution, a standard of 250 $\mu g/m^3$ (as PM_{10}) also might provide some margin of safety for other, less sensitive, groups. Nevertheless, this study of bronchitics in London has inherent limitations in sensitivity that preclude derivation of unequivocal "effects thresholds" at 250 $\mu g/m^3$ as BS, and by extension PM_{10}. The criteria document notes that associations between pollution and health status persisted at lower BS concentrations in selected, more sensitive individuals. Although the lead author of the study objects to attaching any importance to these latter findings (Lawther, 1986), EPA, with CASAC concurrence, finds no basis for asserting that this study demonstrates a population threshold at 250 $\mu g/m^3$.

In evaluating the margin of safety for a 24-hour standard, it is also important to consider the London mortality studies. A standard at the upper portion of the proposed range (250 $\mu g/m^3$) would he well below the levels (500 to 1000 $\mu g/m^3$ as BS) of the historical London episodes in which the scientific consensus indicates that pollution was responsible for excess mortality (CD, Table 14–7). The portions of the population at greatest risk of premature mortality associated with particulate matter exposures in such episodes

include the elderly and persons with pre-existing respiratory or cardiac disease. Although the extent of life shortening (days, weeks, or years) cannot be specified, the seriousness of this effect strongly justifies a margin of safety for it (below the consensus effects levels) that is larger than that warranted for the effects on bronchitics.

The staff assessment of the several reanalyses of London mortality suggests, however, that the risk of premature mortality to sensitive individuals extends to concentrations substantially lower than those which occurred in the "episodes." The more recent analyses (Mazumdar et al., 1982; Ostro, 1984; Shumway et al., 1983) provide no objective support for a population threshold below which such a risk no longer exists. Although the risk to individuals may be small at concentrations of 250 $\mu g/m^3$ and below, the number of people exposed to lower concentrations given current U.S. levels is substantially larger than the number exposed to higher levels (SPA, Table 2–1). The increased number of individuals exposed increases the risk that effects will occur in the total population exposed.

Differences in the composition of particles and gases among U.S. cities and between current conditions in the U.S. and those in London at the time the mortality and morbidity data were gathered add to the complexity of assessing the risk associated with particulate matter in the U.S. In the case of the mortality studies, however, the staff found that at least one of the more recent studies (Ozkaynak and Spengler, 1985) provides qualitative support for an association between daily mortality and particle concentrations in nearly contemporary U.S. atmospheres (SPA, pp. 43–44).

The 1982 assessment of the mortality studies and related factors prompted the Administrator to consider standard levels that extended from 250 $\mu g/m^3$ down to the lower bound of the original staff range of interest (150 $\mu g/m^3$) and even lower. The more recent analyses of the London mortality data provide additional evidence that serious adverse health effects may occur at particulate concentrations below 250 $\mu g/m^3$. These analyses have addressed a number of the uncertainties associated with the earlier studies, and have reinforced the Administrator's concern that a 24-hour standard at the upper end of the proposed range may not provide an adequate margin of safety. However, given the uncertainties in converting from BS to PM_{10} measurements, particularly at lower concentrations, and the possible differences in particulate composition between London at the time the data were gathered and the contemporary U.S., it is difficult to use these studies to set a precise level for a PM_{10} standard (SPA, pp. 49–51).

Given these difficulties, it is important to examine contemporary studies that utilize gravimetric measurements of particulate concentrations. The staff found the studies of Dockery et al. (1982) and Dassen et al. (1986) to be particularly useful. The Dockery study observed physiologically small but statistically significant decreases in lung function in a group of children exposed to peak PM_{10} levels of 140–250 $\mu g/m^3$. The decrements persisted for 2–3 weeks following the exposures. The study also suggested the possibility of larger responses in a subset of the children, including those with existing respiratory symptoms. The Dassen study recorded similar decrements in children in the Netherlands following exposure to PM_{10} levels estimated at 200 to 250 $\mu g/m^3$, but no observable effects two days after exposure to PM_{10} levels estimated at 125 $\mu g/m^3$. The particle composition, at least in the Dockery study, is more representative of contemporary U.S. cities and the associated aerometry provides a more reliable estimate of PM_{10} levels than do the measurements used in the London studies. It is reasonable to expect that the effects observed (small reversible reductions in lung function in children) are, in most cases, more sensitive to air pollution than those observed in the London studies. These effects are, of themselves, of uncertain significance to health, but might be associated with aggravation of respiratory symptoms in children with preexisting illness (SPA, p. 47). Long-term examination of respiratory health in the same community studied by Dockery et al. (1982) suggests that the children in that community have a higher incidence of respiratory illness and symptoms than children in communities with lower particle levels, but the data show no evidence for any persistent reduction in lung function (Ware et al., 1986). Uncertainties with respect to the effects of other pollutants (e.g., SO_2), the consistency of the changes, and exposures preclude specifying unequivocal "effects likely" levels based on this study. The staff assessment therefore suggests that short-term lung function effects in children are possible across a range of 140–250 $\mu g/m^3$ or more as PM_{10} (SPA, p. 50).

In making a decision on a final standard level, the Administrator also considered information from the more qualitative studies of PM assessed by the staff (SP, pp. 101–103; SPA, pp. 52–53). These suggest increased risks for sensitive groups (asthmatics) and risks of potential effects (morbidity in adults) not demonstrated in the more quantitative epidemiological literature. The qualitative studies do not provide clear information on effects levels, but do justify consideration of effects of particulate matter that have not been sufficiently investigated.

Based on the scientific assessment at the time, the Administrator in 1984 expressed an inclination to select a 24-hour level from the lower portion of the proposed range of 150–250 $\mu g/m^3$. The present Administrator finds that the updated scientific assessment supports the original inclination and, if anything, suggests an even wider margin of safety is warranted. The recent analyses of daily mortality are of particular concern in this regard. The Administrator has, therefore, decided to set the final standard at the extreme lower bound of the range originally proposed; that is, at 150 $\mu g/m^3$. This standard provides a substantial margin of safety below the levels at which there is a scientific consensus that particulate matter causes premature mortality and aggravation of bronchitis. Such a margin is necessary because of the seriousness of these effects and because of the recent analyses of daily mortality that suggest adverse effects may occur at particulate matter levels well below the consensus levels. The standard is in the lower portion of the range where sensitive, reversible physiological responses of uncertain health significance are possibly, but not definitely, observed in children. Using a conservative assessment of lung function/particle relationship from Dockery et al., a change in concentration from background levels (~20 $\mu g/m^3$) to 150 $\mu g/m^3$ would produce lung function changes of at most 10 to 15% in less than 5% of exposed children (SPA, p. 48). Based on the results of Dassen et al. (1986), it appears unlikely that any functional changes would be detected one or two days following such exposures (SPA, p. 50). Thus, the maximum likely changes in lung function appear to present little risk of significant adverse responses. Standards set at a somewhat higher level would, however, present an unacceptable risk of premature mortality and allow the possibility of more significant functional changes. Furthermore, a standard level of 150 $\mu g/m^3$ is fully consistent with the

recommendations of CASAC on the 24-hour standard (Lippmann, 1986c).

2. Annual Standard

The updated staff assessment of important long-term epidemiological data is summarized in Table 2. Long-term epidemiological studies are subject to additional confounding variables that reduce their sensitivity and make their interpretation more difficult than that of short-term studies. The "effects likely" levels are derived from the criteria document, but again, no clear thresholds can be identified for all effects categories. Evidence exists of effects at lower levels—the "effects possible levels"—but the evidence is inconclusive and effects are difficult to detect in the available epidemiological studies.

TABLE 2.—UPDATED STAFF ASSESSMENT OF LONG-TERM EPIDEMIOLOGICAL STUDIES (AFTER TABLE 4-2, SPA)

Effects/Study	Measured BS levels (as $\mu g/m^3$)	Measured TSP levels ($\mu g/m^3$)					Equivalent PM_{10} levels ($\mu g/m^3$)
	Increased respiratory disease, reduced lung function in children [1]	Increased respiratory disease, symptoms, small reduction in lung function in adults [2]	Increased respiratory symptoms in adults [3]	Increased respiratory symptoms and illnesses in children [4]	Reduced lung function in children [4]	Combined range	Combined range [5]
Effects likely	230–300	*180				>180	>80–90
Effects possible	<230	*130–180	60–150(110)	*60–114		60–180	40–90
No significant [6] effects noted		80–130			40–114	<60	<40

*Indicates levels used for upper and lower bound of range.

[1] Study conducted in 1963–65 in Sheffield, England (Lunn et al., 1967). BS levels (as $\mu g/m^3$) uncertain.

[2] Studies conducted in 1961–73 in Berlin, NH (Ferris et al., 1973, 1976). Effects likely level (180 $\mu g/m^3$) based on uncertain 2-month average. Effects in lung function were relatively small.

[3] Study conducted in 1973 in two Connecticut towns. (Bouhuys et al., 1978). Exposure estimates reflect 1965–73 data in Ansonia. Median value (110 $\mu g/m^3$) used to indicate long-term concentration. No effects on lung function, but some suggestion of effects on respiratory symptoms.

[4] Study conducted in 1976–1980 in 6 U.S. cities (Ware et al., 1986). Exposure estimates reflect 4-year averages across cities. Comparable pollution/effects gradients not noted within cities.

[5] Conversion of TSP to PM_{10} equivalents for Berlin, Ansonia studies based on estimated ratio of PM_{10}/TSP for current U.S. atmospheres (Pace, 1983). The estimated ratio ranged between 0.45 and 0.5. Conversion for six-city study based on site-specific analysis of particle size data (Spengler et al., 1986).

[6] Ranges reflect gradients in which no significant effects were detected for categories at top. Combined range reflects all columns.

Based on a recent assessment of PM_{10}/TSP ratios in areas with elevated TSP levels, the updated staff assessment revised the "effects likely" levels from the Ferris et al. (1973) study to 80 to 90 $\mu g/m^3$ as PM_{10} (SPA, p. 58). Because of limitations in sampling duration as well as the conversion to PM_{10}, this estimate is particularly uncertain. As indicated in the table, effects are possible at lower concentrations. Of greatest concern is the possibility of long-term deterioration of the respiratory system in exposed populations, the potential for which is indicated by lung function (mechanical pulmonary) changes and increased incidence of respiratory disease. One set of studies (Ferris et al., 1973, 1976) provides some evidence for a "no observed effects" level for these effects at or below 60 to 65 $\mu g/m^3$ (130 $\mu g/m^3$ as TSP) while another study (Bouhuys et al., 1978), suggests some possibility of symptomatic responses in adults at long-term median levels at or below about 50 to 55 $\mu g/m^3$ as PM_{10}. The importance of these symptomatic responses, which were unaccompanied by lung function changes, to long-term respiratory health is unclear.

The most important recent study of long-term effects is an ongoing examination of six U.S. cities (Ware et al., 1986). The study indicates the possibility of increased respiratory symptoms and illnesses in children at multi-year levels across a range of 40 to over 58 $\mu g/m^3$ as PM_{10}, but found no evidence of reduced lung function at such concentrations. This study did not find similar gradients in symptoms and illness within some of the cities, which had somewhat smaller localized pollution gradients. The results of a separate series of studies of long and intermediate term (2 to 6 weeks) exposures in a number of U.S. metropolitan areas (Ostro, 1987; Hausman et al., 1984) are more supportive of the possibility of effects within cities (respiratory related activity restrictions in adults) at comparable U.S. exposure levels. The results of these more recent studies are generally consistent with the earlier U.S. studies listed in Table 2 (SPA, 57). In particular, the finding of symptomatic responses in children with no change in lung function (Ware et al., 1986) is consistent with similar findings in adults (Bouhuys et al., 1973) at estimated long-term PM_{10} levels down to 50 $\mu g/m^3$. However, the information available to support the existence of significant adverse effects at annual PM_{10} levels below 50 $\mu g/m^3$ — especially when 24-hour levels are maintained below 150 $\mu g/m^3$—is quite limited and uncertain.

Because of the uncertainties in (SP, pp. 104–110; SPA, 54–59), as well as the limited scope and number of, these long-term quantitative studies, it is particularly important to examine the results of qualitative data from a number of epidemiological, animal, and ambient particle composition studies when evaluating what constitutes an adequate margin of safety for an annual standard. These studies justify concern for serious effects not directly evaluated in the studies listed in Table 2. Such effects include damage to lung tissues contributing to chronic respiratory disease, cancer, and premature mortality (SP, pp. 109–111). Substantial segments of the population may be susceptible to one or more of these effects (SP, p. 46). Although the qualitative data do not provide evidence for major risks of these effects at current annual particulate matter levels in most U.S. cities, the Administrator believes that the seriousness of the potential effects and the large population at risk warrant caution in setting the standard.

Based on the then current scientific assessment, the Administrator proposed in 1984 to select the annual standard level from a range of 50 to 65 $\mu g/m^3$. In the proposal, the Administrator favored a standard in the lower portion of the range. The more recent evidence, although subject to substantial uncertainty, serves to reinforce this inclination. In light of the updated assessment and in accordance with the recommendation of CASAC, the Administrator has decided to set the level of the annual standard at the lower bound of the original range, 50 $\mu g/m^3$, expected annual arithmetic mean. This standard provides a reasonable margin of safety against the serious effect of long-term degradation in lung function, which has been judged likely at estimated PM_{10} levels above 80–90 $\mu g/m^3$ and for which there is some evidence at PM_{10} levels above 60 to 65 $\mu g/m^3$. Such a standard also provides reasonable protection against the less serious symptomatic effects for which some studies provide evidence at PM_{10} levels down to 50 $\mu g/m^3$. Although some small risk of increased respiratory symptoms may exist at this concentration, the available data are currently inconclusive on this point. Moreover, the staff and CASAC have recommended that the combined protection afforded by both 24-hour and annual standards be considered in selecting the final standard level. In this regard, analyses of air quality data show that implementation of the 24-hour standard will substantially reduce annual levels in a number of areas to below 50 $\mu g/m^3$, adding to the protection afforded by the annual standard in areas with higher 24-hour peak to mean ratios (SPA, p. 61; Freas, 1986). Based on the present evidence with respect to risks associated with annual exposures, the Administrator finds that the annual and 24-hour standards announced today provide an adequate margin of safety.

IV. Rationale for the Secondary Standards

Section 109(b)(2) of the Clean Air Act states that secondary NAAQS should be set at a level requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of an air pollutant in the ambient air. The criteria document and staff paper examined the effects of particulate matter on such aspects of public welfare as visibility and climate, man-made materials, vegetation, and personal comfort and well being. Each aspect is discussed in some detail in those documents. The following discussion of the rationale for the secondary standards focuses primarily on considerations that were most influential in the Administrator's decision or that differ in some respect from, or expand upon, considerations that influenced the staff and/or CASAC recommendations.

A. Soiling and Nuisance

At high enough concentrations, both large and small particles may soil household and other surfaces, or otherwise become a nuisance. Both effects can result in increased cleaning costs and decreased enjoyment of the environment (SP, p. 140). Efforts to control particulate matter in U.S. cities from 1970 to 1978 were estimated to have produced substantial economic benefits because of reduced soiling and nuisance (CD, p. 1–51). The staff paper therefore recommended consideration of soiling and nuisance generated by dust and other particles in setting a secondary standard (SP, p. 141).

In proposing secondary standard(s) for particulate matter, the Administrator first examined whether the pollutant indicator (PM_{10}), averaging times and form, and range of levels of the proposed primary standards would provide adequate protection against soiling and nuisance. This examination was complicated by uncertainties in the scientific data base that largely preclude accurate quantification of the extent of effects associated with specific particle sizes and concentrations or deposition, and by the fact that the protection afforded by primary standards depends upon the particular combination of levels chosen within the ranges that were proposed for the primary standards. The Administrator proposed a separate indicator and range of secondary standards, while also soliciting comment on the alternative of making the secondary standards identical in all respects to the proposed primary standards for PM_{10}. In so doing, the Administrator noted that "depending on the exact levels of primary standards chosen, the combined requirements for meeting both 24-hour and annual primary standards for PM_{10} might be considered adequate to protect against possible adverse effects relating to soiling and nuisance from all relevant particle sizes." (49 FR 10418).

The decision to adopt the specific revised primary standards discussed in section IV above permits a more definitive assessment of the protection afforded by those standards against potential adverse welfare effects. In addition, information submitted in the public comments, the review of the March 20, 1984 proposal by the CASAC, and further analysis of the welfare effects information by Agency staff have amended the basis for the final decision on the secondary standards. The basis for the original proposal and the implications of the more recent findings are summarized below.

The Administrator originally proposed (1) to retain TSP as the indicator for the secondary standard and (2) to select the standard level from a range of 70–90 $\mu g/m^3$, expected annual arithmetic mean. Given the nature of the evidence available, the Administrator expressed an inclination to select the level for the standard from the upper portion of the range.

The proposal noted that both PM_{10} and TSP could be useful indicators for a secondary standard for soiling and nuisance. PM_{10} is useful because in a qualitative sense: (1) Particles smaller than 10 μm in diameter are more likely than larger particles to penetrate indoors; they are also more likely than larger particles to soil vertical surfaces (SP, pp. 136–137) and (2) due to the characteristic size distributions and origins of particles in the atmosphere (SP, pp. 14–19), control of particles less than 10 μm in diameter would also limit the concentration of larger particles. The TSP indicator was proposed, however, because of the lack of data permitting clear distinctions among size ranges with respect to soiling and nuisance, the more inclusive nature of TSP, and the fact that most of the available information relating soiling and nuisance to air pollution used TSP as an indicator.

Information submitted in the public comments expanded on some of the limitations of TSP as an indicator that were noted in the preamble, namely: (1) The collection efficiency of the high volume sampler, which measures TSP, decreases rapidly for particles with diameters in excess of 25–40 μm; thus, the TSP measurement itself can omit a substantial fraction of the very large particles that can make a substantial contribution to soiling of horizontal surfaces; and (2) because the collection efficiency of the high volume sampler varies more with windspeed than do PM_{10} samplers, TSP may be a less reliable indicator of elevated concentrations of larger particles than PM_{10}.

In light of these considerations, the CASAC in reviewing the March 20 proposal package concluded that it could find no convincing scientific support for maintaining TSP as an indicator for the secondary standards (Transcript of December 16, 1985 CASAC meeting, pp. 56–71; Docket No. A–82–37).

In developing a range of levels for the secondary standard, EPA found that the available data base provides compelling evidence that elevated levels of particulate matter can produce adverse welfare effects, but provides little quantitative information on concentration-effects relationships. Physical damage and economic studies tend to show no obvious welfare effects "thresholds" for soiling. With time, particulate matter may accumulate on surfaces even at low concentrations. At very low concentrations, however, the amounts of particulate matter may be virtually invisible to the human eye or be so slight as to be ignored by most people (Carey, 1959; Hancock et al., 1976). Up to a point, the buildup of particles on surfaces may not be generally regarded as a social problem because it is removed by rain or routine cleaning and maintenance before substantial accumulation can occur. Moreover, even if an accumulation is large enough to be noticed, it is not necessarily considered to be a problem. Thus, the critical judgment for selecting a standard level is to determine a particulate matter concentration at or above which the soiling effect becomes important enough that it should be regarded as an "adverse" effect under section 109(b)(2) of the Act.

The available information suggests that the public does make a distinction between concentrations at which particulate pollution is merely noticeable and higher levels at which it is considered a nuisance. A study of the response of a panel of human subjects to dust on surfaces concluded that the level of dustiness that is found to be objectionable is higher than the level that can be perceived or discriminated (Hancock et al., 1976). It is not, however, possible to derive unique ambient concentration thresholds for adverse effects from this kind of study. A more direct study of perception of air pollution as a nuisance (CD, p. 9–67) suggested that people considered air pollution a nuisance in areas where annual levels were at or somewhat above the level of the current annual primary TSP standard (75 $\mu g/m^3$, annual geometric mean). The upper bound of the proposed range of interest (90 $\mu g/m^3$ TSP), expected annual arithmetic mean, was derived by taking that level and making appropriate conversions to account for the expected arithmetic mean form.

The lower bound of the proposed range (70 $\mu g/m^3$) was supported by a rough analysis of economic benefits of reduced outdoor soiling that might be associated with decreased TSP levels in U.S. cities (CD, p. 10–73). During the public comment period, one of the authors of the analysis that formed the basis for these estimates submitted a more recent analysis which called the earlier analysis into question (Watson and Jaksch, 1984). The author claimed that estimates of benefits from reduced TSP concentrations were significantly overstated because they did not take into account the extent to which the public could perceive improvements associated with reduced concentrations. Other commenters indicated that the underlying experimental data suggested a threshold for economic soiling effects at an annual TSP level of about 150 $\mu g/m^3$.

EPA staff examined the underlying experimental data used in the original analysis. This staff examination (Haines, 1987) has been placed in the rulemaking docket. The staff found that of 27 household cleaning activity categories examined in the underlying experiment (Booz, Allen, Hamilton, 1970), 6 (5 outdoor) were statistically significantly associated with particulate matter across some concentration gradient. In further comparing areas with differing concentrations of in TSP, it was found that the number of significant associations decreased with decreasing TSP levels. The staff concluded that these data provide no convincing evidence to support estimates of significant economic benefits from reducing PM levels below 90 to 100 $\mu g/m^3$.

Following the original inclination of the Administrator and the more recent findings, an annual TSP level of 90 $\mu g/m^3$ was used as a benchmark in an analysis to determine whether the primary particulate matter NAAQS would protect against soiling and nuisance (SP, Table 2–1). An earlier version of these results was presented at the December 16, 1985 CASAC meeting. The analytical approach, assumptions, and limitations of the methodology used in the analysis are discussed in a separate report, which has been placed in the rulemaking docket (Pace et al. 1986). The results indicated that the combined implementation of the primary 24-hour and annual PM_{10} standards announced above would substantially reduce TSP levels to the extent that only 6 counties nationwide would experience annual mean TSP levels in excess of 90 $\mu g/m^3$ and none would exceed 100 $\mu g/m^3$.

In short, EPA has determined that there is no convincing evidence of significant adverse soiling and nuisance at TSP levels below 90–100 $\mu g/m^3$, and that the primary standards promulgated today would permit few, if any, areas to sustain TSP levels above 90–100 $\mu g/m^3$. On the basis of these determinations, the Administrator concludes that a secondary standard different from the primary standards is not requisite to protect the public welfare against soiling and nuisance. This conclusion is supported by the CASAC's determination that there is no scientific support for a TSP-based secondary standard. (Transcript of December 16, 1985, CASAC meeting, p. 71; Docket No. A–82–37). Therefore, the Administrator has decided to set 24-hour and annual secondary PM_{10} standards that are equal in all respects to the primary standards.

B. Other Welfare Effects

The other welfare effects of particulate matter of principal interest are impairment of visibility, potential modification of climate, and contribution to acidic deposition. All three of these effects are believed to be related to regional-scale levels of fine particles, and control programs designed to ameliorate them would likely involve region-wide reductions in emissions of sulfur oxide (SP, p. 147; Friedlander, 1982).

Because of the likely overlap between control measures designed to protect visibility and control measures designed to address acidic deposition, EPA, in its March 20, 1984, notice of proposed rulemaking on the particulate matter standards, did not propose a secondary standard designed to protect visibility. Instead, the Agency decided to defer action pending development of compatible strategies to address both of these related regional air quality problems.

Since publication of the notice of proposed rulemaking, EPA has continued to gather information on acidic deposition and on visibility, and to analyze the potential impact on visibility of strategies designed to control acidic deposition. In particular, EPA has received the report of an Interagency Task Force on Visibility. In light of the Task Force's recommendations as well as other information gathered by the Agency, EPA is now reassessing its position with regard to consideration of a secondary fine particle standard for visibility. In particular, the Agency is considering whether, given the time that would be required to develop, propose, promulgate, and implement a visibility based standard, it would now be appropriate to proceed with consideration of a visibility based standard in parallel with work on acid deposition, so that compatible strategies

for dealing with the two problems can be developed at the implementation stage.

Accordingly, EPA is publishing elsewhere in today's **Federal Register** an advance notice of proposed rulemaking soliciting public comment on the appropriateness of a separate secondary fine particle standard designed to protect visibility, and on a number of issues that would have to be resolved in proposing such a standard.

The Administrator also concurs with the staff suggestions that a separate secondary particle standard is not needed to protect vegetation or to prevent adverse effects on personal comfort and well-being (SP, pp. 143–144).

V. Federal Reference Method

The reference method for the measurement of atmospheric particulate matter as PM_{10}, promulgated today as Appendix J to 40 CFR Part 50, is based on selection of PM_{10} particles by inertial separation, followed by filtration and gravimetric determination of the PM_{10} mass on the filter substrate. The particle size discrimination characteristics of reference method samplers (or sampler inlets) are prescribed as performance specifications in amendments to 40 CFR Part 53, promulgated elsewhere in today's **Federal Register**.

The requirements in Appendix J are generally prescribed as functional or performance specifications in order to allow sampler manufacturers flexibility in designing or configuring their PM_{10} samplers. Sampler shape, inlet geometry, operational flow rate, degree of automation, and other sampler characteristics or features are specified only in terms of required function or performance.

While most of the comments received on Appendix J generally supported the performance-based approach to specifying PM_{10} reference methods, many commentors felt that the sampler performance specifications in the proposed Appendix J and 40 CFR Part 53 were not adequate to ensure accurate collection of PM_{10} under all conditions of ambient sampling. In response to such comments, the sampler performance specifications in Part 53 and the corresponding references to such requirements in Appendix J have been revised. Other comments were received on various requirements of Appendix J such as flow calibration and measurement, flow regulation, filter media, filter equilibration, and sampler maintenance. Specific changes to Appendix J resulting from these comments and from review of other pertinent information are discussed below.

A. Specific Changes to Appendix J

Section 3.0 has been revised to specify that all samplers should be capable of measuring 24-hour PM_{10} mass concentrations of at least 300 $\mu g/m^3$ while maintaining the operating flow rate within specified limits.

In Section 4.0 the term "reproducibility" has been changed to "precision" and the specification for PM_{10} samplers has been changed from 15 percent or better to 7 percent or 5 $\mu g/m^3$, whichever is higher. The particle size for 50 percent sampling effectiveness in Section 5.0 has been changed from 10 ± 1 micrometers to 10 ± 0.5 micrometers. These changes are a result of corresponding changes in the PM_{10} sampler performance specifications in 40 CFR Part 53, promulgated elsewhere in today's **Federal Register**. Refer to the Part 53 action for further discussion of these changes.

In Section 6.0 the subsection on nonsampled particulate matter has been removed. The design of particle size discriminating inlet systems for PM_{10} samplers essentially precludes the transport of windborne particulate matter to the particle collection filter during periods when the sampler is idle. Although windborne particles could potentially enter a PM_{10} sampler's air inlet opening during idle periods, they would have to take a tortuous path with several changes in direction to reach the collection filter.

References to "automatic flow controller" throughout Appendix J have been changed to "flow control device". The latter term is less restrictive and more clearly allows the use of any type of flow regulation device, provided that the other flow-related requirements of Appendix J are met. In particular, Section 7.1 has been changed to require that a PM_{10} sampler have a flow control device capable of maintaining the sampler's operating flow rate within the limits specified for the sampler inlet. The requirement that the flow control device have a flow rate adjustment capability has been removed to allow for the use of certain types of flow controllers (e.g., Venturi-type critical flow devices) that regulate flow at a constant but unadjustable rate. Flow controllers of this type generally employ a fixed-geometry orifice and control the sampler's flow rate without any moving parts or electronic components. The requirement that the flow control device be disabled during calibration has also been removed because it is only applicable to certain types of devices (e.g., electronic flow controllers). Sampler-specific operational requirements such as this are better addressed in the sampler manufacturer's instruction manual.

Subsection 7.1.6 has also been changed to explicitly require that the instruction manual associated with the sampler include detailed procedures for calibration, operation, and maintenance of the sampler. Since much emphasis is placed on the role of the sampler manufacturer's instruction manual in Appendix J, it is important that it contain detailed information on all aspects of sampler operation. The instruction manual for each designated reference method would be reviewed and approved as part of the Part 53 reference method designation process.

The filter alkalinity specification in Subsection 7.2.4 has been changed from <0.005 milliequivalents/gram of filter to <25 microequivalents/gram of filter. In addition, the method used for the alkalinity determination has been changed to a newly developed, more sensitive, and more reliable method. The change in the magnitude of the specification results from the change in procedures (alkalinity measurements are approximately 5 times higher with the new method), and from the change in the measurement units.

Section 7.3 includes specifications and other requirements for the flow rate transfer standard used during sampler calibration. The specifications for the reproducibility and resolution of the flow rate transfer standard have been removed and replaced with an accuracy specification. The revised Section 7.3 requires that the flow rate transfer standard be capable of measuring the sampler's operating flow rate with an accuracy of ± 2 percent. An accuracy specification, stated in this context, is more meaningful and useful than specifications for reproducibility and resolution. In addition, the requirement that the flow rate transfer standard include a means to vary the sampler's flow rate during calibration is not appropriate for all types of samplers and/or flow rate transfer standards and has been removed. This is another example of a sampler-specific requirement that is better addressed in the sampler manufacturer's instruction manual.

The humidity requirement for the filter conditioning environment in Section 7.4 has been changed from a single specification of 45 ± 5 percent relative humidity (RH) to separate specifications for humidity range (20 percent to 45 percent RH) and humidity control (± 5 percent RH). Under the revised requirements, filters may be equilibrated at any preselected humidity between 20

and 45 percent RH, provided that the humidity is controlled to within 5 percent RH. Language has also been added to Section 9.0 to require that the same temperature and humidity conditions be used for both pre- and post-sampling filter equilibration.

The calibration and operational procedures for PM_{10} samplers vary considerably depending on the type of sampler (e.g., high-volume, medium-volume, low-volume) and the type of flow control and flow measurement devices employed in the sampler. Accordingly, the calibration and procedure sections of Appendix J (Sections 8.0 and 9.0) have been revised substantially to be more general in nature. The revised procedures serve to illustrate the steps involved in the calibration and operation of a PM_{10} sampler, and place more emphasis on the sampler manufacturer's instruction manual and the Quality Assurance Handbook for specific guidance.

A new section on sampler maintenance has been incorporated into Appendix J to explicitly require that PM_{10} samplers be maintained in strict accordance with the procedures provided in the sampler manufacturer's instruction manual. The performance of some PM_{10} samplers may be adversely affected by the buildup of substantial quantities of non-PM_{10} particulate matter within the sampler inlet. Such samplers may require periodic cleaning and other maintenance to ensure accurate collection of PM_{10} particulate matter. This new section has been added as Section 10.0, and the calculations and references sections have been renumbered accordingly.

When temperature and pressure corrections to sampler flow indicator readings are required, corrections based on existing temperature and pressure at the time the readings are taken (or daily average values during the sampling period in some cases) are preferable. However, incorporation of site or seasonal average temperatures and barometric pressures into the sampler calibration to avoid daily temperature and pressure corrections is also allowed. When temperature and pressure corrections to flow indicator readings are required, existing temperature and pressure at the time the readings are taken (or daily average values during the sampling period in some cases) must be used. Likewise, the calculations section has been changed to require that the average barometric pressure and average ambient temperature *during the sampling period* be used to calculate Q_{std}. Site or seasonal average values for temperature and barometric pressure may be required in the adjustment of the set-point of certain types of flow control devices (e.g., mass flow controllers). Site or seasonal average values for temperature and pressure are used in these cases to ensure that the deviations in actual volumetric flow rates, resulting from daily changes in temperature and pressure at the monitoring site, are centered about the sampler inlet's design flow rate.

Other minor wording changes have been made throughout Appendix J to clarify the requirements.

B. Designation of Reference Methods for PM_{10}

Before a method for PM_{10} is approved as a PM_{10} reference method, it must meet the requirements of Appendix J and be tested and designated as a reference method in accordance with the provisions of 40 CFR Part 53. Testing of candidate reference methods will generally be conducted by the sampler manufacturers. A notice will be published in the **Federal Register** in accordance with Part 53 whenever an application for a PM_{10} reference method determination is received by EPA. Likewise, a notice of designation and other information pertinent to the designation will be published in the **Federal Register** each time a PM_{10} reference method is approved for use. PM_{10} sampler manufacturers are required to provide sampler purchasers with an operation or instruction manual containing detailed procedures for the calibration, operation, and maintenance of the sampler. Additional guidance and recommendations regarding filter media, type of analytical balance required for mass determinations, and other requirements of the method should also be provided in the manual. Part 53 requires submission of the manual as part of a manufacturer's application for a reference method determination. The instruction manual will be reviewed for technical accuracy and consistency with the requirements of Appendix J and must be approved as part of the requirements for designation of the method as a reference method.

C. Technical Change to Appendix G

Because the high-volume method described in Appendix B will continue to be used in conjunction with Appendix G ("Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air") and for other purposes that may be specified, EPA is promulgating the technical changes to Appendix G as proposed. Under the final rule the reference 10 in Appendix G has been deleted and section 5.1.1 of the Appendix has been revised to read as follows:

"High Volume Sampler. Use and calibrate the sampler as described in Appendix B to this Part." The Appendix has also been revised to specify more directly that the high-volume method described in Appendix B is to be used in conjunction with the reference method for lead.

VI. Summary of Salient Public Comments and Agency Responses

An overview of public comments on the major aspects of the March 20, 1984 proposal are presented in Section II. The most important comments on specific issues are categorized and summarized below together with Agency responses. A more comprehensive compilation of comments and Agency responses is contained in a separate Response to Comments Document that has been placed in the Docket (No. A–82–37).

A. Health Effects Criteria and Selection of the Primary Standards

1. Indicator for the Primary Standards

Comments: PM_6 rather than PM_{10} should be used as the indicator for the primary standards because PM_6 more accurately reflects particle deposition in the thoracic regions, provides an ample margin of safety in protecting health, and puts less emphasis on coarse particles that are relatively inert than does PM_{10}.

Agency Response: EPA considered the major analysis (Swift and Proctor, 1982) and preliminary arguments (AMC, 1982) in support of a PM_6 indicator in developing the 1984 proposal. Although EPA deferred judgment pending additional analysis and review, the decision to propose PM_{10} and not PM_6 was based, in part, on reservations concerning the PM_6 indicator. The likelihood that the available data from mouthpiece studies overstated thoracic deposition during "natural" breathing was recognized in a qualitative sense by CASAC (cf. July 1981 transcript, p. 581; Docket No. A–82–37) and presented as one reason for recommending PM_{10} rather than PM_{15} or TSP as an indicator. The 1982 staff paper reflected this argument in recommending 10 μm rather than 15 μm as the cutpoint for the indicator (SP, pp. 76–77). The criteria document addendum points out that assumptions used in the quantitative analyses used to support PM_6 (Swift and Proctor, 1982) appear to underestimate thoracic particle deposition; this underestimation would reduce any margin of safety associated with an

indicator derived from these data. Extension of the Swift and Proctor analysis itself suggests that approximately 10 to 20% of 10 μm particles could penetrate to the thoracic region, rather than the 0% penetration implied by some commenters who argued for a "D_0" at 10 μm.

The Swift and Proctor analysis as well as several more recent analyses and experimental studies of particle deposition are reviewed in the criteria document and staff paper addendum. The more recent assessments tend to support the original proposal of PM_{10}. The criteria document addendum compares the work of Miller et al. (1986), using the more recent deposition data, with the Swift and Proctor analysis and confirms that the latter understates deposition of particles larger than 6 μm in individuals who habitually breathe through the mouth.

The more recent data also show some fraction of particles of 10 μm and larger can penetrate as far as the alveolar region (CDA, Figure 2–1). The risk associated with deposition of insoluble coarse particles in this region is of particular concern because of slow clearance time (CDA, p. 2–6). Although removal in the tracheobronchial region is more rapid, deposition of coarse particles in the tracheobronchial region may be associated with bronchoconstriction and alteration of clearance mechanisms (SP, Table 5–2). The 1982 staff paper took these factors into account in the original recommendation for a 10 μm indicator that included all of the fine and a portion of the coarse fraction.

After considering these updated assessments, the EPA staff reaffirmed its original recommendation of PM_{10} as an indicator for the standards (SP, p. 32). In reviews of the March 20, 1984 proposal and of the criteria document and staff paper addenda, the CASAC also reaffirmed its recommendation for PM_{10} as an indicator (Lippmann 1986 a,c). The majority of public comments on this issue also favored PM_{10}.

In summary, EPA finds that the presently available record clearly favors the PM_{10} indicator over the alternative PM_6 indicator.

Comments: Some commenters suggested that while PM_{10} represents an improvement over TSP, the fine fraction (<2.5 μm) is of relatively greater concern to health than the coarse fraction (2.5 to 10 μm). Such commenters suggest that a $PM_{2.5}$ standard is needed—in addition to or, in some comments, instead of a PM_{10} standard.

Agency Response: The possibility of a fine particle indicator for the primary standard was examined in the staff paper (pp. 68–70). This suggestion is based in part on the recognition that ambient particle mass and volume are distributed such that a rough division "minimum" at about 1 to 3 μm separates the "fine" (smaller) and "coarse" fractions. Each fraction has somewhat distinct chemical and physical properties and sources. The staff, however, noted a number of difficulties in using fine particles (less than a nominal 2.5 μm) alone instead of PM_{10} as the indicator for the primary standards. These include:

(1) Substantial overlap can occur between the two modes and in some cases the division minimum can disappear. Moreover, despite the differing origins and chemistries of the modes, each is chemically heteorgeneous. The respiratory tract, in effect, alters the ambient distribution, with a mixture of fine and coarse modes being deposited in both the tracheobronchial and alveolar regions. Indeed, the 2.5 μm "cut" is within the size range of maximum efficiency for alveolar deposition (2 to 4 μm). The mixing of these size fractions in the respiratory tract and the heterogeneity within each fraction therefore blurs the distinction between the fractions in terms of health effects.

(2) Coarse dusts have been associated with responses such as bronchoconstriction, altered clearance and alveolar tissue damage (SP, Table 5–2). Given current information, it would be premature to ascribe all of the effects in the British, U.S., and other epidemiological studies to the fine fraction, or to any single chemical entity within that fraction.

EPA believes that a separate fine particle standard in addition to the PM_{10} standard is not warranted for the following reasons:

(1) Fine mass typically comprises on the order of 40 to 70% of PM_{10}. Therefore, the PM_{10} standards provide substantial limits on fine mass, and

(2) The limited epidemiological data presently available must provide the principal basis for any particulate matter standard. Because these data do not separate the effects of fine and coarse fractions, it is most reasonable to use these data to support a single set of standards.

(3) To the extent that emerging information suggests additional protection may be necessary, it may be more appropriate to consider the addition of chemical-specific (e.g., acid aerosols) standards rather than a fine particle standard in future primary standard revisions.

2. Interpretation of Community Epidemiological Studies

Comments: A number of commenters took issue with EPA's interpretation of the various analyses of London mortality data. These commenters suggest that (a) the London data can be used to show only an association of excess mortality with high concentrations of pollution during unique episodes in which BS and SO_2 levels exceeded 500 to 1000 μg/m³, (b) a number of the analyses suffer from methodological flaws precluding valid conclusions, (c) the conclusion that effects may be possible at low pollution levels (e.g., <250 μg/m³) or that there is a continuum of association with no identifiable threshold is not supportable, (d) the results of Mazumdar et al. (1982) and Ostro (1984) are more consistent with the hypothesis that particulate matter is acting as a surrogate for some other causal agent rather than as a causal agent itself, and (e) it is biologically implausible that mortality could be affected by particulate matter at levels below those shown by Lawther et al. (1970) to produce morbid effects in sensitive populations.

Agency Response: EPA's assessment of the various London mortality analysis is discussed at length in the criteria document, the staff paper, and the addenda to these documents. The 1982 criteria document found that in the context of historical London exposures, these data indicate clear increases in daily mortality occurred with BS and SO_2 concentrations in excess of 1000 μg/m³ with some indications of likely increases in daily mortality at levels of both pollutants in the range of 500 μg/m³ or more (CD, Table 14–7). These original conclusions on likely effects levels, based largely on the Martin and Bradley (1960) and Ware et al. (1981) analyses, appear reasonably consistent with the original assessment of these data by the original British investigators and the 1969 criteria document. From the re-examination of these data by Ware et al. (1981) and the analysis of subsequent London winters by Mazumdar et al. (1981), the criteria document also concluded small increases in daily mortality might occur at levels below 500 μg/m³. The more recent analyses of these data by Mazumdar et al. (1982), Ostro (1984), and Shumway et al. (1983) all serve to reinforce the possibility that effects were associated with particulate matter at concentrations below 500 μg/m³. A number of commenters, however, including some of the original British investigators (Holland et al., 1985), object to this latter suggestion.

EPA has carefully examined these studies and the various criticisms of them submitted as comments on the proposal. In order to respond fully to these criticisms, EPA conducted more sophisticated reanalyses of the original London data to further determine the degree of reliance that can be placed on the published results (Schwartz and Marcus, 1986, CDA, Appendix A). Each of these studies does suffer from limitations and uncertainties delineated in EPA's updated assessment (SPA pp. 17–23; 39–44); these limitations preclude definitive conclusions with respect to causality as well as identification of clear "no observed effects" levels. Nevertheless, EPA maintains its original interpretation, supported by its external science advisors, that these data at least suggest the possibility of effects of particulate matter at BS levels as low as 150 $\mu g/m^3$ and possibly even lower. None of the difficulties in statistical methodology or alternative mechanisms cited by commenters provide an adequate explanation for the consistent finding of association between particulate pollution and mortality at levels below 500 $\mu g/m^3$3 (as BS). The association was found for the majority of 14 winters (analyzed individually) spanning a period when pollution in London and indoor heating practices showed marked changes, and including winters in which BS levels did not exceed 250 $\mu g/m^3$. The relative consistency of the results from year-to-year despite these changes suggests that the observed effect is not explained by indoor air pollution or by long-term demographic shifts in the population. The findings were consistent among different investigators, and persisted after taking SO_2, temperature, and other weather variables into account, and after correcting for autocorrelation structure.

The principal arguments for the suggestion by some (including Mazumdar et al., 1982) that smoke may be acting as a surrogate for some more toxic pollutant or related non-pollution variable are: (1) The coefficients in the regression equations appear to increase with decreasing pollution across the 14 winters, (2) surrogate behavior is commonly observed in statistical analyses, (3) the work of Lawther suggests a threshold for morbidity at around 250 $\mu g/m^3$ as BS; hence mortality would not be expected at lower levels. While the possibility of surrogate behavior remains, the above arguments do not demonstrate that smoke acts as a surrogate for non-pollution variables. The trend toward higher coefficients with lower pollution is not clearly consistent in the Mazumdar and Ostro regressions. The existence of higher coefficients in later years, however, prompted these authors to suggest some plausible alternative to non-pollution surrogates, including: (a) The possibility that the composition of pollution changed with time, with an increase in more toxic components, and (b) because the gravimetric mass of particles in the range under 10 μm may not have declined as much as did the black carbon content detected in the smoke measurement (Lodge, 1986), coefficients related only to smoke might be expected to increase. An additional possibility suggested by Schwartz and Marcus is that the effect of higher pollution episodes in earlier winters was blunted by public awareness (and hence reduced exposure) or by a tendency for the most susceptible individuals to succumb on an early day of a multi-day pollution episode.

The use of the Lawther morbidity data as a threshold for mortality is questionable. The London mortality data involve an unequivocal endpoint in a relatively large population (several hundred per day) over a 14 year period. As pointed out by Roth et al. (1986), although the bronchitic population studied was clearly susceptible, the effects indicator used by Lawther was a relatively insensitive one. Moreover, the threshold was determined not by rigorous analysis, but by visual examination of strip chart data. Although the principal author strongly objects (Lawther, 1982), the criteria document points out that the data do not clearly indicate an effects threshold at 250 $\mu g/m^3$. Furthermore, the simple correlation results provided by Lawther et al. (1970) suggest the possibility that a more sophisticated analysis jointly incorporating pollution and weather factors might have found increased morbidity occurring at lower levels. The recent findings of small changes in pulmonary function at lower particulate matter levels in the U.S. and the Netherlands (See Table 1) support the notion that 250 $\mu g/m^3$ (in this case as PM_{10}) is not a reliable effects threshold.

Comments: The derivation of the proposed range of levels for the annual primary standard is without scientific basis. In particular, limitations in the two major series of studies used preclude finding effects of particulate matter at the lower TSP levels shown. In addition, the conversion of the results of these studies to PM_{10} uses an inappropriately low PM_{10}/TSP ratio.

Agency Response: EPA's assessment of studies used to derive the range of levels for the primary standard (Ferris et al., 1973, 1976;) and Bouhuys et al., 1978) (CD, pp. 14–44 to 46 and SP, pages 61–62 and 104 –107) was reviewed by CASAC and found to be an appropriate basis for developing revised standard levels (Friedlander, 1982). The assessment clearly points out the limitations and strengths associated with the uses of these studies.

The Ferris et al. work (See Table 2 above) involved a "longitudinal" tracking of lung function and respiratory illness in adults vs. pollution over a 12 year period in Berlin, NH, a small town in which a pulp mill was a major pollution source. As commenters note, the "effects likely" level drawn from the first year of this study is particularly uncertain, as it is based on very limited aerometry. This level, however, was not important in developing the range for the proposed standard. Because of the seriousness of the effect (a prolonged decrement in lung function), the by then decreased concentration observed in the first followup study (130 $\mu g/m^3$ as TSP), was used in developing the upper bound of the range of proposed annual standards. This concentration was based on a full year of monitoring. Based on the historical record, there can be little doubt that pollution declined in this community from 1961 to 1967, the year of the first follow-up. The nature of the particular pollution source (a pulp mill) in this study, together with a finding of very low British smoke level, indicates that a variety of particles, not just products of combustion, may be associated with adverse effects. Although commenters have suggested that other pulp mill emissions may have been responsible for the effects, ambient levels of the gaseous effluents from such sources (reduced sulfur compounds and SO_2) have not been shown to cause reduced lung function.

Estimating PM_{10} levels from this study by using typical national average PM_{10}/TSP ratios does not—as some commenters argued—clearly understate PM_{10} levels. These commenters argued that high PM_{10}/TSP ratios (e.g., 0.8) should be used because sites in the eastern U.S. tend to have higher ratios. The data on PM_{10}/TSP ratios, however, also show a general tendency for lower ratios to occur in industrialized areas with high TSP concentrations (Pollack, et al., 1985). Moreover, air quality measurements taken in the 1960's document the presence of substantial quantities of larger size particles, as evidenced by high dust fall levels and low soiling indexes (Kenline, 1962). The latter author concludes that this would be expected "if the majority of particles present had diameters of 10 microns or

greater . . . ." EPA therefore believes that the use of ratios characteristic of industrialized areas with high particle concentrations is justified and does not contribute to any excess margin of safety in the estimated effects levels.

The Bouhuys et al. (1978) study (see Table 2 above) was used to set the lower bound for the proposed standard range, which is the level at which the final standard is being promulgated. The study found a difference in three of five respiratory symptoms but no differences in lung functions between two Connecticut towns (Ansonia and Lebanon) that had a historically large (but currently small) difference in levels of particulate matter. Although the authors believed that air pollution did not play a role in the observed differences in symptoms, the data presented do not demonstrate that the differences were due solely to other factors associated with the conduct of the study. Moreover, the finding of excess respiratory symptoms unaccompanied by a persistent change in lung function is not unique. Similar findings were also obtained in the Ferris (1973) follow up study and the more recent six city study results (Ware et al., 1986).

Some commenters argued that the estimated TSP levels derived for the Bouhuys study were too low. EPA disagrees. The staff took the median TSP values reported by Bouhuys et al. over the previous several years as the relevant exposure level for this study because (1) the current gradient in pollution appeared to be too small to result in such effects, and (2) it is unreasonable to attribute all of the observed gradient in effects among urban and rural residents, as measured in 1973, to the maximum historical concentrations reported 8 to 10 years prior to that time. EPA's position is supported by the observations of Ferris et al. (1973, 1976), which show an apparent measurable reduction in symptoms and improved lung function after only a five to six year decline in pollution. This decline suggests that any gradient in effects due to pollution eight to ten years ago would be diminished relative to effects that may be associated with the more recent past. The median value used by EPA for the Bouhuys study is, in fact, also relatively close to the weighted average of all TSP observations reported for Ansonia for the seven years preceding the Bouhuys et al., (1978) measurements, which were taken in 1973 (Lounsbury, 1986).

The approach used to convert the TSP measurements in this study to PM_{10} equivalents was also questioned. The staff rejected use of the limited (15 days) particle size data for Ansonia as unrepresentative because of questions concerning their quality and because they were taken in 1973, after particulate matter concentrations had been reduced to lower levels (SP, p. 62). Absent reliable site-specific particle size data, the staff used the median PM_{10}/TSP ratio seen at other sites in the eastern U.S. with higher than average PM_{10} levels. Because the long-term ratio can vary between 0.3 and 0.65 among such sites, such estimates are admittedly uncertain. Nevertheless, the staff examination of historical air quality and source data associated with the Bouhuys et al. study found no factors that would make the ratio unusually high or low relative to other high concentration sites in the eastern U.S. The analysis by Spengler et al. (1986) of trends in particle size ratios from the 1970's to the present in six eastern cities suggests that the ratio of PM_{10} to TSP in early years with higher TSP levels tends to be comparable to or somewhat lower than the current ratios.

The basis for the final ambient standard is considerably strengthened by the recent results from the six-cities study (Ware et al., 1986). This work also suggests an increased risk of respiratory illness and symptoms, but no differences in lung function, in children across a gradient of pollution that extends to concentrations below those observed in the previous studies. The results are therefore qualitatively consistent with both of the earlier studies. In addition, the associated aerometry permits substantially better estimates of historical PM_{10} data. Taken together, these studies provide substantial support for an annual standard of 50 $\mu g/m^3$.

3. Margin of Safety

Comments: The Agency has incorporated an unrecognized three-fold margin of safety in the 24-hour standards through the means used to convert British Smoke measurements into PM_{10}.

Agency Response: British Smoke measurements collect particles smaller than about 4.5 microns in diameter ($PM_{4.5}$) on a substrate and then measure their absorption of light. Because the measurement depends on light absorption, it is sensitive only to the dark, "sooty" component of the particulate matter. EPA has relied on gravimetric calibrations, performed during the earlier years of the mortality and morbidity studies, that related the British Smoke measurements to particulate mass concentrations that included light-colored as well as dark particles.

The commenters note that the dark, sooty component of the particulate matter in London today constitutes only 40% as large a fraction of the total particulate mass as it did during the period of the studies on which EPA has relied. They argue that the use of those studies to set standards for contemporary particulate pollution therefore introduces an error of a factor of 2.5 (1/0.4). Multiplying this by a typical ratio of PM_{10} to $PM_{4.5}$ of 1.2 (Lodge, 1986), the commenters arrive at an alleged error of a factor of three arising from the Agency's use of the British Smoke measurements.

The commenters rely on the unstated assumption that it is only the dark fraction of particulate pollution that affects human health, and that, since the dark fraction has declined since the time of the studies, the particulate matter in the atmosphere today is less dangerous than that present at the time of the studies. EPA disagrees with this assumption and believes that a more plausible and prudent assumption is that effects on health depend on the mass concentration of particles and not on their color.

Although it is possible that dark, carbonaceous particles were primarily responsible for the observed effects on human health in the London studies, this has not been documented, and there is no evidence to support the assumption that light-colored particles have no significant effect on human health. EPA staff has compared the composition of particulate matter in historical London and in the current U.S. and has concluded that, given the variety of particle types present in the U.S., there is no clear basis for imputing higher acute toxicity to the historical London particles (SP pp. 21–22, 100).

The commenters support their argument with the assertions that the decrease in the dark, sooty fraction of particulate matter in London has been accompanied by the elimination of pollution-related health effects, and that current excursions of fine particle mass in excess of 250 $\mu g/m^3$ have not been associated with health effects in London or elsewhere. EPA finds these assertions to be unsupported. The studies of mortality in London over a 14-year period of declining pollution from 1958 through 1971 found that the relationship between pollution and mortality persisted throughout the period and that, in fact, the regression coefficients assigned to mortality appeared to increase over the period. (Mazumdar et al., 1982; Ostro, 1984). Moreover,

continuing studies in the contemporary U.S. and Europe have suggested health effects at PM_{10} levels below 250 $\mu g/m^3$ (Dockery et al., 1982; Ozkaynak and Spengler, 1985; Dassen et al., 1986).

For these reasons, EPA concludes that it is reasonable and prudent to use the mass concentration estimates derived from historical British Smoke measurements to set ambient standards for current U.S. atmospheres under the assumption that current U.S. particles are equal in toxicity to those found in London at the time of those measurements. Any margin of safety inherent in the British Smoke/PM_{10} conversion for the earlier years when gravimetric calibrations were available is more likely to be on the order of a factor of 1.2 (the ratio of $PM_{4.5}$ to PM_{10} estimated by Lodge, 1986) rather than the factor of three suggested by the commenters. For particulate levels lower than those observed in the earlier years, EPA has supplemented the London studies with the more contemporary American and European studies using direct gravimetric measurements.

Comments: Several commenters expressed concerns that the margin of safety for the range of levels proposed for the 24-hour standard is insufficient. Commenters based these concerns on: (a) Calculations suggesting that even the lower bound may be less stringent than the current standards, (b) evidence from the more recent studies of lung function decrements in children and the analyses of London mortality data, and (c) various studies found to be mainly of qualitative value. In general, such commenters felt that, in view of the available evidence, the standard should be set at levels at or below the lower bound of the proposed ranges.

Agency Response: The overriding consideration in selecting a standard is how well it protects public health, not its relative stringency as compared to the previous standard. EPA believes that standards chosen provide an adequate margin of safety irrespective of the relationship to the former TSP standards. Nevertheless, EPA has compared the stringency of the revised standards with that of the existing standards by estimating the number of areas that would be expected not to attain each set of standards. By this measure, the new PM_{10} standards are equivalent to or somewhat more stringent than the TSP standards (SP, Table 2–1). Commenters who calculated or asserted otherwise often did not take all of the aspects of the standards into account. The margin of safety is a function not only of level, but also of the indicator and form of the standards. The revised form, in particular, makes direct comparison of the relative stringency of proposed range with the current TSP standard inappropriate.

EPA agrees that the analyses of mortality in London justify caution in selecting a 24-hour standard level, and that the recent studies of lung function provide a useful basis for selecting the level. EPA does not, however, believe that these studies compel a standard more stringent than the one chosen. As discussed in Section III.C.1 above, uncertainties in estimating PM_{10} equivalents of low British Smoke concentrations in the later years of the London studies make it difficult to use the studies to set a precise level for a PM_{10} standard. Therefore, it is important to examine the more contemporary studies of lung function that permit a more direct estimation of PM_{10} effects levels. In considering these studies in conjunction with the London mortality and other relevant health studies, EPA finds that a 24-hour standard of 150 $\mu g/m^3$ provides an adequate margin of safety. EPA does not agree with commenters suggestions that it is necessary to prevent any detectable changes in lung function. As discussed in Section III.C.1, a standard of 150 $\mu g/m^3$ will clearly prevent lung function decrements that might be considered to be indicative of adverse effects in well over 95% of children exposed; in fact the evidence suggests that even reversible lung function changes ($FEV_{0.75}$) in excess of 10% are unlikely at this level. EPA therefore believes that the standard provides an adequate margin of safety.

Some commenters favoring standards below the lower bounds of the proposed ranges relied on studies or analyses found by EPA and CASAC to be of little quantitative value for establishing ranges of concern. EPA considered a number of such studies in selecting a margin of safety (e.g., SPA 52–53; SP 109–111), but in EPA's judgment they do not provide a sufficient basis for establishing standards at levels below those derived from the more quantitative studies summarized in Tables 1 and 2 above.

Comments: Some commenters argued that in selecting annual standards much greater weight be given to the results of Ware et al. (1986), which suggest a possible gradient of effects at concentrations extending to the lowest levels observed in the six cities studied (25 $\mu g/m^3$).

Agency Response: EPA disagrees. EPA staff found that the pollution and effects gradient in the three cleanest cities to be too small to provide any strong suggestion of effects at such levels. Moreover, the lack of consistency for "within city" effects in this study argue against placing undue reliance on the suggestion of effects at levels outside of the range suggested by the other long-term studies of interest (Ferris et al., 1973, 1976, Bouhuys et al., 1978). In addition, the 24-hour standard provides an increased margin of safety against annual exposures at levels below 50 $\mu g/m^3$, in areas where long-term exposures are dominated by repeated short-term peaks (Freas, 1986).

B. Secondary Standards

1. Soiling and Nuisance

Comments: The Agency should maintain a secondary TSP standard. Some commenters felt that the proposed secondary annual TSP standard is inadequate, and that the current 24-hour TSP standard should be retained.

Agency Response: As discussed in Section IV.A. above, the CASAC found little scientific support for maintaining a secondary TSP standard. It follows that little data exist to support maintaining the present level or an alternative level for a 24-hour standard designed to protect against soiling and nuisance. Nevertheless, the changes made in the final standard result in both a 24-hour and annual secondary PM_{10} standard. Analysis of the relative protection afforded by the 24-hour PM_{10} standard indicate that it is relatively more stringent than the upper portion of the proposed range for an annual TSP standard. Thus, the final standards should provide more protection than that afforded by the proposed TSP alternative toward which the Administrator was initially inclined. As detailed above, the data do not provide convincing evidence of significant soiling and nuisance effects at concentrations below that permitted by the primary standards.

2. Visibility

Comment: A secondary fine particle standard is needed to protect against visibility impairment and related effects.

Agency Response: The Administrator deferred judgment with respect to a secondary fine particle standard in order to examine the relationship between control programs for regional visibility and the related problems of acid deposition. The initial phase of that examination has now been completed (EPA, 1985). Based on the available information, the Administrator has decided to issue an Advance Notice of Proposed Rulemaking on a secondary fine particle standard in a separate notice in today's **Federal Register**.

C. Averaging Time and Form of the Standards

1. Expected Exceedances for the 24-hour Standard

Comment: Several commenters were opposed to the proposed statistical form and either favored the current simpler deterministic form or preferred a multiple exceedance or percentile form of the 24-hour standard. Others supported the proposal to adopt a single expected exceedance statistical form. Many of the opposing commenters were concerned that the adjustment for incomplete sampling could cause areas with less than one actual exceedance per year to be misclassified as nonattainment and that the method is sensitive to spurious high concentrations. Those in favor of adopting a single exceedance statistical form recognized the need to account for missing data and argued that this form provides proper health protection.

Agency Response: EPA has carefully reviewed these comments and has decided to maintain the basic proposed statistical form for the 24-hour standard but has made some technical changes and clarifications in response to reviewers comments. The Agency believes that a single exceedance form for the primary standards and the proposed adjustments for incomplete sampling appropriately reflect the health basis for the standard. When sampling is performed less frequently than every day, the number of observed exceedances of the standard level will obviously be, in general, fewer than the actual number of exceedances. If, for example, sampling is performed only every sixth day, as is permitted by the Air Quality Surveillance regulations (40 CFR Part 58) being promulgated today, then, on average, the number of observed exceedances will only be one-sixth of the actual number of exceedances. To fail to correct for this effect would be irrational and would seriously degrade the health protection afforded by the standards. The Agency believes that adequate procedures for handling spurious high concentrations are provided in the "Guideline on the Identification and [Use of Air Quality Data Affected by Exceptional Events", EPA–450/4–86–007. Moreover, single high concentrations will not necessarily cause a location to fail the test for attainment. Appendix K has been modified so that the first observed exceedance is not adjusted for incomplete sampling, if the sampling frequency is promptly increased to every day in accordance with 40 CFR Part 58.13. Accordingly, sites sampling once in six days must observe at least two exceedances in order to fail the test for attainment. Sites sampling every other day or every day must record three or four exceedances over a three-year period in order to fail the test. This change reduces the chances for misclassifying a site as nonattainment.

Although a multiple exceedance form of the 24-hour standard could reduce sampling requirements, such a form would reduce the level of health protection by allowing particulate levels to exceed, on multiple days, the levels that the Administrator has determined to pose an unacceptable health risk. An analysis of alternative numbers of exceedances found that, in the long run, the single exceedance form provided much more consistent health protection than did the percentile form recommended by some commenters (Biller, 1984; 1986).

In response to comments regarding the potential for seasonal variation in particulate matter concentrations, as well as possible intrayear changes in sampling frequency as described in Part 58 of this Chapter, the Agency has decided to require that adjustments for incomplete sampling be performed on a quarterly basis instead of a yearly basis.

2. Expected Arithmetic Mean for the Annual Standard

Comment: Many commenters favored retaining the geometric mean to describe annual average particulate matter concentrations but several supported the proposed use of the arithmetic mean. Those opposed to the proposed method noted that the geometric mean is a more stable statistic and is less sensitive to occasional high readings. In addition, opposing commenters were concerned that a change to an arithmetic mean increases the stringency of the annual standard and that the arithmetic mean does not properly relate to health effects.

Response: As discussed above, EPA has decided to adopt annual primary and secondary standards in terms of expected annual arithmetic mean PM_{10}. The Agency believes that the annual arithmetic mean is a more appropriate indicator for a long-term primary air quality standard than is the geometric mean. It provides a better estimate of total exposure and, with its multiple-year averaging, more appropriately takes into account year-to-year fluctuations in meteorology. As discussed in the rationale, the effect of averaging multiple years of data in order to estimate the expected annual value as well as the use of the arithmetic mean were both considered in setting the concentration level of the standard. The use of the arithmetic mean does not necessarily increase the stringency of the standard level; the stringency depends at the combination of the form, indicator, and level. Holding all else equal, however, the arithmetic form is relatively more protective in areas subject to multiple elevations in 24-hour concentrations. EPA views this as a desirable characteristic.

VII. Regulatory and Environmental Impacts

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is a "major" regulation for which a Regulatory Impact Analysis (RIA) is required. At the time of the proposal, the Agency judged the proposed revisions to the particulate matter NAAQS to be a major action, and made available to the public a draft analysis entitled: Regulatory Impact Analysis of the National Ambient Air Quality Standards for Particulate Matter—Draft (EPA, 1983). The draft RIA was based on information developed by several EPA contractors (inter alia., Argonne, 1983; Mathtech, 1983) and provided estimates of costs, benefits, and net benefits associated with alternative standards.

In announcing the availability of the draft RIA, the Agency stated that neither the RIA nor the contractors' reports were considered in developing the proposed revisions. Subsequent to the release of the draft RIA, the public and other governmental agencies raised a number of questions regarding the underlying data bases and analyses discussed in the draft RIA. In response to these questions, the Agency modified the cost model used and made other, more limited, changes to the benefits analyses. The number and extent of the changes were constrained, however, by the underlying model structure and the available data. The Agency has carefully evaluated the revised analysis and has concluded that despite the significant improvement made, fundamental questions remain with regard to certain aspects of the methodology used, particularly with respect to the emission reduction/air quality improvement relationship which affects the subsequent cost and benefit calculations. Consistent with its past practice, the Agency has not considered the final Regulatory Impact Analysis of National Ambient Air Quality Standards for Particulate Matter (EPA, 1986c) in reaching decisions on the final standards.

The final RIA has been submitted to the Office of Management and Budget (OMB) for review under Executive

Order 12291. Comments from OMB and EPA's responses to those comments have been placed in the docket.

Reporting Requirements

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980 U.S.C. 3501 *et seq.*

B. Impact on Small Entities

Under the Regulatory Flexibility Act, 5 U.S.C. 600–612, EPA must prepare initial and final regulatory flexibility analyses that assess the impact a proposed or final rule will have on small entities, which include small businesses, small not-for-profit enterprises, and governmental entities with jurisdiction over populations of less than 50,000. The requirement of preparing such an analysis is waived, however, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The national ambient air quality standards do not have a direct impact on small businesses or enterprises because the standards themselves do not contain emission limits or other pollution controls. Rather, such controls are contained in State implementation plans promulgated under section 110 of the Act, 42 U.S.C. § 7410. The States are given considerable discretion in selecting a mix of controls to attain and maintain the ambient standards, and the impact on small entities depends on how the States choose to exercise their discretion.

Nonetheless, EPA conducted an analysis of the impact of a hypothetical control strategy, designed to minimize costs, on entities in the industries that would be most affected under that hypothetical control strategy. That analysis, discussed in the notice of proposed rulemaking, 49 FR at 10422, indicated that less than 20% of the entities in those industries would be affected by the proposed standards.

During the public comment period, EPA received no comments on the regulatory flexibility analysis. On the basis of that analysis, the Administrator certifies that the revisions being promulgated today will not have a significant impact on a substantial number of small entities.

VIII. Other Reviews

This final rule was submitted to the Office of Management and Budget (OMB) for review. Comments from OMB and EPA's responses to these comments have been placed in the docket.

List of Subjects in 40 CFR Part 50

Air pollution control, Carbon monoxide, Ozone, Sulfur oxides, Particulate matter, Nitrogen dioxide, Lead.

Dated: June 2, 1987.

Lee M. Thomas,

Administrator.

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Addendum I—CASAC Review and Closure of the 1982 Criteria Document for Particulate Matter/Sulfur Oxides and the 1986 Second Addendum to the Criteria Document

January 29, 1982.

Subject: CASAC Review and Closure of the Criteria Document for Sulfur Oxides/Particulate Matter

From: Sheldon K. Friedlander, Chairman, Clean Air Scientific Advisory Committee (CASAC)

To: Anne M. Gorsuch, Administrator

On November 16, 1981, the Clean Air Scientific Advisory Committee of the Science Advisory Board completed its third review of the air quality criteria document for sulfur oxides/particulate matter (SOx/PM). The Committee notes with satisfaction the improvements made in the quality of the document during the course of previous CASAC reviews on August 20-22, 1980 and July 7-9, 1981. The staff of the Environmental Criteria and Assessment Office, directed by Dr. Lester Grant, have proven responsive to Committee advice as well as to comments provided by the general public, and deserve to be commended for the high quality of the document.

The purpose in writing you is to summarize the Committee's major conclusions to assist you in reviewing the scientific data and associated studies relevant to the establishment of revised ambient air quality standards for sulfur dioxide and particulate matter as required by law. This letter further advises you of the Committee's conclusion that the criteria document fulfills the requirements set forth in Section 108 of the Clean Air Act as amended, which requires that the document "shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare" from sulfur oxides and particulates in the ambient air.

The Committee is preparing a separate letter to you summarizing the conclusions of its reviews of the Draft Staff Paper for Particulate Matter. In addition, CASAC will prepare a similar report on the Draft Staff Paper for Sulfur Oxides once that document

becomes available and its review is completed.

Major Scientific Issues and CASAC Conclusions in the SO_x/PM Criteria Document Review

Chapter 1: Executive Summary.

In general, the revised draft Executive Summary critically synthesizes the key points of information discussed at length in the individual chapters. Its conclusions and interpretations of scientific data, studies, and issues are consistent with those presented in each chapter. Relationships among individual chapters are clearly defined; redundancies that do appear are reasonable given the complexity of the subject.

The quality of the Executive Summary would be further improved if more specific statements and/or tables were added to clarify certain important interrelationships. These include the differences in chemical composition associated with each of the several significant size ranges of particulate matter; and the health effects associated with the respiratory tract deposition patterns of particulate matter in the several size ranges and different chemical compositions. Quantitative health effects information useful in defining specific concentrations or ranges of concentrations of size-specific and/or chemical specific PM associated with the occurrence of health effects should also be highlighted. In view of evidence that total thoracic (tracheobronchial and alveolar) particle deposition is of public health concern, it would also be helpful to include a discussion of the likely equivalency among British Smokeshade (BS), Total Suspended Particles (TSP), and size selective particle aerometric measurements that would sample or index atmospheric concentrations of those sized particles identified with tracheobronchial or alveolar deposition.

Chapter 2: Physical and Chemical Properties of SO_x/PM.

This chapter is well written and addresses the important issues relevant to a criteria document. It presents a good summary of current knowledge of the factors affecting the physics and chemistry of sulfur dioxide and the pathways and kinetics of its transformation into sulfuric acid. It also provides a good summary of particle characteristics, dynamics, and hygroscopic growth.

Chapter 3: Techniques for the Collection and Analysis of SO_x/PM.

The revised chapter provides an excellent summary of the measurement of sulfur oxides and particulates. Especially important is the discussion of the capabilities of the various measurement techniques and the profile of pollutants in the ambient air which these measurements yield. The chapter correctly notes that British Smoke (BS), Coefficient of Haze (COHS), and Total Suspended Particulate (TSP) measurements do not adequately reflect key physical or chemical properties of particulate matter in the contemporary ambient air. Precise interconversion among units of BS, COHS, and TSP is not possible. In the context of a particulate standard, British Smoke is applicable only to a "sooty" smoke aerosol. It may not be a valid health effects indicator for the aerosol compositions observed in recent summertime episodes in the United States and Europe. Thus, it is unlikely that BS can provide a sensitive index of hazard for today's air pollution.

Chapter 4: Sources and Emissions.

Both natural and man-made sources emit sulfur dioxide and particulate matter into the ambient air. Given the limitations of our ability to derive reliable estimates from both types of sources, the criteria document presents an adequate discussion of current knowledge.

Chapter 5: Environmental Concentrations and Exposure.

This chapter is largely acceptable in its present form. Most of the comments and suggestions which were made for previous drafts have been effectively incorporated. The most important omission from the chapter is information related to chemical composition with respect to particle size. Abundant information of this type is available for sulfates and some trace metals. Given the strong dependence of deposition rates and light scattering on particle size, it might have been worthwhile to refer to this literature in Chapter 5 or to direct attention to other document chapters (e.g., Chapter 2) where such relationships are discussed.

Chapter 6: Atmospheric Transport, Transformation and Deposition.

This chapter is concise, well-written, and effective in communicating information related to the current status of mathematical models for air pollution. The utility of various models is clearly discussed, and the inadequacy of current models for quantitative extrapolation is pointed out. Topics which had been omitted from the previous draft of this chapter have been added to other chapters with overlapping content. The chapter is now acceptable as written.

Chapter 7: Acidic Deposition.

The Committee has recognized the desirability of incorporating existing information on acidic deposition in the present criteria document. Chapter 7 provides an abbreviated but adequate summary of the contribution of sulfur oxides and particulates to the formation, transport, and effects of acidic deposition. The Committee has concluded that Chapter 7 is a scientifically adequate summary with the conditional understanding that EPA is preparing a Critical Assessment Document for Acidic Deposition for its review that recognizes and incorporates information on causes, effects, and data bases for all of the various pollutants relevant to acidic deposition. CASAC has been briefed several times by Agency officials regarding the status of this document. The Committee looks forward to the submission of this integrated assessment for its critical review.

Chapter 8: Effects on Vegetation.

In response to CASAC recommendations and public comments, this chapter on vegetation effects has been greatly improved compared to earlier drafts reviewed by the Committee. It now includes a more concise and interpretive critical evaluation of those few key studies yielding quantitative dose-effect or dose-response information of most use for criteria development and standard-setting purposes. It also reasonably includes tables in the appendices which summarize studies of particulates and sulfur dioxide related vegetation effects that are of less utility for criteria development and standard setting.

The Committee concurs with Chapter 8 evaluations which point to the lack of dose-response data to establish quantitative evidence of deleterious effects on vegetation from particulates at presently encountered U.S. ambient air concentrations. In contrast to particulates, much clearer evidence exists by which to define quantitative exposure-effect relationships for sulfur dioxide effects on vegetation. Laboratory experiments in particular have demonstrated the greater relative toxicity to vegetation from high short-term exposures of sulfur dioxide. This is especially important in view of the fact that ambient air concentrations of sulfur dioxide from point sources often fluctuate widely and result in high intermittent short-term exposures of plants to sulfur dioxide concentrations against a background of longer-term but much lower annual average sulfur dioxide levels. Also of much importance are differences in the relative sensitivity of various plant species to sulfur dioxide exposures. The degree of sensitivity depends in part on factors such as phase of growth at time of exposure, ambient

temperature and humidity levels, and plant water content. Among studies judged to be most useful for quantitative criteria development and standard setting are those of Dreisinger (1965, 1967) and Dreisinger and McGovern (1970) which demonstrate visible injury to white pine (a commercially important species in some U.S. areas) when natural stands of the tree in southern Canada were exposed for 4 hours to 0.30 ppm or for 8 hours to 0.25 ppm sulfur dioxide emitted from a nearby smelter. Roughly similar exposure-effect relationships were observed in studies reported by Jones et al. (1974) and McLaughlin (1981) on the effects of sulfur dioxide from a southeastern U.S. power plant on a wide variety of natural species in the vicinity of the point source. In these studies some crop and garden species showed visible injury effects with 3 hour exposures to 0.6–0.8 ppm sulfur dioxide, while certain other crop species (potato, cotton, corn, peach) did not show visible injury at levels below 0.8 ppm. In contrast, a chamber study by Hill et al. (1974) suggests that plants common to the southwestern U.S., with markedly lower moisture content and under generally lower ambient air humidity levels, may be able to withstand much higher ambient sulfur dioxide concentrations (up to 11 ppm for two hours) without visible injury.

Chapter 9: Effects on Visibility and Climate.

The technical aspects of this difficult problem are well characterized. The chapter does a good job of discussing the physics and public awareness of visibility. The relationship between fine particle mass concentrations and visibility has been well established. The criteria document thus provides an excellent technical basis for Agency decision-making on these issues.

Chapter 10: Effects on Materials.

This chapter adequately discusses the currently available scientific information concerning the effect of particulate matter and sulfur oxides on man-made materials. This includes critical assessments of available data concerning pertinent materials damage functions, uncertainties associated with existing characterizations of such functions, and limitations regarding estimation of monetary costs and/or benefits associated with the occurrence or control of such damage.

Chapter 11: Respiratory Deposition and Biological Fate of Inhaled Aerosols and Sulfur Dioxide.

This chapter is very much improved compared to earlier drafts reviewed by CASAC and is now a comprehensive and more informative summary of existing knowledge relevant to a criteria document. The existing knowledge in this area is, in many cases, incomplete. For example, a potentially very important factor is the influence of the integrity of lung epithelial barriers (both airway and alveolar) on deposition and clearance. To enhance the chapter's comprehensiveness, this issue should be discussed more sufficiently in the criteria document, despite the paucity of available data.

Chapter 12: Toxicological Studies.

This chapter is quite comprehensive as it describes essentially all toxicological studies relevant to a criteria document on sulfur oxides and particulates. Also, it provides commentary on many studies and the Significance of their findings to potential human health effects. In addition, the presentation of the information is more polished than the previous draft because of improved editing.

Chapter 13: Controlled Human Studies.

This is a chapter which thoroughly discusses the published material on controlled human experiments. The scientific criteria for good studies discussed at the beginning of the chapter cannot be overemphasized. While not all studies meet these criteria, the Committee recognizes that EPA must take account of the available literature and believes the studies cited in the chapter have been appropriately selected and discussed. Overall the chapter is well-written and directed toward addressing those questions to which answers are needed. One of the most important criteria for good human clinical studies is that they be double-blind. Unfortunately, most of the studies in the literature were not so performed. This factor is especially significant when sensitive population groups, such as asthmatics, are under study.

The chapter is also improved by the discussion of exposures administered through the nose and mouth during controlled studies. It appropriately notes that caution should be used in any attempted extrapolation of observed quantitative exposure/effects resulting from such protocols, particularly when compared to results that might be expected under ambient exposure conditions. The chapter identifies additional research results from studies using either face mask or open chamber oronasal breathing that would better resolve this issue, and it discusses existing studies in a balanced and thorough fashion.

Chapter 14: Epidemiological Studies.

The current draft of this chapter represents considerable change and improvement over previous drafts reviewed by CASAC. Following discussion with the Committee, EPA has applied a set of guidelines for deciding which epidemiological studies are most appropriate for use in revising ambient air quality standards.

More specific comments on the chapter include the following: (1) the integration of Chapter 14 with Chapter 3 has advanced the "real world" understanding concerning the application of epidemiological methods; (2) the epidemiological studies providing the most useful quantitative concentration/response information for revising the 24-hour ambient particulate standard include: Lawther et al, 1958 and 1970; Martin and Bradley 1960; Martin 1964; Ware et al, 1981; and Mazumdar et al, 1981; (3) the epidemiological studies providing the most useful quantitative concentration/response information for revising the annual ambient particulate standard include: Ferris and Anderson 1962; Lunn et al, 1967; Ferris et al, 1971 and 1976; and Bouhuys et al, 1978; and (4) the studies by Lave and Seskin, 1970, and Mendelsohn and Orcutt, 1979 suggest an association between chronic exposure to high concentrations of sulfates and increases in the level of mortality, but they do not indicate any threshold or safe level from such exposures, and they are not refined enough to provide estimates of the quantitative effect of sulfate concentrations on mortality.

Summary

The Committee made numerous comments of an editorial nature. These remarks, as well as a more detailed discussion of the recommendations and review provided above, are included in the transcripts of the three CASAC meetings held to review this document. With the understanding that the advised changes will be incorporated in the final criteria document, the Committee is satisfied that the air quality criteria document for sulfur oxides/particulate matter is scientifically adequate for use in standard setting.

December 15, 1986.

The Honorable Lee M. Thomas,
Administrator, U.S. Environmental Protection Agency, Washington, DC 20460

Dear Mr. Thomas: The Clean Air Scientific Advisory Committee (CASAC) has completed its review of two documents related to the development of National Ambient Air Quality Standards (NAAQS) for Particulate Matter and Sulfur Oxides. These two documents are the 1982 *Air Quality Criteria for Particulate Matter and Sulfur Oxides*, and the 1986 *Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982)*, both prepared by the Agency's

Environmental Criteria and Assessment Office (ECAO).

The Committee was impressed with the efforts of the staff of ECAO in preparing a well written, integrated and thorough review of recent relevant scientific studies. The Committee unanimously concluded that this 1986 Addendum, along with the 1982 Criteria Document previously reviewed by CASAC, represent a scientifically balanced and defensible summary of the extensive scientific literature on these pollutants.

Several important issues are discussed in the 1986 Addendum which the Committee believes should be emphasized. These issues were raised during our review of recent studies which relate primarily to guidance at the lower bounds of the ranges for the standards. These studies include the recent reanalyses of the London mortality data, two episodic lung function studies in the Unites States and the Netherlands, and the comparison of respiratory symptoms and pulmonary function levels of children living in six U.S. cities. Further discussion of these studies and reanalyses, as well as a more detailed discussion of the basis for the Committee's conclusions, are contained in the attached report.

The Committee also reviewed the Staff Papers for particulate matter and for sulfur oxides at the October 15–16, 1986 meeting, and is preparing separate reports reflecting its conclusions and recommendations on each of these two documents.

Thank you for the opportunity to present the Committee's views on these important public health issues.

Sincerely,

Morton Lippmann, Ph.D.,

Chairman, Clean Air Scientific Advisory Committee.

cc: A. James Barnes, Lester Grant, Vaun Newill, Craig Potter, Terry Yosie.

Summary of Major Scientific Issues and CASAC Conclusions on the 1986 Addendum to the 1982 Particulate Matter/Sulfur Oxides (PM/SO_x) Criteria Document

The Committee concentrated its review on newer studies and analyses which relate primarily to guidance on the lower limit of the proposed ranges for the standards. In general, the Committee believes the Criteria Document Addendum has appropriately summarized and interpreted the designs, analyses and conclusions of studies that should be considered in the standard setting process. The following is a brief chapter by chapter summary of issues that the Committee wishes to emphasize, or which require further clarification.

Chapter 1: Introduction

In general, this chapter provides an excellent summary of the physical and chemical properties and ambient measurement methods for PM and SO_x. However, the chapter could be strengthened by inclusion of a discussion of direct reading monitors for particulate mass concentrations including beta attenuation, light scattering, or other techniques which may be the dominant measurement techniques in the States in the future. This was discussed at the December 1985 CASAC meeting, with emphasis on the need to move to automated and continuous monitoring for particles.

Chapter 2: Respiratory Tract Deposition and Fate

The presentation in this chapter could be expanded by clarifying the discussion concerning the concept of impaired lungs and the deposition that would occur there as opposed to that in normal subjects. Further, the discussion of broncho-constriction being protective (Svartengren et al., 1984) and the discussion of other types of altered breathing patterns could be made clearer, perhaps by reorganizing this information by specific points.

Chapter 3: Epidemiology Studies

We wish to emphasize several studies and analyses discussed at the October 1986 CASAC meeting. One of these studies (Dassen et al.) should be integrated into this chapter, as was recognized by Agency staff in their remarks at the October 1986 meeting.

(1) The two episodic lung function studies show a consistency of results in Steubenville, Ohio (Dockery et al.) and Ijmond, Netherlands (Dassen et al.), lending credence to reported effects of a mixture of PM and sulfur oxides (SO_x) on respiratory function in children. This is consistent with the earlier work of Stebbings. These studies provide a relatively sensitive indication of possible short term physiological responses of uncertain health significance to PM. The roles of exposure times and duration of functional decrement need better definition.

(2) The London mortality studies, including recent analysis by Agency staff, provide strong evidence that particulate matter is more closely associated with daily mortality than sulfur dioxide concentrations. The criteria document should recharacterize distinctions made between "likely" and "possible" effects levels for establishing upper bounds.

(3) The Six-Cities study has reported that cough and bronchitis are twice as prevalent in children living in cities with PM_{10} in the range of 40–60 $\mu g/m^3$, in comparison to cities with a range of 20–30 $\mu g/m^3$.

Chapter 4: Controlled Human Exposure Studies of SO_2 Health Effects

Although this chapter was well done, the Committee suggests that it be strengthened by modifying its existing discussions and by addition of further discussion and tabular material concerning short term exposure effects presented by Drs. Horstman and Folinsbee at the October 1986 CASAC meeting.

Conclusion

The 1986 Addendum to the 1982 Air Quality Criteria Document on PM/SO_x was prepared by EPA at the request of CASAC for the purpose of updating the knowledge of recent scientific studies and analyses. The Committee commends the Agency staff for its efforts in preparing a concise and well written document. The Addendum summarizes key findings from the earlier documents and provides a reasonably complete summary of newly available information concerning particulate matter and sulfur oxides, with major emphasis on evaluation of human health studies published since 1981. The Committee unanimously concludes that this 1986 Addendum, with the incorporation of the changes noted above, represents a scientifically balanced and defensible summary of the extensive scientific literature on these pollutants. These documents fulfill the requirements under section 108 of the Clean Air Act as amended, which requires that the document(s) ". . . shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare . . ." from particulate matter and sulfur oxides in the ambient air.

Addendum II—CASAC Review and Closure of the 1982 OAQPS Staff Paper for Particulate Matter and the 1986 Addendum to the Staff Paper

January 29, 1982.

Subject: CASAC Review and Closure of the OAQPS Staff Paper for Particulate Matter

From: Sheldon K. Friedlander, Chairman, Clean Air Scientific Advisory Committee

To: Anne M. Gorsuch, Administrator

The Clean Air Scientific Advisory Committee (CASAC) recently completed its second and final review of the document entitled *Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information, OAQPS Staff Paper.* The Committee notes with satisfaction the improvements made in the scientific quality and the completeness of the staff paper. It has been modified in accordance with the recommendations made by CASAC in July and November 1981. This document is also consistent in all significant respects with the scientific evidence presented and interpreted in the combined criteria document for sulfur oxides and particulate matter. It has organized the data relevant to the establishment of particulate primary and secondary ambient air quality standards in a logical and compelling way, and the Committee believes that it provides you with the kind and amount of technical guidance that will be needed to make appropriate revisions to the standards.

CASAC has prepared this closure memorandum to inform you more specifically of its major findings and conclusions concerning the various scientific issues and studies discussed in the staff paper. In addition, the Committee's review of the scientific evidence leading to the particulate

standard revision leads to a discussion of its own role in the process for setting the standard.

CASAC Conclusions and Recommendations on Major Scientific Issues and Studies Associated With the Development of Revised NAAQS for Particulates

1. Based upon the review of available scientific evidence, a separate general particulate standard remains a reasonable public health policy choice.

2. CASAC reaffirms its initial recommendation of July 1981 to establish a 10 micrometer cut point for a revised primary particulate standard. This recommendation is based upon a recognition of the periodic, and sometimes frequent, tendency of both healthy and sensitive populations to breathe through their mouths and/or oronasally. This practice increases the amount of particulate matter that can penetrate into the thorax because the larger particles are not filtered in the oronasal passages. Deposition of particulates into this region is of special concern to those individuals with pre-existing respiratory problems and children. In addition, the collection of particles of less than 10 micrometer diameter size more closely resembles particles passing into the thoracic region of the human body than the collection of larger sized particles. Furthermore, monitors equipped for a 10 micrometer cut are less wind dependent and can provide a more accurate profile of the contemporary ambient air than samplers which measure total suspended particles.

CASAC's recommended size cut is also similar to proposals of other scientific associations. For example, 88% of the national members of the Air Quality Committee of the International Standards Organization recently voted for a particulate cut point at 10 micrometers for sampling particles which can deposit in the lungs.

The CASAC recommendation is based upon available scientific data. Other individuals and groups have discussed the possibility of establishing a revised particulate standard at a size cut considerably less than 10 micrometers. However, for the current revision of the standard, the scientific data more readily support a 10 micrometer size cut.

3. CASAC reached several major conclusions concerning the revision of the 24-hour and annual particulate standards. At the upper bound of the proposed ranges of 150–350 $\mu g/m^3$ for the 24-hour and 55–110 $\mu g/m^3$ for the annual averages, detectable health effects occur in the populations evaluated in the epidemiological studies. Since the upper end of these ranges contain little or no margin of safety, it would be appropriate to consider lower values for revising the 24-hour and annual standards. In addition, the stated ranges are based solely on quantitative evidence reported in epidemiological studies. A final decision on a revised standard should also incorporate information generated through controlled human, animal toxicology, and from other less quantitative epidemiological studies discussed in the criteria document.

There is an absence of a clearly definable exposure-response relationship for particles, as amply discussed in the criteria document and the staff paper. In addition, because airborne particles are heterogeneous in composition, the potential toxic effects of individual constituents should be considered in setting the standard. Thus, compared to margins of safety set for pollutants such as ozone and carbon monoxide, where exposure-response relationships are better established and small margins of safety are more justifiable, CASAC believes you should consider a revised standard with a wider margin of safety.

4. The Committee reached general agreement that the annual particulate standard should consist of an arithmetic mean. It is recommended that the 24-hour standard include a statistical form and that the number of exceedances is set in relation to the revised standard level.

5. During the past decade, the link between visibility and fine particle mass concentrations has been convincingly documented. Visibility is a sensitive indicator of accumulated man-made pollutants in the ambient air. The public cares about visibility and is willing to pay something for clean air. However, the quantitative basis for establishing a psychological, economic, transportation or any other welfare cost associated with visibility impairment has not been established. In addition, controls required to achieve a given visibility standard are not known due to the complexities of pollutant transport and transformation.

Defining acceptable levels of visibility is a social/policy judgment as well as a scientific decision, but science can provide some guidance. The upper end of the 8–25 $\mu g/m^3$ range for fine particles (those particles with a diameter size of less than 2.5 micrometers) would tend to maintain the status quo for the eastern United States and some western urban areas, but would permit air quality degradation for large areas in the west including national parks. Also, it is highly uncertain that the recommended thoracic particle ranges for the primary standard will protect visibility. The 8–25 $\mu g/m^3$ range for fine particles suggested for visibility protection is a seasonal and spatial average, unlike peak values which will be recommended for the primary standard.

The strongest case for a visibility related standard is one that links emissions of nitrogen oxides and sulfur dioxide with the interrelated aspects of acidic deposition, possible climatological effects, and visibility. Each of these three air quality issues is related to the fine particles which originate both as primary particulate emissions and as secondary aerosols from atmospheric conversions of sulfur dioxide and nitrogen oxides emitted as vapors. In terms of a control strategy to protect public welfare, it may be more efficient to consider a common standard linked to fine particles than to establish a separate set of controls for each of these problems and pollutants.

6. The Committee's evaluation of scientific data and studies in the criteria document and the staff paper lead it to conclude that there is no scientific justification for the establishment of a particulate standard for the specific protection of vegetation.

7. The Committee discussed what effect elimination of a Total Suspended Particulate (TSP) standard would have on the environment. The soiling and nuisance aspects of TSP are essentially local air quality problems because such coarse particles are not transported great distances. This contrasts with visibility or oxidant related problems which are distinctly issues of long range pollution transport. Individuals who serve on the Committee made various recommendations regarding retention or elimination of a secondary standard for TSP, but no clear consensus evolved.

The Process for Setting the Ambient Particulate Standard

In its report of September 21, 1981, CASAC made several major recommendations relating to the process for setting ambient air standards. The Committee is aware that your staff is analyzing its report and is awaiting a response.

A major underlying assumption of the Committee's recommendations was the need to make more explicit the relationship between the scientific evidence in the criteria document and the staff paper and the eventual selection of a numerical level for individual standards. The Committee strongly believes in the need to clarify the standard setting process by

identifying the key studies that will shape the determination of a standard. Intensive evaluation of such studies by CASAC and the public will considerably increase your ability to set a scientifically supportable standard.

The Committee is greatly encouraged by your decision to improve the format and content of OAQPS scientific issue staff papers. In the Draft Staff Paper for Particulate Matter key studies are identified and their implications for setting primary and secondary standards are discussed. More importantly, the inclusion of numerical ranges and their supporting rationale enable the Committee and the public to critically examine the staff's proposed use of the studies. This led to a marked improvement in the quality of the public dialogue concerning the scientific basis for revising the standard. CASAC commends your effort and recommends that all staff papers developed for ambient air standards contain numerical ranges.

CASAC recognizes that your statutory responsibility to set standards requires public health policy judgments in addition to determination of a strictly scientific nature. While the Committee is willing to further advise you on the particulate standard, we see no need, in view of the already extensive comments provided, to review the proposed particulate standards prior to their publication in the **Federal Register.** In this instance, the public comment period will provide sufficient opportunity for the Committee to provide any additional comment or review that may be necessary.

December 16, 1986.

The Honorable Lee Thomas,
Administrator, U.S. Environmental Protection Agency, Washington, DC 20460.

Dear Mr. Thomas: The Clean Air Scientific Advisory Committee (CASAC) has completed its review of the 1986 Addendum to the 1982 Staff Paper on Particulate Matter *(Review of the NAAQS for Particulate Matter: Assessment of Scientific and Technical Information)* prepared by the Agency's Office of Air Quality Planning and Standards (OAQPS).

The Committee unanimously concludes that this document is consistent in all significant respects with the scientific evidence presented and interpreted in the combined Air Quality Criteria Document for Particulate Matter/Sulfur Oxides and its 1986 Addendum, on which the CASAC recently issued its closure letter. The Committee believes that this document provides you with the kind and amount of technical guidance that will be needed to make appropriate revisions to the standards. The Committee's major findings and conclusions concerning the various scientific issues and studies discussed in the Staff Paper Addendum are contained in the attached report.

Thank you for the opportunity to present the Committee's views on this important public health issue.

Sincerely,

Morton Lippmann, Ph.D.,
Chairman, Clean Air Scientific Advisory Committee.

cc: A. James Barnes, Gerald Emison, Vaun Newill, John O'Connor, Craig Potter, Terry Yosie.

Summary of Major Scientific Issues and CASAC Conclusions on the 1986 Draft Addendum to the 1982 Particulate Matter Staff Paper

The Committee found the technical discussions contained in the Staff Paper Addendum to be acceptable with minor revisions.

Particle Size Indicator

The CASAC reaffirms its January 29, 1982 recommendation that a particle size indicator that includes only those particles less than or equal to a nominal 10 um aerodynamic diameter, termed PM_{10}, is appropriate for regulation of particulate concentrations. This judgment is based on analysis of the earlier available data, and the analysis of the recent scientific studies discussed in the 1986 Addendum to the Air Quality Criteria for Particulate Matter/Sulfur Oxides and the 1986 Addendum to the Particulate Matter Staff Paper.

Implications of London Mortality Studies

Further analyses of the London mortality studies, including recent analysis by Agency staff, suggest that:

(1) the data provide no evidence for a threshold for the association between airborne particles and daily mortality or a change of coefficient with changes in particle composition;

(2) mortality effects can be associated with PM alone (with or without sulfur oxides);

(3) there is no reliable quantitative basis for converting British Smoke (BS) readings to PM_{10} gravimetric mass at low (<100–200 $\mu g/m^3$) BS levels, and hence the mortality data are not readily useful for establishing a lower bound for 24-hour PM_{10} NAAQSA, although the suggestion of mortality at relatively low PM levels must be given serious consideration in selecting a margin of safety.

Interpretation of Lung Function Studies for 24-hour Standard

Although the lung function decrements observed in children during and after air pollution episodes are of uncertain health significance, the two episodic lung function studies (Dockery et al., 1986; Dassen et al., 1986) are consistent with each other and the earlier work of Stebbings. They provide a relatively sensitive indication of possible short term physiological responses. Given the difficulty in deriving a lower limit from the mortality studies, these lung function studies can be useful in determining lower bounds for a 24-hour PM_{10} standard.

Interpretation of the Six Cities Study for Annual Standard

In general, the Committee felt that the six cities data are useful in establishing the lower bound of the range for the annual standard. In addition, the following are suggested by the data:

(1) Cough and bronchitis, as defined in this study, are about twice as prevalent in children living in cities with PM_{10} in the range of 40–60 $\mu g/m^3$ in comparison to cities with 20–30 $\mu g/m^3$;

(2) Because factors other than particulate matter may affect the inter-city differences, it is difficult to determine whether these associations should be designated as "likely" health effects;

(3) The results are consistent with the Ostro studies in terms of morbidity responses at long-term average particulate matter exposures within current particulate ambient air quality standards; and

(4) The results are consistent with the Bouhuys study in terms of symptoms without changes in pulmonary function.

Ranges for 24-hour and Annual Standards for PM_{10}

In its January 2, 1986 letter to the Administrator, the CASAC noted that its preliminary analyses of the more recent data do not indicate the need for fundamental changes in the structure of the proposed particle standards; however, the Committee pointed out that these new data suggest the need to focus consideration on standards at or perhaps below the low ends of the ranges proposed in the March 20, 1984 **Federal Register** Notice. The ranges of interest then proposed were 150–250 $\mu g/m^3$ for 24-hour standard, and 50–65 $\mu g/m^3$ for annual standard.

Since then, EPA staff have proposed updated ranges of interest for both the 24-hour standard (140–250 $\mu g/m^3$), and the annual standard (40–65 $\mu g/m^3$), based on short-term and long-term epidemiological data, respectively. The Committee finds these ranges of interest reasonable, given the scientific data and related uncertainties; however, a final decision should also weigh evidence from clinical and toxicological studies

as well. The Committee agrees with EPA staff that selection of final standards must include consideration of the combined protection afforded by the 24-hour and annual standards taken together.

The Committee recommends that you consider setting the revised standards at the lower ends of the proposed ranges for both the 24-hour and annual standards. The Committee recognizes that the exact levels to be chosen for the 24-hour and annual standards represent a policy choice, influenced by the need to include a margin of safety. Given the uncertainty in the supporting scientific data, the Committee cannot distinguish the health effects that may be observed at different levels near the lower bound, such as the health significance of setting the 24-hour standard at 140 $\mu g/m^3$ compared to 150 $\mu g/m^3$.

Addendum III—Executive Summary of the 1986 Addendum to the Staff Paper

Review of the National Ambient Air Quality Standards for Particulate Matter: Updated Assessment of Scientific and Technical Information—Addendum to the 1982 OAQPS Staff Paper (EPA, 1986b).

Executive Summary

This paper evaluates and interprets the updated scientific and technical information that the EPA staff believes is most relevant to decision making on revised primary (health) national ambient air quality standards (NAAQS) for particulate matter and is an addendum to the 1982 particulate matter staff paper. The paper assesses the factors the staff believes should be considered in selecting the pollutant indicator and level for the primary particulate matter standards, updating and supplementing previous staff conclusions and recommendations in these areas to incorporate more recent information. This assessment is intended to help bridge the gap between the scientific review contained in the EPA criteria document addendum "Second Addendum to Air Quality Criteria for Particulate Matter and Sulfur Oxides (1982): Assessment of Newly Available Health Effects Information" and the judgments required of the Administrator in making final decisions on revisions to the primary NAAQS for particulate matter that were proposed in March 1984 (49 FR 10408). The staff paper and this addendum are, therefore, important elements in the standards review process and provide an opportunity for public comment on proposed staff recommendations before they are presented to the Administrator.

Particulate matter represents a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) ranging in size from molecular clusters of 0.005 micrometers (μm) to coarse particles on the order of 1000 μm. The major chemical and physical properties of particulate matter vary greatly with time, region, meteorology and source category, complicating the assessment of health and welfare effects as related to various indicators of particulate pollution. The original measurement method for the particulate matter NAAQS was the "hi volume" sampler, which collects particles of sizes up to a nominal 25–45 μm (so-called "Total Suspended Particulate" or TSP). EPA has proposed to replace this particulate matter indicator with one that includes only particles with aerodynamic diameters smaller than a nominal 10 μm, termed "PM_{10}". Although a large number of PM_{10} monitors are now in place, reliable and consistent data are, at present, limited. Data from 39 sites in EPA's IP network show long-term urban PM_{10} levels range between 25 and 75 $\mu g/m^3$ and maximum 24-hour values range from 50 to 175 $\mu g/m^3$. Higher values are likely as more data become available. Both fine (<2.5 μm) and coarse (>2.5 um) particles are substantial components of PM_{10} mass, with a tendency for higher coarse contributions in western U.S. locations with higher concentrations. National estimates of PM_{10} levels are derived from applying measured PM_{10}/TSP ratios to the wider TSP data set. This analysis (for 1983–85 data) estimated that 193 counties exceeded the lower bound of the ranges proposed for PM_{10} standards (150 $\mu g/m^3$ 24 hour, 50 $\mu g/m^3$ annual) while 136 counties had sites that exceeded the current primary TSP standards.

Particle Indicator

Based on an examination of air quality composition, respiratory tract deposition, and health effects and related considerations, the 1982 staff paper recommended adoption of the size specific indicator (PM_{10}) proposed in 1984. The present staff assessment of the more recent information on respiratory tract deposition contained in the criteria document addendum reinforces the conclusions reached in the original staff assessment in 1982. The staff finds that the recent data do not support alternative indicators that have been suggested, which exclude all particles larger than 10 μm. The PM_{10} indicator is generally conservative over the range of tracheobronchial deposition.

Recent information suggesting enhanced tracheobronchial particle deposition for children relative to adults provides an additional reason for an indicator that includes particles capable of such penetration. Given these considerations and its earlier conclusions, the staff reaffirms its recommendation to replace TSP as the particle indicator for the primary standards with a new indicator that includes only those particles smaller than a nominal 10 μm in aerodynamic diameter (PM_{10}). The previously developed effectiveness criteria for samplers are acceptable for regulatory purposes.

Level of Standards

The major scientific basis for selecting PM standards that have an adequate margin of safety remains community epidemiological research, with mechanistic support from toxicological and controlled human investigations. The limitations of epidemiological studies for these purposes must, however, be recognized. Such studies, while representing real world conditions, can only provide associations between a complex pollutant mix measured at specific locations and times and a particular set of observable health points. Difficulties in conducting and interpreting epidemiological studies limit the reliance that can be placed on the results of any single study. None of the available studies have used PM_{10} as a direct measure of pollution, requiring—where appropriate—further conversion of results to estimated PM_{10} units.

The 1982 criteria document and the criteria document addendum identify a limited set of epidemiological studies most useful for developing quantitative conclusions regarding the effects of particulate matter. This updated staff assessment incorporates the previous evaluation of the earlier studies as well as the present assessment of more recent studies.

The updated staff assessment of the short-term epidemiological data is summarized in Table 1; levels are expressed in both the original (British smoke—"BS" or TSP) and PM_{10} units. The "effects likely" row denotes concentration ranges derived from the criteria document and its addendum at or above which a consensus judgment suggests greatest certainty that some effects would occur, at least under the conditions that obtained in the original studies. The data do not, however, show evidence of clear population thresholds but suggest a continuum of response with both the risk of effects occurring *and* the magnitude of any potential effect decreasing with concentration.

This is particularly true for the statistical analyses of daily mortality in London. Substantial agreement exists that wintertime pollution episodes produced premature mortality in elderly and ill populations, but the range and nature of association provide no clear basis for distinguishing any particular lowest "effects likely" levels or for defining a concentration below which no association remains. The recent lung function studies in children suggest that effects are possible in the range listed in Table 1, but the relationships are not certain enough to derive "effects likely" levels for PM_{10}. They do suggest levels below which detectable functional changes are unlikely to occur.

Table 1. Updated Staff Assessment of Short–Term Epidemiological Studies

Effects/study	Measured British smoke levels (as $\mu g/m^3$) (24–hr. avg.)			Measured TSP levels ($\mu g/m^3$ (24–hr. avg.)	Equivalent PM_{10} levels ($\mu g/m^3$)
	Daily mortality in London [1]	Aggravation of bronchitis [2]	Combined range	Small, reversible declines in lung function in children [3,4]	Combined range [5]
Effects Likely	1000	250*–500*	250–500		350–600
Effects Possible	?	<250*	<250	220*–420 [3]—200–250 [4]	140–350
No Significant Effects Noted				125* [4]–160 [3]	<125

* Indicates levels used for upper and lower bound of range.

[1] Various analyses of daily mortality encompassing the London winter of 1958–59, 14 winters from 1958–72, in aggregate and individually. Early winters dominated by high smoke and SO_2 from coal combustion with frequent fogs. From 1982 CD: Martin and Bradley (1960); Ware et al., (1981); Mazumdar et al. (1981). From 1986 CD Addendum: Mazumdar et al. (1982); Ostro (1984); Shumway et al., (1983); Schwartz and Marcus (1986). Later studies show association across entire range of smoke, with no clear delineation of "likely" effects or threshold of response possible.

[2] Study of symptons reported by bronchitis patients in London, mid–50's to early 70's; Lawther et al. (1970).

[3] Study of pollution "episodes" in Steubenville, Ohio, 1978–80; Dockery et al. (1982).

[4] Study of 1985 pollution episode in Ijmond, The Netherlands; Dassen et al. (1986).

[5] (a) *Conversion of BS readings to PM_{10} levels:* Assumes for London conditions and BS readings in the range 100–500 $\mu g/m^3$, BS $< PM_{10} <$ *TSP* Precise conversions are not possible. Uncertainty in measurements of BS and conversion relationships preclude quantitative estimates of range for lower BS levels. The upper bound assumption (PM_{10} = TSP = BS + 100 $\mu g/m^3$) overestimates PM_{10} levels.

(b) *Conversion of TSP to PM_{10} for Dockery et al. results:* Based on analysis of particle size fraction relationships in Steubenville (Spengler et al. 1986) The lower bound TSP of 220 $\mu g/m^3$ was the peak reported for the Spring 1980 study. A PM_{15}/TSP ratio of about 0.8 occurred at a nearby site on days surrounding this peak. Using lower bound of PM_{10}/ PM_{15} ratio from later year (0.8), the PM_{10} to TSP ratio estimate used is 0.64. The 160 $\mu g/m^3$ reflects peak level in Fall 1980 from episode with no significant functional decline noted.

(c) *Conversion of Dassen et al. results to PM_{10}:* Both PM indices (Respirable Suspended Particles [RSP] and TSP) reached similar levels. Results suggest TSP levels too low, but PM_{10} levels unlikely to be much higher than RSP. Thus RSP = PM_{10} assumed for conditions of higher concentrations in this study. The 125 $\mu g/m^3$ entry reflects an excursion occurring 2 days prior to date on which no decrements noted.

Based on this staff assessment of the short–term epidemiological data, the range of 24–hour PM_{10} levels of interest are 140 to 250 $\mu g/m^3$. The upper end of the range reflects the judgment of the Administrator with regard to the maximum level proposed in 1984 for a 24–hour standard, based on his consideration of the earlier criteria and assessments. Although the recent information provides additional support for the possibility of effects at lower levels, it does not demonstrate that adverse effects would occur with certainty at a PM_{10} concentration of 250 $\mu g/m^3$. This level, therefore, remains an appropriate upper bound. The recent data suggest that the range of levels under consideration of alternative standards can be reduced to 140 $\mu g/m^3$, although the original lower bound of 150 $\mu g/m^3$ is within the range of uncertainty associated with expressing the data as PM_{10}. Neither the studies used to derive this range nor the more qualitative studies of effects in other sensitive population groups (e.g., asthmatics) or effects in controlled human or animal studies provide convincing scientific support for health risks of consequence below 140 $\mu g/m^3$ in current U.S. atmospheres. These qualitative data, as well as factors such as aerosol composition and exposure characteristics, should also be considered in evaluating margins of safety associated with alternative standards in the range of 140 $\mu g/m^3$ to 150 $\mu g/m^3$.

The amended staff assessment of the more quantitative long-term epidemiological data is summarized in Table 2. Long-term studies are subject to additional confounding variables that reduce their sensitivity and make interpretation more difficult. The most important new study shows a gradient of responses in children among six U.S. cities that follows the measured gradient in particulate matter, but response comparisons for locations with somewhat smaller pollution gradients within some of these cities do not follow the same patterns. The results of a separate series of studies on long and intermediate term (2–6 weeks) exposures in a number of U.S. cities (Ostro, 1983, 1987; Hausman et. al, 1984) is more supportive of the possibility of within city effects as comparable U.S. exposure levels. Thus some risk of effects is possible at levels somewhat below those suggested by the 1982 assessment, but it is uncertain given the potential for confounding present in these more recent studies.

Table 2. Updated Staff Assessment of Long-Term Epidemiological Studies

Effects/study	Measured BS levels (as $\mu g/m^3$)	Measured TSP Levels ($\mu g/m^3$)					Equivalent PM_{10} levels ($\mu g/m^3$)
	Increased respiratory disease, reduced lung function in children [1]	Increased respiratory disease, symptoms, small reduction in lung function in adults [2]	Increased respiratory symptoms in adults [3]	Increased respiratory symptoms and illnesses in children [4]	Reduced lung function in children [4]	Combined range	Combined range [5]
Effects likely	230–300	180*				>180	>80–90
Effects possible	<230	130–180*	60–150(110)	60*–114		60–180	40–90
No significant [6] effects noted		80–130			40–114	<60	<40

* Indicates levels used for upper and lower bound of range.

[1] Study conducted in 1963–65 in Sheffield, England (Lunn et al., 1967). BS levels (as $\mu g/m^3$) uncertain.

[2] Studies conducted in 1961–73 in Berlin, N.H. (Ferris et al., 1973, 1976). Effects likely level (180 $\mu g/m^3$) based on uncertain 2-month average. Effects in lung function were relatively small.

[3] Study conducted in 1973 in two Connecticut towns. (Bouhuys et al., 1973). Exposure estimates reflect 1965–73 data in Ansonia. Median value (110 $\mu g/m^3$) used to indicate long-term concentration. No effects on lung function, but some suggestion of effects on respiratory symptoms.

[4] Study conducted in 1976–1980 in 6 U.S. cities (Ware et al., 1986). Exposure estimates reflect 4-year averages across cities. Comparable pollution/effects gradients not noted within cities.

[5] Conversion of TSP to PM_{10} equivalents for Berlin, Ansonia studies based on estimated ratio of PM_{10}/TSP for current U.S. atmospheres (Pace, 1983). The estimated ratio ranged between 0.45 and 0.5. Conversion for six-city study based on site-specific analysis of particle size dats (Spengler et al., 1986).

[6] Ranges reflect gradients in which no significant effects were detected for categories at top. Combined range reflects all columns.

Based on this updated assessment of the long-term epidemiological data, the staff recommends that the range of annual PM_{10} levels of interest be 40 to 65 $\mu g/m^3$. The upper end of the range reflects the judgment of the Administrator with regard to the maximum level proposed for an annual standard, based on his consideration of the earlier criteria and assessment. The staff concludes that this level remains a useful upper bound. The recent data prompt consideration of a standard level below the previous lower bound (50 $\mu g/m^3$) to values as low as 40 $\mu g/m^3$. Uncertain data from one recent study of six cities suggest that at this level some risk may remain of respiratory effects in children, but no detectable increases in pulmonary function are expected in children or adults.

When evaluating margins of safety for an annual standard, it is particularly important to examine the results of qualitative data from a number of epidemiological, animal, and air quality studies. These suggest concern for effects not directly evaluated in the studies used to develop the ranges. Such effects include damage to lung tissues contributing to chronic respiratory disease, cancer, and premature mortality. The available scientific data do not suggest major risks for these effects categories at current ambient particle levels in most U.S. areas. Nevertheless, the risk that both fine and coarse particles may produce these responses supports the need to limit long-term levels of PM_{10} for a variety of aerosol compositions.

When selecting final standard levels, consideration should be given to the combined protection afforded by the 24-hour and annual standards taken together. For example, a 24-hour standard at 150 $\mu g/m^3$ would substantially reduce annual levels in a number of areas below 50 $\mu g/m^3$ adding to the protection afforded by an annual standard in areas with higher 24-hour peak to annual mean ratios.

Because of different form, averaging procedures, size range, and limited PM_{10} data, precise comparison between the above ranges of PM_{10} standards and the current primary TSP standards is not possible. A staff analysis of PM_{10}/TSP ratios applied to recent TSP data shows that the revised lower bounds, taken together, would result in standards clearly more stringent than the current standards. In various analyses, standards at the lower bound of the previous range (150,50) have appeared to range from more stringent to approximately comparable to the present primary standards. Standards at the upper end of the range could, however, result in about a four-fold decrease in the number of areas exceeding the primary standards.

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

For reasons set forth in the preamble, Part 50 of Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 109 and 301(a), Clean Air Act, as amended (42 U.S.C. 7409, 7601 (a)).

2. Section 50.6 is revised to read as follows:

§ 50.6 National primary and secondary ambient air quality standards for particulate matter.

(a) The level of the national primary and secondary 24-hour ambient air quality standards for particulate matter is 150 micrograms per cubic meter ($\mu g/m^3$), 24-hour average concentration. The standards are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 $\mu g/m^3$, as determined in accordance with Appendix K to this part, is equal to or less than one.

(b) The level of the national primary and secondary annual standards for particulate matter is 50 micrograms per cubic meter ($\mu g/m^3$), annual arithmetic mean. The standards are attained when the expected annual arithmetic mean concentration, as determined in accordance with Appendix K to this part, is less than or equal to 50 $\mu g/m^3$.

(c) For the purpose of determining attainment of the primary and secondary standards, particulate matter shall be measured in the ambient air as PM_{10} (particles with an aerodynamic

diameter less than or equal to a nominal 10 micrometers) by:

(1) A reference method based on Appendix J and designated in accordance with Part 53 of this chapter, or

(2) An equivalent method designated in accordance with Part 53 of this chapter.

§50.7 [Removed and reserved]

3. Section 50.7 is removed and reserved.

4. In Appendix G, reference 10 is removed and reserved and section 5.1.1 is revised to read as follows:

5.1.1 *High-Volume Sampler.* Use and calibrate the sampler as described in Appendix B to this Part.

5. Appendix I is added and reserved.

Appendix I [Reserved]

6. Appendix J is added to read as follows:

Appendix J—Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere

1.0 *Applicability.*

1.1 This method provides for the measurement of the mass concentration of particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}) in ambient air over a 24-hour period for purposes of determining attainment and maintenance of the primary and secondary national ambient air quality standards for particulate matter specified in § 50.6 of this chapter. The measurement process is nondestructive, and the PM_{10} sample can be subjected to subsequent physical or chemical analyses. Quality assurance procedures and guidance are provided in Part 58, Appendices A and B, of this chapter and in References 1 and 2.

2.0 *Principle.*

2.1 An air sampler draws ambient air at a constant flow rate into a specially shaped inlet where the suspended particulate matter is inertially separated into one or more size fractions within the PM_{10} size range. Each size fraction in the PM_{10} size range is then collected on a separate filter over the specified sampling period. The particle size discrimination characteristics (sampling effectiveness and 50 percent cutpoint) of the sampler inlet are prescribed as performance specifications in Part 53 of this chapter.

2.2 Each filter is weighed (after moisture equilibration) before and after use to determine the net weight (mass) gain due to collected PM_{10}. The total volume of air sampled, corrected to EPA reference conditions (25° C, 101.3 kPa), is determined from the measured flow rate and the sampling time. The mass concentration of PM_{10} in the ambient air is computed as the total mass of collected particles in the PM_{10} size range divided by the volume of air sampled, and is expressed in micrograms per standard cubic meter ($\mu g/std\ m^3$). For PM_{10} samples collected at temperatures and pressures significantly different from EPA reference conditions, these corrected concentrations sometimes differ substantially from actual concentrations (in micrograms per actual cubic meter), particularly at high elevations. Although not required, the actual PM_{10} concentration can be calculated from the corrected concentration, using the average ambient temperature and barometric pressure during the sampling period.

2.3 A method based on this principle will be considered a reference method only if (a) the associated sampler meets the requirements specified in this appendix and the requirements in Part 53 of this chapter, and (b) the method has been designated as a reference method in accordance with Part 53 of this chapter.

3.0 *Range.*

3.1 The lower limit of the mass concentration range is determined by the repeatability of filter tare weights, assuming the nominal air sample volume for the sampler. For samplers having an automatic filter-changing mechanism, there may be no upper limit. For samplers that do not have an automatic filter-changing mechanism, the upper limit is determined by the filter mass loading beyond which the sampler no longer maintains the operating flow rate within specified limits due to increased pressure drop across the loaded filter. This upper limit cannot be specified precisely because it is a complex function of the ambient particle size distribution and type, humidity, filter type, and perhaps other factors. Nevertheless, all samplers should be capable of measuring 24-hour PM_{10} mass concentrations of at least 300 $\mu g/std\ m^3$ while maintaining the operating flow rate within the specified limits.

4.0 *Precision.*

4.1 The precision of PM_{10} samplers must be 5 $\mu g/m^3$ for PM_{10} concentrations below 80 $\mu g/m^3$ and 7 percent for PM_{10} concentrations above 80 $\mu g/m^3$, as required by Part 53 of this chapter, which prescribes a test procedure that determines the variation in the PM_{10} concentration measurements of identical samplers under typical sampling conditions. Continual assessment of precision via collocated samplers is required by Part 58 of this chapter for PM_{10} samplers used in certain monitoring networks.

5.0 *Accuracy.*

5.1 Because the size of the particles making up ambient particulate matter varies over a wide range and the concentration of particles varies with particle size, it is difficult to define the absolute accuracy of PM_{10} samplers. Part 53 of this chapter provides a specification for the sampling effectiveness of PM_{10} samplers. This specification requires that the expected mass concentration calculated for a candidate PM_{10} sampler, when sampling a specified particle size distribution, be within ±10 percent of that calculated for an ideal sampler whose sampling effectiveness is explicitly specified. Also, the particle size for 50 percent sampling effectivensss is required to be 10±0.5 micrometers. Other specifications related to accuracy apply to flow measurement and calibration, filter media, analytical (weighing) procedures, and artifact. The flow rate accuracy of PM_{10} samplers used in certain monitoring networks is required by Part 58 of this chapter to be assessed periodically via flow rate audits.

6.0 *Potential Sources of Error.*

6.1 *Volatile Particles.* Volatile particles collected on filters are often lost during shipment and/or storage of the filters prior to the post-sampling weighing [3]. Although shipment or storage of loaded filters is sometimes unavoidable, filters should be reweighed as soon as practical to minimize these losses.

6.2 *Artifacts.* Positive errors in PM_{10} concentration measurements may result from retention of gaseous species on filters [4, 5]. Such errors include the retention of sulfur dioxide and nitric acid. Retention of sulfur dioxide on filters, followed by oxidation to sulfate, is referred to as artifact sulfate formation, a phenomenon which increases with increasing filter alkalinity [6]. Little or no artifact sulfate formation should occur using filters that meet the alkalinity specification in section 7.2.4. Artifact nitrate formation, resulting primarily from retention of nitric acid, occurs to varying degrees on many filter types, including glass fiber, cellulose ester, and many quartz fiber filters [5, 7, 8, 9, 10]. Loss of true atmospheric particulate nitrate during or following sampling may also occur due to dissociation or chemical reaction. This phenomenon has been observed on Teflon® filters [8] and inferred for quartz fiber filters [11, 12]. The magnitude of nitrate artifact errors in PM_{10} mass concentration measurements will vary with location and ambient temperature; however, for most sampling locations, these errors are expected to be small.

6.3 *Humidity.* The effects of ambient humidity on the sample are unavoidable. The filter equilibration procedure in section 9.0 is designed to minimize the effects of moisture on the filter medium.

6.4 *Filter Handling.* Careful handling of filters between presampling and postsampling weighings is necessary to avoid errors due to damaged filters or loss of collected particles from the filters. Use of a filter cartridge or cassette may reduce the magnitude of these errors. Filters must also meet the integrity specification in section 7.2.3.

6.5 *Flow Rate Variation.* Variations in the sampler's operating flow rate may alter the particle size discrimination characteristics of the sampler inlet. The magnitude of this error will depend on the sensitivity of the inlet to variations in flow rate and on the particle distribution in the atmosphere during the sampling period. The use of a flow control device (section 7.1.3) is required to minimize this error.

6.6 *Air Volume Determination.* Errors in the air volume determination may result from errors in the flow rate and/or sampling time measurements. The flow control device serves to minimize errors in the flow rate determination, and an elapsed time meter (section 7.1.5) is required to minimize the error in the sampling time measurement.

7.0 *Apparatus.*

7.1 PM_{10} Sampler.

7.1.1 The sampler shall be designed to:

a. Draw the air sample into the sampler inlet and through the particle collection filter at a uniform face velocity.

b. Hold and seal the filter in a horizontal position so that sample air is drawn downward through the filter.

c. Allow the filter to be installed and removed conveniently.

d. Protect the filter and sampler from precipitation and prevent insects and other debris from being sampled.

e. Minimize air leaks that would cause error in the measurement of the air volume passing through the filter.

f. Discharge exhaust air at a sufficient distance from the sampler inlet to minimize the sampling of exhaust air.

g. Minimize the collection of dust from the supporting surface.

7.1.2 The sampler shall have a sample air inlet system that, when operated within a specified flow rate range, provides particle size discrimination characteristics meeting all of the applicable performance specifications prescribed in Part 53 of this chapter. The sampler inlet shall show no significant wind direction dependence. The latter requirement can generally be satisfied by an inlet shape that is circularly symmetrical about a vertical axis.

7.1.3 The sampler shall have a flow control device capable of maintaining the sampler's operating flow rate within the flow rate limits specified for the sampler inlet over normal variations in line voltage and filter pressure drop.

7.1.4 The sampler shall provide a means to measure the total flow rate during the sampling period. A continuous flow recorder is recommended but not required. The flow measurement device shall be accurate to ±2 percent.

7.1.5 A timing/control device capable of starting and stopping the sampler shall be used to obtain a sample collection period of 24 ±1 hr (1,440 ±60 min). An elapsed time meter, accurate to within ±15 minutes, shall be used to measure sampling time. This meter is optional for samplers with continuous flow recorders if the sampling time measurement obtained by means of the recorder meets the ±15 minute accuracy specification.

7.1.6 The sampler shall have an associated operation or instruction manual as required by Part 53 of this chapter which includes detailed instructions on the calibration, operation, and maintenance of the sampler.

7.2 *Filters.*

7.2.1 *Filter Medium.* No commercially available filter medium is ideal in all respects for all samplers. The user's goals in sampling determine the relative importance of various filter characteristics (e.g., cost, ease of handling, physical and chemical characteristics, etc.) and, consequently, determine the choice among acceptable filters. Furthermore, certain types of filters may not be suitable for use with some samplers, particularly under heavy loading conditions (high mass concentrations), because of high or rapid increase in the filter flow resistance that would exceed the capability of the sampler's flow control device. However, samplers equipped with automatic filter-changing mechanisms may allow use of these types of filters. The specifications given below are minimum requirements to ensure acceptability of the filter medium for measurement of PM_{10} mass concentrations. Other filter evaluation criteria should be considered to meet individual sampling and analysis objectives.

7.2.2 *Collection Efficiency.* >99 percent, as measured by the DOP test (ASTM–2986) with 0.3 μm particles at the sampler's operating face velocity.

7.2.3 *Integrity.* ±5 μg/m³ (assuming sampler's nominal 24-hour air sample volume). Integrity is measured as the PM_{10} concentration equivalent corresponding to the average difference between the initial and the final weights of a random sample of test filters that are weighed and handled under actual or simulated sampling conditions, but have no air sample passed through them (i.e., filter blanks). As a minimum, the test procedure must include initial equilibration and weighing, installation on an inoperative sampler, removal from the sampler, and final equilibration and weighing.

7.2.4 *Alkalinity.* <25 microequivalents/gram of filter, as measured by the procedure given in Reference 13 following at least two months storage in a clean environment (free from contamination by acidic gases) at room temperature and humidity.

7.3 *Flow Rate Transfer Standard.* The flow rate transfer standard must be suitable for the sampler's operating flow rate and must be calibrated against a primary flow or volume standard that is traceable to the National Bureau of Standards (NBS). The flow rate transfer standard must be capable of measuring the sampler's operating flow rate with an accuracy of ±2 percent.

7.4 *Filter Conditioning Environment.*

7.4.1 Temperature range: 15° to 30° C.

7.4.2 Temperature control: ±3° C.

7.4.3 Humidity range: 20% to 45% RH.

7.4.4 Humidity control: ±5% RH.

7.5 *Analytical Balance.* The analytical balance must be suitable for weighing the type and size of filters required by the sampler. The range and sensitivity required will depend on the filter tare weights and mass loadings. Typically, an analytical balance with a sensitivity of 0.1 mg is required for high volume samplers (flow rates >0.5 m³/min). Lower volume samplers (flow rates <0.5 m³/min) will require a more sensitive balance.

8.0 *Calibration.*

8.1 *General Requirements.*

8.1.1 Calibration of the sampler's flow measurement device is required to establish traceability of subsequent flow measurements to a primary standard. A flow rate transfer standard calibrated against a primary flow or volume standard shall be used to calibrate or verify the accuracy of the sampler's flow measurement device.

8.1.2 Particle size discrimination by inertial separation requires that specific air velocities be maintained in the sampler's air inlet system. Therefore, the flow rate through the sampler's inlet must be maintained throughout the sampling period within the design flow rate range specified by the manufacturer. Design flow rates are specified as actual volumetric flow rates, measured at existing conditions of temperature and pressure (Q_a). In contrast, mass concentrations of PM_{10} are computed using flow rates corrected to EPA reference conditions of temperature and pressure (Q_{std}).

8.2 *Flow Rate Calibration Procedure.*

8.2.1 PM_{10} samplers employ various types of flow control and flow measurement devices. The specific procedure used for flow rate calibration or verification will vary depending on the type of flow controller and flow indicator employed. Calibration in terms of actual volumetric flow rates (Q_a) is generally recommended, but other measures of flow rate (e.g., Q_{std}) may be used provided the requirements of section 8.1 are met. The general procedure given here is based on actual volumetric flow units (Q_a) and serves to illustrate the steps involved in the calibration of a PM_{10} sampler. Consult the sampler manufacturer's instruction manual and Reference 2 for specific guidance on calibration. Reference 14 provides additional information on the use of the commonly used measures of flow rate and their interrelationships.

8.2.2 Calibrate the flow rate transfer standard against a primary flow or volume standard traceable to NBS. Establish a calibration relationship (e.g., an equation or family of curves) such that traceability to the primary standard is accurate to within 2 percent over the expected range of ambient conditions (i.e., temperatures and pressures) under which the transfer standard will be used. Recalibrate the transfer standard periodically.

8.2.3 Following the sampler manufacturer's instruction manual, remove the sampler inlet and connect the flow rate transfer standard to the sampler such that the transfer standard accurately measures the sampler's flow rate. Make sure there are no leaks between the transfer standard and the sampler.

8.2.4 Choose a minimum of three flow rates (actual m³/min), spaced over the acceptable flow rate range specified for the inlet (see 7.1.2) that can be obtained by suitable adjustment of the sampler flow rate. In accordance with the sampler manufacturer's instruction manual, obtain or verify the calibration relationship between the flow rate (actual m³/min) as indicated by the transfer standard and the sampler's flow indicator response. Record the ambient temperature and barometric pressure. Temperature and pressure corrections to subsequent flow indicator readings may be required for certain types of flow measurement devices. When such corrections are necessary, correction on an individual or daily basis is preferable. However, seasonal average temperature and average barometric pressure for the sampling site may be incorporated into the sampler calibration to avoid daily corrections. Consult the sampler manufacturer's instruction manual and Reference 2 for additional guidance.

8.2.5 Following calibration, verify that the sampler is operating at its design flow rate (actual m³/min) with a clean filter in place.

8.2.6 Replace the sampler inlet.

9.0 *Procedure.*

9.1 The sampler shall be operated in accordance with the specific guidance provided in the sampler manufacturer's instruction manual and in Reference 2. The

general procedure given here assumes that the sampler's flow rate calibration is based on flow rates at ambient conditions (Q_a) and serves to illustrate the steps involved in the operation of a PM_{10} sampler.

9.2 Inspect each filter for pinholes, particles, and other imperfections. Establish a filter information record and assign an identification number to each filter.

9.3 Equilibrate each filter in the conditioning environment (see 7.4) for at least 24 hours.

9.4 Following equilibration, weigh each filter and record the presampling weight with the filter identification number.

9.5 Install a preweighed filter in the sampler following the instructions provided in the sampler manufacturer's instructional manual.

9.6 Turn on the sampler and allow it to establish run-temperature conditions. Record the flow indicator reading and, if needed, the ambient temperature and barometric pressure. Determine the sampler flow rate (actual m^3/min) in accordance with the instructions provided in the sampler manufacturer's instruction manual. NOTE.—No onsite temperature or pressure measurements are necessary if the sampler's flow indicator does not require temperature or pressure corrections or if seasonal average temperature and average barometric pressure for the sampling site are incorporated into the sampler calibration (see step 8.2.4). If individual or daily temperature and pressure corrections are required, ambient temperature and barometric pressure can be obtained by on-site measurements or from a nearby weather station. Barometric pressure readings obtained from airports must be station pressure, not corrected to sea level, and may need to be corrected for differences in elevation between the sampling site and the airport.

9.7 If the flow rate is outside the acceptable range specified by the manufacturer, check for leaks, and if necessary, adjust the flow rate to the specified setpoint. Stop the sampler.

9.8 Set the timer to start and stop the sampler at appropriate times. Set the elapsed time meter to zero or record the initial meter reading.

9.9 Record the sample information (site location or identification number, sample date, filter identification number, and sampler model and serial number).

9.10 Sample for 24±1 hours.

9.11 Determine and record the average flow rate (Q_a) in actual m^3/min for the sampling period in accordance with the instructions provided in the sampler manufacturer's instruction manual. Record the elapsed time meter final reading and, if needed, the average ambient temperature and barometric pressure for the sampling period (see note following step 9.6).

9.12 Carefully remove the filter from the sampler, following the sampler manufacturer's instruction manual. Touch only the outer edges of the filter.

9.13 Place the filter in a protective holder or container (e.g., petri dish, glassine envelope, or manila folder).

9.14 Record any factors such as meteorological conditions, construction activity, fires or dust storms, etc., that might be pertinent to the measurement on the filter information record.

9.15 Transport the exposed sample filter to the filter conditioning environment as soon as possible for equilibration and subsequent weighing.

9.16 Equilibrate the exposed filter in the conditioning environment for at least 24 hours under the same temperature and humidity conditions used for presampling filter equilibration (see 9.3).

9.17 Immediately after equilibration, reweigh the filter and record the postsampling weight with the filter identification number.

10.0 *Sampler Maintenance.*

10.1 The PM_{10} sampler shall be maintained in strict accordance with the maintenance procedures specified in the sampler manufacturer's instruction manual.

11.0 *Calculations.*

11.1 Calculate the average flow rate over the sampling period corrected to EPA reference conditions as Q_{std}. When the sampler's flow indicator is calibrated in actual volumetric units (Q_a), Q_{std} is calculated as:

$$Q_{std} = Q_a \times (P_{av}/T_{av})(T_{std}/P_{std})$$

where

Q_{std} = average flow rate at EPA reference conditions, std m^3/min;

Q_a = average flow rate at ambient conditions, m^3/min;

P_{av} = average barometric pressure during the sampling period or average barometric pressure for the sampling site, kPa (or mm Hg);

T_{av} = average ambient temperature during the sampling period or seasonal average ambient temperature for the sampling site, K;

T_{std} = standard temperature, defined as 298 K;

P_{std} = standard pressure, defined as 101.3 kPa (or 760 mm Hg).

11.2 Calculate the total volume of air sampled as:

$$V_{std} = Q_{std} \times t$$

where

V_{std} = total air sampled in standard volume units, std m^3;

t = sampling time, min.

11.3 Calculate the PM_{10} concentration as:

$$PM_{10} = (W_f - W_i) \times 10^6 / V_{std}$$

where

PM_{10} = mass concentration of PM_{10}, μg/std m^3;

W_f, W_i = final and initial weights of filter collecting PM_{10} particles, g;

10^6 = conversion of g to μg.

Note.—If more than one size fraction in the PM_{10} size range is collected by the sampler, the sum of the net weight gain by each collection filter [$\Sigma(W_f - W_i)$] is used to calculate the PM_{10} mass concentration.

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7. Appendix K is added to read as follows:

Appendix K—Interpretation of the National Ambient Air Quality Standards for Particulate Matter

1.0 *General.*

This appendix explains the computations necessary for analyzing particulate matter data to determine attainment of the 24-hour and annual standards specified in 40 CFR 50.6. For the primary and secondary standards, particulate matter is measured in the ambient air as PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by a reference method based on Appendix J of this part and designated in accordance with Part 53 of this chapter, or by an equivalent method designated in accordance with Part 53 of this chapter. The required frequency of measurements is specified in Part 58 of this chapter.

Several terms used throughout this appendix must be defined. A "daily value" for PM_{10} refers to the 24-hour average concentration of PM_{10} calculated or measured from midnight to midnight (local time). The term "exceedance" means a daily value that is above the level of the 24-hour standard after rounding to the nearest 10 $\mu g/m^3$ (i.e., values ending in 5 or greater are to be rounded up). The term "average" refers to an arithmetic mean. All particulate matter standards are expressed in terms of expected annual values: expected number of exceedances per year for the 24-hour standard and expected annual arithmetic mean for the annual standards. The "expected annual value" is the number approached when the annual values from an increasing number of years are averaged, in the absence of long-term trends in emissions or meteorological conditions. The term "year" refers to a calendar year.

Although the discussion in this appendix focuses on monitored data, the same principles apply to modeling data, subject to EPA modeling guidelines.

2.0 *Attainment Determinations.*

2.1 *24-Hour Primary and Secondary Standards.*

Under 40 CFR 50.6(a) the 24-hour primary and secondary standards are attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past 3 calendar years. Situations in which 3 years of data are not available and possible adjustments for unusual events or trends are discussed in Sections 2.3 and 2.4. Further, when data for a year are incomplete, it is necessary to compute an estimated number of exceedances for that year by adjusting the observed number of exceedances. This procedure, performed by calendar quarter, is described in Section 3. The expected number of exceedances is then estimated by averaging the individual annual estimates for the past 3 years.

The comparison with the allowable expected exceedance rate of one per year is made in terms of a number rounded to the nearest tenth (fractional values equal to or greater than 0.05 are to be rounded up; e.g., an exceedance rate of 1.05 would be rounded to 1.1, which is the lowest rate for nonattainment).

2.2 *Annual Primary and Secondary Standards.*

Under 40 CFR 50.6(b), the annual primary and secondary standards are attained when the expected annual arithmetic mean PM_{10} concentration is less than or equal to the level of the standard. In the simplest case, the expected annual arithmetic mean is determined by averaging the annual arithmetic mean PM_{10} concentrations for the past 3 calendar years. Because of the potential for incomplete data and the possible seasonality in PM_{10} concentrations, the annual mean shall be calculated by averaging the four quarterly means of PM_{10} concentrations within the calendar year. The formulas for calculating the annual arithmetic mean are given in Section 4. Situations in which 3 years of data are not available and possible adjustments for unusual events or trends are discussed in Sections 2.3 and 2.4. The expected annual arithmetic mean is rounded to the nearest 1 $\mu g/m^3$ before comparison with the annual primary standard (fractional values equal to or greater than 0.5 are to be rounded up).

2.3 *Data Requirements.*

40 CFR 58.13 specifies the required minimum frequency of sampling for PM_{10}. For the purposes of making comparisons with the particulate matter standards, all data produced by National Air Monitoring Stations (NAMS), State and Local Air Monitoring Stations (SLAMS) and other sites submitted to EPA in accordance with the Part 58 requirements must be used, and a minimum of 75 percent of the scheduled PM_{10} samples per quarter are required.

To demonstrate attainment of either the annual or 24-hour standards at a monitoring site, the monitor must provide sufficient data to perform the required calculations of Sections 3 and 4. The amount of data required varies with the sampling frequency, data capture rate and the number of years of record. In all cases, 3 years of representative monitoring data that meet the 75 percent criterion of the previous paragraph should he utilized, if available, and would suffice. More than 3 years may be considered, if all additional representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such exceptions will have to be approved by the appropriate Regional Administrator in accordance with EPA guidance.

There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the particulate matter standards. Although it is generally necessary to meet the minimum 75 percent data capture requirement per quarter to use the computational formulas described in Sections 3 and 4, this criterion does not apply when less data is sufficient to unambiguously establish nonattainment. The following examples illustrate how nonattainment can be demonstrated when a site fails to meet the completeness criteria. Nonattainment of the 24-hour primary standards can be established by (a) the observed annual number of exceedances (e.g. four observed exceedances in a single year), or by (b) the estimated number of exceedances derived from the observed number of exceedances and the required number of scheduled samples (e.g. two observed exceedances with every other day sampling). Nonattainment of the annual standards can be demonstrated on the basis of quarterly mean concentrations developed from observed data combined with one-half the minimum detectable concentration substituted for missing values. In both cases, expected annual values must exceed the levels allowed by the standards.

2.4 *Adjustment for Exceptional Events and Trends.*

An exceptional event is an uncontrollable event caused by natural sources of particulate matter or an event that is not expected to recur at a given location. Inclusion of such a value in the computation of exceedances or averages could result in inappropriate estimates of their respective expected annual values. To reduce the effect of unusual events, more than 3 years of representative data may be used. Alternatively, other techniques, such as the use of statistical models or the use of historical data could be considered so that the event may be discounted or weighted according to the likelihood that it will recur. The use of such techniques is subject to the approval of the appropriate Regional Administrator in accordance with EPA guidance.

In cases where long–term trends in emissions and air quality are evident, mathematical techniques should be applied to account for the trends to ensure that the expected annual values are not inappropriately biased by unrepresentative data. In the simplest case, if 3 years of data are available under stable emission conditions, this data should be used. In the event of a trend or shift in emission patterns, either the most recent representative year(s) could be used or statistical techniques or models could be used in conjunction with previous years of data to adjust for trends. The use of less than 3 years of data, and any adjustments are subject to the approval of the appropriate Regional Administrator in accordance with EPA guidance.

3.0 *Computational formulas for the 24-hour standard.*

3.1 *Estimating Exceedances for a year.*

If PM_{10} sampling is scheduled less frequently than every day, or if some scheduled samples are missed, a PM_{10} value will not be available for each day of the year. To account for the possible effect of incomplete data, an adjustment must be made to the data collected at each monitoring location to estimate the number of exceedances in a calendar year. In this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level. This computation is to be made for all sites that are scheduled to monitor throughout the entire year and meet the minimum data requirements of Section 2.3. Because of possible seasonal imbalance, this adjustment shall be applied on a quarterly

basis. The estimate of the expected number of exceedances for the quarter is equal to the observed number of exceedances plus an increment associated with the missing data. The following formula must be used for these computations:

$$e_q = v_q + [(v_q/n_q) \times (N_q - n_q)] = v_q \times N_q/n_q \quad [1]$$

where

e_q = the estimated number of exceedances for calendar quarter q,
v_q = the observed number of exceedances for calendar quarter q,
N_q = the number of days in calendar quarter q,
n_q = the number of days in calendar quarter q with PM_{10}, and
$_q$ = the index for calendar quarter, q=1, 2, 3 or 4.

The estimated number of exceedances for a calendar quarter must be rounded to the nearest hundredth (fractional values equal to or greater than 0.005 must be rounded up).

The estimated number of exceedances for the years, e, is the sum of the estimates for each calendar quarter.

$$e = \sum_{q=1}^{4} e_q \quad [2]$$

The estimated number of exceedances for a single year must be rounded to one decimal place (fractional values equal to or greater than 0.05 are to be rounded up). The expected number of exceedances is then estimated by averaging the individual annual estimates for the most recent 3 or more representative years of data. The expected number of exceedances must be rounded to one decimal place (fractional values equal to or greater than 0.05 are to be rounded up).

The adjustment for incomplete data will not be necessary for monitoring or modeling data which constitutes a complete record, i.e., 365 days per year.

To reduce the potential for overestimating the number of expected exceedances, the correction for missing data will not be required for a calendar quarter in which the first observed exceedance has occurred if: (a) there was only one exceedance in the calendar quarter, (b) everyday sampling is subsequently initiated and maintained for 4 calendar quarters in accordance with 40 CFR § 58.13 and (c) data capture of 75 percent is achieved during the required period of everyday sampling. In addition, if the first exceedance is observed in a calendar quarter in which the monitor is already sampling every day, no adjustment for missing data will be made to the first exceedance if a 75 percent data capture rate was achieved in the quarter in which it was observed.

Example 1

During a particular calendar quarter, 39 out of a possible 92 samples were recorded, with one observed exceedance of the 24-hour standard. Using formula [1], the estimated number of exceedances for the quarter is

$e_q = 1 \times 92/39 = 2.359$ or 2.36

If the estimated exceedances for the other 3 calendar quarters in the year were 2.30, 0.0 and 0.0, then, using formula [2], the estimated number of exceedances for the year is $2.36 + 2.30 + 0.0 + 0.0$ which equals 4.66 or 4.7. If no exceedances were observed for the 2 previous years, then the expected number of exceedances is estimated by $(1/3) \times (4.7 + 0 + 0) = 1.57$ or 1.6. Since 1.6 exceeds the allowable number of expected exceedances, this monitoring site would fail the attainment test.

Example 2

In this example, everyday sampling was initiated following the first observed exceedance as required by 40 CFR § 58.13. Accordingly, the first observed exceedance would not be adjusted for incomplete sampling. During the next three quarters, 1.2 exceedances were estimated. In this case, the estimated exceedances for the year would be $1.0 + 1.2 + 0.0 + 0.0$ which equals 2.2. If, as before, no exceedances were observed for the two previous years, then the estimated exceedances for the 3-year period would then be $(1/3) \times (2.2 + 0.0 + 0.0) = 0.7$, and the monitoring site would *not* fail the attainment test.

3.2 *Adjustments for Non-Scheduled Sampling Days.*

If a systematic sampling schedule is used and sampling is performed on days in addition to the days specified by the systematic sampling schedule, e.g., during episodes of high pollution, then an adjustment must be made in the formula for the estimation of exceedances. Such an adjustment is needed to eliminate the bias in the estimate of the quarterly and annual number of exceedances that would occur if the chance of an exceedance is different for scheduled than for non-scheduled days, as would be the case with episode sampling.

The required adjustment treats the systematic sampling schedule as a stratified sampling plan. If the period from one scheduled sample until the day preceding the next scheduled sample is defined as a sampling stratum, then there is one stratum for each scheduled sampling day. An average number of observed exceedances is computed for each of these sampling strata. With nonscheduled sampling days, the estimated number of exceedances is defined as

$$e_q = (N_q/m_q) \times \sum_{j=1}^{m_q} (v_j/k_j) \quad [3]$$

where

e_q = the estimated number of exceedances for the quarter.
N_q = the number of days in the quarter,
m_q = the number of strata with samples during the quarter,
v_j = the number of observed exceedances in stratum j, and
k_j = the number of actual samples in stratum j.

Note that if only one sample value is recorded in each stratum, then formula [3] reduces to formula [1].

Example 3

A monitoring site samples according to a systematic sampling schedule of one sample every 6 days, for a total of 15 scheduled samples in a quarter out of a total of 92 possible samples. During one 6-day period, potential episode levels of PM_{10} were suspected, so 5 additional samples were taken. One of the regular scheduled samples was missed, so a total of 19 samples in 14 sampling strata were measured. The one 6-day sampling stratum with 6 samples recorded 2 exceedances. The remainder of the quarter with one sample per stratum recorded zero exceedances. Using formula [3], the estimated number of exceedances for the quarter is

$e_q = (92/14) \times (2/6 + 0 + \ldots + 0) = 2.19$

4.0 Computational Formulas for Annual Standards.

4.1 Calculation of the Annual Arithmetic Mean.

An annual arithmetic mean value for PM_{10} is determined by averaging the quarterly means for the 4 calendar quarters of the year. The following formula is to be used for calculation of the mean for a calendar quarter:

$$\bar{x}_q = (1/n_q) \times \sum_{i=1}^{n_q} \bar{x}_i \quad [4]$$

where

$\bar{x}_q$ = the quarterly mean concentration for quarter q, q=1, 2, 3, or 4,
n_q = the number of samples in the quarter, and
$\bar{x}_i$ = the ith concentration value recorded in the quarter.

The quarterly mean, expressed in $\mu g/m^3$, must be rounded to the nearest tenth (fractional values of 0.05 should be rounded up).

The annual mean is calculated by using the following formula:

$$\bar{x} = (1/4) \times \sum_{q=1}^{4} \bar{x}_q \quad [5]$$

where

$\bar{x}$ = the annual mean, and
$\bar{x}_q$ = the mean for calendar quarter q.

The average of quarterly means must be rounded to the nearest tenth (fractional values of 0.05 should be rounded up).

The use of quarterly averages to compute the annual average will not be necessary for

monitoring or modeling data which results in a complete record, i.e., 365 days per year.

The expected annual mean is estimated as the average of three or more annual means. This multi-year estimate, expressed in $\mu g/m^3$, shall be rounded to the nearest integer for comparison with the annual standard (fractional values of 0.5 should be rounded up).

Example 4

Using formula [4], the quarterly means are calculated for each calendar quarter. If the quarterly means are 52.4, 75.3, 82.1, and 63.2 $\mu g/m^3$, then the annual means is

$$\bar{x} = (1/4) \times (52.4 + 75.3 + 82.1 + 63.2 = 68.25 \text{ or } 68.3$$

4.2 Adjustments for Non-scheduled Sampling Days.

An adjustment in the calculation of the annual mean is needed if sampling is performed on days in addition to the days specified by the systematic sampling schedule. For the same reasons given in the discussion of estimated exceedances (Section 3.2), the quarterly averages would be calculated by using the following formula:

$$\bar{x}_q = (1/m_q) \times \sum_{j=1}^{m_q} \sum_{i=1}^{k_j} (x_{ij}/k_j) \qquad [6]$$

where

$\bar{x}_q$ = the quarterly mean concentration for quarter q, q = 1, 2, 3, or 4,

x_{ij} = the ith concentration value recorded in stratum j,

k_j = the number of actual samples in stratum j, and

m_q = the number of strata with data in the quarter.

If one sample value is recorded in each stratum, formula [6] reduces to a simple arithmetic average of the observed values as described by formula [4].

Example 5

During one calendar quarter, 9 observations were recorded. These samples were distributed among 7 sampling strata, with 3 observations in one stratum. The concentrations of the 3 observations in the single stratum were 202, 242, and 180 $\mu g/m^3$. The remaining 6 observed concentrations were 55, 68, 73, 92, 120, and 155 $\mu g/m^3$. Applying the weighting factors specified in formula [6], the quarterly mean is

$$\bar{x}_q = (1/7) \times [(1/3) \times (202 + 242 + 180) + 55 + 68 + 73 + 92 + 120 + 155] = 110.1$$

Although 24-hour measurements are rounded to the nearest 10 $\mu g/m^3$ for determinations of exceedances of the 24-hour standard, note that these values are rounded to the nearest 1 $\mu g/m^3$ for the calculation of means.

[FR Doc. 87-13707 Filed 6-30-87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[AD FRL-3141-9(b)]

Air Programs; Review of the National Secondary Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency is soliciting public comment regarding the development of a new secondary national ambient air quality standard (NAAQS) for fine particles (those particles less than 2.5 micrometers (μm) in aerodynamic diameter). This action represents a continuation of the review process for the secondary standards for particulate matter discussed by the Agency on March 20, 1984 (49 FR 10408). The principal welfare effect to be addressed by such a standard is impairment of visibility.

DATE: Written comments pertaining to the issues raised in this notice must be received by September 29, 1987.

ADDRESSES: Submit all comments (duplicate copies are preferred) to: Central Docket Section (A–130), Environmental Protection Agency, Attn: Docket No. A–86–19, 401 M Street SW., Washington, DC 20460. This docket is located in the Central Docket Section at the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays. A reasonable fee may be charged for copying. For the availability of related information, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mr. John Haines, Strategies and Air Standards Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, N.C. 27711, telephone (919) 541–5531 (FTS 629–5531).

SUPPLEMENTARY INFORMATION:

Availability of Related Information

The revised criteria document, Air Quality Criteria for Particulate Matter and Sulfur Oxides (three volumes, EPA–600/8–82–029af–cf, December, 1982; Volume I NTIS #PB–84–120401, $24.95 paper copy and $6.50 microfiche; Volume II NTIS #PB–84–120419, $48.95 paper copy and $6.50 microfiche; Volume III NTIS #PB–84–120427, $48.95 paper copy and $13.50 microfiche) and the final revised staff paper, Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information-OAQPS Staff Paper (EPA–450/5–82–001, January, 1982; NTIS #PB–177874, $24.95 paper copy and $6.50 microfiche), are available from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161 (add $3.00 handling charge per order). A limited number of copies of other documents generated in connection with this review, such as the Visibility Task Force report, can be obtained from: U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, N.C. 27711, telephone (919) 541–2777 (FTS 629–2777).

Background

On March 20, 1984 (49 FR 10408), the Environmental Protection Agency proposed revisions to the NAAQS for particulate matter under section 109 of the Clean Air Act, 42 USC. 7409. In a separate notice in today's **Federal Register** EPA is promulgating final revisions. The revised primary (health) and secondary (welfare) standards are identical and are expressed in terms of an indicator, PM_{10}, that includes only particles less than a nominal 10 pm in diameter.

Section 109(b)(2) of the Clean Air Act, 42 U.S.C. 7409(b)(2), requires that secondary ambient air quality standards specify a level of air quality requisite to "protect the public welfare from any known or anticipated adverse effects" arising from an air pollutant. In the process of reviewing and revising the particulate matter standards, the Agency considered the need for secondary standards to protect the public welfare against the effects of particulate matter on visibility and climate. These effects were found to be most strongly related to regional-scale fine particle levels [1] that result in part from regional sulfur oxide emissions (EPA, 1982b, Friedlander, 1982). For this reason, options for managing regional visibility impairment by fine particles overlap with options for managing the acidic deposition phenomenon. In light of this, EPA deferred a decision on a possible fine particle standard to permit an increased opportunity for developing compatible strategies for these related regional air quality problems (49 FR 10419; March 20, 1984). In announcing this deferral, the Agency also indicated its intent to examine the visibility/fine particle issue, including its relation to acid deposition control strategies, and to solicit public comment regarding a possible fine particle standard.

EPA charged an Interagency Task Force with conducting this examination as part of an ongoing evaluation of visibility strategies. The results of the Task Force's effort are contained in a report, "Developing Long-Term Strategies for Regional Haze: Findings and Recommendations of the Visibility Task Force," which is available at the address listed above. In the process of producing this report, the task force commissioned analyses that projected emissions, pollutant concentrations, and visibility for several scenarios. The task force received a number of public comments, including reviews of the draft analyses, recommendations on alternative approaches, and separate technical assessments of relationships between visibility and ambient particulate matter.

The Task Force recommended further consideration of a fine particle standard, but both the Task Force and the commenters raised a number of scientific, analytic, policy, and other questions associated with the development of such a standard. The Agency is hereby soliciting public comment on these and other issues relevant to the possible development of a fine particle standard and is today announcing the establishment of a standards review docket (No. A–86–19) for this purpose. Comments and other materials submitted to the Visibility Task Force have been placed in this docket. Materials from the earlier particulate matter standards review (Docket No. A–83–48) have been incorporated by reference. In order to permit the review and development process to proceed in a timely manner, written comments on these issues should be submitted to the Docket no later than September 29, 1987.

Major Issues

The 1982 staff assessment of the scientific and technical information on visibility and fine particles (EPA, 1982), and the more recent findings of the Interagency Task Force Assessment (EPA, 1985) identified a number of important issues to be addressed in considering a possible fine particle standard. The most important issues include the following.

1. Basis for Determining Appropriate Level of Protection

A. Regional Character of Visibility

A major difficulty in setting a national standard to protect visibility is evidence

[1] Particles less than a nominal 2.5 micrometers in aerodynamic diameter, or $PM_{2.5}$

that both the extent of visibility impairment and the value people place on visibility vary widely with affected populations, region of the country, and settings within each region. A single national air quality standard might not reasonably or effectively address all facets of the visibility problem. In particular, a national standard set at a level to protect current excellent visibility found in pristine areas of the western U.S. might require particle levels lower than natural background in the East. Because other Clean Air Act mechanisms [2] provide means for protecting visibility in non-urban areas of the West, EPA staff and the Interagency Task Force have recommended that a national standard establish visibility goals for those regions in the East affected by regional haze of multistate origin and those major western urban centers affected by haze predominantly of local origin. EPA solicits comment on the appropriateness of such an overall focus for standard setting.

B. Judgments on Adverse Effects

Section 109 of the Act requires that secondary NAAQS specify a level of air quality "requisite to protect the public welfare. . . ." Determining what level of visibility protection is requisite to protect the public welfare is quite difficult, and is complicated by intra-regional variability, by uncertainties in both the value and perception associated with visibility improvements or decrements, and by uncertainties in the relation of current or projected impairment to natural background. Recent information on these issues is summarized in the Visibility Task Force Report (EPA, 1985).

Alternative approaches that have been advanced for setting a visibility protection standard include:

(i) Setting the standard at a level that would ensure visibility is not perceptibly degraded from estimated natural background conditions.

(ii) Determining the level through a comparison of benefits of visibility and other environmental improvements with the costs of control.

(iii) Setting the standard at a level that would maintain current conditions.

The Agency has already received a number of comments relevant to the second alternative, that of considering costs as one of the factors to be examined in setting secondary standards, in response to a request made in conjunction with the proposed NAAQS for particulate matter (49 FR 10408). In that notice, EPA details the reasons why it may be appropriate to consider costs in secondary standards (49 FR 10417–10418). Based on that rationale and the comments received to date, the Administrator intends to give serious consideration to this possibility in the process of reaching a decision on a secondary standard for fine particles. Accordingly, EPA is exploring alternative approaches and techniques in this area. The Agency encourages full public comment on the desirability and appropriateness of considering costs in secondary standards, as well as on the particular approaches listed above, and on any alternatives. EPA also solicits public comment on the adequacy of the current scientific and technical bases for applying these approaches to setting a fine particle standard.

2. Pollutant-Visibility and Source-Receptor Relationships

Staff recommendations for consideration of a fine particle standard were based on the documented quantitative relationships between ambient particulate matter and visibility summarized in Chapter 9 of the criteria document (EPA, 1982a) and in Appendix C of the staff paper (EPA, 1982b). A number of uncertainties exist in these relationships of potential importance in determining both the levels and measurement principles to be used in the appropriate standard. Even more uncertainties exist in characterizing and predicting relationships between emissions and ambient concentrations of important components of fine particles. A comprehensive summary of recent information on these issues was submitted by the Utility Air Regulatory Group (UARG) in a report entitled "Assessment of the Technical Basis Regarding Regional Haze and Visibility Impairment," a copy of which has been placed in the Docket.

EPA solicits comments on the implications of these uncertainties for EPA's ability to set, and the states' ability to implement, ambient standards and on the extent to which the UARG report accurately reflects the latest scientific information in these areas.

3. Timing With Respect to Related Strategies

As noted above, a decision on a visibility-based fine particle standard was deferred to provide adequate time for consideration of the compatability of, or potential conflict between, additional sulfur control programs initiated for the management of visibility and those initiated for the management of acid deposition. A decision on the need for additional emission controls for acid deposition has been deferred because of a lack of adequate scientific understanding. Scientific research is currently underway which should adequately address these uncertainties. However, the general direction or timing of an acid deposition control decision cannot be predicted prior to reviewing the results of this research now in progress.

Because of the time required to fully assess the scientific information, to establish a new secondary standard for particulate matter to protect visibility, and to develop and approve State implementation plans under section 110 of the Clean Air Act, it could take a number of years before actual implementation of control strategies begins. Given the uncertainty in the timing of an acid deposition control decision, it may be prudent to consider now the development of a secondary fine particulate standard for the purposes of protecting and maintaining visibility. It is possible that most of the potential conflicts or inefficiencies which might arise between the two programs can be adequately addressed during their implementation phases. EPA solicits public comment on the desirability of proceeding with this approach.

List of Subjects in 40 CFR Part 50

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

Dated: June 2, 1987.

Lee M. Thomas,

Administrator.

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[2] Section 169A of the Act establishes a national goal of protecting visibility in mandatory Federal Class I areas (certain national parks, and wilderness areas). Section 165(d) (Prevention of Significant Deterioration) provides for consideration of visibility impairment in siting new sources near such areas. The comparatively high density and distribution of Class I areas in the west led to the suggestion that use of these mechanisms could protect visibility in the west generally. Conversely, the sparsity of Class I areas in the east led the task force to recommend an ambient standard as a more appropriate approach for dealing with regional haze in the east.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[AD-FRL-3141-9(c)]

Regulations for Implementing Revised Particulate Matter Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: To implement revised national ambient air quality standards (NAAQS) for particulate matter, proposed March 20, 1984 (49 FR 10408), EPA proposed revisions to 40 CFR Parts 51, 52, and 81 on April 2, 1985 (50 FR 13130). Part 51 establishes requirements for preparation, adoption, and submittal of State implementation plans (SIP's); Part 52 sets forth the Administrator's approval and promulgation of implementation plans; and Part 81 sets forth air quality planning area designations. Today's action promulgates revisions to Parts 51 and 52 as of July 31, 1987 and announces EPA's final policies for revising SIP's to account for the revised NAAQS for particulate matter. The proposed revisions to Part 81 area designations are withdrawn.

EFFECTIVE DATE: This action is effective July 31, 1987.

ADDRESSES: Material relevant to the SIP policies, guidance, and regulations being promulgated today can be found in Public Docket No. A–82–38. This docket also includes material relevant to the retention of total suspended particulate (TSP) increments and other components of the prevention of significant deterioration (PSD) program originally submitted to Docket No. A–83–48 and other dockets listed below. Material pertinent to related revisions being promulgated today are contained in the following dockets:

a. The particulate matter standards in 40 CFR Part 50, Docket No. A–82–37;

b. Ambient air monitoring reference and equivalent methods in 40 CFR Part 53, Docket No. A–82–43;

c. Ambient air quality surveillance for particulate matter in 40 CFR Part 58, Docket No. A–83–13.

The dockets are located at the U.S. EPA Central Docket Section in South Conference Center, Room 4, 401 M Street SW., Washington, DC 20460. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on weekdays, and a reasonable fee may be charged for copying.

Availability of Related Information

The EPA prepared the following guidelines to assist States in revising their SIP's in response to the revised particulate matter NAAQS.

- PM_{10} SIP Development Guideline, EPA 450/2–86–001;
- Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or PM_{10} Data, EPA 450/4–86–017;
- Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD). EPA 450/4–87–007.

Copies of these guidelines are being sent to State and local air pollution control agencies. They are available for inspection and copying at:

- State Air Programs Branch, EPA, Region I, JFK Federal Building, Boston, Massachusetts 02203.
- Air Programs Branch, EPA, Region II, 26 Federal Plaza, New York, New York 10278.
- Air Programs Branch, EPA, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.
- Air Programs Branch, EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia, 30365.
- Air and Radiation Branch, EPA, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.
- Air Programs Branch, EPA, Region VI, Allied Bank Tower 1445 Ross Avenue, Dallas. Texas 75202–2733.
- Air Branch, EPA, Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.
- Air Programs Branch, EPA,. Region VIII, 999 18th Street, Suite 1300 Denver, Colorado 80202–2413.
- Air Programs Branch, EPA, Region IX, 215 Fremont Street, San Francisco, California 94105.
- Air Programs Branch, EPA, Region X, 1200 6th Avenue, Seattle, Washington 98101.

A limited number of copies can be obtained from the EPA library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777 (FTS 629–2777). Copies can also be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

Emission factors for stationary and mobile sources have been published in the following documents:

- Compilation of Air Pollutant Emission Factors, Volume I, Stationary Point And Area Sources, AP–42, Fourth Edition, 9/85, Stock #005–000–00251–7.
- Compilation of Air Pollutant Emission Factors, Volume II, Mobile Sources, AP–42, Fourth Edition, 9/85, Stock #005–000–00252–5.
- AP–42 Supplement A, October 1986.

These reports are available from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Kenneth Woodard regarding the SIP program at (919) 541–5351 (FTS 629–5351) and Daniel deRoeck regarding the PSD/new source review (NSR) programs at (919) 541–5593 (FTS 629–5593) or write to them at Standards Implementation Branch (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: References in this notice are indicated by superscript, lower case letters and are listed at the end of the preamble.

Table of Contents

1. Background

Today's final rules for implementing revised particulate matter standards are the culmination of several actions taken in accordance with sections 108 and 109 of the Clean Air Act (Act). The EPA has reviewed and revised the criteria upon which the original primary and secondary particulate matter standards are based. As a result of its review and revision of the health and welfare criteria, EPA proposed revisions to the particulate matter standards on March 20, 1984 (49 FR 10408). The EPA also proposed at the same time to (1) adopt a new Federal Reference Method (Appendix J to 40 CFR Part 50) for measuring particulate matter with an aerometric diameter of a nominal 10 micrometers or less (PM_{10}) in the ambient air, (2) adopt a new Appendix K to 40 CFR Part 50 to provide guidance on the statistical nature of the revised standards, and (3) revise the regulations concerning Ambient Air Quality Surveillance (40 CFR Part 58). Notices of final rulemaking on those proposed revisions are published elsewhere in today's **Federal Register**. The Administrator's final decision with respect to the specific levels of revised standards for particulate matter include: (1) Changing the indicator for both the primary and secondary standards from TSP to PM_{10}, (2) changing the level of the 24-hour primary standard to 150 micrograms per cubic meter ($\mu g/m^3$) measured as PM_{10} and replacing the deterministic form of the standard with a statistical form, (3) changing the level and form of the annual primary standard to 50 $\mu g/m^3$ expected annual arithmetic mean measured as PM_{10}, (4) establishing secondary 24-hour and annual standards that are identical in level and form to the primary standards.

On April 2, 1985, EPA proposed (50 FR 13130) to revise its regulations governing SIP programs to account for revisions to the particulate matter standards. In particular, EPA (1) set forth the policy it proposed to follow regarding revisions to SIP's to account for the revised standards; (2) proposed to amend the significant harm and air pollution episode levels for particulate matter; (3) proposed amendments to the regulations for preconstruction review of new and modified sources (new source review) in nonattainment areas and in regulations for PSD; and (4) proposed amendments to Part 81, Designation of Areas.

The remaining sections of this preamble describe EPA's resolution of the issues raised during the rulemaking process. Section II outlines the relevant statutory and regulatory requirements. Section III describes EPA's legal interpretation of the Act's requirements. Section IV sets out the final policies for implementing the revised NAAQS under EPA's SIP program, NSR/PSD programs, and new source performance standards (NSPS) program. Section V summarizes the revised regulations. Section VI presents the major public comments received on the proposal and EPA's response to those comments. The EPA's response to comments not covered herein is included in Docket No. A–82–38.

II. Statutory and Regulatory Requirements

A. Statutory Background

1. State Implementation Plans

In 1970 Congress comprehensively amended the Act to establish a joint State and Federal program to control air pollution. Under sections 108 and 109, EPA is responsible for issuing air quality criteria and proposing and promulgating NAAQS. The States then have primary responsibility for implementing the NAAQS. In broad outline, each State must develop and submit to EPA a plan that provides for attainment and maintenance of each NAAQS as expeditiously as practicable within certain time limits. The EPA must review each plan, termed SIP, and approve or disapprove its provisions. If a State fails to submit a plan, or submits a plan which EPA finds inadequate, EPA may, and in some cases must, promulgate whatever measures are necessary to fill the gap.

a. *Section 110.* (1) *Timing.* Under section 110(a)(1), each State must adopt and submit a SIP ". . . within 9 months after the promulgation of a national primary ambient air quality standard (or any revision thereof). . . ." Section 110(a)(1) also sets a 9-month deadline for submittal of SIP's for new and

revised secondary NAAQS; however, section 110(b) authorizes the Administrator to extend that deadline for up to 18 months where "necessary."

Under section 110(a)(2)(A), SIP's must provide for attainment of any primary NAAQS ". . . as expeditiously as practicable but [subject to subsection (e)] in no case later than 3 years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard). . . ." The SIP's for secondary NAAQS must provide for attainment within a "reasonable time."

Section 110(e) allows the Administrator to extend the attainment date for the primary NAAQS for 2 years, if he finds that sources will not be able to comply with their emission limitations within the 3-year deadline because needed technology will not be available. The plan, however, must provide for interim control of the noncomplying sources and controls on all other sources of the same pollutant in the same air quality control region.

(2) *Content of state implementation plans.* A core requirement of section 110 is that each SIP must include:

> . . . emission limitations, schedules and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard. . . . [section 110(a)(2)(B)]

The remaining subsections of section 110(a)(2) elaborate on this general framework. Specific to today's promulgation:

- Section 110(a)(2)(C) requires the plan to provide for operation of a system that collects and analyzes air quality data.
- Section 110(a)(2)(D) states that each SIP must provide a preconstruction review program consisting of ". . . a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that the national ambient air quality standards are achieved and maintained. . . ."
- Section 110(a)(2)(F) provides that plans must require owners or operators of stationary sources to monitor and report on emissions from their sources.
- Section 110(a)(2)(H) requires each plan to contain a self-correction mechanism in case the plan proves unsatisfactory. The plan must contain provisions that the State will revise the plan:

> . . . from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious means of achieving such primary or secondary standard; or . . . whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977 . . . .

- Section 110(c)(1)(C) authorizes the Administrator to notify a State that it needs to revise its plan in accordance with the section 110(a)(2)(H) requirements for self correction and to set a deadline for submitting the revision. The deadline must be at least 60 days after the notification, but may be later at the Administrator's discretion.
- Section 110(a)(2)(F)(v) provides that SIP's must contain contingency plans for immediate emission reductions where pollution levels increase to the point of presenting an imminent and substantial endangerment to public health.

(3) *Consequences of failing to submit a state implementation plan.* Section 110 provides for Federal intervention if a State fails to submit an adequate SIP. Under section 110(c)(1), EPA must promulgate plan provisions for a State if the State fails to submit a plan at all, submits a plan that does not meet the section 110 requirements, or fails to comply with a notification under section 110(c)(1)(C)—i.e., a call for a plan revision under the provisions of section 110(a)(2)(H). The EPA must promulgate a substitute plan unless the State in the interim adopts and submits a plan that EPA finds adequate.

Other sections of the Act provide financial incentives for State participation in the SIP development process such as section 105(b), which gives EPA general authority to impose conditions on its grants to air pollution control agencies. Thus, EPA may condition grants on the submittal of satisfactory SIP's or SIP revisions. Beyond that, section 176(b) prohibits EPA from making any grants in any area where the responsible State or local authority ". . . is not implementing any requirement of an approved or promulgated plan under section 110 . . . ." This prohibition would apply if a State failed to implement the SIP provision that requires the State to revise its plan under the circumstances stipulated in section 110(a)(2)(H). Thus, if a State fails to respond to a call for a SIP revision under section 110(c)(1)(C), the section 176(b) grant prohibition is applicable.

b. *Part D and Associated Amendments.* In many areas of the country, the original SIP's that were approved and promulgated in the early 1970's failed to bring about attainment within the statutory deadlines. When Congress revised the Act in August 1977, it added a new Part D and amendments to sections 107 and 110 to address this nonattainment problem.

(1) *Identification of air quality problems.* Congress first instructed the States and EPA to identify all areas of the country that were experiencing violations of the NAAQS. A new section 107(d) required each State to list for EPA by early December 1977 those areas that were experiencing violations (nonattainment areas), those areas that were meeting the standards (attainment areas), and those areas that could not be classified for lack of air quality data (unclassifiable areas). It then required EPA to review the lists, make necessary modifications, and promulgate them all by early February 1978. Section 107(d)(5) allows States to modify a list even after promulgation:

> . . . [a] State may from time to time review, and as appropriate revise and resubmit, the list required under this subsection. The Administrator shall consider and promulgate such revised list in accordance with this subsection.

(2) *Content and timing of plan revisions.* Congress then added section 110(a)(2)(I) which required each SIP to contain a provision that would ban the construction or modification after July 30, 1979, of any major stationary source:

> . . . in any nonattainment area [as defined in section 171(2)] to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of Part D (relating to nonattainment areas).

Congress then specified other new requirements for SIP content in Part D. In essence, Part D relaxed attainment dates but tightened control requirements for both new and existing sources.

In section 172(a)(1), Congress directed the States to adopt plans that provided for attainment of all of the primary standards as expeditiously as practicable, and, except for ozone and carbon monoxide, no later than December 31, 1982. Plans were also to provide for all emission reductions available from applying "reasonably available control technology" (RACT). Each plan also had to establish a permit program under section 173 for the construction and modification of major stationary sources.

Congress directed each State to adopt whatever provisions would be necessary to meet these Part D requirements, and submit them to EPA,

by January 1, 1979. *See* Pub. L. 95–95, section 129(c) (uncodified). Congress required the States to follow EPA's 1976 interpretive ruling on new source construction and modification in the period before the new plans were to come into effect. *See* Pub. L. 95–95, section 129(a) (uncodified).

(3) *Consequences of failing to submit a plan.* All of the consequences of failing to submit a SIP described above under section 110 potentially apply to States that fail to submit Part D SIP's. In addition, after July 1, 1979, the mandatory construction ban required by section 110(a)(2)(I) was to apply in any nonattainment area that lacked a revised plan that met the Part D requirements. Further, if a State failed to implement its SIP in a nonattainment area, which includes not complying with a call for a SIP revision under section 110(c)(1)(C), the nonattainment area would be subject to a construction ban required by section 173(4).

c. *Part C and Associated Amendments.* The 1977 amendments also added to the Act as Part C to Title I a third set of SIP requirements aimed at the PSD of air quality in attainment and unclassifiable areas. New section 110(a)(2)(J) generally requires each SIP to satisfy the requirements of Part C. Revised section 110(a)(2)(D) specifically requires each SIP to meet Part C's requirements for a preconstruction review program for major new sources and major modifications. Section 161 of the new Part C requires that:

> . . . each applicable implementation plan contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) identified pursuant to section 107(d)(1) (D) or (E) of this title . . . [i.e., the attainment and unclassifiable areas].

The remaining Part C provisions limit deterioration by establishing maximum allowable increases in pollution, commonly called "increments," and by requiring preconstruction review of major new stationary sources and major modifications.

(1) *The increment system.* For sulfur dioxide and "particulate matter," section 163(a) requires that each plan " . . . contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded . . . ." Section 163(b) establishes three sets of "maximum allowable increases" for these two pollutants. The most restrictive increments apply in Class I areas, while larger increments apply in areas designated as Class II or Class III. No provision in the Act, however, defines "particulate matter" as used in section 163.

Section 162(a) designates as Class I areas all international parks and then all national parks, national wilderness areas, and national memorial parks exceeding certain sizes and existing on the effective date of the 1977 amendments. Section 162(a) prohibits the States from changing this designation. Other areas that may have been designated as Class I under earlier EPA regulations for PSD retain their Class I designations, but may be redesignated under procedures described in section 164. Section 162(b) provides that all other areas " . . . identified pursuant to section 107(d)(1)(D) or (E) which are not established as Class I . . . shall be Class II areas . . . ." States may, however, redesignate such areas as Class I or Class III under section 164.

While Part C does not contain an increment system for the NAAQS pollutants other than sulfur dioxide and particulate matter, it directs EPA to create such a system or an equivalent one for those pollutants. Thus, for carbon monoxide, ozone, nitrogen oxides, and ". . . pollutants for which national ambient air quality standards are promulgated after the date of enactment of this part . . . ," sections 166 (a) and (d) require EPA to promulgate ". . . specific measures at least as effective as the increments established in section 163 . . . ."

(2) *The preconstruction review program.* The key element of the preconstruction review program required by Part C is the requirement that a company obtain a PSD permit before constructing virtually[1] any new major stationary source or making any major modification in an attainment or unclassifiable area. *See* section 165(a), 40 CFR 51.166(i) [formerly 51.24(i)]. A major stationary source is any plant that has the potential to emit 100 tons per year (tpy), or 250 tpy, depending on plant type, of any pollutant regulated under the Act, including the NAAQS pollutants. A major modification is, in general, any change to a major stationary source that would result in a significant net increase in emissions of a regulated pollutant [section 169, 40 CFR 51.166(b)].

To obtain a permit, an applicant must show that the source or modification would be subject to "best available control technology" (BACT) for each regulated pollutant it would emit in significant amounts [section 165(a)(3), 40 CFR 51.166(j) (1983)]. In addition, an applicant must show that:

> ... emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard . . . . [section 165(a)(3)].

Finally, an applicant must provide, for each regulated pollutant emitted by the project, analysis of (1) existing air quality in the project area; (2) the effect the project would have on soils, vegetation, and visibility; and (3) the effect growth associated with the project would have on air quality. For NAAQS pollutants, the analysis of existing air quality generally must include a year's worth of monitoring data [section 165(a)(2), (a)(b), and (e); 40 CFR 51.166(k)–(o)].[2]

2. New Source Performance Standards

The 1970 amendments also require EPA to establish NSPS for major new air pollution sources. Under section 111, EPA must promulgate such a standard for any category of sources that:

> . . . in [the Administrator's] judgment . . . causes or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare . . . [section 111(b)(1)(A)].

The standards apply to "new sources," which include both new and modified stationary sources [sections 111(e), 111(a)(2)]. The standards must:

> . . . reflect the degree of emission limitation and the percentage reduction achievable

[1] Under EPA's current regulations, a project that emits some regulated pollutant can escape PSD review only if it locates in an area that is designated nonattainment for all pollutants to which section 107(d) applies or if it emits only those pollutants for which the area is designated nonattainment. *See* 45 FR 52676, 52710–52712 (August 7, 1980).

[2] Part C gives special protection to Federal Class I areas. It places an "affirmative responsibility" on each Federal land manager (FLM) to protect the air quality related values (AQRV's) of its Federal Class I areas. It then forbids the issuance of a PSD permit in any case where the FLM of a Class I area shows to the satisfaction of the permitting authority that the project in question would affect the AQRV's of the area adversely, even if the applicant shows that the project would not cause or contribute to a violation of an increment over the area [section 165(d)(2) (B), (C)].

On the other hand, Part C provides certain variances from the Class I increments. For instance, even if a project would cause or contribute to an increment violation over a Federal Class I area, the permitting authority may issue a permit if the FLM certifies that the project would not violate certain special increments. For particulate matter, these special increments are equal to the normal Class II increments [section 165(d)(2)(C)].

through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated . . . [section 111(a)(1)].

B. Regulatory Background

1. Implementation of Particulate Matter Standards

a. *Section 110 State Implementation Plans.* Since 1971 EPA has promulgated, in 40 CFR Part 51, regulations covering a wide range of the planning requirements set forth by section 110. On November 7, 1986 EPA promulgated (51 FR 40656) restructured Part 51 regulations. References to Part 51 in this notice are to the recodified sections.

b. *Part D State Implementation Plans.* (1) *Section 107(d) designations.* The EPA promulgated attainment status designations for particulate matter and four other NAAQS on March 3, 1978, in 40 CFR Part 81 Subpart C (43 FR 8962).

In the preamble of this action, EPA pointed out that it had designated some rural areas "attainment" or "unclassifiable" for particulate matter despite data showing that these areas were experiencing violations of the particulate matter NAAQS (43 FR 8963). Under its Fugitive Dust Policy, EPA defined as "rural" any area with low population that lacked major industrial development or major industrial particulate matter emissions. In the absence of evidence to the contrary, EPA at that time presumed rural dust to be less harmful than urban dust because it consisted primarily of natural materials not contaminated by industrial products.

The EPA also promulgated a rule explaining that it could redesignate areas when air quality data showed that a change was warranted. See 40 CFR 81.300.[3]

(2) *Guidance for Part D State Implementation Plan revision: "RACT plus studies" policy.* The EPA published most of its guidance for SIP's for nonattainment areas in the form of a "general preamble" interpreting the Part D planning requirements (44 FR 20372, April 4, 1979). The EPA generally required States to apply RACT to all stationary sources unless the State could show that controls on a particular source or group of sources would not bring about attainment any faster. Moreover, the States had to submit all needed control measures in fully enforceable form (44 FR 20375). For particulate matter, however, EPA allowed States to postpone the adoption of control measures for "nontraditional" sources until the States had an opportunity to study what control measures would be efficacious (44 FR 20378). "Nontraditional" sources included area or background sources such as vehicle traffic and construction activities. All emissions from industrial processes at stationary sources were subject to the requirement for enforceable RACT measures.

Later, as EPA reviewed specific plan revisions, it expanded this policy to allow States to postpone the submittal of attainment demonstrations for the particulate matter standards until the States had a chance to quantify the effects of controlling nontraditional sources. However, the demonstrations, when submitted, still had to provide for attainment of the primary standards by the end of 1982. Also, EPA required areas that postponed demonstrations to impose RACT measures on all traditional sources, since they would be unable to show that they could attain with less stringent controls.

(3) *New source review rules.* The EPA originally issued guidance on the NSR requirements of section 173 in the general preamble. However, in 1980 EPA promulgated detailed regulations on the content of approvable State programs (45 FR 31304, May 13, 1980 and 45 FR 52678, August 7, 1980), codified at 40 CFR 51.165(a) [formerly 51.18(j)]. Part D and these regulations provide, among other things, that State plans must require major stationary sources and major modifications to offset their proposed emissions and achieve the "lowest achievable emission rate" (LAER).[4]

(4) *Environmental Protection Agency action on Part D plans: construction bans, conditional approvals, and policy for correcting deficient Part D plans.* By July 1, 1979, no nonattainment areas had fully approved SIP's, and very few had SIP provisions in effect that limited construction as required by sections 110(a)(2)(I) and 173(4). Consequently, on July 2, 1979, EPA published a regulation that inserted the section 110(a)(2)(I) and section 173(4) construction bans into all SIP's that lacked them (44 FR 39471, now codified at 40 CFR 52.24). In the same notice, EPA announced that the section 110(a)(2)(I) ban had become effective in each nonattainment area that lacked an approved or promulgated Part D plan revision. The EPA explained that it would remove these bans when it took final action approving or promulgating a plan that met all relevant Part D requirements. The EPA, however, subsequently concluded that the section 110(a)(2)(I) construction ban would not apply if a State lacked a Part D revision for a secondary NAAQS, since section 110(b) allows States to obtain extensions for submitting secondary plans and the legislative history of Part D shows Congress' chief concern was the protection of human health (47 FR 44729, October 12, 1982).

Many nonattainment areas failed to attain the primary standards by the end of 1982. The EPA has interpreted the Act, however, as not requiring the Agency to impose the full array of available sanctions immediately in all of these areas. Instead, on November 2, 1983, EPA announced that it would find plans for areas that failed to attain to be "inadequate" under section 110(a)(2)(H) and 110(c)(1)(C) (48 FR 50686). The EPA would require States to submit revisions for these areas and, if any area failed to comply, EPA would find that the State was not implementing the portion of its SIP that requires revisions in response to a notice under section 110(a)(2)(H). This finding would trigger a construction ban under section 173(4) and funding restrictions under section 176(b).

The EPA acknowledged in its November 1983 notice that it was considering a revision to the particulate matter standard (48 FR 50697). Consequently, EPA deferred, and is continuing to defer, the issuance of notices of inadequacy for particulate matter plans.

2. Implementation of Prevention of Significant Deterioration Requirements

Prior to the enactment of Part C in 1977, EPA had promulgated Federal PSD regulations as 40 CFR 52.21 in response to court rulings that the 1970 Act required SIP's to include PSD measures. See *Sierra Club* v. *Ruckleshaus,* 344 F. Supp. 253 (D.C. Cir. 1972), aff'd per curiam, 4 ERC 1815 (D.C. Cir. 1972), aff'd by an equally divided court, sub. nom. *Fri* v. *Sierra Club,* 412 U.S. 541 (1973). The EPA inserted the Federal PSD regulations directly into each SIP pursuant to section 110(c) of the Act [39 FR 42510]. In 1978 EPA substantially amended its Federal PSD regulations to conform them to the detailed PSD requirements contained in the 1977 amendments [43 FR 25380 (now codified,

[3] One court has ruled that section 107(d) does not authorize EPA to redesignate areas to nonattainment unless a State concurs in the redesignation. *See Bethlehem Steel Corp. v. EPA,* 726 F.2d 1303 (7th Cir. 1983). No other court has yet decided this issue.

[4] Under regulations recently upheld by the Supreme Court, *Chevron, Inc.* v. *NRDC,* 104 S. Ct. 2778 (1984), EPA defines "major stationary source" for purposes of the nonattainment area NSR program as essentially an entire plant.

as amended at 40 CFR 52.21)]. At the same time EPA inserted the amended Federal PSD regulations into each deficient SIP.

Pursuant to the statutory requirements, the amended PSD regulations established a Federal permitting system for preconstruction review of new major projects and authorized the Administrator to approve construction only of those facilities that would employ BACT and would not cause or contribute to ambient air quality in excess of any NAAQS or applicable PSD increment [40 CFR 52.21(j), (k)]. The regulations explicitly refer to the statutory increments for sulfur dioxide and "particulate matter" [40 CFR 52.21(c)].

In 1978 EPA also promulgated a second set of PSD regulations outlining the requirements for an approvable State PSD program (43 FR 26380) (now codified, as amended, at 40 CFR 51.166). These regulations mirrored the Federal PSD program for the most part.

Numerous industry and environment groups challenged the amended PSD regulations, which were subsequently affirmed in part and remanded in part in *Alabama Power Co.* v. *Costle*, 636 F.2d 323 (D.C. Cir. 1979). The court in *Alabama Power* took the position, which was not essential to any of its ultimate dispositions, that EPA had discretion to define "particulate matter" to exclude particles of a size or composition determined not to present substantial health or welfare concerns, not only for purposes of the NAAQS, but also for purposes of the PSD increments (Id. at 370, footnote 134).

In 1980 EPA again amended its PSD regulations, this time to make them conform to the *Alabama Power* decision (45 FR 52676). The EPA amended both the Federal PSD program at 40 CFR 52.21 and the requirements for approvable State programs at 40 CFR 51.24 (now 51.166). The EPA again inserted the amended Federal regulations into the SIP for each State that had not previously submitted an approvable PSD program.

3. Implementation of New Source Performance Standards

The EPA has promulgated NSPS in 40 CFR Part 60 that limit particulate matter emissions from 22 categories of stationary sources. The EPA determined that the sources in these categories emit significant amounts of particulate matter. For NSPS, EPA defined "particulate matter" in section 60.2 of Part 60 as ". . . any finely divided solid or liquid material, other than uncombined water, as measured by reference methods specified under each applicable subpart, or an equivalent method . . .."

4. Regulatory Precedents: The Environmental Protection Agency Actions on National Ambient Air Quality Standards Since 1977

The EPA has promulgated two major rules concerning NAAQS since Congress revised the Act in 1977. In 1978 EPA, for the first time, promulgated NAAQS for lead (43 FR 46246, October 5, 1978). In a related action addressing implementation issues, EPA directed States to submit plans controlling new and existing sources under section 110, as opposed to Part D (43 FR 46264, October 5, 1978). Thus, there are no formal designations of attainment status under section 107(d) for the lead NAAQS.

Any new major lead source or modification must undergo the PSD review that section 165 requires of all regulated pollutants, unless the source or modification locates in an area that is not designated attainment or unclassifiable for any NAAQS pollutant. [Since EPA has not promulgated any section 107 designations for lead, no source can escape PSD review because it locates in an area designated as nonattainment for lead (see footnote 1).] Such a source or modification must also undergo the review outlined in sections 51.160(a)–(e), 51.161, 51.162, and 51.163 [formerly 51.18(a)–(i)] to ensure that the project will meet applicable SIP limits and not cause or contribute to a NAAQS violation.

In 1979 EPA renamed the NAAQS for "photochemical oxidants" so they applied to "ozone" and raised the numerical level of the primary and secondary standards (44 FR 8202, February 8, 1979). In this case EPA instructed the States to follow Part D. The EPA concluded that, since the revised standard represented a relaxation, States would have no difficulty meeting the Part D deadlines for submitting plans and attaining standards [43 FR 26962, June 22, 1978 (proposed rule); 44 FR 8202].

III. Interpretation of the Clean Air Act Requirements

As indicated above, the Act contains different pathways along which the revised NAAQS could be implemented. These pathways fall under two general categories which, for ease of discussion, are referred to as (1) the section 110 core, and (2) Part D. For the reasons described below, EPA has concluded that only section 110 governs the implementation of the revised primary and secondary PM_{10} standards. In the following sections of this notice, EPA discusses its legal interpretation of the Act and applies that legal interpretation to the revised particulate matter standards.

A. Legal Interpretation

1. Conflict in the Literal Language of the Clean Air Act

A literal reading of sections 110(a)(1) and (a)(2)(A) yields a general rule for implementing revised standards and a partial exception. Section 110(a)(1) requires each State to submit ". . . within nine months after the promulgation of a national . . . ambient air quality standard (*or any revision thereof*) . . ." a SIP that implements the new standard in all regions of the State [5] (emphasis added). Section 110(a)(2)(A), which applies to all plans submitted under section 110(a)(1), stipulates that a plan, to be approvable by the Administrator, must provide for attainment and maintenance within certain specified periods except as may be provided in section 110(a)(2)(I). Section 110(a)(2)(A)(i), for example, requires each SIP implementing a primary standard to provide for attainment as expeditiously as practicable but ". . . in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard) . . ." Section 110(a)(2)(I) on the other hand requires the SIP to contain a construction ban that applies after June 30, 1979, ". . . in any nonattainment area [as defined in section 171(2)] . . . unless . . . such plan meets the requirements of Part D . . . ." Section 171(2) defines "nonattainment area" as any area that ". . . is shown . . . to exceed *any* national ambient air quality standard . . ." (emphasis added).

Since the term "any revision" in section 110 (a)(1) appears to encompass any revised standard, sections 110(a)(1) and (2) appear to set a general rule that (1) States must submit SIP revisions for all areas to account for NAAQS revisions, generally within 9 months after promulgation of the revised NAAQS and (2) the SIP revisions must provide for attainment within the periods specified in section 110(a)(2)(A)—for example, 3 years from plan approval for a primary standard.

However, since the reference to "any national ambient air quality standard" in section 171(2) also appears to encompass any revised standard,

[5] Section 110(b) allows EPA to extend this submittal deadline an additional 18 months for revised secondary NAAQS under certain conditions.

section 171(2) together with section 110(a)(2)(I) seem to state an exception to section 110(a)(2)(A) for areas that are "nonattainment" for any standard, new or revised. The exception is that SIP revisions for all such "nonattainment areas" must include a construction ban that can be avoided by satisfying all of the provisions of Part D instead of providing for attainment within the usual periods of section 110(a)(2)(A).

Thus, the Act appears to contain two different and conflicting blueprints for SIP preparation with respect to both content and timing, one in section 110 and the other in Part D, for SIP's for areas that are "nonattainment" under a revised primary or secondary standard.

2. Resolution of the Conflict

In the April 1985 proposal, EPA set out various legal interpretations it could use to reconcile the inherent conflict between section 110 and Part D as to the requirements for "nonattainment areas." After subsequent analysis of the legal issues and review of the numerous public comments received, EPA has concluded that the best legal interpretation is that Part D applies only to those NAAQS that existed when Congress created Part D in 1977 and to revisions to those NAAQS that do not impose significant new planning burdens on the States. Only section 110 applies to new NAAQS and to revised NAAQS that do impose significant new planning burdens on the States.

Congress created Part D in 1977 to deal with the persistent failure of many areas to attain the then existing NAAQS by the statutory attainment dates despite sufficient time for preparation and execution of SIP's. Congress imposed strict new requirements on these nonattainment areas to encourage them to promptly complete the retooling necessary to bring them into attainment. The EPA's review of the relevant statutory language and legislative history leads it to conclude that these more rigorous Part D provisions should not apply to revised standards that impose significant new planning burdens on the States.

In particular, the fixed attainment deadline of December 31, 1982, could produce unreasonable results if strictly applied to such a revised NAAQS. Since that date has already passed, an area under a literal application of the statutory language would become subject to Part D sanctions immediately after a finding that the area exceeds the revised NAAQS, despite the fact that the area could not demonstrate attainment of the revised NAAQS without completing the additional new planning burdens imposed by the revised NAAQS. Thus, the area would be penalized for having failed to submit a SIP demonstrating attainment by December 31, 1982, even though the planning burdens the area must complete to demonstrate attainment were never required until sometime substantially after that date.

The EPA does not believe that it should apply Part D to these areas and then attempt to ease this burden by interpreting the 1982 attainment deadline as inoperative so that the residual Part D requirement for attainment "as expeditiously as practicable" would apply to areas shown to exceed a revised standard. Under this approach, the meaning of section 110(a)(2)(A)'s 3-year deadline as it relates to revised standards would be lost. It would also mean that an area exceeding a revised standard that imposes significant new planning burdens would not be subject to section 110(a)(2)(A)'s 3-year attainment deadline, while areas exceeding an entirely new standard would be. This would treat these two areas differently, and would treat revised standards more flexibly, even though they would face essentially the same type of planning requirements, which would in all probability be more challenging for new than for revised standards. It is unlikely that Congress would have intended these inconsistent results.

The EPA also rejects the legal interpretation that the relevant Part D provisions do not govern revised standards at all. Arguably, section 171(2) defines "nonattainment areas" as areas exceeding "any national ambient air quality standard," without reference to revised standards. In contrast, section 110(a)(1) expressly applies its 9-month SIP submittal deadline, and section 110(a)(2)(A) its 3-year attainment deadline for primary standards, to "revisions." Congress could have included a similar reference to revised standards in section 171(2) if it had intended Part D to apply to revised standards. This indicates that Congress may have intended the general section 110 scheme to govern the implementation of all revised standards. This reading, however, would produce the result that a relaxation of a pre-1977 NAAQS would automatically shield areas exceeding the revised standard from the strict Part D requirements, even though the revision made it easier for them to attain. It is clear that Congress would not have intended this result. Hence, EPA reads the section 110(a)(2)(A) exception, and thus Part D, as applying to the nonattainment planning problems that Congress faced when it enacted Part D in 1977 and to those revised NAAQS that result in no significant increase in those problems.

The legislative history of section 110 and Part D also supports the view that revised standards requiring significant new planning burdens should not be implemented under Part D. Congress in 1970 created a SIP development scheme that until 1977 clearly applied to all revised NAAQS. When Congress added Part D in 1977, it did not repeal the requirements either for SIP submittal in section 110(a)(1) or for attainment and maintenance in section 110(a)(2)(A). Moreover, the conflicts between section 110 and Part D (e.g., their different attainment deadlines) show that a single revised standard could not have been intended to be subject to both schemes at one time. Congress, therefore, must have intended section 110 to remain effective for areas that are not attaining at least some revised NAAQS.

Many areas failed to plan adequately to attain the standards EPA promulgated in the early 1970's. The legislative materials behind Part D strongly indicate that Congress' main purpose in enacting Part D was to address the nonattainment problems that persisted because of those planning failures. Congress chose to solve the problems by giving States one last planning opportunity before imposing the sanctions authorized in Part D. In contrast, the history reveals no evidence that Congress intended these tougher measures to apply also where EPA revises a NAAQS so as to impose planning burdens significantly beyond what the Act imposed under the pre-1977 standards. Stated simply, areas that exceed such a revised standard are unlike those for which Part D was plainly intended—namely, areas that had already failed to plan adequately in the first SIP round. Moreover, inferring congressional intent that these measures apply to such revisions would conflict with the pattern of legislation in this area. Congress reserved substantial power to the States when it enacted the 1970 Act. The tough Part D measures, by providing for a significant Federal intrusion on what had previously been the States' domain, represented an exception to the Act's general scheme of cooperative State and Federal regulation. Interpreting ambiguity in the Act's language so as to authorize the most intrusive implementation of Part D would be inconsistent with the basic thrust of the Act.

B. Comparison of Revised and Prior Particulate Matter National Ambient Air Quality Standards

The EPA assessed the impact of the revised primary and secondary NAAQS on the planning requirements of State air pollutibn control agencies.[b] It estimated the probability of violating the PM_{10} NAAQS at each TSP State and local air monitoring station based on 1983–1985 TSP data. These estimates indicate that sites in over 100 counties could violate the PM_{10} NAAQS. The EPA's SIP development policy which is discussed in section IV.C. of this preamble requires new PM_{10} SIP's to be developed for each of those areas. To develop SIP revisions for each of the counties, EPA estimates that an average of 4 work years and $250,000 in State resources could be required. In addition, all States must revise their SIP's to respond to the new monitoring and new source review requirements. Therefore, EPA concludes that the PM_{10} NAAQS will impose a significant new planning burden upon the States.

The change in the indicator for the revised NAAQS from TSP to PM_{10} could also create regulatory burdens. This change could result in the need for control strategies to refocus on sources emitting small particles. States may also need to develop PM_{10} emission inventories and perform modeling based upon PM_{10}. Thus, the change in indicators alone will cause significant impacts which are a factor to consider in interpreting the Act.

C. The Clean Air Act's Applicability to the Revised National Ambient Air Quality Standards

As stated earlier, EPA has concluded that section 110 governs the implementation of all revised standards that would impose significant new planning requirements beyond what the pre-1977 standards required. For the reasons just described, EPA believes that the revised PM_{10} standards will impose new planning requirements in a significant number of areas. Hence, only section 110 will govern nonattainment problems arising from the revised primary and secondary standards. The policies and rules that EPA discusses in the remainder of this notice implement the EPA's basic conclusion that section 110, and not Part D, applies to implementation of both the primary and secondary PM_{10} standards.

IV. Requirements for State Implementation Plans

Sections A, B, and C of this portion of the preamble set forth EPA's policy for actions that States must take to prepare and submit appropriate SIP revisions for existing sources. Section D focuses on the SIP preconstruction review of new sources, including the PSD permit program.

A. Transition Policy

The particulate matter control strategies in existing TSP SIP's reduce ambient concentrations of PM_{10} as well as TSP. Therefore, to avoid unnecessary disruption of the existing particulate matter control program, States will want to utilize existing SIP requirements as much as possible in their PM_{10} SIP's. The regulatory requirements of a State's existing TSP SIP must remain in effect, therefore, until a PM_{10} SIP is approved by EPA [see section 110(i), 42 U.S.C. 7410(i)]. The existing regulations will continue to be enforced by Federal and State agencies and through citizen suits during the period of transition from a TSP SIP to a PM_{10} SIP.

It is unlikely that the level of control required by the current SIP is significantly more than will be necessary to attain and maintain the PM_{10} NAAQS. Therefore, regulations in the existing SIP cannot be relaxed without a demonstration that the revision will not interfere with attainment or maintenance of the PM_{10} NAAQS.

B. Technical Support for State Implementation Plans Development

1. Ambient Data Base

In 1979 EPA began operating ambient samplers in the inhalable particulate (IP) network. That network consisted of ambient air monitoring stations containing high volume samplers, collocated with dichotomous samplers having inlets designed to measure particles nominally 15 micrometers and less (PM_{15}). The stations in the network were located in urban and suburban areas thoughout the U.S. to reflect maximum concentrations and population exposure due to urban and industrial sources, and also in nonurban areas to provide information on background levels.

The EPA began operating ambient samplers with inlets designed to collect PM_{10} early in 1982. Since August 1984, EPA has distributed PM_{10} samplers to State and local air pollution control agencies. As of December 31, 1986, about 900 samplers were operating at 550 sites. However, sufficient ambient PM_{10} data are not yet available to allow States to comprehensively evaluate the PM_{10} attainment status for all areas.

Analysis of the available ambient data reveals that the PM_{10} portion of TSP varies widely, making it inappropriate to establish a single nationwide conversion factor to simply convert ambient TSP values to ambient PM_{10} values. Therefore, EPA has developed a statistical approach for estimating from ambient TSP data the probability that PM_{10} NAAQS are being violated in the area represented by the ambient sampler. This probability has been termed the "nonattainment probability."

Procedures for using statistical probabilities in the absence of ambient PM_{10} data are explained in a document titled, PM_{10} SIP Development Guideline (EPA 450/2–86–001).[c] A companion document, Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or PM_{10} data (EPA 450/4–86–017 referred to herein as the "probability guideline"), explains in detail the methods for estimating PM_{10} levels using ambient PM_{15} data. or for estimating the probability of PM_{10} nonattainment using TSP data.[d] The probability guideline also contains guidance on determining the spatial extent of PM_{10} nonattainment problems (i.e., the "PM_{10} exceedance area" represented by an ambient PM_{10} sampler). The extent of the PM_{10} exceedance area must be determined in order to develop a control and compliance strategy that encompasses the area.

2. Technical Guidance

The PM_{10} SIP Development Guideline provides technical information on how to meet the implementation requirements in this rulemaking. Topics discussed include monitoring PM_{10} air quality, determining from ambient data when nonattainment problems are apparent, using PM_{10} emission factors, performing joint dispersion and receptor modeling, interpreting model results, writing emission regulations, and measuring PM_{10} emissions. It is meant to cover all aspects of SIP development where additional guidance is needed due to the new focus on a PM_{10} size range. References to other sources of information are included where more detail may be required. The guideline is available from EPA's Regional Offices. The EPA's Office of Air Quality Planning and Standards will be working through its Regional Offices to provide further guidance to States on developing SIP revisions to account for the revised NAAQS.

C. State Implementation Plans Development Policy

For the reasons described earlier, EPA is requiring implementation of the PM_{10} standards under section 110 of the Act.

Section 110(a)(1) provides that each State shall adopt and submit, within 9 months after revision of a NAAQS, a SIP providing for attainment and maintenance of the primary NAAQS everywhere in the State as expeditiously as practicable but no later than 3 years from the date EPA approves the SIP. Section 110(a)(2) requires that a SIP contain emission limits, schedules, and timetables and such other measures as may be necessary to assure expeditious attainment and maintenance. The EPA's regulations in 40 CFR 51.112 (formerly section 51.13) adopted under section 110(a)(2) of the Act, require that States demonstrate through modeling or an adequate alternative that this control strategy will indeed assure timely attainment and maintenance.

The EPA has considered different ways of implementing this control strategy demonstration requirement under the 9-month SIP submittal schedule in section 110(a)(1). There is a great deal of merit in obtaining ambient PM_{10} data in all areas to specifically define the extent and degree of PM_{10} nonattainment situations before developing control strategies. However, due to applicable Act requirements and the environmental risk in areas with severe air quality problems, the Administrator cannot permit delay in the development of PM_{10} control programs simply because ambient PM_{10} data are unavailable.

Another approach would be simply to call upon States to develop and submit a full PM_{10} attainment demonstration and control strategy for every area of the country within the 9-month period. The EPA believes, however, that such a requirement would be unreasonable for certain areas. An analysis of the latest ambient TSP data in conjunction with the methodology in the probability guideline indicates that there could be from around 50 to 150 counties in which the PM_{10} NAAQS will not be attained.[b] While these numbers are the best indication at this time of the potential nonattainment situation for PM_{10}, they are only estimates and, furthermore, will probably change as new ambient TSP and PM_{10} data become available. The estimates are, however, useful as an indication of the degree of PM_{10} SIP development that may eventually be necessary. The key point is that many of the 3141 counties in the nation may need no additional particulate matter SIP provisions to meet the revised NAAQS. Thus, for many areas, the existing TSP SIP's may already provide for timely attainment and maintenance of the PM_{10} NAAQS. To call upon areas that almost certainly have adequate SIP's to resubmit those SIP's along with full attainment demonstrations would be unnecessary and therefore wasteful of limited State resources.[6]

There are, also, several areas where available data indicate that air quality may be close to the level of the NAAQS. Many of these areas may actually be shown, with more ambient data, to be in attainment or may need only minor SIP changes. Therefore, EPA believes that a demand for immediate submissions of attainment demonstrations and control strategies for all of these areas is unreasonable when additional air quality data could provide a more clear picture of the status of the area.

For the reasons given immediately above, EPA is adopting the SIP development policy it proposed April 2, 1985. The EPA is dividing all areas of the country into three categories: (1) Areas with a strong likelihood of violating the PM_{10} NAAQS and requiring substantial SIP adjustment (Group I), (2) areas where attainment of the standards is possible and existing SIP's probably need less adjustment (Group II), and (3) areas with a strong likelihood of attaining the PM_{10} NAAQS and therefore needing only adjustments to the PSD/NSR provisions in their SIP (Group III). For purposes of this program, "areas" are conceptually the same as "areas" for which classifications are designated in Part 81, although there will be no area designations in Part 81 for PM_{10}. The spatial extent of a PM_{10} attainment or nonattainment situation may differ from TSP area boundaries. Guidance is provided in the probability guideline for determining the area of exceedance of the PM_{10} NAAQS.

1. Area Grouping Procedures

For those areas where there are sufficient ambient PM_{10} data to define PM_{10} NAAQS attainment or nonattainment in accordance with Appendix K of 40 CFR Part 50, the need for SIP revision can be determined relatively easily. The SIP's are due within 9 months for such areas that cannot demonstrate attainment. For other areas with insufficient PM_{10} data, EPA will use a three-step process to categorize areas.

First, where only ambient TSP data are available, or limited amounts of PM_{10} are available, EPA in cooperation with State agencies will use those data and the probability guideline to classify areas preliminarily as Group I, II, or III.[7] The EPA will presume that (1) areas with a probability of not attaining the PM_{10} standard of at least 95 percent fit into Group I, (2) areas with a probability of between 20 and 95 percent fit into Group II, and (3) areas with a probability of less than 20 percent fit into Group III.

Second, EPA's Regional Offices, after consulting with the appropriate State and local agencies, will evaluate the existing TSP SIP's and other relevant information for each area in their jurisdiction (1) to see whether information other than the probability of nonattainment justifies changing the group for an area, and (2) to determine the appropriate group for areas that the EPA could not classify under the first step because ambient TSP data were unavailable.

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[6] Developing a sound attainment demonstration is generally resource intensive. It requires an in-depth study of the emission characteristics of specific sources in the demonstration area and a thorough evaluation of the anticipated effects of various emission levels from those sources. The EPA estimates it could require up to 4 work years and $250,000 to develop a SIP for each area found to be violating the NAAQS.

[7] The EPA has computerized the procedures described in the probability guideline and has made the computer software available to States to calculate nonattainment probabilities. The EPA has also made the results of its own calculations available to the States.

The EPA has found that some uncertainty exists in the PM_{10} measurements collected prior to 1987 with the PM_{10} instruments available at that time. Specifically, a study performed by EPA in Phoenix has shown that in extreme situations, data collected by the Sierra Anderson SA-321A size selective PM_{10} instrument can be influenced by coarse particles to the extent that concentrations may be biased high by as much as 20 percent.[a] In addition, data collected by the Wedding and Associates GMW-9000 instrument may be biased low 20 percent due to soiling problems and improper cleaning. In order to account for the uncertainty associated with such reported PM_{10} concentrations, a zone of uncertainty or "gray zone" of ±20 percent will be placed around the standard for the purpose of calculating the probability of nonattainment. Further, the gray zone will be divided into two portions: the lower gray zone, defined as 0.8 NAAQS to NAAQS, and the upper gray zone, specified as NAAQS to 1.2 NAAQS. In particular, when calculating probabilities based on PM_{10} from SA-321A instruments, PM_{10} observations within the upper gray zone will not be counted as exceedances of the 24-hour standard and PM_{10} annual means (calculated using all PM_{10} data) that fall in the upper gray zone will not be counted as exceedances of the annual standard. Similarly, when calculating probabilities based on PM_{10} data from GMW-9000 instruments, 24-hour PM_{10} values and annual PM_{10} means (using all data) that are within the lower gray zone will be counted as exceedances of the respective standards.

If an area's nonattainment probability using TSP data and PM_{10} data drops below 0.20 or rises above 0.95, as a result of PM_{10} data in the "gray zone," it will be classified Group II in order to resolve the possible uncertainty associated with the PM_{10} data and to ensure that a determination is made as to whether the existing SIP provides for attainment and maintenance of the PM_{10} standards. Areas will not be classified Group I solely on the basis of SA-321A data that are within the upper gray zone. Similarly, areas will not be classified Group III on the basis of data, Produced by GMW-9000 instruments, that are within the lower gray zone.

Third, to insure national consistency, all grouping will be reviewed by representatives of EPA's Headquarters staff and Regional Offices.

Requirements for Group I Areas. States will be required to submit complete SIP's for all areas in Group I within 9 months of promulgation of the PM_{10} NAAQS. These SIP's will have to contain full PM_{10} control strategies including a demonstration of attainment as expeditiously as practicable, but not later than 3 years (for the primary standards) from approval of the SIP, and provisions for maintenance, as well as meeting the PSD/NSR requirements discussed in section D below.

As provided in section 110(e) of the Act, the Governor may apply, at the time the SIP is submitted, for up to 2 additional years for attainment of the primary standards. The Administrator may grant an extension if he determines that:

> . . . . (A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such 3-year period, and
>
> (B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the 3 years cannot be achieved.

The Administrator must also determine that the plan provides for:

> . . . (A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (A) [above] within the 3-year period, and
>
> (B) such interim measures of control of the sources (or classes) described in paragraph (A) (above) as the Administrator determines to be reasonable under the circumstances.

Requirements for Group II Areas. States will also be required to submit SIP's for all areas in Group II within 9 months of NAAQS promulgation, but those SIP's need not contain full control strategies and demonstrations of attainment and maintenance. Instead, States may submit "committal" SIP's that supplement the existing SIP's with enforceable commitments to:

(a) Gather ambient PM_{10} data, at least to an extent consistent with minimum EPA requirements and guidance.[8]

(b) Analyze and verify the ambient PM_{10} data and report 24-hour PM_{10} NAAQS exceedances to the appropriate Regional Office within 45 days of each exceedance.

(c) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see Section 2.0 of the PM_{10} SIP Development Guideline) or when an annual arithmetic mean (AAM) above the level of the annual PM_{10} NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the appropriate Regional Office.

(d) Within 30 days of the notification referred to in (c) above, or within 37 months of promulgation, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM_{10} standards, and immediately notify the appropriate Regional Office.

(e) Within 6 months of the notification referred to in (d) above, adopt and submit to EPA a PM_{10} control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the committal SIP.

The EPA proposed (50 FR 13130) that States determine whether measures in the existing SIP were adequate [item (d) above] and notify the appropriate Regional Office within 18 months after approval of the committal SIP. Assuming the committal SIP was submitted to EPA 9 months after promulgation and EPA approved the SIP in 6 months, the notification of SIP adequacy would have been due within 33 months of promulgation. The EPA is changing the latest date of notification of SIP adequacy to 37 months after promulgation for two reasons. First, 18 months was allowed initially for making PM_{10} air quality measurements. However, 3 years of valid air quality data are required to determine the attainment status of an area in accordance with Appendix K of 40 CFR Part 50. Second, if the committal SIP is submitted late or approval is not completed in 6 months, the date of notification would extend beyond 33 months after promulgation. The EPA believes it is best to have a firm date by which the adequacy of the existing SIP must be determined for Group II areas and still allow adequate time to collect PM_{10} data. The PM_{10} monitors have been operating for several months already in many Group II areas. The time a State has to implement a control strategy and comply with the PM_{10} NAAQS could be shortened by 4 months if the committal SIP is submitted in 9 months, approved in 6 months, and the notification of SIP adequacy is not made until the end of the 37-month period. However, any area that requires a full 3 years of monitoring to determine that it is violating the NAAQS, must be very close to the NAAQS. Therefore, only very minor adjustments to the control strategy should be required to attain the NAAQS.

The following factors should be considered in determining the adequacy of the existing SIP in item (d) above:

(1) *Air quality data.* (Time is alloted for up to 3 years of PM_{10} data to be collected if a NAAQS is not violated sooner. At the end of that time, the available PM_{10} data must be examined to determine if attainment can be demonstrated in accordance with Appendix K of 40 CFR Part 50 or the "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards" in the absence of adequate PM_{10} data.)[f]

(2) *The present control strategy.* (The existing control strategy must be evaluated to determine if it is fully implemented; if it is adequately enforced; if start-up, shutdown, and malfunction regulations are adequate to prevent circumvention of the emission limitations; and it can adequately attain and maintain the PM_{10} NAAQS if the above conditions are met. The evaluation should include the use of dispersion and receptor modeling techniques where appropriate.)

(3) *Emissions data.* (The emission inventories must be evaluated to determine if emissions can increase significantly because actual emissions are far below allowable emissions for the area, if sources with operating permits are not operating or are operating at reduced capacity, and if "banked" emissions could impact future air quality.)

The committal SIP must include an enforceable schedule with appropriate milestones or checkpoints. The EPA will review and act on both the committal SIP's and on control strategies submitted under step (e). For Group II areas, States may, if they wish, submit full PM_{10} attainment demonstrations within 9 months as required for Group I areas in lieu of the committal SIP.

The SIP revisions necessary to meet the PSD/NSR requirements detailed in section D below must be submitted in 9 months, also.

Requirements of Group III Areas. For Group III areas, EPA will presume that the existing SIP is adequate to demonstrate attainment and maintenance of the PM_{10} standards. States, therefore, need only make SIP revisions as required under the

[8] Section 58.13 of 40 CFR Part 58 requires States, within 1 year after PM_{10} NAAQS are promulgated, to begin sampling PM_{10} everyday (at at least one site) in areas with a PM^{10} nonattainment probability of 95 percent or greater, and every other day (at at least one site) in areas with a nonattainment probability between 20 and 95 percent.

preconstruction review program (see section D) within 9 months. The EPA will make a final determination of the adequacy of individual Group III SIP's at the time it takes action on these revisions. Any of these areas which subsequently observe violation of the PM_{10} NAAQS will be treated as newly discovered nonattainment areas.

2. Area Designation Policy

The EPA proposed to amend Part 81, "Designation of Areas for Air Quality Planning Purposes," by transferring the area designation of nonattainment for the primary TSP standard to an area designation of nonattainment for the secondary TSP standard. Since the Administrator has determined that the indicator for the secondary standard should also be changed from TSP to PM_{10}, EPA is withdrawing this proposed change to Part 81.

The EPA will continue to accept requests by the State to revise area designations for TSP from nonattainment to attainment or unclassifiable. The requests will continue to be reviewed during the transition period for compliance with EPA's redesignation policies as issued in memorandums from the Director of the Office of Air Quality Planning and Standards (OAQPS) April 21, 1983, and September 30, 1985.[g,h]

States are encouraged to request redesignation of TSP nonattainment areas to unclassifiable at the time the PM_{10} control strategy for the area is submitted. When EPA approves the control strategy as sufficient to attain and maintain the PM_{10} NAAQS, it will also approve the redesignation. An area designation must be retained until EPA promulgates PM_{10} increments because the section 163 PSD increments depend upon the existence of section 107 designations. Once States have PM_{10} SIP's in place and EPA has promulgated PM_{10} increments, EPA will act on requests to delete TSP designations. See section D below for a full discussion of this issue in connection with the requirements for PSD programs.

3. Fugitive Dust Policy

The EPA proposed to continue a 1977 fugitive dust policy which directs the efforts to control particulate matter be expended first at sources in urban areas and next at certain large manmade sources in rural areas.[a,i] In response to a broad range of comments on this issue, EPA has developed three alternatives to the existing policy. Elsewhere in the **Federal Register** today EPA is publishing a notice proposing those alternatives. Until EPA has reviewed comments on the proposal and takes final action, the existing policy will remain in effect.

4. Emission Trading (Bubble) Policy

In EPA's initial bubble policy (44 FR 71780, December 11, 1979), alternative emission reduction options (bubbles) approved as part of a SIP for TSP are treated as any other existing SIP provision that may or may not be revised in order to control emissions from other sources to attain the PM_{10} NAAQS. The recently published final Emissions Trading Policy Statement Technical Issues Document confirms this position by stating that if ambient violations of any standard are discovered in an area where EPA has approved a trade, sources in the trade could potentially be subject to requirements for additional emission reductions just as all other sources in the area [see 51 FR 43814 (December 4, 1986)]. Although there is no specific requirement to review existing bubbles, bubble agreements cannot interfere with State efforts to attain and maintain the PM_{10} NAAQS.

5. Sanctions Policy

Section 110 provides for Federal intervention if a State fails to submit an adequate SIP. Under section 110(c)(1), EPA must promulgate plan provisions for a State if the State fails to submit a plan at all, submits a plan that does not meet the section 110 requirements, or fails to comply with a notification under section 110 (c)(1)(C), i.e., a call for a plan revision under the provisions of section 110(a)(2)(H). The EPA must promulgate a substitute plan unless the State in the interim adopts and submits a plan that EPA finds adequate.

The EPA intends to explore the legal issues, appropriateness, and authority for imposing a construction ban under sections 110(c) and 301 of the Act as the first element of a Federal plan. A construction ban would serve to limit any growth of PM_{10} emissions in a nonattainment area while EPA is developing a control strategy for the area. The EPA will also explore the appropriateness and authority of using funding sanctions to stimulate development and implementation of plans.

D. Prevention of Significant Deterioration/New Source Review Program

Today's notice promulgates certain new and revised provisions which will change the way in which EPA and State and local air pollution control agencies implement preconstruction review requirements for particulate matter. The most significant effects of today's actions are that: (1) Proposed new and modified sources must evaluate their emissions of particulate matter on the basis of two separate indicators—TSP and PM_{10}, and (2) the preconstruction review of major new and modified sources which emit particulate matter will be conducted primarily under the PSD program. Since EPA is not using section 107 area designations for PM_{10}, Federal requirements which apply to the preconstruction review of sources locating in designated section 107 nonattainment areas will generally not apply with respect to particulate matter in the long run, as explained in more detail below.

1. Revised PSD Program for Particulate Matter

a. *Transition.* Today's amendments to the Part 52 PSD regulations, establishing new requirements for PM_{10}, take effect 30 days from today on the effective date of the revised NAAQS for particulate matter. The EPA is making these amendments effective at the earliest possible date because once the PM_{10} NAAQS becomes effective, EPA will be responsible for the protection of the PM_{10} NAAQS as well as the review of PM_{10} as a regulated pollutant.[9] Consequently, PSD applicants requesting preconstruction review approval from EPA or a State that implements PSD under a Federal delegation of the Administrator's PSD authority must begin to address the new PM_{10} requirements unless they are eligible for grandfather status as described below.

States with approved PSD SIP's will have 9 months from the effective date of today's PSD amendments to revise their SIP's for PM_{10} and submit them to EPA for approval. See revised section 51.166(a)(6) [formerly section 51.24(a)(6)]. In the meantime, the EPA expects these States to continue implementing their existing programs for particulate matter. In some cases, this may involve the automatic assumption of responsibility for the review of PM_{10}. EPA believes that some States may have PSD rules which, like EPA's Part 52 PSD

[9] Section 52.21(k)(1) contains a general provision requiring prospective PSD sources to demonstrate that their potential emissions will not cause or contribute to air pollution in violation of "any" NAAQS. On the date that EPA's revisions to the NAAQS for particulate matter become effective, EPA will become responsible for protecting the revised NAAQS, instead of the old TSP NAAQS, under the preconstruction review process. Similarly, various PSD provisions, e.g. 52.21(j)(2), apply to "any pollutant subject to regulation under the Act," and would, thereby, automatically include the PM_{10} indicator for particulate matter on the date this new indicator becomes effective.

regulations, are sufficiently open-ended so as to require the immediate protection of the PM_{10} NAAQS and review of PM_{10} as a regulated form of particulate matter.

Over the course of the next several months, EPA will audit State PSD permitting activities to determine whether or not States are implementing their existing PSD requirements for particulate matter. In the event EPA finds that a State is not protecting the NAAQS for particulate matter in either of its regulated forms, EPA will initiate action pursuant to section 110(c)(1) of the Act to disapprove the State's PSD program with respect to particulate matter and will reinstate amended Part 52 PSD regulations into the SIP for such State. The EPA will then protect the PM_{10} NAAQS in that State through the Part 52 PSD program until the State submits, and EPA approves, a PM_{10} SIP which includes adequate PSD provisions.

As a result of today's amendments, additional new sources and modifications may be required to undergo PSD review for particulate matter, and sources already required to undergo PSD review for particulate matter may be subject to additional analyses for PM_{10}. In fairness to certain of these applicants, EPA is phasing in the new requirements by means of two grandfather provisions and a monitoring program.

The first grandfather provision prevents the retroactive review of sources that were not previously subject to PSD review for particulate matter, provided that the affected sources: (a) Obtained all the necessary approvals under the SIP before the effective date of the new requirements, and (b) commenced construction within 18 months from the effective date of the new requirements or any earlier time required under the SIP [see new section 52.21(i)(4)(ix)].

The second provision excludes from PSD review for PM_{10} any applicant that, before the effective date of today's Part 52 PSD amendments for PM_{10}, submits to EPA or its delegated representative a complete PSD application which already addresses particulate matter, even though a final determination has not yet been made on the permit [see new section 52.21(i)(4)(x)]. Any source eligible for this grandfather provision must meet the requirements for particulate matter that were in effect before the effective date of the PM_{10} amendments.

Today's action also provides some relief to certain applicants who would otherwise be expected to include up to 1 year of ambient monitoring data for PM_{10} as part of a complete PSD application. Three transition provisions relating to the preapplication monitoring requirements will take effect. These provisions are described below under g. *PSD Monitoring.*

b. *Source Applicability.* A major new source or modification will be subject to PSD review for PM_{10} if it would emit PM_{10} in significant amounts.[10] Today's action amends the definition of "significant" for particulate matter under section 51.166(b)(23)(i) [formerly 51.24(b)(23)(i)] and section 52.24(b)(23)(i) to include an emission rate for the new PM_{10} indicator. Upon its effective date, the new significant emission rate, 15 tpy of PM_{10} emissions, will begin to apply to each PSD applicant subject to EPA's Part 52 PSD regulations.

States with approved PSD SIP's are expected to make similar amendments to their PSD rules to add the new significant emission rate for PM_{10} within the 9-month period allowed under the Act. In the meantime, States must examine the source applicability provisions in their existing PSD rules to determine whether PM_{10} is automatically incorporated as a "regulated" pollutant (by virtue of the fact that it will be a pollutant regulated under the Act) or whether specific rulemaking action must be taken to accomplish that result. The EPA believes that some States may have PSD rules which could immediately require the review of PM_{10} as a regulated pollutant, even though the State rules do not yet contain a specified significance level for PM_{10} emissions. Prospective PSD applicants should inquire as to the status of existing State PSD rules with respect to PM_{10}.

The existing "particulate matter" significance level of 25 tpy is being clarified to apply to particulate matter emissions [see revised sections 51.166(b)(23)(i) and 52.21(b)(23)(i)].[11]

[10] PSD applies to new major stationary sources and major modifications of existing major stationary sources. A "major stationary source" for PSD purposes is: (1) any source type belonging to a list of 28 source categories that emits or has the potential to emit 100 tpy or more of any pollutant regulated under the Act, or (2) any other source that emits or has the potential to emit any pollutant regulated under the Act in an amount equal to or greater than 250 tpy. The PSD review requirements apply to any regulated pollutant which the new or modified major stationary source would emit in significant amounts. Thus, a source may be "major" for only one pollutant, but PSD review would apply to other pollutants emitted in "significant" amounts.

[11] Elsewhere in today's notice, the Administrator has established new definitions, "particulate matter emissions" and "PM_{10} emissions," to distinguish between those emissions of the pollutant particulate matter which affect ambient concentrations of TSP and PM_{10}, respectively. [See new section 51.100 (oo) and (qq).]

The EPA considers TSP to remain regulated under the Act because, even though a NAAQS will no longer exist for TSP, the statutory PSD increments for particulate matter will still be expressed in terms of TSP. It follows then that, since PSD applicability is defined in terms of significant emissions of any pollutant subject to regulation under the Act, significance levels for both regulated indicators of particulate matter are necessary.

The fact that there are now two different indicators for particulate matter means that sources of particulate matter could be required to undergo PSD review for either or both forms of the pollutant. Conversely, an emission rate lower than the significant emission rate for one form of particulate matter would allow a source to be excluded from PSD review only with respect to that specific form of the pollutant.

For source modifications, the PSD review requirements will apply to whichever form of particulate matter results in a significant net emission increase. Any determination of whether a proposed modification would exceed the PM_{10} significance threshold should be based only on PM_{10} emission changes, which include actual emission changes from a particular modification and other creditable increases and decreases of actual PM_{10} emissions that are contemporaneously associated with the modification. For PM_{10}, that portion of the contemporaneous particulate matter emission change with a particle size larger than PM_{10} would not be creditable. If both PM_{10} and TSP particulate matter emissions increase significantly, then both are subject to PSD review.

c. *Geographic Applicability.* Under the section 110 implementation pathway applicable to PM_{10}, the new PSD requirements for PM_{10} will generally apply if the otherwise subject source locates in an area designated attainment or unclassifiable under section 107 for any pollutant. This means that the PSD requirements for PM_{10} will apply in all locations because there are no areas where a section 107 nonattainment designation currently applies to all pollutants. The Administrator's determination that only section 110 applies to the revised (PM_{10}) NAAQS for particulate matter means that there will be no Federal requirements under a Part D based nonattainment area preconstruction review with respect to PM_{10}.

For TSP, the PSD requirements will continue to apply in any area which does not have a section 107 nonattainment designation for TSP.

Since the indicator for the particulate matter NAAQS has been changed to PM_{10}, arguably it is no longer meaningful to maintain section 107 designations (whether attainment, nonattainment, or unclassifiable) with respect to the TSP NAAQS.[12] However, EPA believes that as stated in the April 2, 1985, proposal, the Class II increments for particulate matter only apply in areas that bear a designation of attainment or unclassifiable specifically for the NAAQS for particulate matter, not just for any NAAQS.[13] Consequently, in order to preserve the applicability of the increments as desired, EPA will not approve any State requests to completely delete these TSP designations until the new PM_{10} increments have been established (see further discussion below in section f. *PSD Increments for Particulate Matter).*

States may request redesignation of their existing TSP nonattainment areas to unclassifiable areas, pursuant to section 107 and EPA will approve such request on or after the date that EPA approves the State's control strategy as sufficient to attain and maintain the PM_{10} NAAQS. Such redesignations would enable PSD review to be applied with respect to both indicators for particulate matter and will avoid the complexity of conducting the nonattainment NSR for TSP, while simultaneously conducting PSD for PM_{10}.

d. *Best Available Control Technology.* While no actual changes have been made to the control technology review requirement for PSD, today's action by the Administrator to regulate a PM_{10} indicator for particulate matter means that any major stationary source or major modification having the potential to emit PM_{10} in significant amounts, i.e., 15 tpy or more, and seeking a PSD permit under the Part 52 PSD regulations must now consider how it will ensure the application of BACT for PM_{10} emissions. A similar source undergoing PSD review under EPA-approved State regulations will also be required to address BACT for PM_{10} if the applicable State's PSD rules automatically cover PM_{10} as a regulated pollutant, despite the lack of a specified significance level for PM_{10} emissions in the State rule; otherwise, no BACT requirement will apply to PM_{10} in such State until the SIP is appropriately revised.

Where PSD applicants request permit approval under the Part 52 PSD regulations, the Administrator will seek to establish emission limitations defined in terms of PM_{10} emissions contingent upon the availability of emission factors and control efficiency information for the source under review. The feasibility of establishing a PM_{10} emission limitation will thereby be a case-by-case determination. Compliance in each case is to be based on an acceptable test method also to be determined on a case-by-case basis. Appendix C of EPA's PM_{10} SIP Development Guideline describes procedures for modifying existing sampling techniques to collect PM_{10} emissions data. The EPA is also developing specific PM_{10} emissions measurement methods which will be available in the future.

Where a quantifiable PM_{10} emission limit is not yet feasible, the Administrator intends to allow the use of TSP-based emission limitations, provided that the reduction of PM_{10} emissions—and not just "particulate matter emissions"—has been considered to the extent possible in the BACT determination.

e. National Ambient Air Quality Standards Analysis

When the revised NAAQS for particulate matter become effective, each PSD application subject to EPA's Part 52 PSD regulations, and not eligible to be grandfathered under today's action, must contain a PM_{10} NAAQS analysis. Applicants seeking permits from States with SIP-approved programs will also have to demonstrate compliance with the PM_{10} NAAQS if the State's regulations are sufficiently open-ended to accommodate EPA's revised NAAQS for particulate matter without further rulemaking action on the part of that State. Otherwise, PSD applicants will have additional time before a PM_{10} NAAQS analysis will be required by the State's revised preconstruction review procedures.

The required PM_{10} analysis must demonstrate that the proposed major new or modified source will not cause or contribute to ambient concentrations of PM_{10} exceeding the PM_{10} primary and secondary NAAQS as required by section 165 of the Act. This analysis applies in general to PSD sources which have the potential to emit significant amounts of PM_{10} emissions. In the event that such demonstration indicates that the proposed source would cause or contribute to ambient PM_{10} levels exceeding the revised NAAQS, the Administrator will require the applicant to obtain, at a minimum, sufficient PM_{10} emission offsets to compensate for the source's ambient impact in the area of the violation.[14] In addition, the Administrator intends that emission offsets allowed for PSD purposes must meet applicable creditability criteria equivalent to those set forth under section 51.165(a) [previously section 51.18(j)].[15]

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[12] Section 107(d) authorized the States to submit, and EPA to subsequently promulgate, a list of areas that on August 7, 1977, did or did not comply with the various NAAQS in existence on that date. Although section 107(d)(5) continues to provide for revisions to these lists, it would make no sense to continue to maintain a list indicating ongoing compliance with a standard that is no longer in effect.

[13] See 50 FR 13147, discussion under d. *NAAQS Analysis/Increment Consumption.* The same argument would also apply to Class III increments; however, no Class III designations have been made to date under the PSD program. (With respect to all subsequent discussions pertaining to Class II areas and increments, such discussions will also apply to Class III areas and increments.) On the other hand, mandatory Class I areas and the Class I increments would remain in effect since their general applicability is independently established by the Act and is not linked to the section 107 area designation process See sections 162(a) and 163(b)(1) of the Act.

[14] In the April 2, 1985 proposal, the Administrator indicated that under the Part 52 PSD regulations he intended to require, at a minimum, that sources found to cause or contribute to a PM_{10} NAAQS violation must obtain sufficient emission offsets so as to provide a "net air quality benefit," thus satisfying the "cause or contribute to" language under section 165(a)(3) of the Act. Later in the proposal, he stated that the "net air quality benefit" test would also apply to offsets required under State PSD programs and section 51.18(k) [now section 51.165(b)] programs as well. The Administrator has since concluded that the "net air quality benefit" test for the required offsets is appropriate in only some areas, namely areas where violations of the PM_{10} standard already exist but do not have an approved plan demonstrating attainment of the PM_{10} standard as expeditiously as practicable. In these areas, new sources would otherwise continue to "contribute" to the existing violations if they merely compensated on a one-for-one basis for their own ambient impact and failed to also provide air quality progress, inasmuch as such areas have yet to satisfactorily provide for attainment through available reductions from existing sources. Only by providing for some air quality improvement could new sources help to remedy the existing nonattainment problems in such areas rather than "contributing" to them. Conversely, in areas that are not experiencing existing violations of the PM_{10} NAAQS, new sources would not need to provide air quality progress because once such sources adequately compensate for their own adverse air quality impacts, the areas would remain in attainment of the PM_{10} NAAQS. Similarly, in areas that may be experiencing violations of the PM_{10} NAAQS but that do have an approved plan demonstrating attainment as expeditiously as practicable, new sources that adequately compensate for their own projected ambient impacts would not need to provide additional emissions reductions since the areas are already moving towards attainment as expeditiously as is practicable. States may, of course, require additional offsets in these latter areas should they desire to do so.

[15] On August 25, 1983, EPA proposed amendments to its regulations concerning the construction of new and modified stationary sources of air pollution (48 FR 38742). Included were two proposed changes to the offset creditability criteria contained in section 51.18(j) [recodified as section 51.165(a)]. Specifically, EPA proposed to revise subparagraph (j)(3)(ii)(T3c) [now (a)(3)(ii)(c)] which pertains to the creditability of emission reductions achieved by shutting down an existing

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Where a State must first revise its SIP to redefine the ambient air quality standards for particulate matter in terms of PM_{10} before a PM_{10} review would be required, EPA anticipates that a proposed source seeking a State permit (including a PSD permit where applicable) will have to continue to demonstrate its ability to meet the TSP-based NAAQS as a matter of State law. Moreover, the particular State preconstruction review requirements which must be met will continue to be based on geographic applicability as governed by current section 107 area designations for TSP. It is possible, therefore, that a source could be subject to EPA's Part 52 PSD regulations requiring compliance with the newly-revised PM_{10} primary and secondary NAAQS and the applicable State preconstruction review procedures requiring compliance with the old TSP NAAQS. This particular outcome will not occur, however, after such State revises its SIP for the PM_{10} NAAQS.

f. Prevention of Significant Deterioration Increments for Particulate Matter

The Administrator today is announcing his intention to establish PM_{10} increments pursuant to section 166 of the Act.[16] In accordance with the procedures established by Congress under paragraphs (a) and (b) of section 166, over the next several years, EPA will propose and promulgate regulations which set forth new PSD increments measured by the PM_{10} indicator. These regulations are to become effective 1 year after the date upon which EPA promulgates them, whereupon States will be given time to revise their SIP's to include the new PM_{10} increments and submit them to EPA for approval. Ultimately, EPA plans to allow States to use the new PM_{10} increments to effectively replace the existing increments for "particulate matter," as further described below.

During the period of time required to incorporate the new PM_{10} increments into State PSD programs, the Administrator is taking steps to ensure that the existing PSD increments for particulate matter in section 163 of the Act will continue to be measured by the TSP indicator. Although the statute does not specify an indicator to be used to measure particulate matter levels against the statutory increments (they are simply referred to as increments for "particulate matter"), it is clear from the legislative history that Congress could only have intended these increments to be measured as TSP.

At the time Congress created the increments, the particulate matter NAAQS were measured as TSP. Congress created the "particulate matter" increments in section 163 by taking a percentage of the lowest NAAQS concentration for each measurement period [see e.g., H.R. Rep. No. 95–294, 95th Cong., 1st Sess. (1977), p. 153ff]. In this way, ambient concentrations of particulate matter could generally be restricted to levels below the NAAQS levels. This approach only makes sense if Congress intended to use the same indicator for the increments as was then in use for the NAAQS. Therefore, under today's revisions EPA is clarifying these increments so as to apply them specifically to ambient TSP concentrations.

The TSP increments will continue to apply in mandatory Class I areas (see footnote 13) and in Class II areas for TSP, i.e., area's which, pursuant to section 107, are designated attainment or unclassifiable for TSP. The EPA anticipates a potential problem if States should request deletion of their section 107 TSP designations when they adopt PM_{10} NAAQS to replace the old TSP NAAQS. As noted earlier in this preamble, the statutory Class II TSP increments will no longer apply in an area once EPA has deleted the existing section 107 designations for TSP pursuant to State request, since Class II areas are defined as a subset of section 107 area designations. If EPA were to grant such requests in the absence of PM_{10} increments, many areas would be subject to no PSD increments for particulate matter in either of its regulated forms. This potential result would clearly conflict with congressional intent to prevent significant deterioration with respect to particulate matter.

The EPA intends to deny State requests for deletion of section 107 TSP designations pending each State's adoption of PM_{10} increments. In support of this position, EPA will rely upon the introductory phrase in section 107(d) which states "[f]or the purposes of . . . part C (relating to prevention of significant deterioration of air quality) . . . ." Although section 107 area designations with respect to TSP may no longer be appropriate in the absence of the TSP NAAQS, EPA will require the retention of the TSP designations for the purposes of Part C of the Act until PM_{10} increments are in place.

The EPA will also rely on its authority under section 301 to "prescribe such regulations as are necessary to carry out [its] functions" under the Act. That is, until PM_{10} increments are promulgated, it will be "necessary" within the meaning of section 301 to retain existing section 107(d) TSP designations so that the Class II TSP increments will continue to apply in Class II areas for particulate matter. However, as described earlier, States will have the opportunity to remove their existing TSP nonattainment designations by requesting to EPA that each area be redesignated as unclassifiable. The EPA will approve such redesignations on or after the date it approves each State's plan to attain and maintain the PM_{10} NAAQS.

The redesignation to "unclassifiable" pursuant to section 107 of the Act will enable the PSD preconstruction review requirements to apply to subsequent major new sources and major modifications proposing to locate in such redesignated areas. Hence, at the time that the first complete PSD application affecting the redesignated area is filed, the baseline date will be established for TSP and the amount of increment which would be consumed must be determined. The EPA plans to develop guidance to enable PSD sources and States to determine which changes, if any, in actual PM_{10} emissions, occurring during the time that the area was designated nonattainment, affect the amount of TSP increment consumed.

Once EPA promulgates PM_{10} increments, a dual increment system for particulate matter, i.e., TSP and PM_{10}, will exist. The EPA believes that a mandatory dual increment system will be unnecessarily burdensome and cumbersome. A partial remedy to a mandatory dual system exists in the fact that States will be given the opportunity to request the deletion of all or a portion of their existing section 107 area designations for TSP. In any area designated as attainment or unclassifiable for TSP, States may effectively end the applicability of the Class II increments for "particulate matter" under section 163 of the Act when the TSP area designation for such

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source or permanently curtailing production or operating hours; and to change subparagraph (j)(3)(ii)(e) [now (a)(3)(ii)(e)] which currently requires that all emission reductions claimed as offset credit be federally enforceable. The EPA intends to apply the existing offset creditability criteria to PSD offsets until it takes final action on the August 25, 1983, proposal. In the event that such final action changes the offset creditability criteria in section 51.165(a), then the changes would also be applied with respect to the PSD offset program.

[16] Section 166 of the Act requires in part that, for pollutants for which NAAQS are promulgated after August 7, 1977, EPA must promulgate regulations which "shall provide specific measures at least as effective as the increments established in section 163 . . . and may contain air quality increments, emission density requirements, or other measures."

areas is deleted. However, because the Class I increments for particulate matter under section 163 of the Act are not similarly affected by the deletion of the section 107 area designations, EPA intends to construct Class I PM_{10} increments that are equivalent in effect to the statutory Class I TSP increments. In the event that EPA can do so, it will then allow States to use these Class I PM_{10} increments as surrogates for the Class I TSP increments. Thus, PSD permit applicants and permit reviewers might not have to deal with two separate increment analyses.

g. Prevention of Significant Deterioration Monitoring

Today's action adds a second significance concentration for the purpose of requiring PSD preapplication monitoring data for particulate matter. Under the amended Part 52 PSD regulations, EPA will use the newly-defined significant ambient concentration, 10 $\mu g/m^3$ (24-hour average) of PM_{10}, to help determine when a proposed PSD source must, prior to the submittal of its PSD application, collect and evaluate ambient PM_{10} data. See revised section 51.166(i)(8)(i) and section 52.21(i)(8)(i).[17]

Although TSP monitoring will continue to be required under the newly amended regulations, TSP will no longer be a pollutant for which a NAAQS exists. Therefore, discretionary authority in accordance with section 52.21(m)(1)(ii) and section 51.166(m)(1)(ii) is available to exempt TSP monitoring in certain situations. When an exemption is granted, the required air quality analysis would instead have to use air quality dispersion modeling to estimate ambient impact.

The Administrator will phase in new PM_{10} monitoring according to a transition program being set forth today in the Part 52 PSD regulations. The three monitoring transition provisions are essentially the same as those in the proposal, except that time periods focus on the effective date of the PSD amendments for PM_{10} rather than the promulgation date of the amendments. For complete applications submitted during the first 10 months after the PM_{10} amendments become effective, no new PM_{10} monitoring will be required; however, the Administrator may require an applicant to consider existing air quality data (PM_{10}, PM_{15}, or TSP) if it is available and representative.[18]

When a PSD application would become complete after 10 months and not later than 16 months from the effective date of the PSD amendments for PM_{10}, the prospective PSD source must use existing PM_{10} or PM_{15} representative air quality data or collect PM_{10} monitoring data.[19] The collected data can come from nonreference sampling methods. The amount of PM_{10} data collected during this period will involve at least 4 months of sampling, but will depend on the applicant's ability to collect more data before the application would otherwise become complete.

Finally, for complete applications submitted after 16 and not later than 24 months from the effective date of today's amendments, applicants must collect ambient PM_{10} data from reference method PM_{10} samplers. The amount of data collected from the reference monitors must include at least 4 months of data but, as above, depends on when the PSD application would otherwise become complete.

2. Revised New Source Review Requirements for Particulate Matter

The fact that EPA will implement the PM_{10} NAAQS under a section 110 pathway significantly limits which Federal NSR requirements will apply to major sources with PM_{10} emissions. For the reasons described elsewhere in this preamble, the NSR requirements contained in section 51.165(b) [formerly section 51.18(k)] will apply, but the other major source NSR requirements for areas not attaining the NAAQS, including the nonattainment regulations under section 51.165(a) [formerly section 51.18(j)], the offset rule under 40 CFR Part 51 Appendix S, and the construction ban under section 52.24 will not apply with respect to PM_{10}.

The purpose of the section 51.165(b) NSR regulations is to require States to establish preconstruction review procedures which address major sources proposing to locate in designated attainment or unclassifiable areas and whose proposed emissions would cause or contribute to a NAAQS violation in any area. States have been required to implement a preconstruction review program which meets the requirements of section 51.165(b) for the particulate matter NAAQS which until now were based on the TSP indicator. Current State programs may or may not continue to protect the TSP-based primary and secondary NAAQS for particulate matter depending upon the language in their regulations pertaining to NAAQS. Such programs must continue to be implemented with respect to TSP NAAQS until the States revise their SIP's where necessary to define the NAAQS in terms of PM_{10}.

The EPA expects States to implement their section 51.165(b) NSR program in accordance with the same geographic and source applicability criteria as apply for PSD purposes with one exception. That exception pertains to the definition of "major source." The NSR source applicability requirement with respect to major sources is more inclusive than the PSD source applicability requirement in that "major" for NSR purposes includes all sources which have the potential to emit at least 100 tpy of any regulated pollutant as defined in section 302(j) of the Act. The EPA is amending the section 51.165(b) regulations to clarify the ambiguity that was present in the original requirements [see new section 51.165(b)(1)]. The Act requires that this

[17] The Administrator is taking this opportunity to correct several errors that have existed in the table of significant ambient concentrations since the time the table was first published on August 7, 1980. First, the averaging period for lead is being revised to a 3-month average. This would conform to the 3-month averaging period specified for the lead NAAQS. The averaging period for each criteria pollutant was intended to conform to the shortest averaging period for which a NAAQS was defined for that particular pollutant.

Second, the Administrator is revising the significant concentrations for beryllium and hydrogen sulfide because these concentrations were listed incorrectly. The beryllium concentration was promulgated as 0.0005, which was low by a factor of 2. It should have been 0.001 $\mu g/m^3$. The hydrogen sulfide concentration was promulgated as 0.04 $\mu g/m^3$, which is the minimum detectable concentration and did not reflect the factor of 5 as used to establish each of the other significant ambient concentrations. The correct value for hydrogen sulfide should therefore be 0.2 $\mu g/m^3$.

[18] The EPA has revised its "Ambient Monitoring Guidelines for Prevention of Signification Deterioration (PSD)" to fully describe Agency policy for implementing each of the transition provisions which are set forth in today's notice.

[19] The April 2, 1985, proposal contained a discrepancy concerning the specific kinds of nonreference sampling methods that the Administrator would accept during the second transition period (after 10 but not later than 16 months from the PSD amendments). In the FEDERAL REGISTER preamble (p. 13150) there is a statement indicating that EPA would accept data based on TSP sampling for comparison with the proposed PM_{10} primary NAAQS. The inclusion of TSP as acceptable data was in error. The August 1984 draft of EPA's "Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)," which was made available for public comment simultaneously with the proposed PSD amendments, contained the Agency's intended policy which was to allow TSP data to be used during the second transition period only in comparison with the then proposed TSP secondary NAAQS (see section 2.5.2.2, p. 44 of the draft guidance). The Administrator's decision not to allow the use of TSP data for comparison with the PM_{10} NAAQS is based on the fact that the relationship between PM_{10} and TSP may vary quite widely on both a temporal (day-to-day) and spatial (site-to-site) basis so that no single conversion factor can be used to reliably determine PM_{10} concentrations using TSP data. Thus, the Administrator wishes to discourage the use of TSP data after the initial 10-month transition phase. After such time, sources should be able to gather at least 4 months of ambient PM_{10} or PM_{15} data.

definition of major source, in section 302(j) of the Act, be used for the purposes of section 110(a)(2)(D) of the Act, which is the primary basis for the section 51.165(b) NSR requirements.

In accordance with the April 2, 1985, proposal, the Administrator will allow States, as part of an approvable section 51.165(b) NSR program for PM_{10}, to establish an emission offset program. Such emission offset program, in order to be approvable by the Administrator, must be consistent with the PSD offset creditability criteria as described earlier (also see footnote 15). Emissions offsets must be applied as a prerequisite for approving a construction permit for any applicable major new or modified source whose prospective construction would otherwise cause or contribute to a PM_{10} NAAQS violation. "Cause or contribute to" would be determined in accordance with numerical criteria at least as stringent as the significance criteria set forth under new section 51.165(b)(2). States which experience more severe nonattainment problems may need to consider more stringent significance criteria to address new construction that would occur in the area of a nonattainment problem. In any case, the required offsets must be sufficient to compensate for the proposed source's ambient impact in the area of a NAAQS violation to the extent that the source's emissions would cause or contribute to the violation [see new paragraph 51.165(b)(3)].

With respect to federally-imposed construction bans already in effect for TSP, such bans will automatically be lifted when EPA's PM_{10} NAAQS in 40 CFR Part 50 become effective in 30 days. EPA finds that it will no longer have authority under section 110(a)(2)(I) of the Act to impose the construction ban against violations of the old TSP NAAQS. Under that statutory provision and 40 CFR 52.24, a construction ban is to apply within designated nonattainment areas failing to meet Part D of the Act for a major new source or modification that would cause or contribute to a violation of a NAAQS. While TSP nonattainment designations will be retained at least for the time being, the TSP NAAQS will be replaced by PM_{10} NAAQS in 40 CFR Part 50. Thus, EPA will be unable to continue imposing a ban to compel new Part D planning for TSP. States will, however, be expected to continue implementing their existing NSR rules, including those based on Part D of the Act.

V. Revised Regulations

A. Revisions to Part 51

1. Regulatory Reform

On November 7, 1986, EPA promulgated (51 FR 40656) restructured 40 CFR Part 51 regulations. Part 51 was changed by deleting obsolete provisions, removing unnecessary requirements, reducing reporting burdens on the States, and restructuring the entire part into a new format that will be easier to use than the existing format. Now restructured, Part 51 reflects the Act requirements pertaining to SIP's in general terms rather than specifying requirements by pollutant. This action simplifies formerly detailed regulations and provides more flexibility. In keeping with that effort, the revisions to Part 51 being promulgated today are in the new format. Since most references to specific pollutants have been removed from Part 51, only a small number of changes, aside from the NSR/PSD changes, are needed in this action to revise Part 51 in response to the revised particulate matter standards.

2. Basic State Implementation Plans Requirements

The new Subpart G, Control Strategy, of Part 51 contains general requirements that must be met by States in order that their PM_{10} SIP be approvable by EPA. For example, Subpart G requires that each SIP include a description of the control measures being adopted, a demonstration of the adequacy of those measures to provide for timely attainment and maintenance of the NAAQS, and a description of the procedures for implementing and enforcing those measures. These requirements were formerly included in sections 51.12 and 51.13.

The new Subpart K, Source Surveillance, requires provisions for recordkeeping by owners or operators of stationary sources, testing inspection, and enforcement of regulations through visibile emission limitations. These requirements were formerly included in section 51.19. The Administrator will judge the PM_{10} SIP's against these requirements to determine their approvability. Where SIP's already contain certain provisions, such as a description of administrative procedures, these need not be repeated in the SIP revision submitted for the PM_{10} NAAQS.

3. Section 51.100, Definitions

The EPA is adding definitions to section 51.100 (formerly section 51.1) to help clarify the distinctions between the terms, "particulate matter," "particulate matter emissions," "PM_{10}," "PM_{10} emissions," and "total suspended particulates." A generic definition of "particulate matter" is added which parallels the use of the term in the revised criteria document for particulate matter. The term "TSP" is defined as particulate matter as measured by the high-volume method described in Appendix B of 40 CFR Part 50. The term "PM_{10}" is defined as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method described in Appendix J of 40 CFR Part 50.

The terms "PM_{10} emissions" and "particulate matter emissions" are defined as those respective materials as measured during a source test that are emitted to the ambient air. For example, particulate matter emissions are finely divided solid or liquid material as measured during a stack test (e.g., EPA Reference Methods 5 or 17) of the sources emissions. The PM_{10} emissions are finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured during a stack test of the source's emissions.

4. Section 51.151, Significant Harm Levels

The review and revision of health and welfare criteria for particulate matter and sulfur oxides and revisions to the NAAQS for particulate matter necessitate certain changes to the significant harm levels. The indicator for the particulate matter significant harm level is changed from TSP to PM_{10} to conform with the revision of the primary NAAQS for particulate matter.

Also the significant harm concentration level for particulate matter is revised. The criteria document and its addendum indicate that a scientific consensus exists linking increases in daily total mortality and particles during the historical London wintertime pollution episodes when particle levels, measured as British Smoke (BS),[20] and sulfur dioxide (SO_2) levels were both in the range of 500 to 1000 $\mu g/m^3$.[j] Strong evidence exists showing an association between pollution and mortality at substantially lower levels. However, substantial disagreement exists as to whether such associations are causal at these low concentrations.[k] While the relative

[20] British Smoke is a pseudo-mass indicator related to small particle (size less than a nominal 4.5 micrometers) darkness. This particulate matter indicator was widely used in British and other European studies.

importance of SO_2 cannot be specified unequivocally, the conservative assumption (with respect to particles) is that similar responses might have occurred without substantial amounts of SO_2 present as discussed in the EPA staff paper and the staff paper addendum for particulate matter (p.98).[1,1] In addition to potential SO_2 interaction, consideration must also be given to comparing BS and PM_{10}. Because the smoke reading responds to darkness instead of mass, the relationship between BS and a mass index such as PM_{10} is particularly uncertain. To account for this, the staff paper (p. 99) derives general boundary relationships comparing BS and PM_{10} units from the available aerometric data. The lower bound assumes a BS reading equals a PM_{10} mass reading while the upper bound assumes PM_{10} mass = BS reading + 100 $\mu g/m^3$. The lower bound includes a margin of safety compared with the upper bound of the range. A reasonable estimate of PM_{10} that may cause significant harm can be made by combining the conservative assumption that particulate matter above 500 $\mu g/m^3$ (BS > 500 $\mu g/m^3$) will cause increased mortality and the less conservative assumption that PM_{10} = BS + 100 $\mu g/m^3$. On this basis, EPA is changing the significant harm level for particulate matter to 600 $\mu g/m^3$ measured as PM_{10} (PM_{10} = BS > 500 $\mu g/m^3$ + 100 $\mu g/m^3$).

The significant harm level for the combined levels of particulate matter (measured as TSP) and SO_2 are deleted. As noted in the staff paper (p. 71), it is not clear from the relevant scientific evidence that such a combined particulate matter SO_2 index provides any improvement in protecting against significant harm from particulate matter over a single significant harm level for particulate matter that is chosen with due consideration of the potential interactive effects. As discussed above, the proposed significant harm level for particulate matter does take into account, in a conservative fashion, potential SO_2 interaction. Continuation of the current combined TSP–SO_2 index is, therefore, no longer appropriate nor needed from the standpoint of particulate matter.

More detailed discussion of the information supporting these revisions can be found in the criteria document and staff paper which are available for inspection at the Central Docket Section (Docket No. A–82–37). The address of the Central Docket Section is given at the beginning of this notice.

5. Section 51.165, Permit Requirements

In subsection (a) of this section, the significance level for particulate matter is deleted because the TSP-based NAAQS have been deleted and the new indicator for particulate matter, PM_{10}, is not subject to the provisions of this section concerning nonattainment NSR. In paragraph (b)(1) reference is added to paragraphs (a)(1) (iv) and (v) of section 51.165 which contain definitions of "new major stationary source" and "major modification." Also in paragraph (b)(1) a change is being made to replace "40 CFR 81.300 et seq." with "section 107 of the Act" where reference is made to area classifications. A table similar to the table in section III.A of Appendix S is being added in a new paragraph (b)(2) to indicate significant ambient impact concentrations. Within this table, the annual and 24-hour concentrations are being deleted for TSP since there is no longer an annual or 24-hour TSP NAAQS.[2,1] Concentrations for the annual and 24-hour averaging times are being added to define significant ambient impacts for PM_{10}.

Paragraph (b)(3) is being added to clarify EPA's position that States may allow proposed major sources or major modifications to obtain emission offsets to compensate for their adverse ambient impacts where such sources or modifications would otherwise cause or contribute to a violation of a NAAQS. Finally, paragraph (b)(4) is being added to exclude a source from the requirements of paragraph (b) with respect to any pollutant for which the location of the source is designated as nonattainment.

6. Section 51.166, Prevention of Significant Deterioration of Air Quality

Various amendments to the requirements for the prevention of significant deterioration are being added to section 51.166. Paragraph (a)(6)(i) is changed to allow States 9 months from the effective date of any new PSD amendments to adopt and submit the appropriate SIP revisions. In paragraph (b)(23)(i), the existing significant emissions rate for particulate matter is changed so as to clarify that it is to be measured in terms of "particulate matter emissions." A new significant emissions rate for particulate matter is also added and is expressed in terms of "PM_{10} emissions." Thus, there are significant emissions rates for two regulated forms of particulate matter, i.e., TSP and PM_{10}.

The increments for particulate matter in paragraphs (c) and (p) are clarified to indicate that the specified concentrations apply to ambient TSP. In paragraph (i) the significant ambient concentration for particulate matter is changed to indicate that the specified value applies to either TSP or PM_{10}. Also in paragraph (i), technical and clarifying amendments are being made to lead, beryllium, and hydrogen sulfide to correct for previous typographical errors. Finally, a new provision is being added that would allow States to adopt PM_{10} transition provisions that parallel the proposed transition provisions in section 52.21.

7. Sections 51.322 and 51.323, Annual Source Emissions Reporting

The EPA requires annual reporting of actual emissions of criteria pollutants in order to perform various types of national analyses and to prepare national emissions trends reports. The EPA proposed to amend section 51.322, "Sources subject to emissions reporting," and section 51.323, "Reportable emissions data and information," to specify requirements for State reporting of both particulate matter emissions and PM_{10} emissions on an annual basis. However, since the Administrator has determined that the indicator for both primary and secondary standards should be changed from TSP to PM_{10}, the promulgated amendments simply replace particulate matter emissions reporting with PM_{10} emissions reporting. To provide time for States to develop the capability for reporting PM_{10} emissions data and for EPA to store and retrieve such data, State reporting of PM_{10} emissions data is to begin with calendar year 1988 emissions. The requirement to report particulate matter emissions data ends with State reporting of calendar year 1987 emissions.

8. Revisions to Appendix L

Appendix L to Part 51 contains example air pollution episode levels and contingency plans for the purpose of preventing air pollution from reaching the significant harm levels prescribed in section 51.151. To conform with the revisions to the significant harm level for particulate matter, the Administrator is making the following revisions to the example episode levels for particulate matter:

(1) The indicator for particulate matter episode levels is changed from TSP to PM_{10}, as it is for the significant harm level;

(2) The combined particulate matter/sulfur dioxide episode levels are deleted;

[2,1] The annual and 24-hour concentrations for TSP in the table as it occurs in Appendix S are not being deleted at this time because States may continue to use these concentrations to address the TSP NAAQS which may remain in effect within their SIP's until the SIP's are revised with respect to PM_{10}.

(3) The example alert level for particulate matter (measured as PM_{10}) is changed to 350 $\mu g/m^3$, 24-hour average;

(4) The example warning level for particulate matter (measured as PM_{10}) is changed to 420 $\mu g/m^3$ 24-hour average; and

(5) The example emergency level (measured as PM_{10}) is changed to 500 $\mu g/m^3$, 24-hour average.

The basis for changing the indicator for particulate matter and for deleting the combined particulate matter/SO_2 episode levels is the same basis as discussed above for the revisions to section 51.151. With respect to example episode levels, the proposed alert level reflects the upper bound of the range of interest in the staff paper. The staff paper concludes that at or above 350 $\mu g/m^3$ health effects are likely to occur in certain sensitive population groups. Therefore, it would be appropriate under the episode criteria to initiate first stage control action when this ambient level of particulate matter occurs. The warning and emergency levels are set at approximately equal increments between the alert level and the significant harm level. This approach provides opportunity for the control actions associated with each episode level to take effect before the next stage is triggered and additional control actions become necessary.

9. Revisions to Appendix S

In Appendix S, the emission rate which defines significant amounts for "particulate matter" in paragraph II.A.10(i) is changed to clarify that such emissions are to be measured as "particulate matter emissions," consistent with the newly defined term added to section 51.100. The new indicator for particulate matter, PM_{10}, is not subject to the nonattainment provisions of this Appendix.

B. Revisions to Part 52

1. Section 52.21, Prevention of Significant Deterioration of Air Quality

The amendments for the Part 52 PSD regulations in section 52.21 include the amendments described for section 51.166 concerning (1) the significant emission rate for particulate matter; (2) the ambient increments for particulate matter; and (3) the significant ambient concentrations for particulate matter, lead, beryllium, and hydrogen sulfide. Also, in paragraph (i)(4) new provisions are being added to grandfather certain applicants from additional PSD review resulting from new PM_{10} requirements when prescribed criteria have been met by the applicant. In paragraphs (i)(11), (m)(1)(vii), and (viii), new transition provisions for preconstruction monitoring are added to exclude applicants from PM_{10} monitoring methods depending on when a complete application is submitted relative to the promulgation date of the PM_{10} NAAQS. Finally, paragraph (w)(2) is changed to replace the date "June 28, 1978," with the date of the PSD requirements in effect immediately preceding the effective date of the new PM_{10} amendments.

2. Section 52.24, Statutory Restriction on New Sources

The provisions for prohibiting construction in certain designated nonattainment areas are revised by deleting the significant emission rate for particulate matter from the definition of "Significant" under paragraph (f)(12). This emission rate is no longer needed because, through the deletion of the TSP NAAQS, construction ban provisions of this section no longer apply to particulate matter.

VI. Public Participation

The proposal to implement the revised particulate matter standards drew many responses during the public comment period. Since the issues raised by commenters had a significant effect on the contents of today's final rule, EPA feels it is important to make the connection between comments and the development of this final rule as clear as possible.

Accordingly, there is a separate discussion below for each part of the proposal that drew comments in which issues of major importance were raised. In order of presentation, these parts are: legal issues, attainment probability estimates, SIP development policy, PSD and NSR issues, technical, miscellaneous, and procedural issues.

Each discussion opens with a brief review of what was proposed. This is followed by a summary of the issues raised by the commenter and EPA's response. The EPA's response to comments not addressed in this preamble may be found in the docket.

A. Comments on Legal Issues

A full discussion of the legal issues raised in the proposal is presented in section III above.

1. Comments Favoring an Exclusive Section 110 Pathway

Many commenters who supported use of section 110 exclusively for implementation of the revised PM_{10} NAAQS argued that Part D by its own terms does not apply to any revisions to a NAAQS. The EPA does not agree with this premise. As explained in Section III above, if this were true, a relaxation of a NAAQS that reduces a State's planning burden would shield an area that had failed to meet the original NAAQS from the strict Part D requirements despite the fact that it would now be easier for the area to attain. It is unlikely that Congress would have intended such a result. The term "national ambient air quality standard" in section 171(2) must therefore encompass revised standards as well.

These commenters similarly pointed to the fixed attainment dates in Part D as evidence that Part D could not apply to any NAAQS revisions after the statutory 1982 attainment date. However, as a matter of statutory construction, the duty to demonstrate attainment by the Part D attainment dates should properly still apply to NAAQS relaxations after 1982 that reduce an area's planning burdens and ease opportunities to demonstrate attainment, or that have no significant effect on planning burdens.[22] There is no reason for Congress to have provided such areas with additional time to prepare SIP's to meet such revisions. All such areas were already under a duty to demonstrate attainment of the prior NAAQS by 1982, and no further planning would be required of such areas by virtue of such relaxations. Where NAAQS revisions do impose significant additional planning burdens, States could not be expected to show that they could attain by dates that had already passed before the planning burdens were imposed and thus Congress would not have wanted Part D to apply to such areas.

One commenter pointed to section 406(d)(2)(B) of the 1977 amendments, arguing that this provision required the use of section 110 in all cases unless the Act expressly stated otherwise. In fact, this provision makes no mention of section 110, but merely states that SIP revisions should be submitted within 9 months of promulgation of EPA regulations necessitated by the 1977 Amendments.

One commenter discussed the legislative history of Part D and concluded that Congress only intended it to apply in 1977 to areas that then exceeded the then-existing NAAQS. These arguments support EPA's position that Part D should not apply to NAAQS revisions that impose significant new

[22] The EPA notes that under its sanctions policy (48 FR 50686), EPA would in practice approve a Part D SIP and lift the construction ban upon a demonstration that the SIP would provide for attainment as expeditiously as practicable after 1982. This policy would apply to particulate matter SIP's in all areas subject to Part D.

planning burdens. But it would drastically undercut any benefits of the program Congress established in 1977 to remove Part D applicability as to NAAQS revisions that reduce planning burdens and ease opportunities for attainment of the NAAQS as they existed in 1977, the very standards Congress sought to see attained when it created Part D. Any area not in attainment of such a revised standard would presumably have exceeded the pre-1977 NAAQS as well.

Several commenters supporting use of section 110 cited *Bethlehem Steel Corp. v. EPA*, 723 F.2d 1303 (7th Cir. 1983), quoting the court's statement that the Part D deadlines only make sense as applied to areas that data indicated in 1977 were in violation of then-existing NAAQS. This case had to do with EPA's authority to reclassify areas so as to bring new areas not previously subject to it under Part D. The EPA's position that revisions which impose significant new planning burdens are not subject to Part D is consistent with this case, in which the court concluded that EPA could not unilaterally apply the strict Part D requirements to new areas after 1977. This case does not support the position that Part D would not apply to revisions that impose no new planning burdens because all areas subject to Part D under such revisions should already have been subject to Part D under the original pre-1977 NAAQS.

A few commenters cited *U.S. Steel v. EPA*, 595 F.2d 207 (5th Cir. 1979), asserting that the court had construed section 406(d)(2) of the 1977 Amendments as applying section 110 even to SIP's subject to Part D but incapable of meeting its deadlines. Actually, this case merely held that the relevant Part D plans would be due within 9 months of necessary EPA regulations as stated in section 406(d)(2)(B) and made no reference to section 110.

Finally, one commenter cited the opening sentence of the Supreme Court decision in *Chevron USA v. NRDC*, 104 S. Ct. 2778 (1984), where the Court stated that Congress in 1977 enacted additional requirements for areas that had failed to achieve previously established standards. This statement is merely descriptive of Congress' actions in 1977 and does not reflect any thought on the Court's part as to the relative applicability of section 110 or Part D to future NAAQS revisions.

Numerous commenters addressed EPA's alleged concern that application of section 110 to all NAAQS revisions, including relaxations, would automatically shield States from having to show that SIP relaxations would not interfere with attainment and maintenance of the revised NAAQS. These commenters apparently misunderstood EPA's actual concern that use of section 110 in cases of NAAQS relaxation would shield areas from the strict Part D requirements despite eased attainment burdens. Consequently, the commenter's suggestions that existing Part D SIP's would continue to apply pending SIP revisions to comply with the revised NAAQS are not relevant to EPA's actual concern over ultimate SIP relaxation in such cases. Under either section 110 or Part D, States would still have to show that any SIP relaxation would not interfere with attainment and maintenance of the revised NAAQS.

One commenter alleged that historical precedent supports use of the section 110 pathway in all cases. The commenter pointed first to an EPA decision in 1979 to accept less than all reasonably available control measures in a Part D plan so long as reasonable further progress toward attainment could be demonstrated as evidence of EPA's alleged past practice of dispensing with certain Part D requirements. In reality, EPA merely stated in 1979 its interpretation that Part D only requires implementation of such measures as necessary to insure reasonable further progress and attainment as expeditiously as practicable, and that Part D does not require implementation of additional cost effective measures that would not further expedite attainment. The EPA did not purport to dispense with any applicable Part D requirements (see 44 FR 20375).

This same commenter also stated that EPA's 1979 position on implementation of the revised ozone standard did not support use of Part D for NAAQS relaxations. The commenter alleged that EPA merely concluded that SIP revisions would not be required as a result of the ozone NAAQS revision since States could keep more stringent requirements in their SIP's if they desired. It is true that EPA concluded that additional SIP revisions would not be required to implement the relaxed ozone standard. However, EPA also stated that the deadline for Part D SIP submission established in the 1977 Act would not be affected by the ozone NAAQS revision (44 FR 8202). Implicitly, EPA concluded that Part D would continue to apply to all areas that failed to meet the new relaxed ozone standard.

Several commenters noted that use of Part D for revisions that did not impose significant new planning burdens could result in a more stringent implementation scheme for welfare-based secondary standards than for health-based primary standards if only the revised primary standard imposed new planning burdens, a result that Congress allegedly would not have intended. Since EPA has concluded that the primary and secondary PM_{10} standards should be identical in all respects, this hypothetical situation will not arise for PM_{10}. The EPA notes that a similar situation could also arise if EPA revised a primary standard to impose additional planning burdens while making no revision to a secondary standard for the same pollutant. However, as discussed in section II.B.1.b.(4) above, EPA has determined that sanctions do not apply for failure to have Part D revisions for a secondary NAAQS.

Finally, some commenters suggested that an exclusive section 110 pathway would be preferable in that it would relieve EPA of the duty of determining which revisions imposed additional new burdens. The EPA agrees that a uniform section 110 pathway would be simpler to administer, but believes that the adopted interpretation is the better reading of the statute.

2. Comments Favoring an Integrated Section 110 and Part D Pathway

Several commenters urged EPA to read section 110 and Part D as an integrated whole, applying Part D to any areas not attaining any NAAQS. These commenters noted that section 110 specifically incorporates Part D in sections 110(a) (2) (D), (H) and (I). However, EPA reads these cross references as only incorporating Part D to the extent it would otherwise apply by its own terms. The EPA does not see that the cross references reconcile the inherent conflict concerning applicability of section 110 and Part D.

In support of the integrated approach, one commenter cited *City of Seabrook v. EPA*, 659 F.2d 1349 (5th Cir. 1980). There, the court held that EPA's duty to approve or disapprove SIP's under section 110 applies also to plans submitted under Part D. Again, EPA believes this refers only to Part D SIP's submitted for areas subject to Part D by its own terms. The decision merely clarifies the cross references to Part D in section 110 and makes no statement about applicability of either pathway to new or revised standards.

One commenter supporting the integrated approach addressed the conflicting attainment deadlines in section 110 and Part D by suggesting that the Part D deadlines provide exceptions to the 3-year deadline in section 110 only for those areas

originally designated nonattainment in 1977. The commenter thus felt that any areas designated nonattainment at later dates would still be subject to Part D but would have to attain as expeditously as practicable, but in no case later than 3 years, as required by section 110. This argument ignores the plain language of section 172(a)(1) which establishes the alternative Part D deadlines for "each such area" subject to Part D. The commenter did not provide further legal support for its interpretation.

Another commenter supporting this position pointed out that section 110 sets the general rule, i.e., the 3-year deadline, while Part D merely establishes an exception to the rule for certain areas. Since the exception would not make sense as applied to areas not in attainment of a new or revised NAAQS after 1982, the general rule of section 110 would necessarily apply. Again, this argument ignores the clear sense of section 172(a)(1) that the 1982 deadline apply to all areas subject to Part D.

A different commenter suggested resolving the attainment deadline issue by acknowledging that the 1982 deadline would apply to all areas subject to Part D, but giving the States the opportunity to demonstrate under section 110(a)(2)(H)(i) that more time would be needed to complete additional planning necessary to attain the revised standard. The commenter suggested that if EPA found the demonstration adequate, it could hold the section 110(a)(2)(I) construction ban in abeyance. This may be possible in practice, but EPA believes it is not relevant to the statutory construction of Part D. Congress required in section 110(a)(2)(1) that for all areas subject to Part D each SIP must provide for a ban that would apply unless the SIP provides for meeting all of the requirements of Part D, which necessarily includes the Part D 1982 attainment deadline. Given this, Congress would not have intended Part D to apply to areas that could not possibly plan to meet the 1982 attainment date because a revised NAAQS imposes significant new planning burdens after that date.

As a policy matter, one commenter noted that failure to apply Part D to the revised PM_{10} standard would produce the undesirable result that implementation of the revised standard for particulate matter would proceed under weaker substantive provisions than the original TSP standard, which was one of the standards Congress clearly intended to be subject to the strict Part D requirements. This result would occur, but is not necessarily undesirable in light of the significant new planning burdens imposed upon States to demonstrate attainment of the revised PM_{10} standard. Part D is clearly a remedial provision and should not apply to a new or revised standard that imposes significant additional planning burdens which States have never previously addressed. This is so even if the standard applies to a pollutant which had previously been subject to a different standard for which States had failed to plan adequately.

Commenters also reasoned that EPA should use an integrated approach because of benefical program results, such as continuation of existing Part D SIP's and sanctions and alleviation of the need to determine which revisions impose additional planning burdens. Whether or not EPA would like to see these results, they do not provide a different basis for determining statutory applicability where EPA can do so based upon the statutory language and legislative intent.

One commenter claimed that EPA's past practice did not support its current position. The commenter pointed out that although EPA did apply Part D to the 1979 ozone relaxation, it did not then indicate that Part D would not have applied if the revision had imposed significant new planning burdens. This is true, but EPA had no reason to do so because Part D did in fact apply in that instance. The commenter similarly found no precedent in the case of EPA's 1978 statements that Part D did not apply to the lead NAAQS because it was an entirely new, as opposed to a revised, standard. Presumably, the commenter felt that areas which had failed to plan adequately to demonstrate attainment of the original particulate matter NAAQS should not be relieved of the strict Part D requirements in implementing the revised NAAQS for particulate matter. The EPA, however, believes that a revised NAAQS which imposes significant new planning burdens is similar to a new NAAQS in that it imposes burdens on the States which they were not subject to prior to the revision and which they consequently should not be penalized for failing to have completed.

This same commenter also noted that many areas which Congress subjected to Part D in 1977 had not submitted SIP's prior to 1977 and thus had full planning burdens ahead of them. This may be so, but the relevant fact is that those planning burdens were originally imposed in the 1972 Act. Whether or not given areas had complied with previous planning duties, Congress created Part D in 1977 to encourage areas that either failed to plan at all or planned poorly to promptly complete the planning necessary to show attainment of the standards that should have been attained years earlier.

This commenter also pointed to the sum of congressional action since 1967 in which Congress reacted to State's planning failures by granting more time but only while imposing specific additional requirements. This line of reasoning is inapplicable to NAAQS revisions which impose significant new planning burdens because States that have had no previous opportunities to meet new planning burdens can hardly be said to have failed to do so.

One commenter argued that EPA should apply Part D merely because implementation under section 110 has produced little progress toward attainment. Whether this is true or not, it does not provide a legal basis for applying Part D rather than section 110.

This same commenter pointed to EPA's policy for newly designated nonattainment areas, indicating that there EPA applied Part D but substituted alternative dates for the 1979 SIP submittal and 1982 attainment dates where these dates had passed prior to discovery of a nonattainment problem. In that case, EPA was faced with a situation where Part D appeared to clearly apply. The EPA attempted to fashion a reasonable approach for applying Part D to areas found to be in nonattainment after the normal Part D deadlines had passed. There, EPA attempted to effectuate congressional intent as closely as possible by honoring the spirit of the statute since the literal language did not fit the situation. The EPA's actions in that context are not relevant to a statutory interpretation of the proper applicability of Part D to new or revised NAAQS.

In addition, EPA notes that the court in *Bethlehem Steel Corp. v. EPA*, supra, held that EPA could not redesignate newly found nonattainment areas so as to bring them under Part D and apply the above-described schedule in the absence of a State request. The Court relied heavily on the onerous nature of Part D and its conviction that EPA should thus not unilaterally create analogies to Part D and apply them to areas not clearly subjected to Part D by Congress. This line of reasoning would apply equally to areas subject to revised standards imposing significant new planning burdens, and consequently supports EPA's statutory interpretation that Part D does not apply to such areas.

B. Comments on Use of the Probability Guideline

Because of a lack of PM_{10} data, EPA proposed to use statistical probabilities to estimate PM_{10} concentrations from the relatively abundant TSP data. The EPA calculated this relationship by relating available PM_{10} and Inhalable Particulate (IP) monitoring data to collocated TSP monitors. As discussed earlier, procedures for using statistical probabilities in the absence of ambient PM_{10} data were explained in the probability guideline (EPA 450/4–86–017).

Commenters were concerned with the concept of the guideline as well as technical problems with the guideline. First, they felt that EPA should base its SIP development program on actual ambient air quality data, not probability estimates. To do this, the commenters stated, EPA should allow sufficient time to obtain adequate data on the new standards, identify problem areas, and develop and submit necessary revisions to SIP control strategies. *Second*, there were several comments of a technical nature. The commenters were concerned about many issues, among them the use of a national probability distribution instead of regional and seasonal distributions, and the use of PM_{10}/IP ratios instead of PM_{10}/TSP distribution ratios.

In response to the first comment, when EPA promulgates a new or revised standard, the Act requires the States to develop a SIP within 9 months to show attainment of the standard. This schedule presents a problem because some areas do not yet have sufficient PM_{10} air quality data to determine their attainment status. However, TSP air quality data is readily available and, together with available PM_{10} data, a reasonable probability of the attainment status of the area may be determined. Thus, the likelihood that any given area will or will not attain the PM_{10} NAAQS can be determined by using the available TSP and PM_{10} data as explained in the probability guideline. The EPA is using its estimate of the probable attainment status of an area in conservative manner by requiring only areas with at least 95 percent probability of nonattainment to submit full SIP's within 9 months. Areas with less than 95 percent probability have additional time to collect PM_{10} data and determine their attainment status prior to submission of full SIP's.

In response to the second group of comments on the probability guideline, EPA has made several technical revisions in the guideline. A number of comments dealing with the basis for the distribution were anticipated and resolved through an evaluation and refinement of the procedure conducted concurrently with the public review period. The results of this study are described in a report, An Examination of 1982–1983 Particulate Matter Ratios and Their Use In The Examination of PM_{10} NAAQS Attainment Status (EPA–450/4–85–010) which is in Docket No. A–82–38.[m] The report reexamines the seasonal and regional specific ratio issues and supports the use of a national distribution. As a result of this study and the public comments, the guideline, including the probability curves, has been revised. The curves are now based on only elevated TSP and PM_{10} data collected concurrently in 1982 and 1983. The recommended procedure no longer relies on a single conversion factor between IP and PM_{10}. A distribution has been prepared for PM_{10}/IP data. Also the guideline was clarified in several areas to address comments that were prompted by misinterpretation of its instructions. The guideline has been updated just prior to promulgation to incorporate charts for the specific level of the NAAQS, thus simplifying the computations somewhat. A computer program is available to help accomplish the computations. A detailed response to the technical comments on the Guideline and the corresponding revisions have been placed in Docket No A–82–38.

C. Comments on the SIP Development Policy

1. Area Grouping Policy

The EPA proposed the same SIP development policy described in section IV(c) above with one exception. The EPA proposed to use PM_{10} and PM_{15} data where available to determine when a control strategy demonstration is needed. Where sufficient PM_{10} data are not available, EPA will use TSP data and the probability guideline to classify areas into Group I, II, or III. Group I areas are required to submit a complete SIP within 9 months that provides for attainment of the NAAQS. For Group II areas, a State would submit a "committal" SIP which need not contain a full demonstration of attainment and maintenance. The "committal" SIP would pledge the State to gather ambient PM_{10} data, analyze and verify the data, and develop an adequate SIP where nonattainment is shown. The EPA proposed to allow up to 18 months from approval of the committal SIP to collect and analyze PM_{10} data. The EPA's final policy is to allow up to 37 months from today to collect and analyze PM_{10} data. If a State notifies EPA, during that time, that they have found a violation of the PM_{10} standard in a Group II area, the State has 6 months thereafter in which to develop and submit a control strategy to EPA. The strategy must then show attainment as expeditiously as practicable but no later than 3 years from the EPA's initial approval of the committal SIP as required by the Statute. The EPA will presume that the existing SIP in Group III areas (less than 20 percent probability of nonattainment) is adequate to maintain the standards.

Industrial and governmental organizations that commented felt the SIP development policy should be based on PM_{10} air quality data and not on probability estimates based on TSP data. The commenters recommended several paths to achieve this end. The paths basically would result in EPA allowing States time to develop a PM_{10} data base before requiring a control strategy. Commenters suggested this could be done in a variety of ways, such as postponing the effective date of the PM_{10} NAAQS or classifying all high nonattainment probability areas as Group II for committal SIP's. Commenters also felt an area might be moved from one group to another without a thorough evaluation of the data. They wanted detailed guidance on how EPA would consider such issues as unusual events, poor quality control, and installation of recent additional controls in an area after the air quality was measured.

The environmental groups generally felt that EPA should follow the letter of the law and require complete plans for all areas within 9 months of promulgation. Even though EPA states that Group II areas are to attain the NAAQS within 3 years of approval of the committal SIP, such areas are not required to submit a full control strategy for EPA approval until 3 years after promulgation. The environmental groups contend that even if such a schedule is adhered to, it is very unlikely that a complete control strategy will be implemented within 1 year of submittal to EPA.

Many PM_{10} monitoring sites have been put into operation since the notice of proposed rulemaking was published April 2, 1985. It is EPA's policy to use valid PM_{10} data to determine the attainment status of an area in preference to TSP-based probabilities. However, 3 years of PM_{10} data are required to demonstrate attainment in accordance with Appendix K of 40 CFR Part 50. Accordingly, EPA developed statistical relationships between TSP and PM_{10} data, reviewed and confirmed

the validity of those relationships and thus feels justified in using those relationships, where sufficient PM_{10} data are not available, to predict PM_{10} attainment status. After a preliminary area classification based on 1983–1985 TSP data, the EPA will consult with State and local agencies to evaluate available PM_{10} data and consider other factors affecting the air quality data and the existing SIP. Thus, EPA believes that the State and local agencies will have adequate opportunity to discuss issues which might determine the final grouping of an area. The EPA's policy is to require only areas with high probability (>95 percent) of violating the PM_{10} NAAQS to immediately begin developing a SIP. Other areas will be allowed up to 3 years from promulgation to collect additional air quality data and determine their attainment status. The amount of emission reduction required for an area is not based entirely upon air quality measurements exceeding the NAAQS. The EPA also requires an examination of allowable emissions, meteorological conditions, and the use of proportional models to demonstrate that air quality will be protected under the worst conditions.

Regarding the concern of environmental groups, EPA proposed to allow up to 18 months for air quality monitoring following approval of a committal SIP. Since a State can take 9 months to submit a SIP and EPA may take 6 months to approve it, a State would not be required to notify EPA of the adequacy of the existing SIP for up to 33 months after promulgation. This notification date would be even later if the date of SIP approval slipped. Therefore, EPA has decided to set the latest date for notifying the Agency of the adequacy of the existing SIP at 37 months from promulgation. This schedule allows 3 years of air quality data to be collected, yet it sets a firm date for declaring the attainment status of an area. The final date of declaration may be 4 months later than originally proposed or several months earlier if SIP approval is delayed. The EPA realizes that it may be difficult to implement a SIP and attain the NAAQS within 3 years after approval of the committal SIP. However, EPA believes that the worst nonattainment situations can be identified quickly, and the States would not need the entire 37 months to collect data. To assist the States, EPA has supplied them with several hundred PM_{10} samplers. These samplers have been deployed in areas of high probability of nonattainment on a priority basis. In addition, EPA monitoring regulations (40 CFR Part 58) require every other day sampling in Group II areas in order to expeditiously confirm their attainment status. Thus, any significant problems with attaining the PM_{10} standards should be found early. Areas requiring the entire 37 months of monitoring to determine their attainment status should be very close to the NAAQS and require only slight adjustments in the existing SIP to show attainment. Thus it should be possible to implement these minor changes in less than 1 year.

2. Fugitive Dust Policy

The Administrator proposed to continue the fugitive dust policy as it was implemented in urban and rural areas exceeding the TSP NAAQS.[a, 1] Reaction to the proposal to continue the existing fugitive dust policy was received from many industrial groups, environmental groups, and State and local agencies. Comments ranged from suggestions that the policy be expanded to opposition to continuing the existing policy.

The existing policy would place all Rural Fugitive Dust Areas (RFDA's) in Group III for SIP development. The EPA has developed three alternatives to that policy. The first alternative would place RFDA's in Group I, II, or III based upon the area's probability of not attaining the annual or 24-hour PM_{10} NAAQS. The second alternative would place RFDA's in Group II or III based upon the area's probability of not attaining annual or 24-hour PM_{10} NAAQS. The third alternative would place RFDA's in Group II or III based only on the area's probability of not attaining the annual PM_{10} NAAQS. These alternatives are discussed in more detail in EPA's proposal, published elsewhere in today's **Federal Register.**

Until EPA issues a revised policy, it is continuing the existing rural fugitive dust policy. To do otherwise would require States to expend resources to develop what may turn out to be unnecessary SIP's.

3. Emissions Trading (Bubble) Policy

It was noted in the proposal notice that past emission trade agreements cannot interfere with a State's efforts to attain and maintain the revised NAAQS. Sources were warned in the initial bubble policy published on December 11, 1979 (44 FR 71780), that if EPA revised the TSP NAAQS to a PM_{10} NAAQS some alternative approaches initially approved by EPA might no longer be adequate to protect the PM_{10} NAAQS. On this basis, States were advised in the proposal notice to consider bubbles approved prior to development of PM_{10} SIP's as any other existing SIP provision and therefore subject to revision.

The recently published final Emissions Trading Policy Statement Technical Issues Document confirms that if ambient violations of any standard are discovered in an area where EPA has approved a trade, sources in the trade could potentially be subject to requirements for additional emission reductions just as all other sources in the area [see 51 FR 43814, 48847 (December 4, 1986)].

Commenters stated that revisions of the TSP NAAQS should not automatically trigger reconsideration of bubble plans, especially in Group II and III areas. They alleged that control techniques applied in bubbles to meet the TSP standard are likely to be the same techniques that would be used to meet a PM_{10} NAAQS, and it was therefore unnecessary to reopen bubble plans to ensure attainment of the revised standard. Also, one commenter thought it would be inequitable for EPA to reopen an agreement with a source after the source has invested in controls.

It is not EPA's intent to automatically reopen all emission trading plans. The EPA merely intended to make three points in the notice of proposed rulemaking:

(1) Bubble agreements cannot interfere with a State's efforts to attain and maintain the revised NAAQS;

(2) States should consider bubbles that were approved after publication of the policy but prior to development of PM_{10} SIP's as any other existing SIP provision; and

(3) Sources were warned in the initial bubble policy published on December 11, 1979, that EPA was considering revising its particulate matter NAAQS and that some bubbles initially approved by EPA might no longer be adequate under the revised NAAQS.

For example, a process source emits 100 tpy of PM_{10}. Instead of controlling the process source, emissions from a source of fugitive dust were reduced 100 tpy in order to attain the TSP standard. If only half of the fugitive dust (i.e. 50 tpy) was PM_{10} it may be necessary for the State to require some portion of the 100 tpy of PM_{10} from the process source to be controlled in order to attain the revised PM_{10} NAAQS.

D. Prevention of Significant Deterioration/New Source Review Program

In his April 2, 1985, proposal, the Administrator announced that the proposed revisions to the NAAQS for particulate matter would potentially affect six existing sets of

preconstruction review requirements contained in Parts 51 and 52 and would, in turn, lead to substantial revisions to existing SIP procedures for PSD and nonattainment NSR (PSD/NSR). Because of some uncertainties as to which implementation pathways would apply to the revised primary and secondary NAAQS, the program proposal included several alternative approaches to account for the different outcomes possible. Many comments were received on this part of the proposal, describing support of specific implementation pathways and the resulting PSD/NSR requirements. This section presents a review of the relevant portions of the original proposal, the comments, and EPA's responses.

1. Revised Prevention of Significant Deterioration Program for Particulate Matter

a. *Effective Date of the Part 52 Federal Prevention of Significant Deterioration Regulations.* In the proposal, the Administrator announced his inclination to make the changes to the Part 52 PSD regulations effective immediately upon promulgation of the revised PM_{10} standards. The intended effect of such an outcome was that EPA and presumably State and local agencies who had been delegated the Administrator's PSD authority would be required to begin immediately to implement the new PSD requirements for PM_{10} on the effective date of the PM_{10} NAAQS, even though States with EPA-approved PSD SIP's would have an additional 9 months to adopt new PSD rules for PM_{10} and submit them for EPA approval.

While expressing his inclination to require immediately effective Federal PSD amendments for PM_{10}, the Administrator acknowledged some potential problems concerning the legal ability of delegated agencies to proceed with their implementation of the PM_{10} requirements under section 52.21. First, it was known that the delegation agreement between EPA and the State or local agency in some cases did not require that the delegatee implement new requirements based on future standards or amended procedures. Second, some PSD delegations could only be implemented after equivalent PSD requirements were enacted into law at the State or local level (although not submitted to EPA as part of an approved SIP). Consequently, even with an adequate delegation agreement, some State or local programs might not be able to implement PM_{10} requirements until their own PSD rules are appropriately changed.

For these reasons, the Administrator said he would consider delaying the implementation of the PM_{10} changes where EPA or its delegatees had PSD permitting responsibility. To assist in this consideration, he solicited comments on the merit of delaying the effective date of the Part 52 regulations and asked whether an immediate conversion to PM_{10} was necessary to provide adequate environmental protection for particulate matter.

Most commenters expressed their support for EPA to delay its implementation of the PM_{10} amendments under the Part 52 PSD regulations until all States are required to have approved PM_{10} preconstruction review procedures in their SIP's. However, the reasons given typically did not relate to problems associated with delegation agreements or other potential legal problems that might occur during the transition period.

Several commenters indicated that a delay would be desirable because it would result in a uniform implementation scheme that would keep the PSD permitting requirements essentially the same in all States. In this way, the commenters noted, Congress' original concern about possible interstate competition from new industry would generally be eliminated. Some commenters stated that the delay would give EPA and the States time to work out any technical difficulties with the new rules before they become effective. Two commenters felt that the delay would allow additional time to expand the data base for developing PM_{10} emission factors. One commenter stated simply that the delay would result in less complication and confusion.

Concerning potential legal problems, one air pollution control agency favored a delay in the new PM_{10} requirements in order to provide additional time to resolve any regulatory or statutory problems in making the transition from TSP to PM_{10}. However, the agency commenting did not specify whether it would experience any such problems. On the other hand, another air pollution control agency fully supported EPA's immediate implementation of the PM_{10} amendments because such action on EPA's part would enable agencies desiring full PSD delegation to make their request as soon after promulgation as they are able.

A number of the commenters who supported EPA's delay of the PM_{10} requirements added that a continuation of the existing requirements for a TSP review under the PSD program would provide adequate interim protection for the particulate matter NAAQS. This was a key concern to EPA when the possibility of a PM_{10} program delay was originally announced. The EPA generally believes that its continued implementation of a TSP review under the PSD program would have been acceptable as long as such review provided for protection of the TSP NAAQS. However, EPA failed to adequately consider the fact that on the effective date of the revised NAAQS for particulate matter, the previously effective TSP NAAQS will no longer exist and consequently EPA will not be able to require PSD applicants to demonstrate that their proposed emission increases will not violate the withdrawn TSP NAAQS. The PSD regulations at 40 CFR 52.21(k) require PSD sources to demonstrate that their emissions will not cause or contribute to air pollution in violation of "[a]ny national ambient air quality standard. . . ." At any time, the applicable NAAQS encompassed by this PSD provision are those standards which are independently defined under 40 CFR Part 50. Moreover, the effective dates of the NAAQS are independently established when the standards are promulgated and are clearly not affected by the status of any amendment to the PSD program.

If EPA does not amend the Part 52 PSD regulations as of the effective date of the revised NAAQS for particulate matter, PM_{10} will be subject to PSD review but EPA's PSD procedure would be devoid of the various PM_{10} thresholds (for source applicability, ambient monitoring, and significant ambient impact) and transition provisions which are necessary to determine when and to what extent a PM_{10} review is to be required. Thus, given the fact that PM_{10} NAAQS become effective 30 days from promulgation, as published elsewhere in today's **Federal Register**, EPA believes that it would not be appropriate to consider a delay beyond the effective date of the PM_{10} NAAQS in its implementation of the PM_{10} amendments to the Part 52 PSD regulations.

b. *Source Applicability.* The Administrator proposed a new emission rate within section 52.21 (b)(23)(i) that would define "significant" for PM_{10}. The new rate would be used to determine when PM_{10} emissions (as opposed to particulate matter emissions which relate to TSP) would require PSD review. An emission rate lower than the new significant emission rate would allow a source to be excluded from PSD review, with respect to PM_{10}, on the grounds that such lower emissions would be insignificant, i.e., de minimis.

In the proposal, the Administrator set the significant emission rate for PM_{10} at 15 tpy. He explained that the approach used to derive this value was based on the methodology used to set the original particulate matter significance level promulgated on August 7, 1980 (45 FR 52676). Basically, this approach used an emission rate for which the modeled ambient concentration represented approximately 4 percent of the 24-hour primary standard. The Administrator also announced in the proposal that two additional points needed to be considered during the final selection process for the PM_{10} significant emission rate.

First, the proposed value of 15 tpy assumed that the 24-hour primary standard for PM_{10} would be set at 150 $\mu g/m^3$. Second, EPA was in the process of studying the potential effects of alternative significance levels in terms of their environmental benefits versus administrative burden. The study was completed after the publication of the proposal notice, but was placed in the rulemaking docket approximately 30 days later for public inspection. The Administrator stated his intention to take into consideration the results of the study and all relevant comments pertaining to it.

Seven commenters expressed opposition to the proposed 15 tpy significant emission rate for PM_{10}, while three commenters conditionally supported it. Of those in opposition, five commenters sought a higher emission rate and two expressed their concern that proposing any significance level at this time is premature.

Two of the opposing commenters were particularly concerned about the effect of a 15-tpy significant emission rate on surface mining activities. One stated that while it did not object to establishing a significance level for PM_{10}, use of the proposed 15 tpy rate would be completely inappropriate for determining major modifications at surface mines if such facilities are made subject to the PSD program. This commenter noted that even a minor extension of a haul road at a large surface mine could increase emissions more than 15 tpy. The commenter argued that such activity should not be considered a major modification which would subject an existing coal mine to PSD review.

The EPA does not believe that special consideration of the effects on surface mining activities or any other specific category of source should generally serve as the basis for selecting the significant emission rate for PM_{10} emissions. The significance values provide a categorical exemption from the PSD preconstruction review requirements based on the de minimis nature of the prescribed emission rate with respect to its potential contribution to the 24-hour primary NAAQS, regardless of the specific emitter of the pollutant.

In addition, the Administrator found that the commenter's position indicating that many surface mines would be adversely affected by a 15 tpy PM_{10} threshold in particular is not totally correct. Minor extensions of haul roads, as are typically made during the course of carrying out the mining operation, would not generally be considered modifications for PSD purposes as long as such activity would already be allowed under the permit granted to the source. Even if this were not the case, the extension of a haul road could easily result in emissions which would exceed any of the emission rates that EPA considered for developing a PM_{10} threshold.

At the present time, however, the fugitive emissions from surface coal mines are generally not included in the determination of whether such source is major for the purposes of PSD [see e.g., 52.21(i)(4)(vii)] and consequently the 15 tpy significance threshold would generally not apply to their PM_{10} emissions. The EPA is considering, under separate rulemaking, whether it is appropriate to extend the requirements for inclusion of fugitive emissions to surface coal mines (45 FR 43215, October 26, 1984). The EPA believes that the commenter's concerns would be more appropriately addressed under that rulemaking action.

Several of the commenters stated that EPA should set the significant emission rate for PM_{10} at a level higher than 15 tpy and gave a variety of reasons for this conclusion. First, two of the commenters said that the 24-hour standard can be significantly higher than 150 $\mu g/m^3$, i.e., 250 $\mu g/m^3$, and still protect public health with an adequate margin of safety. This comment has more to do with the level selected for the 24-hour NAAQS than with the significant emission rate for PM_{10}. Having promulgated a 24-hour standard of 150 $\mu g/m^3$, the Administrator finds no specific argument from the commenters that the proposed significance threshold should not be 15 tpy.

Second, a commenter claimed that the proposed significance value was based on very conservative modeling. Thus, the commenter reasoned that the significance rate could be raised without causing any significant real-world impacts on air quality. The Administrator wishes to point out that the techniques used to derive the selected value followed EPA guidance, using procedures and assumptions common to air quality impact analyses. Such techniques could be used by sources as well to calculate their own ambient impact. The commenter provided no demonstrations to support the allegation that the modeling techniques which EPA used were not appropriate for selecting the PM_{10} significant emission rate.

Third, a commenter used EPA's study of alternative significance levels to conclude that EPA had no justification for selecting a significant emission rate for PM_{10} below 20 tpy. The commenter's conclusion was based on a study finding that, regardless of the PM_{10} significance level considered, up to 25 tpy, approximately 90 percent of all PM_{10} emission increases would be subject to PSD review. The commenter stated that "thousands of dollars" in annual costs to prepare and review applications with respect to PM_{10} would be saved by using a significance level of 20 tpy rather than 15 tpy. The Administrator acknowledges that, according to the study, the additional PM_{10} reviews required under a 15 tpy significance level would not add appreciably to total PM_{10} emissions brought under PSD review. The Administrator, however, is unable to conclude that the additional number of reviews estimated to result from selection of a 15 tpy significance level would cause an administrative burden worthy of consideration for special relief. The court in *Alabama Power* stated that EPA's authority to exempt sources from PSD review "is narrow in reach and tightly bounded by the need to show that the situation is genuinely de minimis or one of administrative necessity" [Alabama Power Company v. Costle, 636 F.2d 323, 361 (D.C. Cir. 1979)]. In keeping with the previous approach for setting de minimis cutoffs, a source capable of consuming almost 5 percent of the primary 24-hour NAAQS is not insignificant, and EPA did not find a compelling need for an exemption by reason of administrative necessity.

One commenter, in an apparent misunderstanding of EPA's approach for selecting a significant emission rate, disagreed with "EPA's modeled calculations of 25 tpy of TSP and 15 tpy of PM_{10} to define 'significant' emissions." This commenter stated that the emission rate for TSP and PM_{10} "should both be the same for most efficient combustion sources." The commenter's finding that an efficiently operated combustion source would have TSP emissions comprised almost entirely of PM_{10} size particles has no bearing on the process of selecting a significant emission rate

for PM_{10} which may differ from the rate for TSP. The significant emission rates for PM_{10} and TSP are based on the relationship of a selected amount of emissions to the resulting modeled ambient concentrations from such level of emissions. These ambient concentrations are then compared to the appropriate primary 24-hour NAAQS to determine whether the emission rate is significant.

Of the three commenters who conditionally supported the proposed significance level, two stated that, if EPA sets the primary PM_{10} standard higher than 150 $\mu g/m^3$, EPA should raise the significance level by a proportionate amount. The third supportive commenter agreed with the 15 tpy emission rate as long as EPA did not eliminate the 25 tpy significance level for TSP. If EPA were to abandon the TSP standards altogether, the commenter suggested that EPA should reevaluate the 15 tpy level in order to provide continued and equivalent ambient air quality protection. As with previous commenters, the Administrator finds no argument here concerning the 15 tpy significance level based on the fact that: (1) He is today promulgating a 24-hour PM_{10} NAAQS of 150 $\mu g/m^3$ in an accompanying final notice in today's **Federal Register**, and (2) the existing significance level for TSP is being retained.

Finally, the two commenters who felt that the proposal of a significant emission rate for PM_{10} was premature claimed that the technology for accurately predicting PM_{10} emissions from a source does not yet exist. One stated in particular that if EPA cannot promulgate a reference method as part of the implementation package, then sources should be allowed to use the existing significance level of 25 tpy in making applicability determinations with the existing reference method for particulate matter emissions. The EPA acknowledges that a reference method for PM_{10} source testing does not yet exist. Nevertheless, the Agency has developed and used PM_{10} source test protocols to collect data from a number of source categories to develop PM_{10} emission factors. The EPA believes that this data is of good quality and can be used to determine potential PM_{10} emissions to be compared against the new PM_{10} significant emission rate. The EPA will continue to develop and update PM_{10} emission factors as additional test data become available. The EPA believes that sufficient information is already available to estimate the level of PM_{10} emissions from many sources that will come under PSD/NSR. However, when it is not feasible to estimate the amount of PM_{10} emissions from a particular source, then it would be appropriate to proceed only on the basis of particulate matter emissions (TSP).

c. *Prevention of Significant Deterioration Geographic Applicability.* Because of the uncertainty as to whether section 110 or Part D would apply to the revisions being proposed, the Administrator described various alternatives as to how the PSD requirements with respect to particulate matter would apply based on the geographic location of the proposed source. In turn, commenters based their responses on certain assumptions and opinions as to which legal pathway would apply. In light of the fact that the Administrator has concluded that only section 110 should be used to implement both the primary and secondary NAAQS, this section will address only those portions of the proposal which pertained to that particular set of alternatives. The issue of whether or not commenters agreed with the Administrator's selection of the section 110 implementation approach was addressed in an earlier part of this preamble.

Under the section 110 pathway for implementing the proposed PM_{10} primary NAAQS, EPA anticipated that PM_{10} preconstruction review would be covered under the PSD requirements in all locations. The proposal explained that this result would occur because States would not be required to designate PM_{10} nonattainment areas pursuant to section 107 of the Act. In the absence of PM_{10} area designations, PSD would apply to PM_{10} sources in any area designated as attainment or unclassifiable pursuant to section 107 for any pollutant unless the area was nonattainment for all pollutants having section 107 designations.[22] There are, at this time, no such pervasive nonattainment situations to be found in the nation.

The proposal also discussed the possibility that the Administrator would make the secondary NAAQS equivalent to the primary NAAQS in all respects, including particle size. If this were to occur, the proposal noted that under a section 110 implementation pathway for the secondary NAAQS, geographic applicability would be the same as the program outlined for the PM_{10} primary NAAQS.

Some commenters disagreed with EPA's assertion that a section 110 implementation approach precludes the use of section 107 area designations with respect to the revised NAAQS for particulate matter. These commenters, while divided over which indicator to use with the term "particulate matter," claimed that there is no authority in section 107 for States to completely remove the area designations for particulate matter. Moreover, the commenters disagreed with EPA's conclusion that the term "national ambient air quality standards" in section 107(d)(1) must mean only the NAAQS in effect in 1977 even if that is the accepted meaning of the same phrase in section 171(2).

The Administrator interprets section 107(d)(1) of the Act to require States to list those air quality control regions which, "on the date of enactment of the Clean Air Act Amendments of 1977," do or do not comply with the NAAQS in existence on that date. In turn, the Administrator believes that section 107(d)(5) provides for States to revise the original list from time to time to reflect changes in air quality relative to those NAAQS in existence in 1977. If Congress meant for the section 107(d)(5) revision process to include new section 107 area designations for new NAAQS, or for revised NAAQS which would create significant new planning burdens, then it would follow that Congress also intended for Part D requirements to apply in areas newly designated as nonattainment for such pollutants after the December 31, 1982, statutory deadline for demonstrating attainment—even though the affected area had no opportunity to complete newly imposed planning burdens and to demonstrate attainment within the statutory timeframe. The Administrator does not believe that Congress intended this outcome. Similarly, it would make no sense to continue to maintain a list indicating ongoing compliance status relative to a level or form of the standard that no longer exists.

[22] If a proposed source or modification qualifies as major, its existing or prospective location must be in a PSD area in order for a PSD review to apply. A PSD area is one designated as attainment or unclassifiable under section 107 for any pollutant for which a NAAQS exists, regardless of what pollutant emissions cause the source to be major. In general, once it is determined that a proposed major source or major modification would occur in a PSD area, the PSD review applies to significant emissions increases of each regulated air pollutant unless the area is designated nonattainment under section 107 for that pollutant. In the case of a pollutant not subject to the section 107 area designation process (e.g., lead, PM_{10}), PSD would not apply only when the area is designated nonattainment for all pollutants subject to section 107.

The Administrator has concluded, therefore, that the use of a section 110 implementation pathway—applying to a new NAAQS or revised NAAQS involving significant new planning burdens—does preclude the use of section 107 area designations. The term "national ambient air quality standards" in section 107 was intended by Congress to mean only the NAAQS in effect in 1977, or revisions to such NAAQS which would not impose any significant new planning burdens and would therefore continue to be subject to Part D of the Act. The section 107 area designations for TSP are being retained for the interim, however, in order to support the continued applicability of the section 163 increments for "particulate matter," which the Administrator believes Congress intended to be TSP-based increments. As explained earlier in this preamble, these TSP designations will continue to apply until EPA completes rulemaking to establish PM_{10} increments and such increments become effective in accordance with section 166 of the Act.

One of the commenters who supported continuation of the section 107 area designations for particulate matter, citing *Alabama Power* at 361–363, alleged that the areas originally identified as unclassifiable or attainment under section 107(d)(9) (D) and (E), respectively, remain PSD areas subject to section 163 increments regardless of any future change in their section 107(d) area designation status. The Administrator does not find anything within the *Alabama Power* decision to support the commenter's conclusion. Section 107(d)(5) provides States with the authority to "from time to time review, and as appropriate revise and resubmit" the area designations as originally promulgated by the Administrator. If geographic applicability for PSD (and nonattainment NSR) was to be permanently affixed to the original area designations, then there would be little reason to revise the designations. The EPA policy to date has always allowed States to revise their section 107 area designations as appropriate and to base PSD/NSR geographic applicability on the most current designations. In the case of PM_{10}, however, the Administrator has already stated his position that the section 107 area designation process does not apply, and the existing designations for particulate matter apply only with respect to TSP.

Several commenters stated that although they agreed that PSD may apply everywhere for PM_{10} as the primary standard, EPA's approach of using TSP for the secondary standard could prevent the desired "PSD everywhere" approach because a section 107 nonattainment designation for TSP would prevent any PSD review for particulate matter in those nonattainment areas. One commenter in particular stated that EPA's proposal glosses over this difficulty, and EPA could not achieve the result it wants without also changing its position that the PM_{10} standards are revisions of the existing particulate matter NAAQS rather than new NAAQS.

Even though EPA decided not to retain the TSP indicator for the secondary NAAQS, the commenters' main concern focused on the alleged problems that would result from EPA's retention of the section 107 area designations for TSP. For the reasons already given, the Administrator does not agree that the section 107 area designation process applies to the PM_{10} NAAQS and thus a section 107 nonattainment designation for TSP would not prevent PSD review for the PM_{10} indicator. Instead, a nonattainment designation for particulate matter will only affect which preconstruction review requirements will apply with respect to the TSP indicator. In addition, the Administrator does not believe that it is necessary to consider the PM_{10} NAAQS as new NAAQS—rather than revisions to the existing standards—to independently address PM_{10} as a form of particulate matter. The Administrator believes instead, that it is possible to regulate two forms of the pollutant particulate matter through the establishment of different indicators and regard each as being a separate pollutant regulated under the Act. Thus, by establishing a new PM_{10} indicator for the particulate NAAQS and retaining the existing TSP indicator for the section 163 increments as an interim measure, it is possible to have two regulated forms of particulate matter. In turn, it is appropriate to determine PSD applicability independently for each regulated form.

Some commenters were concerned that an EPA interpretation requiring no section 107 area designations for PM_{10} under a section 110 implementation pathway would pose a significant hurdle to EPA's acceptance of the legal argument that section 110 should govern all PM_{10} SIP revisions. As described earlier in the preamble, EPA's position concerning the applicability of section 110 or Part D is based on whether a NAAQS revision would impose significant new planning burdens. The ultimate applicability of section 107 area designations was not a factor in arriving at this conclusion.

d. *Best Available Control Technology (BACT).* In the proposal, EPA stated that its proposed action to regulate PM_{10} was not expected to immediately cause significant changes in the way that BACT determinations would be made for particulate matter. This statement was based on the belief that current control technology for particulate matter appears to be effective for controlling both PM_{10} and TSP. Meanwhile EPA further indicated that it would be in the process of evaluating the effectiveness of various existing NSPS for controlling PM_{10} and, at a later date, would make any necessary adjustments in BACT policy.

In order to begin implementing the BACT requirement for PM_{10}, the Administrator proposed that as a matter of policy he would accept emission limitations in terms of either PM_{10} emissions or particulate matter emissions provided the selected emission limit is enforceable and represents selection of the appropriate control technology for meeting BACT for PM_{10}. The proposal explained that the alternative of a particulate matter emission limit rather than a PM_{10} emission limit to represent BACT for PM_{10} might often be more desirable initially for several reasons, including: (1) The continuing reliance on TSP-based SIP's until a comprehensive PM_{10} SIP could be developed, (2) the present lack of a standard reference method to ensure source compliance with a PM_{10} emission limitation, and (3) the fact that the NSPS were not likely to directly reflect PM_{10} emissions for some time. Commenters generally supported EPA's proposed policy that, as an alternative to expressing the BACT emission limitations in the PSD permit in terms of PM_{10} emissions, the permitting authority may instead express the emission limitations in terms of particulate matter emissions.

Several commenters urged, however, that such policy should be strictly interim and that emission limitations should begin to be expressed in terms of PM_{10} emissions as soon as possible pending the development of a reference method for measuring PM_{10} emissions.

Sharing a similar concern, two other commenters indicated that the proposed BACT policy for PM_{10} should be tightened with respect to allowing the use of particulate matter emission limitations. One commenter pointed out that while EPA's proposal for BACT determinations appears to be the same as its guidance on lowest achievable emission rate (LAER), they considered the BACT proposal to be far less protective. This conclusion was based

on the fact that EPA's LAER proposal would allow substitution of particulate matter emission controls for PM_{10} emission controls only when the latter are unavailable or completely unreliable, while the BACT proposal would allow similar substitutions at any time, whether they are necessary or not.

The other commenter cautioned that EPA should permit particulate matter emission substitution only when PM_{10} emission limitations are not feasible, or when the applicant undertakes the responsibility for demonstrating the continued effectiveness of the particulate matter emission limit for controlling PM_{10} emissions. This commenter explained that even slight variations in assumed operating conditions could affect the PM_{10}/TSP relationship tremendously. Under worst case parameters, the commenter claimed, a source could emit several times more PM_{10} emissions than anticipated while the particulate matter emission rate remained constant.

The Administrator agrees that, when PM_{10} emissions would occur in significant amounts, BACT defined in terms of PM_{10} emissions should be encouraged whenever possible. While the proposed policy was intended as an interim approach, the way that it was expressed would have allowed for the continued use of particulate matter emission limitations beyond the point that they were of necessity. Therefore, as described in IV.D. PSD/NSR Program, the Administrator has reformulated his BACT policy to promote the use of PM_{10} emission limits in most cases contingent on the availability of emission factors and control efficiency information for the source under review. When it is not feasible to quantify PM_{10} emissions, EPA will allow the use of emission limits based on particulate matter emissions as a substitute.

Objecting to the proposed BACT policy, one commenter said that it would be arbitrary for EPA to require sources subject to BACT for PM_{10} to meet a TSP emission limit. The commenter was concerned that a source may not need additional controls to meet a PM_{10} emission limitation, yet could be found in violation because it exceeds the particulate matter emission limit. The proposed policy was not an attempt to require a source subject to BACT for PM_{10} to meet a particulate matter emission limit. Instead, it was presumed that there would be a desirability or need to do so during the period when source test methods, SIP's, and NSPS were under development with respect to PM_{10}. The fact that the Administrator has revised his policy concerning the use of TSP substitutions should alleviate some of the commenter's objections. However, when it should become necessary to define a source's emission limitations in terms of particulate matter emissions, source compliance must be based on the source's ability to continuously meet that particulate matter emission limit.

Finally, a commenter disagreed with EPA's statement on the overall effectiveness of current particulate matter technology for controlling both PM_{10} emissions and particulate matter emissions. The commenter argued that, from his experience, significant changes are required when handling high percentages of PM_{10} particles. The commenter expressed doubt that a system handling particulate matter emissions successfully will also handle PM_{10} emissions to the same degree.

The Administrator appreciates the point being made by this commenter and acknowledges that one should not arbitrarily assume that a particular control device or operating system will work equally well for both particulate matter emissions and PM_{10} emissions. While the Administrator continues to believe that current particulate matter control technology has the effect of controlling both forms of particulate matter, he emphasizes that the reviewing agencies have the responsibility to evaluate each BACT situation carefully to determine which particular emission reduction system is most appropriate for the source configuration under review.

e. *National Ambient Air Quality Standards Analysis.* Section 165(a)(3) of the Act provides that no PSD source can be approved for construction if it would cause or contribute to ambient concentrations of a pollutant that would exceed the applicable NAAQS.[23] The Administrator proposed that, at a minimum, he would require that PSD sources subject to the Part 52 PSD regulations and found to cause or contribute to a PM_{10} NAAQS violation obtain sufficient PM_{10} emission reductions (offsets) to provide a net air quality benefit in the affected area. Such offsets would be considered to satisfy the "cause or contribute to" language under section 165(a)(3) of the Act (see footnote 14 and accompanying text). In addition, the Administrator indicated that he was considering whether it might be necessary to impose additional conditions beyond offsets to adequately address nonattainment situations involving PM_{10}. He solicited comments as to what additional requirements should be considered.

The commenters generally stated that EPA can implement, without any changes to its PSD rules, the requirement that in areas where the PM_{10} NAAQS would be exceeded a proposed source can make a showing that it will not cause or contribute to a NAAQS violation by offsetting its projected emissions. In fact, some commenters said that EPA has no authority to require that PSD programs include LAER and statewide compliance requirements. The commenters claimed that the States have a responsibility to submit a SIP which provides for attainment as required by section 110(a)(2)(A). Only if a State fails to satisfy this requirement does EPA have any authority to impose additional requirements.

The EPA generally agrees with these commenters. In their initial PM_{10} SIP's, States will not be required by EPA to impose LAER and statewide compliance provisions but need only require that proposed sources and modifications demonstrate that their emissions will not cause or contribute to ambient concentrations in excess of the PM_{10} NAAQS. In the event initial PM_{10} SIP's fail to provide for timely attainment and maintenance of the PM_{10} NAAQS, EPA will then investigate the need to impose additional requirements on proposed new sources.

Several commenters suggested that, since PSD offsets will become more common under a section 110 pathway, some creditability criteria might be helpful in managing offsets under the PSD program. The Administrator agrees; he believes that creditability criteria are not only helpful but are necessary to determine the adequacy of emission offsets obtained by PSD sources. In the proposal, the Administrator indicated that he would approve a State's emission offset program under section 51.18(k) [recodified at 51.165(b)] only if creditability criteria at least as stringent as the criteria set forth under section 51.18(j) [recodified at 51.165(a)] are required to be applied to all offsets. These criteria should also be applied to offsets obtained by a source under a State PSD program (see footnote 15 and related discussion).

Where EPA is implementing the PSD program under its Part 52 PSD

[23] As explained earlier in the preamble, the Administrator's determination that section 110 governs the PM_{10} implementation requirements means that the PSD program for PM_{10} will apply in all locations regardless of how the existing air quality compares with the PM_{10} NAAQS. Consequently, the PSD NAAQS analysis and all other applicable PSD requirements will serve to determine the approvability of a new or modified PM_{10} source seeking to construct in an area where PM_{10} NAAQS violations may already exist.

regulations and the applicant must obtain emission offsets with respect to a pollutant subject to PSD review, the Agency's general policy is not to be involved directly in approving emission offsets which would involve the modification of permits issued by State permitting authorities. Instead, EPA will require the owner or operator of the proposed source to obtain offsets (whether from another facility on the same premises or from an external source) through the appropriate State or local new source review program before EPA can approve the proposed source under PSD. These offsets must meet EPA-approved creditability criteria which are equivalent to the criteria under section 51.165(a) and contained in the applicable SIP.

One commenter objected to the Administrator's proposal to require a source that would cause or contribute to a PM_{10} NAAQS violation to obtain sufficient offset so as to provide a "net air quality benefit" in the affected area. The commenter argued that this requirement is unlawful, and that a source whose emissions have been offset one-for-one cannot be said to "cause or contribute" to a NAAQS violation.

As explained in footnote 14, EPA has decided to restrict the use of the "net air quality benefit" test in conjunction with the offsets which EPA requires for purposes of PSD and section 51.165(b). Offsets producing air quality benefits would only be required in areas already experiencing violations of the PM_{10} standard where the State does not have an approved attainment demonstration. The EPA does not agree with the commenter's conclusion that one-for-one offsets will always satisfy the "cause or contribute to" criterion with respect to NAAQS violations. Where an area is shown to have existing violations and does not have an adequate attainment plan, new sources that fail to provide progress would continue to "contribute" to the nonattainment problem inasmuch as the area has not yet provided for expeditious attainment through reductions from existing sources.

In an area that does not have existing violations, a new source would need only to compensate for its own adverse ambient impacts to fully remedy any projected violations. Where an area is experiencing violations but does have an adequate attainment plan, new sources again need only compensate for their own ambient impacts since the area is already moving toward attainment as expeditiously as is practicable. As pointed out in the preamble to the recently published final Emissions Trading Policy Statement, since EPA can do no more than require States to demonstrate timely attainment, EPA will approve trades, including offsets, in areas experiencing violations that have adequate attainment demonstrations so long as air quality impacts are equivalent [see 51 FR 43814, 43818 (December 4, 1985)]. States are of course free to require additional offsets in such areas. However, the Emissions Trading Policy Statement requires substantial additional air quality progress for trades in areas without adequate attainment demonstrations to insure that such trades will help move the areas forward toward eventual attainment (see 51 FR 43814, 43820). Further, even in areas that are not experiencing violations, offsets may need to exceed one-for-one in terms of emissions in order to produce equivalent ambient impacts, depending upon source parameters and geographic conditions.

Finally, several commenters stated that, if a new facility fully offsets its emissions, EPA should waive the PSD requirements for ambient monitoring and modeling. The Administrator does not find any justification for a blanket waiver from the PSD monitoring and modeling requirements simply because a prospective source would obtain emission reductions which fully offset its emissions. The commenters have failed to consider the importance of modeling and monitoring (conceivably both preapplication and post construction monitoring) in demonstrating that the emission offsets would satisfy the air quality impact test associated with the required emission offsets and described above in the response to the previous comment; in fact, such a demonstration would of necessity require modeling. Consequently, the Administrator finds no reason to change EPA's present requirements for PSD monitoring and modeling as a result of today's action to promulgate PM_{10} amendments.

f. *Prevention of Significant Deterioration Increments for Particulate Matter.* In the 1985 proposal, the Administrator indicated his belief that the PSD program would need to include a dual increment system for particulate matter; that is, separate sets of increments for TSP and PM_{10}. To carry this out, the Administrator proposed to: (1) Clarify that the existing increments, defined under section 163 of the Act, would be measured as TSP; and (2) establish new increments measured as PM_{10} in accordance with the procedures under section 166 of the Act. While he believed that this proposal could be readily accomplished under the proposal to promulgate a PM_{10} primary NAAQS implemented under a section 110 pathway and a TSP secondary NAAQS implemented under a Part D pathway, the Administrator raised a number of questions as to how the increment system for particulate matter would be affected by other alternatives for revising the particulate matter NAAQS.

Relevant to today's announced action, the Administrator raised the issue regarding the continued applicability of the existing increments for particulate matter in the event that the secondary NAAQS was defined as a PM_{10}-based standard and implemented via section 110 of the Act as is the case in today's final action. Specifically, the Administrator indicated that it was not clear whether TSP would continue to be regulated under the Act, whether the section 107 designation process would continue to apply to particulate matter, or whether the TSP-based increments would continue to apply. Thus, the Administrator requested comments concerning all possible impacts on the PSD increments for particulate matter if he were to use PM_{10} to define both the primary and secondary NAAQS.

With respect to PM_{10} increments, the Administrator indicated that he would consider using the approach applied by Congress, which initially created the TSP increments, to establish new PM_{10} increments (i.e., basing them on specific percentages of the NAAQS). In addition, he described possible means of implementing such increments relying on many of the same criteria that are currently being used to implement the existing increments for particulate matter. This particular discussion was raised to identify issues associated with the eventual development of a PM_{10} increment system which would proceed under a subsequent rulemaking action in accordance with section 166 of the Act.

The EPA received numerous comments concerning the PSD increments for particulate matter. The Administrator's announced intention to establish a dual increment system was opposed by most of the commenters. Many of these commenters also opposed the retention of TSP as the indicator for measuring the increments. In addition to the comments concerning the appropriate way to express the increments, a number of commenters presented arguments concerning the selection of the proper implementation pathway (section 110 versus Part D) in relation to the continued applicability of the increments for particulate matter.

Several commenters pointed to the PSD provisions of the Act and the

legislative history to argue against the Administrator's proposal to define the section 163 increments for "particulate matter" as TSP increments. The commenters pointed out that section 163 establishes increments, at levels that cannot change, for "particulate matter" in whatever way EPA wishes to define it. Congress, the commenters noted, intended section 166 to be used to set "numerical measures" for totally different pollutants and not for various indicators of the same pollutant, e.g., particulate matter. These commenters stated that there is no requirement on the face of the Act, or in the legislative history of section 163, to suggest that Congress intended to require EPA to define the increments for particulate matter in terms of TSP. The commenters cited the use by Congress of the term "particulate matter" without any reference to TSP. One commenter in particular stated that, although at the time Congress adopted section 163 of the Act in 1977 particulate matter was generally equated with TSP and Congress did use TSP as the basis for setting the section 163 increments, it does not necessarily follow that Congress intended the increments forever to be tied to TSP if EPA changed the indicator for purposes of the NAAQS.

On the other hand, one commenter supported retention of the existing statutory increments as TSP increments based on the very fact that Congress was aware of the use by EPA of TSP as the indicator for particulate matter. Therefore, the commenter believed that Congress intended the term "particulate matter" to mean TSP. This commenter also claimed that there is no authority in the Act for EPA to administratively change this clear example of legislative policy judgment. Referencing the legislative history, this commenter went on to say that by choosing increments that were numerically a small fraction of the then current NAAQS, Congress was clearly hoping to minimize the amount of environmental damage associated with the congressional objective to accommodate a specified level of new economic activity. Thus, the commenter concluded, if the statutory increments were modified to "track" a NAAQS revision, both the absolute amount of additional pollution allowed in each area and the number of additional polluting sources permitted would be changed. The commenter stated that since the latter was the subject of intense congressional scrutiny, there is a strong presumption that Congress did not intend to give the Administrator discretion to change the statutory increments in section 163 because of a particulate matter NAAQS revision. According to this commenter, EPA has authority under section 166 to establish a PSD program for a particulate matter indicator other than TSP, but as a supplement to, not a replacement for, the section 163 increment program.

The Administrator agrees with the latter commenter that Congress did intend to fix the measure of the particulate matter increment defined in section 163 in terms of TSP and to provide for establishment of new increments in the appropriate form under section 166 of the Act for any new NAAQS. In defining the section 163 increments for particulate matter, Congress used the same term that EPA used in establishing the then current NAAQS, clearly understood to apply to TSP. Further, Congress relied upon TSP-based emissions data from a number of specific source categories to agree upon specific allowable increases that would accommodate a certain level of source growth.[24] This point is important because it assigns to the "particulate matter" increments a fixed reference point, i.e., the TSP indicator, upon which source growth is to be measured. To change this reference point, as the latter commenter notes, would change a significant part of the nondegradation system which Congress chose to define in section 163 by means of specific maximum allowable increases for both TSP and SO_2. The Administrator wishes to note here that while he strongly believes that the statutory increments for "particulate matter" must be measured in terms of TSP, he does not believe that he should necessarily continue to retain TSP increments beyond the date when new PM_{10} increments become effective. This will be discussed more fully in response to subsequent comments which support the dual increment system which the Administrator originally proposed.

Finally, Congress apparently considered excluding "naturally occurring particulate matter" from subsection 163(c) and rejected that alternative.[25] Thus particulate matter increments must include all suspended particles for Congress to consider it necessary to exclude some fraction of those particles.

Several commenters stated that it was clear that the court in *Alabama Power* acknowledged EPA's power to define "particulate matter," both for NAAQS and PSD increment purposes as something other than TSP. The commenters quoted from footnote 134 of that opinion:

> EPA has discretion to define the pollutant "particulate matter" to exclude particulates of a size or composition determined not to present substantial public health or welfare concerns. 636 F. 2d at 370 n. 134.

The Administrator acknowledges that, in dicta, the court in *Alabama Power* describes such an approach, which could be used to ultimately redefine the statutory increments for particulate matter as PM_{10} increments. However, the court clearly premised this approach on a finding by EPA that larger particles present no substantial health or welfare effects. The EPA has not reached this conclusion. Rather, EPA believes that large particles do present some welfare concerns but that controls necessary to meet a PM_{10} NAAQS will adequately address any such concerns. Further, EPA does not read footnote 134 to mean that EPA could administratively redefine the statutory increments to apply to PM_{10}. Such a reading would be inconsistent with the court's stated rationale. Moreover, the court's statements appear in a footnote not essential to the ultimate disposition of the case, and are thus not entitled to the weight of a judicial holding.

The court's conclusion that once EPA excludes certain particles from the NAAQS for particulate matter then PSD increments for TSP should not apply to such excluded particles is sound. However, it does not follow that EPA can administratively alter the statutory TSP increments. The court did not analyze the issue of which indicator Congress intended to use for the statutory increments prior to drafting the footnote. After a careful review of the relevant statutory and legislative background, as discussed above, EPA has concluded that Congress intended

[24] Committee on Environment and Public Works, 95th Cong., 2nd Sess., A Legislative History of the Clean Air Act Amendments of 1977, at 330–331 (1978). Discussion recorded in the House debate on the selection of PSD increments indicates that acceptance of the increments then under consideration was based heavily on the assurance that power plants using BACT could normally be built up to approximately 6,000 megawatts in Class II areas, and that constraints in the construction of other types of new plants would be in the equivalent range. If for some reason the section 163 increments were to be redefined in such a way that they would become more stringent, then it is not at all clear that Congress would have selected such levels. It cannot be concluded, therefore, that redefining the existing increments to make them less stringent would have been any more acceptable to Congress.

[25] The 1977 House bill had an exclusion for naturally occurring particulate matter in the forerunner of subsection 163(c) [see HR Rep. No. 95-294, 95th Cong., 1st Sess. 165 (1977)]. The conference committee remanded the exclusion and it was not included in subsection 163(c) as adopted. However, the term particulate matter was used unchanged in both versions of the provision.

the statutory increments to be measured as TSP. The EPA therefore agrees with the commenter who claimed that footnote 134 does not change the statutory construction. This commenter further pointed out that footnote 134's sole authority is section 166, but that section contains no authority to modify the section 163 increments; rather section 166 establishes a duty for EPA to expand the PSD program beyond the statutory increments of section 163.

The Administrator agrees that the proper approach for developing new PM_{10} increments is found in section 166 of the Act, and earlier in this preamble indicated his intention to proceed along that prescribed path. Further explanation of his effort and its effect on the PSD increment system for particulate matter is provided in response to subsequent comments below.

Some commenters gave other reasons for opposing the retention of TSP as the indicator for the particulate matter increments. A number of these commenters stated that retention of TSP would lead to complex, duplicative, and therefore wasteful practices in that it would require sources subject to the PSD program to implement dual systems for monitoring, establishing emission limitations and control strategies, obtaining offsets, and preparing and evaluating permits—one for the size-specific indicator of the revised NAAQS and another for TSP as the indicator for the PSD increments.

The Administrator acknowledges that, during the interim period when the section 163 TSP increments are to be retained, the PSD program will entail review requirements for both TSP and PM_{10}. Such requirements would cause permitting agencies and PSD sources to consider both forms of particulate matter when such sources could emit both TSP and PM_{10} in significant amounts. This situation is intended to be temporary, however, and should improve when EPA completes the statutory process for developing PM_{10} increments in accordance with section 166. The EPA believes such a situation is necessary during the period required to establish PM_{10} increments. The alternative, that is, temporarily eliminating increment protection for particulate matter, cannot reasonably be justified.

A number of commenters associated with the mining industry expressed their concern that if EPA finalizes its October 1984 proposal to list surface coal mines as major sources for which fugitive emissions are to be included in determining PSD applicability, retention of the TSP increments would result in severe economic consequences for surface coal mines. These commenters noted that the adoption of a size-specific indicator for the increments, instead of TSP, would reduce the adverse economic effects although there would still be substantial limits on mine production.

The Administrator recognizes that certain industries may be affected more than others under the requirements of the PSD program; however, this situation cannot serve as the basis for defining the form of particulate matter used to measure the increments for particulate matter in section 163 of the Act. The Administrator has already explained the legal basis by which he concluded that the statutory increments for particulate matter must be measured by the TSP indicator. Eventually, the Administrator intends to promulgate PM_{10} increments which States may use effectively to replace the statutory TSP increments.

Some commenters supported EPA's retention of the TSP-based increments and even suggested that PM_{10} increments should be added to supplement rather than replace the statutory increments. Several air pollution control agencies stated that EPA should retain the TSP increments to prevent deterioration beyond what would be allowed under the TSP increment system and to prevent potential soiling and nuisance impacts of particles greater than 10 microns. A Federal agency noted that the development of PM_{10} increments would be a significant additional management tool. Another control agency claimed that abolishment of the TSP secondary NAAQS (and presumably the TSP increments) would weaken the PSD program because PSD applicability would be based on a source's potential to emit PM_{10}, which may be only a fraction of TSP, i.e., particulate matter emissions.

While the Administrator agrees that the statutory increments for particulate matter are appropriately expressed as TSP increments, he does not agree that it is necessary or reasonable to continue measuring air quality deterioration in terms of TSP in light of the fact that both the primary and secondary NAAQS for particulate matter will be measured by a PM_{10} indicator, particularly when PM_{10} increments are developed in accordance with section 166. In fact, once EPA approves State requests to delete section 107 designations for TSP, the Class II TSP increments will no longer have any applicability since Class II increments by definition apply only in designated section 107 areas. The statutory Class I TSP increments will of course remain applicable. However, EPA intends to develop PM_{10} increments under section 166 which are equivalent to the existing TSP increments. To the extent this can be done, protection of the PM_{10} increments will fully protect the TSP increments. The EPA will then accept a demonstration of protection of the PM_{10} increments as a surrogate for the required demonstration of protection of the TSP increments so that permit applicants and reviewers will be able to avoid the then unnecessary burdens and complexities of a dual increment system. The EPA believes it has the authority to do this under section 301(a) of the Act.

With respect to any weakening of the PSD program as a result of basing major source status on PM_{10} emissions rather than particulate matter emissions, the Administrator recognizes that eliminating regulation of TSP altogether could reduce the number of sources emitting major amounts of "particulate matter" and consequently would allow such sources to avoid PSD review. As part of the EPA's effort to develop a PM_{10} increment system, the Administrator intends to evaluate the effects on PSD source applicability of changing the indicator for particulate matter. Should a significant negative effect be foreseen, the Administrator would consider alternatives for correcting the problem such as redefining "major" for PM_{10} sources under section 166.

One commenter, who supported redefining the section 163 increments as PM_{10} increments, also stated that EPA's concern about the geographic applicability of the section 163 increments for particulate matter was unfounded. This commenter noted that Congress designated mandatory Class I areas and then designated all other areas as Class II if the area was attainment or unclassifiable for at least one pollutant. The commenter then concluded that because the Class II area classifications are not pollutant specific—as opposed to the section 107(d) designations which are—the area classifications will survive the NAAQS revision and subsequent deletion of section 107 area designations for TSP, and the section 163 Class II increments for particulate matter will retain their applicability as well.

The EPA disagrees with the comments claiming that the Class II area classifications are not pollutant specific. If that interpretation is correct, then it would follow that Congress intended the PSD review including the increment analysis to apply to emissions of a nonattainment pollutant (based on a section 107 designation) simply because

the area was also designated attainment for another pollutant. The structure of the Act suggests otherwise, indicating instead that Congress did not intend for a source to undergo PSD review for a pollutant that was subject to a section 107 nonattainment designation. The EPA believes that by adding Part D to the Act in 1977, Congress intended that separate preconstruction review requirements set forth under section 173 of the Act were to apply in such situations instead.

Other commenters who recognized the Class II area classifications as being pollutant-specific were concerned that EPA's proposal not to require section 107(d) area designations for PM_{10} would result in no Class II PSD areas for particulate matter, and thus no areas in which the section 163 Class II increments for particulate matter would apply. As mentioned earlier, EPA does not believe that Congress intended for either the section 163 increments or the section 107(d) area classification system to apply to PM_{10}. The EPA believes that new PM_{10} increments, developed pursuant to section 166 of the Act, can be applied independently from the section 107(d) area designations for TSP and the Class II areas—both of which determine the applicability of the section 163 TSP increments. Also, EPA will establish appropriate areas to which the PM_{10} increments will apply during the course of the upcoming section 166 rulemaking process.

Since EPA believes that the section 107(d) area designations for TSP are necessary to provide for the continued applicability of the section 163 Class II increments, it will decline to completely eliminate these TSP designations until PM_{10} increments are in effect and replace the existing TSP increments. As mentioned earlier, the Administrator believes that retention of the TSP increments is necessary during the interim to implement Congressional intent to keep air quality deterioration within the limits established by the statutory increment system.

Finally a number of commenters stated that since there is allegedly no scientific reason to retain the TSP-based increments (because there are no soiling or nuisance effects), an EPA decision not to eliminate TSP as the indicator for the PSD increments would be a violation of the binding and enforceable settlement agreement in *CMA v. EPA*, D.C. Cir., No. 79–1112.[26] These comments actually addressed EPA's earlier proposal on March 20, 1984 (49 FR 10408), which in addition to proposing revisions to the NAAQS for particulate matter proposed not to change how "particulate matter" would be defined for the purposes of the PSD increments. In that proposal, the Administrator indicated that based on EPA's review of the data, particles larger than 10 microns could contribute to soiling and nuisance and therefore may have substantial welfare effects. Consistent with this finding, the Administrator proposed to retain TSP as the indicator for the secondary NAAQS for particulate matter, and consequently for the PSD increments, because it includes most of these larger particles and could therefore be a better indicator of all particles that produce soiling and nuisance. The Administrator also raised the possibility that a size cutoff below TSP could ultimately be selected to replace TSP as the indicator for the secondary NAAQS, but even if that were to occur, there was considerable question as to whether EPA could then adopt the same cutoff for the purposes of the PSD increments (49 FR 10421).

By the terms of the *CMA* agreement itself, the Administrator believes that he acted appropriately in then proposing to retain TSP as the indicator for the PSD increments and concluding that the contemplated interim relief was not available. In any event, the thrust of the settlement provision was to cause EPA to initiate a rulemaking on the question of how the NAAQS revisions for particulate matter should affect the particulate matter increments. In no way was it intended to bind EPA to any particular outcome. Here EPA in its 1984 proposal not to change the increments and its 1985 proposals on PSD increment issues in general certainly initiated such a rulemaking—indeed a rulemaking that has resulted in thorough public discussion, debate, and subsequent Agency deliberation. Thus the spirit as well as the letter of the provision has been satisfied.

Moreover, the Administrator now firmly believes that for the reasons set forth earlier in this section of the preamble, Congress intended the section 163 increments for particulate matter to be measured as TSP. The Administrator is taking the course of action he believes was intended by Congress to implement different "particulate matter" increments. That is, he will promulgate new PM_{10} increments in accordance with section 166 of the Act and allow such increments to the extent that they are equivalent to replace effectively the statutory TSP increments at the appropriate time.

g. *Prevention of Significant Deterioration Monitoring.* The Administrator proposed a new significance level, expressed as an ambient concentration of PM_{10}, for PSD monitoring purposes. He proposed that a concentration of 10 $\mu g/m^3$ (24-hour average) be used as a criterion to determine whether a PSD applicant would be required to collect (or, conversely, be excluded from having to collect) ambient PM_{10} data for the 1-year period preceding submittal of a complete PSD application. The Administrator also indicated that the significant ambient concentration for TSP, 10 $\mu g/m^3$ (24-hour average), would be retained due to the proposed TSP secondary NAAQS.

In addition to proposing a significant ambient concentration for PM_{10}, the Administrator proposed a transition program related to the preapplication monitoring requirements for PM_{10} (see section h. *Transition Provisions* for details on the proposed provision, issues raised by commenters, and EPA's response). As part of the proposed program, the Administrator indicated that he intended to allow the use of ambient data collected from samplers not designated as PM_{10} reference or equivalent methods until such reference or equivalent methods are designated and made commercially available. The Administrator specified PM_{10}, PM_{15}, and TSP as the particulate matter size fractions which could be measured from acceptable alternative samplers. This data would then be used in accordance with EPA-approved estimating procedures to demonstrate compliance with the PM_{10} NAAQS.

The EPA received no comments opposing the proposed significant ambient concentration for PM_{10}; several commenters expressed general support for the proposed value. However, several commenters did raise certain questions concerning the proposed monitoring and ambient air estimating procedures. These procedures would be used to meet the preapplication monitoring and air quality analysis requirements for PM_{10} during the transition period before PM_{10} reference

[26] Pursuant to a settlement with petitioners in *Chemical Manufacturers Association v. EPA*, D.C. Cir. No. 79–1112, the EPA agreed to propose revisions to certain PSD requirements, if appropriate, at the time it proposed revisions to the particulate matter standards on public health or welfare. In relevant part, the settlement stated that "[w]hen EPA proposes a new size cutoff for purposes of the NAAQS, it shall also propose: (a) A new size cutoff for PSD purposes that would remain in effect indefinitely (i.e., the permanent PSD cutoff); and (b) an interim size cutoff for PSD purposes to remain in effect until EPA takes final action on the permanent PSD cutoff. The interim cutoff will exclude only those particles which clearly appear not to pose substantial health and welfare risks and therefore are highly likely to be excluded permanently."

or equivalent methods become available.

One commenter stated that EPA needs to address the frequency of required monitoring since this is not addressed with respect to PSD monitoring. Since States are required to conduct daily monitoring for 1 year at high priority sites, the commenter asked whether PSD applicants would be required to do the same.

The EPA addressed the frequency of PSD monitoring for PM_{10} in its draft revisions to the EPA document entitled "Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD)," which was made available for review during the public comment period. The Administrator intends to retain the language contained in the draft guidance which described different sampling frequencies as appropriate for use with PM_{10}, PM_{15}, or TSP data used to demonstrate compliance with the PM_{10} NAAQS. The frequencies described are consistent with the final 40 CFR Part 58 sampling frequencies as published elsewhere in today's **Federal Register**.

Another commenter questioned EPA's ability to use undesignated interim alternative sampling methods to gather ambient PM_{10} data. This commenter stated that EPA must instead propose and subject the interim sampling methods to public and scientific review before any final monitoring implementation rule is promulgated. The Administrator disagrees with this position for two reasons. First, the Clean Air Act requires States to submit control strategies to EPA within 9 months of the revision of the NAAQS. However, it will take approximately 6 months after promulgation of the PM_{10} NAAQS before PM_{10} reference method samplers are designated. The EPA's policy, therefore, is to require States to use available particulate matter data for PM_{10} SIP evaluation and planning purposes during the period before reference methods are designated. The use of interim methods for PSD purposes is also considered acceptable by EPA. Thus, when PM_{10} data are required during the transition period and PM_{10} reference method data are not available, particulate matter data that must be used in order of preference are PM_{10} nonreference method data, PM_{15} data, and, for up to 10 months after the effective date of the new requirements, TSP data.

Second, on March 20, 1984, EPA did propose in Appendix J of Part 50 a general reference method for determination of particulate matter as PM_{10} in the atmosphere. Public comments were taken and were considered before final promulgation of this reference method. Actual designation of reference method samplers, however, does not require proposal in the **Federal Register**. Under the existing 40 CFR Part 53 regulations, EPA has the authority to designate reference or equivalent method samplers without first proposing the method(s) in the **Federal Register** for public comment provided that the methods meet the performance specifications and other requirements contained in Parts 50 and 53.

Concerning efforts to meet the air quality analysis requirements before a reference method is available, one commenter stated that EPA must propose for comment the specific "estimating procedures" that must be used to determine ambient concentrations of PM_{10} based on data collected from undesignated samplers.

The commenter was apparently not aware that the prescribed "estimating procedures" were provided in the draft revisions to EPA's PSD monitoring guideline referenced above. The monitoring guideline actually reflects guidance provided elsewhere for purposes of SIP development which prescribes that PM_{15} data be multiplied by a correction factor of 0.8, and that PM_{10} data be used directly even though it was collected with a nondesignated reference or equivalent method. In addition, the monitoring guideline allows TSP data to be used only as a one-for-one substitute for comparison to the PM_{10} standards and only during the first 10 months of the monitoring transition. The use of PM_{10} and PM_{15} data will result in much less uncertainty than the practice of comparing existing TSP data to the PM_{10} standards. Alternatively, awaiting the availability of reference method monitoring and making no estimates of the PM_{10} particulate matter air quality in the meantime would be even less desirable in light of the need to demonstrate ambient impacts of proposed sources on the PM_{10} NAAQS.

h. *Transition Provisions.* The Administrator proposed several provisions which would delay for some applicants all or some of the new PSD requirements for PM_{10}. Complete exclusion from the new requirements was proposed under two grandfather provisions. The first excluded from review sources that were not previously subject to PSD review, provided that the sources: (a) Have already obtained all the necessary approvals under the SIP before the effective date of the new requirements, and (b) commenced construction within 18 months of the effective date of the new requirements (or any earlier time required under the SIP).

The second grandfather provision excluded from PM_{10} review any sources that have submitted a complete PSD application (including those for which a final determination has not yet been made) to EPA or its delegated representative on or before the promulgation of the Part 52 PSD amendments for PM_{10}.

In addition to the above provisions, the Administrator proposed to enact a transition program to phase in the new requirements for PM_{10} monitoring. These monitoring provisions were necessary because the proposed grandfather provisions could not offer adequate relief to those applicants whose applications had not been submitted but whose on-site monitoring efforts were well underway, except, of course, for any new PM_{10} monitoring that would otherwise be required.

There were several other factors that influenced the design of the monitoring transition program as well. One important factor was the concern that development of ambient PM_{10} samplers suitable for designation as reference or equivalent method samplers could be delayed as long as 1 year. Another was that once the samplers became available and designated, additional time would be needed for applicants to actually install and calibrate the samplers on site before a PM_{10} sampling network could begin to operate. Finally, the PSD regulations require that a minimum of 4 months of data must be collected from any site [see section 52.21(m)(1)(iv)] and submitted as part of the complete PSD application.

Taking into account these factors, the Administrator proposed three provisions to phase in the preapplication monitoring requirements for PM_{10}. The first of these provisions gave the Administrator discretionary authority to exempt from the PM_{10} ambient data requirements certain PSD applicants who would become subject to the requirements because of PM_{10}, provided the applicant submitted an otherwise complete application within 10 months after promulgation of the Part 52 PSD amendments for PM_{10}.

The second proposed provision allowed eligible applicants to sample PM_{10} using nondesignated PM_{10} or PM_{15} samplers during the period of time when they would be unable to establish a PM_{10} monitoring network utilizing designated PM_{10} samplers. In the proposal, the preamble incorrectly indicated that TSP data would also be acceptable during this phase but EPA's draft monitoring guidance made available for public comment correctly indicated that TSP monitoring data

would not be accepted for PM_{10} purposes, but only for comparison with the then proposed TSP secondary NAAQS. This provision would affect complete applications (except for PM_{10}) submitted between 10 and 16 months after promulgation of the PSD amendments for PM_{10}.

The third and final proposed provision relating to the phase-in of PM_{10} monitoring equipment allowed certain applicants to commence reference method PM_{10} monitoring and gather ambient data over only the period extending from the date 12 months from promulgation of PM_{10} amendments to the date the application becomes otherwise complete with respect to all other existing monitoring requirements. This provision applied to complete applications (except for the PM_{10} monitoring requirements) submitted between 16 and 24 months after promulgation.

The Administrator also proposed to allow States to adopt transition provisions for PM_{10} monitoring if the provisions are compatible with the intent of the Federal transition provisions proposed in the Part 52 PSD regulations.

Grandfather provisions. While most commenters expressed general support for EPA's proposed grandfather provisions which protect certain sources from having to meet the PSD requirements for PM_{10}, a few concerns were noted.

One commenter objected to the use of different qualifications for grandfathering sources not previously subject to PSD versus sources previously subject to PSD. For the former category, sources are grandfathered only if they have received all otherwise required preconstruction approval and permits and commence construction within 18 months. In the latter category, sources are grandfathered if they have merely submitted an otherwise complete PSD application. The commenter felt this provided inequitable treatment to sources, and that it would be more fair and rational to grandfather all sources based on the submittal of a complete application.

The EPA does not believe that the alleged discrepancy in the two provisions as they were intended to be applied is inequitable. However, in reviewing the proposed provisions, EPA recognized that there was some ambiguity as to exactly who would be eligible for grandfather status under each provision. The EPA intended the first grandfathering provision to apply to all sources not previously subject to PSD for particulate matter, even if they were subject to PSD for some other pollutant. The EPA intended the second grandfathering provision to apply only to those sources that were previously subject to PSD for particulate matter and had consequently included analyses for particulate matter in their PSD applications. The use of more lenient grandfathering qualifications for sources previously subject to PSD is keyed to the presence of particulate matter analyses in the completed application. The EPA has clarified the grandfather provisions in the final action to remove the stated ambiguity [see new section 52.21(i)(4)(ix) and (x)].

In addition, to further enhance consistency between the two provisions, EPA has also changed the wording of the second grandfather provision so that the same eligibility cutoff date is used for excluding sources from the new PM_{10} amendments. Under the proposed language, applicants previously subject to PSD (for particulate matter) would have had an extra day (i.e., "on or before" versus "before") in which to gain grandfather status. Based on these changes, EPA does not agree that an inequity exists between the two new grandfather provisions.

The EPA has found it necessary to make several other changes to the new grandfather provisions. First, the second grandfather provision in today's notice contains a key final sentence that was unintentionally omitted from the provision as originally proposed. Without this sentence, the affected source or modification would have been excluded from the original PSD requirements for particulate matter in addition to being grandfathered from today's amendments. This was clearly not the intent of the provision. The proposed grandfather rules were to exempt applicants from new requirements but require them to continue to meet existing requirements instead.

Secondly, the date upon which both provisions will be based is changed to the date 30 days from today's date of publication. The proposal, in using the date of publication, did not take into account the fact that the amendments being published in today's **Federal Register** will become effective 30 days later. Finally, reference to the August 7, 1980, PSD regulations in both of the proposed grandfather provisions has been changed because this reference does not properly account for PSD amendments occurring since August 7, 1980. Those sources or applicants which may be grandfathered from the new PM_{10} amendments are expected to meet the Part 52 PSD requirements, including applicable amendments made after August 7, 1980, which are in effect immediately preceding the effective date of the new PM_{10} amendments.

Several commenters noted that EPA should also include these proposed grandfather provisions in section 51.24 (recodified as 51.166) where States have the permitting authority, and not just include them in the Part 52 PSD regulations where EPA or its delegate is the permitting authority. The Administrator agrees that States with approved PSD regulations in their SIP's should have the same ability to grandfather certain sources from the new PM_{10} requirements. Although it was not mentioned in the proposal, States may adopt such provisions in their regulations and EPA will approve them pursuant to section 51.166(a)(6)(ii) which requires that when a State revises its PSD rules it must specify when and as to what sources such revisions will take effect. Consequently, there is no need to further amend the section 51.166 PSD requirements to satisfy the commenter's concern.

Monitoring Transition. Many commenters expressed general support for EPA's proposed phase-in of the new PSD monitoring requirements for PM_{10}. Some of these commenters, however, gave recommendations that would change the transition procedures in certain ways.

Most of the commenters expressed concern about the eventual availability of an acceptable sampling method. One commenter stated that EPA should delay action on its PM_{10} proposal until an acceptable reference method sampler is available for widespread use by PSD permit applicants. Another commenter stated that EPA should allow the States to waive or to adjust the PM_{10} monitoring requirement on a case-by-case basis beyond the time periods provided if a sufficient supply of approved PM_{10} monitoring equipment is not available. Yet another commenter went further by stating that the PSD requirements should contain some triggering mechanism requiring the Administrator to take an affirmative action finding that monitors are available before requiring their use.

Finally, a commenter said that all three transition provisions should apply uniformly to all applicants who meet the requirements and should be revised to reflect the delayed effective date of EPA's PSD regulations. (This commenter recommended a 9-month delay before the Part 52 PSD regulations would apply.) That is, the first transition provision should exempt from PM_{10} monitoring those applicants who submit a complete application within 3 months

after the effective date of the PSD amendments for PM_{10}; the second provision should apply to applicants who submit a complete application between 12 and 18 months after promulgation of the revisions and should allow them to monitor PM_{10} or other particulate matter size fractions during the interim period when approved samplers are not available; and the third provision should apply to applicants who submit complete applications from 18 to 24 months after promulgation, requiring sampling with designated samplers beginning 12 months after promulgation.

The Administrator believes that the concern relating to potential unavailability of reference or acceptable PM_{10} samplers is no longer a valid issue. At the time of the 1985 proposal, it was generally agreed that relatively few acceptable PM_{10} samplers were readily available. However, since the 1985 proposal, at least 900 commercially available PM_{10} samplers have been placed in operation by State and local agencies and suppliers are already advertising the availability of PM_{10} samplers that will meet the proposed requirements.

The Administrator believes that the three transition periods as proposed are reasonable, provide sufficient flexibility for implementation, and do ensure that adequate estimates of ambient PM_{10} concentrations are available for air quality analysis purposes. Consequently, no changes to the proposed PSD regulations or draft PSD monitoring guideline are being made based on concerns over the unavailability of PM_{10} samplers. However, with respect to the effective date of EPA's Part 52 PSD regulations, the Administrator has revised the language in the monitoring transition provisions to replace the reference to the date of promulgation with the effective date of the regulations which is actually 30 days later.

2. Nonattainment New Source Review Requirements

In the 1985 proposal, the Administrator proposed separate sets of preconstruction NSR requirements with respect to the primary and secondary NAAQS for particulate matter. The EPA did this because: (1) the NAAQS proposal included PM_{10} primary standards and TSP secondary standards, and (2) the Administrator proposed to establish implementation requirements for attaining the PM_{10} primary NAAQS using the section 110 pathway and requirements to implement the TSP secondary NAAQS using the Part D pathway. While concentrating on these particular assumptions, the Administrator also described alternative programs that could result from subsequent decisions to use different implementation pathways for either the primary or secondary NAAQS, or to select the PM_{10} indicator for the secondary NAAQS, thereby eliminating TSP-based NAAQS altogether.

For the primary PM_{10} NAAQS, the Administrator proposed that the PSD program (as described in the previous section) in conjunction with the requirements in section 51.18(k) [now recodified as 51.165(b)], concerning protection of the NAAQS in designated section 107 attainment and unclassifiable areas as required by section 110(a)(2)(D) of the Act, would apply in all areas to major sources or modifications whose PM_{10} emissions would cause or contribute to NAAQS violations. The Part D NSR requirements under section 51.18(j) [now recodified as 51.165(a)] and the construction ban under section 52.24 would have no applicability to PM_{10}. However the Administrator proposed that until States received EPA approval for their section 51.165(b) program for PM_{10} Section III of the Offset Rule (40 CFR Part 51 Appendix S (1985)), would govern the preconstruction review process for PM_{10}.

Under section 51.165(b), the EPA proposed both to add requirements for PM_{10} and to clarify the existing requirements as they apply to other criteria pollutants as well. First, EPA proposed to establish annual and 24-hour significant ambient impact levels for PM_{10} similar to the existing levels for other pollutants which would be used to determine when a source's emissions are considered to cause or contribute to a NAAQS violation at any location. Sources having a modeled significant ambient impact must address such impact by getting emission offsets. The EPA proposed values of 1 $\mu g/m^3$ (annual) and 5 $\mu g/m^3$ (24-hour average).

With respect to the applicability of the section 51.165(b) program requirements, EPA proposed to clarify that major source status would be based on the applicable definition under section 302(j) of the Act, i.e., 100 tpy or more of any regulated pollutant. Using this definition, section 51.165(b) covers all PSD sources as well as certain non-PSD sources, namely sources that have the potential to emit more than 100 tpy (but less than 250 tpy) of any regulated pollutant and are not included on the 28-source category listing for PSD.

For PSD sources, EPA proposed that the requirements of section 51.165(b) would be applied in addition to all applicable PSD requirements. For non-PSD sources, section 51.165(b) would apply in addition to any other applicable preconstruction review requirements in the approved SIP.

The Administrator also indicated that he would give States considerable flexibility in designing an offset program under section 51.165(b) as necessary to prevent new or modified major sources from causing or contributing to a NAAQS violation. He proposed that, as a minimum, an approvable section 51.165(b) program would merely have to require emission offsets which: (1) Provide a net air quality benefit, and (2) conform with creditability criteria at least as stringent as the offset criteria set forth under section 51.18(j) [recodified as 51.165(a)]. However, because of the broad range of nonattainment situations that section 51.165(b) would be expected to deal with in the absence of Part D applicability for PM_{10}, the Administrator also requested comments concerning the need to impose additional Part D-like requirements such as LAER and statewide compliance.

The Administrator's proposal with respect to the proposed secondary TSP NAAQS called for a continuation of the Part D-based NSR requirements except for the construction ban under section 52.24 should he select the Part D implementation pathway as proposed. Thus sources proposing to locate in areas designated nonattainment under section 107 for TSP would have been required to fully offset their proposed particulate matter emissions, apply LAER, and ensure that all other sources under common ownership statewide were in compliance or on a compliance schedule.

If he were to choose to implement the revised TSP secondary NAAQS under section 110 rather than Part D, the Administrator indicated that the PSD requirements in conjunction with the section 51.165(b) requirements would apply to TSP in the same manner as proposed for the primary PM_{10} NAAQS. Moreover, in the event that the Administrator set the secondary NAAQS equivalent in all respects to the primary PM_{10} NAAQS, then the preconstruction requirements proposed for the primary PM_{10} NAAQS would apply for the secondary NAAQS as well.

Finally, while proposing that no construction ban under either section 110(a)(2)(1) or section 173(4) of the Act would apply to PM_{10}, the Administrator raised the issue of whether to consider imposition of a construction ban for PM_{10} under authority of section 301 if a State failed to meet its obligation to

submit an acceptable plan revision within the required 9-month time frame or failed to implement a plan after it had been approved.

The commenters' views on the proposed NSR requirements were generally based on whether they supported a section 110 or a Part D implementation pathway. The majority of commenters, believing that the development of SIP's for any NAAQS revision should be governed by section 110, opposed any retention of Part D-based NSR requirements. These commenters supported an offset requirement under section 51.165(b) as proposed, but disagreed that EPA had any authority to impose LAER or other requirements under Part D or the Offset Rule—even during the interim period before States submitted and received EPA approval of their section 51.165(b) program for PM_{10}.

A few commenters who supported an integrated section 110/Part D implementation pathway felt that it would be inappropriate for EPA not to continue imposing Part D NSR requirements where PM_{10} NAAQS violations may exist. One commenter stated that by failing to do so, one must conclude that Congress intended a more relaxed regime for the persistent particulate matter problems than it required earlier for initial particulate matter nonattainment problems.

For reasons stated earlier, the Administrator finds no statutory basis for applying Part D to PM_{10} and thus it would not be appropriate to try to impose for PM_{10} purposes the NSR requirements for LAER or statewide compliance contained in Part D of tne Act. The Administrator here wishes to reemphasize the fact that the nonapplicability of Part D does not result simply because EPA is revising the NAAQS for particulate matter, but because such revisions are believed to result in significant new planning burdens required to demonstrate attainment of the revised PM_{10} standards.

In taking the position that Part D does not apply to the revised primary NAAQS, the Administrator acknowledges that, as one commenter noted, the NSR program for PM_{10} may in some respects represent a relaxation of the nonattainment NSR program that had been required for TSP. The Administrator believes that this must occur, however, under the implementation scheme that Congress appears to have intended when a NAAQS revision causes significant new planning burdens. Nevertheless, States are still required to revise their SIP's (including the applicable NSR requirements) to demonstrate attainment of the revised NAAQS within the time frame required by Congress. Even if the PM_{10} preconstruction review program adopted by a State appears to be a weakened one by comparison, the PM_{10} SIP must show that attainment of the revised NAAQS will occur within 3 years.

Where violations of the PM_{10} NAAQS already exist, some States may indeed find that the minimum required offset program under section 51.165(b) is not adequate to address the nonattainment problem. Such States must then decide to what extent it may be appropriate to establish additional preconstruction review requirements for major new or modified sources under section 51.165(b) in addition to requiring emission reductions from existing sources of PM_{10}. The Act, under a section 110 implementation pathway, gives States adequate flexibility to take the measures they deem appropriate and necessary to demonstrate attainment of the revised PM_{10} NAAQS within 3 years.

Several commenters opposed EPA's proposal to apply the requirements under the offset rule to govern certain preconstruction review until the State submitted and received EPA approval of its section 51.165(b) program for PM_{10}. These commenters stated that EPA is not justified in proposing to impose the Part D-type requirements of the offset rule, i.e., LAER and certification of statewide compliance, until the State has failed to meet the statutory deadline for achieving the revised NAAQS.

The EPA has reviewed the proposal in light of these comments and agrees that it would not be appropriate to apply the requirements of the offset rule to PM_{10} at this time. However, until States revise their SIP's to demonstrate attainment and maintenance of PM_{10} NAAQS and presumably redesignate TSP nonattainment areas to unclassifiable areas, they will be expected to continue implementing, where applicable, a preconstruction review program for particulate matter based on their existing TSP-based nonattainment area requirements which may include the provisions of the offset rule. The requirements which the Administrator is today promulgating will not seek to impose the offset rule directly with respect to PM_{10}.

An air pollution control agency opposed EPA's proposal to use only section 51.165(b) to define NSR permitting requirements for PM_{10}. The commenter criticized EPA's approach by saying that due to the language of the regulation, section 51.165(b) could neither adequately address PM_{10} nonattainment situations nor ensure progress toward attaining the PM_{10} standards. At the center of the commenter's concern is the ambient impact screening test which EPA allows States to use as part of the applicability requirements for section 51.165(b). First, the commenter claimed that section 51.165(b) would provide no effective control of PM_{10} emission growth because new sources could be permitted to construct without sufficient mitigation if modeling fails to demonstrate a significant ambient impact. In comparison, under EPA's Part D-based nonattainment NSR requirements, there would be no ambient test and each major source locating in a nonattainment area would be presumed to contribute to the existing air quality problem.

Second, the commenter stated that section 51.165(b) provides no mechanism for addressing precursors to nonattainment pollutants. That is, because of the ambient impact screening test, section 51.165(b) is dependent on the capability of models which are not available to accurately predict downwind concentrations.

In response to the commenter's first concern, section 51.165(b) does allow states to exclude certain sources from its coverage on the basis of their insignificant modeled ambient impact. In proposing the significant ambient impact levels for PM_{10}, EPA sought to enable States to use the same de minimis modeling test for PM_{10} that is already available for other criteria pollutants to determine whether the modeled ambient impact of a new source or modification would significantly affect the air quality. At points beyond the location where a source would have significant modeled impacts, the source's impact would not be sufficient to cause or contribute to a NAAQS violation.

These de minimis numbers are keyed to the limits of reliability of the models used to predict a source's ambient impact some distance away. The commenter correctly points out that the use of such significant levels may not be desirable for applying the section 51.165(b) program to PM_{10} when a serious nonattainment situation is known to exist in the area where a source proposes to locate. (A similar problem could occur for any other pollutant as well when a State chooses not to redesignate an area to nonattainment under section 107 even though a widespread nonattainment situation may exist.)

Under such conditions of widespread NAAQS violations, EPA advises States to consider a more stringent

applicability framework than the one minimally set forth under section 51.165(b), based on criteria other than modeled ambient impacts. Such additional stringency could include a provision to require offsets from all sources—even those that the ambient screening test would otherwise exempt. The Administrator continues to believe, however, that it is generally reasonable to apply the de minimis test under section 51.165(b) to determine whether the modeled ambient impact of a source would significantly affect air quality. Since that is the intended purpose of the de minimis provisions, EPA therefore finds it appropriate to promulgate the proposed PM_{10} values.

It should be pointed out that when a source is allowed to be excluded from the section 51.165(b) requirements on the basis of its de minimis impact in the affected area, the SIP for PM_{10} must continue to account for any potential accumulation of such allowed de minimis emission increases which affect the NAAQS exceedance. Presumably the SIP will address this through additional emission reductions at existing sources.

In response to the commenter's second concern about the lack of models to predict PM_{10} levels caused by precursors, the Administrator anticipates that this is only a temporary drawback. The EPA is developing modeling methods that will estimate ground level PM_{10} concentrations caused by precursors. Where the contribution of PM_{10} precursors is anticipated to be of significant concern, EPA also permits the development of site-specific models to estimate precursor contribution to the source's ambient PM_{10} impact.

The same government agency commenter, noting that EPA proposed to grant States considerable flexibility in designing their emission offset program under section 51.165(b), suggested that intrapollutant offsets for secondary pollutants be accepted as mitigation for PM_{10} emission increases. The Administrator recognizes that secondary aerosols in the form of sulfates and nitrates may contribute significantly to the ambient PM_{10} levels in a number of locations and believes that in certain situations intrapollutant offsets could be considered appropriate to enable States to effectively address such problems. This matter further points to the need for models to predict the ambient PM_{10} concentrations caused by PM_{10} precursors. The Administrator intends to review on a case-by-case basis State requests to incorporate in the SIP a provision which would allow precursor offsets for PM_{10}.

Several commenters supported the need for creditability criteria for emission offsets required as part of a section 51.165(b) program; however, two commenters specifically questioned the need for the offsets to be federally enforceable. One commenter in particular claimed that the process of ensuring that an offset is "federally enforceable" rather than simply "enforceable" can be burdensome, time-consuming, costly, and unnecessary if the source owner is already subject to a State permit condition that requires the emission reduction and is enforceable by the State.

The general issue of federally enforceable emission reductions (offsets) is being addressed in a separate rulemaking action. On August 25, 1983, EPA proposed amendments which among other things proposed changes to the Federal enforceability requirements contained in a number of preconstruction review provisions, including the requirement for federally enforceable emission reductions (48 FR 38742). Specifically, EPA proposed to delete the requirement in section 51.18(j)(3)(ii)(e) [recodified as 51.165(a)(3)(ii)(e)] that emission offsets obtained by one source from another source in order to obtain preconstruction approval be federally enforceable. Subsequent to that proposal, EPA received extensive public comment which is being subjected to careful review.

The Administrator finds no basis for evaluating the issue of Federal enforceability separately with regard to PM_{10} and he will take final action on the August 25, 1983, proposal at the appropriate time. Until such time as a final action is taken, the requirement for Federal enforceability of emission offsets will continue to apply to all pollutants, including PM_{10}. In the event that EPA deletes the existing requirement for Federal enforceability in section 51.165(a)(3)(ii)(e), then the change would also be applied to PSD offsets.

A number of commenters strongly opposed any attempt by the Administrator to impose a construction ban for PM_{10} under any circumstances. Some of these commenters noted that section 110 does not provide the Administrator with any authority to reestablish a ban to stimulate timely PM_{10} SIP development. Other commenters agreed, adding that even section 301 with its narrow, gap-filling grant of authority is not an appropriate implementation vehicle for something as "major, extraordinary, and controversial" as the ban.

Some commenters expressed the opinion that imposition of a construction ban could actually worsen the nonattainment problem because it would prevent areas from obtaining the net emission reductions provided by new and modified sources through their offsets and also the replacement of older, higher emitting facilities with newer, better controlled ones.

A few commenters noted that the ban penalizes the wrong party since stationary sources are generally not responsible for inadequate SIP's. Others added that a better way to deal with recalcitrant States is to use the funding sanctions of section 176(b) and 105, and the EPA SIP promulgation authority of section 110(c)(1), all of which directly affect the States.

Two commenters stated that if the ban is to be used, it should be imposed only on a case-by-case basis after an opportunity for a public hearing, and only when emissions from stationary sources are the cause of the problem.

In support of a construction ban, several commenters stated that the existing construction ban is applicable because section 110(a)(2)(I) applies to all post-1979 SIP submissions. One of these commenters stated that if EPA decides that section 110(a)(2)(I) does not apply, then it would be appropriate for EPA to establish a provision equivalent to section 110(a)(2)(I).

Because the Administrator has concluded that Congress did not intend the Part D requirements to apply to such NAAQS revisions as are being promulgated today, it would be inappropriate in the absence of statutory authority for EPA to impose the existing Part D-based ban provisions under section 110(a)(2)(I) and section 173(4) with respect to PM_{10}. In addition, today's action does not include any new provisions for imposing a construction ban for PM_{10} sources under the Administrator's section 301 authority. The EPA does not believe it would be appropriate to consider the need to impose such a ban until States have first had an opportunity to prepare and begin implementing SIP's which provide for attainment of the revised PM_{10} NAAQS.

Nevertheless, EPA intends to fully analyze all of the legal issues and reserve for a future determination the appropriateness of, and authority for, imposing a construction ban under sections 110(c) and 301 of the Act on a case-by-case basis in States that fail to develop PM_{10} SIP's in a timely manner or fail to implement a PM_{10} SIP after it has been approved by EPA. Where authorized and appropriate, EPA will also consider the use of other sanctions,

such as funding sanctions or Federal rule promulgation to stimulate the development and implementation of plans which adequately demonstrate timely attainment and maintenance of the PM_{10} NAAQS.

E. Comments on Technical Issues

Along with the notice of proposed rulemaking, EPA issued a draft "PM_{10} SIP Development Guideline." Several comments were received regarding development of PM_{10} emission inventories, air quality modeling procedures, PM_{10} source testing procedures, and other matters covered in the guideline.

1. Preparing an Emission Inventory

Several commenters recommended that EPA amend its PM_{10} SIP Development Guideline to provide guidance on how to inventory directly emitted nitrates and sulfates and that the definitions of "particulate matter emissions" and "PM_{10} emissions" be revised to include secondary particulate matter precursor emissions.

The size specific emission factors developed by EPA for various particulate matter source categories include directly emitted nitrates and sulfates, but do not specifically identify the portion of the emission factor that is primary nitrate or sulfate. However, EPA has published chemical characterization information for a number of source categories which could be used to estimate the fractional emissions of primary nitrates and sulfates. This information is available in Receptor Model Source Composition Library, EPA–450/4/85–002.°

The EPA does not agree that secondary particulate matter precursor emissions should be included in the definition of particulate matter emissions. Particulate matter emissions are intended to include materials which are directly emitted from sources as particles. Directly emitted particles are distinctly different from secondarily formed particles, which are emitted as gases and form particulate matter as a result of chemical reactions that occur some time after being emitted by a source. As such, secondary particulate matter precursor emissions contribute to ambient PM_{10} concentrations but do not contribute to PM_{10} emissions per se.

2. Emission Factors

Commenters stated that EPA has no detailed emission information upon which to base the development of PM_{10} emission factors since a standard reference source test method has not been adopted for PM_{10} emissions. The commenters believe there are significant technical problems with the two basic PM_{10} measuring techniques (cascade impactors and multistage cyclones) and with measuring condensible particulate matter. Also, the commenters allege that the use of particle size fraction multipliers in conjunction with existing emission factors requires excessive attention to specific source characteristics to prepare a realistic emission inventory.

As part of a special data collection effort to develop PM_{10} emission factors for certain source categories, starting in the 1970's, EPA tested and evaluated several particle size source sampling techniques. The PM_{10} source test protocols were developed and utilized in collecting data for the development of PM_{10} emission factors under this program. While it is true that EPA does not have a standard reference method for PM_{10} source testing, the Agency believes the data collected under the special PM_{10} emission factor program were of good quality. Nevertheless, it is generally recognized that much of the particle size data collected and reported in the literature in the past are of limited value. Literature data were used by EPA to develop emission factors for sources not tested under EPA's field program. The limited quality of these data has been generally noted by the use of EPA's letter rating system for emission factors.

The EPA recommends that source-specific emission data be collected to characterize emissions from any particular source. This is particularly true for large point sources of PM_{10}, whose emissions are known to be a function of identifiable process and design variables. Emission factors and/or fractional multipliers are intended to be used as a fallback to estimate emissions when source specific data are not available.

The fractional multipliers represent an average of available test data and are most appropriately applied when estimating emissions from numerous sources in an areawide source inventory. Because these multipliers are averages, they will yield emission estimates and distributions that may not necessarily be representative of an individual source. However, when applied to multiple sources, these differences tend to balance out across the inventory. The EPA published particle sized emission factors in the *Compilation of Emission Factors*, AP–42, in September 1985 and Supplement A which was issued in October 1986.p The EPA will continue to develop and update PM_{10} emissions factors as more data become available.

3. Receptor Modeling

Industrial commenters stated that the receptor modeling techniques recommended by EPA (chemical mass balance, automated scanning microscopy and optical microscopy) have limitations that make their general endorsement for SIP development inappropriate at this time. They felt EPA should acknowledge that there are certain situations, primarily in simple air sheds, in which use of these techniques by technicians trained to understand the capabilities and limitations of each techinque would assist in control strategy development. They recommended EPA should concentrate on standardizing and providing better guidance and training regarding these techniques.

The EPA does recognize the limitations (and strengths) of receptor modeling and our guidance reflects this. Receptor models should be used collaboratively with dispersion models, where possible, to apportion the contribution of sources to various receptors.

The EPA guidance reflects the fact that chemical mass balance (CMB) is most useful in those cases where: (1) The identification of source categories will provide sufficient information or, alternatively, that the impacts of specific sources within a category can be allocated by emission inventories or models; (2) the number of major impacting categories in an air shed is likely to be small. The EPA recommends that source profiles, based on source-specific data, be used in CMB just as source emission measurements are preferred to the use of AP–42 factors as the basis for emission estimates in dispersion model. As a fall-back, EPA has developed a source composition library which is a compendium of available source profile information that assigns a rating to each profile to assist the user in determining its usefulness. It is agreed that a PM_{10} CMB analysis on TSP glass fiber filters is likely to be unsatisfactory in complex air sheds. The proposed guidance recommends that a CMB analysis be corroborated if possible by microscopic analysis, if TSP data collected on glass fiber filters are all that are available. Many areas have (or will have) PM_{10} or PM_{15} data collected on quartz fiber filters or Teflon filters or will likely obtain additional samples prior to SIP preparation.

Microscopic techniques will likewise be useful in conjunction with some models. Microscopy is less useful when a TSP sample collected on glass fiber filters is all that is available; it has been,

however, demonstrated to be valid as a corroborative technique with appropriately collected samples.

Agencies with moderately sophisticated technical staffs should be able to perform the CMB analysis after appropriate training. The EPA has conducted five workshops on receptor modeling nationwide; several have been conducted by the Air Pollution Control Association and private consultants have conducted several. The EPA has published a six-volume set of technical reports on receptor models which is available from NTIS. Volume IV of the Receptor Model Technical Series provides useful information to agencies interested in commissioning studies or interpreting results, though it is not an exhaustive treatment of the subject.

In some cases, a consultant will need to provide the necessary analyses just as some dispersion modeling is done by consultants. The EPA is revising the users guide for the CMB model and preparing a protocol for application and validation of that model, as well as a document explaining how differences between receptor and dispersion model results can be reconciled.[r,s,t]

4. Dispersion Modeling

Two commenters raised concerns about the availability and applicability of air quality dispersion models in complex terrain. Both commenters suggested EPA either approve air quality dispersion models for use in such terrain or permit the use of simpler approaches.

Commenters also raised concerns about the ability of current air quality dispersion models to assess the impact of particle formation as a result of oxides of sulfur and nitrogen emitted to the atmosphere, i.e., secondary aerosols, on PM_{10} air quality.

Commenters asserted that fine particles in general, and secondary aerosols in particular, are potentially major contributors to PM_{10} in some areas and may originate outside of the region under the control of local or State authorities. They alleged gaseous as well as particulate matter emissions reductions may be needed to reduce PM_{10} concentrations and that distant sources of precursors may prove difficult to identify.

The EPA does not intend that each area where complex terrain is of concern develop its own model where the State believes the available techniques do not accurately describe the physical circumstances. To eliminate the use of air quality dispersion models in complex terrain would be inappropriate because while receptor modeling and other similar approaches provide information relevant to the SIP development effort, analyses using air quality dispersion models are more likely to include the meteorological circumstances resulting in the maximum expected air quality concentrations.

The EPA proposed the addition of another complex terrain screening model, the Rough Terrain Diffusion Model (RTDM), for use in performing these air quality analyses on September 9, 1986 (51 FR 32180). Use of these techniques, when approved, should result in more credible analyses of complex terrain impacts.

With regard to secondary aerosol, preliminary analysis of fine particulate matter data collected in the National Inhalable Particulate Network indicates that sulfate and nitrate generally total less than half of fine particulate matter on days with high concentrations. This indicates that a substantial portion of fine particulate matter in urban areas is likely to be of local origin.

The formation of secondary aerosols is the concern of many ongoing research activities within EPA as well as the scientific community at large. The validity of models that represent the formation of secondary aerosols must, however, be demonstrated to EPA, and approval for application of such models in a specific area must be received before incorporating the results in a SIP. The EPA is developing a model, the Particulate Episodic Model (PEM–2), that calculates for either one or two pollutants the average surface concentrations of both the primary (reactant) and secondary (reaction products) pollutants, provided they are coupled through a first-order chemical transformation. Its use in specific regulatory applications will have to wait until the model and its associated limitations can be established.

Where the contribution of secondary aerosols is anticipated to be of significant concern, EPA permits the development of site-specific models to address these concerns. With respect to determining distant sources of precursors, EPA is evaluating the performance of long range transport models. Therefore, none can be recommended at this time on other than a case-by-case basis. Recommendations on the use of long-range transport models will be accomplished through revisions to the Guideline on Air Quality Models.[u] Appendix D of the SIP development guideline provides guidance on identifying the background portion of PM_{10} and provides a working definition of background.

5. Source Sampling Devices and Procedures

A commenter stated that the two techniques available to measure PM_{10} in a gas stream, cascade impactors and cyclone samplers, have numerous problems. Specifically, the commenter alleged that cascade impactors:

a. Are very sensitive to small weight changes and operator error;

b. Are not versatile enough to measure wide variations of particle concentrations and size distribution;

c. Have significant wall losses;

d. Are subject to particle bounce which affects reliability;

e. Are affected by reactions between the collection medium and SO_2 in the gas stream; and

f. Have difficulty achieving isokinetic sampling.

The commenter also alleged that cyclone samplers have many of the same problems, and that there is very little experience using cyclone samplers.

Appendix C of the PM_{10} SIP Development Guideline describes modified Method 5 source sampling procedures that can be used to measure PM_{10} in a gas stream. The EPA believes Appendix C procedures can be used by knowledgeable source testing personnel in the interim until development of a PM_{10} reference method is completed. Several precautionary statements are made in Appendix C to make clear the fact that size selective measurements are more complex and require greater skill and attention to detail than Method 5 and 17 tests. Regarding sampler versatility, any one of several devices will cover the majority of conditions in ducts downstream of particulate matter controls with gas temperatures less than 650 °F. Wall losses for particles smaller than 10 micrometers are acceptably small, particle bounce can be avoided with proper operation, and reactions of SO_2 with the filter media can be prevented by pretreatment of the filter media.

6. Data Reduction

A commenter stated that the PADRE computer routine for test data reduction has shortcomings that make prediction of actual PM_{10} emissions difficult. Specifically, the commenter stated, the PADRE program:

a. Allows the use of generic calibration constants;

b. Uses fixed cut-point data for any preseparator device; and

c. Requires designation of a maximum expected particle diameter within the sample.

The PADRE was developed for analysis of cascade impactor data. It was used to facilitate entry of particle size data into the Fine Particle Emission Inventory System (FPEIS). The PADRE contains an algorithm for interpolating and to some degree extrapolating data to obtain size distribution information at diameters other than those provided directly by the impactors. The accuracy of this algorithm has been demonstrated to be reliable. The "generic" calibration constants used in PADRE are based on averages of calibration data for several specific samplers of each model of cascade impactor. When the corresponding stages from all units of the same model are averaged, the standard deviation of the averages for each stage are typically within 8 percent of the mean values.

The PADRE program does not assume a fixed preseparator cut point. Because equations and constants governing the performance of various precollectors are not the same, operators are expected to verify the cut point and input the correct value as part of the data entry into PADRE.

The maximum particle size of concern in the PADRE input is the maximum size in the sample. This can be measured with sufficient accuracy using a microscope. This value is used to establish a boundary condition in the algorithm used to extrapolate data to diameters larger than the maximum stage or precollector cut size. Since 10 micrometers is almost always within the span covered by the impactor and precollector cuts, extrapolation of data should seldom be needed. The EPA believes these procedures can yield results adequate for development of site specific emission factors if the suggested precautions are taken.

F. Comments on Miscellaneous Issues

1. Impact on New Source Performance Standards Program

The current 22 NSPS that reflect best demonstrated control technology for particulate matter have the effect of controlling PM_{10}. Therefore, EPA proposed to take the following actions on NSPS in response to a revision of the particulate matter standards:

(1) Complete an assessment of the current NSPS to determine whether or not to revise them because of PM_{10} considerations. The assessment would identify the source categories that are significant emitters of PM_{10} and condensible gases that form PM_{10} in the ambient air after release from the stack, and the effectiveness of the controls required to reduce such emissions. The EPA would then proceed to revise the NSPS; giving highest priority to the most significant emitters of PM_{10}.

(2) Assess all NSPS for effectiveness in controlling PM_{10} when reviewed periodically as required by section 111(b)(1)(B) of the Act; and

(3) Consider PM_{10} in developing any future NSPS.

Several commenters stated that there is no inconsistency between having TSP-based NSPS requirements and having PM_{10} as the indicator of particulate matter in the NAAQS. The particulate matter regulated by the NSPS is measured by Reference Method 5, and is probably closer in size to PM_{10} than TSP after passing through the particulate matter control device almost invariably required on any source of such emissions subject to NSPS requirements.

The EPA acknowledges that NSPS for sources of particulate matter are not based on the NAAQS indicator whether that indicator is TSP or PM_{10}. Rather the standards are based on the effectiveness of control technology as measured by various reference test methods. Consequently, EPA does not intend to revise any NSPS at this time to account for revisions to the NAAQS. Since proposal, EPA has completed a draft screening study that identifies the NSPS source categories that are significant emitters of PM_{10}. As part of any future review of these NSPS under section 111(b)(1)(B) of the Act, EPA will consider the effectiveness of the NSPS in controlling PM_{10}. The EPA will also consider PM_{10} control in developing any future NSPS.

2. Economic Impact

The EPA determined that the particulate matter NAAQS proposal of March 20, 1984, was a major action and prepared a Regulatory Impact Analysis (RIA) as required by Executive Order (E.O.) 12291. However, the EPA determined that the proposal of April 2, 1985, as to how the standards will be implemented, did not in itself result in the economic effects set forth in Section I of the E.O. as grounds for finding a regulation to be a major rule.

A commenter disagreed with the Administrator's finding that the implementation proposal is not in itself a major action, especially if the PM_{10} standards are selected from the low end of the range proposed.

The EPA recognized that selection of a PM_{10} standard in the lower part of the range would be a major action. Accordingly, both the draft and final RIA account for those impacts. That analysis is discussed in the final action on new particulate matter standards that appears elsewhere in this **Federal Register** and is also available in Docket No. A-82-37. Since both the draft and final RIA account for the level of the NAAQS selected, the EPA determined that no separate study was required for related actions taken to implement the NAAQS.

3. Annual Source Emissions Reporting

The proposal required States to report annually both particulate matter emissions data and PM_{10} emissions data and specified procedures applicable to annual reporting of emissions for both pollutants.

One State commented that it expects to estimate directly emitted amounts of PM_{10} by multiplying total particulate matter emissions [as reported to the National Emissions Data System (NEDS)] by PM_{10} size fractions and added that, "EPA has PM_{10} size fractions and could apply them to existing NEDS data for particulate matter." Based on this, and "the small contribution of point sources," the State proposed that EPA require PM_{10} emissions reporting only for sources where estimates are not made by applying a PM_{10} fraction to total particulate matter emissions.

Since the Administrator has determined that the indicator for the secondary standard should also be changed from TSP to PM_{10}, EPA does not require, as was proposed, annual reporting of both particulate matter emissions and PM_{10} emissions. Required annual reporting of particulate matter emissions ends with State reporting of calendar year 1987 emissions. Required annual reporting of PM_{10} emissions begins with State reporting of calendar year 1988 emissions. Since the reporting burden will not increase and since the ratio of PM_{10} emissions to particulate matter emissions can vary greatly among sources, it is better for the State to choose the appropriate method of determining PM_{10} emissions for each source.

One State noted that a basic problem will be the establishment of PM_{10} emission factors for sources and default values where data do not exist. This State also said that the criteria for source emissions reporting for PM_{10} should be a lower number than for particulate matter "as proposed in the offset rule significant emission rate determination."

The EPA agrees that providing emissions factors and default values is critical to the States' capabilities to comply with EPA's PM_{10} emissions reporting requirements. The EPA plans to provide this and other necessary information to States by the time needed

to meet the reporting requirements. The States' first annual reporting of PM_{10} emissions begins with the reporting of calendar year 1988 emissions. Regarding the differences in the criteria for emissions reporting and the criteria for "significant emission rate determination" in the offset rule, EPA agrees that a lower number for reporting PM_{10} would prove useful, since it could continue to require approximately the same number of sources to be reported. However, the reporting system is generally set up to track sources with 100 tpy or more of actual emissions regardless of the pollutant or the method used to measure that pollutant. This keeps the system limited to the very large sources of each pollutant, and EPA feels still provides the data needed for various types of national analyses at minimal resource costs. The "significance" values in the offset rule serve a totally different purpose; they are potential emissions (not actual) used to determine whether an emissions increase at an existing source should be subject to preconstruction review. The threshold values for new source preconstruction review, also in the offset rule, are generally 100 tpy for major sources as defined by statute which fits in well with the reporting requirement. Therefore, the threshold limit for emission reporting is not being changed.

One commenter stated that reporting PM_{10} emissions to the Hazardous and Trace Emissions System (HATREMS) with other pollutants opens the door for false accusation of emitters of PM_{10} as being emitters of hazardous materials.

The EPA's proposal to report PM_{10} emissions to HATREMS was strictly for the purpose of data management. The NEDS does not have the capability to store data for both particulate matter and PM_{10}. The EPA plans to replace both the NEDS and HATREMS with a new facility subsystem being developed as part of the Aerometric Inventory Retrieval System. The subsystem will be able to store and retrieve emission data on all pollutants.

G. Comments on Procedural Issues

1. Extension of the Comment Period and Public Hearing

The proposal allowed a 60-day comment period for submission of written comments. It also provided an opportunity for oral comment and stated that persons wishing to present oral testimony at a public hearing should notify EPA within 2 weeks of publication of the proposal.

Several commenters requested a 60-day extension in the comment period. One commenter made a request 45 days after the proposal notice requesting that EPA schedule a public hearing for a reasonable time (30 days) after the close of the comment period.

The EPA granted a 30-day extension of the public comment period. The EPA believes that a 90-day comment period provided the public with ample opportunity to submit written comments. The EPA did not hold a public hearing because only one commenter requested it, and the request was not made until 30 days after the deadline established in the proposal notice for such requests. The EPA felt that one untimely request did not indicate sufficient interest to justify scheduling a public hearing.

2. Reproposal

Because no scientific consensus existed on specific levels for the standards, and the analytical and policy basis for making these decisions under the statute were limited and difficult to implement, the Administrator did not propose specific standard levels but proposed a range of levels in the March 1984 proposal. The April 2, 1985, proposal of regulations for implementing revised particulate matter standards also included a variety of scenarios and implementation issues. The EPA proposed to implement a PM_{10} primary standard under section 110 of the Act rather than Part D. The SIP development policy proposed was essentially the same as that promulgated today (i.e., dividing the country into Group I, II, and III areas). Implementation policies for a TSP secondary standard were proposed for both the section 110 and Part D pathways.

Several commenters felt that it was virtually impossible to comment on implementation of the revised particulate matter NAAQS as proposed because of the numerous alternative scenarios, what they termed undue complexity, and in places alleged incomprehensibility of EPA's discussion of its regulatory package.

The commenters listed several problem areas where they felt uncertainties must be resolved before an actual proposal on implementation issues could be published on which the public could meaningfully comment. Among these problem areas were: (1) Lack of a reference method for measuring particulate matter stack emissions; (2) lack of specified numerical values for the PM_{10} primary standards; (3) lack of a decision on whether the secondary standard would be expressed as TSP or PM_{10}, and the specific numerical value for the secondary standard; and (4) lack of a clear legal "pathway" chosen to implement the revised standards. Thus, the commenters felt EPA should withdraw the April 2, 1985, proposal and rewrite, simplify, and repropose the PM_{10} implementation action after final action on the standards.

The EPA agrees that the proposal presented many options. However, EPA believes that each option was discussed in detail and the public had meaningful opportunity to comment on each option even though they did not know which option EPA would eventually choose. The EPA cannot repropose the SIP implementing provisions after the NAAQS are finalized because the Act requires the States to implement the standards as soon as they become effective. The Act requires States to submit SIP's to EPA within 9 months of promulgation of a standard. If EPA reproposed the SIP implementation regulations and policy when the NAAQS were promulgated, EPA could not finalize them soon enough to give States time to develop their SIP submittals within 9 months.

VII. Regulatory and Environmental Impacts

A. Regulatory Impact Analysis

Under E.O. 12291, EPA must determine whether a regulation is a "major rule" for which an RIA is required. The EPA has determined the particulate matter NAAQS revision is a major action, and has prepared a RIA which is discussed in that notice. This action addresses the implementation of the revised NAAQS and does not itself result in the economic effects set forth in Section I of the E.O. as grounds for finding this regulation to be a major rule.

B. Impact on Small Entities

The Regulatory Flexibility Act requires that all Federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. section 601 et seq.). The EPA has considered the potential impacts of revising the particulate matter NAAQS on small entity groups and included a detailed discussion of that effort in Section V.F. of the RIA. The reader is referred to that discussion for further details.

C. Impact on Reporting Requirements

The revisions to Parts 51 and 52 were submitted to the Office of Management and Budget (OMB) for review as required by EO 12291. The reporting and recordkeeping provision addressed in this notice, moreover, have been submitted separately for review by OMB

under section 3504(b) of the Paperwork Reduction Act of 1980, U.S.C. 3501 et seq. The OMB comments and EPA responses to those comments are available for public inspection in the docket for this action.

List of Subjects

40 CFR Part 51

Administrative practice and procedure, air pollution control, intergovernmental relations, reporting and recordkeeping requirements, hydrocarbons, ozone, carbon monoxide, sulfur oxides, nitrogen dioxide, lead, particulate matter, State implementation plans.

40 CFR Part 52

Air pollution control, ozone, sulfur oxides, nitrogen dioxide, lead, carbon monoxide, hydrocarbons, particulate matter.

Dated: June 2, 1987.

Lee M. Thomas,

Administrator.

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PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

For the reasons set forth in the preamble, EPA amends Part 51 of Chapter I of Title 40 of the Code of Federal Regulations as follows:

1. The authority citation for Part 51 is revised to read as follows:

Authority: This rulemaking is promulgated under authority of sections 101(b)(1), 110, 160–169, 171–178, and 301(a) of the Clean Air Act 42 U.S.C. 7401(b)(1), 7410, 7470–7479, 7501–7508, and 7601(a).

2. In § 51.100, paragraphs (oo), (pp), (qq), (rr) and (ss) are added to read as follows:

§ 51.100 Definitions.

* * * * *

(oo) "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.

(pp) "Particulate matter emissions" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by applicable reference methods, or an equivalent or alternative method, specified in this chapter, or by a test method specified in an approved State implementation plan.

(qq) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based

on Appendix J of Part 50 of this chapter and designated in accordance with Part 53 of this chapter or by an equivalent method designated in accordance with Part 53 of this chapter.

(rr) "PM_{10} emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in this chapter or by a test method specified in an approved State implementation plan.

(ss) "Total suspended particulate" means particulate matter as measured by the method described in Appendix B of Part 50 of this chapter.

3. In § 51.151, the third unnumbered subdivision beginning "sulfur dioxide and particulate matter combined" is removed and the second unnumbered subdivision beginning "particulate matter" is revised to read as follows:

§ 51.151 Significant harm levels.

* * * * *

PM_{10}—600 micrograms/cubic meter; 24-hour average.

* * * * *

4. In § 51.165, the fourth entry in the list in paragraph (a)(1)(x) is removed and paragraph (b) is revised to read as follows:

§ 51.151 Permit requirements.

* * * * *

(b)(1) Each plan shall include a preconstruction review permit program or its equivalent to satisfy the requirements of section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in paragraphs (a)(1) (iv) and (v) of this section. Such a program shall apply to any such source or modification that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to section 107 of the Act, when it would cause or contribute to a violation of any national ambient air quality standard.

(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 μg/m³	5 μg/m³		25 μg/m³	
PM_{10}	1.0 μg/m³	5 μg/m³			
NO_2	1.0 μg/m³				
CO			0.5 mg/m³		2 mg/m³

(3) Such a program may include a provision which allows a proposed major source or major modification subject to paragraph (b) of this section to reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard. The plan shall require that, in the absence of such emission reductions, the State or local agency shall deny the proposed construction.

(4) The requirements of paragraph (b) of this section shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to section 107 of tne Act.

5. In § 51.166, paragraph (a)(6)(i) is revised, the fourth entry in the list in paragraph (b)(23)(i) is revised, the entries under the headings "Particulate matter" in the tables in paragraphs (c) and (p)(4) are revised, paragraphs (i)(8)(i) (*c*), (*f*), (*h*), and (*l*) are revised, and new paragraph (i)(10) is added to read as follows:

§ 51.166 Prevention of significant deterioration of air quality.

(a) * * *

(6) * * *

(i) Any State required to revise its implementation plan by reason of an amendment to this section, including any amendment adopted simultaneously with this paragraph, shall adopt and submit such plan revision to the Administrator for approval within 9 months after the effective date of the new amendments.

* * * * *

(b) * * *

(23)(i) * * *

Particulate matter: 25 tpy of particulate matter emissions. 15 tpy of PM_{10} emissions.

* * * * *

(c) * * *

Pollutant	Maximum allowable increases (micrograms per cubic meter)
Class I	
Particulate matter:	
TSP, annual geometric mean	5
TSP, 24-hr maximum	10
* * * * *	
Class II	
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
* * * * *s0	
Class III	
Particulate matter:	
TSP, annual geometric mean	37
TSP, 24-hr maximum	75
* * * * *	

* * * * *

(i) * * *

(8) * * *

(i) * * *

(*c*) Particulate matter—10 μg/m³ TSP, 24-hour average.—10 μg/m³ PM_{10}, 24-hour average.

* * * * *

(*f*) Lead—0.1 μg/m³, 3-month average.

* * * * *

(*h*) Beryllium—0.001 μg/m³, 24-hour average:

* * * * *

(*l*) Hydrogen sulfide—0.2 μg/m³, 1-hour average:

* * * * *

(10) If EPA approves a plan revision under § 51.166 as in effect before July 31, 1987 , any subsequent revision which meets the requirements of this section may contain transition provisions which parallel the transition provisions of § 52.21 (i)(11)(i)(iii), and (m)(1) (vii) and (viii) of this chapter as in effect on that date, these provisions being related to monitoring requirements for particulate matter. Any such subsequent revision may not contain any transition provision which in the context of the revision would operate any less stringently than would its counterpart in § 52.21 of this chapter.

* * * * *

(p) * * *

(4) * * *

Pollutant	Maximum allowable increases (micrograms per cubic meter)
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37

Pollutant	Maximum allowable increases (micrograms per cubic meter)
* * * * *	

* * * * *

6. In § 51.322, paragraphs (a)(1) and (b)(1) are revised to read as follows:

§ 51.322 Sources subject to emissions reporting.

(a) * * *

(1) For particulate matter, PM_{10}, sulfur oxides, VOC and nitrogen oxides, any facility that actually emits a total of 90.7 metric tons (100 tons) per year or more of any one pollutant. For particulate matter emissions, the reporting requirement ends with the reporting of calendar year 1987 emissions. For PM_{10} emissions, the reporting requirement begins with the reporting of calendar year 1988 emissions.

* * * * *

(b) * * *

(1) For particulate matter, PM_{10}, sulfur oxides, VOC and nitrogen oxides. 22.7 metric tons (25 tons) per year or more. For particulate matter, the reporting requirement ends with the reporting of calendar year 1987 emissions. For PM_{10}, the reporting requirement begins with the reporting of calendar year 1988 emissions.

* * * * *

7. In § 51.323, paragraphs (a)(1) and (a)(2) are revised and paragraph (a)(3) is added to read as follows:

§ 51.323 Reportable emissions data and information.

(a) * * *

(1) Emissions of particulate matter, sulfur oxides, carbon monoxide, nitrogen oxides, and VOC as specified by AEROS Users Manual, Vol. II (EPA 450/2–76–029, OAQPS No. 1.2–039) to be coded into the National Emissions Data System point source coding form.

(2) Emissions of lead or lead compounds measured as elemental lead as specified by AEROS Users Manual, Vol. II (EPA 45/2–76–029, OAQPS No. 1.2–039) to be coded into the Hazardous and Trace Emissions System points source coding forms, and

(3) Emissions of PM_{10} as will be specified in a future guideline.

* * * * *

8. In Appendix L, paragraphs 1.1 (b), (c), and (d) are amended by removing the unnumbered subdivisions beginning "SO_2 and particulate combined" and by revising the unnumbered subdivisions beginning "Particulate" to read as follows:

Appendix L—[Amended]

APPENDIX L—EXAMPLE REGULATIONS FOR PREVENTION OF AIR POLLUTION EMERGENCY EPISODES

1.1 * * *

(b) * * *

PM_{10}—350 $\mu g/m^3$, 24-hour average.

(c) * * *

PM_{10}—420 $\mu g/m^3$, 24-hour average.

(d) * * *

PM_{10}—500 $\mu g/m^3$, 24-hour average.

* * * * *

Appendix S—[Amended]

9. In Appendix S, the fourth line beginning "Particulate matter" in the list in section 11.A.10(i) is amended by adding the words "of particulate matter emissions" after the words "25 tpy."

* * * * *

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

For the reasons set out in the preamble, Part 52 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.

2. In § 52.21, the fourth item in the table in paragraph (b)(23)(i) is revised; the entries under the heading "Particulate matter" in the tables in paragraphs (c) and (p)(5) are revised; paragraphs (i)(4) (ix) and (x) are added; the third, sixth, eighth, and twelfth items in the list in paragraph (i)(8)(i) are revised; paragraph (i)(11), and paragraphs (m)(1)(vii) and (viii) are added; and paragraph (w)(2) is revised as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) Definitions. * * *

(23)(i) * * *

Particulate matter: 25 tpy of particulate matter emissions; 15 tpy of PM_{10} emissions.

* * * * *

(c) * * *

Pollutant	Maximum allowable increases (micrograms per cubic meter)
Class I	
Particulate matter:	
TSP, annual geometric mean	5
TSP, 24-hr maximum	10
* * * * *	
Class II	
Particulate matter:	
TSP, annual geometric mean	19
TSP, 24-hr maximum	37
* * * * *	
Class III	
Particulate matter:	
TSP, annual geometric mean	37
TSP, 24-hr maximum	75
* * * * *	

* * * * *

(i) * * *

(4) * * *

(ix) The source or modification was not subject to § 52.21, with respect to particulate matter, as in effect before July 31, 1987, and the owner or operator:

(*a*) Obtained all final Federal, State, and local preconstruction approvals or permits necessary under the applicable State implementation plan before July 31, 1987.

(*b*) Commenced construction within 18 months after July 31, 1987, or any earlier time required under the State implementation plan; and

(*c*) Did not discontinue construction for a period of 18 months or more and completed construction within a reasonable period of time;

(x) The source or modification was subject to 40 CFR 52.21, with respect to particulate matter, as in effect before July 31, 1987 and the owner or operator submitted an application for a permit under this section before that date, and the Administrator subsequently determines that the application as submitted was complete with respect to the particulate matter requirements then in effect in this section. Instead, the requirements of paragraphs (j) through (r) of this section that were in effect before July 31, 1987 shall apply to such source or modification.

* * * * *

(8) * * *

(i) * * *

Particulate matter:

10 $\mu g/m^3$ of TSP, 24-hour average.

10 $\mu g/m^3$ of PM_{10}, 24-hour average;

* * * * *

Lead—0.1 $\mu g/m^3$, 3-month average;

* * * * *

Beryllium—0.001 $\mu g/m^3$, 24-hour average;

* * * * *

Hydrogen sulfide—0.2 $\mu g/m^3$, 1-hour average;

* * * * *

(11)(i) At the discretion of the Administrator, the requirements for air quality monitoring of PM_{10} in paragraphs (m)(1)(i)–(iv) of this section may not apply to a particular source or modification when the owner or operator of the source or modification submits an application for a permit under this section on or before June 1, 1988 and the Administrator subsequently determines that the application as submitted before that date was complete, except with respect to the requirements for monitoring particulate matter in paragraphs (m)(1)(i)–(iv).

(ii) The requirements for air quality monitoring of PM_{10} in paragraphs (m)(1)(iii) and (iv) and (m)(3) of this section shall apply to a particular source or modification if the owner or operator of the source or modification submits an application for a permit under this section after June 1, 1988 and no later than December 1, 1988. The data shall have been gathered over at least the period from February 1, 1988 to the date the application becomes otherwise complete in accordance with the provisions set forth under paragraph (m)(1)(viii) of this section, except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

* * * * *

(m) *Air quality analysis.*

(1) * * *

(vii) For any application that becomes complete, except as to the requirements of paragraph (m)(1)(iii) and (iv) pertaining to PM_{10}, after December 1, 1988 and no later than August 1, 1988 the data that paragraph (m)(1)(iii) requires shall nave been gathered over at least the period from August 1, 1988 to the date the application becomes otherwise complete. except that if the Administrator determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not to be less than 4 months), the data that paragraph (m)(1)(iii) requires shall have been gathered over that shorter period.

(viii) With respect to any requirements for air quality monitoring of PM_{10} under paragraphs (i)(11) (i) and (ii) of this section, the owner or operator of the source or modification shall use a monitoring method approved by the Administrator and shall estimate the ambient concentrations of PM_{10} using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Administrator.

* * * * *

(p) * * *

(5) * * *

Pollutant	Maximum allowable increases (micrograms per cubic meter)
Particulate matter:	
TSP, annual geometric mean	19
TSP 24-hr maximum	37

* * * * *

(w) *Permit rescission.* * * *

(2) Any owner or operator of a stationary source or modification who holds a permit for the source or modification which was issued under § 52.21 as in effect on July 30, 1987, or any earlier version of this section, may request that the Administrator rescind the permit or a particular portion of the permit.

* * * * *

§ 52.24 [Amended]

3. In § 52.24, paragraph (f)(10) is amended by removing the fourth entry, beginning "Particulate matter," from the list of significant emission rates.

[FR Doc. 87–13709 Filed 6–30–87; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 52

[AD-FRL-314-9(d)]

Air Programs; Particulate Matter (PM_{10}) Fugitive Dust Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed policy statement.

SUMMARY: Since 1977, EPA has allowed States with rural fugitive dust areas (RFDA's) to discount fugitive dust in developing and enforcing a State implementation plan (SIP) for attainment and maintenance of the national ambient air quality standards (NAAQS) for particulate matter (PM). Elsewhere in the **Federal Register** today, EPA is announcing final decisions concerning the indicator and levels of the NAAQS for PM and the requirements for implementing those new standards. By this notice, EPA is soliciting comments on alternative SIP requirements for RFDA's and on the adequacy of the definitions which are used in identifying RFDA's. The EPA will continue its existing fugitive dust policy and apply it to implementation of the revised PM standard until it has received and reviewed comments on these proposed alternative SIP requirements and has adopted a final policy.

DATES: All comments must be submitted on or before July 31, 1987.

ADDRESSES: Comments on these alternative fugitive dust policies should be submitted (in triplicate if possible) to the Central Docket Section (LE–132), U.S. Environmental Protection Agency, Attention: Docket Number A–87–01, 401 M Street, SW., Washington, DC 20460. The Docket is located in Room 4, South Conference Center and is available for public inspection between 8:00 a.m., and 3:00 p.m. on weekdays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kenneth Woodward, Standards Implementation Branch (MD–15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. Telephone: (919) 541–5351 (FTS 629–5351).

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Requirements

Section 110(a)(1) of the Clean Air Act (Act) requires that each State adopt, within 9 months after promulgation or revision of a primary NAAQS, a SIP that provides for implementation, maintenance, and enforcement of the NAAQS at all locations within 3 years of approval of the plan by EPA. The Administrator may grant a 2-year extension to the attainment date under conditions given in section 110(e) of the Act. Because some areas may be heavily impacted by fugitive dust which can be difficult to control, EPA issued a fugitive dust policy in 1977 applicable to nonattainment areas for total suspended particulate (TSP).

B. History of the Fugitive Dust Policy

Fugitive dust was identified as a significant contributor to ambient concentrations of TSP in 1976. However, there was little experience in controlling fugitive dust sources such as agricultural activities, unpaved roads, and wind erosion. In rural areas especially, four factors mitigated EPA's desire to reduce fugitive emissions: (1) The PM was native soil which was believed to be less of a health hazard than urban particles, (2) the population affected was small, (3) the economic base to support control was small, and (4) the aggregate cost of controlling miles of unpaved roads and acres of open land could be unreasonable. For these reasons, EPA issued guidance on implementation of its SIP development and new source review policies in areas impacted by fugitive dust (Tuerk, 1977). The guidance (known as the fugitive dust policy) concluded that fugitive dust caused greater environmental impact in urban areas than in rural areas. The basis for this conclusion was the belief that although fugitive dust is typically native soil, in urban areas it is contaminated to a measurable degree by "a combination of industrial pollutants from a variety of sources making it potentially more harmful." Also, the fugitive dust problem was considered "more pronounced within urbanized areas and thus more conducive to development of an implementable control program." On this basis, EPA's policy for development of control strategies for fugitive dust emissions of TSP was that "urban areas should receive the highest priority for development of a comprehensive and reasonable program to control fugitive dust." Control programs in rural areas were to "center on the control of large existing manmade fugitive dust sources (i.e., tailing piles, mining operations, etc.) which in themselves are presently causing violations of the NAAQS or are sources of a known toxic or hazardous material (e.g., asbestos)."

Another aspect of the fugitive dust policy was that "new sources that wish to construct in rural fugitive dust areas should be allowed to do so without the need of an emission offset, as long as they comply with the applicable emission regulation and the impact of their emissions plus the emissions from other stationary sources in the vicinity of the proposed location, along with normal background, is not projected to cause violations of the NAAQS."

The following criteria were used in defining a rural area under the fugitive dust policy: "(1) the lack of major industrial development or absence of significant industrial particulate emissions, and (2) low urbanized population (i.e., eastern states <100,000–200,000 or western states <25,000–50,000)."

The EPA felt justified in focusing efforts to control fugitive dust in urban areas not only because it was considered potentially more harmful, but also because (1) the population at risk was larger, and (2) resources to implement a control program (control agency manpower and control costs) could be spread over a broad base of support.

The EPA's guidance on State designation of attainment status under section 107 of the Act was issued by the Assistant Administrator for Air and Waste Management on October 7, 1977 (Hawkins, 1977). This guidance stated that an "area should be designated attainment when a TSP violation can be clearly attributed to rural fugitive dust (as defined in the EPA fugitive dust policy paper)."

These two guidance memorandums (Tuerk, 1977 and Hawkins, 1977) constitute what has become known as EPA's Rural Fugitive Dust Policy. Under this policy, 144 counties or portions of counties identified as RFDA's were eventually designated attainment for TSP.

C. Proposed Revision of the NAAQS for Particulate Matter

The EPA, on March 20, 1984 (49 FR 10408), proposed several revisions to the PM standards. One of the most significant proposals was to replace TSP as the indicator for PM with a new indicator that includes only particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). The notice of final rulemaking on the revisions to 40 CFR Part 50 in today's **Federal Register** announces EPA's final decisions on the proposed revisions and the basis for the selection of PM_{10} as the new indicator for both the primary and secondary NAAQS.

The EPA proposed revisions to its regulations governing SIP's on April 2, 1985 (50 FR 13130), to account for the proposed changes in the NAAQS for PM. At that time, EPA proposed to continue its existing fugitive dust policy

and solicited comments on that course of action.

D. Comments on Proposal to Continue Existing Policy

Several State agencies and environmental organizations favored narrowing or discontinuing the current policy. Comments were received from several industrial groups favoring continuation or expansion of the current fugitive dust policy. A summary of the comments and EPA's response follows.

Comments opposing continuation of the existing policy. Several commenters stated that EPA should discontinue use of the rural fugitive dust policy for PM_{10} until it has been subjected to full public review. It was alleged that control of PM_{10} must be based on the health impacts and not on economic consequences. It was argued that fine particles, fertilizers, pesticides, and herbicides in fugitive dust from agricultural processes and other processes that disturb the land may have as great an impact on rural communities as other sources do on urban communities.

Several commenters stated that EPA should narrow the scope of its policy because they believe over 50 percent of fugitive dust may be PM_{10} which can travel long distances and impact a larger population than just those in the rural area of origin. They alleged rural fugitive dust may also include fungal spores which cause diseases such as Valley Fever. Therefore, the commenters felt sources of fugitive dust need to be controlled whenever it is technically and economically possible.

EPA response to comments. The EPA has chosen not to discontinue the existing fugitive dust policy while it is soliciting comments on alternative policies. To do so before a decision on a final policy is made could cause limited State resources to be prematurely directed away from addressing higher priority urban area problems. However, EPA recognizes that some of the reasons for the existing policy may not apply to PM_{10} and consequently is seeking further comment on alternative policies.

Comments favoring continuing or expanding the existing policy. Several commenters (primarily representing mining interests) stated that EPA should continue its rural fugitive dust policy as proposed or expand it to include areas where industrial sources contribute only a minor portion of total PM_{10} emissions. The commenters alleged that fugitive dust from mines is essentially the same as, and poses no greater health risk than, naturally occurring uncontaminated dust. They felt that the current policy recognizes that large particles (which predominate in rural fugitive dust) are of little concern to human health, control of fugitive dust is difficult, and the cost of control on a broad scale would be staggering.

EPA response to comments. The EPA's 1977 fugitive dust policy stated that a rural area would be identified by a lack of major industrial development or absence of significant industrial PM emissions and low urbanized population. The highest priority was to be given to developing control programs for fugitive dust in urban areas. Priority was also to be given to control of large manmade fugitive dust sources in rural areas that in themselves caused violations of the TSP NAAQS or were sources of known toxic or hazardous material.

Thus, the fugitive dust policy never defined a rural area as completely absent of industrial development. Also, one of the bases for the policy was that control of fugitive dust was difficult and the cost could be large, especially for a rural economy.

Fugitive dust includes PM_{10} in varying amounts. Since EPA has now concluded that long-term exposure to high concentrations of PM_{10} constitutes a health risk and has concluded that, at present, fugitive dust or other specific components of PM_{10} cannot be safely excluded from the primary standard, EPA must carefully consider application of the existing fugitive dust policy in rural areas. The options being considered by EPA range from continuing the existing policy to requiring attainment of the PM_{10} NAAQS with 3 years.

E. Possible Rural Fugitive Dust Areas for PM_{10}

The number of counties likely to be considered RFDA's for PM_{10} under the existing policy are categorized in Table 1 by probabilities of violating PM_{10} NAAQS of 50 micrograms per cubic meter ($\mu g/m^3$), annual arithmetic mean, and 150 ($\mu ug/m^3$, 24-hour average, together with the population of the counties. The probabilities are based on 1983–1985 TSP air quality data and calculated using EPA's probability guideline [1] and a national distribution of PM_{10} to TSP ratios (EPA 1986). The TSP has been monitored in many of these areas for several years, whereas PM_{10} is not yet monitored in many RFDA's.

Table 1 indicates that 14 RFDA's with a total population of about 1.3 million have a 95 percent or greater probability of violating a 24-hour PM_{10} NAAQS of 150 $\mu g/m^3$. Two of those same RFDA's have 95 percent or greater probability of violating an annual PM_{10} NAAQS of 50 $\mu g/m^3$. About 35 RFDA's with a total population of about 1.1 million have between 20 and 95 percent probability of violating the 24-hour NAAQS. Twelve of these 35 RFDA's have greater than 20 percent probability of violating the annual NAAQS.

TABLE 1. ESTIMATED NUMBER OF PM_{10} RFDA'S AND THEIR POPULATION FOR VARIOUS PROBABILITIES OF VIOLATING THE ANNUAL OR 24-HOUR PM_{10} NAAQS

Probability of violating standards	50 $\mu g/m^3$ annual arithmetic mean	Population at risk (1000's)	150 $\mu g/m^3$ 24-hour average	Population at risk (1000's)
>0.95	2	110	[1] 14	1,293
>0.20, <0.95	22	1,219	[2] 35	1,131
Totals	24	1,329	[3] 49	2,424

[1] Of the 14 RFDA's with 95 percent or greater probability of violating the 24-hour NAAQS, 2 have 95 percent or greater, 10 have from 20 to 95 percent, and 2 have less than 20 percent probability of violating the annual NAAQS. Thus, this number includes 12 RFDA's from column 2.

2 Of the 35 RFDA's with 20 to 95 percent probability of violating the 24-hour NAAQS, 12 have from 20 to 95 percent and 23 have less than 20 percent probability of violating the annual NAAQS. Thus, this number includes 12 RFDA's from column 2.

[3] Includes all 24 areas which have greater than 20 percent probability of violating the annual NAAQS.

II. Definition of Rural Fugitive Dust Areas

The 1977 policy defined an RFDA as having a:

(1) Lack of major industrial development or absence of significant industrial particulate emissions, and

[1] The "probability guideline," an EPA report entitled "Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or PM_{10} Data," was prepared to facilitate classifying areas in the absence of adequate PM_{10} air quality data.

(2) Low urbanized population (i.e., eastern states <100,000–200,000 or western states <25,000–50,000).

The terms "lack of major industrial development" and "absence of significant industrial particulate emissions" were not defined in the 1977 policy. In the past, potential RFDA's have been evaluated for compliance with these terms on a case-by-case basis. The Administrator seeks comment on whether the terms should be specifically defined and, is so, how they should be defined.

In addition, a multitude of small nonfugitive dust sources (i.e., wood stoves) could also significantly impact small communities. Therefore, the Administrator seeks comment on the need to define and include in the definition of an RFDA the term "lack of significant, nonfugitive dust, area source emissions."

In the past, the 1977 definition of low urbanized population has been applied to the total population of the RFDA without respect to the size of the area involved. The RFDA's for TSP generally conformed to county boundaries which often included very large areas in western States. Since the sizes of the RFDA's varied greatly, the total population of the area was not indicative of the population density. Air monitoring sites in RFDA's are generally located in small towns which are often the only population center in the RFDA. Therefore, the most dense population is often within a few kilometers of the monitoring site. The Administrator seeks comments on whether the 1977 definition of low urbanized population for rural areas in adequate for implementing any fugitive dust policy adopted by EPA, or whether EPA should define low urbanized population based upon the population density of an area in proximity to a monitor.

III. Alternative Fugitive Dust Policies

The EPA believes that it may be appropriate to continue to give a lower priority to full SIP development in rural fugitive dust areas. A PM_{10} fugitive dust policy may be desirable given the potentially high cost of controlling rural fugitive dust in relation to the low populations at risk in such areas. Further, it may be more productive to require prompt attainment of the annual PM_{10} NAAQS in rural areas while giving a lower priority to the 24-hour PM_{10} NAAQS. The Administrator wishes to gather more technical information from the public in order to evaluate the relative importance of promptly attaining annual versus 24-hour PM_{10} standards in RFDR's and the costs of attaining each standard. The EPA is soliciting public comment on these issues to provide a basis for determining if the existing fugitive dust policy should be revised. If EPA concludes that the fugitive dust policy should be changed for PM_{10}, it will adopt a policy appropriate to meet the concerns identified.

The EPA is currently considering three alternatives to the existing fugitive dust policy, which are discussed below. They range from requiring attainment of both the 24-hour and annual PM_{10} NAAQS within 3 years [or 5 years with a section 110(e) extension] to requiring attainment of only the annual standard over an extended period of time.

The notice of final rulemaking revising 40 CFR Parts 51 and 52, published elsewhere in today's **Federal Register**, sets forth EPA's policies for implementing the PM_{10} NAAQS. The notice explains that air quality areas are being divided into three groups. Group I areas will be those with a high probability of not attaining the PM_{10} NAAQS, Group II areas will be those where existing air quality data are not sufficient to determine if they are attainment, and Group III areas will be those with a high probability of attaining the NAAQS without revisions to their existing control strategy.

A. Alternative I

The first alternative fugitive dust policy is the most stringent. The RFDA's with greater than 95 percent probability of violating the annual PM_{10} NAAQS would be required to meet Group I SIP requirements as explained in the notice of final rulemaking of Parts 51 and 52. Table 1 indicates that two RFDA's would be put into Group I under the alternative.The SIP must demonstrate attainment of the annual NAAQS within 3 years.

The RFDA's with greater than 20 percent but less than 95 percent probability of violating the annual PM_{10} NAAQS, or greater than 20 percent probability of violating the 24-hour NAAQS, would be required to meet Group II SIP requirements. Table 1 indicates that 47 RFDA's[2] would be put into group II. Major new sources and major modifications would be required to meet the same provisions for PM_{10} offsets under the PSD program as those in other areas not attaining the NAAQS and lacking an approved PM_{10} plan, i.e., emission offsets sufficient to provide a net air quality benefit. Consequently, a source might have to find reductions from nonindustrial sources, such as unpaved roads.

[2] This figure is derived from the 49 RFDA's with greater, than 20 percent probability of violating the 24-hour NAAQS minus the 2 RFDA's which have a probability of 95 percent or greater of violating the annual NAAQS, and thus are categorized as Group 1 areas.

B. Alternative II

The second alternative policy would be to require RFDA's with greater than 20 percent probability of violating either the annual or 24-hour NAAQS to meet the Group II SIP requirements. If attainment of the annual or 24-hour NAAQS cannot be demonstrated within 5 years [including a 2-year extension under section 110(e)], all reasonable control measures must be taken toward attainment. Rationale would be required as to why enactment of certain measures would be unreasonable and States would be required to show sustained progress toward attainment of both the annual and 24-hour NAAQS in RFDA's. The EPA solicits comments on this approach of allowing States to submit SIP's showing sustained progress toward attainment but not demonstrating attainment by any set attainment date. Specifically, EPA solicits comment on potential legal constraints on such an approach in light of the apparent statutory requirements for attainment by fixed dates [*Cf.* 51 FR 34428, 34434 (September 26, 1986) ("reasonable extra efforts program" proposed for California ozone nonattainmetn area)].

Major new sources and major modifications would be required to offset emissions under this alternative also. Table 1 indicatesr that 49 RFDA's would be put into Group II under this alternative.

C. Alternative III

The third alternative policy would be to require RFDA's with greater than 20 percent probability of violating the annual PM_{10} NAAQS only to meet Group II SIP requirements. Table 1 indicates there are about 24 such RFDA's.

As in Alternative II, if a control strategy is required but attainment cannot be demonstrated, all reasonable control measures must be taken toward attainment. Rationale would be required as to why enactment of certain measures would be unreasonable and States would be required to show sustained progress toward attainment of the annual PM_{10} NAAQS. Preparation of SIP's for RFDA's experiencing violations of the 24-hour NAAQS will be second priority.

As with the 1977 policy, major new sources and major modifications would not be required to offset emissions. They would be required to demonstrate that

the impact of their emissions plus the emissions of other stationary sources in the vicinity plus normal background would not cause violations of the PM_{10} NAAQS.

D. Continuing the Existing Policy

Under the 1977 policy, all RFDA's including those exceeding the 24-hour or annual PM_{10} NAAQS would be put into Group III and would not be required to develop a control strategy to attain the NAAQS. Major new and modified sources would not be required to offset emissions, but would have to demonstrate that the impact of their emissions plus the emissions of other stationary sources in the vicinity plus normal background would not cause violations of the PM_{10} NAAQS.

IV. Analysis of Five RFDA's

The EPA, in cooperation with the States concerned, examined the impact of the existing fugitive dust policy and the three alternatives on five areas designated RFDA's for TSP. The five RFDA's were selected as representative of areas impacted by a variety of fugitive dust sources. (Characteristics of the five RFDA's are contained in study reports referenced at the end of this notice and are available in Docket Number A–87–01). The study areas generally have the following characteristics typical of RFDA's:

1. The population is small with generally less than 25,000 persons within 20 km of the monitoring site;
2. A large portion of the land area is natural or used for agriculture (e.g., growing crops or grazing);
3. Emissions from industrial sources are a small portion of the total inventory for the area; and
4. A significant portion of emissions in the area are from unpaved roads, agricultural activities, or wind erosion.

Three of the five study areas have high probabilities of violating a 24–hour PM_{10} NAAQS of 150 $\mu g/m^3$ based on 1983–1985 TSP data. The probabilities of violating an annual PM_{10} NAAQS of 50 $\mu g/m^3$ vary from as low as 5 percent up to 70 percent. These studies were conducted over an 8-week period; therefore, the quantity of emissions from each source category and the impacts of the various source categories on the population could not be determined precisely. A description of each RFDA and the characteristics of the PM monitoring sites are presented along with a discussion of PM sources in the area and possible control strategies. The area selected are Umatilla County, Oregon, and Sherman County, Kansas, both dry land agricultural areas; San Miguel County, Colorado, a ski resort area with unpaved roads and a mine tailings pile; Grant County, New Mexico, an arid region with rangeland, copper mines, and smelting operations; and the Southeast Desert Air Basin (SEDAB) in California, a large desert area that encompasses 63 communities. Tables 2 through 6 present detailed characteristics of the study areas such as population, urban centers, land use, climate, location of PM monitors, significant sources of PM_{10} and the reduction in emissions necessary to attain the PM_{10} NAAQS.

Umatilla County, Oregon was selected because it was an RFDA for TSP. It is a rural agricultural area with a very fine soil (>50 percent silt). Windblown dust is a problem but the area is also impacted by smoke from wood stoves and field burning.

Sherman County, Kansas was selected because it is a typical Plains-State agricultural area Annual TSP values equaled or exceeded the former primary TSP NAAQS (75 $\mu g/m^3$) in 1979, 1981, 1982 and 1984. The former 24-hour TSP NAAQS has not been exceeded since 1979. The TSP concentrations have decreased in the last 10 years possibly because the acres of irrigated cropland near the air quality monitor have greatly increased. The area is not impacted significantly by smoke and is projected to attain the PM_{10} NAAQS.

San Miguel County, Colorado, was selected because it is a recreational area rather than an agricultural area. The area has a very small permanent population, but it is a ski area in winter and hosts a bluegrass festival (7000 people) in the summer. It is impacted by PM_{10} from an old mine tailings pile, unpaved roads, and campfires during the summer months. During the winter, smoke from wood stoves is a problem.

Grant County, New Mexico, was selected because it is an arid agricultural area with some open pit mines and a copper smelter. The land is used for grazing cattle; very little is used to grow crops. The area is impacted by fugitive dust from unpaved roads and tailings piles.

The SEDAB in California was selected because it is a large, sparsely populated desert area. The EPA estimates that over 80 percent of PM_{10} emissions in the area may be due to windblown dust from agricultural fields and disturbed desert areas.

Table 2.—Umatilla County, Oregon

County Population (1980): 59,000
Urban areas and population: Pendleton 14,500 in 1985
Land Use:
- 2,068,000 acres total
- 66 percent used for grazing and crops
- 58,000 acres are irrigated

Climate:
- Mild and dry
- Average annual rainfall 13 inches
- Average wind speed 9 mph

Particulate matter monitoring site:
- location:
  - Roof of State Office Building in Pendleton
- PM_{10}/TSP ratio: 0.3–0.5/1
- Probability of not attaining: annual NAAQS—0.31
  24-hour NAAQS—0.32

Significant sources of PM_{10}

Source category	Tons per year
Point	140
Area:	
Wood stoves	260
Motor vehicles	3
Paved roads	88
Unpaved roads	200
Field burning	6,700
Agricultural tilling	3,200
Total	10,600

Estimate of required emission reduction:
- A 21 percent reduction in emission may be required to attain the 24-hour NAAQS. This reduction may occur through the implementation of recently approved regulations for wood stoves and open burning permits.

Table 3.—Sherman County, Kansas

County Population (1980): 7,800
Urban Areas and population (1980):
- Goodland 5,700

Land Use:
- 675,000 acres total
- 120,000 acres irrigated crop land
- Most of remaining land is used for growing dry land crops (e.g. wheat and alfalfa). There are very few trees in the county.

Climate:
- Semi arid
- Average annual rainfall 17 inches
- Moderate to strong surface wind speeds

Particulate matter monitoring site:
- Location: roof of Goodland fire station
- PM_{10}/TSP ration: 0.4/1
- Probability of not attaining:
  Annual NAAQS—0.05
  24-hour NAAQS—0.15

Significant sources of PM_{10}:
- Agricultural tilling
- Wind erosion from cleared areas such as fields, unpaved parking areas and lots, and cattle feed lots.

Estimate of required emission reduction:
- Reductions may not be required; the area is likely to attain both NAAQS.

Table 4.—San Miguel County, Colorado

County Population (1980): 3,000
Urban areas and population (1980):
Telluride 1,200
Land Use:
Box canyon surrounded on three sides by mountains
Area is used for recreational purposes in winter (skiing) and summer (bluegrass festival)
Climate:
Average annual precipitation 16–20 inches
Strong inversion layers frequently trap pollutants in the canyon between 7:00 p.m. and 11:00 a.m.
Particulate matter monitoring sites:
Location:
Roof of two story building in Telluride.
Two sites in the canyon but outside of town
Probability of not attaining:
Annual NAAQS—0.28
24-hour NAAQS—0.90
Significant sources of PM_{10}:
Summer: Old mine tailings pile, unpaved roads, and campfires.
Winter: Wood stoves
Estimate of required emission reduction:
A 28-percent reduction may be required to attain the 24-hour NAAQS.

Table 5.—Grant County, New Mexico

County Population (1980) 26,200
Urban areas and population (1980):
Silver City—9,900
Bayard—3,000
Land use:
2,540,000 acres total
1,445,000 acres rangeland
350,000 acres woodland
9,600 acres cropland
Climate:
Semiarid to arid
Average annual rainfall 8 inches in plains, 20 inches in mountains
Average wind speed in spring (March-June) 9 mph with gusts to 38 mph
Particulate matter monitoring site:
monitors are located in three cities.

Location	Site	Probability of not attaining—	
		Annual (percent)	24-hour
Hurley	Roof of public building	0.32	0.46
Silver City	Roof of public safety building.	.18	.35
Bayard	Platform in parking area	.69	.81

PM_{10}/TSP ratio is about 0.3/1 based on PM_{10} data for April-June, 1986
Significant sources of PM_{10}:

Source category	Tons per year
Point	230
Area:	
Wood stoves	250
Motor vehicles	840
Unpaved roads	23,000
Total	24,320

Estimate of required reduction: Based on ambient TSP values, it is not clear what emission reduction may be necessary to attain the NAAQS at Bayard.

Table 6.—Southeast Desert Air Basin, California

Population

The RFDA in SEDAB consists of portions of three counties in California—Imperial Riverside, and San Bernardino. The total population of the area in 1980 was 590,000. There are 63 communities in the area and most are smaller than 25,000 persons. Two larger communities are Lancaster with 48,000 and Palm Springs with 85,000.

Land use:
21.5 million acres total
3.2 million acres are irrigated for growing crops
17.8 million acres are covered only with desert vegetation
Climate:
Annual rainfall 2 to 5 inches
Monthly mean windspeed is about 7 to 10 mph
Peak windspeeds 60 to 80 mph
Particulate matter monitoring sites:

Site	Probability not attaining NAAQS	
	Annual (percent)	24-hour
Imperial County:		
Brawley	0.63	0.61
El Centro	.30	.67
Riverside County:		
Banning	.05	.45
Indio	.55	.97
San Bernardino County:		
Barstow	.70	.99
Victorville	.09	.22

Significant sources of PM_{10}:

Source category	Imperial County tons/yr PM_{10}	Riverside County tons/yr PM_{10}	San Bernardino tons/yr PM_{10}
Industrial sources	420	60	2,300
Motor vehicles	640	1,360	1,300
Tilling	7,410	3,500	170
Feed lots	12,700	90	0
Paved roads	2,600	5,100	1,900
Unpaved roads	3,180	7,700	1,800
Wind Erosion:			
Agricultural	59,400	31,100	4,100
Desert	92,000	96,500	74,500
Miscellaneous	650	3,100	1,430
Total	179,000	148,500	88,500

Estimate of required emission reduction:
The following emission reductions may be required for each planning area:
Imperial County—21 percent
Riverside County—22 percent
San Bernardino County—38 percent

V. Effect of Alternative Policies on Study Areas

A summary of the PM_{10} nonattainment probabilities and possible nontraditional control measures available for the five study areas is presented in Table 7. The effect of the alternative rural fugitive dust policies on the ability of each study area to attain the PM_8 NAAQS is presented in Table 8.

The main sources of PM_{10} in Sherman County, Kansas, are agricultural fields. Ambient PM levels appear to be decreasing as the areas of irrigated farmland near Goodland have increased. The probabilities of attaining the annual and 24-hour PM_{10} NAAQS are 95 and 85 percent, respectively. Therefore, Sherman County will be put into Group III and will not be affected by the alternate policies.

Nearly 70 percent of PM_{10} emissions in Umatilla County, Oregon, are estimated to come from wood stoves and field burning. The State of Oregon has adopted regulations which require permits for open burning and certification of new wood stoves. The EPA anticipates that implementation of these regulations will bring about attainment and maintenance of the annual and 24-hour PM_{10} NAAQS in Umatilla County within 5 years; therefore, this area should attain under all the alternative policies.

A. Alternative I

Under policy Alternative I, RFDA's with 95 percent or greater probability of violating an annual NAAQS of 50$\mu g/m^3$ would be put into Group I. Other areas with 20 percent or greater probability of violating the annual NAAQS or a 24-hour NAAQS of 150$\mu g/m^3$ would be put into Group II. Therefore, all of the RFDA's studied would be put into Group II and be required to attain both NAAQS within 3 to 5 years except for Sherman County. Although Umatilla County, Oregon, will be placed in Group II, no additional control measure should be necessary for the area to attain the PM_{10} NAAQS.

The possibility of attaining the annual NAAQS in San Miguel County appears good. However, the possibility of attaining the 24-hour NAAQS within 3 to 5 years is poor. The EPA estimates that emissions must be reduced 28 percent. There are fugitive dust emissions from

unpaved roads and an old mine tailings pile. However, PM_{10} concentrations above 150$\mu g/m^3$ are measured in the winter when snow cover should reduce dust significantly. The State has already identified emissions from wood stoves and campfires, especially during atmospheric inversions, as significantly impacting air quality. Therefore, measures are being taken to limit emissions from these sources.

The possibility of attaining the annual NAAQS in Grant County is good at Silver City and Hurley. It is poor at Bayard, however. Fugitive dust from unpaved streets in Bayard and the unpaved lots around the monitoring site are believed to impact the area significantly. The possibility of attaining the 24-hour NAAQS within 3 to 5 years is poor at all three sites. The most significant sources impacting the county are unpaved roads and motor vehicles. There are also emissions from open pit mines, tailings piles, and a copper smelter. More than 5 years would probably be required to control these sources.

The possibility of attaining the annual NAAQS within 5 years is poor in each of the three planning areas of the SEDAB. The possibility of attaining the 24-hour NAAQS is very poor. The EPA estimates that 50 to 80 percent of daily emissions in each area could be from disturbed desert lands.

B. Alternative II

Under Alternative II, RFDA's with 20 percent or greater probability of violating either the annual or the 24-hour NAAQS would be put into Group II. All reasonable control measures would be required in an effort to attain both the annual and 24-hour NAAQS over an extended period of time, if necessary.

As discussed above, Sherman County, Kansas, would be placed in Group III, and Umatilla County, Oregon, is expected to attain the PM_{10} NAAQS in 5 years without the application of additional control measures.

In San Miguel County, the possibilities of attaining the annual and 24-hour NAAQS over an extended period are good. About a 28 percent reduction of emissions may be required to attain 24-hour NAAQS. The State is taking steps to limit emissions from wood stoves; however it may take more than 5 years to achieve the necessary reductions from these actions. Unpaved roads could be stabilized during the summer months if necessary.

In Grant County, the possibility of attaining the annual NAAQS at Hurley and Silver City is good and is fair at Bayard over an extended period. The possibility of attaining the 24-hour NAAQS over extended time is poor because of the miles of unpaved roads that must be stabilized with the expense borne by the State and local governments.

The possibility of attaining the annual NAAQS in the SEDAB over extended time is fair. Attainment depends on reducing windblown dust from agricultural fields, disturbed desert lands, and perhaps controlling some traditional sources in the towns. The possibility of attaining the 24-hour NAAQS is poor because of the large open areas and arid conditions.

C. Alternative III

Under Alternative III, RFDA's with 20 percent or greater probability of violating the annual NAAQS would be put into Group II. All reasonable control measures would be required in an effort to attain the annual NAAQS over an extended period of time.

As discussed above, Sherman County would be placed into Group III and Umatilla County would be placed in Group II, but it is expected to attain without the adoption of additional control measures. San Miguel County would be placed in Group II and has a good possibility of attaining the annual NAAQS over extended time. The possibilities of attaining the annual NAAQS at the Silver City and Hurley sites in Grant County are good. Emissions from unpaved areas will need to be reduced to a greater extent in Bayard to attain the annual NAAQS, however.

In the SEDAB, the possibility of attaining the annual NAAQS is only fair because of the large open areas and arid conditions that prevail.

D. Continuing the Existing Policy

Under the existing fugitive dust policy, RFDA's would be put into Group III and fugitive dust would not be considered in determining whether the area was attained the PM_{10} NAAQS. Sherman County and Umatilla County are expected to attain the PM_{10} NAAQS without the adoption of additional control measures. However, it is not clear whether San Miguel County could attain the NAAQS even if fugitive dust was not considered since it is heavily impacted by smoke. Therefore, this area may no longer qualify as an RFDA.

TABLE 7.—SUMMARY OF NONATTAINMENT PROBABILITIES AND CONTROL MEASURES FOR STUDY AREAS

RFDA	SIP category	Probability of not attaining annual/24-hour in percent		Percent emission reduction required	Possible control measures
Umatilla, OR	Group II	31	32	21	Conservation tilling, better smoke management, certify new wood stoves, incentives to control existing stoves.
Sherman, KS	Group III	5	15	0	None required.
San Miguel, CO	Group II	28	90	28	Certify new wood stoves, limit number of wood burning units, stabilize tailings pile, stabilize unpaved roads in summer months.
Grant, NM:					
Bayard	Group II	69	81	[1] N/A	Stabilize unpaved streets in and near towns, control dust from open pit mine, stabilize tailings pile at copper smelters.
Silver City	Group II [2]	18	35	N/A	
Hurley	Group II	32	46	N/A	
SEDAB, CA:					
Imperial	Group II	63	67	21	Restrict the use of off-road vehicles in the desert, plant windbreaks to protect fields from wind erosion.
Riverside	Group II	55	97	34	
San Bernardino	Group II	70	99	38	

[1] Not available.

[2] The probability of not attaining the 24-hour NAAQS is 35 percent; thus, Silver City would be placed in Group II under Alternatives I and II. However, the probability of not attaining the annual NAAQS is only 18 percent; thus Silver City would be placed in Group III under Alternative III.

TABLE 8. SUMMARY OF THE ENVIRONMENTAL EFFECTS OF ALTERNATIVE POLICIES

RFDA	Alternative I	Alternative II	Alternative III	Existing Policy
Umatilla, OR....	Implementation of recently adopted control measures will likely result in attainment of the PM_{10} NAAQS in 5 years [1].	See Alternative I.....	See Alternative I.....	See Alternative I.
Sherman, KS...	Recent monitoring data indicates this area is probably attaining both NAAQS and thus will not be affected by the policy.	.....do.....	.....do.....	Do.
San Miguel, CO.	The annual NAAQS may be attained within 5 years by using a combination of measures. Control of existing wood stoves probably cannot be implemented rapidly enough to achieve attainment of the 24-hour NAAQS within 5 years.	Control of existing wood stoves or replacement with new stoves and limiting the total number of wood burning units may allow attainment of the 24-hour NAAQS over extended time.	The annual NAAQS may be attained with 5 years.	Little improvement in air quality is expected, except as may result from control of new wood stoves (see 52 FR 4994).
Grant, NM.....	The air quality would be improved by stabilizing unpaved streets in the county and other control measures. However, the county may not be able to expand stabilization fast enough to attain the annual or 24-hour NAAQS within 5 years.	Attainment of the annual NAAQS may eventually be achieved by expansion of a program to stabilize unpaved roads. Additional control measures may lead to attainment of the 24-hour NAAQS at some time in the future.	Attainment of the annual NAAQS may eventually be achieved by expansion of a program to stabilize unpaved roads.	Little improvement in air quality is expected.
Sedab, CA.....	Air quality may be improved some by restricting the use of off-road vehicles in the desert. However, emission reductions probably would not be adequate to attain the annual or 24-hour NAAQS within 5 years.	Restricting the use of off-road vehicles and planting windbreaks may reduce PM_{10} concentrations enough to attain the annual NAAQS. Reduction of peak concentrations below the 24-hour NAAQS is questionable.	Restricting the use of off-road vehicles and planting windbreaks may reduce PM_{10} concentrations enough to attain the annual NAAQS.	Do.

[1] Includes possible 2-year extension under section 110(e).

VI. Conclusions

An overview of the study results shows that air quality in most of the study areas is adversely affected by emissions from source categories other than those for which the rural fugitive dust policy was developed. This does not necessarily mean that these areas could not continue to be designated as RFDA's if the Administrator decides to adopt one of the alternatives described herein. It does mean, however, that emissions from such source categories should be targeted for control in the SIP.

As discussed above, Alternative I would require areas to be placed in Group I, II, or III based upon their probability of violating the PM_{10} standard. Initial analysis of existing RFDA's indicate that two areas would fall into Group I and 47 areas would fall in Group II. Areas in Group I and areas in Group II which monitor violations of the PM_{10} standard will be required to demonstrate attainment of both the annual and 24-hour NAAQS within 3 years of the date the SIP is approved. (A 2-year extension is always available under section 110(e) if the State can make the proper showings regarding the adequacy of control technology.) This means States must adopt some combination of possible control measures (e.g., those listed in Table 7: conservation tilling, better smoke management, certification of wood stoves, stabilizing unpaved roads, controlling dust from open pit mines, stabilizing tailing piles, restricting use of off-road vehicles, and planting windbreaks to protect fields from erosion). However, Group I areas or any of the Group II areas which monitor violations of the PM_{10} standards may still have a great deal of difficulty demonstrating attainment within the 3 to 5 year time frame. Since this alternative could require use of all the control measures listed above, it should bring about attainment of the NAAQS quicker than the other alternatives even if compliance extends beyond 5 years.

Since Alternative II would not require any area to be immediately placed in Group I, all RFDA's with greater than 20 percent probability of violating either the 24-hour or annual PM_{10} would be required to conduct additional monitoring. If violations of the NAAQS are monitored, then the State would be required to develop attainment plans. The State must consider essentially the same controls as would be called for under Alternative I. If the State cannot demonstrate that the standards will be attained within 5 years, [including the section 110(e) 2-year extension] then the State must adopt all reasonably available control measures and show why other measures would be unreasonable. In addition, the State must show sustained progress toward attainment. It is anticipated that the town of Bayard in Grant County and the SEDAB will have a fair chance of

attaining the annual NAAQS by applying controls only over an extended period of time. Attainment of the 24-hour standard will continue to pose a problem except for Umatilla County and Sherman County where it is anticipated that implementation of existing control measures will result in attainment within the 5 years.

Since Alternative III requires grouping and initial attainment plan development based only on the annual average PM_{10} concentrations, fewer areas would be in Group II and fewer areas would be required to develop attainment plans in the near future. If attainment plans are necessary, States would be required to adopt reasonable control measures to attain the annual NAAQS only. These control measures are essentially the same as those required under Alternative II to attain the annual NAAQS. While implementation of these control measures may also provide a measure of progress toward attainment of the 24-hour NAAQS by reducing peak concentrations. Alternative III does not require controls specific for attainment and maintenance of the short-term standard.

Continuation of the existing policy will give lower priority to attaining the NAAQS in rural rather than in urban areas, thus the annual and 24-hour standards may not attained. This policy would save resources otherwise expended toward the difficult problems of controlling fugitive sources. This would allow the resources not expended in rural areas to be expended to improve air quality in urban areas.

VII. Public Comments

The Administrator seeks comment on (1) the necessity for adopting some form of a rural fugitive dust policy; (2) technical support for such a policy, specifically information on the costs of controlling rural fugitive dust and the relative importance of protecting annual versus 24-hour NAAQS; (3) potential legal constraints on alternatives that contemplate SIP's providing for sustained progress toward attainment but not demonstrating attainment by a fixed date; (4) what should be the definition of a rural fugitive dust area; and (5) the preferred policy of the three alternatives presented.

Until such time as the Administrator decides which course of action to follow, he will allow States, in effect, to continue implementing the fugitive dust policy by placing qualified RFDA's in Group III, as defined in the notice of final rulemaking revision 40 CFR Parts 51 and 52 published elsewhere in today's **Federal Register.**

Authority: Sections 110 and 301 of the Act give the Administrator authority to adopt policies necessary to implement national ambient air quality standards.

Dated: June 2, 1987.

Lee M. Thomas,

Administrator.

References

Hawkins, David G. (Assistant Administrator for Air and Waste Management), Model Letter Regarding State Designation of Attainment Status. Memorandum to Regional Administrators. October 7, 1977.

Tuerk, Edward F. (Acting Assistant Administrator for Air and Waste Management), Guidance on SIP Development and New Source Review in Areas Impacted by Fugitive Dust. Memorandum to Regional Administrators. August 16, 1977.

U.S. Environmental Protection Agency (EPA), "Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate Matter or PM_{10} Data." Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina. EPA 450/4–86–017, December 1986.

EPA Region VI, "Rural Fugitive Dust Area Study Grant County, New Mexico." Air Programs Branch, Dallas, Texas, September 1986.

EPA Region VII, "Evaluation of Goodland, Kansas As a PM_{10} Fugitive Dust Area." Air Branch, Kansas City, Kansas, September 1986.

EPA Region VIII, "PM_{10} Rural Fugitive Dust Study of Telluride, Colorado." Air Branch, Denver, Colorado, September 1986.

EPA Region IX, "Effects of a PM_{10} Rural Fugitive Dust Policy on California's Southeast Desert Air Basin." Air Management Branch, San Francisco, California, November 1986.

EPA Region X, "Rural Fugitive Dust Area Study Pendleton, Oregon." Air Programs Branch, Seattle, Washington, October 1986.

[FR Doc. 87–13710 Filed 6–30–87; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 53

[FRL-3141-9(e)]

Ambient Air Monitoring Reference and Equivalent Methods

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: Today's action promulgates amendments to Part 53 of Chapter 1 of Title 40 of the Code of Federal Regulations to incorporate performance specifications, test procedures, and other requirements applicable to reference and equivalent methods for measuring the atmospheric concentration of particles less than 10 micrometers in aerodynamic diameter (PM_{10}). This action is taken in conjunction with the promulgation of revised national ambient air quality standards for particulate matter (40 CFR Part 50) and a new reference method for the determination of PM_{10} in the atmosphere (40 CFR Part 50—Appendix J). The revisions to 40 CFR Part 53 were proposed on March 20, 1984 and include provisions for the determination and designation of reference and equivalent methods for PM_{10}, performance specifications and explicit test procedures by which the performance of candidate reference and equivalent methods for PM_{10} is to be tested, and some minor changes and clarifications to existing provisions of Part 53 pertaining to other pollutants for which ambient air quality standards exist.

DATE: This regulation takes effect on July 31, 1987.

ADDRESS: Docket No. A–82–43 containing material relevant to this action is located in the Central Docket Section of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW., Washington, DC. The docket may be inspected between the hours of 8:00 a.m. and 3:00 p.m. on weekdays, and a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Larry J. Purdue, Quality Assurance Division, (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Telephone: (919) 541–2665 or (FTS) 629–2665).

SUPPLEMENTARY INFORMATION:

Background

Section 110(a)(2)(C) of the Clean Air Act requires the development of State Implementation Plans that include provisions for monitoring ambient air quality for the pollutants for which national ambient air quality standards (NAAQS) have been established. The ambient air monitoring reference and equivalent method regulations in 40 CFR Part 53, promulgated under the authority of section 301(a)(1) of the Clean Air Act, contain performance specifications, test procedures, and other requirements applicable to ambient air monitoring methods for most of the pollutants for which NAAQS have been established. Subpart A of Part 53 contains general requirements. Subpart B contains performance specifications and test procedures for candidate automated methods for the gaseous criteria pollutants. Subpart C contains test procedures and specifications for demonstrating the comparability of candidate equivalent methods to reference methods.

Elsewhere in this issue of the **Federal Register**, EPA is promulgating revisions to the NAAQS for particulate matter and a new reference method for the determination of ambient concentrations of particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). Amendments to 40 CFR Part 53 to incorporate provisions for reference and equivalent methods for PM_{10} were proposed on March 20, 1984 (49 FR 10454). The proposed principal change to Part 53 was the addition of a new Subpart D, which prescribes performance specifications and test procedures specifically applicable to candidate methods for PM_{10}. Specifications and associated test procedures for PM_{10} candidate methods were proposed for sampling effectiveness (for both liquid and solid particles), 50 percent cutpoint, reproducibility, and flow rate stability. In addition, Subpart C was proposed to be revised to allow for the designation of equivalent methods for PM_{10} by adding test procedures and specifications to compare candidate equivalent methods to a PM_{10} reference method. The amendments being promulgated today are, with the exception of changes made in response to public comment, the same as those proposed on March 20, 1984.

Summary of Comments

EPA received comments from a total of 35 respondents on the proposed amendments to Part 53. The respondents are categorized as follows: industrial concerns or industry groups (26), State and local governmental agencies (7), and institutions (2). One commentor provided numerous detailed comments and recommendations concerning the proposed performance specifications and test procedures; those comments formed the basis for the majority of the comments submitted by many of the industry respondents.

The commentors generally agreed with the performance-based approach for approving reference and equivalent methods for PM_{10}, an approach that would allow the use of currently available PM_{10} samplers and encourage improvements and innovations in future sampler designs. However, there was a general consensus that the proposed performance requirements were too lenient and would result in the approval of PM_{10} methods that could produce substantially different PM_{10} measurements in the field.

Most of the commentors believed that the typical urban particle size distribution used in the calculation of expected mass concentrations in the liquid particle sampling effectiveness test was inadequate. The commentors favored the use of a coarse particle-dominated distribution. Some commentors felt that five particle sizes were not sufficient to accurately define a candidate sampler's sampling effectiveness curve, and additional tests at higher wind speeds were suggested by others. Solid particle sampling effectiveness tests over a full range of particle sizes and wind speeds, with calculation of expected mass concentrations in the same manner as required in the liquid particle sampling effectiveness tests, were also recommended. Many of the commentors felt that the additional solid particle tests would be justified because of recently published reports indicating that significant PM_{10} measurement errors can result from solid particle bounce in sampler inlets with unoiled internal collection surfaces.

Many of the industry commentors favored a specification and test procedure for D_0, the smallest particle size for which a candidate sampler's sampling effectiveness is zero. Although there was no consensus on what the D_0 particle size specification should be, the commentors tended to favor a value between 15 and 25 μm. The industry groups recommended that all candidate methods be compared to an absolute reference sampler under field test conditions to validate sampler performance as determined in the wind tunnel tests. They further recommended that photomicrographs and scanning electron microscopy analysis be required as part of the field test to verify that candidate samplers do not collect large particles to an extent greater than allowed. A need for periodic retesting of approved samplers in a wind tunnel

following field use to check for degradation in performance due to exposure to ambient particulate matter was suggested by some commentors. Tighter specifications for sampler reproducibility and flow rate stability were also generally favored.

All of the comments were given careful consideration, and many of the suggestions and recommendations were taken. Those suggestions that resulted in revisions to the proposed requirements are discussed in more detail in the next section. Those suggestions that were rejected are discussed below.

The suggestions for a specification and test for D_0 are directed at the need to minimize the overcollection of coarse particles by approved PM_{10} methods. This issue can be adequately addressed by changing the particle size distribution used for the expected mass calculations in the liquid particle sampling effectiveness test. The use of a more appropriate size distribution dominated by coarse particles for this calculation will provide a test that is much more sensitive to sampler effectiveness curves that have a gradual tail on the large particle end of the curve (i.e., significant particle collection in the range from 15 to 25 μm). Samplers with a high coarse particle collection efficiency, relative to the ideal sampler, will have a higher probability of failing the sampling effectiveness test with the modified particle size distribution.

A need for additional wind tunnel tests at higher wind speeds has not been conclusively demonstrated. Current researchers are in disagreement concerning the effects of elevated wind speed on sampler performance. One researcher has observed an oversampling effect during wind tunnel tests of a current PM_{10} sampler at 48 km/hr (1). However, the developer of this sampler has conducted similar tests at 48 km/hr and found no such effect (2). Considering the uncertainty in the current information base and the impracticality and cost of an additional testing requirement, no additional tests at elevated wind speeds have been included in the final regulation.

The suggestion to require additional solid particle tests was given careful consideration but was rejected. Recent wind tunnel tests on a current PM_{10} sampler with an unoiled inlet, using both solid and liquid particles in the range of 3 to 20 μm, indicate very little difference in measured sampling effectiveness for the two particle types (3). Thus, solid particle tests in this size range do not appear to be justified. Solid particle tests in a range of particle sizes above 20 μm might be appropriate to identify solid particle bounce problems with candidate sampler inlets, but the technical problems associated with the generation and transport of large particles through the wind tunnel limit the maximum size of test particles to about 25 to 30 μm.

A field test to compare candidate methods to an absolute reference sampler to validate wind tunnel performance is a reasonable recommendation. However, such a test is not feasible due to the unavailability of any such well-characterized, unequivocal, and accepted sampling device, and the unlikelihood of any device becoming available in the near future. Furthermore, any absolute reference sampler that could be used for this purpose would most likely be characterized using wind tunnel tests. The ability of wind tunnel tests to accurately predict the reference sampler's performance under all ambient sampling conditions would be subject to the same reservations as is the wind tunnel testing of candidate method samplers.

Retesting of approved PM_{10} methods following some period of field use might be desirable. However, it would be difficult to design a practical performance test that would identify samplers vulnerable to performance degradation after a period of field use. The effect of field exposure would be dependent on sampler design and the concentration, size distribution, and types of particles sampled, among other factors, and could vary considerably from site to site. EPA has chosen to address this potential problem by requiring manufacturers to incorporate appropriate maintenance procedures into their sampler instruction manuals, and by implementing a post-designation testing program for approved PM_{10} methods. Current provisions of Part 53 require manufacturers to include maintenance procedures in their sampler instruction manuals, which would be reviewed and approved as part of the method designation process. EPA currently conducts post-designation testing of approved reference and equivalent methods for the other criteria pollutants, including both laboratory tests and field comparisons. Similar post-designation testing of approved PM_{10} methods should identify potential problems related to field use. In the event that a sampler problem is uncovered by post-designation testing by EPA, or during tests by other parties, the sampler manufacturer would be given the opportunity, under the existing provisions of Subpart A of Part 53, to take corrective actions or make other necessary adjustments to bring the method into compliance.

Specific Changes in Final Regulation

The following paragraphs discuss specific changes to the proposed amendments that resulted from review of the public comments. Other minor changes have also been made throughout Part 53 to clarify the proposed requirements and language.

Subpart D—Procedures for Testing Performance Characteristics of Methods for PM_{10}.

The 50 percent cutpoint specification is changed from 10±1 to 10±.05 μm. This change is necessary to minimize the potential for PM_{10} measurement bias among designated methods due to differences in cutpoint. The change is justified by improvements in the state-of-the-art technology for the wind tunnel characterization of particle sampling devices. Improved particle generation and sizing techniques, an increase in the number of particle sizes used in the liquid particle sampling effectiveness tests, and standardization of the wind tunnel test procedures should lead to increased confidence in the wind tunnel test results.

The typical urban particle size distribution used in the calculation of expected PM_{10} mass concentration for the test sampler and for the ideal sampler in the test for sampling effectiveness with liquid particles was strongly criticized as being much too lenient. The use of a particle size distribution characterized by a much larger coarse particle fraction and higher total mass concentration than the typical urban distribution proposed results in a more stringent sampling effectiveness test, alleviates the need for a D_0 test, and minimizes the potential for PM_{10} measurement bias among approved methods. Several alternative size distributions, both real and simulated, were considered, and a simulated size distribution representing rather extreme coarse particle concentration conditions was selected. The new distribution is characterized by a coarse mode mass median diameter of 14.0 μm, a fine mode mass median diameter of 0.5 μm, coarse and fine mode geometric standard deviations of 2.0, a coarse to fine ratio of 3.0, and a total mass concentration of 300 $\mu g/m^3$. This change in the particle size distribution will require that a candidate sampler's effectiveness curve more closely match that of the ideal sampler.

The number of particle sizes used in the tests for liquid particle sampling effectiveness and 50 percent cutpoint is increased from 5 to 10, increasing the minimum number of test measurements

with liquid particles from 45 to 90. Sampling effectiveness measurements for the increased number of particle sizes will result in a more precise determination of the test sampler's sampling effectiveness curve and 50 percent cutpoint.

The particle size used in the test for solid particle sampling effectiveness is changed from 20 to 25 μm. The larger particle size is believed to represent a more stringent test of particle bounce than the smaller size proposed, and yet is not too large to make generation and transport through the wind tunnel impractical or impossible.

The wind tunnel test procedure is changed to explicitly require the use of a vibrating orifice aerosol generator for the generation of all test particles. In addition, the solid test particles must be ammonium fluoroscein. These requirements provide a more uniform and standardized approach for test particle generation, and should result in improved comparability of test results from different wind tunnel facilities, particularly results for solid particle bounce.

A requirement to correct liquid particle sampling effectiveness test results for the presence of multiplets (doublets and triplets) is added. Correction for multiplets is clearly necessary to ensure accurate determination of both sampling effectiveness and 50 percent cutpoint. More explicit procedures for the microscopic verification of particle size and the determination of the multiplet population in test particle atmospheres are also incorporated.

The sampling zone in the wind tunnel test section is redefined. The horizontal dimension is changed from not less than 1.5 times the width of the test sampler at its inlet opening to not less than 1.2 times that width. The vertical dimension is changed from not less than the height of the sampler inlet to 25 cm. This reduces the area in the wind tunnel test section in which test particle concentration uniformity must be established. The proposed definition of the sampling zone would have required concentration uniformity over a much larger area than is necessary. To ensure accurate test results, concentration uniformity is required only in close proximity to the test sampler's inlet opening.

A new provision is added to require that the internal collection surface or surfaces of a candidate sampler's inlet be cleaned prior to conducting wind tunnel tests with solid particles if the surface is normally dry (i.e., not coated with oil or grease). If the solid particle bounce test is conducted following tests with liquid particles, it is possible that any coating of liquid particles on the inlet's internal collection surface could suppress the extent of solid particle bounce during the subsequent test.

The specification for reproducibility, now referred to as precision, is changed from 15 percent to 5 $\mu g/m^3$ for PM_{10} concentrations below 80 $\mu g/m^3$ and 7 percent for PM_{10} concentrations above 80 $\mu g/m^3$. The specification for flow rate stability is changed from a single specification for the maximum difference between initial and final flow rates over a 24-hour sampling period to two specifications. The new specifications require that (1) the average flow rate over a 24-hour sampling period be within ±5 percent of the initial flow rate, and (2) all measured flow rates during the 24-hour sampling period be within ±10 percent of the initial flow rate. The number of sampling periods (test days) for the precision and flow rate stability tests is increased from 5 to 10. The flow rate stability test procedure is changed to require flow rate measurements at 6-hour intervals during three of the 10 test days. These changes are based on a general consensus that current commercial PM_{10} samplers are capable of meeting more stringent requirements than were initially proposed.

The accuracy specification for all flow measurements obtained during the tests is changed from 5 to 2 percent. The proposed specification was unnecessarily loose, since higher accuracy is easily attainable with most flow measurement techniques.

Subpart C—Procedures for Determining Comparability Between Candidate Methods and Reference Methods

The test requirements and specifications for candidate equivalent methods for PM_{10} are changed to provide an improved and more stringent test of comparability. The proposed test required the collection of five sets of simultaneous 24-hour PM_{10} samples with one reference method sampler and three candidate method samplers at three different test sites. If the difference between the candidate method and reference method PM_{10} measurements exceeded 20 percent more than once per test site, the candidate method would fail the comparability test. This requirement was considered to be inadequate and much too lenient by most of the commentors, because it could theoretically result in the approval of methods that produce PM_{10} measurements as much as 40 percent apart.

The revised procedure requires the comparison of three candidate method samplers and three reference method samplers over 10 to 15 test days at each of two test sites. The precision of the reference method PM_{10} measurements on each test day is required to be 5 $\mu g/m^3$ or 7 percent. The linear regression relationship between the candidate method and reference method PM_{10} measurements is determined for each test site. If the linear regression slope and intercept fall within 1.00±0.1 and 0±5 $\mu g/m^3$, respectively, and the correlation coefficient is 0.97 or better at each test site, the candidate method passes the test for comparability.

Designation of Approved Methods for PM_{10}

There will be a period of perhaps several months before the first PM_{10} reference method is designated. To expedite the availability of approved PM_{10} samplers, manufacturers are encouraged to conduct the required testing and to submit an application for a reference method determination as soon as possible. Manufacturers are also encouraged to consider appropriate sampler design changes to minimize potential performance degradation due to field exposure and to incorporate more definitive maintenance guidance in their instruction manuals. In the unlikely event that no manufacturer-tested PM_{10} sampler is designated as a reference method in a reasonable time, provisions in Part 53 would allow EPA to conduct the tests itself, if necessary. Since candidate equivalent methods for PM_{10} must be compared to a designated PM_{10} reference method as part of the testing requirements, some additional time will be necessary before any equivalent methods can be designated.

Whenever an application for a reference or equivalent method determination is received by EPA, a notice of receipt of application will be published in the **Federal Register** in accordance with Part 53. Likewise, whenever a method is designated, notice of the designation and other information pertinent to the method designation will be published in the **Federal Register.**

Automated or Continuous Methods for PM_{10}

Manufacturers of particulate sampling equipment are strongly encouraged to pursue the development of automated or continuous methods for PM_{10}. In many areas, PM_{10} compliance monitoring is required on a daily basis. Everyday monitoring using conventional manual reference or equivalent methods requires multiple samplers at many monitoring sites, resulting in increased costs for equipment procurement,

operation, and maintenance. The development and formal designation of automated PM_{10} samplers, or preferably continuous PM_{10} monitors, could substantially reduce the cost and manpower burden that a daily sampling schedule imposes on State and local air monitoring agencies. Continuous PM_{10} monitors would also be extremely useful for episode monitoring where PM_{10} measurements for periods shorter than 24 hours are needed.

Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule is not a major regulation, because it principally revises the existing provisions in 40 CFR Part 53 to incorporate requirements for the designation of reference and equivalent methods for PM_{10}, in conjunction with the revisions to the NAAQS for particulate matter. Moreover, the total national expenditures for PM_{10} samplers will be much less than $100 million. In fact, EPA estimates that it will be less than $10 million. The Regulatory Impact of the revisions to the NAAQS is addressed in that rulemaking, which is published elsewhere in today's Federal Register.

Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601 et seq., requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions. EPA's consideration pursuant to this Act indicates that no small entity group would be significantly affected in an adverse way by this rulemaking. Therefore, pursuant to 5 U.S.C. 605(b) the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Other Reviews

This regulation was submitted to the Office of Management and Budget (OMB) for review. Comments from OMB and EPA responses to these comments are available for public inspection at EPA's Central Docket Section (Docket No. A–82–43), West Tower Lobby, Gallery I, Waterside Mall, 401 M Street, SW., Washington, DC.

List of Subjects in 40 CFR Part 53

Administrative practice and procedure, Air pollution control.

Dated: June 2, 1987.

Lee M. Thomas,

Administrator.

References

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2. McFarland, A.R., and C.A. Ortiz, Response to Comment on "A Field Comparison of PM_{10} Inlets at Four Locations", *JAPCA*, Vol. 35, No. 9, pp. 950–953 (1985).

3. Woods, M., F. Chen, and M.B. Ranade, The PM_{10} Sampler Evaluation Program: January 1985 to July 1986, EPA–600/4–87/004, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, January 1987.

PART 53—AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

For the reasons set forth in the preamble, Part 53 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 53 continues to read as follows:

Authority: Sec. 301(a) of the Clean Air Act (42 U.S.C. sec. 1857g(a)), as amended by sec. 15(c)(2) of Pub. L. 91–604, 84 Stat. 1713, unless otherwise noted.

1a. Section 53.1 is amended by revising paragraph (j) and adding paragraphs (m) and (n) to read as follows:

§ 53.1 Definitions.

* * * * *

(j) "Test analyzer" means an analyzer subjected to testing as a candidate method in accordance with Subparts B, C, and/or D of this part, as applicable.

* * * * *

(m) "PM_{10} sampler" means a device, associated with a manual method for measuring PM_{10}, designed to collect PM_{10} from an ambient air sample, but lacking the ability to automatically analyze or measure the collected sample to determine the mass concentration of PM_{10} in the sampled air.

(n) "Test sampler" means a sampler subjected to testing as part of a candidate method in accordance with Subpart C or D of this part.

2. Section 53.2 is revised to read as follows:

§ 53.2 General requirements for a reference method determination.

(a) *Manual methods.* (1) For measuring SO_2 and lead, Appendices A and G, respectively, of Part 50 of this chapter specify unique manual reference methods for those pollutants. Except as provided in § 53.16, other manual methods for SO_2 and lead will not be considered for reference method determinations under this part.

(2) For measuring PM_{10}, a candidate method must be a manual method that meets the requirements specified in Appendix J of Part 50 of this chapter and must include a PM_{10} sampler that meets the requirements specified in Subpart D of this part.

(b) *Automated methods.* For measuring CO, O_3, and NO_2, a candidate automated method must utilize the measurement principle and calibration procedure specified in the appropriate appendix to Part 50 of this chapter and must meet the requirements specified in Subpart B of this part.

3. Section 53.3 is revised to read as follows:

§ 53.3 General requirements for an equivalent method determination.

(a) *Manual methods.* Candidate manual methods must satisfy the requirements specified in Subpart C of this part. In addition, samplers associated with manual methods for PM_{10} must satisfy the requirements of Subpart D of this part.

(b) *Automated methods.* Candidate automated methods for pollutants other than PM_{10} must satisfy the requirements specified in Subparts B and C of this part. Candidate automated methods for PM_{10} must satisfy the requirements of Subparts C and D of this part.

§53.4 [Amended]

4. Section 53.4 is amended as follows:

a. In paragraph (a), the address for submission of applications for reference or equivalent method determinations is revised to read as follows:

(a) * * * Director, Environmental Monitoring Systems Laboratory, Department E, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

* * * * *

b. In paragraph (b)(3), the phrase "For automated methods," is revised to read "For samplers and automated methods," and footnote 1 is removed.

c. Paragraphs (b)(4) through (b)(6) and (c) are revised to read as follows:

* * * * *

(b) * * *

(4) A statement that the candidate method has been tested in accordance with the procedures described in Subparts B, C, and/or D of this part, as applicable.

(5) Test data, records, calculations, and test results as specified in Subparts B, C, and/or D of this part, as applicable.

(6) A statement that the method, analyzer, or sampler tested in accordance with this part is representative of the candidate method described in the application.

(c) For candidate automated methods and candidate manual methods for PM_{10}, the application shall also contain the following:

(1) A detailed description of the quality control program that will be utilized, if the candidate method is designated as a reference or equivalent method, to ensure that all analyzers or samplers offered for sale under that designation will have essentially the same performance characteristics as the analyzer or sampler tested in accordance with this part.

(2) A description of the durability characteristics of such analyzers or samplers (see § 53.9(c).).

§ 53.9 [Amended]

5. Section 53.9 is amended as follows:

a. Paragraph (c) is revised to read as follows:

* * * * *

(c) Any analyzer or PM_{10} sampler offered for sale as a reference or equivalent method shall function within the limits of the performance specifications referred to in § 53.20(a) or § 53.40(a), as applicable, for at least one year after delivery and acceptance when maintained and operated in accordance with the manual referred to in § 53.4(b)(3).

* * * * *

b. In paragraphs (d), (f), and (g), the words "analyzer" or "analyzers" are removed each time they occur and replaced with the phrases "analyzer or PM_{10} sampler" or "analyzers or PM_{10} samplers", respectively.

6. The title of Subpart B is revised to read as follows:

Subpart B—Procedures for Testing Performance Characteristics of Automated Methods for SO_2, CO, O_3, and NO_2

7. The title of Subpart C is revised to read as follows:

Subpart C—Procedures for Determining Comparability Between Candidate Methods and Reference Methods

8. Section 53.30 is amended as follows:

a. Paragraph (a) is revised to read as follows:

§ 53.30 General provisions.

(a) *Determination of comparability.* The test procedures prescribed in this subpart shall be used to determine if a candidate method is comparable to a reference method when both methods measure pollutant concentrations in ambient air.

(1) Comparability is shown for SO_2, CO, O_3, and NO_2 methods when the differences between:

(i) Measurements made by a candidate manual method or by a test analyzer representative of a candidate automated method, and

(ii) Measurements made simultaneously by a reference method, are less than or equal to the values specified in the last column of Table C–1.

(2) Comparability is shown for lead methods when the differences between: (i) Measurements made by a candidate method, and (ii) measurements made by the reference method on simultaneously collected lead samples (or the same sample, if applicable), are less than or equal to the value specified in Table C–3.

(3) Comparability is shown for PM_{10} methods when the relationship between: (i) Measurements made by a candidate method, and (ii) measurements made by a reference method on simultaneously collected PM_{10} samples (or the same sample, if applicable) at each of two test sites, is such that the linear regression parameters (slope, intercept, and correlation coefficient) describing the relationship meet the values specified in Table C–4.

* * * * *

b. The heading of paragraph (b)(2) is revised and paragraph (b)(4) is added to read as follows:

* * * * *

(b) * * *

(2) Methods for SO_2 CO, O_3, and NO_2.

* * * * *

(4) *Methods for PM_{10}.* Test measurements must be made at, or derived from particulate samples collected at, not less than two test sites, each of which must be located in a geographical area characterized by ambient particulate matter that is significantly different in nature and composition from that at the other test site(s). Augmentation of pollutant concentrations is not permitted, hence appropriate test sites must be selected to provide PM_{10} concentrations in the specified range.

* * * * *

c. Paragraph (c) is revised to read as follows:

* * * * *

(c) *Test atmosphere.* Ambient air sampled at an appropriate test site or sites shall be used for these tests. Simultaneous concentration measurements shall be made in each of the concentration ranges specified in Table C–1, C–3, or C–4, as appropriate.

* * * * *

d. The heading of paragraph (d)(2) and paragraphs (d)(3) and (d)(4) are revised to read as follows:

* * * * *

(d) * * *

(2) *Methods for SO_2, CO, O_3, and NO_2.*

* * * * *

(3) *Methods for lead and PM_{10}.* The ambient air intake points of the candidate and reference method samplers for lead or PM_{10} shall be located at the same height, and between 2 and 4 meters apart. The samplers shall be oriented in a manner that will minimize spatial and wind directional effects on sample collection.

(4) *Methods employing a common sampling procedure.* Candidate methods which employ a sampler and sample collection procedure that are identical to the sampler and sample collection procedure specified in the reference method may be tested by analyzing common samples. The common samples shall be collected according to the sample collection procedure specified by the reference method and shall be analyzed in accordance with the analytical procedures of both the candidate method and the reference method.

* * * * *

§ 53.31 [Amended]

9. Section 53.31 is amended by revising the heading and first sentence of paragraph (b) to read as follows:

* * * * *

(b) *Samplers and automated methods.* Set-up and start-up of the test analyzer, test sampler(s), and reference method (if applicable) shall be in strict accordance with the applicable operation manual(s).

* * *

* * * * *

10. Section 53.32 is amended by removing the phrase "consistent relationship" each time it appears in paragraphs (c)(1), (c)(2), (c)(3)(i), (c)(3)(ii), and (c)(4) and replacing it with the word "comparability", and by revising the title to read as follows:

§ 53.32 Test procedures for methods for SO_2, CO, O_3, and NO_2.

* * * * *

11. Section 53.33 is amended as follows:

a. The title is revised to read as follows:

§ 53.33 Test procedure for methods for lead.

* * * * *

b. In paragraph (b), the address is revised to read:

* * * * *

(b) * * * Director, Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. * * *

* * * * *

c. In paragraphs (e), (h) heading, and (i), the phrase "consistent relationship" is removed each time it appears and replaced by the word "comparability."

d. Paragraphs (h)(2) and (h)(3) are revised to read as follows:

* * * * *

(h) * * *

(2) If none of the percent differences (D) exceed ±20 percent, the candidate method passes the test for comparability.

(3) If one or more of the percent differences (D) exceed ±20 percent, the candidate method fails the test for comparability.

* * * * *

12. Section 53.34 is added to read as follows:

§ 53.34 Test procedure for methods for PM_{10}.

(a) *Sample collection.* Using three reference method samplers collocated with three candidate method samplers, collect a minimum of 15 sets of simultaneous 24-hour PM_{10} samples at each of two test sites (i.e., a minimum of 30 sets of samples, each consisting of three reference method and three candidate method samples collected simultaneously, 180 samples total). If the conditions of § 53.30(d)(4) apply, collect sample sets only with the three reference method samplers.

(b) *Sample analysis.* Analyze each sample (or the same sample if § 53.30(d)(4) applies) according to the reference method or candidate method, as appropriate, and determine the PM_{10} concentration in $\mu g/m^3$.

(c) *Test for comparability.* (1) For each of the sample sets, calculate the average PM_{10} concentration obtained with the reference method samplers:

$$\bar{R}_j = \frac{\sum_{i=1}^{3} R_{ij}}{3}$$

where R denotes results from the reference method, i is the sampler number, and j is the set.

(2) For each of the sample sets, calculate the precision of the reference method PM_{10} measurements:

$$P_j = \sqrt{\frac{\sum_{i=1}^{3} R_{ij}^2 - \left(\sum_{i=1}^{3} R_{ij}\right)^2/3}{2}}$$

if $\bar{R}_j$ is below 80 $\mu g/m^3$, or

$$RP_j = 100\% \times \sqrt{\frac{\sum_{i=1}^{3} R_{ij}^2 - \left(\sum_{i=1}^{3} R_{ij}\right)^2/3}{2}} \Big/ \bar{R}_j$$

if $\bar{R}_j$ is above 80 $\mu g/m^3$.

(3) If R_j falls outside the acceptable concentration range specified in Table C–4 for any set, or if P_j or RP_j, as applicable, exceeds the value specified in Table C–4 for any set, that set of samples shall be discarded. For each site, at least three of the sample sets shall have R_j values below 80 $\mu g/m^3$ and at least three of the sample sets shall have R_j values above 80 $\mu g/m^3$. Additional sample sets shall be collected and analyzed, as necessary, to provide a minimum of 10 acceptable sample sets for each site. If more than 10 sample sets meet the above criteria, all such sample sets shall be used to demonstrate comparability.

(4) For each of the acceptable sample sets, calculate the average PM_{10} concentration obtained with the candidate method samplers:

$$\bar{C}_j = \frac{\sum_{i=1}^{3} C_{ij}}{3}$$

where C denotes results from the candidate method, i is the sampler number, and j is the set.

(5) For each site, plot the average PM_{10} measurements obtained with the candidate method (C_j) against the corresponding average PM_{10} measurements obtained with the reference method (R_j). For each site, calculate and record the linear regression slope and intercept, and the correlation coefficient.

(6) If the linear regression parameters calculated above meet the values specified in Table C–4 for each test site, the candidate method passes the test for comparability.

TABLE C–4.—TEST SPECIFICATIONS FOR PM_{10} METHODS

Acceptable concentration range, $\mu g/m^3$.	30 to 500.
Minimum number of test sites...	2.
Number of candidate method samplers per site.	3.
Number of reference method samplers per site.	3.
Minimum number of 24-hour samples per sampler per site.	15.
Minimum number of acceptable sample sets per site.	10.
Precision of replicate reference method measurements.	5 $\mu g/m^3$ or 7 percent.
Slope of regression relationship.	1±0.1.
Intercept of regression relationship, $\mu g/m^3$.	0±5.
Correlation of reference method and candidate method measurements.	≥0.97.

13. A new Subpart D is added to read as follows:

Subpart D—Procedures for Testing Performance Characteristics of Methods for PM_{10}

Sec.

53.40 General provisions.

53.41 Test conditions.

Subpart D—Procedures for Testing Performance Characteristics of Methods for PM_{10}

§ 53.40 General provisions.

(a) The test procedures prescribed in this subpart shall be used to test the performance of candidate methods for PM_{10} against the performance specifications given in Table D–1. Except as provided in paragraph (b) of this section, a test sampler or samplers representative of the sampler described in the candidate method must exhibit performance better than, or equal to, the specified value for each performance parameter, to satisfy the requirements of this subpart.

(b) For a candidate method using a PM_{10} sampler previously approved as part of a designated PM_{10} method, only the test for precision need be conducted and passed to satisfy the requirements of this subpart. For a candidate method using a PM_{10} sampler inlet previously approved as part of a designated PM_{10} method, the tests for precision and flow rate stability must be conducted and passed to satisfy the requirements of this subpart; the tests for sampling effectiveness and 50 percent cutpoint need not be conducted if suitable rationale is provided to demonstrate that test results submitted for the previously approved method are applicable to the candidate method.

(c) The liquid particle sampling effectiveness and 50 percent cutpoint of a test sampler shall be determined in a wind tunnel using 10 particle sizes and three wind speeds as specified in Table D–2. A minimum of 3 replicate measurements of sampling effectiveness shall be required for each of the 30 test conditions for a minimum of 90 test measurements.

(d) For the liquid particle sampling effectiveness parameter, a smooth curve plot shall be constructed of sampling effectiveness (percent) versus aerodynamic particle diameter (μm) for each of the three wind speeds. These plots shall be used to calculate the expected mass concentration for the test sampler, using the procedure in § 53.43(a). The candidate method passes the liquid particle sampling effectiveness test if the expected mass concentration calculated for the test sampler at each wind speed differs by no more than ± 10 percent from that predicted for the "ideal" sampler.*

(e) For the 50 percent cutpoint parameter, the test result for each wind speed shall be reported as the particle size at which the curve specified in § 53.40(d) crosses the 50 percent effectiveness line. The candidate method passes the 50 percent cutpoint test if the test result at each wind speed falls within 10 ± 0.5 μm.

(f) The solid particle sampling effectiveness of a test sampler shall be determined in a wind tunnel using 25 μm particles at 2 wind speeds as specified in Table D–2. A minimum of three replicate measurements of sampling effectiveness for the 25 μm solid particles shall be required at both wind speeds for a minimum of 6 test measurements.

(g) For the solid particle sampling effectiveness parameter, the test result for each wind speed shall be reported as the difference between the average of the replicate sampling effectiveness measurements obtained for the 25 μm solid particles and the average of the replicate measurements obtained for the 25 μm liquid particles. The candidate method passes the solid particle sampling effectiveness test if the test result for each wind speed is less than, or equal to, 5 percent.

(h) The precision and flow rate stability of three identical test samplers shall be determined at a suitable test site by simultaneously sampling the PM_{10} concentration of the atmosphere for 10 periods of 24 hours.

(i) For the precision parameter, the test result for each of the 10 periods of 24 hours shall be calculated using the procedure in § 53.43(c). The candidate method passes the precision test if all of the test results meet the specifications in Table D–1.

(j) For the flow rate stability parameter, the test results for each of the three test samplers and for each of the 10 periods of 24 hours shall be calculated using the procedure in § 53.43(d). The candidate method passes the flow rate stability test if all of the test results meet the specifications in Table D–1.

(k) All test data and other documentation obtained from or pertinent to these tests shall be identified, dated, signed by the analyst performing the test, and submitted to EPA.

TABLE D–1.—PERFORMANCE SPECIFICATIONS FOR PM_{10} SAMPLERS

Performance parameter	Units	Specification
1. Sampling effectiveness:		
A. Liquid particles	Percent	Such that the expected mass concentration is within ±10 percent of that predicted for the ideal sampler.
B. Solid particles	Percent	Sampling effectiveness is no more than 5 percent above that obtained for liquid particles of same size.
2. 50 Percent cutpoint	μm	10 ± 0.5 μm aerodynamic diameter.
3. Precision	$\mu g/m^3$ or percent.	5 $\mu g/m^3$ or 7 percent for three collocated samplers.
4. Flow rate stability	Percent	Average flow rate over 24 hours within ±5 percent of initial flow rate; all measured flow rates over 24 hours within ±10 percent of initial flow rate.

§ 53.41 Test conditions.

(a) Set-up and start-up of all test samplers shall be in strict accordance with the operating instructions specified in the manual referred to in § 53.4(b)(3).

(b) If the internal surface or surfaces of the candidate method's sampler inlet on which the particles removed by the inlet are collected is a dry surface (i.e., not normally coated with oil or grease), those surfaces shall be cleaned prior to conducting wind tunnel tests with solid particles.

(c) Once the test sampler or samplers have been set up and the performance tests started, manual adjustment shall be permitted only between test points for the sampling effectiveness and 50 percent cutpoint tests or between test days for the precision and flow rate

* The sampling effectiveness curve for this "ideal" sampler is described by column 5 of Table D–3 and is based on a model that approximates the penetration of particles into the human respiratory tract. Additional information on this model may be found in a document entitled, "Particle Collection Criteria for 10 Micrometer Samplers," which is available from the Quality Assurance Division (MD–77), Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

stability tests. The manual adjustments and any periodic maintenance shall be limited to only those procedures prescribed in the manual referred to in § 53.4(b)(3). The submitted records shall show clearly when any manual adjustment or periodic maintenance was made and shall describe the operations performed.

(d) If a test sampler malfunctions during any of the sampling effectiveness and 50 percent cutpoint tests, that test run shall be repeated. If a test sampler malfunctions during any of the precision and flow rate stability tests, that day's test shall be repeated. A detailed explanation of all malfunctions and the remedial actions taken shall be submitted to EPA with the application.

§ 53.42 Generation of test atmospheres for wind tunnel tests.

(a) A vibrating orifice aerosol generator shall be used to produce monodispersed liquid particles of oleic acid tagged with uranine dye and monodispersed solid particles of ammonium fluoroscein with equivalent aerodynamic diameters as specified in Table D–2. The geometric standard deviation for each particle size and type generated shall not exceed 1.1 (for primary particles) and the proportion of multiplets (doublets and triplets) in a test particle atmosphere shall not exceed 10 percent. The particle delivery system shall consist of a blower system and a wind tunnel having a test section of sufficiently large cross-sectional area such that the test sampler, or portion thereof, as installed in the test section for testing, blocks no more than 15 percent of that area. To be acceptable, the blower system must be capable of achieving uniform wind speeds at the speeds specified in Table D–2.

TABLE D–2.—PARTICLE SIZES AND WIND SPEEDS FOR SAMPLING EFFECTIVENESS TESTS

Particle size (μm) [a]	Wind speed (km/hr)		
	2	8	24
3±0.5	/	/	/
5±0.5	/	/	/
7±0.5	/	/	/
9±0.5	/	/	/
10±0.5	/	/	/
11±0.5	/	/	/
13±1.0	/	/	/
15±1.0	/	/	/
20±1.0	/	/	/
25±1.0	/	//s	//s

[a] Mass median aerodynamic diameter.
/=liquid particle.
s=solid particle.

Number of liquid particle test points (minimum of 3 replicates for each combination of particle size and wind speed): 90.
Number of solid particle test points (minimum of 3 replicates for each combination of particle size and wind speed): 6.
Total number of test points: 96.

(b) The size of the test particles delivered to the test section of the wind tunnel shall be established using the operating parameters of the vibrating orifice aerosol generator and shall be verified during the tests by microscopic examination of samples of the particles collected on glass slides or other suitable substrates. When sizing liquid particles on glass slides, the slides should be pretreated with an oleophobic surfactant and an appropriate flattening factor shall be used in the calculation of aerodynamic diameter. The particle size, as established by the operating parameters of the vibrating orifice aerosol generator, shall be within the tolerance specified in Table D–2. The precision of the particle size verification technique shall be 0.5 μm or better, and particle size determined by the verification technique shall not differ by more than 0.5 μm or 10 percent, whichever is higher, from that established by the operating parameters of the vibrating orifice aerosol generator.

(c) The population of multiplets in a test particle atmosphere shall be determined during the tests and shall not exceed 10 percent. Solid particles shall be checked for dryness and evidence of breakage or agglomeration during the microscopic examination. If the solid particles in a test atmosphere are wet or show evidence of significant breakage or agglomeration (>5 percent), the solid particle test atmosphere is unacceptable for purposes of these tests.

(d) The concentration of particles in the wind tunnel is not critical. However, the cross-sectional uniformity of the particle concentration in the sampling zone of the test section shall be established during the tests using isokinetic samplers. An array of not less than five evenly spaced isokinetic samplers shall be used to determine the particle concentration uniformity in the sampling zone. If the particle concentration measured by any single isokinetic sampler in the sampling zone differs by more than 10 percent from the mean concentration, the particle delivery system is unacceptable in terms of uniformity of particle concentration. The sampling zone shall be a rectangular area having a horizontal dimension not less than 1.2 times the width of the test sampler at its inlet opening and a vertical dimension not less than 25 centimeters. The sampling zone is an area in the test section of the wind tunnel that is horizontally and vertically symmetrical with respect to the test sampler inlet opening.

(e) The wind speed in the wind tunnel shall be determined during the tests using an appropriate technique capable of a precision of 5 percent or better (e.g., hot-wire anemometry). The mean wind speed in the test section of the wind tunnel during the tests shall be within 10 percent of the value specified in Table D–2. The wind speed measured at any test point in the test section shall not differ by more than 10 percent from the mean wind speed in the test section. The turbulence intensity (longitudinal component and macroscale) in the test section shall be determined during the tests using an appropriate technique (e.g., hot-wire anemometry).

(f) The accuracy of all flow measurements used to calculate the test atmosphere concentrations and the test results shall be documented to be within ±2 percent, referenced to a primary standard. Any flow measurement corrections shall be clearly shown. All flow measurements shall be given in actual volumetric units.

(g) Schematic drawings of the particle delivery system (wind tunnel and blower system) and other information showing complete procedural details of the test atmosphere generation, verification, and delivery techniques shall be submitted to EPA. All pertinent calculations shall be clearly presented.

§ 53.43 Test procedures.

(a) *Sampling Effectiveness*—(1) *Technical Definition.* The ratio (expressed as a percentage) of the mass concentration of particles of a given size reaching the sampler filter or filters to the mass concentration of particles of the same size approaching the sampler.

(2) *Test Procedure.* (i) Establish a wind speed specified in Table D–2 and measure the wind speed and turbulence intensity (longitudinal component and macroscale) at a minimum of 12 test points in a cross-sectional area of the test section of the wind tunnel. The mean wind speed in the test section must be within ±10 percent of the value specified in Table D–2 and the variation at any test point in the test section may not exceed 10 percent of the mean.

(ii) Generate particles of a size and type specified in Table D–2 using a vibrating orifice aerosol generator. Check for the presence of satellites and adjust the generator as necessary. Calculate the aerodynamic particle size using the operating parameters of the vibrating orifice aerosol generator and record. The calculated aerodynamic

diameter must be within the tolerance specified in Table D–2.

(iii) Collect a sample of the particles on a glass slide or other suitable substrate at the particle injection point. If a glass slide is used, it should be pretreated with an appropriate oleophobic surfactant when collecting liquid particles. Use a microscopic technique to size a minimum of 25 primary particles in three viewing fields (do not include multiplets). Determine the geometric mean aerodynamic diameter and geometric standard deviation using the bulk density of the particle type (and an appropriate flattening factor for liquid particles if collected on a glass slide). The measured geometric mean aerodynamic diameter must be within 0.5 μm or 10 percent of the aerodynamic diameter calculated from the operating parameters of the vibrating orifice aerosol generator. The geometric standard deviation must not exceed 1.1.

(iv) Determine the population of multiplets (doublets and triplets) in the collected sample by counting a minimum of 100 particles in three viewing fields. The multiplet population of the particle test atmosphere must not exceed 10 percent.

(v) Introduce the particles into the wind tunnel and allow the particle concentration to stabilize.

(vi) Install an array of five or more evenly spaced isokinetic samplers in the sampling zone (see § 53.42(d)) of the wind tunnel. Collect particles on appropriate filters (e.g., glass fiber) over a time period such that the relative error of the measured particle concentration is less than 5 percent. Relative error is defined as $(p \times 100\%)/(X)$, where p is the precision of the fluorometer on the appropriate range, X is the measured concentration, and the units of p and X are the same.

(vii) Determine the quantity of material collected with each isokinetic sampler in the array using a calibrated fluorometer. Calculate and record the mass concentration for each isokinetic sampler as:

$$C_{iso(ij)} = \frac{\text{mass of material collected with isokinetic sampler}}{\text{sample flow rate} \times \text{sampling time}}$$

where i=replicate number and j=isokinetic sampler number.

(viii) Calculate and record the mean mass concentration as:

$$\bar{C}_{iso(i)} = \frac{\sum_{j=1}^{n} C_{iso(ij)}}{n}$$

where n=total number of isokinetic samplers.

(ix) Calculate and record the coefficient of variation of the mass concentration measurements as:

$$CV_{iso(i)} = \sqrt{\frac{\sum_{j=1}^{n} C_{iso(ij)}^2 - \left(\sum_{j=1}^{n} C_{iso(ij)}\right)^2/n}{n-1}} \Bigg/ \bar{C}_{iso(i)}$$

If the value of $CV_{iso(i)}$ exceeds 0.10, the particle concentration uniformity is unacceptable and steps vi through ix must be repeated. If adjustment of the vibrating orifice aerosol generator or changes in the particle delivery system are necessary to achieve uniformity, steps ii through ix must be repeated. Remove the array of isokinetic samplers from the wind tunnel. NOTE: A single isokinetic sampler, operated at the same nominal flow rate as the test sampler, may be used in place of the array of isokinetic samplers for the determination of particle mass concentration used in the calculation of sampling effectiveness of the test sampler in step xiii. In this case, the array of isokinetic samplers must be used to demonstrate particle concentration uniformity prior to the replicate measurements of sampling effectiveness.

(x) If a single isokinetic sampler is used, install the sampler in the wind tunnel with the sampler nozzle centered in the sampling zone (see § 53.42(d)). Collect particles on an appropriate filter (e.g., glass fiber) for a time period such that the relative error of the measured concentration (as defined in step vi) is less than 5 percent. Determine the quantity of material collected with the isokinetic sampler using a calibrated fluorometer. Calculate and record the mass concentration as $C_{iso(i)}$ as in step vii. Remove the isokinetic sampler from the wind tunnel.

(xi) Install the test sampler (or portion thereof) in the wind tunnel with the sampler inlet opening centered in the sampling zone (see § 53.42(d)). To meet

the maximum blockage limit of § 53.42(a) or for convenience, part of the test sampler may be positioned external to the wind tunnel provided that neither the geometry of the sampler nor the length of any connecting tube or pipe is altered. Collect particles on an appropriate filter or filters (e.g., glass fiber) for a time period such that the relative error of the measured concentration (as defined in step vi) is less than 5 percent.

(xii) Determine the quantity of material collected with the test sampler using a calibrated fluorometer. Calculate and record the mass concentration as:

$$C_{sam(i)} = \frac{\text{mass of material collected with test sampler}}{\text{sample flow rate} \times \text{sampling time}}$$

where i=replicate number.

(xiii) Calculate and record the sampling effectiveness of the test sampler as:

$$E_{(i)} = \frac{C_{sam(i)}}{C_{iso(i)}} \times 100\%$$

where i=replicate number.

Note.—If a single isokinetic sampler is used for the determination of particle mass concentration, replace $C_{iso(i)}$ with $C_{iso(i)}$.

(xiv) Remove the test sampler from the wind tunnel. Repeat steps vi through xiii, as appropriate, to obtain a minimum of three replicate measurements of sampling effectiveness.

(xv) Calculate and record the average sampling effectiveness of the test sampler as:

$$\bar{E} = \frac{\sum_{i=1}^{n} E(i)}{n}$$

where n=number of replicates.

(xvi) Calculate and record the coefficient of variation for the replicate sampling effectiveness measurements of the test sampler as:

$$CV_E = \sqrt{\frac{\sum_{i=1}^{n} E_{(i)}^2 - \left(\sum_{i=1}^{n} E_{(i)}\right)^2/n}{n-1}} \Bigg/ \bar{E}$$

If the value of CV_E exceeds 0.10, the test run (steps ii through xvi) must be repeated.

(xvii) Repeat steps i through xvi for each wind speed, particle size, and particle type specified in Table D–2.

(xviii) For each of the three wind speeds (nominally 2, 8, and 24 km/hr), correct the liquid particle sampling effectiveness data for the presence of multiplets (doublets and triplets) in the test particle atmospheres.

(xix) For each wind speed, plot the corrected liquid particle sampling effectiveness of the test sampler (E_{corr}) as a function of particle size (d_p) on semi-logarithmic graph paper where d_p is the particle size established by the operating parameters of the vibrating orifice aerosol generator. Construct a smooth curve through the data.

(xx) For each wind speed, calculate the expected mass concentration for the test sampler under the assumed particle size distribution and compare it to the mass concentration predicted for the ideal sampler, as follows:

(A) Extrapolate the upper and lower ends of the corrected liquid particle sampling effectiveness curve to 100 percent and 0 percent, respectively, using smooth curves. Assume that E_{corr}=100 percent at a particle size of 1.0 μm and E_{corr}=0 percent at a particle size of 50 μm.

(B) Determine the value of E_{corr} at each of the particle sizes specified in the first column of Table D–3. Record each E_{corr} value as a decimal between 0 and 1 in the second column of Table D–3.

(C) Multiply the values of E_{corr} in column 2 by the interval mass concentration values in column 3 and enter the products in column 4 of Table D–3.

(D) Sum the values in column 4 and enter the total as the expected mass concentration for the test sampler at the bottom of column 4 of Table D–3.

(E) Calculate and record the percent difference in expected mass concentration between the test sampler and the ideal sampler as:

$$\Delta C = \frac{C_{sam(exp)} - C_{ideal(exp)}}{C_{ideal(exp)}} \times 100\%$$

where:

$C_{sam(exp)}$=expected mass concentration for the test sampler, μg/m³

$C_{ideal(exp)}$=expected mass concentration for the ideal sampler, μg/m³ (calculated for the ideal sampler and given at the bottom of column 7 of Table D–3.)

(F) The candidate method passes the liquid particle sampling effectiveness test if the ΔC value for each wind speed meets the specification in Table D–1.

(xxi) For each of the two wind speeds (nominally 8 and 24 km/hr), calculate the difference between the average sampling effectiveness value for the 25 μm solid particles and the average sampling effectiveness value for the 25 μm liquid particles (uncorrected for multiplets).

(xxii) The candidate method passes the solid particle sampling effectiveness test if each such difference meets the specification in Table D–1.

TABLE D–3—EXPECTED MASS CONCENTRATION FOR PM_{10} SAMPLERS

Particle size (um)	Test sampler			Ideal Sampler		
	Sampling effectiveness	Interval mass concentration (μg/m³)	Expected mass concentration (μg/m³)	Sampling effectiveness	Interval mass concentration (μg/m³)	Expected mass concentration (μg/m³)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
<1.0	1.000	62.813	62.813	1.000	62.813	62.813
1.5		9.554		0.949	9.554	9.067
02.0		2.164		0.942	2.164	2.038
02.5		1.785		0.933	1.785	1.665
03.0		2.084		0.922	2.084	1.921
03.5		2.618		0.909	2.618	2.380
04.0		3.211		0.893	3.211	2.867
04.5		3.784		0.876	3.784	3.315
05.0		4.300		0.857	4.300	3.685
05.5		4.742		0.835	4.742	3.960
06.0		5.105		0.812	5.105	4.145
06.5		5.389		0.786	5.389	4.236
07.0		5.601		0.759	5.601	4.251

TABLE D-3—EXPECTED MASS CONCENTRATION FOR PM_{10} SAMPLERS—Continued

Particle size (um)	Test sampler			Ideal Sampler		
	Sampling effectiveness	Interval mass concentration ($\mu g/m^3$)	Expected mass concentration ($\mu g/m^3$)	Sampling effectiveness	Interval mass concentration ($\mu g/m^3$)	Expected mass concentration ($\mu g/m^3$)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
07.5		5.746		0.729	5.746	4.189
08.0		5.834		0.697	5.834	4.066
08.5		5.871		0.664	5.871	3.898
09.0		5.864		0.628	5.864	3.683
09.5		5.822		0.590	5.822	3.435
10.0		5.750		0.551	5.750	3.168
10.5		5.653		0.509	5.653	2.877
11.0		8.257		0.465	8.257	3.840
12.0		10.521		0.371	10.521	3.903
13.0		9.902		0.269	9.902	2.664
14.0		9.250		0.159	9.250	1.471
15.0		8.593		0.041	8.593	0.352
16.0		7.948		0.000	7.948	0.000
17.0		7.329		0.000	7.329	0.000
18.0		9.904		0.000	9.904	0.000
20.0		11.366		0.000	11.366	0.000
22.0		9.540		0.000	9.540	0.000
24.0		7.997		0.000	7.997	0.000
26.0		6.704		0.000	6.704	0.000
28.0		5.627		0.000	5.627	0.000
30.0		7.785		0.000	7.785	0.000
35.0		7.800		0.000	7.800	0.000
40.0		5.192		0.000	5.192	0.000
45.0		4.959		0.000	4.959	0.000
		$C_{sum(exp)}=$			$C_{ideal(exp)}=$	143.889

(b) *50 Percent Cutpoint*—(1) *Technical Definition.* The particle size for which the sampling effectiveness of the sampler is 50 percent.

(2) *Test Procedure.* (i) From the corrected liquid particle sampling effectiveness curves for each of the three wind speeds, determine the particle size at which the curve crosses the 50 percent effectiveness line and record as D_{50} on the corresponding sampling effectiveness plot.

(ii) The candidate method passes the 50 percent cutpoint test if the D_{50} value at each wind speed meets the specification in Table D–1.

(c) *Precision*—(1) *Technical Definition.* The variation in the measured particle concentration among identical samplers under typical sampling conditions.

(2) *Test Procedure.* (i) Set up three identical test samplers at the test site in strict accordance with the instructions in the manual referred to in § 53.4(b)(3). Locate the test sampler inlet openings at the same height and between 2 and 4 meters apart. The samplers shall be oriented in a manner that will minimize spatial and wind directional effects on sample collection. Perform a flow calibration for each test sampler in accordance with the instructions given in the instruction manual and/or Appendix J to Part 50 of this chapter. Set the operating flow rate to the value prescribed in the sampler instruction manual. NOTE: For candidate equivalent methods, this test may be used to satisfy part of the requirements of Subpart C of this chapter. In that case, three reference method samplers are also used at the test site, measurements with the candidate and reference methods are compared as specified in § 53.34, and the test site must meet the requirements of § 53.30(b).

(ii) Measure the PM_{10} concentration of the atmosphere using the three test samplers for 10 periods (test days) of 24 hours each. On each of the 10 test days, measure the initial and final flow rates of each test sampler. On three of the test days, measure the flow rate of each test sampler after 6, 12, and 18 hours of operation. All measurements of flow rate and mass collected must be made in accordance with the procedures prescribed in the sampler instruction manual and/or Appendix J to Part 50 of this chapter. All measurements of flow rate must be in actual volumetric units. Record the PM_{10} concentration for each sampler and each test day as $C_{(i)(j)}$ where i is the sampler number and j is the test day.

(iii) For each test day, calculate and record the average of the three measured PM_{10} concentrations as $C_{(j)}$ where j is the test day. If $C_{(j)}<30\ \mu g/m^3$ for any test day, data from that test day are unacceptable and the tests for that day must be repeated.

(iv) Calculate and record the precision for each of the 10 test days as:

$$P_j = \sqrt{\frac{\sum_{i=1}^{3} C^2_{(i)(j)} - \left(\sum_{i=1}^{3} C_{(i)(j)}\right)^2/3}{2}}$$

if $\bar{C}_j$ is below 80 $\mu g/m^3$, or

$$RP_j = 100\% \times \sqrt{\frac{\sum_{i=1}^{3} C^2_{(i)(j)} - \left(\sum_{i=1}^{3} C_{(i)(j)}\right)^2/3}{2}} \Bigg/ \bar{C}_{(j)}$$

if $\bar{C}_j$ is above 80 $\mu g/m^3$.

(v) The candidate method passes the precision test if all 10 P_j or RP_j values meet the specifications in Table D–1.

(d) *Flow Rate Stability*—(1) *Technical Definition.* Freedom from variation in the operating flow rate of the sampler under typical sampling conditions.

(2) *Test Procedure.* (i) For each of the three test samplers and each of the 10 test days of the precision test, record each measured flow rate as $F_{(i)(j)(t)}$, where i is the sampler number, j is the test day, and t is the time of flow rate measurement (t=0, 6, 12, 18, or 24 hours).

(ii) For each sampler and for each test day, calculate and record the average flow rate as:

$$\bar{F}(i)(j) = \frac{\sum_{t=0}^{24} F(i)(j)(t)}{n}$$

where n=number of flow rate measurements during the 24-hour test day.

(iii) For each sampler and for each test day, calculate and record the percent difference between the average flow rate and the initial flow rate as:

$$\Delta F(i)(j) = \frac{\bar{F}(i)(j) - F(i)(j)(0)}{F(i)(j)(0)} \times 100\%$$

where $F_{(i)(j)(0)}$ is the initial flow rate (t=0).

(iv) For each sampler and for each of the 3 test days on which flow measurements were obtained at 6-hour intervals throughout the 24-hour sampling period, calculate and record the percent differences between each measured flow rate and the initial flow rate as:

$$\Delta F(i)(j)(t) = \frac{F(i)(j)(t) - F(i)(j)(0)}{F(i)(j)(0)} \times 100\%$$

where t=6, 12, 18, or 24 hours.

(v) The candidate method passes the flow rate stability test if all of the $\Delta F_{(i)(j)}$ and $\Delta F_{(i)(j)(t)}$ values meet the specifications in Table D–1.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 58

[COAR-FRL-3141-9(f)]

Ambient Air Quality Surveillance for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTON: Final rulemaking.

SUMMARY: Today's action promulgates revisions to Part 58 that establish ambient air quality monitoring and data reporting requirements for PM_{10} comparable to those already established for the other criteria pollutants. These revisions were proposed on March 20, 1984 (49 FR 10435). Included within these regulations are requirements for reporting and assuring the quality of ambient PM_{10} data; and for the design of PM_{10} monitoring networks and the siting of PM_{10} monitors.

EFFECTIVE DATE: This regulation takes effect July 31, 1987.

ADDRESS: Docket No. A–83–13 containing material relevant to this action is located in the Central Docket Section of the Environmental Protection Agency, South Conference Center, Room 4, 401 M St., SW., Washington, DC. Submit all comments to this docket. The docket may be inspected between 8:00 a.m. and 3:00 p.m. on week days and a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Neil Berg or Stanley Sleva, Monitoring and Data Analysis Division (MD–14), Office of Air Quality Planning and Standards, Environmental Protection Agency, Research Triangle Park, NC. 27711, phone: 919–541–5651 or (FTS) 629–5651.

SUPPLEMENTARY INFORMATION:

Background

Elsewhere in today's **Federal Register**, EPA is promulgating in 40 CFR Part 50 revised national ambient air quality standards (NAAQS) for particulate matter and a new reference method for the determination of ambient concentrations of particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). Corresponding revisions are also being promulgated elsewhere in today's **Federal Register** to the regulations in 40 CFR Part 53, Ambient Air Monitoring Reference and Equivalent Methods. The sampling method described in Appendix B of 40 CFR Part 50 (Reference Method for Determination of Total Suspended Particulate Matter) will continue to be used in conjunction with Appendix G of Part 50 (Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air) as well as for other purposes as specified in the revisions to this part.

Section 110(a)(2)(c) of the Clean Air Act requires ambient air quality monitoring for purposes of State Implementation Plans (SIPs) and for reporting air quality data to EPA. Criteria to be followed when measuring air quality and provisions for reporting a daily air pollution index are required by section 319 of the Act. To satisfy these requirements, on May 10, 1979 (44 FR 27558), EPA established 40 CFR Part 58 which provided detailed requirements for air quality monitoring, data reporting, and surveillance for all of the pollutants for which ambient air quality standards have been established (criteria pollutants) except lead (Pb). On September 3, 1981 (45 FR 44159), similar rules were promulgated for Pb. Today's action promulgates similar rules for PM_{10}. The regulations being promulgated today are, with the exception of changes made due to public comment, the same as those proposed on March 20, 1984, (49 FR 10435).

Public Comments

A total of 49 written comments were submitted to EPA's Docket A–84–13 concerning the March 20, 1984, proposed revisions to the Part 58 Monitoring Regulations for PM_{10}. The origin of the letters are as follows: State Air Pollution Control Agencies, 14; Local Air Pollution Control Agencies, 7; Industry and/or their contractors-law firms, 19; Institutions, 4; Other Governmental Agencies, 2; and Private Citizens, 3. Additionally, 300 written comments were submitted to Docket A–82–37 (which covers Revisions to the National Ambient Air Quality Standards for Particulate Matter) of which 84 addressed monitoring issues germane to the Part 58 monitoring regulations. Many of these latter comments were duplicates of the comments submitted to Docket A–83–13.

Difference Between the Final Rule and Proposal

The following discussion lists each section of the regulation where a change was proposed in the March 20, 1984, action, presents the respective comments received, and explains what action is being taken for each section.

Section 58.1 Definitions. One commenter suggested the definition of PM_{10} should include "50 percent collection efficiency for particles having an aerodynamic diameter equal to a nominal 10 μm." The collection efficiency specification is already included in Parts 50 and 53 and is not considered necessary in Part 58.

Section 58.13 Operating Schedule. This section describes the sampling schedule for PM_{10} monitors, which, for the period prior to collection of PM_{10} data is based on an area's probability of nonattainment. The nonattainment probability is based on the levels of total suspended particulate matter (TSP) data collected in the area. The PM_{10} monitors operating schedule addresses both a first-year and a long-term sampling schedule for the monitors in the area. Included in section 58.13 is a requirement for everyday PM_{10} sampling during the first year of PM_{10} sampling for at least one PM_{10} site in an area with a high-probability of nonattainment. A similar requirement is included for the long-term sampling plan for those areas where the PM_{10} levels are within 90 to 120 percent of the short–term (24–hour) NAAQS. This everyday sampling requirement generated numerous comments, some of which were based on an apparent misunderstanding of the intent of the proposed regulation. Several respondents interpreted the proposed everyday sampling schedule to be required by all samplers in the area rather than just one. Several commenters were adverse to the new requirement since they had a lack of actual experience in operating samplers in this fashion.

Thirty commenters did not support everyday sampling, seven wanted EPA to pay for any extra cost incurred, two supported everyday sampling, while six wanted less than 24-hour sampling or continuous methods for PM_{10} sampling. One respondent wanted the maximum concentration site to sample less frequently than everyday but wanted the rest of the monitors in the area to sample more frequently than once every sixth day. Two commenters wanted the flexibility of a noon to noon sampling period, while one wanted midnight to midnight to be explicitly mentioned in section 58.13(b), which addresses manual methods (excluding PM_{10} samplers). Five respondents did not support the long-term sampling schedule, while one did. Two wanted the term "area" more explicitly defined. One commenter wanted to consider seasonal variations in PM_{10} levels with more frequent sampling required in seasons of high concentration and less frequent monitoring required in seasons of lower concentration. Three respondents felt that in all cases the annual average should be the controlling standard in determining the frequency of sampling. One commenter questioned if one sample in six days is sufficient if the

annual average is close to the standard, and another wanted the annual average to be calculated from every sixth day sampling even if the site were sampling more frequently for the 24-hour standard.

The changes to section 58.13 in response to EPA's consideration of the comments are described in the following discussion. At the time of the March 20, 1984, Part 58 proposal, very little PM_{10} sampling data were available and there was limited experience with everyday sampling. Since then, about 900 PM_{10} samplers at approximately 520 sites have been placed in operation. Roughly 9 percent of these sites are operating everyday, 20 percent every other day and the remainder once every sixth day. The 900 samplers represent about 75 percent of the projected total of 1200 samplers that would be needed for the State and Local Air Monitoring Stations (SLAMS) network. Considering that States have until two years after promulgation to complete their SLAMS network, it appears that the proposed PM_{10} sampling network requirements including the accelerated sampling schedule is a realistic goal. Accelerated sampling schedules: (a) Reduces the risk of misclassifying the attainment/nonattainment status for an area, (b) provides a more accurate design value, and (c) under certain specified conditions, allows for attainment decisions to be made with less than 3 years of data. In view of these facts, the Agency has decided to promulgate the requirement for accelerated PM_{10} sampling.

Because the major objection to daily sampling is the cost and inconvenience of weekend visits, the Agency considered as an alternative to the midnight to midnight sampling schedule, a noon to noon sampling schedule variance which would eliminate weekend visits. To qualify for the variance the operating agency would be required to verify that the midnight to midnight sampling schedule would be a hardship and demonstrate that the alternate sampling schedule would produce comparable data. Estimates of the comparability of the levels measured using alternate schedules could be obtained using such diverse techniques as staggered or off-set PM_{10} sampling intervals, short duration PM_{10} sampling intervals, or through the use of possible continuous monitoring methods. Acceptable comparisons would have to be done on a site-specific basis.

One of the main objections to the allowance of the alternate noon to noon sampling schedule is possible PM_{10} data inconsistencies due to different sampling schedules which could result in data interpretation problems among sampling sites. Similar concerns exist over the potential sampling schedule differences between PM_{10} and other criteria pollutants having 24-hour sampling periods. Other issues were the possibility of producing lower 24-hour average concentrations and the potential time schedule inconsistency between meteorological data collected on a calendar day basis versus air quality data collected on a noon to noon schedule. There is also an argument that any cost savings attributed to noon to noon sampling could very well be consumed through the conduct of field studies and data analyses that would be required to demonstrate that an alternative sampling schedule produces data comparable to data from a midnight to midnight schedule.

In view of these concerns, the lack of specific data and information to respond to some of the issues raised, and the recognition that continuous PM_{10} analyzers are possible in the near future, the Agency has decided to promulgate the proposed midnight to midnight PM_{10} operating schedule.

Another change from the proposed regulation was to further define what was meant by the term "area" in determining where monitoring on an accelerated sampling schedule must occur. The use of the term "area" as it applies to the required sampling frequencies of the "area" was changed to read as follows: (1) Any urbanized area as defined by the U.S. Bureau of Census, (2) any incorporated place such as a city or town as defined by the U.S. Bureau of Census or group of these cities or towns, and (3) any "area" designated by the responsibile air pollution control agency. In designating these latter "areas," the control agency should consider technical factors such as the types of emissions within the area, their spatial distribution, meteorology, and topography and how these factors contribute to the uniqueness of the "area." This uniqueness which distinguishes it from other designated "areas" would justify requiring a separate sampling frequency.

No specific public comments were raised on the criteria for meeting the first year PM_{10} monitoring requirements before proceeding into the long term selective monitoring plan. However, a large number of air pollution control agencies initiated PM_{10} sampling prior to promulgation of the monitoring regulations, but at a sampling frequency less than that prescribed by the first year sampling plan. In order to provide credit for these efforts, the Agency has modified the first year PM_{10} sampling definition to include an "equivalent year" definition.

The equivalent to one year of PM_{10} sampling to be completed within one year of the effective date of promulgation is defined as follows: (a) For everyday sampling: 2 years of every other day sampling or 2 years of every sixth day sampling and 1 year of every other day sampling or 3 years of every sixth day sampling; (b) for every other day sampling: 3 years of every sixth day sampling. In all cases, each sampling year must produce 75 percent of the scheduled samples on a quarterly basis.

To further reduce the monitoring burden, a provision was added to the long term selective sampling schedule which would allow the Regional Administrator to exempt a site from sampling every day during certain periods or seasons. The exemption would be contingent upon the operating agency being able to prove seasonality of PM_{10} levels. During the exempt seasons, the site would be required to operate every sixth day.

Finally, in section 58.13(c)(2) as proposed, the word "highest" was inadvertently left out of the statement "The site having the (highest) concentration in the most current year . . ." and is reinserted in this final action.

Section(s) 58.20, 58.23, 58.30, 58.34 and 58.35 (amended). These sections all addressed time frames in which relocated TSP samplers used for monitoring the proposed TSP secondary standard were to be operational. Since elsewhere in today's **Federal Register**, the primary and secondary TSP standards are being revoked, references to the secondary TSP standard are stricken from this Part 58 action as well.

Section 58.36 System Modification. Although there was no proposed change to this section, one commenter suggested that provisions be made for an annual National Air Monitoring Stations (NAMS) network review similar to those provided for the annual SLAMS network review. This provision was addressed in the Part 58 air monitoring generic revisions promulgated on March 19, 1986.

Revisions to Appendix A—Quality Assurance Requirements for SLAMS

There were no significant comments on the proposed revisions to Appendix A. Subsequent to the March 20, 1984, proposal of these regulations, generic revisions to Part 58 were promulgated on March 19, 1986. Appendix A was revised and provisions applicable to methods for monitoring size-specific

particulate matter (PM_{10}) were incorporated into Appendix A by use of generic terms such as "particulate matter method" or "particulate matter sampler." These generic terms are intended to refer to methods for either TSP or PM_{10}. Consequently, the March 20, 1984, proposed revisions to Appendix A are no longer relevant and have been replaced by the March 19, 1986, Appendix A requirements. However, a few changes are still needed and are included in this final action.

These changes are a provision to keep the PM_{10} network separate from the TSP network in determining how many collocated sites are necessary, adding PM_{10} measurement limits equal to those for TSP for calculating single sampler precision, and for purposes of calculating accuracy adding PM_{10} as a manual method to Table A–1.

Revisions to Appendix B—Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Monitoring

The few comments received on Appendix B pointed out a misprint in the formulas for calculating probability limits for single instrument precision. Appendix B is revised to incorporate the corrected formulas and by deleting the restrictions on using collocated measurements above specified measurement limits for calculating single sampler precision for PSD monitors.

Revisions to Appendix C—Ambient Air Quality Monitoring Methodology

One commenter disagreed with the proposed use of a TSP monitor as a surrogate for a PM_{10} monitor, one agreed with using TSP monitoring as a surrogate for PM_{10} monitoring, one wanted to use IP_{25} monitors as a surrogate, and one wanted the time frame clarified as to how soon the TSP surrogate monitor had to be replaced by a PM_{10} monitor, if the 24-hour or the annual PM_{10} standard levels were exceeded as measured by the hi-vol TSP sampler. Consequently, explicit timing requirements were added. For the 24-hour standard, the PM_{10} sampler must be operating before the end of the calendar quarter following the quarter in which the 24-hour exceedance occurred and for the annual exceedance, the sampler must be operating before June 30 of the following year.

Also, one commenter was not in favor of the provision to require collocated TSP monitors and PM_{10} monitors for one year at sites that were formerly NAMS TSP sites and will be PM_{10} NAMS sites. Two commenters felt that more than 1 year of collocated data was necessary, and one commenter wanted the collocated sampling requirements clarified when the PM_{10} sampler was required to operate on an accelerated sampling frequency. EPA feels that 1 year of required collocated sampling is the minimum time period required but is not precluding any agency from extending their time period. Also, EPA feels that operating the TSP sampler on a once every sixth day schedule is sufficient regardless of the sampling frequency of the PM_{10} sampler, and that clarification has been incorporated into the regulation.

Revisions to Appendix D—Network Designs for SLAMS and NAMS

Because of the actions taken elsewhere in today's **Federal Register** regarding the TSP primary and secondary standard, the sections pertaining to SLAMS and NAMS network design for TSP have been removed and reserved. Also, because of the fact that certain steps in obtaining information for the siting of TSP and PM_{10} samplers are similar, the steps for TSP were referred to in the PM_{10} section in the proposal. Now, they will be incorporated into the PM_{10} sections on SLAMS network design criteria. Similarly, Table 5—Summary of Spatial Scales for SLAMS and Required Scales for NAMS, is being modified to remove the TSP columns.

One respondent commented favorably on the network design criteria for PM_{10} NAMS. Consistent with the network design criteria for the other pollutants, the proposed PM_{10} design criteria included a requirement for category (a) and category (b) type stations. A category (a) station must be located in an area of expected maximum concentration and the category (b) station must be located in an area which combines poor air quality with a high population density but not necessarily located in an area of expected maximum concentration. For each urban area where more than one NAMS are required, both types of stations are required. In situations where only one NAMS is required, the site must be a category (a) maximum concentration area station. In section 3.7 of the proposed regulations, it was stated that if an evaluation of the sources of PM_{10} in an urban area is predominately influenced by roadway emissions, then a category (a) station should be located adjacent to a major road and should be a microscale or middle scale station. Since emissions from motor vehicles contribute to urban area particulate matter levels, supplemental information was added which expands the discussion on motor vehicle emissions and the need to consider these emissions in designing the PM_{10} network.

Revisions to Appendix E—Probe Siting Criteria for Ambient Air Quality Monitoring

For reasons stated elsewhere concerning the revocation of the TSP NAAQS, the section on probe siting criteria for TSP monitoring has been removed and reserved.

The comments on this section totally concerned the microscale siting criteria. Six respondents did not support use of microscale sites for making emission control or attainment/nonattainment decisions. Four did support microscale sites, one wanted to average the values from microscale sites, while another wanted to preclude microscale sites from being located on plant property.

One commenter wanted the regulation to require unrestricted wind flow 360° around the sampler rather than the existing 270°, and another wanted the sampler to be sited no closer than five times the height that an obstacle protrudes above the sampler rather than the current two times. EPA feels that while the latter two suggestions would be good practices to observe in selecting monitoring sites, they would be too restrictive in most major metropolitan areas.

EPA, consistent with its previous comments in Appendix D on network design, believes that microscale PM_{10} sites represent legitimate exposures to ambient air to which people have reasonable access and that the data from each site should be used independently. Accordingly, section 8 and Table 5—Summary of Probe Siting Criteria—have been modified to include two types of microscale PM_{10} sampling sites. One being a roadway or traffic corridor site which must meet the 270° of unobstructed air flow requirement, the twice the obstacle height setback criteria, and be no closer than 5 meters from the nearest traffic lane. The other type of site would be a street canyon site in which the 270° of unobstructed air flow and the twice the obstacle height setback criteria would not apply. Such sites would have the same setback from the street as the CO microscale, namely, between 2 and 10 meters. The TSP section of Table 5 also has been removed.

Revisions to Appendix F—Annual SLAMS Air Quality Information

Although no comments were received on the items in Appendix F, EPA feels an explanation is necessary as to why the air quality data reporting

requirements for TSP have not been removed as was the siting and network design criteria commensurate with the revoking of the TSP primary and secondary standard. The regulations still allow for the use of TSP monitors as a surrogate for $PM_{10\ monitors}$ under certain conditions and require a year of TSP monitoring collocated with PM_{10} monitoring at existing TSP NAMS sites. That data will have to be reported; hence the continuance of TSP reporting criteria. The TSP ranges in Appendix F have been changed to be compatible with the PM_{10} standard, and the PM_{10} standard ranges have also been modified to be compatible with the PM_{10} standard.

Revisions to Appendix G—Uniform Air Quality Index and Daily Reporting

No comments were received on this section; however, the proposal used a level of 55 and 180 for the annual and 24-hour standard as examples in the numerical calculations of the pollution standard index (PSI) and in the example of the breakpoints for the PSI function for particulate matter. A footnote was included that stated that these numbers would be replaced by the actual air quality standard levels in the final promulgation. Appendix G is revised to accomplish this.

Impact on Small Entities

The Regulatory Flexibility Act requires that all federal agencies consider the impacts of final regulations on small entities, which are defined to be small businesses, small organizations, and small governmental jurisdictions (5 U.S.C. 601 et seq.). EPA's consideration pursuant to this Act indicates that no small entity group would be significantly affected in an adverse way by the rulemaking. Therefore, pursuant to 5 U.S.C. 605(b), the Administrator certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Other Reviews

Since this revision is classified as minor, no additional reviews are required.

This is not a "major" rule under Executive Order 12291 because it does not meet any of the criteria defined in the Executive Order. The revisions to Part 58 were submitted to the Office of Management and Budget (OMB) for review (under Executive Order 12291).

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3502 et seq. This rulemaking is promulgated under authority of section 110, 301(a) and 319 of the Clean Air Act, 42 U.S.C. 7410, 7601(a), 7619.

List of Subjects in 40 CFR Part 58

Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Quality assurance requirements, Pollutant standard index, Ambient air quality monitoring network.

Dated: June 2, 1987.

Lee M. Thomas,

Administrator.

PART 58 — AMBIENT AIR QUALITY SURVEILLANCE

For the reasons set out in the preamble, Part 58 of Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 58 continues to read as follows:

Authority: 42 U.S.C. 7410, 7601(a), 7613, 7619.

2. Section 58.1 is amended by adding new paragraphs (t), (u), (v), as follows:

§ 58.1 Definitions.

* * * * *

(t) "TSP" (total suspended particulates) means particulate matter as measured by the method described in Appendix B of Part 50 of this chapter.

(u) "PM_{10}" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on Appendix J of Part 50 of this chapter and designated in accordance with Part 53 of this chapter or by an equivalent method designated in accordance with Part 53 of this chapter.

(v) "Pb" means lead.

* * * * *

3. Section 58.13 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 58.13 Operating schedule.

* * * * *

(b) For manual methods (excluding PM_{10} samplers)—at least one 24-hour sample every six days except during periods or seasons exempted by the Regional Administrator.

(c) For PM_{10} samplers—a 24-hour sample must be taken from midnight to midnight (local time) to ensure national consistency. The sampling shall be conducted on the following schedules which are based on either the first year of PM_{10} monitoring or a long-term selective PM_{10} monitoring plan:

(1) First year PM_{10} monitoring. The sampling frequency for the first year (12 consecutive months) of ambient PM_{10} monitoring shall be based on the monitoring area's SIP area grouping (I, II, III) which is described in the PM_{10} SIP Development Guideline and the Preamble to Part 51 of this chapter. In general, the SIP groupings are defined in terms of the estimated probability of not attaining the PM_{10} NAAQS. Procedures to develop these probabilities are found in Pace, T., et al. "Procedures for Estimating Probability of Nonattainment of a PM_{10} NAAQS Using Total Suspended Particulate or Inhalable Particulate Data." OAQPS, U.S. Environmental Protection Agency, Research Triangle Park, N. C. December 1986. The most recent 3 calendar years of air quality data must be used in this determination. The SIP area groupings are divided into three categories: Group I—areas whose probability is greater than or equal to 95 percent; Group II—areas whose probability is greater than or equal to 20 percent to less than 95 percent probability, and Group III—areas whose probability is less than 20 percent. The use of the term "monitoring area" as it applies to the required sampling frequencies of the "monitoring area" is as follows: First, any urbanized area as defined by the U.S. Bureau of Census; second, any incorporated place such as a city or town as defined by the U.S.Bureau of Census or group of cities or towns; and third, any "monitoring area" designated by the responsible air pollution control agency. In designating these latter "monitoring areas", the control agency should consider technical factors such as the types of emissions, their spatial distribution, meteorology, and topography and how these factors contribute to the uniqueness of the "monitoring area" thereby distinguishing it from other designated "monitoring areas". The starting date for this first year of PM_{10} monitoring may begin prior to the effective date of promulgation of this regulation.

(i) For Group I areas, everyday PM_{10} sampling is required for at least one PM_{10} site which must be located in the area of expected maximum concentration. The remainder require every sixth day sampling.

(ii) For Group II areas, every other day sampling is required for at least one PM_{10} site which must be located in the area of expected maximum concentration. The remainder require every sixth day sampling.

(iii) For Group III areas, a minimum of one in six day sampling is required.

If a monitoring site in a Group III or Group II area later records levels exceeding the short term (24-hour) PM_{10}

NAAQS, as described in Part 50 Appendix K, and the monitoring frequency was less than everyday, then everyday sampling must be initiated in the area of expected maximum concentration no later than 90 days following the end of the calendar quarter in which the exceedance occurred and continue for the subsequent four calender quarters.

(2) *Long term monitoring selective sampling.* To be eligible for the long term selective sampling plan, the first year of PM_{10} sampling, or its equivalent, must be conducted. A complete year comprises all four calendar quarters with each quarter containing data from 75 percent of the scheduled sampling days. The equivalent to one year of PM_{10} sampling to be completed within one year of the effective date of promulgation is defined as follows: First, for everyday sampling: 2 years of every other day sampling or 2 years of every sixth day sampling and 1 year of every other day sampling or 3 years of every sixth day sampling; second, for every other day sampling: 3 years of every sixth day sampling. After one year of PM_{10} monitoring or it's equivalent has been obtained, the minimum monitoring schedule for the site in the area of expected maximum concentration shall be based on the relative level of that monitoring site concentration with respect to the level of the controlling standard. For those areas in which the short-term (24–hour) standard is controlling i.e., has the highest ratio, the selective sampling requirements are illustrated in Figure 1. If the operating agency were able to demonstrate, by a combination of historical TSP data and at least one year of PM_{10} data that there were certain periods of the year where conditions preclude violation of the PM_{10} 24–hour standard, the increased sampling frequency for those periods or seasons may be exempted by the Regional Administrator and revert back to once in six days. The minimum sampling schedule for all other sites in the area would be once every six days. For those areas in which the annual standard is the controlling standard, the minimum sampling schedule for all monitors in the area would be once every six days. During the annual review of the SLAMS network, the most recent year of data must be considered to estimate the air quality status for the controlling air quality standard (24–hour or annual). Statistical models such as analysis of concentration frequency distributions as described in "Guideline for the Interpretation of Ozone Air Quality Standards," EPA–450/479–003, U.S. Environmental Protection Agency, Research Triangle Park, N.C., January 1979, should be used. Adjustments to the monitoring schedule must be made on the basis of the annual review. The site having the highest concentration in the most current year must be given first consideration when selecting the site for the more frequent sampling schedule. Other factors such as major change in sources of PM_{10} emissions or in sampling site characteristics could influence the location of the expected maximum concentration site. Also, the use of the most recent three years of data might in some cases, be justified in order to provide a more representative data base from which to estimate current air quality status and to provide stability to the network. This multiyear consideration would reduce the possibility of an anamalous year biasing a site selected for accelerated sampling. If the maximum concentration site based on the most current year is not selected for the more frequent operating schedule, documentation of the justification for selection of an alternate site must be submitted to the Regional Office for approval during the annual review process. It should be noted that minimum data completeness critieria, number of years of data and sampling frequency for judging attainment of the NAAQS are discussed in Appendix K of Part 50.

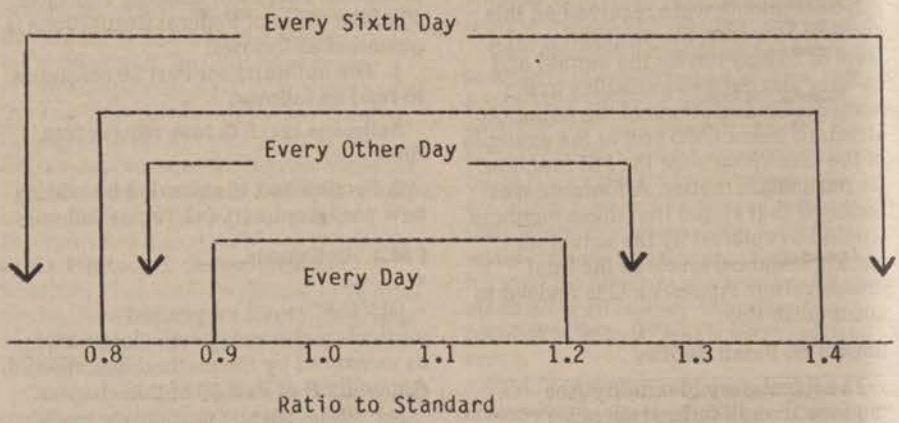

Figure 1. Selective Sampling Requirements

§ 58.20 [Amended]

4. Paragraph (e) of § 58.20 is amended by adding "and for PM_{10} monitors which must be available by 6 months after the effective date of promulgation" after "by December 1, 1981."

§ 58.23 [Amended]

5. Section 58.23 is amended by revising the introductory text to read as follows:

By January 1, 1983, with the exception of PM_{10} samplers whose probability of nonattainment of the PM_{10} ambient standard is greater than or equal to 20 percent which shall be by 1 year after the effective date of promulgation and the remaining PM_{10} samplers which shall be by 2 years after the effective date of promulgation:

* * * * *

§ 58.30 [Amended]

6. Section 58.30 is amended by adding "and PM_{10} samplers, which shall be by 6 months after the effective date of promulgation," after "by December 1, 1981" in paragraph (a) introductory text.

§ 58.34 [Amended]

7. Section 58.34 is amended by adding "and PM_{10} samplers, which shall be by 1 year after the effective date of promulgation" after "by July 1, 1982" in the introductory text.

8. Section 58.35 is amended by adding a new sentence after the last sentence in paragraph (d) as follows:

§58.35 NAMS data submittal.

* * * * *

(d) * * *. For PM_{10} samplers, the first quarterly report will be due 120 days after the first quarter of operation.

* * * * *

Appendix A—[Amended]

9. In Appendix A, Sections 3, 5 and Table A–1 are amended as follows:

a. The first phrase in the first sentence of section 3.3 is revised to read as follows: "For each network of manual methods," * * *

b. The following sentence is inserted after the second sentence in section 3.3 "For particulate matter, a network for measuring PM_{10} shall be separate from a TSP network."

c. The measurement limits for PM_{10} are added to the list of limits in section 5.3.1: "PM_{10}: 20$\mu g/m^3$."; the word "and" is deleted from the third limit; and the period at the end of the fourth limit is replaced by a comma and the word "and."

d. Table A–1 is revised to read as follows:

TABLE A–1.—MINIMUM DATA ASSESSMENT REQUIREMENTS

Method	Assessment method	Coverage	Minimum frequency	Parameters reported
Precision:				
Automated methods for SO_2, NO_2, O_3, and CO.	Response check at concentration between .08 and .10 ppm (8 & 10 ppm for CO).	Each analyzer	Once per 2 weeks	Actual concentration and measured concentration.
Manual methods including lead.	Collocated samplers	1 site for 1–5 sites; 2 sites 6–20 sites; 3 sites >20 sites; (sites with highest conc.).	Once per week	Two concentration measurements.
Accuracy:				
Automated methods for SO_2, NO_2, O_3, and CO.	Respose check at .03–.08 ppm;[1] .15–.20 ppm; [1] .35–.45 ppm; [1] .80–.90 ppm [1] (if applicable).	1. Each analyzer; 2. 25% of analyzers (at least 1).	1. Once per year; 2. Each calendar quarter.	Actual concentration and measured (indicated) concentration for each level.
Manual methods for SO_2, and NO_2.	Check of analytical procedure with audit standard solutions.	Analytical system	Each day samples are analyzed, at least twice per quarter.	Actual concentration and measured (indicated) concentration for each audit solution.
TSP, PM_{10}	Check of sampler flow rate	1. Each sampler; 2. 25% of samplers (at least 1).	1. Once per year; 2. Each calendar quarter.	Actual flow rate and flow rate indicated by the sampler.
Lead	1. Check sample flow rate as for TSP; 2. Check analytical system with Pb audit strips.	1. Each sampler; 2. Analytical system.	1. Include with TSP; 2. Each quarter.	1. Same as for TSP; 2. Actual cocentration and measured (indicated) concentration of audit samples (μg Pb/strip).

[1] Conc. times 100 for CO.

Appendix B—[Amended]

10. Appendix B is amended as follows:

a. The heading of paragraph 3.3.1 is revised to read as follows:

3.3.1 *TSP and PM_{10}* Methods. * * *

b. The first paragraph of 3.4.1 is revised to read as follows:

3.4.1 *TSP and PM_{10}* Methods. Each sampling quarter, audit the flow rate of each sampler at least once. Audit the flow at the normal flow rate, using a certified flow transfer standard (see reference 2). The flow transfer standard used for the audit must not be the same one used to calibrate the flow of the sampler being audited, although both transfer standards may be referenced to the same primary flow or volume standard. The difference between the audit flow measurement and the flow indicated by the sampler's flow indicator is used to calculate accuracy, as described in paragraph 5.2.

* * * * *

C. Section 5.1 is revised to read as follows:

5.1 *Single Instrument Precision for TSP, Pb and PM_{10}.* Estimates of precision for ambient air quality particulate measurements are calculated from results obtained from collocated samplers as described in section 3.3. At the end of each sampling quarter, calculate and report a precision probability interval, using weekly result from the collecated samplers. Directions for calculations are given below, and directions for reporting are given in section 6.

For the paired measurements obtained as described in sections 3.3.1 and 3.3.2, calculate the percent difference (d_i) using equation 1a, where Y_i is the concentration of pollutant measured by the duplicate sampler, and X_i is the concentration measured by the sampler reporting air quality for the site. Calculate the quarterly average percent difference (d_j), equation 2; standard deviation (S_j), equation 3; and upper and lower 95 percent probability limits for precision, equations 6 and 7.

$$d_i = \frac{Y_i - X_i}{(Y_i + X_i)/2} \times 100 \quad (1a)$$

$$\text{Upper 95 percent probability limit} = d_j + 1.96 S_j/\sqrt{2} \quad (6)$$

$$\text{Lower 95 percent probability limit} = d_j - 1.96 S_j/\sqrt{2} \quad (7)$$

d. In paragraph 5.2, change the heading to read *"Single Instrument Accuracy for TSP and PM_{10},"* and replace the phrase "each high volume sampler" with the phrase "each high-volume or PM_{10} sampler."

Appendex C—[Amended]

11. In Appendix C, sections 2.0, 4.0, and 5.0 are amended as follows:

a. In section 2.0, paragraphs 2.2.1 and 2.2.2 are deleted and paragraph 2.2 is revised to read as follows:

* * * * *

2.2 For purposes of showing compliance with the NAAQS for particulate matter, the high volume sampler described in Appendix B of Part 50 of this chapter may be used in a SLAMS as long as the ambient concentration of particles measured by the high volume sampler is below the PM_{10} NAAQS.

If the TSP sampler measures a single value which is higher than the PM_{10} 24-hour standard or has an annual average greater than the PM_{10} annual standard, the high volume sampler designated as a substitute PM_{10} sampler must be replaced with a PM_{10} sampler. For the 24-hour standard, the TSP sampler should be replaced with a PM_{10} sampler before the end of the calendar quarter following the quarter in which the exceedance occurred. For the annual standard, the PM_{10} sampler should be

operating by June 30 of the year following the exceedance.

In order to maintain historical continuity of ambient particulate matter trends and patterns, for PM_{10} NAMS that were previously TSP NAMS, the TSP high volume sampler must be concurrently operated with the PM_{10} sampler for a one-year period beginning with the PM_{10} NAMS start up date. The operating schedule for the TSP sampler must be at least once every six days regardless of the PM_{10} sampling frequency.

* * * * *

b. Section 4.0 is revised to read as follows:

4.0 *Particulate matter episode monitoring.*

4.1 For short-term measurements of PM_{10} during air pollution episodes (see § 51.152 of this chapter) the measurement method must be:

4.1.1 Either the "Staggered PM_{10}" method or the "PM_{10} Sampling Over Short Sampling Times" method, both of which are based on the reference method for PM_{10} and are described in reference 1: or

4.1.2 Any other method for measuring PM_{10}:

4.1.2.1 Which has a measurement range or ranges appropriate to accurately measure air pollution episode concentration of PM_{10},

4.1.2.2 Which has a sample period appropriate for short-term PM_{10} measurements, and

4.1.2.3 For which a quantitative relationship to a reference or equivalent method for PM_{10} has been established at the use site. Procedures for establishing a quantitative site-specific relationship are contained in reference 1.

4.2 Quality Assurance. PM_{10} methods other than the reference method are not covered under the quality assessment requirements of Appendix A. Therefore, States must develop and implement their own quality assessment procedures for those methods allowed under this section 4. These quality assessment procedures should be similar or analogous to those described in section 3 of Appendix A for the PM_{10} reference method.

* * * * *

c. Section 5.1 is revised to read as follows:

5.1 Pelton, D.J. Guideline for Particulate Episode Monitoring Methods, GEOMET Technologies, Inc., Rockville, MD. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Contract No. 68-02-3584. EPA 450/4-83-005. February 1983.

Appendix D—[Amended]

12. Appendix D is amended as follows:

a. In the Table of Contents, Section 2.2 and 3.1 are removed and reserved and sections 2.8 and 3.7 are added in the appropriate places as follows:

* * * * *

2.8 PMG510 Design Criteria for SLAMS

* * * * *

3.7 PM_{10} Design Criteria for NAMS

* * * * *

b. In section 2, section 2.2 is removed and reserved and a new section 2.8 is added as follows:

2. *SLAMS Network Design Procedure.*

* * * * *

2.8 M_{10} *Design Criteria for SLAMS.*

As with other pollutants measured in the SLAMS network, the first step in designing the PM_{10} network is to collect the necessary background information. Various studies[11, 12, 13, 14, 15, 16] have documented the major source categories of particulate matter and their contribution to ambient levels in various locations throughout the country. Because the sources for PM_{10} are similar to those for TSP, the procedures for collecting the necessary background information for PM_{10} are also similar. Sources of background information would be regional and traffic maps and aerial photographs showing topography, settlements, major industries and highways. These maps and photographs would be used to identify areas of the type that are of concern to the particular monitoring objective. After potentially suitable monitoring areas for PM_{10} have been identified on a map, modeling may be used to provide an estimate of PM_{10} concentrations throughout the area of interest. After completing the first step, existing TSP SLAMS or other particulate matter stations should be evaluated to determine their potential as candidates for SLAMS designation. Stations meeting one or more of the four basic monitoring objectives described in section 1 of this Appendix must be classified into one of the five scales of representativeness (micro, middle, neighborhood, urban and regional) if the stations are to become SLAMS. In siting and classifying PM_{10} stations, the procedures in reference 17 should be used.

If existing TSP samplers meet the quality assurance requirements of Appendix A, the PM_{10} siting requirements of Appendix E, and are located in areas of suspected maximum concentrations are described in section 3 of Appendix D, and if the TSP levels are below the ambient PM_{10} standards, TSP samplers may continue to be used as substitutes for PM_{10} SLAMS samplers under the provisions of Section 2.2 of Appendix C.

The most important spatial scales to effectively characterize the emissions of PM_{10} from both mobile and stationary sources are the micro, middle and neighborhood scales. For purposes of establishing monitoring stations to represent large homogenous areas other than the above scales of representativeness, urban or regional scale stations would also be needed.

• *Microscale*—This scale would typify areas such as downtown street canyons and traffic corridors where the general public would be exposed to maximum concentrations from mobile sources. Because of the very steep ambient PM_{10} gradients resulting from mobile sources, the dimensions of the microscale for PM_{10} generally would not extend beyond 15 meters from the roadway, but could continue the length of the roadway which could be several kilometers. Microscale PM_{10} sites should be located near inhabited buildings or locations where the general public can be expected to be exposed to the concentration measured. Emissions from stationary sources such as primary and secondary smelters, power plants, and other large industrial processes may, under certain plume conditions, likewise result in high ground level concentrations at the microscale. In the latter case, the microscale would represent an area impacted by the plume with dimensions extending up to approximately 100 meters. Data collected at microscale stations provide information for evaluating and developing "hotspot" control measures.

• *Middle Scale*—Much of the measurement of short-term public exposure to PM_{10} is on this scale. People moving through downtown areas, or living near major roadways, encounter particles that would be adequately characterized by measurements of this spatial scale. Thus, measurements of this type would be appropriate for the evaluation of possible short-term public health effects of particulate matter pollution. This scale also includes the characteristic concentrations for other areas with dimensions of a few hundred meters such as the parking lot and feeder streets associated with shopping centers, stadia, and office buildings. In the case of PM_{10}, unpaved or seldom swept parking lots associated with these sources could be an important source in addition to the vehicular emissions themselves.

• *Neighborhood Scale*—Measurements in this category would represent conditions throughout some reasonably homogeneous urban subregion with dimensions of a few kilometers and of generally more regular shape than the middle scale. Homogeneity refers to the PM_{10} concentrations, as well as the land use and land surface characteristics. In some cases, a location carefully chosen to provide neighborhood scale data would represent not only the immediate neighborhood but also neighborhoods of the same type in other parts of the city. Stations of this kind provide good information about trends and compliance with standards because they often represent conditions in areas where people commonly live and work for periods comparable to those specified in the NAAQS. This category also includes industrial and commercial neighborhoods, as well as residential.

Neighborhood scale data could provide valuable information for developing, testing, and revising models that describe the larger-scale concentration patterns, especially those models relying on spatially smoothed emission fields for inputs. The neighborhood scale measurements could also be used for neighborhood comparisons within or between cities. This is the most likely scale of measurements to meet the needs of planners.

• *Urban Scale*—This class of measurement would be made to characterize the PM_{10} concentration over an entire metropolitan area. Such measurements would be useful for assessing trends in city-wide air quality, and hence, the effectiveness of large scale air pollution control strategies.

• *Regional Scale*—These measurements would characterize conditions over areas with dimensions of as much as hundreds of kilometers. As noted earlier, using representative conditions for an area implies

some degree of homogeneity in that area. For this reason, regional scale measurements would be most applicable to sparsely populated areas with reasonably uniform ground cover. Data characteristics of this scale would provide information about larger scale processes of PM_{10} emissions, losses and transport.

c. In section 3, section 3.1 is removed and reserved and the third paragraph is revised to read as follows:

3. Network Design for National Air Monitoring Stations (NAMS)

* * * * *

Category (a): stations located in area(s) of expected maximum concentrations (generally microscale for CO, microscale or middle scale for Pb and PM_{10}, neighborhood scale for SO_2, and NO_2, and urban scale for O_3.

* * * * *

d. In Section 3.2, the phrase "As with TSP monitoring" at the beginning of the first paragraph is removed so that the sentence begins with the next word "It." The second, third, fourth and fifth sentences in the second paragraph are deleted and replaced with "This number of NAMS SO_2 monitors is sufficient for national trend purposes due to the low background SO_2 levels, and the fact that air quality is very sensitive to SO_2 emission changes."

e. A new Section 3.7 is added as set forth below.

3.7 *PM_{10}, Design Criteria for NAMS.*

Table 4 indicates the approximate number of permanent stations required in urban areas to characterize national and regional PM_{10} air quality trends and geographical patterns. The number of stations in areas where urban populations exceed 1,000,000 must be in the range from 2 to 10 stations, while in low population urban areas, no more than two stations are required. A range of monitoring stations is specified in Table 4 because sources of pollutants and local control efforts can vary from one part of the country to another and therefore, some flexibility is allowed in selecting the actual number of stations in any one locale.

It is recognized that no PM_{10} samplers will be designated as PM_{10} reference or equivalent methods until, at the earliest, approximately six months after promulgation of PM_{10} NAAQS and the reference and equivalent method requirements. Even though non-designated PM_{10} samplers will have been commercially available, and a small number of samplers will have been in use by EPA, other agencies, and industry, there will not be enough ambient PM_{10} data to determine ambient PM_{10} levels for all areas of the country. Accordingly, EPA has provided guidance[18] on converting ambient IP_{15} data to ambient PM_{10} data. Ambient IP_{15} data are data from high volume samplers utilizing quartz filters or dichotomous samplers, both with inlets designed to collect particles nominally 15 um and below. Also included in the guidance are procedures for calculating from ambient TSP data the probability that an area will be nonattainment for PM_{10}. For determining the appropriate number of NAMS per area, the converted IP_{15} data or the probabilities of PM_{10} nonattainment are used in Table 4, unless ambient PM_{10} data are available. If only one monitor is required in an urbanized area, it must be a category (a) type. Since emissions associated with the operation of motor vehicles contribute to urban area particulate matter levels, consideration of the impact of these sources must be included in the design of the NAMS network, particularly in urban areas greater than 500,000 population. In certain urban areas particulate emissions from motor vehicle diesel exhaust currently is or is expected to be a significant source of PM_{10} ambient levels. If an evaluation of the sources of PM_{10} as described in section 2.8 indicates that the maximum concentration area is predominantly influenced by roadway emissions, then the category (a) station should be located adjacent to a major road and should be a microscale or middle scale. A microscale is preferable but a middle scale is also acceptable if a suitable microscale location cannot be found. However, if the predominant influence in the suspected maximum concentration area is expected to be industrial emissions, and/or combustion products (from other than an isolated single source), the category (a) station should be a middle scale or neighborhood scale. A middle scale exposure is preferable to a neighborhood scale in representing the maximum concentration impact from multiple sources, other than vehicular, but a neighborhood scale is acceptable, especially in large residential areas that burn oil, wood, and/or coal for space heating.

For those cases where more than one station is required for an urban area, there should be at least one station for category (a) and one station for category (b) neighborhood scale objectives as discussed in Section 3. Where three or more stations are required, the mix of category (a) and (b) stations is to be determined on a case-by-case basis. The actual number of NAMS and their locations must be determined by EPA Regional Offices and the State agencies, subject to the approval of the Administrator as required by § 58.32. The Administrator's approval is necessary to insure that individual stations conform to the NAMS selection criteria and that the network as a whole is sufficient in terms of number and location for purposes of national analyses. As required under the provisions of section 2.2 of Appendix C, all PM_{10} NAMS that were previously designated as TSP NAMS must concurrently collect ambient TSP and PM_{10} data for a one-year period beginning when each NAMS PM_{10} sampler is put into operation.

TABLE 4.—PM_{10} NATIONAL AIR MONITORING STATION CRITERIA

[Approximate Number of Stations per Area] [a]

Population category	High concentration [b]	Medium concentration [c]	Low concentration [d]
1,000,000	6–10	4–8	2–4
500,000–1,000,000	4–8	2–4	1–2
250,000–500,000	3–4	1–2	0–1
100,000–250,000	1–2	0–1	0

[a] Selection of urban areas and actual number of stations per area will be jointly determined by EPA and the State agency.

[b] High concentration areas are those for which: Ambient PM_{10} data or ambient IP_{15} data converted to PM_{10} show ambient concentrations exceeding either PM_{10} NAAQS by 20 percent or more; or the probability of PM_{10} nonattainment, calculated from TSP data, is 95 percent or greater.

[c] Medium concentration areas are those for which: Ambient PM_{10} data or ambient IP_{15} data converted to PM_{10} show ambient concentrations exceeding either 80 percent of the PM_{10} NAAQS, or the probability of PM_{10} nonattainment, calculated from TSP data, is >20 percent and <95 percent.

[d] Low concentration areas are those for which: Ambient PM_{10} data or ambient IP_{15} data converted to PM_{10} show ambient concentrations less than 80 percent of the PM_{10} NAAQS; or the probability of PM_{10} nonattainment, calculated from TSP data, is less than 20 percent.

[e] Procedures for estimating ambient PM_{10} concentrations from IP_{15} ambient air measurements or for estimating the probability of nonattainment for PM_{10} given observed TSP data are provided in reference 18.

f. In section 4, Table 4 is redesignated as Table 5 and is revised to read as follows:

TABLE 5.—SUMMARY OF SPATIAL SCALES FOR SLAMS AND REQUIRED SCALES FOR NAMS

Spatial Scale	Scale Applicable for SLAMS						Scales Required for NAMS					
	SO_2	CO	O_3	NO_2	Pb	PM_{10}	SO_2	CO	O_3	NO_2	Pb	PM_{10}
Micro		✓			✓	✓		✓			✓	✓
Middle	✓	✓	✓	✓	✓	✓					✓	✓
Neighborhood	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Urban	✓		✓	✓	✓	✓			✓	✓		
Regional	✓			✓	G7z							

* * * * * *

g. In section 5, the list of references is amended by adding references 112 through 18 as follows:

5. References

* * * * *

11. Cooper, J.A., et. al. Summary of the Portland Aerosol Characterization Study. (Presented at the 1979 Annual Air Pollution Association Meeting, Cincinnati, OH. APCA #79–24.4).

12. Bradway, R.M. and F.A. Record. National Assessment of the Urban Particulate Problem. Volume 1. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–450/3–76–024. July 1976.

13. U.S. Environmental Protection Agency, Air Quality Criteria for Particulate Matter and Sulfur Oxides, Volume 2. Environmental Criteria and Assessment Office, Research Triangle Park, NC. December 1981.

14. Watson, J.G., et al. Analysis of Inhalable and Fine Particulate Matter Measurements. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–450/4–81–035. December 1981.

15. Record, F.A. and L.A. Baci. Evaluation on Contribution of Wind Blown Dust from the Desert Levels of Particulate Matter in Desert Communities. GCA Technology Division, Bedford, MA. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–450/2–80–078. August 1980.

16. Goldstein, E.A. and Paly M. The Diesel Problem in New York City. Project on the Urban Environment. Natural Resources Defense Council, Inc., New York, NY. April 1985.

17. Koch, R.C. and H.E. Rector. Optimum Network Design and Site Exposure Criteria for Particulate Matter. GEOMET Technologies, Inc., Rockville, MD. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Contract No. 68–02–3584. EPA 450/4–87–009.

18. Pace, T., et al. Procedures for Estimating Probability of Nonattainment of a PM_{10} Data. U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–450/4–86–017. December 1986.

Appendix E—[Amended]

13. Appendix E is amended as follows:

a. The Table of Contents is amended by removing and reserving section 2 and by adding a new section 8 and redesignating the original sections 8 through 11 as sections 9 through 12 as follows:

* * * * *

b. In section 1, the last sentence of the second paragraph is amended by changing the term "section 9" to "section 10."

c. Section 2 is removed and reserved.

d. Section 8 is revised to read as follows:

8. Particulate Matter (PM_{10}).

8.1 *Vertical Placement*—Although there are limited studies on the PM_{10} concentration gradients around roadways or other ground level sources, References 1, 2, 4, 18 and 19 of this Appendix show a distinct variation in the distribution of TSP and Pb levels near roadways, TSP, which is greatly affected by gravity, has large concentration gradients, both horizontal and vertical, immediately adjacent to roads. Lead, being predominately sub-micron in size, behaves more like a gas and exhibits smaller vertical and horizontal gradients than TSP. PM_{10}, being intermediate in size between these two extremes exhibits dispersion properties of both gas and settleable particulates and does show vertical and horizontal gradients.[30] Similar to monitoring for other pollutants, optimal placement of the sampler inlet for PM_{10} monitoring should be at breathing height level. However, practical factors such as prevention of vandalism, security, and safety precautions must also be considered when siting a PM_{10} monitor. Given these considerations, the sampler inlet for microscale PM_{10} monitors must be 2–7 meters above ground level. The lower limit was based on a compromise between ease of servicing the sampler and the desire to avoid re-entrainment from dusty surfaces. The upper limit represents a compromise between the desire to have measurements which are most representative of population exposures and a consideration of the practical factors noted above.

For middle or larger spatial scales, increased diffusion results in vertical concentration gradients that are not as great as for the microscale. Thus, the required height of the air intake for middle or larger scales is 2–15 meters.

8.2 *Spacing from Obstructions*—If the sampler is located on a roof or other structure, then there must be a minimum of 2 meters separation from walls, parapets, penthouses, etc. No furnace or incineration flues should be nearby. This separation distance from flues is dependent on the height of the flues, type of waste or fuel burned, and quality of the fuel (ash content). In the case of emissions from a chimney resulting from natural gas combustion, as a precautionary measure, the sampler should be placed at least 5 meters from the chimney.

On the other hand, if fuel oil, coal, or solid waste is burned and the stack is sufficiently short so that the plume could reasonably be expected to impact on the sampler intake a significant part of the time, other buildings/locations in the area that are free from these types of sources should be considered for sampling. Trees provide surfaces for particulate desposition and also restrict airflow. Therefore, the sampler should be placed at least 20 meters from the dripline and must be 10 meters from the dripline when the tree(s) acts as an obstruction.

The sampler must also be located away from obstacles such as buildings, so that the distance between obstacles and the sampler is at least twice the height that the obstacle protrudes above the sampler except for street canyon sites. Sampling stations that are located closer to obstacles than this criterion allows should not be classified as neighborhood, urban, or regional scale, since the measurements from such a station would closely represent middle scale stations. Therefore, stations not meeting the criterion should be classified as middle scale.

There must be unrestricted airflow in an arc of at least 270° around the sampler except for street canyon sites. Since the intent of the category (a) site is to measure the maximum concentrations from a road or point source, there must be no significant obstruction between a road or point source and the monitor, even though other spacing from obstruction criteria are met. The predominant direction for the season with the greatest pollutant concentration potential must be included in the 270° arc.

8.3 *Spacing from Roads*—Since emissions associated with the operation of motor vehicles contribute to urban area particulate matter ambient levels, spacing from roadway criteria are necessary for ensuring national consistency in PM_{10} sampler siting.

The intent is to locate category (a) NAMS sites in areas of highest concentrations

whether it be from mobile or multiple stationary sources. If the area is primarily affected by mobile sources and the maximum concentration area(s) is judged to be a traffic corridor or street canyon location, then the monitors should be located near roadways with the highest traffic volume and at separation distances most likely to produce the highest concentrations. For the microscale traffic corridor station, the location must be between 5 and 15 meters from the major roadway. For the microscale street canyon site the location must be between 2 and 10 meters from the roadway. For the middle scale station, a range of acceptable distances from the roadway is shown in Figure 2. This figure also includes separation distances between a roadway and neighborhood or larger scale stations by default. Any station, 2 to 15 meters high, and further back than the middle scale requirements will generally be neighborhood, urban or regional scale. For example, according to Figure 2, if a PM_{10} sampler is primarily influenced by roadway emissions and that sampler is set back 10 meters from a 30,000 ADT road, the station should be classified as a micro scale, if the sampler height is between 2 and 7 meters. If the sampler height is between 7 and 15 meters, the station should be classified as middle scale. If the sample is 20 meters from the same road, it will be classified as middle scale; if 40 meters, neighborhood scale; and if 110 meters, an urban scale.

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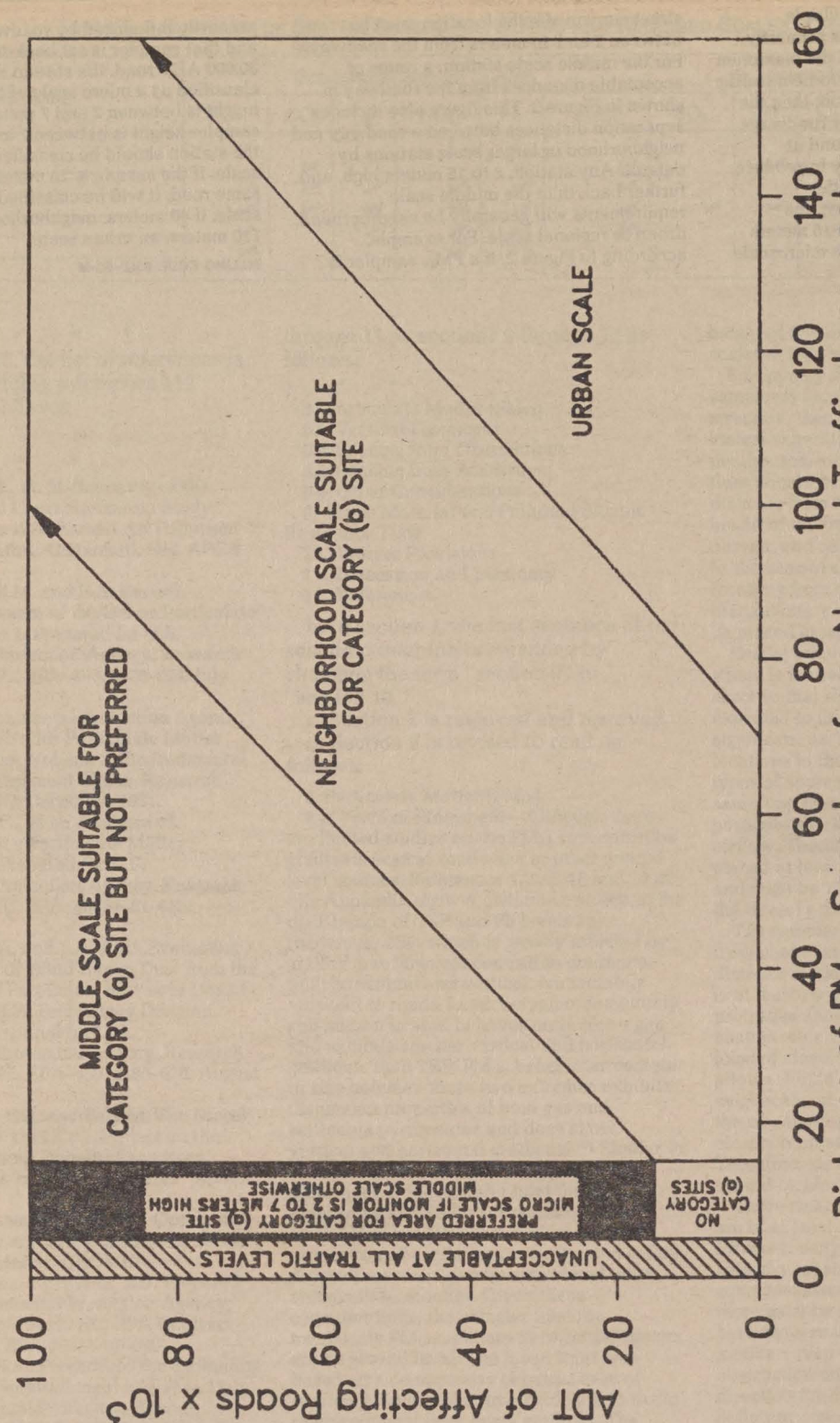
Figure 2. Acceptable Areas for PM_{10} Micro, Middle, Neighborhood, and Urban Samplers Except for Microscale Street Canyon Sites.



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It is important to note that the separation distances shown in Figure 2 are measured from the edge of the nearest traffic lane of the roadway presumed to have the most influence on the site. In general, this presumption is an oversimplification of the usual urban settings which normally have several streets that impact a given site. The effects of surrounding streets, wind speed, wind direction and topography should be considered along with Figure 2 before a final decision is made on the most appropriate spatial scale assigned to the sampling station.

8.4 *Other Considerations.* For those areas that are primarily influenced by stationary source emissions as opposed to roadway emissions, guidance in locating these areas may be found in the guideline document Optimum Network Design and Site Exposure Criteria for Particulate Matter.[29]

Stations should not be located in an unpaved area unless there is vegetative ground cover year round, so that the impact of wind blown dusts will be kept to a minimum.

e. Section 8 "Probe Material and Pollutant Sample Residence Time" is redesignated as section 9.

f. Section 9 "Waiver Provisions" is redesignated as section 10.

g. Section 10 "Discussion and Summary" is redesignated as section 11; the Table 5 therein is revised to read as follows:

11. Discussion and Summary.

* * * * *

TABLE 5.—SUMMARY OF PROBE SITING CRITERIA

Pollutant	Scale	Height above ground, meters	Distance from supporting structure, meters		Other spacing criteria
			Vertical	Horizontal[a]	
SO_2	All	3–15	>1	>1	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. No furnace or incinerator flues should be nearby.[c]
CO	Micro	3±½	>1	>1	1. Must be >10 meters from street intersection and should be at a midblock location. 2. Must be 2–10 meters from edge of nearest traffic lane. 3. Must have unrestricted airflow 180° around the inlet probe.
	Middle Neighborhood	3–15	>1	>1	1. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 2. Spacing from roads varies with traffic (see Table 1).
O_3	All	3–15	>1	>1	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. Spacing from roads varies with traffic (see Table 2).
NO_2	All	3–15	>1	>1	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from inlet probe to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the inlet probe.[b] 3. Must have unrestricted airflow 270° around the inlet probe, or 180° if probe is on the side of a building. 4. Spacing from roads varies with traffic (see Table 3).
Pb	Micro	2–7	—	>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler except for street canyon sites. 4. No furnace or incineration flues should be nearby.[c] 5. Must be 5 to 15 meters from major roadway.

TABLE 5.—SUMMARY OF PROBE SITING CRITERIA—Continued

Pollutant	Scale	Height above ground, meters	Distance from supporting structure, meters		Other spacing criteria
			Vertical	Horizontal[d]	
	Middle, neighborhood, urban and regional.	2–15	—	>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler. 4. No furnace or incineration flues should be nearby.[c] 5. Spacing from roads varies with traffic (see Table 4).
PM_{10}	Micro	2–7	—	>2	1. Should be > meters from the dripline and must be 10 meters from the dripline when the tree(s) acts as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler except for street canyon sites.[b] 3. Must have unrestricted airflow 270° around the sampler except for street canyon sites. 4. No furnace or incineration flues should be nearby 5. Spacing from roads varies with traffic (see Figure 2) except for street canyon sites which must be from 2 to 10 meters from the edge of the nearest traffic lane.
	Middle, neighborhood urban and regional scale.	2–15	—	>2	1. Should be >20 meters from the dripline and must be 10 meters from the dripline when the tree(s) act as an obstruction. 2. Distance from sampler to obstacle, such as buildings, must be at least twice the height the obstacle protrudes above the sampler.[b] 3. Must have unrestricted airflow 270° around the sampler. 4. No furnace or incineration flues should be nearby.[c] 5. Spacing from roads varies with traffic (see Figure 2).

[a] When probe is located on rooftop, this separation distance is in reference to walls, parapets, or penthouses located on the roof.
[b] Sites not meeting this criterion would be classified as middle scale (see text).
[c] Distance is dependent on height of furnace or incineration flues, type of fuel or waste burned, and quality of fuel (sulfur, ash or lead content). This is to avoid undue influences from minor pollutant sources.

h. Section 11, *References,* is redesignated as section 12, and the list of references is amended by adding references 29 and 30 as follows:

12. *References.*

* * * * *

29. Koch, R.C. and H.E. Rector. Optimum Network Design and Site Exposure Criteria for Particulate Matter, GEOMET Technologies, Inc., Rockville, MD. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Contract No. 68–02–3584. EPA 450/4–87–009. May 1987.

30. Burton, R.M. and J.C. Suggs. Philadelphia Roadway Study. Environmental Monitoring Systems Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, N.C. EPA–600/4–84–070 September 1984.

Appendix F—[Amended]

14. Appendix F is amended as follows:

a. The following is added to the end of the table of contents:

b. In section 2.2, the title is revised, subparagraph 2.2.2 is revised, and subparagraph 2.2.3 is added to read as follows:

2.2 *Total Suspended Particulates (TSP)*

* * * * *

2.2.2 *Annual Summary Statistics.* Annual arithmetic mean ($\mu g/m^3$) as specified in Appendix*3* of Part 50. Daily TSP values exceeding the level of the 24-hour PM_{10} NAAQS and dates of occurrence. If more than 10 occurrences, list only the 10 highest daily values. Sampling schedule used such as once every six days, once every three days, etc. Number of additional sampling days beyond sampling schedule used. Number of 24-hour average concentrations in ranges:

Range:	*Number of values*
0 to 50 ($\mu g/m^3$)	
51 to 100	
101 to 150	
151 to 200	
201 to 250	
251 to 300	
301 to 400	
Greater than 400	

2.2.3 *Episode and Other Unscheduled Sampling Data.* List episode measurements, other unscheduled sampling data, and dates of occurrence. List the regularly scheduled sample measurements and date of occurrence that preceded the episode or unscheduled measurement.

c. Section 2.7 is added to read as follows:

2.7 *Particulate Matter (PM_{10})*

2.7.1 *Site and Monitoring Information.* City name (when applicable), county name, and street address of site location. SAROAD site code. Number of daily observations.

2.7.2 *Annual Summary Statistics.* Annual arithmetic mean ($\mu g/m^3$) as specified in Appendix K of Part 50. All daily PM_{10} values above the level of the 24-hour PM_{10} NAAQS and dates of occurrence. Sampling schedule used such as once every six days, once every three days, etc. Number of additional sampling days beyond sampling schedule used. Number of 24-hour average concentrations in ranges:

Range:	Number of values
0 to 25 ($\mu g/m^3$)	
26 to 50	
51 to 75	
76 to 100	
101 to 125	
126 to 150	
151 to 175	
176 to 200	
Greater than 200	

2.7.3 **3pisode and Other Unscheduled Sampling Data.** List episode measurements, other unscheduled sampling data, and dates of occurrence. List the regularly scheduled sample measurements and date of occurrence that preceded the episode or unscheduled measurement.

Appendix G—[Amended]

15. Appendix is revised to read as follows:

a. Paragraph 2.f. is revised to read as follows:

2. *Definitions.*

* * * * *

f. "Critical pollutant" means the pollutant with the highest subindex during the reporting period.

b. In the first paragraph of section 3, the term "TSP" is removed in the third sentence and replaced by the words "PM_{10}", the word "particulate" is removed and replaced with "PM_{10}" in the fourth sentence, and the term "hi-volume" is removed twice in the fourth sentence and replaced by the words "reference or equivalent method."

c. In section 7, the words "total suspended particulates (TSP)" are deleted in the second sentence of the first paragraph and replaced by the words "particulate matter (PM_{10})," the first sentence of the second paragraph is removed and the word "six" in the second sentence of the second paragraph is replaced by the word "five".

d. Section 7.2 is revised to read as follows:

7.2 *Example Computation.*

Suppose a PM_{10} 24-hour concentration of 283 $\mu g/m^3$ is observed. The PM_{10} subindex is calculated using equation 1 as follows: In Table 1, the observed concentration of $X_j = 283\ \mu g/m^3$ lies between 150 and 350 $\mu g/m^3$, therefore this computation is carried out for the second segment (j=2). For this segment, $X_{1,2}=150$ and $X_{1,3}=350$, with corresponding subindex values for $I_{1,2}=100$ and $I_{1,3}=200$. The computation is as follows:

$$I_1 = \frac{I_{1,3}-I_{1,2}}{X_{1,3}-X_{1,2}}(283-X_{1,2})+I_1 = \frac{200-100}{350-150}(283-150)+100 = \frac{100}{200}\times 133+100=167$$

Therefore, the PM_{10} subindex is I=167. If four other pollutant subindices calculated in a similar manner from observations on the same data were: $I_2=0$, $I_3=0$, $I_4=20$, and $I_5=30$, then the overall index is reported as the maximum of these values:

PSI=max(167,0,0,20,30)=167

A typical report might contain the following statement: "Today's air quality index is 161 which is regarded as unhealthful. The responsible pollutant is particulate matter. This report represents conditions prevailing over most of the downtown urban area for the previous 24-hour period ending at noon today." If the index were forecast for the next day, the following additional language might also be used: "The current forecast is for improved air quality tomorrow with the index not expected to exceed 80."

e. In Table 1, in the sixth column entitled 1-hr. O_3, the number 118 is removed and replaced with 120, the term "$\mu mg/m^3$" is removed from the heading of the fifth column and replaced with "mg/m^3," the fourth column entitled TSP×SO_x ($\mu g/m^3$)[2] is removed, and the second column is revised to read as follows:

Table 1.—Breakpoints for PSI in Metric Units [1]

24-hr PM $\mu g/m^3$
50
150
350
420
500
600

f. In Table 2, the third column entitled TSP×SOs($\mu g/m^3$ (ppm)) is removed.

g. Figure 2 is revised to read as follows:

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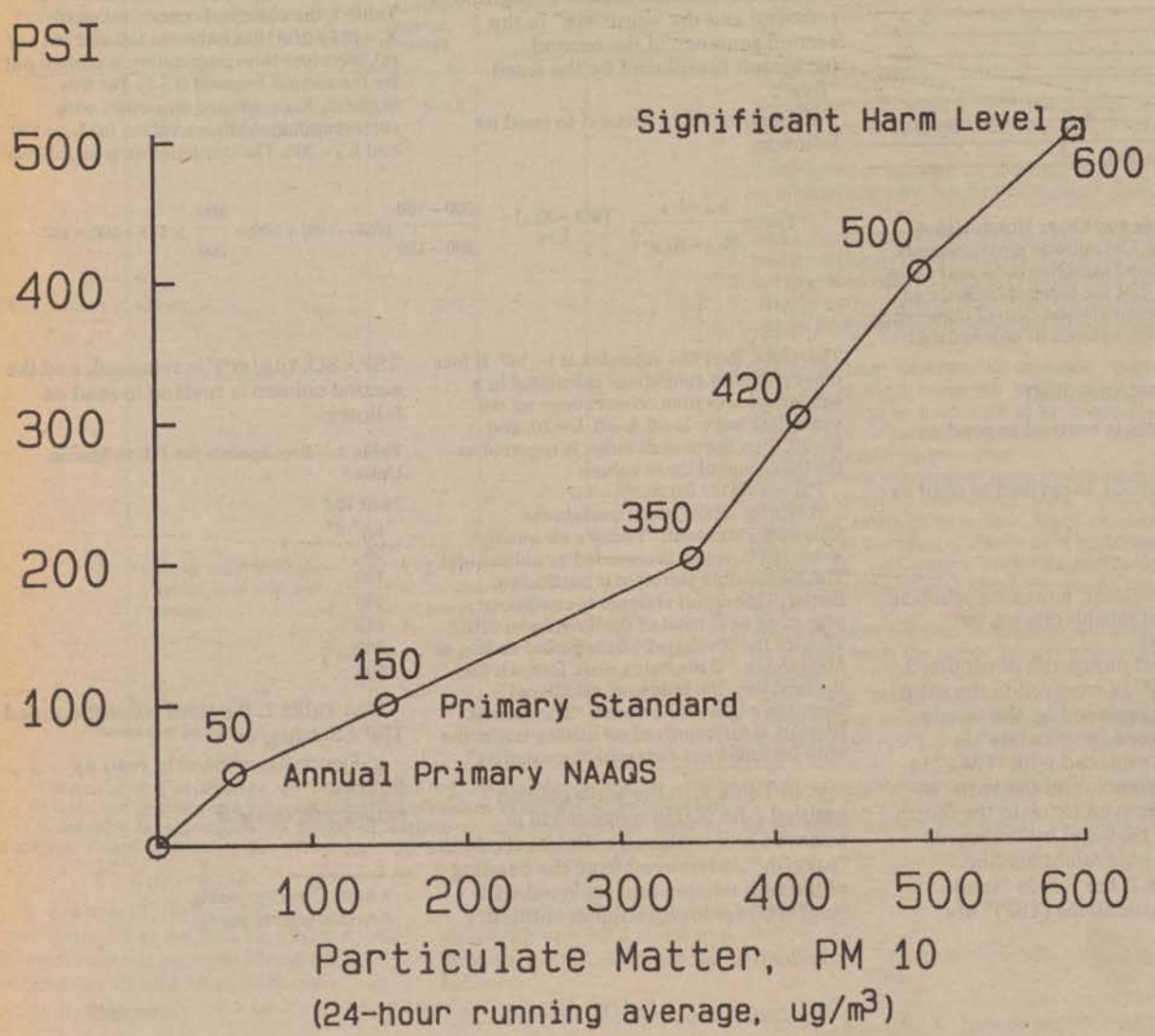
[1] At 25° C and 760 mmHg.

[2] At 25°C and 760 mm Hg.

Figure 2. PSI Function for Suspended Particulate Matter, PM 10



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Wednesday
July 1, 1987

Part IV

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 405 and 442

Medicare and Medicaid Programs; Long Term Care Survey; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405 and 442

[HSQ-149-P]

Medicare and Medicaid Programs; Long Term Care Survey

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: These proposed regulations respond to a U.S. District Court decision, which declared the final rule affecting Medicaid long term care surveys, published in the **Federal Register** on June 13, 1986, to be procedurally invalid. The court ordered that, by July 1, 1987, we publish a new proposed rule to correct the inadequacies identified by the court.

Accordingly, these proposed regulations describe in detail HCFA's survey methodology, guidelines and forms used in surveys, and the duties of the State survey agency, and HCFA solicits comments on the guidelines and forms that constitute the survey system, set forth in appendices to this document.

DATE: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on September 29, 1987.

ADDRESS: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ-149-P, P.O. Box 26676, Baltimore, Maryland 21207.

Please address a copy of comments on information collection requirements to: Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G. Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code HSQ-149-P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave. SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Wayne Smith, (301) 594-5547.

SUPPLEMENTARY INFORMATION:

I. Background

A. Legislative Requirements

Section 1864 of the Social Security Act (the Act) requires the Secretary to enter into agreements with States to survey nursing homes and certify their compliance or noncompliance with Medicare participation requirements. These requirements are contained in section 1861(j) of the Act and are implemented through regulations located in 42 CFR Part 405, Subparts K and S.

Section 1902(a)(33)(B) of the Act requires the State Medicaid agency to contract with the State survey agency used by Medicare (if that agency is the agency responsible for licensing health facilities), to determine whether nursing facilities meet the requirements for participation in the Medicaid program. Medicaid participation requirements for skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) are in sections 1902(a)(28) and 1905 (c) and (d) of the Act, respectively. Regulations implementing these requirements are located in 42 CFR Part 442, Subparts B, C, D, E, and F.

Under § 442.101 of those rules, the State survey agency (SA) certifies to the Medicaid agency whether Medicaid participation requirements are met. The regulations at § 431.610(f)(1) require that the SA use Federal standards and the forms, methods, and procedures designated by HCFA. Section 442.30(a)(4) provides that, if the SA fails to follow the Federal procedures referenced in § 431.610(f), the Medicaid provider agreement executed on the basis of the SA's survey and certification will not be considered by HCFA to be valid evidence of a facility's compliance with participation requirements. When the agreement is considered to be invalid, HCFA must disallow Federal financial participation in expenses incurred by the State for the services furnished by that facility.

For Medicare requirements, regulations at 42 CFR 405.1902(b) provide that SA certifications represent recommendations to HCFA, which makes final determinations on a facility's eligibility to participate in the Medicare program. Although the District Court's order applied only to Medicaid, the proposed regulatory changes include provisions affecting SA responsibilities under Medicare.

The process for reviewing and determining facility compliance with Medicaid health and safety requirements is referred to as the survey and certification process. Specific requirements for this process are established by law (section 1902(a)(33)(B) of the Act), implemented and enforced by regulations (Part 442, Subpart C), and interpreted in general program instructions (the State Operations Manual, interpretive guidelines, and program letters and memoranda).

If a facility has requested a provider agreement in order to participate in the Medicaid program, the request must be denied if that facility is found not to be in compliance with participation requirements. If a facility that has a provider agreement is found not to be in compliance, its provider agreement must be terminated.

HCFA has broad oversight responsibility for the Medicaid as well as the Medicare program. HCFA regional offices conduct onsite surveys of a sample of all types of facilities to determine continued compliance with program requirements. When HCFA reviews certifications of facilities that participate only in Medicaid, it is referred to as "look behind." HCFA ascertains whether a facility is in compliance with Medicaid participation requirements, and will terminate a facility's participation in Medicaid if it determines that those requirements are not met. This "look behind" authority is contained in sections 1902(a)(33)(B) and 1910(c) of the Act.

The proposed regulations embody a basic set of principles for the survey and certification process and would require that the SA follow these principles in determining compliance with participation requirements. These principles are:

—The survey process is the means to assess compliance with Federal health, safety and quality standards.

—The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically, surveyors will directly observe the actual provision of care and services to residents to assess whether the care provided meets the needs of individual residents.

—Surveyors are professionals who use their judgment, in concert with Federal forms and procedures, to determine compliance.

—Federal procedures are used by all surveyors to ensure uniform and consistent application and

interpretation of Federal requirements.
—Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

This proposed rule (NPRM) incorporates these principles in the survey and certification regulations. Of particular concern here is HCFA's implementation of specific survey forms and procedures for determining compliance of long-term care facilities. (In this NPRM, "long-term care" refers only to SNFs and ICFs and does not include intermediate care facilities for the mentally retarded.) The remainder of this preamble discusses legal considerations affecting the long-term care survey process and provides a detailed description of HCFA's survey methodology and forms.

B. The District Court's Order in Estate of Smith v. Bowen

On March 24, 1987, in *Estate of Smith* v. *Bowen*, 656 F. Supp. 1093 (D. Colo. 1987), the U.S. District Court for The District of Colorado ordered the Secretary to publish by June 1, 1987, an NPRM consistent with the views expressed in his order. (On June 1, the court extended the publication date to July 1, 1987.) Specifically, the court found that the rule published June 13, 1986, at 51 FR 21550, "Medicare and Medicaid Programs Long-Term Care Survey" was invalid due to an inadequate NPRM and flaws in the rulemaking procedure. The court ruled that the NPRM, published October 31, 1985, at 50 FR 45584, was inadequate because it did not include "the guidelines and forms that constitute the system", information which the Court concluded was "required for meaningful comment." The Court also found that the rule itself was inadequate because it did not include details of the survey methodology. Procedural flaws cited by the court include an insufficient 60-day comment period, and the Secretary's failure to extend the comment period despite numerous requests to do so. Finally, the court ruled that the statement of basis and purpose of the rule was flawed because of the failure to provide a sufficient description in the NPRM, or to provide an adequate opportunity for comment.

The district court's order is the latest development stemming from a class action filed in 1975 on behalf of residents in a Colorado nursing home. The plaintiffs claimed that the Secretary had failed to carry out a duty to ensure that Medicaid recipients in nursing facilities were actually receiving high quality care. The plaintiffs sought to require that the Department's existing system for the survey and certification of nursing homes be replaced by a "patient oriented" system, which they viewed as more likely to ensure quality care. On February 8, 1983, the district court dismissed the case on the basis that the Secretary had the authority to implement different procedures but had no mandatory duty to do so. Upon appeal, however, the Tenth Circuit Court of Appeals reversed the district court on October 29, 1984, and held that the Secretary had failed to fulfill a statutory duty to promulgate regulations enabling him to determine whether Medicaid facilities are providing high quality care. The court of appeals ruled that the current survey and certification system failed to discharge this duty and remanded the case back to the district court to compel compliance.

On August 9, 1985, the district court ordered the Secretary to publish an NPRM by October 31, 1985, regarding a new survey system that would enable the Secretary to fulfill the duty prescribed by the court of appeals. To comply with this order, HCFA published an NPRM, on October 31, 1985 (50 FR 45584), and a final rule on June 13, 1986 (51 FR 21550) announcing our intent to implement a new resident-centered survey process. The preambles to both the NPRM and the final rule described the basic methodology of the new survey. This NPRM responds to the district court's subsequent ruling that the previous rulemaking process was not adequate to satisfy its order of August 9, 1985.

C. Guidelines for the Long-Term Care Survey Process

The long-term care survey method consists of a three-part review of a facility's compliance with program participation requirements—a review of administrative and procedural requirements (Part A), a review of requirements directly affecting resident care (Part B), and a review of Life Safety Code (LSC) requirements. No changes are being proposed in the LSC portion of the survey, and LSC surveyors will continue to apply the particular edition of the code applicable to each facility. Facilities are still required to be in continuous compliance with all regulatory requirements in order to be approved to participate in Medicare and Medicaid. As described below, however, a complete survey will under most circumstances consist of the LSC review and a Part B review.

Administrative and Procedural Requirements

Part A of the survey process covers current regulatory requirements that focus on a facility's capacity to provide services rather than on how services are actually provided and their effects on residents. Part A requirements span all 18 of the current conditions of participation for skilled nursing facilities (42 CFR 405.1120 through 405.1137) and the corresponding intermediate care facility standards (42 CFR 442.301 through 442.346). All requirements contained in Part A fall into one of the six major areas listed below:

- By laws and other organizational documentation (e.g. operating budget, expenditure plan, evidence of licensure and personnel registration);
- Written administrative and resident care policies;
- Written agreements with outside resources/consultants;
- Committee meeting and reporting requirements;
- Staff qualifications and written development programs; and
- Other written programs, plans or systems (e.g., equipment maintenance, disaster preparedness.)

The common characteristics of all of these administrative and procedural requirements is that no observation of residents, actual provision of care, or the physical environment of the facility is needed to determine compliance. Instead, surveyors carry out an extensive "paper review" process to assess whether facilities meet these items. The Part A survey form (HCFA 525) simply states the essence of each administrative and procedural requirement and references the appropriate regulatory citation for SNFs or ICFs as applicable. We are publishing the Part A form for public comment as appendix A to this proposed rule.

Surveyors conduct an on-site evaluation of the Part A requirements for facilities that are initial (first time) program applicants. Facilities not meeting these requirements are not approved for participation. Part A is not generally applied for resurveys of participating long-term care facilities. Instead, at the time of recertification (reapproval) a facility is required to complete an affidavit attesting that there have been no administrative or procedural changes that would affect Part A compliance. The facility must also agree to notify the State agency immediately of any changes in its organization or management that may raise questions regarding continuing compliance.

Facilities are still required to comply with all Part A requirements and surveys may be conducted as needed to verify compliance.

Requirements Affecting Resident Care—Overview

Part B of the survey process consists of a resident-centered survey methodology that surveyors apply to all SNFs and ICFs on an annual basis. The Part B forms and procedures focus on the regulatory requirements that most directly affect the health and well-being of residents (nursing services. dietary services, resident activities, etc.). The process stresses resident outcomes and the actual provision of care and services. Surveyors cite deficiencies based directly on the review of resident care and treatment rather than on review of policies and procedures.

The purpose of Part B of the survey is to provide a valid and reliable assessment of whether a nursing home is actually delivering high quality care to its residents. Through the in-depth review of a representative sample of residents, surveyors identify resident needs and problems and determine how well care is provided to meet those needs. In addition, by our requiring surveyors to follow specific procedures and to perform resident reviews using a specified checklist, the Part B review promotes consistency in methodology and findings.

Under Part B of the survey, surveyors are brought face to face with residents in a systematic manner so that they may directly evaluate resident care in each of the four major components of the process:

—Resident-centered in-depth tour of the facility;
—Observation, interview, and medical record reviews of a sample of residents;
—Observation of meals, dining areas and eating assistance techniques; and
—Observation of drug administration.

Although the observation of residents has always been an integral part of the survey process, since July 14, 1986 our methodology has ensured that the structured observation of residents and the actual care they receive is the focal point of the survey. We expect more accurate assessments to result from requiring all surveyors to employ structured worksheets to record their findings in each of these areas. Survey forms, procedural guidelines and care guidelines for use in implementing the survey process have been developed, tested and refined on a continuing basis since early 1983. Below is a detailed description of the forms and procedures we require surveyors to use, and a summary of the purpose and content of the care guidelines. In addition, we are publishing copies of the forms (Appendix B), Worksheets (Appendix C), procedural guidelines (Appendix D), and care guidelines (Appendix E) for public comment.

D. Forms for the Long Term Care Survey Process

In conducting a Part B survey, surveyors are required to record all findings on the "Medicare/Medicaid Skilled Nursing Facility and Intermediate Care Facility Survey Report," (HCFA 519) (Appendix B). In addition to the survey report form, surveyors also complete a series of worksheets that cover each major review component of the survey methodology (Appendix C). Relevant information from each worksheet is transferred onto the survey report form, which is the comprehensive record of survey findings. The following discussion provides a complete description of the survey report form.

Descriptions of each of the required worksheets are contained in the subsequent section describing Part B survey procedures.

The single survey report form closely resembles the separate SNF and ICF report forms previously used in terms of structural format. Page one of the form collects standard identifying information on the facility and the surveyors, including names of members of the survey team and the discipline they represent, e.g., nursing, dietetics, pharmacy, etc.

The body of the form consists primarily of data identifier numbers for each survey requirement, appropriate regulatory references for both SNFs and ICFs, a clear statement of the requirement, boxes to indicate compliance or noncompliance, and an "explanatory statements" column for documentation of findings. The form requires the completion of staffing charts for the previous three weeks, although it specifies that the chart must reflect "actual" nursing and aide staff on duty rather than "assigned" staff. The form differs from report forms previously used in the required collection of resident census information. The survey report form now highlights the importance of these data by moving the resident census section to page two of the survey report document and significantly expanding its required contents. As its title implies, the "Resident Census and Conditions of Residents" section calls for detailed description of residents in terms of their physical condition and care needs. Facilities must classify all residents according to functional abilities in each of the following activities of daily living (ADLs): bathing, dressing, toileting, ability to move from bed to chair, continence, and feeding.

In addition, the resident census form requires information on the aggregate number of residents in 11 narrowly defined categories ranging, for example, from "completely bedfast" to "requiring no assistance in ADLs" and including special care needs such as "residents with decubiti" and "residents receiving intravenous therapy or blood transfusions."

As noted, the Part B survey report form covers all current regulatory requirements directly affecting resident health and well being. Presented below is a brief sequential description of each major section of the survey report form:

Governing body—This section of the survey report form consists almost entirely of complete statements of the resident rights requirements now in 42 CFR 405.1121(k) for SNFs and 42 CFR 442.411 for ICFs. Examples of areas covered by these rights include "Information", "Medical Conditions and Treatment", "Financial Affairs", "Freedom from Abuse and Restraints", and "Privacy." The only other aspect of the governing body regulations covered by the survey form are status change notification requirements.

Physician services—This section covers requirements for medical findings and evaluation at the time of admission, ongoing physician supervision of resident care and the availability of emergency services.

Nursing services—This extensive section focuses on whether sufficient nursing services are provided to meet resident needs on a continuous basis. Data are separately collected for specific care need categories (e.g., hygiene, decubitus care, restraints, catheters). The form specifies the SNF and ICF staffing and qualification requirements. Other areas covered by the nursing services section include general rehabilitative nursing requirements, nutritional and eating assistance needs, and drug administration practices.

Dietetic services—This section covers requirements for menu planning and nutritional adequacy, therapeutic diets, food preparation and serving, frequency of meals, and availability of food service personnel.

Specialized rehabilitation services—This section covers the development, implementation, progress reporting and reevaluation of rehabilitative care plans for residents requiring such services.

Pharmaceutical services—This section requires surveyors to enter the drug error rate calculated during each survey (see below) and includes requirements for monthly drug regimen reviews and labelling practices.

Laboratory and radiologic services—This section states the record review requirements indicative of active physician involvement.

Social services—This section focuses on the existence and implementation of a care plan that identifies and meets each resident's social and emotional needs.

Activities—This section covers requirements for an ongoing activities program tailored to individual residents' interests, as well as requirements to encourage participation and to have supplies and equipment functional and available.

Patient care management—This section covers the requirement that each resident's needs are addressed in an integrated written care plan that is implemented in a timely manner. It specifies that each professional service contributes to the process of need identification, goal-setting, planning, intervention and evaluation.

Training—This section emphasizes the outcomes of staff training by focusing on staff knowledge levels about resident care problems and use of proper care techniques, as well as demonstration of ability to protect the health and rights of residents.

Medical records—This section addresses the specific content of the medical record and requires that it be sufficient to justify diagnoses and treatment and to document progress.

Transfer agreement—This section ensures that transfers of residents from nursing homes to hospitals are medically appropriate and timely.

Physical environment—This extensive section provides for comprehensive assessment of the environmental requirements for resident rooms, dining and activities areas, toilet and bath facilities, all care delivery areas, building maintenance, and food preparation, service, storage and disposal. The requirements contained here are stated clearly and positively and emphasize hygiene, safety, comfort, privacy, space sufficiency and working equipment. These requirements are drawn from a variety of regulatory areas, and all sources are cited on the survey report form.

Infection control—This section emphasizes overall sanitation and the actual use of proper aseptic techniques. It also specifically covers pest control requirements and the availability and handling of linens.

Disaster preparedness—This section focuses on facility staff's awareness of applicable plans, procedures and responsibilities.

The Long Term Care Survey

The specific procedures that are followed by surveyors are contained in procedural guidelines entitled, "The Outcome—Oriented Survey Process—Skilled Nursing Facilities and Intermediate Care Facilities" (Appendix D). These procedures have been developed and refined based on field experience with the process, recent research results from Brown University, and our continuing consultation with representatives of the State survey agencies, the nursing home industry and consumer advocacy groups.

We identify eight distinct survey tasks:

- Entrance conference;
- Selection of a resident sample;
- Facility tour;
- Observation/interview/medical record review of a sample of residents;
- Drug administration observation;
- Dining area and eating assistance observation;
- Formation of a deficiency statement; and
- Exit conference.

Following is a detailed description of each task.

1. *Entrance conference*—The survey team introduces itself to facility staff and outlines the steps involved in the survey process. Surveyors ask the facility to complete the resident census portion of the survey report form as soon as possible and also to provide a list of all residents with a prescribed list of special care needs for use in selecting the resident sample (see below). Finally, surveyors make necessary arrangements to have signs posted indicating that a survey is in progress and to meet privately with representatives of the facility's resident council if applicable.

2. *Selection of resident sample*—The survey team next selects a sample of residents for in-depth review. The names of residents selected for in-depth review are recorded on the worksheet entitled, Residents Selected for Indepth Review (HCFA-520) (Appendix C1). Sample size is determined as follows:

Number of residents in facility	Number of residents in sample
0-60	25% of Residents (Minimum—10).
61-120	20% of Residents (Minimum—15).
121-200	15% of Residents (Minimum—24).
201+	10% of Residents (Minimum—30) (Maximum—50).

Surveyors select residents to be included in the sample in a random manner. However, our guidelines specify that no less than 25% of residents in each of the following care need categories must be reviewed:

Decubitus Care
Restraints
Catheters
Injections
Parenteral Fluids
Rehabilitation Services
Colostomy/Ileostomy Care
Respiratory Care
Tracheostomy Care
Suctioning
Tube Feeding

Due to the relatively low prevalence of these care categories in many nursing homes, a random sample may severely under-represent or entirely omit appropriate residents. Our guidelines instruct surveyors to either add residents with these care needs to the sample or to substitute such residents for others in the sample to ensure that a facility's performance in meeting these special needs is adequately assessed. We require that the random portion of the sample always constitute at least 50% of the total resident sample. Surveyors are never precluded from investigating the care of any resident whose health or safety is at issue.

(The procedural guidelines for selecting a resident sample summarized above and contained in Appendix D reflect the February 1987 refinement in the methodology for selecting a sample. We have encouraged, but not required, surveyors to implement the new sampling methodology. Until October 1, 1987, surveyors are still permitted to select the resident sample in accordance with the instructions contained in the June 1986 procedural guidelines, which mandated a 10-percent sample size to be selected during the facility tour. This accounts for the difference in the refined procedures for resident sample selection discussed above and the procedures reflected in Appendix C2.)

3. *Facility tour*—Our guidelines stress that, in conducting the facility tour, surveyors should focus their attention on individual residents' needs and whether those needs are being met. Specific tour activities include the following:

—Surveyors look at each resident in order to make an overall assessment of types and patterns of care delivery in the facility. (Examples of patterns of care include such areas as respect for residents' rights and privacy, grooming and personal hygiene,

attention to social or emotional needs, and appropriate activities programs.)
—Surveyors assess facility compliance with physical environment requirements.
—Surveyors ascertain whether residents selected for in-depth review are communicative and willing to be interviewed, and they converse with other residents, staff, and family members (if present).
—Surveyors meet with resident council representatives to outline the survey process, determine their primary concerns, and advise them of the subsequent availability of survey findings.

The primary means by which surveyors record findings from the facility tour is the Tour Notes Worksheet (HCFA–521) (Appendix C2). Our guidelines instruct surveyors to make notes throughout the tour on this form, including both resident-specific observations and evidence of facility-wide or unit-wide care patterns that may be substandard. Surveyors refer to this worksheet throughout the survey as they corroborate initial findings and investigate possible problem areas. Specific areas covered on the tour notes worksheet include:

Grooming/Personal Hygiene
Positioning
Assistive Devices
Ambulation
Restraints
Hydration
Infection Control
Resident Rights
Other

Findings recorded on the worksheet are eventually transferred onto the survey report form in the "Explanatory Statements" section at the appropriate rule. Findings related to the physical environment requirements need not be documented on the tour notes worksheet but instead can be entered directly on the survey report form.

4. *Observation/interview/medical record review of sample residents*—The next component of the survey process is the in-depth review of each resident in the sample to determine whether care provided is sufficient to meet the resident's physical, mental, and psychosocial needs. The observation and interview portion of this review is carried out concurrently, and our guidelines suggest that surveyors spend an average of about 15 minutes with each sample resident. Surveyors use the Observation/Interview/Record Review (OIRR) Worksheet (HCFA–524) (Appendix C3) to document findings, completing a separate worksheet for each resident in the sample. Listed on the front of the worksheet, and reiterated in the procedural guidelines, is a set of specific items that are assessed in the in-depth reviews. Column A below includes items that surveyors are required to review for each resident; Column B lists those items that are included, whenever applicable:

A—Required Items

Activities of Daily Living
Grooming/Hygiene
Dietary Needs
Skin
Activity Needs
Social Service Needs
Resident Rights

B—Included if Applicable

Bowel/Bladder
Catheters
Injections
Positioning
Restraints
Colostomy/Ileostomy
Parenteral Fluid/IVs
Tracheostomy
Suctioning
Respiratory Care
Rehabilitation Needs
Decubitus
Dressings
Tube Feeding
Other

Beneath each of these items, the OIRR worksheet presents a checklist of the most common types of associated problems as an aid to surveyors in recording their findings. In addition, the procedural guidelines contain a similar list of potentially poor resident outcomes and special care needs to which surveyors should be alert, including for example:

Potentially Poor Outcomes

Odors
Wet Linens
Contractures
Withdrawal/Depression
Rehydration
Fractures/Accidents

Special Care Needs

Vision/Hearing/Speech Impairments
Incontinence
Bed Fast/Wheelchair Bound
Paralysis
Swallowing Difficulties
Isolated Residents

Of course, these problems represent only a fraction of the items that surveyors need to be aware of in the course of resident observation and care review. As discussed below, the care guidelines present much more extensive and clinically oriented information on potential care needs and problems.

Usually the last component of the in-depth review of each sample resident is the record review. (Our guidelines point out, however, that surveyors have the option of performing the record review first, as long as they return to the record to verify any unresolved issues.) Findings from the record review are documented on the reverse side of each OIRR worksheet. The surveyors would determine first whether:

—An assessment has been performed;
—A written care plan with goals has been developed;
—Interventions have been carried out in accordance with the plan;
—The resident has been evaluated in terms of the effectiveness of the interventions.

In conjunction with the observation and interview findings, the surveyor determines whether the resident has been properly assessed for all needs and if routine nursing practices (e.g., periodic measurements of temperature, blood pressure, weight) have been performed as required by the resident's condition. Other aspects of the record review process include:

—Drug regimen review to determine if appropriate personnel have completed the prescribed monthly review of resident's drug records and therapy.
—Review of physician services to ensure that the level of physician involvement in each resident's care meets applicable requirements.
—Further review as necessary, e.g., review of additional admission records if discrimination is suspected or of closed records if discharge or morbidity rates seem excessive.

Once surveyors have completed an OIRR worksheet for each resident in the sample, our guidelines instruct surveyors to summarize findings and transfer appropriate information onto the survey report form.

5. *Drug administration observation*—This component of the survey process requires surveyors to observe the actual preparation and administration of medications and then check the drug orders to determine whether drug preparation and administration are carried out as prescribed. Our guidelines instruct surveyors to perform this drug observation on 20 residents, or on all residents receiving medications if fewer than 20. Based on these observations, surveyors calculate a medication error rate, and record all observations and the overall error rate on the Drug Pass Worksheet (HCFA–522) (Appendix C4). The guidelines and worksheet specify that an error rate equal to or greater than 5% constitutes a citable deficiency.

although any one error can be sufficient to cite a deficiency, depending on the level of severity.

6. *Dining area and eating assistance observation*—The survey process requires surveyors to carry out a focused evaluation of a facility's meals, dining areas, and eating assistance techniques. Our guidelines instruct surveyors to observe two meals and complete a separate Dining Area and Eating Assistance Worksheet (HCFA–523) (Appendix C5) for each meal. Surveyors select at least five residents for each meal observation and ascertain how well the facility assesses and meets their nutritional and eating assistance needs. Specific items that are covered by the worksheet include:

Dining Area—size, cleanliness, lighting, ventilation.

Serving of Meals—frequency, portions, taste, temperature, and nutritional adequacy; availability of utensils and condiments; conformance with diet orders; and, availability of snacks.

Supervision—prompt, courteous and appropriate assistance provided, intake recorded and deviations noted.

The dining observation also provides information on a wide range of non-dietary issues such as staff interaction with residents, availability and use of adaptive equipment, appropriateness of resident dress and resident and staff hygiene for meals, etc. As with the other survey tasks, surveyors subsequently transfer findings noted on the Dining Area and Eating Assistance Worksheet to the survey report form.

7. *Formulation of deficiency*—Once all the review components of the Part B survey have been completed, the survey team meets to discuss its findings and to formulate a deficiency statement. Our guidelines stress that all findings that could possibly contribute to a deficiency citation should be transferred from the various worksheets to the survey report form. The team then analyzes these findings in terms of:

Severity—The existence of an isolated problem may warrant the issuance of a deficiency if it is of sufficient severity to threaten a resident's physical or emotional well being.

Frequency of occurrence/patterns—Our guidelines note that the threshold at which frequency of occurrence amounts to a deficiency varies according to the effect on quality of care or quality of life. Surveyors consider if broad patterns of problems exist in assessing areas such as a facility's staffing, training, and supervisory practices.

Substantiation—Surveyors review the adequacy of the explanatory statements on findings for each broad area to ensure that pertinent information from all worksheets is considered.

Level of deficiency—Surveyors decide if the findings are of sufficient severity, frequency and substantiation to warrant the issuance of deficiencies at the level of condition, standard or element. Surveyors exercise their professional judgment in making this determination. At this point, each data identifier on the survey report form would be marked "met/not met," "yes/no," or "not applicable" where appropriate.

When this analysis is complete, the survey team writes any specific deficiency statements. Each statement is written in the same format—data identifier, regulatory citation, summary of the deficiency and supporting findings. Our procedural guidelines include several examples of model deficiency statements. Although deficiency statements require the exercise of professional judgment by surveyors, the survey process is designed to ensure that each deficiency stems from resident-specific examples that are indicative of a breakdown in a facility's care delivery system.

8. *Exit conference*—The purpose of the exit conference is to inform facility staff of survey findings and to arrange for submission of a plan of correction if needed. Our guidelines instruct surveyors in how to support their conclusions with resident-specific examples without compromising confidentiality. Surveyors provide the facility with positive feedback if warranted and allow the facility to verbally respond to findings. Surveyors are instructed to explain that it is the facility's responsibility to decide how to remedy deficiencies and that follow-up surveys will focus not on whether specific aspects of plans of correction have been implemented but on whether corrective action has had the necessary effect on quality of care.

The final sections of the procedural guidelines deal with plans of correction and follow-up surveys. The guidelines make clear that the State agency's acceptance of a plan of correction constitutes its acknowledgment that:

—The facility has a reasonable approach for correcting its deficiencies; and

—Timely compliance is expected.

Actual facility compliance is determined through the follow-up survey. The facility has 15 days to submit its plan of correction to the State agency.

The purpose of the follow-up survey is to re-evaluate the specific types of care or care delivery patterns that were identified as deficient during the original survey. The guidelines state that the nature of the original deficiencies determine which components of the survey process need to be carried out on follow-up visits. In view of the direct care orientation of the Part B survey, most follow-up surveys would likely include the in-depth review of a sample of residents. Our guidelines provide that surveyors may select a targeted rather than a primarily random sample during follow-up surveys and that use of the OIRR worksheet may be limited to areas applicable to the identified deficiencies. The formula for determining sample size for follow-up surveys is the same as for the original survey with the following exceptions:

—Maximum sample size would be limited to 30 residents

—Minimum sample size of 10 residents would not apply when fewer than 10 residents fall into the specified deficient care category.

The procedural guidelines conclude by instructing the survey team that, should identified deficiencies continue to exist, surveyors are to consider the facility's status as non-compliant and follow the applicable adverse action procedures.

Resident Care Assessment Guidelines

HCFA has also developed the Long Term Survey Care Guidelines (Appendix E) as a resource document that assists surveyors in applying the long-term care survey process. Unlike the survey report forms and worksheets or the procedural guidelines, the care guidelines are intended neither as an operational tool nor as prescriptive instructions. Instead, the care guidelines constitute an extensive surveyor reference manual containing countless examples of the types of information to be collected and reviewed by surveyors in order to make determinations regarding facility quality of care.

They serve to supplement surveyor judgement in identifying appropriate topics of observation, interview, record review and evaluation for different resident conditions and care needs. This section contains a description of the care guidelines.

The care guidelines cover in order almost all observations assigned to data identifier numbers contained on the Part B SNF/ICF Survey Report form. Guidelines are organized throughout into the following six columns:

The initial column repeats the language accompanying each data identifier number on the survey report form and provide a broad statement of

intent for each major area on the form. We also include in this column the SNF and ICF regulatory citations on which each numerical code is based.

Column two lists items that surveyors should regularly observe in assessing whether the facility meets the care needs associated with each coded entry. While not intended to be all-inclusive, this column presents numerous examples of specific indicators of care that can be reviewed through careful observation techniques, with an emphasis on actual care delivery and the effects of that care.

Column three provides examples of the types of questions that surveyors might ask of residents, family members and staff to ascertain their perceptions of the substance and success of the facility's care delivery system. These questions are intended primarily as an aid to surveyors in carrying out the resident interviews required in the course of the in-depth resident review process.

Column four lists specific items of residents medical records as well as facility records that surveyors may wish to check on in corroborating findings suggested through observation and interview. Beyond the broad areas specified in the procedural guidelines, the extent of the record review is largely determined by the surveyor's judgement as to the appropriateness of the outcomes of individual resident care.

Column five summarizes the major items that surveyors should consider in making determinations about compliance with individual survey requirements. These items are not intended to be all-inclusive but provide examples of how major elements from each of the preceding three columns would combine to provide a complete view of whether a facility is meeting its residents needs.

The last column provides a comprehensive list of related areas identified by regulatory citations, that may have an impact on the surveyor's compliance determination for each survey area listed in column one. The "cross reference" column is not intended to be used to cite additional deficiencies but rather to suggest other possible areas to be examined as a quality assurance measure.

Much of the care guidelines are based on generally accepted clinical practices for the treatment of typical long-term care conditions and problems. We anticipate an on-going refinement of these guidelines to keep pace with further improvements in these clinical practices. The guidelines have been developed and refined in response to the comments received following review by nursing home industry, consumer advocacy and practitioner groups, and we plan to continue this consensus-based refinement process.

E. Proposed Revisions

As noted above, we are presently under a court order issued in *Estate of Smith v. Bowen* directing that we promptly issue for public comment regulations that include details of the current survey methodology. Therefore, we propose to modify our rules to add details of how we determine compliance. We would do this by adding to § 405.1906, Determining compliance, and § 442.30, Agreement as evidence of certification, principles that the State agency must adhere to in determining compliance. These principles set forth the intent of the survey process, which is to assess compliance with Federal health, quality and safety standards, primarily using resident outcomes to determine whether a facility is in compliance with conditions and standards. Further, surveyors use Federal procedures and forms to ensure uniform and consistent interpretation of Federal requirements, and to record findings. Surveyors use their professional knowledge and judgment to determine compliance, together with forms and procedures.

We would also require in both §§ 405.1906 and 442.30 that the survey agency include the following specific elements in a survey:

(1) An entrance conference;

(2) A resident-centered tour of the facility;

(3) An in-depth review of a sample of residents including, observation, interview and record review;

(4) Observation of the preparation and administration of drugs for a sample of residents;

(5) Evaluation of a facility's meals, dining areas and eating assistance procedures;

(6) A description in the survey report of all deficiencies found during the survey;

(7) An exit conference; and

(8) Follow-up surveys when deficiencies are cited on the initial survey.

The general principles applicable to surveys and the specific tasks to be performed at each survey are contained in the text of the regulations. The details of the long term care survey process and the description of the survey forms and procedural guidelines and care guidelines to be used by surveyors are contained in this preamble. The forms and guidelines themselves are in the accompanying appendices. We, therefore, solicit public comment on the content set forth in the regulations text, the preamble and the appendices.

We believe that the court's order does not require us to publish the forms and guidelines in their entirety as part of the regulation which will be published in the Code of Federal Regulations. Moreover, we believe that there are compelling reasons not to do so. First, as can be seen from the documents set forth in the appendices, they largely consist of interpretative details which provide guidance to surveyors without being binding. Second, incorporating such details into the regulations themselves would seriously deprive HCFA of flexibility to be responsive to the need for changes and improvements in the interpretative guidelines, within the scope of the fundamental principles which are contained in the regulations. Finally, the survey forms, like other HCFA forms, are reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 not less than every three years. As part of that review process, we publish a notice in the **Federal Register**. Agency Forms Submitted to the Office of Management and Budget for Clearance, to inform the public of its right to comment on them and to secure copies for review. Consequently, the public is afforded opportunity to comment on the forms.

More specifically, survey guidelines are published in the State Operations Manual and are updated routinely. For example, the attached guidelines are a revision of the original guidelines for the new survey process, issued June, 1986. Revisions to the State Operations Manual are made by HCFA, under delegation from the Secretary, and take an average of 4 to 6 months to be issued. By contrast, the regulation process involves approvals of all details by all components of the Office of the Secretary, and the Executive Office of Management and Budget, and can take a year or more from the first steps of developing a notice of proposed rulemaking, to evaluating concerns of commenters and publishing the final rule.

We are also developing regulations that would potentially affect the process. As a result of an extensive review of the provision of long term care services we are developing a rule to consolidate long term care facility requirements into a single set of conditions of participation for both the Medicare and Medicaid programs that highlights the common resident care requirements of both programs with respect to SNFs and ICFs. Resident care outcomes, in terms of improvement,

maintenance, or decline of health status would be emphasized under these proposed conditions.

We also are developing a rule that would revise survey and certification procedures used by State survey agencies to monitor nursing homes performance. The performance criteria would be those required by the newly revised Federal conditions of participation. Once these regulations became final we would make any necessary changes in the survey methodology and forms.

Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed regulation that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare an initial regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a proposed regulation would not have significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all long-term care facilities as small entities.

This proposed rule reflects current policy and procedures and would only serve to codify in regulations those practices which have already been implemented. This rule would not establish any incremental economic burden beyond those currently experienced by long-term care facilities.

For these reasons, we have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this proposed rule would not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

Paperwork Reduction Act of 1980

Sections 405.1906 and 442.30 of this proposed rule contain information collection requirements which require OMB review under the Paperwork Reduction Act of 1980. However, the information collection requirements contained in these sections are currently approved under OMB control number 0938–0400. The forms approved under this control number are due for review by OMB within the next few months. They will be included in a notice published in the **Federal Register** when they are submitted for review. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, EOMB, New Executive Office Building, Room 3203, Washington, DC 20503. Attn: Allison Herron, Desk Officer for HCFA.

Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 442

Grant programs—health, Health facilities, Health professions, Health records, Medicaid, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Chapter IV would be amended as set forth below:

SUBCHAPTER B—MEDICARE PROGRAMS

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart S—Certification Procedure for Providers and Suppliers of Services

A. In Subchapter B, Part 405 is amended as follows:

1. The authority citation for Subpart S continues to read as follows:

Authority: Secs. 1102, 1814, 1861, 1865, 1866, 1871, 1880, 1881 and 1883 of the Social Security Act as amended (42 U.S.C. 1302, 1395f, 1395x, 1395bb, 1395cc, ,1395hh, 1395qq, 1395rr and 1395tt).

2. In Subpart S, § 405.1906 is revised to read as follows:

§ 405.1906 Determining compliance.

(a) The decision as to whether there is compliance with a particular condition of participation or conditions for coverage will depend upon the manner and degree to which the provider or supplier satisfies the various standards within each condition. Evaluation of a provider's performance against these standards will enable the State survey agency to document the nature and extent of deficiencies, if any, with respect to a particular function, and to assess the need for improvement in relation to the prescribed conditions.

(b) The State agency must adhere to the following principles in determining compliance with participation requirements:

(1) The survey process is the means to assess compliance with Federal health, safety and quality standards;

(2) The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically surveyors will directly observe the actual provision of care and services to residents to assess whether the care provided meets the needs of individual residents;

(3) Surveyors are professionals who use their judgment, in concert with Federal forms and procedures, to determine compliance;

(4) Federal procedures are used by all surveyors to ensure uniform and consistent application and interpretation of Federal requirements;

(5) Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

(c) The State survey agency must use the survey methods, procedures, and forms that are prescribed by HCFA in section 2800 of the State Operations Manual and approved by the Office of Management and Budget under the Paperwork Reduction Act.

(d) The survey agency must ensure that a facility's actual provision of care and services to residents and the effects of that care on residents are assessed in a systematic manner.

(e) A SNF survey must include the following elements:

(1) An entrance conference;

(2) A resident-centered tour of the facility;

(3) An in-depth review of a sample of residents, including observation, interview and record review;

(4) Observation of the preparation and administration of drugs for a sample of residents;

(5) Evaluation of a facility's meals, dining areas and eating assistance procedures;

(6) A description in the survey report of all deficiencies found during the survey;

(7) An exit conference; and

(8) Follow-up surveys when deficiencies are cited on the initial survey.

SUBCHAPTER C—MEDICAL ASSISTANCE PROGRAMS

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

B. In Subchapter C, Part 442 is amended as follows:

1. The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. In Subpart B, § 442.30 is amended by revising the introductory text of paragraph (a), revising paragraph (a)(4), redesignating existing paragraph (a)(5) as paragraph (a)(8), and adding new paragraphs (a)(5), (a)(6) and (a)(7) to read as follows:

§ 442.30 Agreement as evidence of certification.

(a) Under §§ 440.40(a) and 440.150 of this chapter, FFP is available in expenditures for SNF and ICF service only if the facility has been certified as meeting the requirements for Medicaid participation, as evidenced by a provider agreement executed under this part. An agreement is not valid evidence that a facility has met those requirements if HCFA determines that—

* * * * *

(4) The survey agency failed to use the Federal standards, and the forms, methods and procedures prescribed by HCFA in section 2800 of the State Operations Manual, as required under § 431.610(f)(1) of this chapter, for determining the qualifications of providers; or

(5) The survey agency failed to adhere to the following principles in determining compliance:

(i) The survey process is the means to assess compliance with Federal health, safety and quality standards;

(ii) The survey process uses resident outcomes as the primary means to establish the compliance status of facilities. Specifically, surveyors will directly observe the actual provision of care and services to residents to assess whether the care provided meets the needs of individual residents;

(iii) Surveyors are professionals who use their judgment, in concert with Federal forms and procedures, to determine compliance;

(iv) Federal procedures are used by all surveyors to ensure uniform and consistent application and interpretation of Federal requirements;

(v) Federal forms are used by all surveyors to ensure proper recording of findings and to document the basis for the findings.

(6) The survey agency failed to assess in a systematic manner a facility's actual provision of care and services to residents and effects of that care on residents.

(7) Required elements of the SNF or ICF survey process do not include all of the following:

(i) An entrance conference;

(ii) A resident-centered tour of facility;

(iii) An in-depth review of a sample of residents, including observation, interview and record review;

(iv) Observation of the preparation and administration of drugs for a sample of residents;

(v) Evaluation of a facility's meals, dining areas and eating assistance procedures;

(vi) Formulation of a deficiency statement based on the incorporation of all appropriate findings onto the survey report form;

(vii) An exit conference; and

(viii) Follow-up surveys as appropriate

* * * * *

Catalog of Federal Domestic Assistance Program No. 13.773, Medicare Hospital Insurance, No. 13.774, Medical Assistance Program.

Dated: June 9, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 17, 1987.

Otis R. Bowen,

Secretary.

Note.—Appendices A–E will not appear in the Code of Federal Regulations.

BILLING CODE 4120-01-M

APPENDIX A

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0400

PART A — ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

MEDICARE / MEDICAID SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SURVEY REPORT

PROVIDER NUMBER	FACILITY NAME AND ADDRESS (*City, State, Zip Code*)
VENDOR NUMBER	
SURVEY DATE	
SURVEYORS' NAMES	TITLES

Form HCFA-525 (2-86) Page 1

NAME OF FACILITY

CODE	COMPLIANCE WITH STATE AND LOCAL LAWS	YES	NO	N/A	EXPLANATORY STATEMENT
	Compliance with State and Local Laws ***(Condition of Participation)***				
F500	SNF (405.1120) ☐ MET ☐ NOT MET				
	A. Licensure				
F501	SNF (405.1120(a)) ☐ MET ☐ NOT MET				
F502	ICF (442.251) ☐ MET ☐ NOT MET				
F503	The facility has a current State License (Number _____)				
	B. Personnel Licensure				
F504	SNF (405.1120(b)) ☐ MET ☐ NOT MET				
F505	ICF (442.302) ☐ MET ☐ NOT MET				
F506	Staff of the facility are licensed or registered in accordance with applicable State laws.				
	C. Compliance with Other Laws				
F507	SNF (405.1120(c)) ☐ MET ☐ NOT MET				
F508	ICF (442.252) ☐ MET ☐ NOT MET				
F509	ICF (442.315) ☐ MET ☐ NOT MET				
F510	The facility is in compliance with applicable Federal, State and local laws and regulations relating to fire and safety, sanitation, communicable and reportable diseases, postmortem procedures and other relevant health and safety requirements.				

Form HCFA-525 (2-86) Page 2

NAME OF FACILITY

CODE	COMPLIANCE WITH STATE AND LOCAL LAWS/ GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	The facility is in compliance with applicable regulations pertaining to:				
F511	Buying, dispensing, safeguarding, administering, and disposing of medications and controlled substances. **Exception: Not applicable to SNFs.**				
F512	Construction, maintenance and equipment. **Exception: Not applicable to SNFs.**				
F513	Current reports from all responsible governmental agencies are retained at the facility.				
	Governing Body and Management ***(Condition of Participation)***				
F514	SNF (405.1121) ☐ MET ☐ NOT MET The facility has a governing body with full legal authority and responsibility for operation of the facility.				
	A. Disclosure				
F515	SNF (405.1121(a)) ☐ MET ☐ NOT MET Full disclosure of ownership has been made in accordance with requirements at 42 CFR 420.206.				
	B. Administration				
F516	SNF (405.1121(c)) ☐ MET ☐ NOT MET				
F517	1. Written bylaws address the operation of the facility.				
F518	2. Written bylaws and policies address effective resident care.				
F519	3. Bylaws are reviewed and revised as necessary.				

Form HCFA-525 (2-86) Page 3

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F520	ICF (442.301) ☐ MET ☐ NOT MET				
	C. Independent Medical Review				
F521	SNF (405.1121(d)) ☐ MET ☐ NOT MET The facility has policies which ensure that the facility cooperates in an effective program for regular independent medical evaluation and audit of residents in the facility to the extent required by the programs in which the facility participates.				
	D. Administrator				
F522	SNF (405.1121(e)) ☐ MET ☐ NOT MET				
F523	ICF (442.303) ☐ MET ☐ NOT MET				
F524	The facility has a licensed administrator who has authority for the overall operation of the facility. (Administrator's license or registration number _____).				
	E. Resident Care Director				
F525	ICF (442.304) ☐ MET ☐ NOT MET				
F526	1. The administrator or another professional staff member is the resident care director (RSD).				
F527	2. The RSD coordinates and monitors each resident's care.				

Form HCFA-525 (2-86) Page 4

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	F. Institutional Planning				
F528	SNF (405.1121(f)) ☐ MET ☐ NOT MET				
F529	1. The facility has an overall plan and budget prepared by a committee of representatives from the governing body, administrative staff, and the organized medical staff (if any).				
F530	2. The overall plan and budget is reviewed and updated at least annually.				
F531	3. The plan includes a capital expenditures plan, if necessary.				
	G. Personnel Policies and Procedures				
F532	SNF (405.1121(g)) ☐ MET ☐ NOT MET				
	1. The facility has written policies and procedures that support sound resident care and personnel practices and address, at least:				
F533	a. Control of communicable disease;				
F534	b. The review of employee incidents and accidents to identify health and safety hazards; and				
F535	c. The existence of a safe and sanitary environment.				
F536	2. Personnel records are current, available to each employee, and contain sufficient information to support placement in the position to which assigned.				
F537	3. Referral or provision for periodic health examinations to ensure freedom from communicable disease.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	H. Outside Resources/Consultant Agreements				
F538	SNF (405.1121(i)) ☐ MET ☐ NOT MET				
F539	ICF (442.317) ☐ MET ☐ NOT MET				
F540	The facility has written agreements with qualified persons to render a service (if it does not employ a qualified professional person to do so). The agreements:				
F541	1. Address the responsibilities, functions, objectives, and terms (including financial arrangements and charges);				
F542	2. Are signed by an authorized representative of the facility and the outside resource; and				
F543	3. Specify that the facility retains ultimate responsibility for the services rendered.				
	I. Notification of Change in Resident Status				
F544	SNF (405.1121(j)) ☐ MET ☐ NOT MET				
F545	The facility has policies and procedures to notify physicians and other responsible persons in the event of an accident involving the resident, or resident's physical, mental or emotional status, or resident charges, billings or related administrative matter.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	J. Resident Rights				
F546	SNF (405.1121(k)) ☐ MET ☐ NOT MET				
	Indicators 1 thru 12 apply to SNFs.				
F547	ICF (442.311) ☐ MET ☐ NOT MET				
	1. Information				
F548	a. The facility informs each resident, before or at the time of admission, of his rights and responsibilities.				
F549	b. The facility informs each resident, before or at the time of admission, of all rules governing resident conduct.				
F550	c. The facility informs each resident of amendments to their policies on residents' rights and responsibilities and rules governing conduct.				
F551	d. Each resident acknowledges in writing receipt of residents' rights information and any amendment to it.				
F552	e. The resident must be informed in writing of all services and charges for services.				
F553	f. The resident must be informed in writing of all changes in services and charges before or at the time of admission and on a continuing basis.				
F554	g. The resident must be informed of services not covered by Medicare or Medicaid in the basic rate.				

Form HCFA-525 (2-86) Page 7

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	2. Medical Condition and Treatment				
F555	a. Each resident is informed by a physician of his health and medical condition unless the physician decides that informing the resident is medically contraindicated.				
F556	b. Each resident is given an opportunity to participate in planning his total care and medical treatment.				
F557	c. Each resident is given an opportunity to refuse treatment.				
F558	d. Each resident gives informed, written consent before participating in experimental research.				
F559	e. If the physician decides that informing the resident of his health and medical condition is medically contraindicated, the physician has documented this decision in the resident's medical record.				
	3. Transfer and Discharge				
	Each resident is transferred or discharged only for:				
F560	a. Medical reasons.				
F561	b. His/her welfare or that of other residents.				
F562	c. Nonpayment except as prohibited by the Medicare or Medicaid program.				
	4. Exercising Rights				
F563	a. Each resident is encouraged and assisted to exercise his/her rights as a resident of the facility and as a citizen.				
F564	b. Each resident is allowed to submit complaints and recommendations concerning the policies and services of the facility to staff or to outside representatives of the resident's choice or both.				
F565	c. Such complaints are submitted free from restraint, coercion, discrimination, or reprisal.				

Form HCFA-525 (2-86) Page 8

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	5. Financial Affairs				
F566	a. Residents are allowed to manage their own personal financial affairs.				
F567	b. The facility establishes and maintains a system that assures full and complete accounting of residents' personal funds. An accounting report is made to residents in skilled nursing facilities at least on a quarterly basis.				
F568	c. The facility does not commingle resident funds with any other funds other than resident funds.				
F569	d. If a resident requests assistance from the facility in managing his personal financial affairs, resident's delegation is in writing.				
	e. The facility system of accounting includes written receipts for:				
F570	1. All personal possessions and funds received by or deposited with the facility.				
F571	2. All disbursement made to or for the resident.				
F572	f. The financial record must be available to the resident and his/her family.				
	6. Freedom from Abuse and Restraints				
F573	a. Each resident is free from mental and physical abuse.				
F574	b. Chemical and physical restraints are only used when authorized by a physician in writing for a specified period of time or in emergencies.				
F575	c. If used in emergencies, they are necessary to protect the resident from injury to himself or others.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F576	d. The use is authorized by a professional staff member identified in the written policies and procedures of the facility.				
F577	e. The use is reported promptly to the resident's physician by the staff member.				
	7. Privacy				
F578	a. Each resident is treated with respect, consideration and full recognition of his/her dignity and individuality.				
F579	b. Each resident is given privacy during treatment and care of personal needs.				
F580	c. Each resident's records, including information in an automated data bank, are treated confidentially.				
F581	d. Each resident must give written consent before the facility releases information from his/her record to someone not otherwise authorized to receive it.				
F582	e. Married residents are given privacy during visits by their spouses.				
F583	f. Married residents are permitted to share a room.				
	8. Work				
F584	No resident may be required to perform services for the facility.				
	9. Freedom of Association and Correspondence				
F585	a. Each resident is allowed to communicate, associate and meet privately with individuals of his choice unless this infringes upon the rights of another resident.				
F586	b. Each resident is allowed to send and receive personal mail unopened.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	10. Activities				
F587	Each resident is allowed to participate in social, religious, and community group activities.				
	11. Personal Possessions				
F588	Each resident is allowed to retain and use his personal possessions and clothing as space permits.				
	12. Written Policies and Procedures: Delegation of Rights and Responsibilities				
F589	ICF (442.312) ☐ MET ☐ NOT MET				
F590	a. The facility has written policies and procedures that provide that all the rights and responsibilities of a resident pass to the resident's guardian, next of kin or sponsoring agency or agencies if the resident is adjudicated incompetent under State law or is determined by his physician to be incapable of understanding his rights and responsibilities.				
F591	b. Physician determinations of incapability and the specific reasons thereof are recorded by the physician in the resident's record.				
	K. Resident Care Policies				
F592	SNF (405.1121(i)) ☐ MET ☐ NOT MET				
F593	1. The facility has written policies to govern the continuing skilled nursing care and related medical or other services provided.				
F594	2. These policies reflect awareness of and provision for meeting the total medical and psychosocial needs of residents including admission, transfer, discharge planning, and the range of services available to residents; and				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F595	3. The protection of residents' personal and property rights.				
F596	4. The policies are developed by a group of professional personnel, including the Medical Director or the organized medical staff, and are periodically reviewed and revised (if necessary).				
F597	5. These policies are available to admitting physicians, sponsoring agencies, residents, and the public.				
F598	6. The Medical Director or a registered nurse is designated as responsible for the execution of the policies.				
	L. Public Availability				
F599	ICF (442.305) ☐ MET ☐ NOT MET				
F600	1. The facility has written policies and procedures governing all the services it provides.				
F601	2. The policies and procedures are available to the staff and residents, members of the family, the public, and legal representatives of residents.				
	M. Admissions				
F602	ICF (442.306) ☐ MET ☐ NOT MET				
	The facility has written policies and procedures that ensure that it admits as residents only those residents whose needs can be met by:				
F603	1. the facility itself.				
F604	2. the facility in cooperation with community resources.				
F605	3. the facility in cooperation with other providers of care affiliated with or under contract to the facility.				

NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	N. Transfers				
F606	ICF (442.307) ☐ MET ☐ NOT MET				
F607	1. The facility has written policies and procedures to ensure that residents are transferred promptly to a hospital, SNF or other appropriate facility when a change is necessary.				
F608	2. Except in emergencies, the facility consults the resident, his next of kin, the attending physician, and the responsible agency, if any, at least five days before discharge.				
F609	3. The facility uses casework services and other means to ensure that adequate arrangements are made to meet resident's needs through other resources.				
	O. Restraints				
F610	ICF (442.308) ☐ MET ☐ NOT MET				
	The facility has written policies and procedures that:				
F611	1. Define the uses of chemical and physical restraints.				
F612	2. Identify the professional personnel who may authorize the use of restraints in emergencies under 442.311(f).				
F613	3. Describe procedures for monitoring and controlling the use of these restraints.				
	P. Complaints				
F614	ICF (442.309) ☐ MET ☐ NOT MET				
	The facility has written policies and procedures that:				
F615	1. Describe the procedures the facility uses to receive complaints and recommendations from residents.				
F616	2. Ensure that the facility responds to complaints and recommendations.				

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NAME OF FACILITY

CODE	GOVERNING BODY AND MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	Q. Staff Development				
F617	SNF (405.1121(h)) ☐ MET ☐ NOT MET				
F618	ICF (442.314) ☐ MET ☐ NOT MET				
F619	1. The facility conducts an orientation program for all new employees that includes a review of all its policies.				
F620	2. The facility plans and conducts an inservice staff development program for all personnel to assist them in developing and improving their skills.				
F621	3. The facility maintains a record of the orientation and staff development programs it conducts.				
F622	4. The record includes the content of the program and the names of participants.				
F623	5. Inservice training includes at least prevention and control of infections, fire prevention and safety, confidentiality of resident information, and preservation of resident dignity including protection of resident's privacy and personal and property rights.				

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NAME OF FACILITY

CODE	MEDICAL DIRECTION	YES	NO	N/A	EXPLANATORY STATEMENT
	Medical Direction *(Condition of Participation)*				
F624	SNF (405.1122) ☐ MET ☐ NOT MET The facility has a written agreement with a licensed physician to serve as Medical Director on a part-time or full-time basis as is appropriate to the needs of the residents and the facility. (See 405.1911(b) regarding waiver of this requirement.)				
	A. Coordination of Medical Care				
F625	SNF (405.1122(a)) ☐ MET ☐ NOT MET				
F626	1. Medical direction and coordination of medical care in the facility are provided by a Medical Director.				
F627	2. The Medical Director is responsible for development of policies approved by the governing body.				
F628	3. Coordination of medical care includes liaison with attending physicians to ensure their writing orders promptly upon admission of a resident, and periodic evaluation of the adequacy and appropriateness of health professional and supportive staff and services.				
	B. Responsibilities to the Facility				
F629	SNF (405.1122(b)) ☐ MET ☐ NOT MET				
F630	1. The Medical Director is responsible for surveillance of the health status of the facility's employees.				
F631	2. Incidents and accidents that occur on the premises are reviewed by the Medical Director to identify hazards to health and safety.				

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NAME OF FACILITY

CODE	PHYSICIAN SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	Physician Services *(Condition of Participation)*				
F632	SNF (405.1123) ☐ MET ☐ NOT MET Residents in need of skilled or rehabilitative care are admitted to the facility only upon the recommendation of, and remain under the care of, a physician. To the extent feasible, each resident designates a personal physician.				
	A. Physician Supervision				
F633	SNF (405.1123(b)) ☐ MET ☐ NOT MET				
F634	ICF (442.346) ☐ MET ☐ NOT MET				
F635	1. The facility has a policy that the health care of every resident must be under the supervision of a physician.				
F636	2. All attending physicians must make arrangements for the medical care of their residents in their absence.				
	B. Emergency Services				
F637	SNF (405.1123(c)) ☐ MET ☐ NOT MET The facility has written procedures available at each nurses' station, that provide for having a physician available to furnish necessary medical care in case of emergency.				

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NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	Nursing Services *(Condition of Participation)*				
F638	SNF (405.1124) ☐ MET ☐ NOT MET The facility provides 24-hour service by licensed nurses, including the services of a registered nurse at least during the day tour of duty, 7 days a week. There is an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing needs of all residents (See 405.1911(a) regarding waiver of the 7-day registered nurse requirement).				
F639	ICF (442.342) ☐ MET ☐ NOT MET The facility provides nursing care as needed including restorative nursing care.				
	A. Director of Nursing Services				
F640	SNF (405.1124(a)) ☐ MET ☐ NOT MET				
F641	1. The director of nursing services is a qualified registered nurse employed full-time.				
F642	2. The director of nursing services has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing services staff, and serves only one facility in this capacity.				
F643	3. If the director of nursing services has other institutional responsibilities, a qualified registered nurse serves as assistant so that there is the equivalent of a full-time director of nursing services on duty.				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Health Services Supervision				
F644	ICF (442.339) ☐ MET ☐ NOT MET				
F645	1. The facility has a full-time registered nurse, or a licensed practical or vocational nurse to supervise the health services 7 days a week on the day shift.				
F646	2. The nurse has a current State license.				
F647	3. If the supervisor of health services is a licensed practical or vocational nurse, the facilty has a formal contract with a registered nurse to serve as a consultant no less than 4 hours a week.				
F648	4. To qualify to serve as a health services supervisor, a licensed practical or vocational nurse must: a. Have graduated from a State-approved school of practical nursing, or				
F649	b. Have education or other training that the State authority responsible for licensing practical nurses considered equal to graduation from a State-approved school of practical nursing, or				
F650	c. Have passed the Public Health Service examination for waivered licensed practical or vocational nurses.				
F651	5. If the nurse in charge is licensed by the State in a category other than registered nurse or licensed practical or vocational nurse: a. The individual has completed a training program to get the license that includes at least the same number of classroom and practice hours in all nursing subjects as in the program of a State-approved school of practical or vocational nursing, and				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F652	b. The State agency responsible for licensing the individual submits a report to the Medicaid agency comparing State-licensed practical nurse or vocational nurse course requirements with those for the program completed by the individual.				
	C. Twenty-four Hour Nursing Service				
F653	SNF (405.1124(c)) ☐ MET ☐ NOT MET				
F654	ICF (442.338) ☐ MET ☐ NOT MET				
F655	1. 24-Hour Nursing Nursing policies and procedures address the total nursing needs of the residents.				
F656	The policies are designed to ensure that each resident receives: Treatment.				
F657	Medications as prescribed.				
F658	Diet as prescribed.				
F659	Rehabilitative nursing care as needed.				
F660	Proper care to prevent decubitus ulcers and deformities.				
F661	Proper care to ensure that residents are clean, well-groomed and comfortable.				
F662	Protection from accident and injury.				
F663	Protection from infection.				
F664	Encouragement, assistance, and training in self-care and group activities.				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F665	2. Weekly time schedules are maintained and indicate the number and classifications of nursing personnel including relief personnel, who worked on each unit for each tour of duty.				
	D. Rehabilitative Nursing Care				
F666	SNF (405.1124(e)) ☐ MET ☐ NOT MET				
F667	Nursing personnel are trained in rehabilitative nursing.				
	E. Supervision of Resident Nutrition				
F668	SNF (405.1124(g)) ☐ MET ☐ NOT MET				
F669	A procedure is established to inform dietetic service of physicians' diet orders and of residents' dietetic problems.				
	F. Administration of Drugs				
F670	SNF (405.1124(g)) ☐ MET ☐ NOT MET				
F671	Procedures are established by the Pharmaceutical Services Committee (see 405.1127(d)) to ensure that drugs are checked against physicians' orders.				
	G. Conformance with Physicians' Drug Orders				
F672	SNF (405.1124(h)) ☐ MET ☐ NOT MET **Indicators 1 thru 4 apply to SNFs.**				
F673	ICF (442.335) ☐ MET ☐ NOT MET				
F674	1. Drugs not specifically limited as to time or number of doses when ordered are controlled by automatic stop orders or other methods in accordance with written policies.				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F675	2. The attending physician is notified of an automatic stop order prior to the last dose so that the physician may decide if the administration of the drug or biological is to be continued or altered.				
F676	ICF (442.334) ☐ MET ☐ NOT MET				
F677	3. Physicians' verbal orders for drugs are given only to a licensed nurse, pharmacist, or physician and are immediately recorded and signed by the person receiving the order. (Verbal orders for Schedule II drugs are permitted only in the case of a bona fide emergency situation.)				
F678	4. Such orders are countersigned by the attending physician within a reasonable time.				
	H. Storage of Drugs and Biologicals				
F679	SNF (405.1124(i)) ☐ MET ☐ NOT MET				
F680	1. Procedures for storing and disposing of drugs and biologicals are established by the pharmaceutical services committee.				
F681	2. In accordance with State and Federal laws, all drugs and biologicals are stored in locked compartments under proper temperature controls.				
F682	3. Only authorized personnel have access to the keys.				
F683	4. Separately locked, permanently affixed compartments are provided for storage of controlled drugs listed in Schedule II of the Comprehensive Drug Abuse Prevention & Control Act of 1970 and other drugs subject to abuse, except under single unit dosage distribution systems in which the quantity stored is minimal and a missing dose can be readily detected.				
F684	5. An emergency medication kit approved by the pharmaceutical services committee is kept readily available.				

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NAME OF FACILITY

CODE	DIETETIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	Dietetic Services *(Condition of Participation)*				
F685	SNF (405.1125) ☐ MET ☐ NOT MET The facility provides a hygienic dietetic service that meets the daily nutritional needs of patients, ensures that special dietary needs are met, and provides palatable and attractive meals. A facility that has a contract with an outside food management company may be found to be in compliance with this condition provided the facility and/or company meets the standards listed herein.				
	A. Staffing				
F686	SNF (405.1125(a)) ☐ MET ☐ NOT MET				
F687	1. Overall supervisory responsibility for the dietetic service is assigned to a full-time qualified dietetic service supervisor.				
F688	2. If the dietetic service supervisor is not a qualified dietitian, the dietetic service supervisor functions with frequent, regularly scheduled consultation from a person so qualified. (§405.1101(e).)				
F689	3. In addition, the facility employs sufficient supportive personnel competent to carry out the functions of the dietetic service.				
F690	4. If consultant dietetic services are used, the consultant's visits are at appropriate times, and of sufficient duration and frequency to provide continuing liaison with medical and nursing staffs, advice to the administrator, resident counseling, guidance to the supervisor and staff of the dietetic service, approval of all menus, and participation in the development or revisions of dietetic policies and procedures. (See §405.1121(i).)				

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NAME OF FACILITY

CODE	DIETETIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Staffing				
F691	ICF (442.332) ☐ MET ☐ NOT MET				
F692	1. The facility has a staff member trained or experienced in food management or nutrition who is responsible for: a. Planning meals that meet the nutritional needs of each resident.				
F693	b. Following the orders of the resident's physician.				
F694	c. To the extent medically possible, following the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences (Recommended Dietary Allowances, 8th Ed., 1974).				
F695	d. Supervising the meal preparation and service to ensure that the menu plan is followed.				
F696	2. For residents who required medically prescribed special diets, the facility: a. Has menus for those residents planned by a professionally qualified dietitian or reviewed and approved by the attending physician; and				
F697	b. Supervises the preparation and serving of meals to ensure that the resident accepts the special diet.				
F698	3. The facility keeps for 30 days a record of each menu as served.				

NAME OF FACILITY

CODE	DIETETIC SERVICES/ SPECIALIZED REHABILITATION SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	C. Hygiene of Staff				
F699	SNF (405.1125(f)) ☐ MET ☐ NOT MET				
F700	In the event food service employees are assigned duties outside the dietetic service, these duties do not interfere with the sanitation, safety, or the time required for dietetic work assignments. (See §405.1121(g).)				
	D. Sanitary Conditions				
F701	SNF (405.1125(g)) ☐ MET ☐ NOT MET				
F702	Written reports of inspections by State and local health authorities are on file at the facility, with notation made of action taken by the facility to comply with any recommendations.				
	Specialized Rehabilitation Services *(Condition of Participation)*				
F703	SNF (405.1126) ☐ MET ☐ NOT MET The facility provides, or arranges for, under written agreement, specialized rehabilitative services by qualified personnel (i.e., physical therapy, speech pathology and audiology, and occupational therapy) as needed by residents to improve and maintain functioning. Safe and adequate space and equipment are available, commensurate with the services offered. If the facility does not offer such services directly, it does not admit nor retain residents in need of this care unless provision is made for such services under arrangement with qualified outside resources under which the facility assumes professional responsibility for the services rendered. (See §405.1121(i).)				

NAME OF FACILITY

CODE	SPECIALIZED REHABILITATION SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Staffing and Organization				
F704	SNF (405.1126(a)) ☐ MET ☐ NOT MET **Indicators 1 thru 3 apply to SNFs**				
F705	ICF (442.343(d)(1)(2)) ☐ MET ☐ NOT MET				
F706	1. Specialized rehabilitative services are provided, in accordance with accepted professional practices, by qualified therapists or by qualified assistants or other supportive personnel under the supervision of qualified therapists.				
F707	2. Other rehabilitative services also may be provided, but must be in a facility where all rehabilitative services are provided through an organized rehabilitative service under the supervision of a physician qualified in physical medicine who determines the goals and limitations of these services and assigns duties appropriate to the training and experience of those providing such services. **Exception: Does not apply to ICFs.**				
F708	3. Written administrative and resident care policies and procedures are developed for rehabilitative services by appropriate therapists and representatives of the medical, administrative, and nursing staffs. **Exception: Does not apply to ICF's** **See General Requirements 442.305**				

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NAME OF FACILITY

CODE	SPECIALIZED REHABILITATION SERVICES/ PHARMACEUTICAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Documentation of Services				
F709	SNF (405.1126(c)) ☐ MET ☐ NOT MET The physician's order, the plan of rehabilitative care, services rendered, evaluations of progress, and other pertinent information are recorded in the patient's medical record, and are dated and signed by the physician ordering the service and the person who provided the service.				
	C. Qualifying to Provide Outpatient Physical Therapy Services				
F710	SNF (405.1126(d)) ☐ MET ☐ NOT MET If the facility provides outpatient physical therapy services, it meets the applicable health and safety regulations pertaining to such services as are included in Subpart Q of this part. (See §405.1719, 405.1720, 405.1722(a) and (b)(1)(2)(3)(i), (4), (5), (6), (7), and (8); and 405.1725.)				
	Pharmaceutical Services *(Condition of Participation)*				
F711	SNF (405.1127) ☐ MET ☐ NOT MET The facility has appropriate methods and procedures for the dispensing and administering of drugs and biologicals. The facility is responsible for providing such drugs and biologicals for its residents, insofar as they are covered under the programs, and for ensuring that pharmaceutical services are provided in accordance with accepted professional principles.				

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NAME OF FACILITY

CODE	PHARMACEUTICAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Supervision of Services				
F712	SNF (405.1127(a)) ☐ MET ☐ NOT MET				
F713	1. The pharmaceutical services are under the general supervision of a qualified pharmacist.				
F714	2. The pharmacist is responsible to the administrative staff for developing coordinating, and supervising all pharmaceutical services.				
F715	3. The pharmacist (if not a full-time employee) devotes a sufficient number of hours, based upon the needs of the facility, during regularly scheduled visits to carry out these responsibilities.				
F716	ICF (442.333) ☐ MET ☐ NOT MET				
F717	1. The facility employs a licensed pharmacist, or				
F718	2. The facility has formal arrangements with a licensed pharmacist to advise the facility on ordering, storage, administration, disposal and recordkeeping of drugs and biologicals.				
	B. Control and Accountability				
F719	SNF (405.1127(b)) ☐ MET ☐ NOT MET				
F720	1. The pharmaceutical service has procedures for control and accountability of all drugs and biologicals throughout the facility.				
F721	2. Only approved drugs and biologicals are used in the facility.				
F722	3. Records of receipt and disposition of all controlled drugs are maintained in sufficient detail to enable an accurate reconciliation.				

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NAME OF FACILITY

CODE	PHARMACEUTICAL SERVICES/ LABORATORY AND RADIOLOGIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	C. Pharmaceutical Services Committee				
F723	SNF (405.1127(d)) ☐ MET ☐ NOT MET				
F724	1. A pharmaceutical services committee or its equivalent develops written policies and procedures for safe and effective drug therapy, distribution, control and use.				
F725	2. The committee is comprised of at least the pharmacist, the director of nursing services, the administrator, and one physician.				
F726	3. The committee oversees pharmaceutical services in the facility, makes recommendations for improvement, and monitors the service to ensure its accuracy and adequacy.				
	Laboratory and Radiologic Services *(Condition of Participation)*				
F727	SNF (405.1128) ☐ MET ☐ NOT MET The facility has provision for promptly obtaining required laboratory, X-ray, and other diagnostic services.				
	A. Provision for Services				
F728	SNF (405.1128(a)) ☐ MET ☐ NOT MET				
F729	1. If the facility provides its own laboratory and X-ray services, these meet the applicable conditions established for certification of hospitals that are contained in 405.1028 and 405.1029, respectively.				

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NAME OF FACILITY

CODE	LABORATORY AND RADIOLOGIC SERVICES/ DENTAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F730	2. If the facility itself does not provide such services, arrangements are made for obtaining these services from a physician's office, a participating hospital or skilled nursing facility, or a portable X-ray supplier or independent laboratory which is approved to provide these services under the program.				
F731	3. The facility assists the resident, if necessary, in arranging for transportation to and from the source of service.				
	B. Blood and Blood Products				
F732	SNF (405.1128(b)) ☐ MET ☐ NOT MET				
F733	1. Blood handling and storage facilities are safe, adequate, and properly supervised.				
F734	2. If the facility provides for maintaining and transfusing blood and blood products, it meets the conditions established for certification of hospitals that are contained in §405.1028(j).				
F735	3. If the facility does not provide its own facility but does provide transfusion services alone, it meets at least the requirements of §405.1028(j)(1), (3), (4), (6), and (9).				
	Dental Services *(Condition of Participation)*				
F736	SNF (405.1129) ☐ MET ☐ NOT MET The facility has satisfactory arrangements to assist residents to obtain routine and emergency dental care (See §405.1121(i). (The basic Hospital Insurance Program does not cover the services of a dentist in a skilled nursing facility in connection with the care, treatment, filling, removal, or replacement of teeth or structures supporting the teeth; and only certain oral surgery is included in the Supplemental Medical Insurance Program.)				

NAME OF FACILITY

CODE	DENTAL SERVICES/SOCIAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Advisory Dentist				
F737	SNF (405.1129(a)) ☐ MET ☐ NOT MET				
F738	A dentist recommends oral hygiene policies and practices for the care of residents. (§405.1121(h).				
	B. Arrangements of Outside Services				
F739	SNF (405.1129(b)) ☐ MET ☐ NOT MET				
F740	1. The facility has a cooperative agreement with a dentist, and				
F741	2. Maintains a list of dentists in the community for residents who do not have a private dentist.				
F742	3. The facility assists the resident, if necessary, in arranging for transportation to and from the dentist's office.				
	Social Services *(Condition of Participation)*				
F743	SNF (405.1130) ☐ MET ☐ NOT MET The facility has satisfactory arrangements for identifying the medically related social and emotional needs of the resident. It is not mandatory that the skilled nursing facility itself provide social services in order to participate in the program. If the facility does not provide social services, it has written procedures for referring residents in need of social services to appropriate social agencies. If social services are offered by the facility, they are provided under a clearly defined plan, by qualified persons, to assist each resident to adjust to the social and emotional aspects of the resident's illness, treatment, and stay in the facility.				

NAME OF FACILITY

CODE	SOCIAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Social Service Functions				
F744	SNF (405.1130(a)) ☐ MET ☐ NOT MET				
F745	Services are provided to meet the social and emotional needs of residents by qualified staff of the facility, or by referral, based on established procedures, to appropriate social agencies.				
F746	ICF (442.344(b)) ☐ MET ☐ NOT MET The facility either provides these services itself or arranges for them with qualified outside resources.				
	B. Staffing				
F747	SNF (405.1130(b)) ☐ MET ☐ NOT MET				
F748	1. If the facility offers social services, a member of the staff of the facility is designated as responsible for social services.				
F749	2. If the designated person is not a qualified social worker, the facility has a written agreement with a qualified social worker or recognized social agency for consultation and assistance on a regularly scheduled basis. (See §405.1101(a).)				
F750	3. The social service also has sufficient supportive personnel to meet resident needs.				
F751	4. Facilities are adequate for social service personnel, easily accessible to residents and medical and other staff, and ensure privacy for interviews.				

NAME OF FACILITY

CODE	SOCIAL SERVICES/ACTIVITIES	YES	NO	N/A	EXPLANATORY STATEMENT
F752	ICF (442.344(c)) ☐ MET ☐ NOT MET				
F753	The facility designates one staff member, qualified by training or experience, to be responsible for: a. Arranging for social services; and				
F754	b. Integrating social services with other elements of the plan of care.				
	C. Records and Confidentiality				
F755	SNF (405.1130(c)) ☐ MET ☐ NOT MET				
F756	Records of pertinent social data about personal and family problems medically related to the resident's illness and care, and of action taken to meet the resident's needs, are maintained in the resident's medical records.				
F757	If social services are provided by an outside resource, a record is maintained of each referral to such resource.				
	Activities (Condition of Participation)				
F758	SNF (405.1131) ☐ MET ☐ NOT MET The facility provides for an activities program, appropriate to the needs and interests of each resident, to encourage self care, resumption of normal activities, and maintenance of an optimal level of psychosocial functioning.				

NAME OF FACILITY

CODE	ACTIVITIES/MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Staffing				
F759	SNF (405.1131(a)) ☐ MET ☐ NOT MET				
F760	A member of the facility's staff is designated as responsible for the activities program.				
F761	If not a qualified activities coordinator, this staff member functions with frequent, regularly scheduled consultation from a person so qualified. (See §405.1101(o).)				
F762	ICF (442.345(b)) ☐ MET ☐ NOT MET The facility designates one staff member, qualified by training or experience in directing group activity, to be responsible for activity service.				
	Medical Records *(Condition of Participation)*				
F763	SNF (405.1132) ☐ MET ☐ NOT MET The facility maintains clinical (medical) records on all residents in accordance with accepted professional standards and practices. The medical record service has sufficient staff, facilities, and equipment to provide medical records that are completely and accurately documented, readily accessible, and systematically organized to facilitate retrieving and compiling information.				
F764	ICF (442.318(a)) ☐ MET ☐ NOT MET The facility maintains an organized resident record system that contains a record for each resident.				

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NAME OF FACILITY

CODE	MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Staffing				
F765	SNF (405.1132(a)) ☐ MET ☐ NOT MET				
F766	1. Overall supervisory responsibility for the medical record service is assigned to a full-time employee of the facility.				
F767	2. The facility also employs sufficient supportive personnel competent to carry out the functions of the medical record service.				
F768	3. If the medical record supervisor is not a qualified medical record practitioner, this person functions with consultation from a person qualified. (See §405.1101(l).)				
	B. Protection of Medical Record Information				
F769	SNF (405.1132(b)) ☐ MET ☐ NOT MET				
F770	ICF (442.318(d)) ☐ MET ☐ NOT MET				
F771	The facility safeguards medical record information against loss, destruction, or unauthorized use.				
	C. Physician Documentation				
F772	SNF (405.1132(d)) ☐ MET ☐ NOT MET				
F773	1. Only physicians enter or authenticate in medical records opinions that require medical judgment (in accordance with medical staff bylaws, rules, and regulations, if applicable).				
F774	2. All physicians sign their entries into the medical record.				

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NAME OF FACILITY

CODE	MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
	D. Completion of Records and Centralization of Reports				
F775	SNF (405.1132(e)) ☐ MET ☐ NOT MET				
F776	1. Current medical records and those of discharged residents are completed promptly.				
F777	2. All clinical information pertaining to a resident's stay is centralized in the resident's medical record.				
	E. Retention and Preservation				
F778	SNF (405.1132(f)) ☐ MET ☐ NOT MET Medical records are retained for a period of time not less than that determined by the respective State statute, the statue of limitations in the State, or 5 years from the date of discharge in the absence of a State statute, or, in the case of a minor, 3 years after the resident becomes of age under State law.				
F779	ICF (442.318(e)) ☐ MET ☐ NOT MET The facility must keep a resident's record for at least 3 years after the resident is discharged.				
	F. Location and Facilities				
F780	SNF (405.1132(h)) ☐ MET ☐ NOT MET The facility maintains adequate facilities and equipment, conveniently located to provide efficient processing of medical records (reviewing, indexing, filing, and prompt retrieval).				

NAME OF FACILITY

CODE	TRANSFER AGREEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	Transfer Agreement ***(Condition of Participation)***				
F781	SNF (405.1133) ☐ MET ☐ NOT MET				
F782	ICF (442.316) ☐ MET ☐ NOT MET				
F783	The facility has in effect a transfer agreement with one or more hospitals approved for participation under the programs, which provides the basis for effective working arrangements under which inpatient hospital care or other hospital services are available promptly to the facility's residents when needed. (A facility that has been unable to establish a transfer agreement with the hospital(s) in the community or service area after documented attempts to do so is considered to have such an agreement in effect.) Exception: A facility that has been unable to establish a written agreement after documented attempts to do so, is considered to have such an agreement.				
	Resident Transfer				
F784	SNF (405.1133(a)) ☐ MET ☐ NOT MET				
F785	A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case of two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that: 1. Transfer of patients will be effected between the hospital and the skilled nursing facility, ensuring timely admission, whenever such transfer is medically appropriate as determined by the attending physician.				

NAME OF FACILITY

CODE	TRANSFER AGREEMENT/PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F786	2. There will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.				
F787	3. Security and accountability for residents' personal effects are provided on transfer.				
	Physical Environment ***(Condition of Participation)***				
F788	SNF (405.1134) ☐ MET ☐ NOT MET The facility is constructed, equipped, and maintained to protect the health and safety or residents, personnel, and the public.				
	A. Life Safety from Fire				
	SNF (405.1134(a)) ☐ MET ☐ NOT MET				
	ICF (442.321) ☐ MET ☐ NOT MET				
	(See appropriate HCFA Fire Safety survey form.)				
	B. Maintenance of Equipment, Building, and Grounds				
F789	SNF (405.1134(i)) ☐ MET ☐ NOT MET				
F790	The facility establishes a written preventative maintenance program to ensure that all equipment is operative.				

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NAME OF FACILITY

CODE	INFECTION CONTROL	YES	NO	N/A	EXPLANATORY STATEMENT
	Infection Control ***(Condition of Participation)***				
F791	SNF (405.1135) ☐ MET ☐ NOT MET The facility establishes an infection control committee of representative professional staff with responsibility for overall infection control in the facility. All necessary housekeeping and maintenance services are provided to maintain a sanitary and comfortable environment and to help prevent the development and transmission of infection.				
	A. Infection Control Committee				
F792	SNF (405.1135(a)) ☐ MET ☐ NOT MET				
F793	1. The infection control committee is composed of members of the medical and nursing staffs, administration, and the dietetic, pharmacy, housekeeping, maintenance, and other services.				
F794	2. The committee establishes policies and procedures for investigating, controlling, and preventing infection in the facility.				
F795	3. The committee monitors staff performance to ensure that the policies and procedures are executed.				
	B. Aseptic and Isolation Techniques				
F796	SNF (405.1135(b)) ☐ MET ☐ NOT MET				
F797	1. The facility has written procedures for aseptic and isolation techniques.				
F798	2. These procedures are reviewed and revised for effectiveness and improvement as necessary.				

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NAME OF FACILITY

CODE	INFECTION CONTROL	YES	NO	N/A	EXPLANATORY STATEMENT
	C. Housekeeping				
F799	SNF (405.1135(c)) ☐ MET ☐ NOT MET				
F800	1. The facility employs sufficient housekeeping personnel.				
F801	2. Provides all necessary equipment to maintain a safe, clean and orderly interior.				
F802	3. A full-time employee is designated responsible for the services and for supervision and training of personnel.				
F803	4. If a facility has a contract with an outside resource for housekeeping services, the facility and/or outside resource meets the requirements of the standards.				
	D. Pest Control				
F804	SNF (405.1135(a)) ☐ MET ☐ NOT MET The facility has an ongoing pest control program.				

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NAME OF FACILITY

CODE	DISASTER PREPAREDNESS	YES	NO	N/A	EXPLANATORY STATEMENT
	Disaster Preparedness *(Condition of Participation)*				
F805	SNF (405.1136) ☐ MET ☐ NOT MET The facility has a written plan, periodically rehearsed, with procedures to be followed in the event of an internal or external disaster and for the care of casualties (residents and personnel) arising from such disasters.				
	A. Plan				
F806	ICF (442.313(a)(b)) ☐ MET ☐ NOT MET				
F807	1. The facility has a written plan for staff and residents to follow in case of emergencies such as fire or explosion.				
F808	2. The facility rehearses the plan regularly.				
F809	3. The facility has written procedures for the staff to follow in case of an emergency involving an individual resident.				
F810	4. These procedures include: a. Caring for the resident.				
F811	b. Notifying the attending physician and other individuals responsible for the resident.				
F812	c. Arranging for transportation, hospitalization, and other appropriate services.				
F813	SNF (405.1136(a)) ☐ MET ☐ NOT MET				
F814	1. The facility has an acceptable written plan in operation, with procedures to be followed in the event of fire, explosion, or other disaster.				
F815	2. The plan is developed and maintained with the assistance of qualified fire, safety, and other appropriate experts.				

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NAME OF FACILITY

CODE	DISASTER PREPAREDNESS/UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F816	3. Includes procedures for prompt transfer of casualties and records.				
F817	4. Instructions regarding the location and use of alarm systems and signals and of fire-fighting equipment.				
F818	5. Information regarding methods of containing fire.				
F819	6. Procedures for notification of appropriate persons.				
F820	7. Specifications of evacuation routes and procedures. (See §405.1134(a).)				
	B. Orientation and training				
F821	SNF (405.1136(b)) ☐ MET ☐ NOT MET				
F822	The disaster program includes orientation and ongoing training and drills for all personnel in all procedures so that each employee promptly and correctly carries out a specific role in case of a disaster (See §405.1121(h).)				
	Utilization Review *(Condition of Participation)*				
F823	SNF (405.1137) ☐ MET ☐ NOT MET The facility carries out utilization review of the services provided in the facility to residents who are entitled to benefits under the program(s). Utilization review assures the maintenance of high quality care and appropriate and efficient utilization of facility services. There are two elements to utilization review: medical care evaluation studies and review of extended duration cases.				

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NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
	A. Plan				
F824	SNF (405.1137(a)) ☐ MET ☐ NOT MET				
F825	1. The facility has a currently applicable written description of its utilization review plan.				
F826	2. Such description includes: a. The organization and composition of the committee or group which will be responsible for the utilization review function.				
F827	b. Methods of criteria (including norms where available) to be used to define periods of continuous extended duration and to assign or select subsequent dates for continued stay review.				
F828	c. Methods for selection and conduct of medical care evaluation studies.				
	B. Organization and Composition of Utilization Review Committees				
F829	SNF (405.1137(b)) ☐ MET ☐ NOT MET				
F830	1. The utilization review (UR) function is conducted by: a. A staff committee of the skilled nursing facility which is composed of two or more physicians, with participation of other professional personnel; or,				

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NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F831	b. A group outside the facility which is similarly composed and which is established by the local medical or osteopathic society and some or all of the hospitals and skilled nursing facilities in the locality; or (indicate name of the outside group and briefly describe the organization.)				
F832	c. A group established and organized in a manner approved by the Secretary that is capable of performing such function.				
F833	2. The medical care evaluation studies, educational duties of the review program, and the review of admissions and long-stay cases are performed by: a. the same committee or group;				
F834	b. or more committees or groups. Briefly explain who performs these functions.				
	C. Medical Care Evaluation Studies				
F835	SNF (405.1137(c)) ☐ MET ☐ NOT MET				
F836	1. Medical care evaluation studies are performed to promote the most effective and efficient use of available health facilities and services consistent with resident needs and professionally recognized standards of health care.				
F837	2. Studies emphasize identification and analysis of patterns of resident care and suggest, where appropriate, possible changes for maintaining consistently high quality care and effective and efficient use of services.				

NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F838	3. Each medical care evaluation study identifies and analyzes factors related to the care rendered in the facility and where indicated, results in recommendations for change beneficial to residents, staff, the facility, and the community.				
F839	4. Studies, on a sample or other basis, include, but need not be limited to, admissions, durations of stay, ancillary services furnished (including drugs and biologicals), and professional services performed on premises.				
F840	At least one study was completed during the last year. Type of study last completed: _____				
	D. Extended Stay Review				
F841	SNF (405.1137(d)) ☐ MET ☐ NOT MET				
F842	1. Periodic review is made of each current inpatient skilled nursing facility beneficiary case of continuous extended duration, and the length of which is defined in the utilization review plan to determine whether further inpatient stay is necessary.				
F843	2. The review is based on the attending physician's reasons for and plan for continued stay and any other documentation the committee or group deems appropriate.				
F844	3. Cases are screened by: a. A qualified non-physician representative of the committee.				
F845	b. The group.				
F846	c. The reviewer uses criteria established by the physician members of the committee.				

NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F847	4. In instances when non-physician members are utilized, those cases are referred to a physician member for further review when it appears that the resident no longer requires further inpatient care.				
F848	5. Non-physician representatives used to screen extended stay review cases, have experience in such screening or appropriate training in the application of the screening criteria used, or both.				
F849	6. Before the expiration of each new period, the case must be reviewed again in like manner with such reviews being repeated as long as the stay continues beyond the scheduled review dates and notice has not been given pursuant to paragraph (e) of this section.				
	E. Further Stay Not Medically Necessary				
F850	SNF (405.1137(e)) ☐ MET ☐ NOT MET				
F851	1. A final determination of the committee or group that continued stay is not medically necessary is made by at least two physician members of the committee or group, except that the final determination may be made by one physician where the attending physician, when given an opportunity to express his views, does not do so, or does not contest the finding that the continued stay is not medically necessary.				
F852	2 If the committee or group, or its nonphysician representative where a physician member concurs, has reason to believe from the review of an extended duration case or a case reviewed as part of a medical care evaluation study that further stay is no longer medically necessary, the committee or group shall notify the individual's attending physician and afford him an opportunity to present his views before it makes a final determination.				

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NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F853	3. If the final determination of the committee or group is that further stay is no longer medically necessary, written notification of the finding is given to the facility, the attending physician, and the individual (or where appropriate, his next of kin) no later than 2 days after such final determination is made and, in no event in the case of an extended duration case, later than 3 working days after the end of the extended duration period specified pursuant to paragraph (d) of this section.				
	F. Administrative Responsibilities				
F854	SNF (405.1137(f)) ☐ MET ☐ NOT MET				
F855	The administrative staff of the facility is kept directly and fully informed of committee activities to facilitate support and assistance. (Explain)				
	G. Utilization Review Records				
F856	SNF (405.1137(g)) ☐ MET ☐ NOT MET				
F857	1. Written records of committee activities are maintained.				
F858	2. Appropriate reports, signed by the committee chairman, are made regularly to the medical staff, administrative staff, governing body, and sponsors (if any).				
F859	3. Minutes of each committee meeting is maintained and include at least: a. Name of committee.				
F860	b. Date and duration of meeting.				
F861	c. Names of committee members present and absent.				

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NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F862	4. Description of activities presently in progress to satisfy the requirements for medical care evaluation studies, including the subject, reason for study, dates of commencement and expected completion, summary of studies completed since the last meeting, conclusions and follow-up on implementation of recommendations made from previous studies.				
F863	5. Summary of extended duration cases reviewed including the number of cases, identification number, admission and review dates, and decision reached, including the basis for each determination and action taken for each case not approved for extended care.				
	H. Discharge Planning				
F864	SNF (405.1137(h)) ☐ MET ☐ NOT MET The facility maintains a centralized, coordinated program to ensure that each resident has a planned program of continuing care which meets his postdischarge needs.				
F865	1. The facility has in operation an organized discharge planning program.				
F866	The utilization review committee, in its evaluation of the current status of each extended duration case, has available to it the results of such discharge planning and information on alternative available community resources to which the resident may be referred.				
F867	2. The facility maintains written discharge planning procedures which describe: a. How the discharge coordinator will function, and his authority and relationships with the facility's staff.				
F868	b. The maximum time period after which reevaluation of each resident's discharge plan is made.				

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NAME OF FACILITY

CODE	UTILIZATION REVIEW	YES	NO	N/A	EXPLANATORY STATEMENT
F869	c. Local resources available to the facility, the resident, and the attending physician to assist in developing and implementing individual discharge plans; and				
F870	d. Provisions for periodic review and reevaluation of the facility's discharge planning program.				
F871	3. At the time of discharge, the facility provides those responsible for the resident's post discharge care with appropriate summary of information about the discharged resident to ensure the optimal continuity of care.				
	The discharge summary includes at least the following:				
F872	a. Current information relative to diagnoses.				
F873	b. Rehabilitation potential.				
F874	c. A summary of the course of prior treatment.				
F875	d. Physician orders for the immediate care of the resident.				
F876	e. Pertinent social information.				

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APPENDIX B

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

FORM APPROVED
OMB NO. 0938-0400

PART B

MEDICARE / MEDICAID SKILLED NURSING FACILITY AND INTERMEDIATE CARE FACILITY SURVEY REPORT

PROVIDER NUMBER

VENDOR NUMBER

SURVEY DATE

FACILITY NAME AND ADDRESS (*City, State, Zip Code*)

SURVEYORS' NAMES	TITLES

SURVEY TEAM COMPOSITION

F1 Indicate the Number of Surveyors According to Discipline:

A. ☐ Administrator
B. ☐ Nurse
C. ☐ Dietitian
D. ☐ Pharmacist
E. ☐ Records Administrator
F. ☐ Social Worker
G. ☐ Qualified Mental Retardation Professional
H. ☐ Life Safety Code Specialist
I. ☐ Laboratorian
J. ☐ Sanitarian
K. ☐ Therapist
L. ☐ Physician
M. ☐ National Institute of Mental Health
N. ☐ Other

Note: More than one discipline may be marked for surveyors qualified in multiple disciplines.

F2 Indicate the Total Number of Surveyors Onsite: _____

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(CONTINUED ON REVERSE)

RESIDENT CENSUS AND CONDITIONS OF RESIDENTS

PROVIDER NO. _____ F3 ☐ MEDICARE _____ F4 ☐ MEDICAID _____ F5 ☐ OTHER _____ F6 TOTAL RESIDENTS _____

CODE		CODE	
	BATHING		**CONTINENCE**
F7	___ Number of residents requiring assistance in bathing more than one part of body—or does not bathe self.	F22	___ Number of residents with indwelling or external catheters.
F8	___ Number of residents requiring assistance in bathing only a single part (as back or disabled extremity) or bathes self completely.	F23	___ Number of residents with partial or total incontinence in urination or defecation—partial or total control by suppositories or enemas, regulated use of urinals and/or bedpans.
F9	___ **TOTAL***	F24	___ Number of residents with urination and defecation entirely self-controlled.
		F25	___ **TOTAL***
	DRESSING		**FEEDING**
F10	___ Number of residents totally dressed by another person.	F26	___ Number of residents who receive nutrition parenteral feedings, e.g. tube, etc.
F11	___ Number of residents needing assistance to dress self or remain partly dressed. (Exclude those residents totally dressed.)	F27	___ Number of residents who require assistance in act of eating.
F12	___ Number of residents able to get clothes from closets and drawers-puts on clothes, outer garments, braces-manages fasteners. Act of tying shoes is excluded.	F28	___ Number of residents who get food from plate or its equivalent into mouth—(pre-cutting of meat and preparation of food, buttering bread, opening cartons, removing plate covers, etc., are excluded from evaluation).
F13	___ **TOTAL***	F29	___ **TOTAL***
	TOILETING		
F14	___ Number of residents not toileted. (Use protective padding, catheter.)	F30	___ Number of completely bedfast residents.
F15	___ Number of residents who must use a bedpan or commode and/or receive assistance in getting to and using a toilet.	F31	___ Number of chairbound residents.
F16	___ Number of residents able to get to toilet—gets on and off toilet—cleans self—arranges clothes.	F32	___ Number of ambulatory residents (may use cane, walker, or crutches).
F17	___ **TOTAL***	F33	___ Number of restrained residents (belt, vest, cuffs).
		F34	___ Number of confused or disoriented residents.
	TRANSFERRING	F35	___ Number of residents with decubiti.
F18	___ Number of residents who need assistance in transferring to toilet and tub.	F36	___ Number of residents on individually written bowel and bladder retraining program.
F19	___ Number of residents who need assistance in moving in or out of bed and/or chair—(exclude toilet, tub transfers).	F37	___ Number of residents receiving special skin care.
F20	___ Number of residents able to move in and out of bed independently and move in and out of chair independently (may or may not be using mechanical supports).	F38	___ Number of residents receiving intravenous therapy and/or blood transfusion.
F21	___ **TOTAL***	F39	___ Number of residents requiring no assistance in ADLs.
		F40	___ Number of residents on self-administration of drugs.

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*MUST EQUAL TOTAL NUMBER OF RESIDENTS IN FACILITY

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
	GOVERNING BODY *(CONDITION OF PARTICIPATION)*				
F41	SNF (405.1121) ☐ MET ☐ NOT MET				
	RESIDENT RIGHTS				
F42	SNF (405.1121(k)) ☐ MET ☐ NOT MET **Indicators A thru L apply to SNFs**				
F43	ICF (442.311) ☐ MET ☐ NOT MET				
	A. Information				
F44	1. The facility informs each resident, before or at the time of admission, of his/her rights and responsibilities.				
F45	2. The facility informs each resident, before or at the time of admission, of all rules governing resident conduct.				
F46	3. The facility informs each resident of amendments to their policies on residents' rights and responsibilities and rules governing conduct.				
F47	4. Each resident acknowledges in writing receipt of residents' rights information and any amendment to it.				
F48	5. The resident must be informed in writing of all services and charges for services.				
F49	6. The resident must be informed in writing of all changes in services and charges before or at the time of admission and on a continuing basis.				
F50	7. The resident must be informed of services not covered by Medicare or Medicaid and not covered in the basic rate.				

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NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Medical Condition and Treatment				
F51	1. Each resident is informed by a physician of his/her health and medical condition unless the physician decides that informing the resident is medically contraindicated.				
F52	2. Each resident is given an opportunity to participate in planning his/her total care and medical treatment.				
F53	3. Each resident is given an opportunity to refuse treatment.				
F54	4. Each resident gives informed, written consent before participating in experimental research.				
F55	5. If the physician decides that informing the resident of his/her health and medical condition is medically contraindicated, the physician has documented this decision in the resident's medical record.				
	C. Transfer and Discharge				
	Each resident is transferred or discharged only for:				
F56	1. Medical reasons.				
F57	2. His/her welfare or that of other residents.				
F58	3. Nonpayment except as prohibited by the Medicare or Medicaid program.				
	D. Exercising Rights				
F59	1. Each resident is encouraged and assisted to exercise his/her rights as a resident of the facility and as a citizen.				
F60	2. Each resident is allowed to submit complaints and recommendations concerning the policies and services of the facility to staff or to outside representatives of the resident's choice or both.				

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NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
F61	3. Such complaints are submitted free from restraint, coercion, discrimination, or reprisal.				
	E. Financial Affairs				
F62	1. Residents are allowed to manage their own personal financial affairs.				
F63	2. The facility establishes and maintains a system that assures full and complete accounting of residents' personal funds. An accounting report is made to each resident in a skilled nursing facility at least on a quarterly basis.				
F64	3. The facility does not commingle resident funds with any other funds other than resident funds.				
F65	4. If a resident requests assistance from the facility in managing his/her personal financial affairs, resident's delegation is in writing.				
	5. The facility system of accounting includes written receipts for:				
F67	All personal possessions and funds received by or deposited with the facility.				
F68	All disbursements made to or for the resident.				
F69	6. The financial record must be available to the resident and his/her family.				
	F. Freedom from Abuse and Restraints				
F70	1. Each resident is free from mental and physical abuse.				
F71	2. Chemical and physical restraints are only used when authorized by a physician in writing for a specified period of time or in emergencies.				

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
F72	3. If used in emergencies, they are necessary to protect the resident from injury to himself/herself or others.				
F73	4. The use is authorized by a professional staff member identified in the written policies and procedures of the facility.				
F74	5. The use is reported promptly to the resident's physician by the staff member.				
	G. Privacy				
F75	1. Each resident is treated with respect, consideration and full recognition of his/her dignity and individuality.				
F76	2. Each resident is given privacy during treatment and care of personal needs.				
F77	3. Each resident's records, including information in an automated data bank, are treated confidentially.				
F78	4. Each resident must give written consent before the facility releases information from his/her record to someone not otherwise authorized to receive it.				
F79	5. Married residents are given privacy during visits by their spouses.				
F80	6. Married residents are permitted to share a room.				
	H. Work				
F81	No resident may be required to perform services for the facility.				

NAME OF FACILITY

CODE	GOVERNING BODY	YES	NO	N/A	EXPLANATORY STATEMENT
	I. Freedom of Association and Correspondence				
F82	1. Each resident is allowed to communicate, associate and meet privately with individuals of his/her choice unless this infringes upon the rights of another resident.				
F83	2. Each resident is allowed to send and receive personal mail unopened.				
	J. Activities				
F84	Each resident is allowed to participate in social, religious, and community group activities.				
	K. Personal Possessions				
F85	Each resident is allowed to retain and use his/her personal possessions and clothing as space permits.				
	L. Delegation of Rights and Responsibilities				
F86	ICF (442.312) ☐ MET ☐ NOT MET				
F87	1. All the rights and responsibilities of a resident pass to the resident's guardian, next of kin or sponsoring agency or agencies if the resident is adjudicated incompetent under State law or is determined by his/her physician to be incapable of understanding his/her rights and responsibilities.				
F88	2. Physician determinations of incapability and the specific reasons thereof are recorded by the physician in the resident's record.				

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NAME OF FACILITY

CODE	GOVERNING BODY/PHYSICIANS' SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	STATUS CHANGE NOTIFICATIONS				
F89	SNF (405.1121(j)) ☐ MET ☐ NOT MET				
F90	1. The facility notifies the resident's attending physician and other responsible persons in the event of an accident involving the resident, or other significant change in the resident's physical, mental, or emotional status, or resident charges, billings, and related administrative matters.				
F91	2. Except in a medical emergency, a resident is not transferred or discharged, nor is treatment altered radically, without consultation with the resident or, if the resident is incompetent, without prior notification of next of kin or sponsor.				
	PHYSICIANS' SERVICES *(CONDITION OF PARTICIPATION)*				
F92	SNF (405.1123) ☐ MET ☐ NOT MET				
	A. Medical Findings and Orders at Time of Admission				
F93	SNF (405.1123(a)) ☐ MET ☐ NOT MET				
F94	1. There is made available to the facility prior to or at the time of admission, resident information which includes current medical findings, diagnoses, and orders from a physician for immediate care of the resident.				
F95	2. Information about the rehabilitation potential of the resident and a summary of prior treatment are made available to the facility at the time of admission or within 48 hours thereafter.				

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NAME OF FACILITY

CODE	PHYSICIANS' SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Resident Supervision by Physician				
F96	SNF (405.1123(b)) ☐ MET ☐ NOT MET				
F97	ICF (442.346) ☐ MET ☐ NOT MET **Indicators B and C apply to ICFs**				
F98	1. Every resident must be under the supervision of a physician.				
F99	2. A physician prescribes a planned regimen of care based on a medical evaluation of each resident's immediate and long-term care needs. **Exception: Not required for ICF residents**				
F100	3. A physician is available to provide care in the absence of any resident's attending physician.				
F101	4. Medical evaluation is done within 48 hours of admission unless done within 5 days prior to admission. **Exception: Not required for ICF residents.**				
F102	5. Each resident is seen by their attending physician at least once every 30 days for the first 90 days after admission.				
F103	**Exception: ICF residents must be seen every 60 days unless otherwise justified and documented by the attending physician.**				
F104	6. Each resident's total program of care including medications and treatments is reviewed during a visit by the attending physician at least once every 30 days for the first 90 days and revised as necessary.				
F105	**Exception: Only medications must be reviewed quarterly for ICF residents.**				

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NAME OF FACILITY

CODE	PHYSICIANS' SERVICES/NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F106	7. Progress notes are written and signed by the physician at the time of each visit, and all orders are signed by the physician. **Exception: Not required for ICF residents.**				
F107	8. Alternate physician visit schedules that exceed a 30-day schedule adopted after the 90th day following admission are justified by the attending physician in the medical record. These visits cannot exceed 60 days or apply to residents who require specialized rehabilitation schedules.				
F108	**Exception: ICF residents must be seen every 60 days unless justified otherwise and documented by the attending physician.**				
F109	**C. Emergency Services** SNF (405.1123(c)) ☐ MET ☐ NOT MET				
F110	Emergency services from a physician are available and provided to each resident who requires emergency care.				
	NURSING SERVICES *(CONDITION OF PARTICIPATION)*				
F111	SNF (405.1124) ☐ MET ☐ NOT MET				
F112	ICF (442.338) ☐ MET ☐ NOT MET **Indicators A thru E apply to ICFs except where noted.**				
	A. The facility provides nursing services which are sufficient to meet nursing needs of all residents all hours of each day.				
F113	SNF (405.1124(c)) ☐ MET ☐ NOT MET **Indicators A and B apply to SNFs.**				
F114	1. Each resident receives all treatments, medications and diet as prescribed. Deviations are reported and appropriate action is taken.				

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NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F115	2. Each resident receives daily personal hygiene as needed to assure cleanliness, good skin care, good grooming, and oral hygiene taking into account individual preferences. Residents are encouraged to engage in self care activity.				
F116	3. Each resident receives care necessary to prevent skin breakdown.				
F117	4. Each resident with a decubitus receives care necessary to promote the healing of the decubitus including proper dressing.				
F118	5. When residents require restraints the application is ordered by the physician, applied properly, and released at least every 2 hours.				
F119	6. Each resident with incontinence is provided with care necessary to encourage continence including frequent toileting and opportunities for rehabilitative training.				
F120	7. Each resident with a urinary catheter receives proper routine care including periodic evaluation.				
F121	8. Each resident receives proper care for the following needs: Injections Parenteral Fluids Colostomy/Ileostomy Respiratory Care Tracheostomy Care Suctioning Tube Feeding				
F122	9. Infection Control Techniques are properly carried out in the provision of care to each resident.				

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NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F123	10. Proper nursing and sanitary procedures and techniques are used when medications are given to residents.				
F124	11. Adequate resident care supplies are available for providing treatments.				
	B. Twenty-Four Hour Nursing Service				
F125	1. Nursing personnel,including registered nurses, licensed practical (vocational) nurses, nurse aides, orderlies, and ward clerks, are assigned duties consistent with their education and experience, and based on the characteristics of the resident load.				
F126	2. Weekly time schedules are maintained and indicate the number and classifications of nursing personnel including relief personnel, who worked on each unit for each tour of duty. (If a distinct part certification, show the staffing for the DP and, if appropriate, any nonparticipating remainder and explain any sharing of nursing personnel.) **Exception: Not required for Freestanding ICFs.**				
F127	3. There is a sufficient number of nursing staff available to meet the total needs of all residents.				
F128	4. There is a registered nurse on the day tour of duty 7 days a week. **Exception: Not required for ICF residents.**				

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NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	C. Charge Nurse				
F129	SNF (405.1124(b)) ☐ MET ☐ NOT MET				
F130	1. A registered nurse or a qualified licensed practical (or vocational) nurse is designated as charge nurse by the director of nursing for each tour of duty. **Exception: Not required for ICFs.**				
F131	2. The director of nursing services does not serve as charge nurse in a facility with an average daily total occupancy of 60 or more residents. **Exception: Not required for ICFs.**				
F132	3. The ICF must have a registered nurse, or a licensed practical or vocational nurse full-time, 7 days a week, on the day shift. **Exception: Not required for SNFs.**				

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NAME OF FACILITY

List the number of full-time equivalents of RN's, LPN's, Aides/Orderlies assigned to nursing duty from the last 3 complete weeks. (Note only actual staff on duty.)

Shift		CODE	Day 1			Day 2			Day 3			Day 4			Day 5			Day 6			Day 7		
			RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	DP	F133																					
	Entire Facility	F134																					
EVENING	DP	F135																					
	Entire Facility	F136																					
NIGHT	DP	F137																					
	Entire Facility	F138																					

Shift		CODE	Day 1			Day 2			Day 3			Day 4			Day 5			Day 6			Day 7		
			RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	DP																						
	Entire Facility																						
EVENING	DP																						
	Entire Facility																						
NIGHT	DP																						
	Entire Facility																						

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NAME OF FACILITY

Shift		CODE	Day 1			Day 2			Day 3			Day 4			Day 5			Day 6			Day 7		
			RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	DP	F139																					
	Entire Facility	F140																					
EVENING	DP	F141																					
	Entire Facility	F142																					
NIGHT	DP	F143																					
	Entire Facility	F144																					

STAFFING PATTERN WORKSHEETS DAY OF SURVEY (OPTIONAL)

ENTIRE FACILITY STAFFING PATTERN (DAY OF SURVEY)

	CODE		RN	PN	A
DAY	F145	REPORT			
	F146	ACTUAL			
EVENING	F147	REPORT			
	F148	ACTUAL			
NIGHT	F149	REPORT			
	F150	ACTUAL			

UNIT STAFFING PATTERN WORKSHEET (DAY OF SURVEY)

	CODE	Unit			Unit			Unit			Unit			Unit			Unit			Unit		
		RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A	RN	PN	A
DAY	F151																					
EVENING	F152																					
NIGHT	F153																					
CENSUS	F154																					

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	D. Rehabilitative Nursing Services are performed daily, and recorded for those residents who require such service.				
F155	SNF (405.1124(e)) ☐ MET ☐ NOT MET				
F156	1. Each resident receives rehabilitative nursing care to promote maximum physical functioning to prevent immobility, deformities, and contractures.				
F157	2. There is an ongoing evaluation of each resident's rehabilitative nursing needs. This may include;				
F158	(a) Range of motion, ambulation, turning and positioning and other activities;				
F159	(b) Assistance and instruction in the activities of daily living such as feeding, dressing, grooming, oral hygiene and toilet activities;				
F160	(c) Remotivation therapy and/or reality orientation when appropriate.				
F161	3. These activities are coordinated with other resident care services.				
	E. The facility has an awareness of nutritional needs and fluid intake of residents and provides prompt assistance where necessary in feeding residents.				
F162	SNF (405.1124(f)) ☐ MET ☐ NOT MET				
F163	1. Each resident is provided with the amount of food and fluid on a daily basis necessary to maintain their appropriate minimum average weight. Between meal feedings are offered and the amount consumed is observed. Daily food and fluid intake is observed and encouraged.				

NAME OF FACILITY

CODE	NURSING SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F164	2. Each resident needing assistance in eating or drinking is provided prompt assistance. Specific self-help devices are available when necessary.				
F165	3. Deviations from normal food and fluid intake are recorded and reported to the charge nurse and the attending physician.				
	F. Administration of Drugs				
F166	SNF (405.1124(g)) ☐ MET ☐ NOT MET				
F167	ICF (442.337) ☐ MET ☐ NOT MET				
F168	1. The resident is identified prior to administration of a drug.				
F169	2. Drugs and biologicals are administered as soon as possible after doses are prepared.				
F170	3. Administered by same person who prepared the doses for administration except under single unit dose package distribution systems.				
F171	**Exception: ICF residents may self administer medication only with their physician's permission.**				
	G. Conformance with Physician Drug Orders				
F172	SNF (405.1124(h)) ☐ MET ☐ NOT MET				
F173	ICF (442.334) ☐ MET ☐ NOT MET				
F174	Drugs are administered in accordance with written orders of the attending physician.				

NAME OF FACILITY

CODE	DIETETIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	DIETETIC SERVICES *(CONDITION OF PARTICIPATION)*				
F175	SNF (405.1125) ☐ MET ☐ NOT MET				
	A. Menus and Nutritional Adequacy				
F176	SNF (405.1125(b)) ☐ MET ☐ NOT MET				
F177	ICF (442.332(a)(1)) ☐ MET ☐ NOT MET				
F178	Menus are planned and followed to meet the nutritional needs of each resident in accordance with physicians' orders and, to the extent medically possible, based on the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.				
	B. Therapeutic Diets				
F179	SNF (405.1125(c)) ☐ MET ☐ NOT MET				
F180	ICF (442.332(b)(1)(2)) ☐ MET ☐ NOT MET				
F181	1. Therapeutic diets are prescribed by the attending physician.				
F182	2. Therapeutic menus are planned in writing, prepared, and served as ordered with supervision from the dietitian and advice from the physician whenever necessary.				
F183	Number of Regular Diets_____				
F184	Number of Therapeutic Diets_____				
F185	Number of Mechanically Altered Diets _____				
F186	Number of Tube Feedings_____				

NAME OF FACILITY

CODE	DIETETIC SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	C. Preparation				
F187	SNF (405.1125(e)) ☐ MET ☐ NOT MET				
F188	1. Food is prepared by methods that conserve its nutritive value and flavor.				
F189	2. Meals are palatable, served at proper temperatures. They are cut, ground, chopped, pureed or in a form which meets individual resident needs.				
F190	3. If a resident refuses food served, appropriate substitutes of similar nutritive value are offered.				
	D. Frequency				
F191	SNF (405.1125(d)) ☐ MET ☐ NOT MET				
F192	ICF (442.331(a)) ☐ MET ☐ NOT MET				
F193	1. At least three meals are served daily at regular hours with not more than a 14-hour span between a substantial evening meal and breakfast.				
F194	2. To the extent medically possible, bedtime nourishments are offered to all residents. **Exception: Not required for ICF Residents.**				
	E. Staffing				
F195	SNF (405.1125.(a)) ☐ MET ☐ NOT MET				
F196	1. Food service personnel are on duty daily over a period of 12 or more hours.				

NAME OF FACILITY

CODE	SPECIALIZED REHABILITATIVE SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	SPECIALIZED REHABILITATIVE SERVICES *(CONDITION OF PARTICIPATION)*				
F197	SNF (405.1126) ☐ MET ☐ NOT MET				
F198	SNF (405.1126(b)) ☐ MET ☐ NOT MET **Indicators A thru C apply to SNF**				
	A. Plan of Care				
F199	ICF (442.343(e)(1)(2)) ☐ MET ☐ NOT MET				
F200	Rehabilitative services are provided under a written plan of care, initiated by the attending physician and developed in consultation with appropriate therapists(s) and the nursing service.				
	B. Therapy				
F201	ICF (442.343(a)(c)(d) ☐ MET ☐ NOT MET				
F202	Therapy is provided according to orders of the attending physician in accordance with accepted professional practices by qualified therapists or qualified assistants.				
	C. Progress				
F203	ICF (442.343(f)) ☐ MET ☐ NOT MET				
F204	1. A report of the resident's progress is communicated to the attending physician within 2 weeks of the initiation of specialized rehabilitative services.				
F205	**Exception: ICF resident's progress must be reviewed regularly.**				

NAME OF FACILITY

CODE	SPECIALIZED REHABILITATIVE SERVICES/PHARMACEUTICAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
F206	2. The resident's progress is thereafter reviewed regularly, and the plan of rehabilitative care is reevaluated as necessary, but at least every 30 days, by the physician and the therapist.				
F207	**Exceptions: ICF residents' plans must be revised as necessary.**				
	PHARMACEUTICAL SERVICES *(CONDITION OF PARTICIPATION)*				
F208	SNF (405.1127) ☐ MET ☐ NOT MET				
F209	Drug Error Rate _____% (See Form HCFA-522)				
	A. Supervision				
F210	SNF (405.1127(a)) ☐ MET ☐ NOT MET				
F211	ICF (442.336(a)(b)) ☐ MET ☐ NOT MET				
F212	The pharmacist reviews the drug regimen of each resident at least monthly and reports any irregularities to the medical director and administrator.				
F213	**Exception: A registered nurse may be utilized to perform this review for ICF residents. Also, the attending or staff physician must review medications quarterly.**				

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NAME OF FACILITY

CODE	PHARMACEUTICAL SERVICES LABORATORY AND RADIOLOGIC SERVICES/SOCIAL SERVICES	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Labeling of Drugs and Biologicals				
F214	SNF (405.1127(c)) ☐ MET ☐ NOT MET				
F215	ICF (442.333) ☐ MET ☐ NOT MET				
F216	The labeling of drugs and biologicals is based on currently accepted professional principles and includes the appropriate accessary and cautionary instructions as well as an expiration date when applicable.				
	LABORATORY AND RADIOLOGIC SERVICES *(CONDITION OF PARTICIPATION)*				
F217	SNF (405.1128) ☐ MET ☐ NOT MET				
F218	SNF (405.1128(a)) ☐ MET ☐ NOT MET				
	Provision of Services				
F219	1. All services are provided only on the orders of a physician.				
F220	2. The attending physician is notified promptly of diagnostic findings.				
F221	3. Signed and dated reports of a clinical laboratory, X-ray and other diagnostic services are filed with the resident's medical record.				

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NAME OF FACILITY

CODE	SOCIAL SERVICES/ACTIVITIES	YES	NO	N/A	EXPLANATORY STATEMENT
	SOCIAL SERVICES *(CONDITION OF PARTICIPATION)*				
F222	SNF (405.1130) ☐ MET ☐ NOT MET				
F223	SNF (405.1130(a)) ☐ MET ☐ NOT MET **Indicators A and B apply to SNFs**				
	A. Plan				
F224	ICF (442.344(d)) ☐ MET ☐ NOT MET				
F225	The medically related social and emotional needs of the resident are identified.				
	B. Provision of Services				
F226	ICF (442.344(a)(b)) ☐ MET ☐ NOT MET				
F227	1. Services are provided to meet the social and emotional needs by the facility or by referral to an appropriate social agency.				
F228	2. If financial assistance is indicated, arrangements are made promptly for referral to an appropriate agency.				
	ACTIVITIES *(CONDITION OF PARTICIPATION)*				
F229	SNF(405.1131) ☐ MET ☐ NOT MET				
	Provision of Services				
F230	SNF (405.1131(b)) ☐ MET ☐ NOT MET				

NAME OF FACILITY

CODE	ACTIVITIES/PATIENT CARE MANAGEMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F231	ICF (442.345(a)(c)(d)) ☐ MET ☐ NOT MET				
F232	1. An ongoing program of meaningful activities is provided based on identified needs and interests of each resident. It is designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice, if any.				
F233	2. Unless contraindicated by the attending physicians all residents are encouraged to participate in the activities program.				
F234	3. The activities promote the physical, social and mental well-being of the resident.				
F235	4. Equipment is maintained in good working order.				
F236	5. Supplies and equipment are available.				
	PATIENT CARE MANAGEMENT				
F237	SNF (405.1124(d)) ☐ MET ☐ NOT MET				
F238	ICF (442.341) ☐ MET ☐ NOT MET				
F239	A. Each resident's needs are addressed in a written plan of care which demonstrates that the plans of all services are integrated, consonant with the physician's plan of medical care, and implemented shortly after admission.				
F240	B. Each professional service identifies needs, goals, plans, and evaluates the effectiveness of interventions, plus institutes changes in the plan of care in a timely manner.				

NAME OF FACILITY

CODE	TRAINING/MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
	TRAINING				
F241	SNF (405.1121(h)) ☐ MET ☐ NOT MET				
F242	ICF (442.314) ☐ MET ☐ NOT MET				
F243	1. Facility staff are knowledgeable about the problems and needs of the aged, ill, and disabled.				
F244	2. Facility staff practices proper techniques in providing care to the aged, ill, and disabled.				
F245	3. Facility staff practice proper technique for prevention and control of infection, fire prevention and safety, accident prevention, confidentiality of resident information, and preservation of resident dignity, including protection of privacy and personal and property rights.				
	MEDICAL RECORDS *(CONDITION OF PARTICIPATION)*				
F246	SNF (405.1132) ☐ MET ☐ NOT MET				
	Content				
F247	SNF (405.1132(c)) ☐ MET ☐ NOT MET				
F248	ICF (442.318(a)(c)) ☐ MET ☐ NOT MET				
F249	1. The medical record contains sufficient information to identify the resident clearly, to justify diagnoses and treatment, and to document results accurately.				

NAME OF FACILITY

CODE	MEDICAL RECORDS	YES	NO	N/A	EXPLANATORY STATEMENT
	2. The medical record contains the following information:				
F250	a. Identification information				
F251	b. Admission data including past medical and social history				
F252	c. Transfer form, discharge summary from any transferring facility				
F253	d. Report of resident's attending physician				
F254	e. Report of physical examinations				
F255	f. Reports of physicians' periodic evaluations and progress notes				
F256	g. Diagnostic reports and therapeutic orders				
F257	h. Reports of treatments				
F258	i. Medications administered				
F259	j. An overall plan of care setting forth goals to be accomplished through each service's designed activities, therapies and treatments.				
F260	k. Assessments and goals of each service's plan of care				
F261	l. Treatments and services rendered				
F262	m. Progress notes				
F263	n. All symptoms and other indications of illness or injury including date, time and action taken regarding each problem.				

NAME OF FACILITY

CODE		YES	NO	N/A	EXPLANATORY STATEMENT
	TRANSFER AGREEMENT *(CONDITION OF PARTICIPATION)*				
F264	SNF (405.1133) ☐ MET ☐ NOT MET				
F265	SNF (405.1133(a)) ☐ MET ☐ NOT MET				
F266	ICF (442.316) ☐ MET ☐ NOT MET				
F267	A. Whenever the attending physician determines that a transfer is medically appropriate between a hospital or a facility providing more specialized care and the nursing facility, admission to the new facility shall be effected in a timely manner.				
F268	B. Information necessary for providing care and treatment to transferred individuals is provided.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	PHYSICAL ENVIRONMENT *(CONDITION OF PARTICIPATION)*				
F269	SNF (405.1134) ☐ MET ☐ NOT MET				
	A. Nursing Unit				
F270	SNF (405.1134(d)) ☐ MET ☐ NOT MET				
F271	1. The unit is properly equipped for preparation and storage of drugs and biologicals.				
F272	2. Utility and storage rooms are adequate in size.				
F273	3. The unit is equipped to register resident calls with a functioning communication system from resident areas including resident rooms and toilet and bathing facilities.				
	B. Dining and Activities Area				
F274	SNF (405.1134(g)) ☐ MET ☐ NOT MET				
F275	ICF (442.329) ☐ MET ☐ NOT MET				
F276	1. The facility provides one or more clean, orderly and appropriately furnished rooms of adequate size, designated for resident dining and resident activities.				
F277	2. Dining and activity rooms are well lighted and ventilated.				
F278	3. Any multipurpose room used for dining and resident activities has sufficient space to accommodate all activities and prevent their interference with each other.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F279	SNF (405.1134(e)) ☐ MET ☐ NOT MET **Indicators C and D apply to SNFs.**				
	C. Resident Rooms				
F280	ICF (442.325) ☐ MET ☐ NOT MET				
F281	1. Single resident rooms have at least 100 square feet.				
F282	2. Multiple resident rooms have no more than four residents and at least 80 square feet per resident.				
F283	3. Each room is equipped with or conveniently located near toilet and bathing facilities.				
F284	4. There is capability of maintaining privacy in each.				
F285	5. There is adequate storage space for each resident.				
F286	6. There is a comfortable and functioning bed and chair plus a functioning cabinet and light.				
F287	7. Personal expression is allowed.				
F288	8. The resident call system functions in resident rooms.				
F289	9. Each room is designed and equipped for adequate nursing care and the comfort and privacy of the residents.				
F290	10. Each room is at or above grade level.				
F291	11. Each room has direct access to a corridor and outside exposure. **Exception: Not required for ICF residents.**				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	D. Toilet and Bath Facilities				
F292	ICF (442.326) ☐ MET ☐ NOT MET				
F293	1. Facilities are clean, sanitary and free of odors.				
F294	2. Facilities have safe and comfortable hot water temperatures.				
F295	3. Facilities have capability of maintaining privacy.				
F296	4. Facilities have grab bars and other safeguards against slipping.				
F297	5. Facilities have fixtures in good condition.				
	E. Social Service Area				
F298	SNF (405.1130(b)) ☐ MET ☐ NOT MET				
F299	ICF (442.344(c)) ☐ MET ☐ NOT MET				
F300	1. Capability to ensure privacy for social service interviewing.				
F301	2. Adequate space for clerical and interviewing functions.				
F302	3. Easily accessible to residents and staff.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
	F. Therapy Areas				
F303	SNF (405.1126(a)) ☐ MET ☐ NOT MET				
F304	ICF (442.328(a)) ☐ MET ☐ NOT MET				
F305	1. Space is adequate for proper use of equipment by all residents receiving treatments.				
F306	2. Equipment is safe and in proper working condition.				
	G. Facilities for Special Care				
F307	SNF (405.1134(f)) ☐ MET ☐ NOT MET				
F308	ICF (442.328(b)) ☐ MET ☐ NOT MET				
F309	1. Single rooms with private toilet and handwashing facilities are available for isolating residents.				
F310	2. Precautionary signs are used to identify these rooms when in use.				
	H. Common Resident Areas				
F311	SNF (405.1134(j)) ☐ MET ☐ NOT MET				
F312	ICF (442.324) ☐ MET ☐ NOT MET				
F313	1. All common resident areas are clean, sanitary and free of odors.				
F314	2. Provision is made for adequate and comfortable lighting levels in all areas.				
F315	3. There is limitation of sounds at comfort levels.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT	YES	NO	N/A	EXPLANATORY STATEMENT
F316	4. A comfortable room temperature is maintained.				
F317	5. There is adequate ventilation through windows or mechanical means or a combination of both.				
F318	6. Corridors are equipped with firmly secured handrails on each side.				
F319	7. Staff are aware of procedures to ensure water to all essential areas in the event of loss of normal supply.				
	I. Maintenance of Building and Equipment				
F320	SNF (405.1134(i)) ☐ MET ☐ NOT MET				
F321	1. The interior and exterior of the building are clean and orderly.				
F322	2. All essential mechanical and electrical equipment is maintained in safe operating condition.				
F323	3. Sufficient storage space is available and used for equipment to ensure that the facility is orderly and safe.				
F324	4. Resident care equipment is clean and maintained in safe operating condition.				
F325	ICF (442.331(b)) ☐ MET ☐ NOT MET **Indicators J and K apply to ICFs.**				
	J. Dietetic Service Area				
F326	SNF (405.1134(h)) ☐ MET ☐ NOT MET				
F327	1. Kitchen and dietetic service areas are adequate to insure proper, timely food services for all residents				
F328	2. Kitchen areas are properly ventilated, arranged, and equipped for storage and preparation of food as well as for dish and utensil cleaning, and refuse storage and removal.				

NAME OF FACILITY

CODE	PHYSICAL ENVIRONMENT/INFECTION CONTROL	YES	NO	N/A	EXPLANATORY STATEMENT
	K. Dietetic Sanitary Conditions				
F329	SNF (405.1125(f)(g)) ☐ MET ☐ NOT MET				
F330	1. Dietetic service personnel practice hygienic food handling techniques.				
F331	2. Food is stored, refrigerated, prepared, distributed, and served under sanitary conditions.				
F332	3. Waste is disposed of properly.				
	L. Emergency Power				
F333	SNF (405.1134(b)) ☐ MET ☐ NOT MET				
F334	1. An emergency source of electrical power necessary to protect the health and safety of residents is available in the event the normal electrical supply is interrupted.				
F335	2. Emergency power is adequate at least for lighting in all means of egress; equipment to maintain fire detection, alarm, and extinguishing systems; and life safety support systems.				
F336	3. Emergency power is provided by an emergency electrical generator located on the premises where life support systems are used.				
	INFECTION CONTROL *(CONDITION OF PARTICIPATION)*				
F337	SNF (405.1135) ☐ MET ☐ NOT MET				
	A. Infection Control				
F338	SNF (405.1135(b)) ☐ MET ☐ NOT MET				
F339	Aseptic and isolation techniques are followed by all personnel.				

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NAME OF FACILITY

CODE	INFECTION CONTROL/DISASTER PREPAREDNESS	YES	NO	N/A	EXPLANATORY STATEMENT
	B. Sanitation				
F340	SNF (405.1135(c)) ☐ MET ☐ NOT MET				
F341	The facility maintains a safe, clean, and orderly interior.				
	C. Linen				
F342	SNF (405.1135(d) ☐ MET ☐ NOT MET				
F343	ICF (442.327) ☐ MET ☐ NOT MET				
F344	1. The facility has available at all times a quantity of linen essential for proper care and comfort of residents.				
F345	2. Linens are handled; stored, processed, and transported in such a manner as to prevent the spread of infection.				
	D. Pest Control				
F346	SNF (405.1135(e)) ☐ MET ☐ NOT MET				
F347	1. The facility is maintained free from insects and rodents.				
	DISASTER PREPAREDNESS *(CONDITION OF PARTICIPATION)*				
F348	SNF (405.1136) ☐ MET ☐ NOT MET				
F349	SNF (405.1136(a)) ☐ MET ☐ NOT MET				
F350	ICF (442.313) ☐ MET ☐ NOT MET **Indicators A and B apply to ICFs**				
	A. Disaster Plan				
F351	1. Facility staff are aware of plans, procedures to be followed for fire, explosion or other disaster.				

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NAME OF FACILITY

CODE	DISASTER PREPAREDNESS	YES	NO	N/A	EXPLANATORY STATEMENT
F352	2. Facility staff are knowledgeable about evacuation routes.				
F353	3. Facility staff are aware of their specific responsibilities in regard to evaluation and protection of residents.				
F354	4. Facility staff are aware of methods of containing fire.				
	B. Drills				
F355	SNF (405.1136(b)) ☐ MET ☐ NOT MET				
F356	1. All employees are trained, as part of their employment orientation in all aspects of preparedness for any disaster.				
F357	2. Facility staff participate in ongoing training and drills in all procedures so that each employee promptly and correctly carries out a specific role in case of a disaster.				

SKILLED NURSING FACILITY & INTERMEDIATE CARE FACILITY

SURVEY REPORT — PART B
CRUCIAL DATA EXTRACT
(To be used with 2-86 Revision of Form HCFA-519)

PROVIDER NO.	FACILITY NAME	SURVEY DATE

SURVEY TEAM COMPOSITION

*F1: INDICATE THE NUMBER OF SURVEYORS ACCORDING TO DISCIPLINE:

A.	_____	ADMINISTRATOR	H.	_____	LIFE SAFETY CODE SPECIALIST
B.	_____	NURSE	I.	_____	LABORATORIAN
C.	_____	DIETITIAN	J.	_____	SANITARIAN
D.	_____	PHARMACIST	K.	_____	THERAPIST
E.	_____	RECORDS ADMINISTRATOR	L.	_____	PHYSICIAN
F.	_____	SOCIAL WORKER	M.	_____	NATIONAL INSTITUTE OF MENTAL HEALTH
G.	_____	QUALIFIED MENTAL RETARDATION PROFESSIONAL	N.	_____	OTHER

NOTE: MORE THAN ONE DISCIPLINE MAY BE MARKED FOR SURVEYORS QUALIFIED IN MULTIPLE DISCIPLINES.

*F2: INDICATE THE TOTAL NUMBER OF SURVEYORS ONSITE: ____

*F209: DRUG ERROR RATE: _____% (Round % to nearest whole number.)

*SF5 Survey Form Indicator (Check one)

Traditional Survey (1) ☐ New LTC Survey (2) ☐

NOTE: PLEASE ATTACH COPY OF PAGES 2, 14 AND 15.

*Mandatory

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

APPENDIX C1

FORM APPROVED
OMB NO. 0938-0400

RESIDENTS SELECTED FOR INDEPTH REVIEW

PROVIDER NUMBER	SURVEY DATE

	RESIDENT NAME (TARGETED)*	ROOM NUMBER	REASON FOR SELECTION
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			
16.			
17.			
18.			
19.			
20.			

FORM HCFA-520 (2-86) * NOTE IF ICF OR SNF RESIDENT

TOUR NOTES WORKSHEET

PROVIDER NUMBER	SURVEY DATE

INSTRUCTIONS

1. Note care and problems in care on all units.
2. Report deficiencies directly to survey report form or evaluate further during indepth sample review.
3. Select residents for indepth review.
4. Select a proportionate number from each section.

INDEPTH SAMPLE			
Facility Bed Size	<60	60-200	200+
Sample Size	5	10%	30

OBSERVE RESIDENTS FOR THE FOLLOWING CARE PROBLEMS

GROOMING/PERSONAL HYGIENE

POSITIONING

ASSISTIVE DEVICES

AMBULATION

RESTRAINTS

HYDRATION

INFECTION CONTROL

PATIENT RIGHTS

OTHER

FORM HCFA-521 (2-86)

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

APPENDIX C3

FORM APPROVED
OMB NO. 0938-0400

OBSERVATION / INTERVIEW RECORD REVIEW WORKSHEET

PROVIDER NUMBER	SURVEY DATE	OBSERVATION/INTERVIEW OF: (RESIDENT IDENTIFIER)

INSTRUCTIONS

1. Observe each resident in sample to identify ADL needs and potential problems. Check appropriate blocks.
2. Interview only residents in sample who are capable and willing.
3. Review each resident's record to ensure assessments, plans, interventions and evaluations are appropriate and current.
4. Note deficiencies on survey report form after reviewing all residents in sample.

NURSING NEEDS

ADL's
- ☐ Bathing
- ☐ Dressing
- ☐ Toileting
- ☐ Transferring
- ☐ Continence
- ☐ Feeding

SKIN
- ☐ Tears/Wounds
- ☐ Ulcers
- ☐ Rashes
- ☐ Flaking
- ☐ Scaling
- ☐ Red Area

DECUBITUS
- ☐ Grade
- ☐ Foul Odor
- ☐ Draining
- ☐ Dressing
- ☐ Unclean
- ☐ Not Dry
- ☐ Not Intact
- ☐ Poor Technique

GROOMING/HYGIENE
- ☐ Eyes/Ears/Mouth
- ☐ Oral/Dental Hygiene
- ☐ Foot Care
- ☐ Facial Hair
- ☐ Hair/Scalp
- ☐ Nails
- ☐ Clothing
- ☐ Shoes/Slippers
- ☐ Odors

POSITIONING
- ☐ Need Present
- ☐ Contracted Extremities
- ☐ Improper Position
- ☐ No Protective Device
- ☐ ROM Improper
- ☐ Lack of Turning as Needed
- ☐ Schedule Not Present
- ☐ Improper Techniques
- ☐ Aseptic/Other

DRESSINGS
- ☐ Present
- ☐ Unclean
- ☐ Not Dry
- ☐ Not Intact
- ☐ Foul Odor
- ☐ Poor Technique

RESTRAINTS
- ☐ Type
- ☐ Inappropriate Application
- ☐ Improper Body Alignment/Support
- ☐ Not Released/Exercised Every 2 Hours
- ☐ Chemically Restrained

BOWEL/BLADDER
- ☐ Incontinent
- ☐ Not Routinely Toileted
- ☐ Commode Not Available
- ☐ Schedule Not Available

CATHETER
- ☐ Present
- ☐ Inappropriate
- ☐ Poor Drainage
- ☐ Drainage System Open
- ☐ No Urine in Bag
- ☐ Urine Leaking
- ☐ Abdomen Distended
- ☐ Tubing Not Clean
- ☐ No I/O Recording
- ☐ Supply Storage Unclean

INJECTIONS
- ☐ Receives Injections
- ☐ Site Red/Swollen
- ☐ Improper Technique
- ☐ Resident Reacts

COLOSTOMY/ILEOSTOMY
- ☐ Present
- ☐ Not Well Regulated
- ☐ Odors
- ☐ Diarrhea/Constipation
- ☐ Site Red/Irritated

PARENTERAL FLUID/IV'S
- ☐ Present
- ☐ Rate Incorrect/Stopped
- ☐ Site Red/Swollen
- ☐ Dressing Unclean
- ☐ Unsafe Splint
- ☐ Improper Label
- ☐ Outdated Solution
- ☐ No I/O Recording

TRACHEOSOTOMY
- ☐ Present
- ☐ Site Red/Swollen
- ☐ Obstructed
- ☐ Unclean
- ☐ Improper Suctioning
- ☐ Equipment Not Available

SUCTIONING
- ☐ Need Present
- ☐ Audible Rales
- ☐ Labored Breathing
- ☐ Drainage
- ☐ Equipment Not Available

RESPIRATORY
- ☐ Congested/Short Breath
- ☐ IPPB Not Available
- ☐ Oxygen Not Available
- ☐ Improper Equipment Use

DIETARY NEEDS
- ☐ Over/Underweight
- ☐ Dehydrated
- ☐ Edema
- ☐ Emaciated
- ☐ Dull/Dry Hair
- ☐ Swollen/Red Tongue
- ☐ Bleeding Gums
- ☐ Cracked Lips
- ☐ Inability to Chew
- ☐ Sallowing Problem
- ☐ Pallor

TUBE FEEDING
- ☐ Present
- ☐ Nutrition Inadequate
- ☐ Poorly Tolerated
- ☐ Vomits
- ☐ Dehydrated
- ☐ Over/Underweight
- ☐ Diarrhea/Constipation
- ☐ Poor Skin Condition
- ☐ Poor Mouth Condition
- ☐ Improper Technique

REHABILITATION NEEDS
- ☐ Cannot Communicate
- ☐ Ineffective Use of Assistive Device
- ☐ Improper Equipment Use
- ☐ Improper Technique
- ☐ Equipment Inadequate

SOCIAL SERVICE NEEDS
- ☐ Not Oriented
- ☐ Not Able to Converse
- ☐ Uncooperative/Disrupts
- ☐ Withdrawn
- ☐ Anxious
- ☐ Confused
- ☐ Lonely
- ☐ Vision/Hearing Needs
- ☐ Mentally Retarded

OTHER
- ☐
- ☐
- ☐
- ☐
- ☐

ACTIVITY NEEDS
- ☐ Not Participating
- ☐ Vision/Hearing
- ☐ Chair/Bedfast
- ☐ Dependence ≥4 ADL's

PATIENT RIGHTS
- ☐ Privacy Not Maintained
- ☐ Staff Not Courteous
- ☐ Not Informed of Rights
- ☐ Mental/Physical Abuse
- ☐ Cannot Exercise Rights
- ☐ Cannot Manage Affairs

NOTES:

Form HCFA-524 (2-86)

SEE REVERSE

RECORD REVIEW

☐ Drug Regimen Review (See SOM Appendix N Part 1).
☐ Satisfactory ☐ Unsatisfactory

ROUTINE REPORTS: ☐ Weights ☐ Lab ☐ X-ray ☐ Other

ASSESSMENT	PLAN	INTERVENTION	EVALUATION

PHYSICIAN SERVICES

☐ Admission Information
☐ Rehabilitation Information
☐ Physical Exam
☐ Written Care Plan
☐ Signs Orders/Notes
☐ Required Visits
☐ Emergency Availability
☐ Review of Care

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

APPENDIX C4

FORM APPROVED
OMB NO. 0938-0400

DRUG PASS WORKSHEET

PROVIDER NUMBER

SURVEY DATE

ERROR RATE ☐

INSTRUCTIONS

1. *Perform Drug Pass Observations on 20 Residents.*
2. *Record Observation of each Opportunity.*
3. *Compare Observation Notes with Physician Orders.*
4. *Calculate and Note Error Rate.*
5. *Note Deficiencies on Survey Report Form.*

DEFICIENCY FORMULA

1. *One or more Significant Errors = Deficiency*
2. $\frac{\text{Significant + Non-significant}}{\text{Doses Given + Doses Ordered But Not Given}} \times 100$ *≥5% = Deficiency*

IDENTIFIER	POUR	PASS	RECORD
RESIDENT'S FULL NAME, ROOM NUMBER, TIME	DRUG PRESCRIPTION NAME, DOSE AND FORM	OBSERVATION OF ADMINISTRATION	DRUG ORDER WRITTEN AS: *(IF DIFFERS FROM ADMINIS ONLY)*

FORM HCFA-522 (2-86)

SEE REVERSE

DRUG ERROR CALCULATION
(SEE SOM Appendix N Part 2)

How to Calculate a Medication Error Rate—In calculating the percentage of errors, the numerator in the ratio is the total number of errors that you observe, both significant and non-significant. The denominator is all the doses observed being administered **plus** the doses ordered but not administered. The equation for calculating a medication error rate is as follows:

$$\text{Medication Error Rate} = \frac{\text{Number of errors observed}}{\text{Opportunities for errors}} \times 100$$

Where: Opportunities for errors equals the number of doses administered **plus** the number of doses ordered but not administered.

Comments

For example, you observed the administration of drugs to 20 patients. There were a total of 47 drugs administered (47 opportunities for errors). At the completion of the reconciliation of your Observations with the physicians' orders, you find that three medication errors were made in administration and one medication was omitted (ordered but not administered). The omitted dose is included in both the numerator and the denominator. Therefore, following the above formula, your equation would be as follows:

$$\frac{3 + 1}{47 + 1} \times 100 = 8.3\%$$

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH CARE FINANCING ADMINISTRATION

APPENDIX C5

FORM APPROVED
OMB NO. 0938-0400

DINING AREA & EATING ASSISTANCE WORKSHEET

PROVIDER NUMBER	SURVEY DATE

INSTRUCTIONS

TASKS 1. Observe Dining Area.
2. Note Meals Served/Review Physicians Orders.
3. Note Assistance Provided.
4. Note Deficiencies on Survey Summary Form.

➡ *SAMPLE A MINIMUM OF FIVE (5) RESIDENTS ⬅

1. DINING AREA AND MEALS

a. Size does not restrict movement.

b. Accommodates all residents.

c. Cleanliness.

d. Adequate/comfortable lighting.

e. Adequate/comfortable ventilation.

2. SERVING OF MEALS *

a. Number of meals/time span between meal.

b. Conformance to physicians order.

c. Nutritional adequacy.

d. Adequacy of portions.

e. Residents eat approximately 75% of meals.

f. Puree dishes served individually.

g. Food cut, chopped or ground for individual resident needs.

h. Acceptable taste.

i. Proper temperature.

j. Plates covered.

FORM HCFA-523 (2-86)

SEE REVERSE

2. SERVING OF MEALS * *(continued)*

k. Served promptly.

l. Residents ready for meal when served.

m. Attractive.

n. Utensils available.

o. Functional trays for bedfast residents.

p. Salt, pepper, sugar, other condiments on resident's trays unless contraindicated.

q. Medically able residents eating in dining area.

r. Bedtime nourishment offered.

3. SUPERVISION OF RESIDENT NUTRITION

a. Prompt assistance.

b. Proper assistance (spoon-feeding; supervision or instruction to develop eating skills).

c. Courteous and unhurried assistance.

d. Self-help devices present (straws, easy grip utensils, special cup, etc.).

e. Intake recorded/deviations from normal are reported.

Appendix D—Procedural Guidelines

SNF/ICF Survey Process

The purpose for implementing a new SNF/ICF survey process is to access whether the quality of care, as intended by the law and regulations, and as needed by the resident, is actually being provided in nursing homes. Although the onsite review procedures have been changed, facilities must continue to meet all applicable Conditions/Standards, in order to participate in Medicare/Medicaid programs. That is, the methods used to compile information about compliance with law and regulations are changed; the law and regulations themselves are not changed. The new process differs from the traditional process, principally in terms of its emphasis on resident outcomes. In ascertaining whether residents' grooming and personal hygiene needs are met, for example, surveyors will no longer routinely evaluate a facility's written policies and procedures. Instead, surveyors will observe residents in order to make that determination. In addition, surveyors will confirm, through interviews with residents and staff, that such needs are indeed met on a regular basis. In most reviews, then, surveyors will ascertain whether the facility is *actually* providing the required and needed care and services, rather than whether the facility is *capable* of providing the care services.

The Outcome-Oriented Survey Process—Skilled Nursing Facilities (SNFs) and Intermediate Care Facilities (ICFs)

General

A complete SNF/ICF facility survey consists of three components:

- Life Safety Code requirements;
- Administrative and structural requirements (Part A of the Survey Report, Form HCFA–525); and
- Direct resident care requirements (Part B of the Survey Report, Form HCFA–519), along with the related worksheets (Forms HCFA–520 thru 524)

Use this survey process for all surveys of SNFs and ICFs—whether freestanding, distinct parts, or dually certified. Do not use this process for surveys of Intermediate Care Facilities for Mentally Retarded (ICFs/MR), swing-bed hospitals or skilled nursing sections of hospitals that are not separately certified as SNF distinct parts.

The Survey Tasks

Listed below are the survey tasks for easy reference:

- Task 1. Entrance Conference
- Task 2. Resident Sample—Selection Methodology
- Task 3. Tour of the Facility
  - —Resident Needs
  - —Physical Environment
  - —Meeting with Resident Council Representatives
  - —Tour Summation and Focus of Remaining Survey Activity
- Task 4. Observation/Interview/Medical Record Review of Each Individual in the Resident Sample (including drug regimen review)
- Task 5. Drug Pass Observation
- Task 6. Dining Area and Eating Assistance Observation
- Task 7. Forming the Deficiency Statement (if necessary)
- Task 8. Exit Conference

Task 1—Entrance conference

Perform these activities during the entrance conference in every certification and recertification survey:

- Introduce all members of the team to the facility staff, if possible, even though the whole team may not be present for the entire entrance conference. (All surveyors wear identification tags.)
- Explain the SNF/ICF survey process as resident centered in focus, and outline the basic steps.
- Ask the facility for a list showing names of residents by room number with each of the following care needs/treatments identified for each resident to whom they apply:
  - —Decubitus care
  - —Restraints
  - —Catheters
  - —Injections
  - —Parenteral fluids
  - —Rehabilitation service
  - —Colostomy/ileostomy care
  - —Respiratory care
  - —Tracheostomy care
  - —Suctioning
  - —Tube feeding

Use this list for selecting the resident sample.

- Ask the facility to complete page 2 of Form HCFA–519 (Resident Census) as soon as possible, so that the information can further orient you to the facility's population. In a survey of a SNF with a distinct part ICF, you may collect two sets of census data. However, consolidate the information when submitting it to the regional office. You may modify the Resident Census Form to include the numbers of licensed and certified beds, if necessary.
- Ask the facility to post signs on readily viewed areas (at least one on each floor) announcing that State surveyors are in the facility performing an "inspection," and are available to meet with residents in private. Also indicate the name and telephone number of the State agency. Hand printed signs with legible, large letters are acceptable.
- If the facility has a Resident Council, make mutually agreeable arrangements to meet privately with the president and officers and other individuals they might invite.
- Inform the facility that interviews with residents and Resident Councils are conducted privately, unless they request otherwise, in order to enhance the development of rapport as well as to allay any resident anxiety. Tell the facility that information gathered from interviews is always balanced with information from the tour, observations, discussions and record review as well as information given by facility officials. Point out that the facility will be given an opportunity to respond to all findings.

Task 2—Resident Sample—Selection Methodolgy

This methodology is aimed at formulating a sample that reflects the actual distribution of care needs/treatments in the facility population.

Primarily performed on a random basis, it also ensures representation in the sample of certain care needs and treatments that are assessed during the survey.

A. *Sample size*—Calculate the size of the sample according to the following guide:

Number of residents in facility	Number of residents in sample [1]
0–60	25 percent of Residents (Minimum—10)
61–120	20 percent of Residents (Minimum—15)
121–200	15 percent of Residents (Minimum—24)
201+	10 percent of Residents (Minimum—30)

[1] Maximum—50.

Note: That the calculation is based on the resident census, not beds. After determining the appropriate sample size, select residents for the sample in a random manner. You may, for example, select every fifth resident from the resident census, beginning at a random position on the list. For surveys of dually certified facilities or distinct part SNFs/ICFs, first use the combined SNF/ICF population to calculate the size of the sample, and then select a sample that reflects the proportions of SNF and ICF residents in the facility's overall population.

B. *Special care needs/Treatments*—The survey form specifies several care needs/treatments that must always be reviewed when they apply to any facility residents. These include:

- Decubitus Care (F117)
- Restraints (F118)
- Catheters (F120)
- Injections, Parenteral Fluids, Colostomy/Ileostomy, Respiratory Care, Tracheostomy Care, Suctioning, Tube Feeding (F121)
- Rehabilitative Services (physical therapy, speech pathology and audiology services, occupational therapy) (F198, 201)

Due to the relatively low prevalence of these care needs/treatments, appropriate residents may be either under-represented or entirely omitted from the sample. Therefore, determine during the tour how many residents in the random selection fall into each of these care categories. Then, compare the number of such residents in the random selection with the total number of residents in the facility with each specified care need/treatment (based on either the resident census or other information provided by the facility).

Review no less than 25 percent of the residents in each of these special care needs/treatments categories. For example, if the facility has 10 residents with decubitus ulcers, but only one of these residents is selected randomly, review two more residents with decubitis ulcers (25% of 10 equals 2.5, so review a total of 3). Or, if the facility has two residents who require tube feeding, neither of whom is in the random selection, review the care of at least one of these residents. This can be accomplished using either Option A or Option B.

Option A.—Whenever possible, conduct in-depth reviews of the randomly selected residents and then perform limited reviews of additional residents as needed to cover the specified care categories. Such reviews are limited to the care and services related to the pertinent care areas only, e.g., catheters, restraints, or colostomy. Utilize those worksheets or portions of worksheets which are appropriate to the limited review. Refer to the Care Guidelines, as a resource document, when appropriate.

Option B.—If time constraints do not allow this approach, you may substitute residents from the specified care categories for some of those in the randomly selected group. However, the substitutions may not make up more than 50 percent of the total sample. Then conduct a full observation/interview/record review of all the residents in the sample including the substituted residents. The following example illustrates how this method operates:

Total Number of Residents in Facility=130
Sample Size=24

Care category	Total number of residents in facility who are within this category	Number of residents in random selection who are within this category	Number of additional residents substituted to achieve at least 25% of residents within this category
Catheters	0		
Respiratory care	0		
Tracheostomy care	0		
Suctioning	0		
Rehabilitation services	8	1	1
Decubitus care	7	1	1
Restraints	9	1	2
Parenteral fluids	3	0	1
Tube feeding	11	1	2
Injections	12	3	0
Colostomy care	5	0	2
Total			9

Nine substitutions are needed. Thus, 15 residents remain in the sample from the random selection, which is well above the 50 percent requirement. Conduct a full OIRR for the nine substitutions as well as the 15 randomly selection.

Note.—Should the time constraints allow for some, but not all, additional residents as prescribed in Option A above, you may conduct a limited review of some of the additional residents and a full OIRR for the others.

Using the same example, this approach would operate asd follows:

Care category	Total residents	Random selection	Additional reviews needed to achieve 25%	Additional limited reviews	Substitutions (full OIRR)
Catheters	0				
Respiratory care	0				
Tracheostomy care	0				
Suctioning	0				
Rehabilitation	8	1	1	0	1
Decubitus care	7	1	1	0	1
Restraints	9	1	2	1	1
Parenteral fluids	3	0	1	0	1
Tube feeding	11	1	2	1	1
Injections	12	3	0	0	0
Colostomy care	5	0	2	2	0
Total			9	4	5

In every instance the total number of limited reviews and the total number of substitutions will equal the total additional reviews needed. In this example, four of the nine additional reviews are limited; five are full reviews and substituted for randomly selected residents who don't have care needs/treatments in the specified categorgies.

Finally, keep in mind that neither the random selection approach nor the targeted review of residents within the specified care categories precludes investigation of other resident care situations that you believe might pose a serious threat to a resident's health or safety.

Task 3—Tour of the Facility

A. *Purpose.*—Conduct the tour in order to:

- Assess the types and patterns of care delivery present within the facility;
- Focus on physical environment requirements; and
- Ascertain whether randomly selected residents are communicative and willing to be interviewed.

B. *Protocol.*—You may tour the entire facility as a team or separately, as long as all areas of the facility are examined by at least one team member. Success of the latter approach, however, is largely dependent on open intra-team communication and the ability of each team member to identify situations for further review by the team member of the appropriate discipline. You may conduct the tour with or without a staff accompanying you, as you prefer. Facilities, however, vary in staff member availability. Record your notes on the Tour Notes Worksheet, Form HCFA–521.

Allow approximately three hours for the tour. Converse with residents, family members/significant others (if present), and staff, asking open-ended questions in order to confirm observations, obtain additional information, or corroborate information (e.g., accidents, odors, apparent inappropriate dress, adequacy and appropriateness of activities). Converse sufficiently with residents selected for in-depth review to ascertain whether they are willing to be interviewed and are communicative. Observe staff interactions with other staff members as well as with residents for insight into matters such as resident rights and assignments of staff responsibilities.

Always knock and/or get permission before entering a room or interrupting privacy. If you wish to inspect a resident's skin, observe a treatment procedure, or observe a resident who is exposed, courteously ask permission from the resident if she/he comprehends, or ask permission from the staff nurse if the resident cannot communicate. Do not do "hands-on" monitoring such as removal of dressings; ask staff to remove a dressing or handle a resident.

C. *Resident needs.*— While touring, focus on each resident's needs—physical, emotional, psychosocial, or spiritual—and whether those needs are being met. Refer to the following list as needed:

—Personal hygiene, grooming, and appropriate dress
—Position
—Assistive and other restorative devices
—Rehabilitation issues
—Functional limitations in ADL
—Functional limitations in gait, balance and coordination
—Hydration and nutritional status
—Resident rights
—Activity for time of day (appropriate or inappropriate)
—Emotional status
—Level of orientation
—Awareness of surroundings
—Behaviors
—Cleanliness of immediate environment (wheelchair, bed, bedside table, etc.)
—Odors
—Adequate clothing and care supplies as well as maintenance and cleanliness of same.

D. *Review of the physical environment.*—As you tour each resident's room and auxiliary rooms, also examine them in connection with the physical environment requirements. You need not document physical environment on the Tour Notes Worksheet. Instead, you may note any negative findings directly on the Survey Report Form in the remarks section.

E. *Meeting with resident council representatives.*—If a facility has a Resident Council, one or more surveyors meet with the representatives in a private area. Facility staff members do not attend unless specifically requested by the Council. Explain the purpose of the survey and briefly outline the steps in the survey process, i.e., entrance conference . . . exit conference. Indicate your interest in learning about the strengths of the facility in addition to any complaints or shortcomings. State that this meeting is one part of the information gathering; the findings have not yet been completed nor the conclusions formulated. Explain further, however, that the official survey findings are usually available within three months after the completion of the survey, and give the telephone number of the State agency office.

Use this meeting to ascertain strengths and/or problems, if any, from the consumer's perspective, as well as to develop additional information about aspects of care and services gleaned during the tour that were possibly substandard.

Conduct the meeting in a manner that allows for comments about any aspect of the facility. (See the section on Interview Procedures.) Use open-ended questions such as:

- "What is best about this home?"
- "What is worst?"
- "What would you like to change?"

In order to get more detail, use questions such as:

- "Can you be more specific?"
- "Can you give me an example?"
- "What can anyone else tell me about this?"

If you wish to obtain information about a topic not raised by the residents, use an approach like the following:

- "Tell me what you think about the food/staff/cleanliness here."
- "What would make it better?"
- "What don't you like? What do you like?"

F. *Tour summation and focus of remaining survey activity.*—When the tour is completed, review the resident census data provided by the facility. Determine if the care categories specified in the section on Resident Sample are sufficiently represented in the random selection, make adjustments as needed, and complete the listing of residents on the worksheet labeled "Residents Selected for In-depth Review", Form, HCFA–520.

Transcribe notes of a negative nature onto the SRF in the "Remarks" column under the appropriate rule. Findings from a later segment in the survey or gathered by another surveyor may combine to substantiate a deficiency. You need not check "met" or "not met" at this point in the survey. Discuss significant impressions/conclusions at the completion of each subsequent survey task, and transfer any negative findings onto the Survey Report Form in the Remarks section.

Task 4—Observation/Interview/Medical Record Review (Including Drug Regimen Review)

Perform the in-depth review of each individual in the resident sample in order to ascertain whether the facility is meeting resident needs. Evaluate specific indicators for each resident, utilizing the front and back of the "Observation/Interview/Record Review (OIRR)" worksheet. Form HCFA–524. You may prefer to perform the record review first, complete resident/staff/family observations and interviews, and finally, return to the record for any final unresolved issues. On the other hand, you may prefer to do the interviews first. Either method is acceptable. Whenever possible, however, complete one resident's observation/interview/medical record review and document the OIRR before moving onto another

resident. If because of the facility layout, it is more efficient to do more than one record review at a time, limit such record review to two or three residents so your familiarity with the particular resident and continuity of the OIRR are not compromised.

A. *Observation.*—Conduct observations concurrently with interviews of residents, family/significant others, and discussions with direct care staff. Maintain respect for resident privacy. Minimize disruption of the operations of the facility or impositions upon any resident as much as possible. Based upon your observations of the residents' needs, gather information about any of the following areas, as appropriate:

Bowel and bladder training
Catheter care
Restraints
Injections
Parenteral fluids
Tube feeding/gastrostomy
Colostomy/ileostomy
Respiratory therapy
Tracheostomy care
Suctioning

B. *Interviews.*—Interview each resident in private unless he/she specifically requests that a particular individual be present. Conduct the in-depth interview in a nonthreatening and noninvasive fashion so as to decrease anxiety and defensiveness. The open-ended approach described in the section on the Resident Council is also appropriate for the in-depth interview. While prolonged time expenditure is not usually a worthwhile use of resources or the resident's time, do allow time initially to establish rapport.

At each interview:

- Introduce yourself.
- Address the resident by name.
- Explain in simple terms the reason for your visit (e.g., to assure that the care and services are adequate and appropriate for each resident).
- Briefly outline the process—entrance conference, tour, interviews, observations, review of medical records, resident interviews, and exit conference.
- Mention that the selection of a particular resident for an interview is not meant to imply that his/her care is substandard or that the facility provides substandard care.
- Assure that you will strive for anonymity for the resident and that the interview is used in addition to medical records, observations, discussions, etc., to capture an accurate picture of the treatment and care provided by the facility. Explain that the official findings of the survey are usually available to the public about three months after completion of the survey, but resident names are not given to the public.
- When residents experience difficulty expressing themselves:

—avoid pressuring residents to verbalize
—accept and respond to all communications
—ignore mistakes in word choice
—allow time for recollection of words
—encourage self-expression through any means available.

- When interviewing residents with decreased receptive capacity:

—speak slowly and distinctly
—speak at conversational voice level
—sit within the resident's line of vision.

- Listen to all resident information/allegations without judgment. Respond without judgment, for each allegation must be corroborated, and information gathered subsequently may well repudiate an allegation.

The length of the interview varies, depending on the condition and wishes of the resident and the amount of information supplied. Expect the average interview, however, to last approximately 15 minutes. Courteously terminate an interview whenever the resident is unable or unwilling to continue, or is too confused or disoriented to continue. Do, however, perform the other activities of this task (observation and record review). If, in spite of your conversing during the tour, you find that less than 40 percent of the residents in your sample are sufficiently alert and willing to be interviewed, try to select replacements so that a complete OIRR is performed for a group this size, if possible. There may be situations, however, where the resident population has a high percentage of confused individuals and this percentage is not achievable. Expect that the information from confused individuals can be, but is not necessarily, less reliable than that from more alert individuals.

Include the following areas in the interview of each resident in the sample:

Activities of daily living
Grooming/hygiene
Nutrition/dietary
Restorative/rehabilitation care and services
Activities
Social services
Resident rights.

Refer to the Care Guidelines "evaluation factors" as a resource for possible elements to consider when focusing on particular aspects of care and resident needs.

Document information obtained from the interviews/observations on the OIRR Worksheet. Record in the "Notes" section any additional information you may need in connection with substandard care or services. Unless the resident specifically requests that he/she be identified, do not reveal the source of the information gleaned from the interview.

C. *Medical record review.*—The medical record review is a three-part process, which involves first reconciling the observation/interview findings with the record, then reconciling the record against itself, and lastly performing the drug regimen review.

Document your findings on the OIRR Worksheet, as appropriate, and summarize on the Survey Report Form the findings that are indicative of problematic or substandard care. Be alert for repeated similar instances of substandard care developing as the number of completed OIRR Worksheets increases.

Note.—The problems related to a particular standard or condition could range from identical (e.g., meals not in accordance with dietary plan) to different but related (e.g., nursing services—lapse in care provided to residents with catheters, to residents with contractures, to three residents needing assistance for personal hygiene and residents with improperly applied restraints).

1. *Reconciling the observation/interview findings with the record.* Determine if:

- An assessment has been performed.
- A plan with goals has been developed.
- The interventions have been carried out.
- The resident has been evaluated to determine the effectiveness of the interventions.

For example, if a resident has developed a decubitus ulcer while in the facility, record review can validate staff and resident interviews regarding the facility's attempts at prevention. Use your own judgment: review as much of the record(s) as necessary to evaluate the care planning. Note that facilities need not establish specific areas in the record stating "Assessment," "Plan," "Intervention," or "Evaluation" in order for the documentation to be considered adequate.

2. *Reconciling the record with itself.* Determine:

- If the resident has been properly assessed for all his/her needs.
- That normal and routine nursing practices such as periodic weights, temperatures, blood pressures, etc., are performed as required by the resident's conditions.

3. *Performing the drug regimen review.*—The purpose of the drug

regimen review is to determine if the pharmacist or R.N., as appropriate, has reviewed the drug regimen on a monthly basis. Follow the procedures in Part One of Appendix N, Surveyor Procedures for Pharmaceutical Service Requirements in Long-Term Care Facilities. Fill in the appropriate boxes on the top left hand corner of the reverse side of the OIRR Worksheet, Form HCFA–524. Appendix N lists many irregularities that can occur. Review at least six different indicators on each survey. However, the same six indicators need not be reviewed on every survey.

Note.—If you detect irregularities and the documentation demonstrates that the pharmacist has notified the attending physician, do not cite a deficiency. Do, however, bring the irregularity to the medical director or other facility official and note the official's name and date of notification on the Survey Report Form.

Task 5—Drug Pass Observation

The purpose of the drug pass observation is to observe the actual preparation and administration of medications to residents. With this approach, there is no doubt that the errors detected, if any, are errors in drug administration, not documentation. Follow the procedure in Part Two of Appendix N, Surveyor Procedures for Pharmaceutical Service Requirements in Long–Term Care Facilities, and complete the Drug Pass Worksheet, form HCFA–522. Be as neutral and unobtrusive as possible during the drug pass observation. Whenever possible, select one surveyor to observe the drug pass of approximately 20 residents. In facilities where fewer than 20 residents are receiving medications, review as many residents receiving medications as possible. Residents selected for the in-depth review need not be included in the group chosen for the drug pass; however, their whole or partial inclusion is acceptable. In order to get a balanced view of a facility's practices, observe more than one person administering a drug pass, if feasible. This might involve observing the morning pass one day in Wing A, for example, and the morning pass the next day in Wing B.

Transfer findings noted on the "Drug Pass" worksheet to the SRF under the appropriate rule. If your team concludes that the facility's medication error rate is 5 percent or more, cite the deficiency under Nursing Services/Administration of Drugs. Report the error rate under F209. If the deficiency is at the standard level, cite it in Nursing Services, rather than Pharmacy.

Task 6—Dining Area and Eating Assistance Observation

The purpose of this task is to ascertain the extent to which the facility meets dietary needs, particularly for those who require eating assistance. This task also yields information about staff interaction with residents, promptness and appropriateness of assistance, adaptive equipment and usage availability, as well as appropriateness of dress and hygiene for meals.

For this task, use the worksheet entitled "Dining Area and Eating Assistance Observation" (Form HCFA–523). Observe two meals; for a balanced view, try to observe meals at different times of the day. For example, try to observe a breakfast and a dinner rather than two breakfasts. Give particular care to performing observations as unobtrusively as possible. Chatting with residents and sitting down nearby may help alleviate resident anxiety over the observation process.

Select a minimum of five residents for each meal observation and include residents who have their meals in their rooms. Residents selected for the in-depth review need not be included in the dining and eating assistance observation; however, their whole or partial inclusion is acceptable. Ascertain the extent to which the facility assesses, plans, and evaluates the nutritional care of residents and eating assistance needs by reviewing the sample of 10 or more residents. If you are unable to determine whether the facility meets the standards from the sample reviewed, expand the sample and focus on the specific area(s) in question, until you can formulate a conclusion about the extent of compliance. As with the other survey tasks, transfer the findings noted on the "Dining & Eating Assistance Observation" worksheet to the Survey Report Form.

Task 7—Forming the Deficiency Statement

A. *General.*—The Survey Report Form contains information about all of the negative findings of the survey. Be sure to transfer to the Survey Report Form data from the tour, drug pass observation, dining area and eating assistance observation, as well as in-depth review of the sample of residents. Transfer only those findings which could possibly contribute to a determination that the facility is deficient in a certain area.

Meet as a group in a pre-exit conference to discuss the findings and make conclusions about the deficiencies, subject to information provided by facility officials that may further explain the situation. Review the summaries/conclusions from each task and decide whether any further information and/or documentation is necessary to substantiate a deficiency. Ask the facility for additional information for clarification about particular findings, if necessary. Always consider information provided by the facility. If the facility considers as acceptable, practices which you believe are not acceptable, ask the facility to backup its contention with suitable reference material or sources and submit them for your consideration.

B. *Analysis.*—Analyze the findings on the Survey Report Form for the degree of severity, frequency of occurrence and impact on delivery of care or quality of life. The threshold at which the frequency of occurrences amounts to a deficiency varies from situation to situation. One occurrence directly related to a life-threatening or fatal outcome can be cited as a deficiency. On the other hand, a few sporadic occurrences may have so slight an impact on delivery of care or quality of life that they do not warrant a deficiency citation. Review carefully all the information gathered. What may appear during observation as a pattern, may or may not be corroborated by records, staff, and residents. For example, six of the 32 residents in the sample are dressed in mismatched, poorly buttoned clothes. A few of the six are wearing slippers without socks. A few others are wearing worn clothes. Six occurrences might well be indicative of a pattern of substandard care. Close scrutiny of records, discussions with staff, and interviews reveal, however, that the six residents are participating in dressing retraining programs. Those residents who are without socks, chose to do so. The worn clothing items were also chosen—they are favorites.

Combinations of substandard care such as poor grooming of a number of residents, lack of ambulation of a number of residents, lack of attention to positioning, poor skin care, etc., can yield a deficiency in nursing services just as 10 out of 10 residents receiving substandard care for decubiti yields a deficiency.

C. *Deficiencies alleged by staff or residents.*—If staff or residents allege deficiencies, but records, interviews, and observation fail to confirm the situation, it is unlikely that a deficiency exists. Care and services that are indeed confirmed by the survey to be in compliance with the regulatory requirements, but considered deficient

by residents or staff, cannot be cited as deficient for certification purposes. On the other hand, if an allegation is of a very serious nature (e.g., patient abuse) and the tools of record review and observation are not effective because the problem is concealed, obtain as much information as possible or necessary to ascertain compliance, and cite accordingly. Residents family, or former employees may be helpful for information gathering.

D. *Composing the deficiency statement.*—Write the deficiency statement in terms specific enough to allow a reasonably knowledgeable person to understand the aspect(s) of the requirement(s) that is (are) not met. Do not delve into the facility's policies and procedures to determine or speculate on the root cause of a deficiency, or sift through various alternatives in an effort to prescribe an acceptable remedy. Indicate the data prefix tag and regulatory citation, followed by a summary of the deficiency and supporting findings using resident identifiers, not resident names, as in the following example:

F102 SNF 405.1123(b).—Each resident has not had a physician's visit at least once every 30 days for the first 90 days after admission. Resident #1602 has not been seen by a physician since she was admitted 50 days ago. Her condition has deteriorated since that time (formulation of decubiti, infections).

When the data prefix tag does not repeat the regulation, also include a short phrase that describes the prefix tag (e.g., F117 decubitus ulcer care). List the data tags in numerical order, whenever possible.

Task 8—Exit Conference

The purpose of the exit conference is to inform the facility of survey findings and to arrange for a plan of correction, if needed. Keep the tone of the exit conference consistent with the character of the survey process—inspection and enforcement. Tactful, business-like, professional presentation of the findings is of paramount importance. Recognize that the facility may wish to respond to various findings. Although deficiency statements continue to depend, in part, on surveyor professional judgment, support your conclusions with resident-specific examples (identifiers other than names) whenever you can do so without compromising confidentiality. Before formally citing deficiencies, discuss any allegations or findings that could not be substantiated during earlier tasks in the process. For example, if information is gathered that suggests a newly hired R.N. is not currently licensed, ask the facility officials to present current licensure information for the nurse in question. Identify residents when the substandard care is readily observed or discerned through record review. Ensure that the facility improves the care provided to all affected residents, not only the identified residents. Make clear to the facility that during a follow-up visit the surveyors may review residents other than those with significant problems from the original sample, in order to see that the facility has corrected the problems overall. Do not disclose the source of information provided during interviews, unless the resident has specifically requested you to inform the facility of his/her comments or complaints. In accordance with your Agency's policy, present the Deficiency Statement, form HCFA–2567, on site or after supervisory review, no later than 10 calendar days following the survey.

Plan of Correction

Explain to the facility that your role is to identify care and services which are not consistent with the regulatory requirements, rather than to ascertain the root causes of deficiencies. Each facility is expected to review its own care delivery. Subsequent to the exit conference, each facility is required to submit a plan of correction that identifies necessary changes in operation that will assure correction of the cited deficiencies. In reviewing and accepting a proposed plan of correction, apply these criteria:

- Does the facility have a reasonable approach for correcting the deficiencies?
- Is there a high probability that the planned action will result in compliance?
- Is compliance expected timely?

Plans of correction specific to residents identified on the deficiency statement are acceptable only where the deficiency is determined to be unique to that resident and not indicative of a possible systemic problem. For example, as a result of an aide being absent, two residents are not ambulated three times that day as called for in their care plans. A plan of correction that says "Ambulate John Jones and Mary Smith three times per day," is not acceptable. An acceptable plan of correction would explain changes made to the facility's staffing and scheduling in order to guarantee that staff is available to provide all necessary services for all residents.

Acceptance of the plan of correction does not absolve the facility of the responsibility for compliance should the implementation not result in correction and compliance. Acceptance indicates the State agency's acknowledgement that the facility indicated a willingness and ability to make corrections adequately and timely.

Allow the facility up to 15 days to prepare and submit the plan of correction to the State agency, however, follow your SA policy if it is a shorter timeframe. Retain the various survey worksheets as well as the Survey Report Form at the State agency. Forward the deficiency statement to the HCFA regional office.

Follow-Up Surveys

The purpose of the follow-up survey is to re-evaluate the specific types of care or care delivery patterns that were cited as deficient during the original survey. Ascertain the corrective status of all deficiencies cited on the Form HCFA–2567. Because this survey process focuses on the actual provision of care and services, revisits are usually necessary to ascertain whether the deficiencies have indeed been corrected. The nature of the deficiencies dictates the scope of the follow-up visit. Use as many tasks or portions of the Survey Report Form(s) as needed to ascertain compliance status. For example, you need not perform another drug pass if no drug related deficiencies were cited on the initial survey. Similarly, you need not repeat the dining area and eating assistance observations if no related problems were identified. All or some of the aspects of the observation/interview/medical record review, however are likely to be appropriate for the followup survey.

When selecting the resident sample for the followup, determine the sample size using the same formula as used earlier in the survey, with the following exceptions:

- The maximum sample size is 30 residents, rather than 50.
- The minimum sample size of 10 residents does not apply if only one care category was cited as deficient and the total number of residents in the facility in that category was less than 10 (e.g., deficiency cited under catheter care and only five residents have catheters).

Include sample these residents who, in your judgment, are appropriate for reviewing vis-a-vis the cited substandard care. If possible, include some residents identified as receiving inadequate care during the initial survey. If after completing the follow-up activities you determine that cited deficiencies were not corrected, initiate adverse action procedures.

Role of Surveyor

The survey and certification process is intended to determine whether

providers and suppliers meet program participation requirements. The primary role of the surveyor, then, is to assess the quality of care and services and to relate those findings to statutory and regulatory requirements for program participation.

When you find substandard care or services in the course of a survey, carefully document your findings. Explain the deficiency in sufficient detail so that the facility officials understand your rationale. If the cause of the deficiency is obvious, share the information with the provider. For example, if you cite a deficiency for restraints (F118), indicate that restraints were applied backwards on residents 1621, 1634, 1646, etc.

In those instances where the cause is not obvious, do not delve into the facility's policies and procedures to determine the root cause of any deficiency. Do not recommend or prescribe an acceptable remedy. The provider is responsible for deciding on and implementing the action(s) necessary for achieving compliance. For the restraint situation in the example above, you would not ascertain whether the improper application was due to improper training or lack of training, nor would you attempt to identify the staff member who applied the restraints. It is the provider's responsibility to make the necessary changes or corrections to ensure that the restraints are applied properly.

A secondary role for the surveyor is to provide general consultation to the provider/consumer community. This includes meeting with provider associations and other groups as well as participating in seminars. It also includes informational activities, whereby you respond to oral or written inquiries about required outcomes in care and services.

Confidentiality and Respect for Resident Privacy

Conduct the survey in a manner that allows for the greatest degree of confidentiality for residents, particularly regarding the information gathered during the in-depth interviews. When recording observations about care and resident conditions, protect the privacy of all residents. Use a code such as resident identifier number rather than names on worksheets whenever possible. Never use a resident's name on the Deficiency statement, Form HCFA–2567. Block out resident names, if any, from any document that is disclosed to the facility, individual or organization.

When communicating to the facility about substandard care, fully identify the resident(s) by name if the situation was identified through observation or record review. Improperly applied restraints, expired medication, cold food, gloves not worn for a sterile procedure, and diet inconsistent with order, are examples of problems which can be identified to the facility by resident name. Information about injuries due to broken equipment, prolonged use of restraints, and opened mail is less likely to be obtained through observation or record review. Do not reveal the source of information unless actually observed, discovered in the record review, or requested by the resident or family.

Team Composition

Whenever possible, use the following survey team model:

SNF/ICF survey team model. In facilities with 200 beds or less, the team size may range from 2 to 4 members. If the team size is:

- *2 members:* The team has at least one RN plus another RN or a dietitian or a pharmacist.
- *3–4 members:* In addition to the composition described above, one or two members of any discipline such as a social worker, sanitarian, etc.

If the facility has over 200 beds and the survey will last more than 2 days the team size may be greater than 4 members. Select additional disciplines as appropriate to the facility's compliance history.

Average onsite time per survey: 60 person hours (Number of Surveyors multiplied by the number of hours on site).

Preferably, team members have gerontological training or experience. Any member may serve as the team leader, consistent with State agency procedures. In followup surveys, select disciplines based on major areas of correction. Include a social worker, for example, if the survey revealed major psychosocial problems. This model does not consider integrated survey and Inspection of Care Review teams, which typically would be larger.

Type of Facility—Application of SNF or ICF Regulations

Apply the regulations to the various types of facilities in the following manner:

- Freestanding Skilled Nursing Facility (SNF)—Apply SNF regulations.
- Freestanding Intermediate Care Facility (ICF)—Apply ICF regulations.
- SNF Distinct Part of a Hospital—Apply SNF regulations.
- ICF Distinct Part of a Hospital—Apply ICF regulations
- Dually Certified SNF/ICF—Apply SNF regulations and 442.346(b).
- Freestanding SNF with ICF Distinct Part (Regardless of the proportion of SNF and ICF beds, the facility type is determined by the higher level of care. Therefore, LTC facilities with distinct parts are defined as SNFs with ICF distinct parts.)

—Apply SNF regulations for SNF unit
—Apply ICF regulations for ICF distinct part
—Apply both SNF and ICF regulations for shared services (e.g., dietary)
—If the same deficiency occurs in both the SNF and ICF components of the facility, cite both SNF and ICF regulations
—If the deficiency occurs in the SNF part only, cite only the SNF regulation
—If the deficiency occurs in the ICF part only, cite only the ICF regulation.

Use of Part A and Part B of the Survey Report

A. *Use of Part A (form HCFA–525).*—Use Part A for initial certification surveys only, except under the following circumstances:

- When a terminated facility requests program participation 60 days or more after termination. Treat this situation as a request for initial certification and complete Part A of the survey report in addition to Part B.
- If an ICF with a favorable compliance history requests to correct a number of beds to SNF level, complete both Part A and Part B for compliance with the SNF requirements. If distinct part status is at issue, also examine whether it meets the criteria for certification as a distinct part.

1. *Addendum for Outpatient Physical Therapy (OPT) or Speech Pathology Services.*—Use the Outpatient Physical Therapy—Speech Pathology SRF (form HCFA–1893) as an addendum to Part A.

2. *Resurvey of participating facilities.*—Do not use Part A for resurveys of participating SNFs and ICFs. A determination of compliance, based on documented examination of the written policies and procedures and other pertinent documents during the initial survey, establishes the facility's compliance status with Part A requirements. This does not preclude citing deficiencies if they pertain to administrative or structural requirements from Part A that are uncovered incidental to a Part B survey. As an assurance measure, however, each facility at the time of recertification must complete an affidavit (on form HCFA–1516) attesting that no substantive changes have occurred that would affect compliance. Each facility must also agree to notify the State agency immediately of any upcoming

changes in its organization or management which may affect its compliance status. If a new administrator is unable to complete the affidavit, proceed with the survey using the Part B form and worksheets; do not use the Part A form. The survey cannot be considered complete, however, until the affidavit is signed. If the facility fails to complete the affidavit, it cannot participate in the program.

3. *Substantial changes in a facility's organization and management.* If you receive such information, review the changes to ensure compliance with the regulations. Request copies of the appropriate documents (e.g., written policies and procedures, personnel qualifications, or agreements) if they were not submitted. If the changes have made continued compliance seem doubtful, determine through a Part B survey whether deficiencies have resulted. Cite any deficiencies on the form HCFA–2567 and follow the usual procedures.

B. *Use of Part B (form HCFA–519).*— Use Part B and the worksheets for all types of SNF and ICF surveys—initials, recertifications, followup, complaints, etc.

The worksheets are:

- HCFA–520—Residents Selected for Indepth Review.
- HCFA–521—Tour Notes Worksheet.
- HCFA–522—Drug Pass Worksheet.
- HCFA–523—Dining Area & Eating Assistance Worksheet.
- HCFA–524—Observation/Interview/Record Review Worksheet.

For complaint investigations, perform a full or partial Part B survey based on the extent of the allegations. If the complaint alleges substandard care in a general fashion or in a variety of services and care areas, perform several tasks or a full Part B survey, as needed. If the complaint is of a more specific nature, such as an allegation of improper medications, perform an appropriate partial Part B survey, such as a drug pass review and a review of selected medical records.

Appendix E—Long Term Care Facility; Skilled Nursing Facility/Intermediate Care Facility (SNF/ICF)—Care Guidelines; January 1987

Introduction

The SNF/ICF—Care Guidelines have been developed as a resource document to complement the material available in the "Interpretive Guidelines." While the "Interpretive Guidelines" are aligned to the regulatory citations for the conditions of participation, the "Care Guidelines" generally follow the data tags in Part B of the SNF/ICF Survey Report form (HCFA 519).

The "Care Guidelines" are not intended to be an operational tool that is followed line by line nor are they global or prescriptive. They should not detract from the surveyor's professional judgment. Instead, the "Care Guidelines" are a resource document for surveyor reference when using the LTC survey forms.

Although the "Care Guidelines" appear in columnar format, it is necessary that the user read down an entire column rather than reading across the page for each area. The content in each column often does not relate by position across the page and the reader must keep this in mind when using the guidelines.

Because the "Care Guidelines" are a resource for Part B of the new SNF/ICF Survey, the language in the first column "survey area" is the same as that used to accompany each data tag on the HCFA 519. To assist surveyors, the regulatory reference is cited so that they may find the companion material easily in the "Interpretive Guidelines."

The "Care Guidelines" describe examples of types of information to be collected and reviewed by the surveyor, thus enabling the surveyor to make informed professional judgments on facility compliance. Consequently, the columns for *Observation, Interviewing* and *Record Review* are constructed to present a sample of key indicators of care for review by the surveyor.

- Observation Column

This column highlights a cross-section of specific areas to monitor, e.g., observing individual resident care and treatment sessions; assessing overall patterns of care delivery and the general physical environment. This column is not an all-inclusive summary, yet it emphasizes the important foci involving patient outcomes. Information obtained during the survey should initiate a more intensive review if a situation warrants further clarification.

- Interviewing Column

Sample questions in this column are provided as a guide to aid the surveyor in his/her individual development of interview questions. They are not intended to restrict the surveyor in either the question format or the type of information elicited from a patient or staff member. For example, the questions as stated could often be answered with yes or no, while in actual practice the surveyor would use open questions that stimulate a more extensive response. Interviewing is a vital component of the outcome-oriented process which functions as a means of gathering information both from the recipient and, in some instances, from the staff in order to evaluate the quality of patient care and treatment within each facility.

- Record Review

Any problems or concerns identified by the surveyor during the tour and interviews should be noted on worksheets prior to the medical record review. This preparatory step is intended to assist the surveyor to focus the record review on specific areas that require further examination for corroboration with the previously collected information. The extent of review of the content of individual medical records is left to the professional judgment of the surveyor based on findings from all components of the survey.

The column on "Evaluation Factors" narrates some of the elements the surveyor should consider when making determinations about compliance. Major areas are mentioned, but this reference information is not exhaustive.

Finally, the "Cross Reference" column is a comprehensive list of areas the surveyor should check as a quality assurance measure. The column should not be used to cite a deficiency solely because the reference information may be related to another survey area. It is important for the surveyor to correlate the actual circumstance with the regulation and interpretive guidelines.

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LONG TERM CARE SURVEY 1

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Residents Rights F44 SNF 405.1121(k)(1) ICF 442.311(a) F45 SNF 405.1121(h)(1) ICF 442.311(a)(1) A. Information* F46 SNF 405.1121(h)(1) ICF 442.311(a)(2) 1. Rights and Responsibilities F47 SNF 405.1121(k)(1) ICF 442.311(a)(3) 2. Rules of Resident Conduct F48 SNF 405.1121(h)(2) ICF 442.311(a)(4) 3. Resident Acknowledgement	Is information concerning resident rights and responsibilities posted in the facility	Ask Resident: - Did you receive a copy of the Resident's Bill of Rights? Was it explained to you? - Were you told of any responsibilities you have in living here? - Were you given a chance to ask questions? - Did he/she receive a written copy of services provided by the facility and any additional costs for these services?	Looked for signed acknowledgement of receipt of resident rights information. Residents unable to sign name may have their "mark" witnessed. Look for written statement of charges services. Social Work records may idicate patient rights information discussed with resident.	Because of the confusion surrounding admission to a new facility and the large amount of information given to a resident or resident's family on admission, information given at this time is often forgotten. Therefore, surveyor should verify resident's recollection with staff interviews and record checks. Written information on services and costs must be given to the resident, as well as copies of residents rights and responsibilities. Copies of residents' rights should also be available to patients and visitors, e.g., in resident lounges, lobbies, or other area where residents and visitors could easily see and read them.	Notification of Change in Status 405.1121(j) 442.307 Patient Care Policies 405.1121(e) 442.308 442.309 442.310 442.305 Medical Director 405.1122(a) Medical Records 405.1132(b)(d) 442.310

INTENT
To assure that the resident maintains, in so far as possible, those personal rights that are a part of normal, adult life, and including the right to personal dignity.

*Information concerning incompetent residents is given in L. Delegation of Rights and Responsibilities.

LONG TERM CARE SURVEY 2

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F49 SNF 405.1121(k)(7) ICF 442.311(a)(4) 4. Resident informed in writing of changes in services and charges for services. F50 SNF 405.1121(k)(2) ICF 442.311(a)(4) 5. Information to resident of services not covered by Medicare or Medicaid and not covered in the basic rate.		Ask Resident: - If there are changes in services or costs does someone explain these? Ask Administrative Staff: - How do residents learn what is expected of them? - How do they learn about any changes in the facility's procedures and/or costs?			

LONG TERM CARE SURVEY 3

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
B. Medical Condition & Treatment F51-55 SNF 405.1121(k)(2) ICF 442.311(b)		Ask Resident: - Has your doctor discussed your health with you, how is it, what's wrong, and what you can expect in the future? - Have you had the opportunity to help plan what you need and how you are taken care of? - Do you know that you can refuse treatment or medication? - Have you ever refused medication or treatment? - What happened when you did? Ask Staff: - Is the facility participating in any experimental research? If yes, ask what residents are involved. Interview a sample of these residents. Ask Resident (or Guardian: - Are you participating in the _____ study? - Was this explained to you well enough so that you understand what the study is about and any risks that may be involved?	If the resident has not been informed of his/her medical condition, physician notes should document that the resident was not informed because it was medically contraindicated. Do care plans or other documentation reflect resident participation in care planning? If resident states he/she has refused treatment or medication does documentation indicate adherence to/violation of resident rights. Review records of residents identified as participating in a clinical research study. Are informed consent forms signed? Do these signed forms list all known risks for the resident? All needed informed consent statements are present and properly signed.	Unless there is documentation that the residents medical condition should not be discussed with him/her resident interviews/record reviews should indicate that the resident and physician have discussed his/her medical condition.* If you cannot confirm that this has occurred, interview staff to get further clarification. Almost all residents who are not comatose are able to participate to some extent in their care planning-you should find evidence of this for the majority of the residents (e.g., care planning interview, nurses notes, social worker progress notes). Residents do have the right to refuse medication or other treatment, but you would expect that the facility would discuss the implications of this refusal with the resident and possibly do some "gentle persuasion".*	Patient Care Management 405.1124(d) 442.319 442.341

LONG TERM CARE SURVEY 4

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F51-55 (cont'd)				However, except in an emergency situation force should never be used to compel a resident to accept medication or treatment. Deceit is also a violation of resident rights. Any resident participating in research studies should fully understand the implication of the study. The facility is not in compliance with the resident rights regulation if the resident consents to participate in a clinical study without full knowledge of the study. (Record review only as other nonclinical studies may not require informed consent).	

LONG TERM CARE SURVEY 5

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
C. Transfer and Discharge F56-58 SNF 405.1121(k)(4) ICF 442.311(c)	Look for residents that may be inappropriately placed physically - an alert resident rooming with a confused, noisy resident; very ill resident placed far from the nurses station; residents not compatable with each other, (e.g., different life-styles, habits, etc.).	Ask Resident: - How well do you get along with your roommate? - Have you ever been moved from one room to another? If yes, why? - How were you involved in the decision to move? - How much time was there between the time they told you you were to be moved, and when you were moved? - Have you asked for your room to be changed? Ask Direct Care and Other Staff: - What are some of the reasons residents rooms are changed? - What are some of the reasons for discharge of residents or transfer to a hospital or LTC facility? - How are residents involved in the decision to move? - If a resident requests a room change, how is this handled? - When a resident requests a room change are the following areas of consideration presented and discussed:	Nursing, physician, and/or social service progress notes should indicate reason for transfer and discussion with resident and/or family/guardian. If staff interviews give you cause to feel that transfers and discharges may be in violation of these regulations, review a sample of closed records for transfer information on how it was handled. If residents are transferred between facilities with common ownership and similar levels of care, transfers must be reviewed to determine reasons for transfer. Efforts to maintain the census is not an acceptable reason for transfer. Do discharge records review: - reason for discharge, medical non-payment or need for different level of care?	To be in compliance with transfer and discharge regulations the facility must be able to confirm that all discharges/transfers were for medical or resident welfare reasons, or non-payment. Welfare reasons include physical, emotional, social issues. Transfers and discharges made solely for the convenvience of the facility are unacceptable. (Relocation to accommodate contagious or other disorders requiring isolation procedures are not for the convenvience of the facility).	Status Change Notification 405.1121(j) Medical Records 405.1132(c)(e) 442.318(c)(4) Transfer Agreement 405.1133(a)(2) 442.307(b)(1)(2)

LONG TERM CARE SURVEY 6

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F56-58 (cont'd)		+ cost factors + resident welfare + resident's reason for requesting the move + facility's assessment of whether the move would be beneficial or not for the resident.			

LONG TERM CARE SURVEY 7

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
D. Exercising Rights F59 SNF 405.1121(k)(5) ICF 442.311(d)	Do residents appear comfortable when speaking to the surveyors as opposed to being afraid that someone may see them or overhear their conversation?	Ask Resident: - Do you belong to, or have representation on the resident council? - Are you informed of changes in the facility that will affect you? - Are you given a chance to express views on these changes prior to their implementation? - Does the facility assist in arranging for you to vote either at the polls or via absentee ballot? - Are you assisted in obtaining legal or Social Services if needed? - Do you feel comfortable in expressing yourself freely or are you concerned about retaliation? - Is staff/administration responsive to complaints? Do you know who to complain to? Ask Staff: - What arrangements are made for residents to vote? - How do you handle it if someone needs a lawyer or other service that you don't provide?	Review resident council documentation to determine level of activity. Review social work or progress notes for legal referrals. Is there documentation in progress notes or elsewhere, of resident complaints and disposition of complaints?	Compliance determinations will be made based primarily on resident/staff interviews and the correlation of interview information with documentation in the Medical record. If residents ask, they should be allowed to speak to the surveyor without facility personnel being present.	Social Services 405.1130 442.344

LONG TERM CARE SURVEY 8

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
E. Financial Affairs F62-69 SNF 405.1121(k)(6) 405.1121(m) ICF 442.311(e) 442.320		Ask Residents: - Are you able to take care of your own financial affairs? - Does the facility keep some money for you that you can have when you request it? - When you ask for this money, how quickly do you get it? - Do you know the amount of money you have available at this time? - If the facility pays bills for you do they periodically provide an itemized listing of the transactions they have made? - When did you receive the last itemized statement? - Are you comfortable that your funds are taken care of correctly? - If you deposit money or valuables with the facility, do you receive a receipt for this deposit? - Are you or your family able to review your financial records when you request to do so? - Have you ever had money or anything else stolen? If so, what was done about it?	A copy of the statement should be in the residents financial record and given to the resident at least quarterly. Receipts, account logs showing deposits/withdrawals, authorization/reasons for withdrawals, and interest earned should be reviewed. If resident indicates there may be a problem, an in-depth interview should be conducted. Resident records indicate separate financial records from facility records.	Residents should have reasonable access to their funds (may not be available at 2 A.M.) and should have at least a quarterly accounting of their funds. If questions arise they should be resolved. Personal possessions and funds received from the residents should be protected from theft and other loss. If losses do occur there should be: 1. a procedure which is implemented to investigate the loss, and 2. a plan to prevent recurrence. Resident funds must not be appropriated for facility furnishings, linen direct care supplies, etc	Social Services 405.1130(a)

LONG TERM CARE SURVEY 9

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F62-69 (cont'd)		- Does the home provide safe-keeping for valuables? - Have they ever lost anything of yours? Ask Staff: - What is the procedure when residents lose personal belongings? Valuables? - How are resident personal funds handled? - What is your procedure when a resident asks to get an accounting of their funds? * The special needs of residents with Alzheimer's disease who "lose" personal possessions should be noted. Individuals in stages 2 and 3 of Alzheimer's disease sometimes believe their personal possessions were stolen.			

LONG TERM CARE SURVEY 10

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F. Freedom From Abuse and Restraints F70-74 SNF 405.1121(k)(7) ICF 442.311(f)	- How many residents are physically restrained? - What type or restraints are used? - Are they applied correctly? - What is the apparent physical/mental condition of those residents restrained? - Do you observe the release of restraints every 2 hours and the provision of at least 10 minutes exercise for the resident? - Do staff respond to request for water, assistance to bathroom, etc., from a resident who is restrained? What is the interval between request and response?	Ask Resident: - Why are you wearing this? - How often is this worn? - Do you know what would happen if it were removed? - How often is it removed? - What is done for you when the restraint is removed? - For nonrestrained resident— + Have you ever been restrained? + For what reason? + What explanation was given for the restraint? - Do you ever feel that you receive medication when you don't need it?	Look for a physician's order for the restraint. Review nurses', physicians' progress notes re: reason for restraints and resident reaction to them. Also any alternative methods tried. What time of day are restraints most often applied? Review schedule of releasing restraints. Care plans: - When restraint is to be used. - For how long. - What are plans for alternative measures. - Is the resident periodically re-evaluated? If appropriate are the Social Service or activities departments involved in providing different directions for resident attention?	There must be a physician's order for all restraints, including "safety devices" which are defined in some State laws. Progress notes should show evidence that methods other than restraints were initially used to protect the resident from injury, and that restraints were used only when other methods were not adequate If used in an "emergency" the reason for use must be documented and show that: a. Its use was necessary to protect the resident from injury. b. Its use was necessary to protect others from injury. The resident must be observed by a staff member at least every 30 mins. while restrained. The restraints must be released and the resident exercised, toileted, etc. at least every 2 hours.	Nursing Services 405.1124(c)(5) Rehab Nursing 405.1124(e) Patient Care Management 405.1124(d)

LONG TERM CARE SURVEY 11

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F70-74 (cont'd)	- How often are restrained residents observed by staff? - Observe effect on residents. Do you see what may be signs of over-medication? - How often is this observed? - Residents should be free from mental and physical abuse. -Observe interaction of staff and residents for any sign of harassment, humiliation or threats. - Do residents appear comfortable with staff? - Look for numbers of residents with bruises or other injuries (skin of the elderly bruises easily, so do not automatically assume abuse or injury). - Observe resident to resident interactions and staff response to any physical or mental abuse of one resident to another.	Ask Staff: - What is the facility policy regarding re: restraints? - What is considered an "emergency" need for restraints? - What is the most common reason for use of restraints? - Do you try any alternative measures before using restraints? - What information do you give the physician to help him make the decision to order restraints? - What do you routinely do for the resident when you periodically release the restraints? - Does use of restraints increase on evenings or nights when there are fewer staff members? - Have you had any accidents or incidents in the last year while residents were restrained? - How do you define the difference between a "safety device" and a "restraint"? - How do your policies differ in regard to "safety devices" and restraints?	Who authorizes the use of restraints in an emergency? Do progress notes indicate that a professional staff member authorized the use of "emergency" restraints? There should be documentation that the use of "emergency" restraint has been promptly reported to the residents physician. Review incident and accident reports to identify any problematic trends. Does the drug regimen review indicate appropriate use of psychoactive drugs? Do progress notes and care plans by all disciplines show a caring, concerned attitude? Are there resident complaints documented? What is the resolution of these complaints?	The restraint must be applied correctly. If the use of restraints increased during evening and night hours review progress notes and staffing to make a determination as to whether the restraints are justified or if they are for staff convenience. Care plans should plan not only for care while the resident is restrained but should show effort to find alternative treatments to restraints, or there should be documentation in the medical record that no alternative is appropriate. An appropriate drug regimen review should be conducted on the resident. Your observations should show interaction between residents and staff to be, except in unusual situations, free from tension and hostility. Staff should step into situation where one resident may be abusing another.	

LONG TERM CARE SURVEY 12

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F70-74 (cont'd)	- Observe for evidence of resident neglect, residents left in urine/feces without cleaning for over an hour.	Ask Resident: - Do you feel safe in the facility? - Do you ever feel intimidated, harassed, or otherwise abused? - How are confused residents treated? - Is anyone ever hit or treated roughly? - Do you feel as if you are treated with respect /dignity? - Is the staff/administration responsive to complaints? - Do you know who to complain to?		Resident should feel free to voice complaints. If no complaints are noted in records or on record review, why not? Residents should seem comfortable in relating how they are treated?	

LONG TERM CARE SURVEY 13

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
6. Privacy F75-80 SNF 405.1121(k)(8)(9)(14) ICF 442.311(g)	- Observe interactions between staff and residents for indications of respect, consideration, dignity and individuality. - How do staff members enter a residents room or go behind a privacy curtain? - Are privacy curtains used or doors shut when personal care needs and/or treatments are rendered? - Are there areas for residents to be alone or meet in private with visitors?	Ask Resident: - Do you feel that you are treated as a worthwhile, adult individual? - Are you given the opportunity to make choices in your life within the facility? (e.g., are all residents "put to bed" at the same time?) - When you are being cared for, are you comfortable? - What is the degree of privacy and respect you receive? - Do you feel comfortable that if the door to your room is closed staff will knock or otherwise make their presence known before entry? - Do you have a private place to make telephone calls? - Are your medical records and condition kept confidential? - Can you see your record if/when you ask? - Has any information about your condition been given to someone outside of the facility without your permission?	Review progress notes for indications that staff see resident as an individual-i.e., resident eats breakfast in bed because he/she enjoys it. Signed consent for release of information. Do maintenance of and content of medical records indicate that confidentiality is practiced?	Observations and interviews will give you information to determine if residents are respected and treated as individuals. If privacy is not provided--e.g., no private place to meet or make phone calls, not allowed to shut door when having visitors, etc. Medical records should not be left where unauthorized personnel can read them and there should be identification codes needed to access computerized records. Married residents should be sharing rooms if they desire to do so unless there are appropriate contradictions.	Medical Records 405.1132(b) 442.318(d)

LONG TERM CARE SURVEY 14

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F75-80 (cont'd)	- Are medical records kept in their assigned spots not carelessly left for nonauthorized persons to view? - Are married residents sharing rooms? - Observe for negative attitudes toward aging-infantilization and patronizing of residents. - If residents undress in public area, how does staff handle this? - Listen to staff conversation in public places (elevator, lobby). Are resident issues being discussed?	For Married Residents: - When your husband/wife visits can you shut your door and be assured of privacy? - Can you ask that you not be disturbed and have that request respected? Ask Staff: - What is done to assure that each resident maintains his/her dignity and individuality? - How are medical records kept secure? Who has access? - Do you have married couples here? - Do they share rooms? - If not, why? - What arrangements do you make for spouses or significant others to visit? - Do you allow their door to be closed? - Can you adhere to a request that they not be disturbed?			

LONG TERM CARE SURVEY 15

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
H. Work F81 SNF 405.1121(k)(10) ICF 442.311(h)	- Are residents doing any type of work such as picking up dirty trays, pushing laundry hampers, etc.? - What about clerical work?	Ask Resident: - Are you ever asked to help out in the facility such as pick up dirty trays or stamp mail? - If yes, do you do this? - Do you want to, or do you feel it is expected of you? - Do you feel you can say "no"? Ask Staff: - Are residents asked to help with facility staff if you are shorthanded? - What is their reaction? - What useful work is available for residents who want/need to be usefully "employed"?	If residents are performing services for the facility, is that included in their care plan with specific therapeutic goals defined? If appropriate does the family concur? Are results documented in progress notes? What service (activities, nursing, etc.) is responsible for planning reevaluating and adjusting work activity? Look for physician's orders for approval or disapproval of work activity or restrictions on this activity. Look for evidence that the resident is given opportunities to refuse to do the work. The resident, however, is not restricted from doing the amount and type of work they desire unless it is in conflict with the plan of care.	Services performed by a resident should be part of the resident's plan of care and should be done only if the resident is in full agreement. Service rewards are specifically identified and not obtained using the residents own funds.	405.1124(d) 442.341

LONG TERM CARE SURVEY 16

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
I. Freedom of Association and Correspondence F82-83 SNF 405.1121(k)(11) (12) ICF 442.311(i)	- Are there areas in the facility-e.g., small lounges, etc.; where residents can and do meet privately? - Is mail delivered opened or unopened? - Are facility personnel assisting residents, if needed, in opening and/or reading mail?	Ask Residents: - Can you have visits from anyone? - Can you find a private place to visit? - Do you receive your mail unopened unless you request otherwise? - Are there telephones you have access to? - Does the staff or volunteers assist you in reading or sending mail, if needed? Ask Staff: - Where do residents go when they want privacy? - What telephones are available to residents? - What is the facility visiting policy?	Physician orders and care plans for indications of restrictions on visitors and/or receiving and sending mail.	All residents may have access to and maintain contact with the community and members of that community have access to them. Subject to reasonable scheduling restrictions, residents may receive visits from anyone they wish. A particular visitor may be restricted by the facility for one of the following reasons: - The resident refuses to see the visitor. - The resident's physician documents specific reasons why such a visit would be harmful to the resident's health. - The visitor's behavior is unreasonably disruptive of the functioning of the facility (reasons are documented and kept on file). Decisions to restrict a visitor are reviewed and reevaluated each time the resident's plan of care and medical orders are reviewed by the physician and nursing staff or at the resident's request.	Resident Rights 405.1121(k)(8) 442.311(g)

LONG TERM CARE SURVEY 17

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F82-83 (cont'd)	Do the available telephones accomodate the physically handicapped (e.g., wheelchair bound, hearing impaired, etc.).			Space is provided for residents to receive visitors in reasonable comfort and privacy. Telephones, consistent with ANSI standards (45.1134(c)), are made available and accessible for residents to make and receive calls with privacy. Residents who need help are assisted in using the phone. The fact that telephone communication is possible, as well as any restrictions, is made known to residents. Arrangements are made to provide assistance to residents who require help in reading or sending mail.	

LONG TERM CARE SURVEY 18

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
J. Activities F84 SNF 405.1121(k)(12) ICF 442.311(j)	- What planned activities are occurring? - What unplanned activities are occurring—individual, 2 or 3 persons or a larger group. - If there is a facility chapel, is it open? - Are activities posted at wheelchair level and kept up to date? - Are residents lined up in front of a T.V. in a common room for hours? - Are activities offered during the evening and on weekends.	Ask Residents: - What do you like to do? - What did you do yesterday? (compare answers) - Is participation in activities optional? - Are you encouraged to participate? - Is pressure exerted on you to attend specific activities? - Which ones? (Surveyors should be aware of special encouragement—"gentle persuasion", which might be important for the depressed or withdrawn resident.) - Are residents notified of community activities? - Are arrangements made for transportation, etc. so that residents can participate? - Can residents go to religious services if they wish? Ask Staff: - Are arrangements ever made to take residents to community activities? - Do friends and relatives ever take them to community activities? - Do your residents attend religious service of their choice? - How are residents kept informed/notified of activities?	Care plans or other documentation should indicate resident preferences for both facility and non-facility planned activities. Progress notes of responses to activities.	Compliance with this element is determined by evidence that residents are given the opportunity to participate in available activities they choose unless medically contraindicated. Residents must not be forced to participate against their wishes.	Patient Activities 405.1131(b) 442.345(a)(c)

LONG TERM CARE SURVEY 19

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
K. Personal Possessions F85 SNF 405.1121(k)(13) ICF 442.311(k)	- Are residents wearing their own clothing or facility nightgowns, robes, etc.? - In resident rooms observe for personal belongings. - Ask residents if you can look in the closet-is personal clothing in there? - Ask residents if belongings such as clothing are identified with name tags or other identifying methods? - Is there enough space to store clothing?	Ask Residents: - What clothing and personal belongings can you have? - Is there a place that you can secure any valuables that you may not want to keep in your room? Ask Staff: - What personal belongings may residents have? - What do you do to secure valuables and other personal property? - What provisions are made for the care of personal clothing?	Admission notes on personal property inventory (e.g., the record should indicate a list of any personal property secured by the facility). The record should indicate how personal clothing will be laundered.	Residents are permitted to keep reasonable amounts of personal clothing and possessions for their use while in the facility and such personal property is kept in a safe location which is convenient to the resident. The amount that is reasonable will be dependent on space available in the facility. Patients are advised, prior to or at admission, of the kinds and amounts of clothing and possessions permitted for personal use, and whether the facility will accept responsibility for maintaining these items (e.g., cleaning and laundry). Any personal clothing or possessions retained by the facility for the patient during his stay is identified. The facility is responsible for secure storage of such items, and they are returned to the patient promptly upon request or upon discharge from the facility.	

LONG TERM CARE SURVEY 20

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
L. Delegation of Rights and Responsibilities F86-88 SNF 405.1121(k) ICF 442.312		Ask Administrative Staff: - When do you have relatives make decisions for residents-i.e., how do you decide when the resident isn't capable of making decisions himself? - Have any legal steps been taken? Ask Resident and/or Guardian: - Do you feel that you are given all pertinent information? - Do you have the opportunity to make decisions re: care, etc.? - For guardian: are you notified/informed in a timely manner as appropriate?	Review physician progress notes—incapability must be documented. Is there clear documentation as to whom rights and responsibilities have been assigned? Are pertinent consents/documents signed by appointed guardian?	The fact that a resident has been judged incompetent, is medically incapable of understanding, or exhibits a communication barrier, does not absolve the facility from advising the resident of their rights to the extent the patient is able to understand them. If the resident is incapable of understanding their rights, the facility advises the guardian or sponsor and acquires a statement indicating an understanding of resident's rights. The surveyor reviews records of residents selected for indepth review who are classified either incompetent, medically incapable of understanding their rights, or have a communication barrier to verify documented evidence (signed acknowledgment) that the guardian or other sponsor has been advised of these resident rights and understand their role in acting on behalf of the resident.	Resident Rights 405.1121(k)(1) 442.311(a)

LONG TERM CARE SURVEY 21

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Status Change Notifications F89 SNF 405.1121(j) ICF 442.307 F90 1. The facility notifies the resident's attending physician and other responsible persons in the event of an accident involving the resident, or other significant change in the resident's physical, mental, or emotional status, or patient charges, billings, and related administrative matters.	Note residents condition: - Clean - Well groomed - Well adjusted - Casts - Bruises - Decubitus Ulcer - Multiple sites of edema - Aberrant behavior, e.g., abusive, disruptive, not reasonable, etc.	Ask Resident: - Have you been injured since you have been in the facility? - If you are injured or become ill, is your physician called? - Are your relatives notified? - Do you know who is notified if administrative changes such as changes in charges, billings, etc. occur? Ask Staff: - Who do you notify if a resident is injured or has a change in condition? - When would they be notified? Does the facility have a policy regarding how soon a relative or responsible party would be notified? - Do you notify them of actual changes in resident condition and also if resident's condition is getting progressively worse?	- Progress note should document injury/change in condition plus notification of physician and appropriate family member/guardian. - Changes in charges should be documented. Ask facility where this is located. - Review accident and incident reports for indepth sample.	- All injuries and changes in condition must be documented. The resident's physician and family must be notified of signicant changes. This should be documented, but this notification should be confirmed by the resident if possible.	Resident Supervision by Physician 405.1123(b)(3) Emergency Services 405.1123(c)

LONG TERM CARE SURVEY 22

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F91 2. Except in a medical emergency, a resident is not transferred or discharged, nor is treatment altered radically, without consultation with the resident or, if the resident is incompetent, without prior notification of next of kin or sponsor. INTENT To assure that: - the resident receives proper treatment in the event of an accident or change of condition. - resident and/or next of kin or responsible party is aware in advance of any changes. - resident is not discharged to gain a higher source payment for that bed or facility convenience.		Ask Resident: - Have you ever been or do you know if others have been transferred or discharged without discussing it with you first?	- Nursing, physician and social work progress notes should be reviewed for evidence of discussion of transfer/discharge with resident or other designated person.	- Except in an emergency, all transfers or discharges are first discussed with the resident or next of kin as evidenced by documentation in the medical record or confirmed by asking resident.	

LONG TERM CARE SURVEY 23

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Physician's Services F92 SNF 405.1123 A. Medical Findings and Orders at Time of Admission F93 SNF 405.1123(a) F94 1. There is made available to the facility prior to or at the time of admission, resident information which includes current medical findings diagnoses, and orders from a physician for immediate care of the resident. F95 2. Information about the rehabilitation potential of		Ask Staff: - Interview nursing staff to determine if they receive transfer information and admission orders on day of admission. - Ask Administrator and Director of Nursing to explain procedure if a resident arrives without sufficient medical information and/or orders.	Review records of residents selected for indepth review to ascertain that: - There is a referral form from the transferring facility that was received in advance of admission or on date of admission that includes current medical findings, diagnosis and orders from a physician for the immediate care of the residents. - If the medical orders were not obtained from the residents attending physician, there are temporary orders from the emergency care physician. - Information on the rehabilitation potential (prognosis) of the resident and a summary of the course of treatment followed in the transferring facility were transmitted within 48 hours of admission. - The summary of treatment should include discharge summaries from therapies or special services when appropriate. - For residents admitted directly from the	Examine medical records of the residents selected for indepth review to determine if date of orders, medical data and other required information is the date of admission or within 48 hours of admission. The facility should receive sufficient information and orders to provide continuity of care of all residents.	

LONG TERM CARE SURVEY 24

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F95 (cont'd) the resident and a summary of prior treatments are made available to the facility at the time of admission, or within 48 hours thereafter.			community, the attending physician provided current medical findings, diagnosis, prognosis, and orders. - The order should cover: + Medications and treatments + Diet + Therapies (P.T., O.T., Speech) + Activities (bedrest, ambulatory, able to participate with any specific limitations on activity).		

LONG TERM CARE SURVEY 25

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Resident Supervision by Physician F96 SNF 405.1123(b) F97 ICF 442.346 B. Resident Supervision by Physician F98 1. Every resident must be under the supervision of a physician F99 2. A physician prescribes a planned regimen of care based on a medical evaluation of each resident's immediate and long-term care needs.	Observe resident for any problem/conditions that should be addressed by physician, e.g., edema, loss of appetite, weight loss, etc.	Ask Resident: - How often physician visits. - If physician has discussed plan of care and medical treatment. - If resident feels treatment and/or plan of care meets his/her needs. Ask Licensed Nursing Staff - How often physician visits and is it often enough to meet resident's needs? - Does physician participate in evaluation and reevaluation of resident's plan of care? - Does plan of care meet resident's needs? - Is physician available in an emergency? - Is physician available to discuss residents treatment and care? Ask Administrator - Facility's policy regarding a physician to provide care in the absence of the resident's own physician. - Facility's policy on physician visits.	Review medical records of selected for indepth review for: - A current plan of care that is based upon physician's orders and resident needs. - Evidence that the plan is reviewed and revised as needed. - Evidence through physician's progress notes, nurses notes, physician's orders, that the physician participates in the resident's overall plan of care. - Evidence that rehabilitation potential is addressed. - Long range plans include an estimate of the length of time for skilled nursing care and a discharge plan. - Physician's orders for medications and treatments on admission and during stay. - A medical evaluation completed within 48 hours of admission unless done within 5 days prior to admission that includes attention to needs such as diet, vision, hearing, speech	Medical records should provide evidence that the residents are under the supervision of a physician by the coordination of physician's orders and progress notes with the resident's plan of care and observations of residents needs. There is evidence that the physician reviews and revises the plan of care as needed. There is evidence that physician services are available to the residents when the residents need such services. An alternate schedule for physician visits may be established if the attending physician determines that the resident need not be seen every 30 days. Justification for the decision is placed in the resident's medical record and is reviewed by the U.R. Committee and State medical review team. Where there is a change in the resident's condition and the physician has failed to document his findings or evaluation of the condition, the physician has failed to provide	

LONG TERM CARE SURVEY 26

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F99 (cont'd) F100 3. A physician is available to provide care in the absence of any resident's attending physician. F101 4. Medical evaluation is done within 48 hours of admission unless done within 5 days prior to admissions. NOT ICFs. F102 5. Each SNF resident is seen by their attending physician at least once every 30 days for the first 90 days after admission.			level of activity, emotional adjustment. - Evidence in care plans and treatment records that physician's orders are being implemented. - Discrepancies in medication record, diet order, intake and output records. - Evidence that an alternate physician provided care if applicable. - Progress notes by physician at least every 30 days for first 90 days (ICF-at least every 60 days). - Review of medications and treatments every 30 days or 60 days if an alternate schedule of visits has been approved. - Documentation of physician observations, actions and plans for treatment. - Justification for alternate schedule of visits. A few closed records should be reviewed to determine if residents were appropriately discharged by an order written by the attending physician. Also review	evidence of his evaluation of resident needs and supervised care. A physician is available to respond within a reasonable time when a resident needs medical attention. Although medical evaluation can be noted as a revision of the previous H&P A statement such as "no change" when in conflict with the status of the	

LONG TERM CARE SURVEY 27

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F102 (cont'd) F103 Exception: ICF residents must be seen every 60 days unless otherwise justified and documented by the attending physician. F104 6. Each resident's total program of care including medications and treatments is reviewed during a visit by the attending physician at least once every 30 days for the first 90 days and revised as necessary.			discharge plans to assure that they were adequate and implemented. Verbal medication orders are countersigned by a physician. MD is reviewing all medication orders every quarter.	resident on this admission to the facility, does not constitute a medical evaluation. Verbal medication orders must be countersigned with 48 hours.	

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F105 Exception: Only medications must be reviewed quarterly for ICF residents. F106 7. Progress notes are written and signed by the physician at the time of each visit, and all orders are signed by the physician. Exception: Not required for ICF residents. F107 8. Alternate physician visit schedules that exceed a 30-day schedule adopted after the 90th day following admission are justified by the attending physician in					

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F107 (cont'd) the medical record. These visits cannot exceed 60 days or apply to patients who require specialized rehabilitation schedules. F108 Exception ICF residents must be seen every 60 days unless justified otherwise documented by the attending physician. C. Emergency Services F109 SNF 405.1123(c) F110 Emergency services from a physician are available and provided to each resident who requires emergency care		Ask Staff: - Are you aware of procedures to be followed during a fire emergency? - Do you know where names and telephone numbers are of physicians to be called in case of emergency?	- If records document an accident or a medical emergency, was the patient seen by a physician or was the physician notified promptly of the emergency? - Review physician's orders to see if specific medications or treatments were ordered to treat emergency situation if applicable.	- Surveyor verifies that there are readily available written procedures for securing a physician in case of emergency. - Names and telephone numbers are posted or on rolodex. - An alternate physician is designated.	Status Change Notification 405.1121(j)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F110 (cont'd) INTENT: To assure that a physician has overall responsibility for the managment and supervision of the residents care.			- Review physicians progress notes to see if emergency situation was addressed.	- There is provision for: + Notification of attending physician/ emergency and other responsible person. + Arrangements for transportation. + Preparation of reports. + There is evidence in the medical records that proper procedures have been carried out. + Residents with sudden changes in condition have been evaluated by the physician.	

LONG TERM CARE SURVEY 31

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Nursing Services F111 SNF 405.1124 F112 ICF 442.338					
F113 SNF 405.1124(c) ICF 442.338 A facility provides nursing services sufficient to meet nursing needs of all residents all hours of each day. F115 Grooming and Personal Hygiene SNF 405.1124(c)	Basic care provided to residents: Surveyors should observe the basic care provided by staff to the residents. Listed below are suggested areas of attention which may provide evidence of the quality of personal care: - Eyes/Ears/Mouth Presence/absence of: + Secretions forming around eyelids, redness or irritation of eyes. + Eyeglasses worn when appropriate are clean, in good repair and fit properly. + Backs of ears scaly, obvious wax build-up, discharge, odor. + Hearing aid worn when appropriate, is in good repair and working. + Dried food particles or drool, etc. around mouth.	Ask Resident: Suggested interview questions include the following: - If the resident's clothing is inappropriate, ask: + Did you choose your clothing today? + Is this what you want to wear? + Do you have other clothing available? - If the resident is not clean, poorly groomed, or inappropriately groomed, ask the resident: + Have you had any help in caring for yourself today (e.g., washing your face, brushing your teeth, etc.)? + How often do you have a bath/shower? + How often is your hair washed? + How often do you brush your teeth/ clean your dentures? + Were there extenuating cicumstances (e.g.,	Nursing notes, flow sheets or bathing records should indicate that the care plan for grooming and personal hygiene is being followed. For example: - Bathing schedules are being followed (including the use of any soaps or special lotions). - Assistance instruction and/or supervision is being provided as identified for each activity. Nursing documentation should also indicate resident response or any changes in the resident's behavior, reaction to an activity, or the ability to carry out grooming and personal hygiene activities. Look for indications of progress toward a goal or further deterioration of resident functioning.	Refer to information on observation. A pattern of evidence of poor personal care indicates noncompliance unless the care plan specifically deals with this and appropriate planning and implementation is occurring. The regulations require that individual preferences are taken into account when providing for grooming and personal hygiene and that residents are encouraged in self-care activity. Do your patient interviews substantiate compliance with the regulations?	Resident Rights 405.1121(k)(8)(13) 442.311 (g)(k) Social Services 405.1130(a) 442.344 Activities 405.1131 442.345(a)(c) Patient Care Management 405.1124(d) 442.341 Training 405.1121(h) 442.314

LONG TERM CARE SURVEY 32

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F115 (cont'd)	+ Dentures worn when appropriate and in good repair. + Oral hygiene. - Odors presence/absence of: + Body odors - Hair/Scalp + Clean and free of rashes + Hair combed - Nails are clean and appropriate length - Clothing is appropriate, clean, and in good repair. + Extremities elevated as necessary while in chair or wheelchair. + Appropriate techniques to prevent infection. + Use of whirlpool as a treatment modality as available and appropriate. - With resident's permission check: + heels, feet and toes + lateral hip + scapular area + sacrum + buttocks + bony prominences in contact with braces + condition of stump (especially diabetic	resident is participating in dressing retraining program)? - Special consideration might be given to the demented patient who frequently "borrows" clothes and for whom removal may elicit catastrophic reaction-whether clothing "matches" may not be the most important issue in the care of these patients. Ask Direct Care Staff: - How do you choose what clothing each of your residents wear each day? - Do you have a specific schedule for washing residents' hair? - How did you learn to bathe resident? - How did you learn to wash residents hair? - How did you learn to shave residents? - How do you handle situations when residents want to wear dirty clothes, or mismatched clothes? - How much care do you let the residents do on their own?			

LONG TERM CARE SURVEY 33

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F115 (cont'd)	amputees with elastic bandage or sock removed).				
Skin Condition F116-117 SNF 405.1124(c)	Observe with residents' permission: - General condition of skin + Redness + Blanching + Soft/dry/rough etc. + Rashes/irritation + Bruises + Scabs + Free of above - Measures taken to prevent skin breakdown. - Decubitus - Decubitus Rx - Factors contributing to prevention of decubitus ulcers + Overall cleanliness and maintenance of dry and aerated skin (uncompromised by urine/feces/perspiration) + Padding for pressure points and bony prominences including padding on bed/chair + Proper gentle massage to bony areas several times a day.	Ask Resident: - Are your feet usually swollen? - Do you know what causes the swelling? - What do you do to alleviate it? - Is this discoloration normal for you? - How did this wound/bruise develop? - Are the treatments done about the same time every day? - What staff person has looked at your skin recently?	Look at nursing notes and P.O.C. for evidence of: - Planned preventive measures - Treatments/Intervention including nutrition - Routine assessment/evaluation of skin condition - Documentation of specific skin problems with location number, severity, measurements as appropriate, and cause - Progress or lack of progress in healing - Assessment/Reevaluation of interventions with alterations in plan - Appropriate nutritional plan - Methods to control edema of lower extremities	Preventable decubitus ulcers are not occuring Ulcers present are treated on a routine basis according to P.O.C. Is skin clean? Is resident dry? Is turning schedule adhered to? Are linens clean and smooth? Do personnel know preventive measures and practice these? Has a nutritional assessment been done, and if appropriate, recommendations implemented?	Dietetic Services 405.1125(i)(c)(e) 442.332(a)(1)(b)(1) Activities 405.1131(b) 442.345(a) Patient Care Management 405.1124(d) 442.341 Training 405.1121(h) 442.314 Rehabilitative Nursing 405.1124(e) 442.342 Supervision of Patient Nutrition 405.1124(f) 442.332(b)(2)

LONG TERM CARE SURVEY 34

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F116-117 (cont'd)	+ Regular assistance for resident to turn or shift weight (bedrails, footboards, trapeze). + Bed linens, clothing, underpads smooth and free from wrinkles. + Elastic bandages or hose are smooth and wrinkle free. + Elastic bandages wrapped smooth with appropriate overlap. + Dietary/nutritional support for skin integrity. (See Guidelines for Dietary/Nutrition + Prevention of shearing force when resident's position altered by staff. + Turning and repositioning as needed. - Care and Treatment: + Turning and repositioning every two hours or as needed (e.g., alternative approach that is justified by the facility.) + Positioning of the ulcer site or protection of affected areas. + Use of effective pressure relief devices.	Ask Direct Care Staff: - What can you tell me about Mr./Mrs._____ swollen feet/wounds/brusises/etc.? - What do you do for them? Ask Charge Nurse: - How did _____ get cuts, bruises, etc.? - What is being done to prevent further occurance? - What treatment is he/she receiving?			Resident Supervision by Physician 405.1123(b)

LONG TERM CARE SURVEY 35

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Wounds/Wound Dressings F114 SNF 405.1124(c)	- Condition of dressing - i.e., clean, firmly secured unless contraindicated. - Observe, if possible, and with resident's permission, a dressing change + Pre-dressing Removal Equipment and supplies organized Hands washed Residents provided with privacy - Dressing Is: + Old dressing observed for drainage? + Wound examined + Appropriate technique used + Proper disposal of old dressing? + Post dressing + Does staff member wash hands? + Return resident to comfortable position or previous activity?	Ask Resident: - How often is the dressing changed? - By whom is the dressing changed? - Does it seem dressing changes are frequent enough? - Are there any odors from the dressing? - Is the dressing change always done in a similar way? - If not, what are the differences? - Do you feel confident that the wound is being well cared for? - Is the area/wound healing? - What caused the ulcer, wound, etc.? Is it healing? Does the staff keep you informed of its status? Ask Staff: - Specific treatment and schedule for each resident?	- MD orders for wound care - Progress notes detailing condition of wound - i.e., size, drainage, surrounding tissue, odor - Treatment provided - Progress/change - Plan of Care (POC) + The plan of care should address: - Area in need of treatment, treatment to be performed, frequency, and responsible staff. - All necessary solutions, ointments, irrigations, types of dressings, and materials. - Any necessary precautions, drains, if present, sutures and tubing. - Specific goals of treatment as well as any problems or limitations imposed as a result of treatment.	MD orders, your observation, progress notes and POC should reflect the same information. Treatment provided over a period of time with no improvement and no re-evaluation also would represent non-compliance, unless nursing/physician progress notes address the "no improvement" problem. Compliance is evidenced by: - treatment given according to doctor's orders and POC. - use of appropriate technique when caring for wound/changing dressing (e.g., follows facility's written procedures). - periodic evaluation of healing process and revision of care plan as needed.	Physician Services 405.1123 442.346 Infection Control 405.1135(b) Pt. Care Management 405.1124 442.341 Dietetic Services 405.1125(b)(c)(e) 442.332(a)(1)(b)(1) Medical Records 405.1132 442.318

LONG TERM CARE SURVEY 36

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Restraints F118 SNF 405.1124(c) When residents require restraints the application is ordered by the physician, applied properly, and released at least every two hours. (See also information under Resident rights-freedom from abuse & restraints)	Direct to evidence of: - Proper application - Proper use - Maintenance of good body alignment - Resident observation, release and exercise Observe frequently throughout your visit to validate care. Specific observations should include the following items: - Type of restraint: belts, wrist or ankle cuffs, blanket restraints, vests, bed nets, locked, etc., (When locked restraints are used can you readily find the key and/or scissors?) as well as geriatric chair or geri-table/tray in place for prolonged periods. - Appropriate application: skin protected from injury(restraint neither too loose nor too tight to prevent rubbing and blistering or impeded circulation) - Body alignment and support: use of pillows, footboards, and wheel-	Use of restraints may be precipitated by an "emergency" situation in which there is a threat to the resident's health or safety, or a threat to the health and safety of others due to the resident's behavior. Restrained residents may not be coherent or rational enough to respond to questions and caution in interviewing therefore, must be exercised. However, observation of a resident in a geri-chair with table in place or a resident in a wheelchair (with vest restraint) for several hours would warrant appropriate questions as to when the staff last assisted him or her to move about or whether the resident would like to get out of the chair. Staff interviews focus on the reason why the resident is restrained. Ask Direct Care Staff and Charge Nurse: - When, why, and how to release and apply restraints? - Why is the resident	- MD orders for restraint: reason, length of time, type - Progress notes - Describe the resident's status/behavior which prompted the use of the restraint. - If a chemical restraint, the order should indicate a specific time period for its use as well as a stop date. - Plan of Care should + Identify other methods or therapies that are being used in conjunction with restraints. + What alternatives to restraints have been considered. + Identify staff responsible for observing the resident (every 30 minutes), and releasing and exercising the resident (every 2 hours for at least 10 minutes). Time intervals should be identified. + Indicate involvement and input of other disciplines necessary to overcome the problem. + Indicate a specific period of time for	- Is there a physician's order, including the circumstances in which they will be used, the length of use, and the type of restraint? - Is the restraint applied properly? - Is it released at least every two hours and the resident provided with exercise and toilet facilities if needed? - Does the staff observe the resident frequently while he/she is restrained? - Are chemical restraints administered in accordance with physician's orders? - Is the order for restraints renewed only after a reassessment of the patient?	Patient Rights 405.1121(k)(1)(2) 442.311(f)(2)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F118 (cont'd)	chair footrests to maintain appropriate posture, circulation, and to prevent skin injury or breakdown. - Periodic release and exercise: exercise may include ambulation, range of motion, massage, or other opportunities for motion (at least 10 minutes every 2 hours during day and evening hours). - Chemical restraints: residents appear drowsy throughout the day (may indicate tranquilizers or other drugs are being used to limit or control behavior for staff convience).	restrained? - Was the resident given an option of restraint? - When were you taught the use of restraints? By whom? - If chemically restrained (excessively sedated) + Why is this done? + Whether alternate means of restraint have been attempted, for how long this will continue, etc. This should elucidate from staff whether the chemical restraint is necessary, or whether it is done for staff convience by controlling resident behavior - Do you ask the resident for permission before using restraints? Ask Resident: Suggested questions are: + Why are you restrained? + What would happen if the restraint were removed? + When do you use bed rails? + What purpose do they serve?	- Indication of assessment of factors which precipitate residents behavior which has warrented restraints and plans to intervene early enough to prevent occurence. - Type, duration and frequency of exercise should be documented. - An assessment of why restraints are continued should be documented.	using the restraint.	

LONG TERM CARE SURVEY 38

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Bowel and Bladder F119 SNF 405.1124(c) Each resident with incontinence is provided with care necessary to encourage continence including frequent toileting and opportunities for rehabilitative training.	- There should be a chart/record in the resident's room on which the program is documented accurately. - If the room is located a distance from the toileting room or for residents with problems ambulating, a commode may be present in the room. - Verify that a call light is available to the resident if non-ambulatory or restrained. - Are fluids available at bedside? - Is there roughage on meal tray? - Diet is appropriate to enhance elimination?	Both the resident and direct care staff should be interviewed and should exhibit a good understanding of the importance of maintaining a regular schedule of elimination. If neither are aware of the intake and toileting schedule, then determine whether they are appropriately panning the resident or carrying out a retraining program. - Verify that the resident is aware that he/she is on a retraining program and knows the content of the program. Ask Resident: Suggested questions are: - How do you deal with constipation/diarrhea? - Are you involved in a special bowel/bladder training program? - If so, how does your program work? - Any problems with it? - Any successes to date? - What does the staff do for you in this matter? - Are they consistent and timely? - How long do you have to wait to be taken to the toilet?	- MD orders if required by facility policy - Nursing notes for + Assessment + Documentation of techniques and progress, reevaluation - Plan of Care The plan of care should clearly address: + Goals that resident will aim for. + Methods to accomplish the goals. + Schedule for fluid intake. + Schedule for toileting. + Responsible staff + Any limitations the resident may encounter as a result of either incontinence or the training program. - Progress notes/MD orders for cause of incontinence. - Laboratory tests of kidney function when available - Treatment for diarrhea/constipation - Residents preference for treatment of constipation. - Recently admitted and newly incontinent residents should be thoroughly assessed for at	- Are all incontinent patients assessed for cause of incontinence and ability to be helped by a bowel/bladder rehabilitative training program? - Are all appropriate residents involved in bladder/bowel training programs or, incontinence management and there is a schedule that shows when the program will be started? - Is there evidence of follow through on all shifts? - For residents not on bowel/bladder retraining programs the plan of care should address specific measures for managing incontinence with a view to prevention of skin and other problems and maintenance of resident dignity.	Nursing Services 405.1124(e) Dietetic Services 405.1125(c)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F119 (cont'd)	- When a resident puts on his/her call bell for toileting assistance, how long is it before assistance is given/ - Observe pre-meal toileting. - Privacy provided. - Schedule for toileting should allow for resident's normal sleep pattern, to avoid disrupted sleep.	Ask Nurses Aides and Charge Nurse: + Will you describe this resident's bowel/ bladder (B/B) training program? + How long has it been in effect? + When will you evaluate the results? + If this program is not successful - What assessment was done to determine B/B status - For residents not on B/B retraining programs what is the facility program for managing incontinence?	at least 7 days for the cause of incontinence and when appropriate an intensive bowel and bladder B/B training program should be instituted. - A trial B/B training program is suggested for all residents with incontinance problems. - I & O		
Catheter Care F120 SNF 405.1124(c) Each resident with a urinary catheter receives proper routine care including periodic evaluation	The indwelling catheter should promote a continuous flow of urine unless ordered otherwise. The surveyor should also observe for the following: - Ample supplies for catheter insertion and care. - Proper positioning of the tubing and drainage bag. - Cleaniness of the	Ask Resident: - What is the tubing/ cathetor for? - Why do you have one? - Does it cause any discomfort? - If it does, what is done about it? - How do you feel about having the catheter? - Is any special care given in relation to the catheter?	The surveyor should verify that there is a physicians order for an indwelling catheter, including the type and frequency of catheter care. If irrigation is ordered, the order should include type of solution and frequency of irrigation. The record should also indicate the color, consistency, and amount of urinary drainage.	*The facility should follow accepted professional standards in their catheter care. There should be medical reasons for catheter insertion - staff convenience cannot be justification. Direct care staff should know signs and symtoms of urinary tract	Infection Control 405.1135(b)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F120 (cont'd)	tubing and drainage bag. - Color and consistency of urine in bag. - Availability and accuracy of documentation on the I&O sheet if ordered or policy. - Proper equipment for ambulation - leg bag if resident is ambulating. (if ordered) - Availability of fluids. - Monitoring of fluid intake to ensure adequate intake and/or conformance with physician orders.	Ask Nursing Aide and Charge Nurse: - How do you routinely position and secure catheters and drainage bags? - How often is each part of the system changed? - What are the indications for insertion of the catheter? - What is the facility's procedure for routine catheter care? - How do you observe for U.T.I.'s in residents with indwelling catheters? - What is the facility's procedure for the cleansing and storage of reusable catheter equipment and drainage receptacles?	- Assessment should address: + Need for an indwelling catheter. + Resultant problems or limitations. - Plan of Care should address: + Type of catheter and type and frequency of care. + For irrigation, the rationale, the type of solution, amount, and frequency of irrigation. + Frequency of symptoms which would precipitate catheter change. + Time frames of catheter change and responsible staff. + Appropriate increase in oral fluid intake. - Intervention The record must reflect: + When and by whom the catheter was inserted and for what reason. + Any special care provided + New problems or changes + Only appropriately trained staff should deliver catheter care. + Only licensed staff should insert	infections (U.T.I.s) and these should be reported and treated promptly. *The Center for Disease Control has developed standards for catheter care which may be used but it is not a requirement.	

LONG TERM CARE SURVEY 41

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F120 (cont'd)			indwelling catheter. + The specific type and size of equipment used should be noted. + Signs and symptoms of urinary tract infections (UTI) should be acted upon and documented as to follow-up. - Evaluation/Reevaluation The record should reflect that the resident: + Is assessed for UTI. + Has no abdominal distention. - Notes should also include: + The color and odor of urine and the development of any problems after insertion of indwelling catheter. + Verify that catheter is patent.		

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCES
Injections F121 SNF 1124(c)	- Observe for preparation of injection - i.e maintenence of sterility; correct dilution, handwashing, before preparation, etc. - Observe injection site for: + Redness + Discoloration + Swelling + Lesions - Observe for proper technique when injection is given + correct site + correct needle size + correct volume of drug + sterility maintained - Resident is observed for any adverse reaction - What is the disposal method for used needles or syringes?	Ask Nurse: - What is your plan for alternating injection sites? Show me. - What is the medication for and what are potential adverse reactions? - Is there nonspecific pain at the injection site or shooting pains down a limb? - Is there skin irritations or lumps under the skin? - If adverse reaction occur, how soon are they reported? - Could this be given by any other route? Ask Resident: Suggested questions are: 1. What kind of medicine do you receive by injection/shot? Why do you need that medicine? 2. Do you have pain or numbness at or around your injection site? 3. Who gives the injection? 4. Do you receive your injection according to a schedule?	- MD order sheet - Nursing notes for: + Resident response to medication if appropriate + Any problems noted at injection site + Any other adverse reactions + Site of injection - Plan of care + Rotation of injection site + Care for any special problems related to the injection. - Infection Control: reports for any infections connected with injections.	- Is the medication administered according to the physicians order? - Is proper technique used in preparation and administration including site rotation? - Does the nurse administering the medication know the expected action of the drug? - If infection control reports show infections at injection sites. - Is the resident's response to the medication noted in the progress notes?	Staff Development 405.1121(h) 442.314 Infection Control 405.1135(b)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCES
Parenteral Fluids F121 SNF 405.1124(c)	The surveyor should observe that parenteral fluids are administered with safe, aseptic technique providing fluids as ordered by the physician. Safety and comfort measures are to be taken insuring maximum protection and optimum hydration of the resident. The surveyor should note the following items: - Labeling of the solution bottle/bag. - Rate of infusion/cc/ml per hour. - Date and time started —additives, if any. - Any signs of swelling or redness at site. - Site dressing is clean, dry and dated. - Accurate I&O of parental and P.O. fluids - If splint (armboard) is used, it is applied to prevent movement but not impede circulation. - Positioning of I.V. tubing. - Comfort of restraint used to allow for maximum resident freedom while preventing movement of I.V. site.	Ask Resident: - Why do you have this tube in your (arm)(leg)? - Is it comfortable? - Is there a way it would be more comfortable? - How long has it been in? - How much longer will it stay in? Ask Appropriate Staff: - Why the resident is receiving I.V. therapy? - What the drip rate is (the amount of fluid to be received per hour). - How often the dressing is changed. - How often the tubing is changed. - What are possible side effects? - How often is the site changed? Ask Nursing Aide - What are your responsibilities when caring for a resident receiving IV fluids? - What training have you had?	- Physician's order for parental therapy specifying type of fluid, rate of infusion/hour, and additives, if any, is available and current. - Twenty-four hour I&O record. - Nursing documentation indicates physician's orders are being followed. - Any adverse reactions are noted in the medical record. - Record indicates: + Infusion started by whom; cite time, rate of flow + Note is made of observation of pain or swelling at infusion site. + The need or reason for parenteral fluids. + Response to the therapy. + Problems and limitations encountered by the resident as a result of receiving parenteral fluids. - Plan of Care* The plan of care should include + Type, rate of infusion /hour, and additives (if ordered).	- Is the parenteral fluid administered according to the physician's order and in accordance with accepted nursing practice? - Are infiltrations noted in a timely manner before a large amount of fluid infiltrates? - Is the facility procedure for care of the IV site and tubing changes followed for all patients unless contraindicated? - Does documentation reflect what the patient received, any problems, and his/her response to the parenteral fluid? - Have any adverse effects been caused by administration of IV fluid? - If yes, were these preventable?	Resident Care Policies 405.1121(1) Infection Control 405.1135(b) Patient Care Management 405.1124(d) 442.341

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F121 (cont'd)			specified goals for correction, time frames, and responsible staff. - Documentation must include time administered and by whom, the amount of fluid infused, and any other special care administered as a result of IV therapy (i.e., mouth care, assistance with ADLs, etc.). - The record must reflect: + Conditions of site and any infiltrations, phlebitis, necrosis, etc. noted, along with measures taken to correct these. + The resident's response to therapy + Changes in laboratory studies *Plan of care would not be modified for a one-time IV infusion.		
Colostomy/Ileostomy F121 SNF 405.1124(c)	The surveyor should ascertain that the facility is providing appropriate nursing care to those residents who have had bowel surgery resulting in a colostomy or ileostomy. It is recommended that the surveyor, with the resi-	Ask Resident: - Why was the ostomy performed? - How do you feel about the ostomy? - Does it ever cause you problems (e.i., pain, skin problems, odors accidents)? If so, what	The surveyor should determine that: - Colostomy irrigations, if ordered, are documented as performed by the resident or appropriately trained staff. - Regular patterns of bowel elimination are	Compliance would be indicated if residents are physically and emotionally comfortable with the ostomy with minimal or no skin problems. If residents are not comfortable with the ostomy, are having skin or other problems, the facility	Patient Care Management 405.1124(d)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Colostomy/Ileostomy F121 (cont'd)	dents permission, observe care being given to determine that proper techniques are being used. The following steps should be taken to assure that proper ostomy care is being provided. - The ostomy dressing should be changed or the bag emptied and thoroughly cleaned promptly after each bowel evacuation or more frequently, if drainage continues. - The peristomal skin should be cleansed and dried, and appropriate measures taken to prevent excoriation and infection. - The resident's privacy should be considered while providing care. - The resident should be provided with information and instruction in self-care at the appropriate level of understanding. - The resident should be observed for signs of withdrawal, disgust anxiety, or other emotional responses which may be related to his/	does staff do about it? - What does the staff generally do with or for the ostomy? Are they consistent and timely? - Has staff talked to you about doing some of the care for this? If so, what was the outcome? If not, is this something you'd be interested in learning more about? Ask Staff: - If nurses aid: + How did you learn to take care of colostomies? + What do you do if the skin around the colostomy becomes red or sore? + Do you ever teach the residents to care for their own colostomies? - If nurse (RN or LPN) + What is the procedure if the resident becomes constipated? Ask Other Nursing Staff: - Is there a facility procedure for ostomy care? - Do you have skin problems with your	documented as established through management of diet, fluid intake, exercise, and the use of prescribed laxatives, suppositories, and/or irrigations. - Ostomy care is documented in the resident's record along with a description of the stool. - Problems in irregularity, skin breakdown, or other observable concerns are documented and reported to the physician. - Documentation indicates that nursing measures are taken to assist the resident who is experiencing problems in understanding and/or accepting the presence of the colostomy/ ileostomy. - Documentation of nursing measures to maintain skin integrity. - Assessment The assessment should indicate: + Needs, problems, and limitations as a result of a colostomy/ ileostomy. + Specific degree of	should be responding to these and correcting them as reasonable. Care plans should indicate specific goals in relation to problems and specific interventions for reaching these goals.	

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Colostomy/Ileostomy F121 (cont'd)	her acceptance of the colostomy/ileostomy. - The surveyor should observe the staff giving ostomy care to verify that proper technique is used.	ostomy residents? - What do you do when skin becomes excoreated? - What teaching do you do with the residents? - What in general is the response to this teaching?	self-care performed or assistance needed. + Special skin care needs. + Regulation and special dietary needs. + Emotional support. + Medications and treatments if needed. - Plan of Care The plan of care should clearly address: + Specific goals to overcome or improve the problems(s) identified. + Methods to accomplish the goal (training, assistance, supervision, treatments, emotional support). + Services necessary and who will perform the services. + Time frame for accomplishing goals.		Social Services 405.1130(a) 442.334(a)(b)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Respiratory Therapy F121 SNF 405.1124(c)	- Aerosol Compressor or IPPB (Intermittent Positive Pressure Breathing Machine) The surveyor must determine that the facility is providing respiratory therapy as ordered by the physician. Observation for this indicator should focus on the necessary equipment as well as on the resident. In order to determine that the necessary equipment is available, the surveyor must look for the following: + Aerosol compressor or IPPB Machine. Check that the machine is clean and operable. + Tubing - If tubing is not attached to the machine, ask to see it. Check that it is stored dry and with consideration for cleanliness. + Nebulizer Cup - should be attached to tubing. It is filled with either the prescribed medicine or distilled water only if about to be used. It should not be	While interviewing the resident, observe for sounds of congestion. Note color of lips and nail beds. Ask Resident: - Do you ever feel short of breath? - If yes, what is done when this occurs? - Is the therapy helping you to feel better? - Are there any problems with it? - If so, how does the staff respond? - Is the therapy consistently performed - both concerning time and method of providing it. - Do you have any concerns about the therapy? Ask Staff: - What is the reason the resident is getting this therapy? - What are the expected results? - Can you demonstrate how you use the equipment? - How often is the equipment cleaned? - What are the infection control procedures in regard to use of res-	The surveyor should determine that: - Respiratory/oxygen therapy is performed or administered by appropriately trained staff. - There is a physician's order for therapy, and it is specific as to rate of delivery, etc. - If the physician's order is for prn therapy, it should specify for what symptoms. - Any information gained from resident or staff is verified in the record. - Assessment + The assessment should address both the need or reason for therapy and any problems or limitations which result from the need for therapy. - Plan of Care The surveyor should note: + The kind, amount, frequency, and/or duration of therapy based on the physician's order. + Specific goals to overcome to improve any identified	Only qualified (trained) personnel should administer/assist with respiratory therapy. Therapy must be provided as ordered. The effectiveness of the therapy must be periodically evaluated and therapy revised as appropriate. Effective infection control measures must be practiced. Needed safety precaution for the use of oxygen must be practiced. Equipment should be available and in working order.	Staff Development 405.1121 (h) 442.314 Infection Control 405.1135(b) Patient Care Management 405.1124(d) 442.341

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Respiratory Therapy F121 (cont'd)	stored wet. If it is not attached to the tubing, ask to see it. The mouthpiece is connected to the nebulizer cup. The surveyor should also check that all involved equipment is clean. - Oxygen Therapy The surveyor must establish that the facility is meeting the oxygen needs of the resident. When the facility does not have wall units, check that: + There are enough cylinders for oxygen delivery. + There should be flow meters and regulators for tanks in use. + A wrench should be attached or stored close by. + If using large cylinders (size G or H), look for a carrier since these tanks cannot be transported without it. + The cylinder at the resident's bedside should either be on	piratory equipment? - What training was given you in the use of this equipment? - Where is the emergency oxygen supply?	problems and/or limitations. + Specific methods to accomplish the goals (observation, supervision, training, etc.). + Who is responsible to perform therapy or assist in accomplishment of goal. - Intervention - The record should display evidence that: + The plan of care is functional + The therapy was administered in accordance with physician's order for the specified reason(s) by an appropriately trained staff member + Change in condition is tion is documented and acted upon promptly. - Evaluation/Reevaluation The record should reflect: + The resident's response to therapy. + If response was undesirable, evidence of further intervention. + Any progress, deterioration, or development of new problems.		Physical Enviornment 405.1134 (i) Medical Records 405.1132 442.318

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Respiratory Therapy F121 (cont'd)	the carrier, sitting on a metal skirt, or otherwise secured. + There should be other necessary equipment available such as humidifiers, nebulizers, masks, nasal cannulas, T-pieces, etc., all should be dry and clean when stored. + Check to see that non bed-bound residents are not limited to their own chair/room when using oxygen (portable units will prevent social isolation. + Water reservoir is appropriately filled per manufacturers instructions. + Check to make certain the tank is not empty and that any tank is labeled as such. + Check for good oral hygiene of resident. + The room should be posted with a "No Smoking" sign. - Residents on respirators: + Are alarm systems turned on?	Residents on Respirators Ask Staff (all levels): - What training have you had in caring for	+ Based on the above information, possible modification of goals.		

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Respiratory Therapy F121 (cont'd)	+ Is sufficient Oxygen supply available? + Is the ventilator accessible to an emergency outlet? + Is the resident in a location that allows for frequent observation by staff? + How does the resident communicate with staff? + What level of staff (aide, LPN, RN) caring for the resident? + Is such equipment at bedside? + Is there reserve back-up equipment? + What is the condition of the residents skin around intubation tube/tracheostomy. + Does the care given use appropriate technique in caring of the patient?	residents on respirators? - Can you show me how the alarm system works? - What is your procedure for pulmonary care? - What is your procedure for changing tubing and the water reservoir? - What happens if the power goes off?			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Tracheostomy Care F121 SNF 405.1124(c)	Satisfactory tracheostomy care is a procedure which promotes a clean, unobstructed air passageway and maintains the skin integrity surrounding the tracheostomy site. The surveyor should determine whether: - Adequate supplies are available for the care of the tracheostomy such as tracheostomy kits, hydrogen peroxide, normal saline or sterile water, suction machine, catheter, sterile gloves, and clean dressings. - The resident is breathing without difficulty and is comfortable. - The dressing is clean, dry, and intact; the cannula is clean, in the proper position, and secured. - The skin surrounding trach is clean and dry with no redness or inflammation. - The resident has adequate oral hygiene. - An extra tube, the same size as the one in	Resident interviews must be guided by the resident's communication ability. Ask Resident: - How long will you have it? - What care can you do for yourself? - What do you need help with? - Who helps you? - Is someone always available to suction him/her when needed? - Is the suction equipment always available in working order? - Is the dressing kept clean and comfortable? - Is the tube kept clean and changed as needed? - How often are the tubes and dressings changed? - Does he/she feel confident in the personnel caring for his trach- - What is communicating with staff and other residents like? - Are staff patient and do they allow you enough time to express your needs/thoughts/ feelings? Ask Staff: - Why does resident have	- The surveyor should determine that tracheostomy care is done as scheduled and as needed following the proper procedure. - Any special solutions that are needed should be addressed in the physician's orders. - Assessment - The record should reflect that the need for tracheostomy care was assessed in terms of: + Frequency + Skin integrity surrounding the tracheostomy, noting redness, inflammation, and/or excoriations. - Plan of Care should include: + Specific times of trach care and the responsible, appropriate trained person performing this task. + Specific problems relating to skin and breathing as well as the goals set to overcome these problems listing the appropriate personnel responsible. + Time frames for resolving problems	Stoma and surrounding skin should be in good condition and if not, there should be treatment directed to resolving this problem. All staff caring for the tracheostomy must be trained and emergency procedures must be known. All needed equipment must be available and in working order. Resident must at all times have readily available a means of communicating with the staff in an emergency.	Infection Control 405.1135 (b) Training 405.1121(h) 442.314 Patient Care Management 405.1124(d) Physicians Services 405.1123(b) Social Services 405.1130(a)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Tracheostomy Care F121 (cont'd)	place, is available at bedside. - Does resident have an adequate method of communicating with the staff? - Does staff allow enough time for residents to communicate?	tracheostomy? - What training were you given to enable you to care for tracheostomies? - What is the procedure for tracheostomy care? - How often is the tube changed? - What do you do if the tube comes out? - May I watch you do a dressing change? - If not convenient, describe what you do.	listed in goals. + Plan for periodic assessment of appropriateness of residents own self care re: teaching or nursing assuming more responsibility as appropriate. - Intervention - The surveyor should look for documentation of: + Trach care and oral hygiene administration, including responsible personnel, time and date, and effects. + Any problems or changes noted in resident condition (e.g., redness, swelling, tracheal obstruction). + Emotional response to tracheostomy. - Evaluation/Reevaluation + Resident is or is not benefiting from trach care and skin care. + If problems are noted, the progress notes and plans for care should indicate changes in treatment. + Resident's emotional response to care of the tracheostomy should be evaluated,		

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Trachoestomy Care F121 (cont'd)			since this may require additional care planning.		
Suctioning F121 SNF 405.1124(c)	Suctioning is necessary for any resident who is unable to cough up secretions that are obstructing his airway. Suctioning may occur via the oral or nasal route, or stoma route with sterile technique. Attempts should be made to observe a resident being suctioned should such an opportunity arise. If so, observe that a clean/aseptic technique is observed throughout and that the resident tolerated the procedure. There should not be bloody aspirant, cyanosis, or bronchospasm. Check that equipment is in good working order, frequency of procedure, etc. Resident observations which indicate need for intervention include: - Secretions are draining from a resident's mouth or trach and the resident is unable to	Ask Resident: - How are you feeling now after the suctioning? Does the suctioning seem to help? - Has staff explained to you the need for suctioning? Why do you need to be suctioned? How often? - Who performs the suctioning (i.e., nurses or nurses aides)? Do you feel safe with the staff performing the suctioning? - Does everyone do it about the same way? Ask Staff: - When and where did you learn to suction? - Tell me what procedure you use when you suction a resident. - Do you always have enough suction machines and catheters? - How frequently is suction tubing changed? - What provisions do you have for suctioning if the electricity is lost?	- Assessment - The record should reflect that: + The resident is frequently observed for suctioning needs. + Any limitations a resident has as a result of his suctioniong needs should be specifically noted. + Any problems resulting must be specified. - Plan of Care should include: + Awareness of the resident's suctioning needs, goals, approaches, and responsible staff needed to improve the problem or at least to maintain the resident at his present status without further deterioration. The plan must clearly indicate specific approaches towards: - Prevention of skin problems around the trach if one exists. - Correction of any existing skin pro-	- All equipment must be available and in working order. - All staff caring for the resident must know what to do in an emergency. - Current professionally accepted standards of care must be maintained.	Infection Control 405.1135(b) Patient Care Management 405.1124(d)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Suctioning F121 (cont'd)	cough or clear himself. - There are audible crackles or wheezes and/or diminished breath sounds. - The resident is dyspneic. - Restlessness or agitation may also be an indication that suctioning is needed. Upon completion of suctioning above symptoms should, in most cases, be relieved. The surveyor should observe that the resident is positioned to facilitate breathing (usually at a 45 degree angle). Check to see that the facility has an ample supply of suction machines and suction catheters to meet the needs of residents requiring them and that they are clean and properly stored.	- Where are your emergency electrical outlets? - What is your procedure for disposing of the secretions from suctioning? - How often does Mrs./Mr. need to be suctioned? - May I observe you when you suction Mrs./Mr.?	blems. - Provision of good oral hygiene including a rigid schedule for mouth care, schedules, or procedures for maintaining clean equipment at bedside, as well as disposal of used (dirty) equipment. - Route of suctioning (i.e., oral/nasal/trach). - Intervention - The record should indicate clearly that: + The plan of care is being implemented. Documentation should reflect: + The number of times the resident required suctioning, for what specific reason, and by whom the resident was suctioned. + Any special treatment the resident received in conjunction with suctioning		

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Suctioning F121 (cont'd)			(i.e., oral hygiene, skin care, etc.). - Evaluation/Reeevaluation The record should reflect: + How well the resident tolerates suctioning procedures. + Any bloody aspirant, cardiac arrhythmia, cyanosis, or bronchospasm. + Further interventions utilized to overcome or improve these. + The amount of sputum as well as its color and consistency. + Any progress or lack of progress, deterioration, and/or the development of new problems. + The evaluation should determine whether goals are being reached or if new goals must be addressed.		
Tube Feedings F121 SNF 405.1124(c)	- Staff use proper technique in administering feedings and medications. Check to see that staff checks for location of tube before feeding and that tubing	If the resident is able to be interviewed, suggested questions may be: Do you feel comfortable/safe with all the staff who perform the feeding?	Tube Feeding Review: - Plan of care - Must document tube placement and formula potency prior to each feeding.	- Has the feeding been ordered by Physician? - Is tube feeding nutritionally adequate? - Have attempts been made to discontinue tube feeding if indicated?	Nursing Services 405.1124(d)(f) 442.338(a)(2) Meal Service 442.331(c)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Tube Feedings F121 (cont'd)	is irrigated before and after addition of medication. - The tube is clean and formula flows freely. - The equipment is clean and protected. If dressings are ordered, they are in place, clean, and dry. - The nasal tube is securely but comfortably secured on the face with skin maintained intact and without irritation. - The skin around the gastrostomy is kept clean and free from irritation or infection. It should be checked carefully for leakage of gastric contents. - A resident who has a N/G tube for a prolonged period of time should be observed for possible complications, such as nasal erosion, sinusitis, esophagitis, gastric ulceration, and pulmonary infection. - Resident is fed slowly with head elevated to 45° during feeding and at least 1 hour post-feeding.	If not, what happens? Are you losing or gaining weight? What is your goal?	- In the case of continuous feeding, tube placement must be documented at least every 4 hours. - Naso gastric tube must be secured in a manner that avoids creating pressure on the nose and nasopharynx. - Identify frequency, amt. of feeding based on the physician's order and time span over which each feeding is accomplished. - Medication and treatment records. - Fluid intake records. - Number of calories as well as amount of additional water. - Documentation present regarding removal and reinsertion of tubes. - Record should indicate measures taken to prevent diarrhea and constipation and to treat if they have developed. - Resident is weighted weekly.	- Is skin free from irritation; mouth care is given several times daily? (More frequent mouth care in the case of continuous feeding.) - Have changes in resident condition been noted and addressed (weight loss, constipation, diarrhea, skin condition)? - Have observed problems been coordinated with other departments and resolved? - Is feeding being monitored to ensure that feeding is occurring at the ordered/appropriate rate? - Varied supplements as preferences allow?	Dietetic Services 405.1125(c)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Tube Feedings F121 (cont'd)	- Supplies for mouth care are in evidence, observe if possible for technique; mouth shows evidence of good care (i.e., moist, clean.)				
Nursing Services F125 SNF (405.1124) ICF (442.338) B. Twenty-four hour nursing. F125 1. Assigned duties consistent with their education and experience/ based on the characteristics of the resident load. F126 2. Weekly time schedules are maintained. F127 3. There is a sufficient number of nursing staff	Are personnel performing duties that are allowed under the State Nurse Practice Act? Do you observe care being rendered in an appropriate, competent manner? Does the time schedule posted indicate that at least the minimum required personnel are scheduled and actually on duty? What is the usual response time before a call bell is answered? In SNF's is an RN on duty during the day? Are licensed staff and aide staff functioning in appropriate roles? Where are staff spending their time?	Ask Resident: - Do residents generally feel that people taking care of them know what they are doing? - If no, explain. - Are your treatments done in a consistent manner? - If no, explain. - Do you feel that there are enough people here to take care of you? - If no, explain. - How long do you usually wait for help when you put your call light on? - Is there anything that doesn't get done as often as it should? Ask Staff: - Do you feel qualified to do all the work you are assigned to do? - If no, explain. - Do you feel you have enough training to keep up with the care the residents require?	- Review progress notes to determine who is giving care. - Review care plan to determine who the facility has assigned to care responsibility to. - Check staffing sheets for minimal requirements and time and attendance for actual staffing. - Review charts maintained for ADL medications, I & O, restraints, etc., to assure that sufficient staff are available for carrying out responsibilities as specified in patient care plans.	All nursing personnel must function within their State Nursing Practice Act. Levels of staffing meet at least minimum requirements. Nursing care needs must be identified by the facility & documentation, resident and staff interviews should determine if these needs are met. All nursing staff should have education or training to prepare them for the care they perform.	Patient Rights 405.1121(k)(g) Patient Care Policies 405.1121(1) Medical Records 405.1132(c) 442.318(a)(c) Patient Care Management 405.1124(d) 442.341 Staff Development 405.1121(h) 442.314

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F127 (cont'd) available to meet the total needs of all residents. F128 4. There is a registered nurse on the day tour of duty 7 days a week (for SNF only). Intent That all residents are cared for by personnel qualified to provide the care & that sufficient numbers & classifications of personnel are available.	Check for staff who are actually on duty.	- If no, what else do you need? - What other personnel do you need here in terms of numbers & classifications - i.e., aides, LPN's, R.N.'s, etc.? - Do you think there is enough help in the facility? - If no, why?			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Restorative Nursing Activities of Daily Living F155-159 SNF 405.1124(e) ICF 442.342 442.343(a)(c) INTENT To assist the resident to attain or maintain his/her maximum level of independence and function?	A. Observe residents in need of assistance. 1. Is needed assistance provided? 2. Is resident provided assistance and instruction, as appropriate, in all ADL's to increase his/her level of independence? 3. Does staff minimize pain/discomfort while assisting resident? 4. Is resident taught transfer techniques? 5. Is resident assisted to toilet in timely manner? 6. Resident personal equipment available & within reach? Glasses Hearing aids Dentures	Ask Resident: - What assistance do you need with bathing and/or dressing? Who helps you? - Does the staff plan with you your dressing/bathing schedule? - Do the nursing and activities staff coordinate your schedule so that you have the opportunity to participate in favorite activities? - Are you able to dress/bathe at times convenient for you? - Are you bathed consistently? (i.e., on the day(s) scheduled does the bath get performed?) - Where are you bathed? (bed, shower, tub?) - Are there adequate clothes available for you to wear? - Do they come back from laundry in appropriate condition? - How do you get in and out of bed? - If staff assists you, do they seem to be able to do their job appropriately? Do you always feel safe when	Review: - Plan of care + Reflects assessment, goals, methods to reach goals, service providers and evaluation. + Addresses restorative nursing assessment, program initiation, implementation and evaluation of the progress over a reasonable time period. Professional judgement determines the assessment of appropriate time frames. + Identifies planning for potential discharge for all residents to determine a disposition on home care or an alternate level of care. - Nursing Notes + Demonstrate evidence of assessment, intervention, response to treatments/teaching and their progress toward independence, a maintenance level or a deterioration. + Provide evidence of interdisciplinary conferences.	Are patient needs identified? Verify that the plan of care addresses resident needs and is implemented as scheduled and that all appropriate information is documented. If goals are not reached, has a reevaluation been performed and goals revised? Does restorative nursing assist the resident to acquire a higher level of independence? Is sufficient time allowed to resident for learning to increase his/her level of independence? Are assistive devices used regularly as per plan and are they in good repair? Is there an assessment, and if appropriate, a plan for each ADL that the resident needs to gain independece in? Maintenance goals should be noted as appropriate.	Physicians Services 405.1124(a)(b) Nursing Services 405.1124(a)(b)(c) 442.342 Dietetic Services 405.1125(a) 442.331(c) Activities 405.1131(a)(b) 442.345(a)(b) Specialized Rehab. Services 405.1126 442.343(e)(1)(2)

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F155-159 (cont'd) ADL's (cont'd)	Prosthetic devices (eg. braces, artificial extremities). Adaptive equipment (e.g., built-up spoon, reachers). Orthotic devices (eg. splints, AFO's). Restraints (eg. vest, waist, wrist, ankle, mitts, nets, geri-chairs). Grooming items (eg. comb, brush, shaver). Oral hygiene (eg. toothbrush, toothpaste, mouthwash, denture cup). Self-feeding devices. Assistive devices for special sensory loss needs (eg. communication boards, large print books, magnifiers, writing tablets, picture cards, talking books). Training/re-training Prosthetic management Stroke adapted ADL's Self-injections of medications Bowel/Bladder Self-feeding Self grooming Ambulation	being helped? - Are staff members encouraging you to do things for yourself? - Do you have any problems getting to the bathroom on time? - Do you have any problems with leakage when you sneeze, laugh or at any other particular time? - How does the staff help you with these problems? - Are they aware of the problems? - Do you bowels move regularly? - If not, what do you/staff do about this? Are you able to feed yourself? - Are you able to get to the dining room by yourself? If not, why? In that case, what does staff do about this? - How long have you been up today? - Do you usually lie down for a rest? - If you need help getting into or out of bed, is staff available to help you when you need it? - Where do you spend most of your time - in your chair, wheelchair or in bed?			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F155-159 (cont'd)	Colostomy/Ileostomy Care Respiratory Care (oxygen inhalation) Speech Mobility Upper extremity dressing Lower extremity dressing Observe at mealtime whether staff encourages/guides residents in self-feeding or <u>feeds</u> the residents.	Does anyone move your arms or legs or help you with exercises? - Have your sleeping habits changed since you came to the nursing home?. If yes, why? - Are you able to get help during the night if needed? + What kind on help is needed? + Is staff response timely? - Do you feel there are adequate care supplies at this facility? - If not, can you give me an example of why you feel this way? - Is your family involved in assisting you or if learning to help you? - Do you feel there is adequate staff at this facility? - If not, can you give me an example of why you feel this way? - Does staff assist and/or encourage activities (e.g., R.O.M., ambulation ADL, communication programs, feeding)? - How often does staff assist in activities? - Is there anything resident would like to do			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F155-159 (cont'd)		for himself/herself that staff is doing? - Is resident comfortable (e.g. free from pain)? - Is your cane/Walker/crutches comfortalbe for you to use? - Did anyone measure you so you have the right size cane/walker/crutches? - Did anyone show you the correct way to use your cane/walker/crutches? - If the facility arranged so that you can get around easily? <u>Ask Activities Staff</u> Do you provide information to nursing staff about time and place of activities, plus names of residents who are to attend or those who might be interested in attending? <u>Chair-bound Resident</u> <u>Ask Resident</u>: - Does he/she know why he/she is in a chair? - Is resident assisted to use bathroom? - Is resident comfortable? - Does he/she see therapist? (O.T., Speech, P.T.) and how often? - Does resident go to a			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F155-159 (cont'd)		therapy area or does therapist come to resident? - Is able to reach items needed? Ask Nurses Aide -Who give you information about the time and place of activities and which residents are to attend? How are you given this information? Wheelchair Resident Ask Resident: - Does he/she know why he/she needs a wheelchair? - Is resident trained and/or encouraged in independent W/C ambulation and activity? - Does resident know how to lock and unlock wheelchair? Ask Staff: - How is a resident set up for independent W/C ambulation? - Nurse Aide - has resident received instruction in transfer techniques? For Bed Bound Resident In addition to appropriate interview questions above:			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F155-159 (cont'd)		Ask Resident: - How do you spend your day? - Can you do some things for yourself? - Does the staff give you a chance to learn self-care skills? Ask Nurse: - If the resident had access to a recliner chair, would he/she be able to be out of bed? - Is the time out of bed coordinated with the activity schedule and necessary care? Ask Nurses Aide: - Does this resident do any self-care? Why not? - If no, has anyone tried to teach him/her to do some care?			

LONG TERM CARE SURVEY 65

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Positioning F158 SNF 405.1124(e) Intent To assure that the resident is positioned at all times to promote maximum therapeutic benefit and comfort, as well as safety.	Observe residents in bed, chairs, restrained, or in "protective devices" for - body alignment - positioning - contractures (when did they occur and what is being done)? - ROM program (observe extent & technique of provider) - Assistive devices (overhead pulleys, slings, splints, etc.) - Turning/repositioning schedule and adherence to the schedule. - Devices to maintain positioning, i.e., sandbags, extra pillows, etc. Specific Observations for the Bed Resident (as appropriate to condition). Positioning/body alignment Resting splints & correct application Foot positioning boards Trapeze Hand rolls Elbow/leg splints & correct application Restraints Siderails (padded) Special mattresses	Ask Resident: - How often are you turned/repositioned by the staff? - Is that often enough? - Are you comfortable now? Do you have any pain or discomfort? Where? - How long have you had joint stiffness (contractures)? - Does someone help you move or exercise your arms and legs? - How often? - Do you wear special devices? How often? - Consistently? - Are they always applied and removed appropriately and promptly? How often? - By whom? Bed Rest Resident Ask Resident: - Why do you have to stay in bed? - How often does staff get you OOB? - Do they know how to get you up? - Who sets you up and/or assists you in bedside ADL's? - Does staff, therapist check positioning, supportive devices?	- MD orders for non-nsq interventions/treatments. - Plan of care should include at a minimum: + Restorative goals + specific joints to be exercised + devices to be used in positioning + frequency of treatment or repositioning + resident teaching information + resident teaching information + services responsible for carrying out the procedures + time frames for reaching goals - Nursing progress notes indicate: + Plan has been implemented + Progress toward goals + Response to information from reevaluation - Look for actual turning/repositioning schedule	Plan of care should be complete (addressing resident needs) and plan is implemented on a daily basis. Care givers are knowledgeable re plan content Residents are turned as scheduled. In good body alignment with proper assistive devices & equipment. Contractures are prevented and/or treated. Plan is reviewed, reevaluated and revised at least quarterly, but must be done as often as patient condition dictates. Ask aide assigned to demonstrate the hand holds he/she uses for ROM. If aide doesn't know, ROM is probably not being done. Do it "at bath time" is not sufficient.	Rehabilitative Services 405.1126(h) 442.343(c)(2) MD Orders Activities Resident Rights Nursing-Staffing Inservice Social Service Dietary

LONG TERM CARE SURVEY 66

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F158 (cont'd)	Blankets/pillows Clean, smooth linen Clean, appropriate bed wear Turning schedules ROM schedule O.O.B. (as tolerated) Water available All adaptive devices are clean and in good repair. All assistive supportive devices are clean and in good repair. Specific Observation for the OOB Resident in Chair (geri-chair, lounge chair in room, as appropriate to condition) Arrangement of room facilitates residents optimal independence (e.g., independent eating, grooming, T.V., radio, water). Positioning/body alignment. Blankets/lap robe, pillows, foot stool. Hand rolls, splints. Clean, dry attire. Pressure relief device. Restraints, with release & activity schedule. Call bell available.	- When? - Does staff answer call bells propmtly? How soon? - Is resident able to reach items (e.g., water call bell, urinal, emesis basin, tissues)? - How much confidence do you have when the nurses are helping you transfer, or turn and so on? - Does resident go to therapy area or does therapist come to resident? Bed Rest Resident Ask Staff: - How often is position changed? - What activity is done at the time (e.g., R.O.M., toileting, OOB, grooming? - What can resident do independently? - Is equipment available? - Who maintains and cleans the equipment? - What is the schedule for this? - What training have you had to learn to position patients correctly?			

LONG TERM CARE SURVEY 67

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F158 (cont'd)	Specific Observation for the Wheel Chair Resident (as appropriate to condition) - Proper fit - Good working condition - Appropriate arm rest, footrest, leg support, lap tray - Proper positioning - Pressure relief aids, (e.g., gel flotation pads, egg crate mattress, sheepskin) - Set up for independent W/C ambulation - Functional adapted toilet area - Transfer techniques Observe how staff wheel the resident (e.g., do they inform before starting movement)? Are patients moved wheeling forward and facing elevator doors? Observe staff for: - verbal cues - physical support - body mechanics Specific Observation for the Ambulatory Resident (as appropriate to condition) - Gait (steady/unsteady) - Appropriate devices for	- Was there any part of your orientation when you first came to work here that addressed positioning? - Do you have any periodic reviews/updates on positioning? Chair Bound Resident Ask Staff: - How often is resident repositioned/taken out of chair? - What is the activity at time of repositioning and/or release of the restraint? - What can resident do independently? Ambulatory Resident Ask Staff: Is resident encouraged to independently ambulate to and from activities and dining room (with or without personal assistance)? - Does resident do as much as he/she can independently? - What does resident do? - How do you know that resident is maximally independent? - If it is not working independently, how do			

LONG TERM CARE SURVEY 68

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F158 (cont'd)	ambulation (e.g., cane, crutches, hemisling) - Posture - Appropriate staff assistance in ambulation - Grab bars (halls, bath/shower area) - Functionally adapted toilet area	you deal with it? - Is there something resident would like to do that he/she is not allowed to do (e.g., shave self, apply make-up, style own hair)? - What training have you had in learning to position residents and do range of motion? - What opportunity do you have for ongoing training? - Who does the actual training? Check question placement under Interviewing. May be more appropriate for resident's rights section. Observe wheeling technique used by staff.			
Nursing Services F. Administration of Drugs F166-167 SNF 405.1124(g) ICF 442.337 F168 1. The patient is identified prior to administration of a drug.	Observe a drug pass with at least 20 residents receiving medication. See SOM Appendix N. Transmittal No. 174 for details of the Surveyor Methodology for Detecting Medication Errors. - Observe medication administration techniques (e.g., hand-	Ask Resident - Do you always receive your medication on time? - If not, what is the problem? - Do you feel that residents here always receive the correct medication? - Who gives you your medications? - Do your medications change in appearance?	Review the medication administration record. (as appropriate) See S.O.M. Appendix N, Transmittal No. 174 for details of the record review.	If the combined total of significant & non-significant errors is 5% or above, a deficiency is present. Any significant error is cause for a deficiency. See Appendix N for details.	Physician Services 405.1124(b)(7) Pharmaceutical Services Supervision 405.1127(a) 442 336(a)(b)

LONG TERM CARE SURVEY 69

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F169 2. Drugs and biologicals are administered as soon after doses are prepared. F170 b. Administered by same person who prepared the doses for administration except under single unit dose packet distribution system. Exception: ICF residents may self administer medications with their physician's permission.	washing, pouring of dosage, position of resident).	- Do the nurses stay with you when you take your medication? - Do any of the medications bother you? Ask Staff: - Do you generally have available the medications you need? - Are there any problems in administering medications? Note drug doses refused by resident and how handled by staff.			

LONG TERM CARE SURVEY 70

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
G. Conformance with Physician Drug Orders F172 F173 F174 SNF 405.1124(h) ICF 442.334(a) Drugs are administered in accordance with written orders of the attending physician. Intent All residents receive medications as ordered by the physician.	Combine with observation of drug pass.		- Review the latest recap of the physicians orders - Review the medication administration record (as appropriate) - See S.O.M. Appendix N, Transmittal No. 174 for details of the record review.	See Appendix N for details	Physician Services 405.1123(b)(7)

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
DIETETIC SERVICES (Condition of Participation) F175 SNF (405.1125) A. Menus and Nutritional Adequacy F176 SNF (405.1125(b)) F177 ICF 442.332(a)(1) F178 Menus are planned and followed to meet the nutritional needs of each resident in accordance with physicians' orders and, to the extent medically possible, based on the recommended dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences.	o Specific Observations which might be indicative of possible nutrition problems: Clinical - underweight/ overweight - dehydration - edema - cracked lips - pallor - dull or dry hair - swollen or red tongue - bleeding gums - decubitus ulcers - infections o Physiologic factors which may affect intake: - Vomiting - Food intolerance - Poor dentition - Sore mouth - Constipation - Diarrhea - Inability to feed self - Decreased visual and olfactory acuity - Unable to communicate - Loss of appetite o Psychological/Social - Confusion	Ask dietary manager to explain the procedure for making substitutions and recording the changes. - Is menu usually followed? Ask Resident: 1. How are your meals? 2. Are there foods you are not allowed to have? 3. Are you on a special diet? 4. Do you receive foods that are not appropriate for your diet? If so, what do you and the staff do about that? 5. What time do you receive breakfast, lunch and supper? Do you always receive a meal at mealtime? If not, why? What happens then? 6. Do you like the taste of the food? 7. Is the temperature appropriate (i.e., milk chilled, coffee hot, etc.)? 8. Do you get enough to eat? What do you do if you're still hungry after a meal?	Review Nutrition assessment for the following documentation: o Usual/ideal body weight/ height o Dietary allergies/ sensitivities, ability to chew and swallow regular foods without difficulty. o Full or partial dentures o Mental and emotional condition o Physical appearance, skin condition o Appetite and food preference. o Vitamin and mineral supplements. o Food and fluid intake in measurable terms and frequency of meals. o Degree of assistance needed in eating, related mobility, vision, or other identified problems. o Medications (e.g., diuretics, insulin, antibiotics, etc.) o Related laboratory findings (e.g., fasting blood sugar, cholesterol, sodium, potassium, hemoglobin, BUN, serum albumin, transferrin or creatinine-height index if available).	o Were physician diet orders followed? o Did nursing plan for feeding and assistance at mealtime? o Is there rehabilitative use of assistive devices, if appropriate? o Is modification of consistency of meals made if resident has a problem or change in condition? o Are between meal and bedtime snacks provided as needed? o Is socialization at meals provided? o Has dietitian provided counseling of resident and family as needed (related to diet)? o Usual body weight is maintained/supported? o Is there evidence that the plan is being carried out (e.g., documentation in the resident's chart, observation by the surveyor, and resident/staff interviews)? If the resident refuses meals or does not respond to intervention, the notes in the chart should indicate efforts to intervene or provide counseling.	Physician Services 405.1123 442.346 Medical Records 405.1132 442.318 Nursing Services 405.1124(e)(f) Specialized Rehabilitative Services 405.1126 Patient Care Management 405.1124(d)

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Intent Ensures that each resident receives food in the amount, kind, and consistency to support optimal nutritional status.	- Excessive food likes and dislikes - Refusal to eat o Selected biochemical changes which might indication changes in nutritional stutus: - Visceral protein status o serum albumin o transferrin o Bun o Serum electrolytes During mealtime observe the resident for: - adherence to food preferences - adequate space for eating - self-feeding skills - proper position for eating - ability to eat foods served - use of adaptive feeding devices - amount of food actually eaten - protection of resident's clothes - amount of time resident is allowed to chew and swallow - Assistance provided as needed to and from dining area	9. Do you receive nourishment in the evening? Do you have a choice about what you want to eat? 10. Do you receive medicines during meals? If yes, do you know what it is or what it is for? 11. Is there a resident council? 12. Do you get food from outside of facility that you buy or family brings? How often? What kind of food? 13. How often does anyone from the kitchen come to ascertain your feelings and opinions on the food service, your portion size, etc.? 14. Where do you eat (e.g., dining room, your room, etc.)? Is this your choice? Do you have a choice of where you eat?	o Food/drug interactions o Mental/emotional assessment as it relates to resident's food habits. Review: o Plan of Care o Nursing Notes Review: o Physicians orders o Progress notes o Notes from other professional disciplines as appropriate. Nutritional status depends not only on adequacy of menu planning but also whether the resident eats the food and how the body uses it. While the surveyor is not responsible for individual nutritional assessments of residents, when specific information is needed during the survey to make a compliance decision, the surveyor will utilize the following minimum assessment guideline: Menu Evaluation o Adequate in energy and nutrients - Protein - Calories	Is there evidence that the resident's progress is regularly observed (e.g., awareness of food and fluid intake such as acceptance of foods, food consumed, and resident's appetite)? o Is fluid intake for resident encouraged, Foley catheter, problem feeders monitored? o Is there general evidence as to whether poor resident conditions are due to poor care or whether the facility has taken appropriate measures to prevent or resolve problems. o Is there indication of progress toward desired outcomes? If not, is the evidence of re-evaluation available within specified time frames? o When the antropometric and clinical data do not correlate with dietary data, (food intake, dietary supplements) the surveyor should take note that the problem may not be nutritional.	Nursing Services -405.1124(f)

LONG TERM CARE SURVEY 73

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
	Assistance being provided in case of choking, incontinence, falling, or other emergencies. Nursing Staff supervision of dining areas including residents' rooms during meal times.		- Vitamin C - Calcium Selected evaluation of residents for in depth review: A check list can be used to evaluate daily menus for basic foods: (use standard serving protions) Daily food plan should include: MILK GROUP 1 pt milk MEAT GROUP 5 equivalents:* 1 equivalent equals 1 oz. of meat (edible portion) weighed after cooking (this includes eggs, dried peas, beans, nuts, and all meat, fish and poultry). VEGETABLE AND FRUIT GROUP 5 services or more, including a dark green or deep yellow vegetable for vitamin A value every other day and a citrus fruit or other fruit rich in Vitamin C daily.		

LONG TERM CARE SURVEY 74

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F178 (cont'd)	Observe serving portions sizes on all menu items: MILK GROUP - 1 pint daily Source of: Protein Calcium Phosphorus B Complex MEAT GROUP - 5 lean meat equivalents (1 meat equivalent = 1 oz meat, poultry, fish, cheese & eggs; also dried peas, beans, and nuts). Source of: Protein Iron Vitamin B12 VEGETABLE AND FRUIT GROUP - 5 servings or more (1/2 cup = 1 serving) Source of: Vitamin A,C, B6, Folacin, Fiber BREAD-CEREAL-POTATO-LEGUME-PASTA GROUP - 7 servings (1 serving = 1 slice bread; 1/2 cup other; 3/4 cup flake-type cereal).		BREAD-CEREAL-POTATO-LEGUME-PASTA GROUP 7 servings FATS AND SWEETS (Without this group the diet contains 1,415 Kcal) Diets are adapted from the handbook of Clinical Dietetics, The American Dietetic Association.) Menus are dated and contain minimum portion sizes. Are substitutions noted on the file copy? Are substitutions made within the same food group i.e., meat for another source of protein in the meat group, or vegetable of similar nutritional value?		

LONG TERM CARE SURVEY 75

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F178 (cont'd)	FATS AND SWEETS (to increase caloric intake) IODIZED SALT (unless contraindicated)		o Documentation of decision to withdraw or begin artificial feeding and hydration. Check menus for variety Are they specific (i.e., states kinds of fruit, juice, vegetable)? DIETARY SERVICES SELECTED NUTRITIONAL REQUIREMENT RECORD REVIEW 1. Anthropometry - Weight /Height NOTE: These recommended formulas and guidelines are not the only acceptable guides available. The surveyor should ask to use the assessment guidelines used by the facility before using the ones provided here. o Important indicator of nutritional outcomes. o Disease state can have adverse effect on desired body weight.		

LONG TERM CARE SURVEY 76

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F178 (cont'd)			2. Weight for Height Calculation Females: Allow 100 lbs. for first 5 ft. of height plus 5 lbs. for each additional inch Males: Allow 106 lbs. for first 5 ft. of height plus 6 lbs. for each additional inch Estimating Caloric Needs 1. FORMULA: Harris-Benedict Equation Men: 66 + (13.7 x Wt. in Kg) + (5 x Ht. in cm) - (6.8 x Age)=BEE Women: 65.5 + 9.6 X Wt. in Kg.) + (1.7 x Ht. in cm) - (4.7 x Age)=BEE Parenteral Anabolic: 1.75 x BEE Oral Anabolic: 1.5 x BEE (Kcals)		

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F178 (cont'd)			Oral Maintenance: 1.20 x BEE (Kcals) Metric Conversions (Approx) pounds (lb.) x 0.45 = kilograms (Kg) inches (in.) x 2.5 = centimeters (cm) Estimating Protein Needs 1. Allow 0.8 gram protein per kilogram of ideal body weight. 2. Increase to 1.2 - 1.5 gm/kg for patients with depleted protein stores (decubitus, draining wounds, fractures, etc.). Fluid Requirement Based on actual body weight: Over 55 years with no major cardiac or renal diseases: (NOTE: 2.2 lbs. equals 1 kg of body weight)		

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F178 (cont'd)			Example: 120 lbs/2.2 lbs. = 54.5 kg (55 kgs) 55 kg x 30 cc = 1,650 cc/day Note: Isotonic Standard Tube Feeding = Approximately 80% water. Amputation % of Body Weight Leg 20% Below Knees 10% Arm 6% At Elbow 3.6% Suggested Standards for Evaluating Significance of Weight Loss % of body weight loss Interval / Significant Loss / Severe Loss 1 week 1-2% 2% 1 month 5% 5% 3 months 7 1/2% 7 1/2% 6 months 10% 10% From Blackburn, et al: "Nutritional and Metabolic Assessment of the Hospitalized Patient: JPEN vol. 1, 1977.		

LONG TERM CARE SURVEY 79

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F178 (cont'd)			Lab Indices for Visceral Proteins		

	Mild Deficiency	Moderate Deficiency	Severe Deficiency
Albumin g/dl	3.5-3.2	3.2-2.8	2.8
Total Lumphocyte Count (cu/mm)	1800-1500	1500-900	900
Transferrin (If Available)	200-180	180-160	160

LONG TERM CARE SURVEY 80

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
B. Therapeutic Diets F179 SNF 405.1125(c) F180 ICF 442.332(b)(1)(2) F181 1. Therapeutic diets are prescribed by the attending physician. F182 2. Therapeutic menus are planned in writing, prepared, and served as ordered with supervision from the dietician and advice from the attending physician whenever necessary.	System for the provision of diets: o Dietetic service Kardex or file o Therapeutic menus o Nourishment preparation and service o Adequacy of nourishment o Individual menus or diet cards SPECIAL FEEDINGS: The surveyor should also attempt to observe that: o Staff use proper technique in administering feedings and medications. Check to see that staff checks for location of tube before feeding and that tubing is irrigated before and after addition of medication.	Ask Staff: o Number, type of therapeutic diets? o Time of nourishment activity, who's responsible? o Nourishment provided for day of survey? The surveyor should interview staff regarding their knowledge of the feeding schedule and training in administering tube feedings. Some residents having difficulty in speaking or swallowing with the tube in place (i.e., poor toleration). The surveyor should inquire if mouth feeding was attempted. Ask Resident: If the resident is able to be interviewed, suggested questions may be: 1. How long have you been fed by this tube? 2. When was the last time you tried to eat by mouth? What happened? 3. How often do you receive the feeding? Is this consistent?	Review: - Physician diet orders in medical record - Nurses' Kardex - Dietary Kardex - Therapeutic diet menu - Diet cards Note: - Consider appropriateness of special diet-updated and reviewed since admission. - Progress notes reflect reevaluation of resident's progress on diet. Selected number of residents on therapeutic diets should be considered for indepth reviews. Tube Feeding Review: - Plan of Care - Identify frequency, amt. of feeding based on the physician's order and the time span over which each feeding is accomplished. - Medication and treatment records - Fluid intake records - Number of calories as	On Pureed diets: o Ordered by physician o Prepared fresh daily o Same calories and/or food groups as if served whole. Pureed foods are coordinated with general/regular menu. On Tube Feeding: o Has the feeding been ordered by physician? o Is tube feeding nutritionally adequate? o Have attempts been made to progress tube feeding if indicated? o Have changes in resident condition been noted and addressed.	Nursing Services 405.1124 405.1124(c) (d.) Patient care plan (f.) Supervision of patient nutrition

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F179-182 (cont'd)		4. Does the staff help you in feeding? Do you feel comfortable/safe with all the staff who perform the feeding? If not, what happens? 5. Are you losing or gaining weight? What is your goal? 6. How often is the tube changed? Who does this? Do you feel comfortable/safe with all staff who perform this procedure? Interview staff regarding knowledge of diabetic diets. o What nourishment does the diabetic patient receive? o If diabetic patient refuses the meal, what is done to supplement the meal? If resident is able to be interviewed, suggested questions: 1. How long have you been on your diabetic diet? 2. Do your know some of foods you must avoid? What are they?	well as amount of additional water - Periodic reassessment of ability to swallow - Record should indicate measures taken to prevent diarrhea and constipation and to treat if they have developed. Diabetic Diets Review: o Pertinent Laboratory data: - urinary glucose - serum glucose o Wt. gain/losses	weight loss, constipation, diarrhea, skin condition)? o Have observed problems been coordinated with other departments and resolved? o Is feeding being monitored to ensure that feeding is occurring at the ordered/appropriate rate? o Varied nourishments as preferences allow? On Diabetic Diets and Other Therapeutic Diets o Ordered by Physician o Varied, nutritionally adequate o Individualized to suit resident o Re-evaluation indicates diet meets objectives. If not appropriate, documentation is provided o Laboratory results support diagnosis o Between meals nourishment provided as needed and recorded in measurable amounts.	

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F179-182 (cont'd) F181 Therapeutic diets prescribed by the attending physician	Observe tray/meal service: o Low sodium diets are palatable (taste) o Sugar sources on diabetic diet trays o Salt sources on sodium restricted diet trays.	3. Do you receive a nourishment between meals or before going go bed?			
F182 Therapeutic menus are planned in writing, prepared and served as ordered with supervision from the dietician and advice from the physician whenever necessary.	Functioning system to provide the needed nutrients: - Resident's general appearance - Meal service + Food acceptance + Adherence to food preferences - Food supplement + Type to support + Method of service + Assistance provided + Timely provision as ordered - Portion sizes - Conforms to physicians orders	FOR THE RESIDENT WITH DECUBITUS ULCERS Ask Staff: 1. Regarding knowledge of dietary needs. 2. What do you do when this resident refuses milk, meats, bread, etc.? 3. What nourishments are provided to this resident? How often? 4. What happens when a weight loss is noticed with this resident? Ask Resident: 1. Has anyone talked with you about the importance of eating your meals? 2. Do you get foods that you don't eat on your tray? 3. When do you feel hungry? 4. Do you get between meal nourishments?	1. Identify residents with conditions that immobilize or prevent voluntary body movement. 2. Identify location, number, size and depth of decubitus ulcers. 3. Calculations of kilocaloric and protein levels as needed. 4. Micronutrient need assessment and recommendation. 5. Progress notes + monitor weight + monitor healing of decubitus ulcers. 6. Pertinent Laboratory Data + Hemoglobin/Hematocrit + Serum Albumin + Total Lymphocyte Count 7. Fluid Intake + sufficient to maintain hydration	A system is in place to provide the type and amount of nutritional support needed by the residents who have developed decubitus ulcers. Food and supplementation are provided in a method to ensure intake of nutrients needed by residents with decubitus ulcers. Nutritional intervention is assessed and reassessed to ensure appropriate intervention for acceptable health care outcome.	Nursing Service 405.1124 (d) Patient Care Plan (f) Supervision of Patient Nutrition

LONG TERM CARE SURVEY 83

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F179-182 (cont'd) F181 Therapeutic diets prescribed by the attending physician F182 Therapeutic menus are planned in writing, prepared and served as ordered with supervision from the dietician and advice from the physician whenever necessary.	RENAL REVIEW System in place for the the correct provision of renal diets. - Individualized menu - Dietary Staff Utilize menu when serving diets.	Interview Staff regarding knowledge of renal diets: 1. What foods should be restricted when a patient has kidney problems? 2. What nourishments are given to these patients? 3. Are fluids restricted? Ask Resident: 1. Are you on a special diet? 2. What foods must you avoid? 3. Do you feel hungry? 4. Do you eat everything at mealtimes? 5. Are the foods the kitchen sends you the correct ones for your diet? 6. Has the dietitian explained your diet to you?	Renal Patient Diet Review - Pertinent Laboratory Data + Serum Sodium + BUN + Serum Potassium + Albumin + Hematocrit + Creatinine - Pertinent Medications + Vitamin/Mineral + Supplements - Weight gains/losses	On Renal Diets - Ordered by physician - Written menu nutritionally complete in so far as medically possible, including calories - Individualized to suit resident - Laboratory testing as needed - Coordination with dialysis unit to determine effectiveness of diet .	Nursing Service 405.1124 (d) Patient Care Plan (f) Supervision of Patient Nutrition

LONG TERM CARE SURVEY 84

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
C. Preparation F187 SNF 405.1124(e) F188 1. Food is prepared by methods that conserve its nutritive value and flavor. F189 2. Meals are palatable, served at proper temperatures. They are cut, ground, chopped, pureed or in a form which meets individual resident needs. F190 3. If a resident refuses food served, appropriate substitutes of similar nutritive value are offered.	Observe: o Feeding assistance is provided or not provided by staff o Length of time residents sit and wait for meal service o Food is served soon after cooking or refrigerated o Trays are free of spillage of foods or liquids o Foods are appropriately covered and kept at a proper temperature o Cooking and service utensils are clean, sanitary and greaseless o Refrigerated foods must be covered o Leftover and pre-cooked foods must be dated and labeled o All cooked food stored above raw meats in refrigerator o Temperature gauge on or in refrigerator to record temperature o Shelving to allow air circulation o Food not stored in refrigerator must be stored off the floor (This is applicable to food stored in walk-in refrigerator and freezer.)		Review: o Plan of Care o Progress notes o Notes from other professional disciplines to determine rehabilitation potential to self feed, use of assistance devices. o Record of food substitution to determine alternate choice provided o Standardized recipes	The facility has kitchen and dietetic service areas adequate to meet the food service needs. These areas are properly ventilated, arranged, and equipped for sanitary refrigeration, storage, and preparation of food. Equipment and storage areas are clean, well maintained, within-proper temperatures ranges, and safe Proper temperatures: (Fahrenheit) Frozen food storage — 0 or below Cold food storage — 40-45 degrees Hot food holding equipment — 140 degress minimum Dishwasher wash cycle — 150 - 160 degrees Dishwasher rinse cycle — 160-180 degrees or a color change in thermopaper; or adherence to manufacturers recommendations	

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F190 (Cont'd) INTENT To provide foods that are safe and nutritious SNF 495.1125(e)	- No rust on shelves - No dripping or spillage on shelves and floors - Degree to which diet modification is commensurate with residents tolerance and capability - Residents for meal satisfaction - Observe appearance of food color, texture, aroma, and flavor - Less than 75% of meal is consumed - Type of substitutions provided		- Progress notes - Diet card - Day's menu substitute record	Dietary personnel are clean and free of infectious disease. They practice acceptable techniques and procedures to keep foods at proper temperatures and protected against contamination. Is dietary information pertinent to dietary modification? Has resident been assessed for eating program to maintain independence? The food substitute is of similar nutritive value as the refused item (e.g., milk refused, alternate of calcium rich food or calcium supplement should be provided.	

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
D. Frequency F191 SNF 405.1124(d) F192 ICF 442.331(a) F193 1. At least three meals are served daily at regular hours with not more than a 14-hour span between a substantial evening meal and breakfast. F194 2. To the extent medically possible, bedtime nourishments are offered to all residents	o Menus as under A on page 63 o Who serves nourishments o Nourishment list and schedule	Interview various residents about the nourishment service: o Are nourishments offered routinely? o At what time are they offered? o By whom? o What kind of nourishments are offered?	Review o Menu as under A o Nourishment List	Three meals or their equivalent are served daily with not more than a 14-hour span between the evening meal and breakfast. The nourishment service is more difficult to evaluate: must find evidence that patients are offered nourishments on a planned basis and documented.	

LONG TERM CARE SURVEY 87

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
E. Staffing F195 SNF 405.1125 (a) F196 1. Food service personnel are on duty daily over a period of 12 or more hours. Intent Persons are providing services commensurate with their level of training; and at the level of sophistication needed by the residents.	- Food service personnel are on duty for all defined dietary responsibilities: - Supervision - Food Preparation - Dishwashing - Cleaning - Duty Schedules	- Interview personnel to verify that they are aware of their responsibilities and job descriptions.		- From an assessment of the total dietetic service operation: + The dietetic supervisor is capable of the overall management and supervision of the dietetic service. + There are dietetic personnel on duty over a 12-hour period who demonstrate ability to perform tasks adequately. + Dietetic personnel receive appropriate orientation and training consistent with their duties and responsibilities. There is evidence that the dietetic staff are knowledgeable about food service policies and procedures and apply these accepted professionals practices in their daily work. + Services provided are consistent with the size, scope and facilities available.	

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
SPECIALIZED REHABILITATIVE SERVICES F197 SNF 405.1126 F198 SNF 405.1126(b) Indicators A thru C apply to SNFs. F199 A. PLAN OF CARE ICF442.343(e)(1)(2) F200 Rehabilitative services are provided under a written plan of care, initiated by the attending physician and developed in consultation with appropriate therapist(s) and the nursing service. B. THERAPY F201 ICF442.343(a)(c)(d) Therapy is provided according to orders of the attending physician in accordance with accepted	OBSERVE RESIDENTS As per "Restorative Nursing Activities of Daily Living" SNF 405.1124(e)2(b) ALSO: OBSERVE RESIDENTS IN THERAPY AREAS: - Is privacy provided during treatment, as applicable (e.g., cubicle curtains, room dividers, one to one area)? - Is there appropriate, courteous resident/staff interaction? - Are therapy areas appriate to treatment given (e.g., small, quiet area for speech/hearing tests and sessions, large area for P.T., exercise and therapy groups, O.T. perceptual testing/splinting, A.D.L. adaptations area, as applicable)? - Is equipment clean and in good working condition? Is it operating as per manufacturer instructions (e.g., hydrocollator temp., parafin, whirlpool, etc.)?	ASK RESIDENT: (or ask staff, if resident has severe communication problem): - Are you receiving any kind of therapy? P.T.? O.P.? Speech? - How does the therapist identify him/herself to you? - Why do you need therapy? - How often do you see the therapist? - What happens if the therapist is absent for scheduled treatments? - Where do you receive your therapy? - How long have you been receiving therapy? - Do other staff members assist with therapy? Who and in what way? - Are you in a comfortable environment (room temperature, privacy, etc.)? - Do you have input into developing or revising your therapy treatments? ASK THERAPY STAFF: - How many days/hours per week do you provide therapy? - Do you participate in the development of the resident's overall plan of care? In what way? - Do you utilize P.T.	REVIEW: - Plan of care - Doctors' orders - Nursing assessment and progress notes - Aide assignment sheets - Therapy assessments/evaluations (includes a minimum of): + name, age, date, diagnoses + referring physician and reason for referral + history, precautions, limitations + objective documentation (e.g., tests, measurements) + rehabilitation potential - Treatment plan (includes a minimum of): + specific rehabilitation needs and objectives + treatment to meet specific measureable rehabilitative goals + Type, amount, frequency, duration, modalities + name of therapist(s) who will provide treatment + restorative nursing follow-thru (recommendations for plan of care)	- Are rehabilitation services integrated with restorative nursing? - Do therapists participate in development of resident plan of care? - Do observations and interview indicate that services are provided in conjunction with 24 hour nursing, and in accordance with the overall plan of care regarding restorative nursing and specialized rehabilitation services?	Nursing Services 405.1124 442.338 442.319 442.341 Physician Services 405.1123 442.346 Medical Records 405.1132 442.318 Activities Program 405.1131 442.345 Resident Rights 405.1121(k) 442.311 Training 405.1121(h) 442.311 Infection Control 405.1135 442.315 442.327 442.328

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F201 (cont'd) professional practices by qualified therapists or qualified assistants. C. PROGRESS F203 ICF 442.343(f) F204 1. A report of the resident's progress is communicated to the attending physician within 2 weeks of the initiation of specialized rehabilitative services. F205 EXCEPTION:	- Are assistive devices being provided as needed? - Do assistive devices fit well, function and are used properly (e.g., wheelchairs, crutches, braces, glasses, hearing aids, canes, artificial limbs assistive eating devices)? - Is staff responsive to resident expressions of discomfort? - How are the prescribed treatments and training meeting the needs of the resident? - Are parallel bars sturdy and well secured to floor? Are systems designed for weight lifting sturdy and well secured; if attached to wall with rigging and hand grips in good condition ? - Are nonverbal residents provided with means of communication (e.g., writing tablets and utensils, picture cards)? - Are visually impaired residents provided with	"aides" In what way (if interviewing the registered physical therapist)? - How do you assure carryover of therapeutics in your absence? - How often do you provide inservice to staff? What topics are covered? - Do you have opportunities to attend inservices? - How do you communicate patient progress/regression, etc. with physician, nursing personnel, family, other disciplines? - How many residents currently are receiving P.T., O.T., S.T.? - Do you utilize the services of a certified occupational/therapy assistant (if interviewing the registered occupational therapist)? If so, in what way? - Is space available for the conduction of your therapy? - Is equipment readily available to meet resident needs? - Is there a coordinated interdisciplinary	+ identifies modalities that will be delegated to non-skill staff - Progress notes indicate that plan of rehabilitation care has been reevaluated by the physician and therapist as necessary but at least every 30 days. - Communication with physician: + 2 week progress after initiation + monthly progress + discharge summary - Treatment documentation: + frequency + summary		Physical Environment 405.1134 442.324 442.325 442.326 442.328 442.329 442.330 Dietetic Services 405.1125(e) 442.329 442.331(c)

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F205 (Cont'd) ICF resident's progress must be reviewed regularly. F206 2. The resident's progress is thereafter reviewed regularly and the plan of rehabilitative care is reevaluated as necessary, But at least every 30 days by the physician and therapist. F207 EXCEPTION ICF resident's plan must be revised as necessary INTENT Therapy services are provided that will assist the resident to attain his/her optimal level of function.	magnifiers and large print books? - Is equipment such as whirlpool cleaned between patients?	approach toward rehabilitation of the geriatric resident evident in your facility? In what way do you see this?			

LONG TERM CARE SURVEY 91

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Pharmaceutical Services F208 SNF 405.1127 F210 A. Supervision F211 ICF 442.336(a)(b) F212 SNF 405.1127(a) The pharmacist reviews the drug regimen of each resident at least monthly & reports any irregularities to the medical director and administrator. F213 A registered nurse may be utilized to perform this review for ICF residents. Also the attending or staff physician must review medication quarterly.	- Observe residents for excess sedation or adverse effects: + drooling + shuffling gait + involuntary movements of limbs, tongue, facial muscles + loss of affect + drowsiness + postural abnormalities + pill rolling movement - Observe for depression aggitation	Ask Resident: - Are you aware of the medications you are taking--use, frequency, contraindictions? - Has your physician discussed the medications you are taking, with you? - How many medications are you taking? - Do you feel the medication helps you? - Do medications bother you, e.g., make you feel nauseated or dizzy? - If so, have you told anyone about it? Ask Staff: - How often does the pharmacist review the resident's medications? - To whom does he report any irregularities? - When the pharmacist reports irregularities, what is done about it? - To whom do you report any problems about medication? - Do you feel the residents are receiving the proper medications, amount and kind? - Is the pharmacist available to you for consultation?	Review medical record: - to see if pharmacist or nurse has reviewed a drug regimen on a monthly basis. - for evidence that the reviewer has reported irregularities to the physician or other who has authority to correct the irregularities for evidence that the irregularities have been evaluated. - review nurses notes, progress notes, care plan, etc. for any adverse reaction to medication and indication that corrective action was taken. - screen the drug therapy of the residents included in the sample using the indicators (forms if prepared) outlined in SOM Appendix N Transmittal #174. - review pharmacists drug regimen monthly reports to determine if pharmacist has commented on potential irregularities, screened out through this process (need full year).	Reviews were performed in the facility. There was evidence of a review performed on every resident whose record was reviewed indepth. In records reviewed, the average prescription utilization was not substantially over 6.1 If it is, review for appropriateness. Apparent irregularities were identified and reported. * Refer to SOM Appendix N in 174 for further information on drug regimen review.	Physicians Services 405.1123(b) 442.346 Nursing Services 405.1124 442.338

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F213 (cont'd)		- Where does the pharmacist perform his drug regimen review?			
B. Labeling of Drugs and Biologicals F214 SNF 405.1127(c) F215 ICF 442.333 F216 The labeling of drugs and biologicals is based on currently accepted professional principles and includes the appropriate accessary and cautionary instructions as well as an expiration date when applicable.	Observe labels of medications for residents observed on drug pass tour for: - name of drug - dosage form - strength of drug - quantity of drug - expiration date - presence of a control number - appropriate accessory or cautionary statement				

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F216 (cont'd) INTENT To assure that residents receive medications as ordered and that they are monitored for possible side effects.					
Laboratory and Radiological Services F217 SNF 405.1128 F218 SNF 405.1128 (a) A. Provisions of Services F219 1. All services are provided only on the orders of a physician. F220 2. The attending physician is notified promptly of findings.	Observe symptons of targeted residents, e.g., drainage, odors, jaundice, fevers, edema, etc.	Ask Nursing/Rehabilitative Staff: - What do you do when you think a resident needs laboratory work done - blood work, cultures, etc.? - How long does it take to get lab results back? - What do you do with the results when they do come back? - Do you have any problems with your laboratory services? - How are lab specimens stored? - Do you have any instruction from the lab regarding collection and storage of specimens?	Review the physician's order sheet to see if: - orders for lab services are signed - that there are orders for tests that have been done. Nursing progress notes are reviewed for documentation of physician notification of lab results. Physician progress notes or other documentation indicating that the physician is aware of lab results. There are lab reports on the medical record for all tests ordered (except if just performed).	There must be signed physician orders for all lab/radiology services performed. Record results of all testing in the medical record. There is documentation in nursing or physician notes to indicate the results of lab tests were promptly communicated to the physician.	Nursing Services 405.1124(a)(b)(c) 442.343 Physician Services 405.1123(b)

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F221 3. Signed and dated reports of a clinical laboratory, x-ray and other diagnostic services are filled with the patient's medical record. INTENT To assure that lab tests are performed as ordered and findings are reported to physicians are made aware of symptoms that may require lab tests.					

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Social Services F222 SNF 405.1130 F223 SNF 405.1130(a) A. Plan F224 ICF 442.344(d) F225 The medically related social and emotional needs of the residents are identified. B. Provision of Services F226 ICF 442..344(a)(b) F227 1. Services are provided to meet the social and emotional needs by the facility or by referral to an appropriate social agency.	Observe resident for: - level of alertness - behavior exhibited (disoriented, confused, uncooperative, disruptive, aggressive, anxious, withdrawn, isolated, lonely). - personal appearance - apparent disabilities - apparent vision and/or hearing problems they exhibit as you talk to them - interaction to staff, other residents, family, visitors - participation in group activities - independence in activities, decision making - Therapeutic staff intervention: constructive reaction to resident's behavior - resident's participation on policy making bodies and committees of facility, e.g., resident councils.	- How long have you been in the facility? - Can you explain to me why you are here? - Have you had any problem adjusting to the facility i.e., loss of independence? - Have you had any other problems? - Has staff been helpful, e.g., financial? - Do you have any family or any other visitors? - Do they have any problems with which this facility has not been helpful? - If exhibiting disruptive depressed, agitated, anxious, etc. behavior- I noticed that you are upset (quiet, nervous, unhappy) today, Can you tell me what has bothered you? - Does staff respond to your suggestions about your own care? - Did you participate in planning what care you will get and who will give it to you? - Do you make use of the dining, activity, community room, and/or outdoor area?	Review medical records of residents selected for in-depth review to determine that: - Assessment and plan of care identifies residents medically related social and emotional needs and/or problems. - Resident's family and home situation, information related to medical and nursing requirements, and community resources are considered in making decisions regarding the residents care. - Medical records contain current specific information signed and dated which highlights the social and emotional needs of the resident and significant findings and actions are entered promptly in the medical record. - Social service notes address the following, if applicable: + losses due to aging + relationship with staff and other residents + mental status + behavior problems + adjustment to the facility + illness	The residents social and emotional needs are identified. The plan of care addresses those needs. The plan of care is being followed, reviewed and revised as necessary. The family's needs and concerns are addressed if applicable. There is referral to appropriate agencies if necessary. Sufficient space is provided for private meetings and discussions.	Nursing Services SNF 405.1124 ICF 442.338 Activities SNF 405.1131 ICF 442.345(a)(c)(d) Physicians Services SNF 405.1123(b) ICF 442.346 Patient Care Management SNF 1124(d) ICF 442.346 Physical Environment SNF 405.1130(b) ICF 442.344(c)

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F222-228 (cont'd) F228 2. If financial assistance is indicated, arrangements are made promptly for referral to an appropriate agency.		- Can you tell me about your life here? What do you do in a usual day? - Are things like getting up, bathing, dressing, eating, done at the same time for everyone? - If you could change some things about living here, what would you change? Ask Social Worker/Nurse - Who is responsible for identifying the resident's: + social and emotional needs + family and home situation + problems and needs + financial needs - How are needs identified and reported? - Does resident participate in the development of his/her care plan? - Ask nursing how often the social worker sees resident. - Does the social worker discuss residents needs/problems with nursing staff if there is a need for nursing to be involved?	- Plan of care, social service notes, reflect the current status of the resident. - There is evidence that the residents mental status has been considered when plan of care was developed. - Vision and hearing problems have been addressed. - Plan of care addresses residents needs as observed by the surveyor and stated by the resident. - Notes and plan indicate that needs have been re-evaluated and care plan changed as necessary. - There is evidence that the problems and needs of the family have been addressed. - There are indications that a referral has been made to the appropriate agency and a statement describing why. - There is documentation from the outside agency indicating what actions were taken and any plan for follow-up.		

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F222-228 (cont'd)		- How is physician notified and involved in plan of care? - Ask social service staff their role, function, and what services they provide. - Ask staff what referral services are available. - If services are being provided by outside resource, are resources documented work service? - Ask social service staff about their background and education. - If there is a consultant ask staff: + How often does the person come? + How long do they stay? + What does the person do while in the facility? + What assistance, consultation is being provided? + Ask social service staff if adequate space is provided for them by the facility to conduct private interviews and meetings.	- The time period between date of referral and date of services is reasonable and if not, there is evidence of follow-thru by staff. - The outside agency has documented their involvement and activities. - Plan of care demonstrates awareness of behavior, articulates the reasons for it, and indicates in the plan of care an approach to the behavior. - Assessment should contain: + a flexible approach to each resident (should be individualized). + awareness of a mental status evaluation. + resident history. + family availability for planning, resident support, etc. + identification of problems resulting from placement. + recent social adjustment. + discharge planning. - The record reflects	- There is documentation of collaboration between nursing and social work for meeting emotional needs.	Patient Care Management 405.1124(d)

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F222-228 (cont'd)			Social Service intervention with family and resident, i.e., grief and bereavement counseling. - Review integrated plan of care for: + Plan for concerted social services. + Plan for supportive services for adjustment. - Adjustment goals. - Interventions for specific conditions.		
F229 SNF 405.1131 Activities F230 SNF 405.1131(b) F231 ICF 442.345(a)(c)(d) F232 1. An ongoing program of meaningful activities is provided based on identified needs and	General level of activities throughout the facility, as well as in specifically designated areas. How many residents are lying on their beds or sitting in chairs staring at the walls during waking hours? What is the level of residents interest in activities they are doing? Are residents positioned correctly for activity?	- How does he/she spend the day? - Of the activities resident has during the week, what does he/she enjoy most/least? - If has none, why? - Has staff asked about his/her interests? Suggested specific activities or people to get acquainted with in response to interests? - What organized activities has he/she participated in this past week? - How does resident find out about upcoming programs or happenings?	Activities Assessment Interests of the resident (past and present) are identified as to resident's current capabilities and necessary adaptations to pursue their interests. Documentation that information about social history, medical problems and limitations impacting residents' activities have been communicated to activities personnel and used in assessment and development of activities portion of care plan.	Are each resident's personal interests known? If not, what actions are being taken to identify them? Residents in facility 60 days should not be without some identified interests. Are each resident's needs identified? If not, what actions are being taken to identify them? Have medical contraindications been identified in the care plans? Needs and contraindications of residents in the facility more than 30 days should be known and/or have a plan of action.	Nursing Services 405.1124 442.319 Social Services 405.1130 442.344 Special Rehabilitative Services 405.1126 442.363 Physician Services 405.1123 442.329

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F232-(cont'd) interests of each resident. It is designed to promote opportunities for engaging in normal pursuits, including religious activities of their choice, if any. F233 2. Unless contraindicated by the attending physician, all residents are encouraged to participate in activities. F234 3. The activities promote the physical, social and mental well being of the residents.	Are needed personal equipment (e.g., splints, glasses) and adaptations for limitations and safety (e.g., cardholder, goggles, footrests) used in activities?	- Does resident get out of facility to activities? - Does resident have problems getting to activities? If so, does the staff assist? - Does the staff encourage residents to go to activities? - Does resident participate in Resident Council? - Does resident have free choice of activities?	- Needs of the resident in the following areas are identified: + social interaction + creative expression + work and service opportunities + intellectual stimulation or activities adaptation + physical exercise + spiritual or religious expression - Plan of care Used all available information about: + interests + needs + indications and contraindications for activities from other assessments + physician orders and progress notes	Does each resident's activities promote his - physical, social and mental well-being?	Physical Environment 405.1134 442.329 Infection Control 405.1135 442.328 Resident Rights 405.1121(k) 405.311 Medical Records 405.1132 405.318 Patient Care Management 405.1124(d) 442.341

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F235 4. Equipment is maintained in good working order. F236 5. Supplies and equipment for activities of interest are available. INTENT Each resident has individual and/or group activities to meet activities needs through his interests daily.	Is lighting adequate throughout the facility for activities in which residents are engaged? Do men and women have activities of interest to them? Do residents communicate with each other in activities? Are methods of communicating upcoming activities appropriate to the resident populations? Specific observation for physically impaired/alert residents: Activities adapted to meet specific needs of the resident. Alert residents have activities of interest and at their cognitive functional level. Specific observations for confused/disoriented, emotionally disturbed and mentally retarded residents: There are current calendars, clocks and patients	Ask Nursing/Activity Staff - Do they know the interests of residents under their care? TV programs they like? Activities they want to participate in today/this week? - Do they know the personal equipment needed (e.g., glasses, hearing aids, reacher)? - Do they know the adaptive equipment used by residents for specific activities (e.g., talking books, built up tools)? - Do they talk to residents to identify new interests and report these and "dislikes" to activities personnel? How? - What is staff's involvement with individual and group activities of residents in their care? - How do they determine interests of residents who have difficulty communicating? - What activities does resident participate in regularly? Which activities does he/she enjoy most/least?	Activities notes spell out implementation of plan, resident's reactions to specific activities, approaches, and people. Residents' participation in individual and group self-started and organized structured and unstructured activities timespent. Evaluation of plan of care for: changes in interests; changes in precautions, changes in needs, new problems, approaches, etc. Plans are revised as needed.	Are equipment and supplies to meet residents interests available and maintained in good working order? Are residents evaluated periodically with emphasis on participation levels and desire for new activities? Are plans readjusted if they do not reach desired outcomes? Residents in the facility more than 60 days should have at least two activities per week of interest to them personally.	

LONG TERM CARE SURVEY 101

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
	and patients names or symbols visible to all the residents. Staff consistently use techniques such as reality orientation, empathy, and/or validation therapy as per each individual's needs. Resident has familiar items if available in room (e.g., family pictures, artwork, afghan, chair from home). Residents in restraints have activities of interest geared to their abilities when restrained (e.g., table-top activity, music, radio, reading and writing material; when out of restraints (e.g., walks, exercise, group, toileting). Small group and one-on-one involvement with staff reinforcing appropriate responses. Staff reaction to resident behavior during activities (e.g., crying, whining, demanding, nonverbal, agression,	- If he/she does not participate, why? - Which activities appear to relax/calm the resident? Excite him/her? - How does staff manage maladaptive behavior (e.g., abusive, disruptive, combative)? - Is direct care staff involved in resident activities? How? When (weekends, evenings)? - Does resident have one-to-one assistance in activities? - How many residents have fewer than 2 hours of activities a day of interest to them as individuals? - Why do these residents have so little interest? - What is your plan to find more activities of interest to them that will meet their needs? - What types of residents seem not to be interested in activities? - How many (who) residents have only passive activities?			

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F 236 (cont'd.)	loudness). <u>Specific observation for comatose or teminally ill resident:</u> - Appropriate items for sensory enrichment in room (e.g., TV, radio, adequate lighting) - Resident placed in supportive living environment (e.g., around people, in hall, activities room, sunshine, fresh air), when appropriate to the resident needs and consistent with the resident's choice. <u>Specific observation of environment for conducting activity program:</u> - Adequate lighting. - Functional area is appropriate for activities of interest (e.g., religious services, arts and crafts, cooking, reading, TV watching, card playing, parties, discussion groups, gardening).	- How do you adapt activities for needs of residents who are: - confused/disoriented - emotionally disturbed - mentally retarded - physically impaired but alert - terminally ill? - What types of activities are available for needs of the comatose? - Are community volunteers utilized in the activities program? In what way? - Are the residents encouraged to offer suggestions for new activities? If so, what activities have been instituted as a result? - Are evening, weekend, holiday programs provided? - How they manage maladaptive behavior (e.g., abusive, disruptive, combative)? - How do they help depressed residents (e.g., tearful, emotionally labile)?			

LONG TERM CARE SURVEY 103

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F236 (cont'd)	- Multi-purpose room use and timing of activities does not conflict. - Outdoor activity area. - Functional furniture, indoors and outdoors. - Evidence of free choice activities: - newspapers - magazines - record player - radios - games - TV's - Activities, equipment and supplies are appropriate and sufficient to meet interests of residents. - Activities, equipment and supplies sufficient for conducting activities. - Activities equipment clean, safe, and in working order. - Resident rooms contain independent project materials, as appropriate. - Residents have access to the total activity environment (e.g., lobby, sunroom, dayroom, porch, dining room).				

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Patient Care Management F237 SNF 405.1124(d) F238 ICF 442.341 F239 A. Each resident's needs are addressed in a written plan of care which demonstrates that the plans of all services are integrated, consonant with the physician's plan of medical care, and is implemented shortly after admission. F240 ICF 442.319 B. Each professional service indentifies needs,	Observe resident level of physical, mental, emotional and social functioning. Note problems, potential problems, needs, using observation/interview/record review work sheet.	Ask Resident: - Are you aware that you have a plan of care? - Did you participate in developing a plan of care? - Do you/your family know what the plan is and details? (e.g., diet, ambulation, dressing, etc.) - Do you attend and participate in plan of care meetings? - Who else attends the plan of care meetings? - When did you last attend the meeting for your plan of care? - Does the staff assist you in achieving the goals on the plan of care? If not, who does or why not? - Do you have all necessary assistive devices and equipment? - Is there anything that is not part of your plan of care that you think should be included? Ask Staff: - What is your input into resident's plan of care? - What aspect of the resident plan of care are you carrying out?	Review: - Plan of care The content of the plan of care is of primary importance rather than the format. Separate care plans are not required for each discipline, but may be accepted if there is evidence that the various disciplines coordinate their planning. - Nursing assessment/reassessments and notes. - Physician orders. - Physician notes. - Assessments/evaluations and progress notes from all professional disciplines as appropriate. - Medication and treatment records as applicable. - Lab reports, as applicable.	- Are all resident's needs/problems identified? - Is the plan developed to meet these needs? - Does the plan demonstrate an interdisciplinary approach, and include: + Goals stated in measurable/observable terms? + Approaches (staff action) to meet the resident action goals? + Responsible disciplines/staff responsible for approaches to assist resident in achieving goal/goals? + Is plan being reassessed and changed as needed to reflect current status? + Does plan of care accurately reflect information gained from observation, interview and record review?	Physician Services 405.1123 442.346 Medical Records 405.1132 442.318 Resident Rights 405.1121(k) 442.311 24 Hour Nursing Service 405.1124 442.338 Specialized Rehabilitation Services 405.1126 442.343 Training 405.1121(h) 442.314 Resident Rooms 405.1134(e) 442.325 442.326 Infection Control 405.1135 442.328 442.324

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F 240 (cont'd) goals, plans, and evaluates the effectiveness of interventions plus institutes changes in the plan of care in a timely manner. INTENT The intent is to assure that the facility identifies the resident's (with residents/family input if applicable) needs through the coordinated efforts of all disciplines.		- What is this particular resident's plan of care? - How do you assist the resident in carrying out the plan of care? - Who attends the care planning meeting? - Is the plan of care useful to you in caring for the resident? - Is there anything the resident needs that is not addressed in the plan of care? - How often is it reassessed?			Social Services 405.1130 405.1130(a) 442.344(d) Activities 405.1131 442.345 Dietetic Services 442.1135 442.332

LONG TERM CARE SURVEY 106

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
TRAINING F241 SNF 405.1121 F242 ICF 442.314 F243 1. Facility staff are knowledgeable about the problems and needs of the aged, ill, and disabled. F244 2. Facility staff practices proper techniques in providing care to the aged, ill and diseased. F245 3. Facility staff practice proper technique for prevention	How do staff relate to residents? Does the facility reflect adaptations for the elderly, i.e., information given in large print, floors covered with materials that allow for ease of movement with walkers, wheel chairs, etc.? Is resident care given using accepted professional standards? Is privacy maintained during bathing treatment, toileting?	Ask Residents - Does staff know how to take care of you? - What things do they do to help you accommodate your (poor vision, unsteady walking, arthritis, etc.)? Ask Staff - What, if any, training have you had here to learn about unique problems and needs of the aged? - What training have you had during the last 12 months? - How have you learned about facility policies and procedures? - Does the facility ask your needs when they develop a training program? - In what areas would you like to have training?	Care plans reflect staff's knowledge of the problems and needs of the residents and special adaptations that are needed. Progress notes indicate that the special needs are considered in implementing planned care.	Facility staff adjusts care to needs/problems of resident. Staff is knowledgeable concerning facility policies and procedures. Staff practices correct techniques, i.e., infection control rehabilitation nursing techniques, etc. Staff interacts and treats residents in a kind, caring way.	Residents Rights SNF 405.1121(k) ICF 442.311 Infection Control 405.1135(a)(b)(c)(d)(e) 442.327(b) Physical Environment 405.1134(a) 442.315(b)(c) 442.326(a)(c) Nursing Services 405.1124(a)(c)(e) 442.338(a)(2) Social Services 405.1130(a)

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F245 (cont'd) and safety, accident prevention, confidentiality of resident information, and preservation of resident dignity including protection of privacy and personal and property rights. INTENT To assure that facility provides ongoing training to staff so that they will be knowledgeable in current practices, use proper techniques, and interact with residents in a kind, caring way.					

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
MEDICAL RECORDS F246 SNF 405.1132				All information required is present in the record. Does the record document all observable resident needs/problems?	
Content F247 SNF 405.1132(c)					
F248 ICF 442.318(a)(c)					
F249 1. The medical record contains sufficient information to identify the resident clearly to justify diagnoses and treatment and to document results accurately. 2. The medical record contains the following information.					

LONG TERM CARE SURVEY 109

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F250 a. Identification information.					
F251 b. Admission data including past medical social history.					
F252 c. Transfer form, discharge summary from any transferring facility.					
F253 d. Report of resident's attending physician.					
F254 e. Report of physical examinations.					

LONG TERM CARE SURVEY 110

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F255 f. Reports of physicians' periodic evaluations and progress notes.					
F256 g. Diagnostic reports and therapeutic orders.					
F257 h. Reports of treatments.					
F258 i. Medications administered.					
F259 j. An overall plan of care setting forth goals to be accomplished through each service's designed activities, therapies and treatments.					

LONG TERM CARE SURVEY 111

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F260 k. Assessments and goals of each service's plan of care.					
F261 l. Treatments and services rendered.					
F262 m. Progress notes.					
F263 n. All symptoms and other indications of illness or injury including date, time and action taken regarding each problem.					

LONG TERM CARE SURVEY 112

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F263 (cont'd) INTENT Brings together all resident information. Reflects the care being given to the residents and helps all care givers to make decisions on care needed.					
TRANSFER AGREEMENT F264 SNF 405.1133		Ask Staff: - What is the routine information you provide to a new facility when you transfer a resident? - Who provides this?	Review information on medical record of resident who was temporarily transferred and is again back in the facility. Look at physician and nursing progress notes of above residents to determine if the timeliness of transfer was consistent with accepted standards of care. Does facility have an agreement with a hospital? Not required if hospital under same ownership, direction and in same campus.	All pertinent resident information must be documented on the medical record at the time of transfer. The resident was not injured in any way by a delay in the transfer process.	Patient Rights 404.1121(k) 442.311
F265 SNF 405.1133(a)					
F266 ICF 442.316					
F267 A. Whenever the physician determines that a transfer is medically appropriate between a					

LONG TERM CARE SURVEY 113

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F 267 (cont'd) hospital or a facility providing more specialized care and the nursing facility, admission to the new facility shall be effected in a timely manner.			Is transfer form complete with all data, with appropriate signatures? Does the medical record indicate that adequate and pertinent aspects of the discharge planning portion of the patient care plan accompany the patient on transfer?		
F268 8. Information necessary for providing care and treatment to transferred individuals is provided.					
PHYSICAL ENVIRONMENT F269 SNF 405.1134					

LONG TERM CARE SURVEY 114

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F270 A. Nursing Unit SNF 405.1134(d)				Medication preparation and storage areas provide adequate space and light to prepare medication and to store medication and needed supplies.	Nursing Service 405.1124(g) 442.337
F271 1. Unit properly equipped for preparation and storage of drugs and biologicals.	There is adequate light to prepare medications. There is sufficient space to prepare medications for administration in a safe and effective manner.	Ask Nursing Staff: - What do you use the medication room (area) for? - Where is the handwashing sink? - Do you have enough, convenient storage area for I.V. fluids and medications needing refrigeration. - Where are the keys for the medication room and unit dose carts? - Do you feel you have adequate storage space for supplies and equipment? - If no, what problems does that cause? - Does the resident call system function properly? Ask Residents: - Do the call bells in your room and in the toilets and bathing areas always work?		Light is available when and where the medication cart is in use. A medication refrigerator is available and does not contain patient or employee snacks. Juice, etc., used in administering medication is allowed. Clean and dirty areas must be separated, preferably in separate rooms. Storage space must be available for bulky items and supplies so that they can be stored without blocking corridors and exits. Medications are protected from unauthorized use. Call bells must be in working order and must be present in all resident bedrooms, toilets and	Infection Control 405.1135 Governing Body 442.325 Resident Rooms 405.1134(e) 442.325
F272 2. Utility and storage rooms are adequate size.	There is sufficient space for storage of medications. Unit dose carts are protected from tampering and theft. Medications are stored in a locked area. Refrigeration facilities are available for medications. There is sufficient storage space for I.V. fluids.				
F273 3. The unit is equipped to register resident calls with a functioning communications system from resident areas including rooms and toilets and bathing facility.	Handwashing facilities are readily accessible either in the medication preparation area or adjacent to it.				

LONG TERM CARE SURVEY 115

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F273 (cont'd)	Audible call system is on and working. Long cords are available for chair bound patients.	- If no: - How often is it that they do not work? - How long does it take to get them fixed?		bathing areas. Audible signals, if in the system, must be in working order and turned on.	
B. Dining and activities area F274 F275 SNF 405.1134(g) ICF 442.329	Area is clean and well maintained. There is sufficient space between tables to allow for safe passage of wheelchairs and residents with walkers, canes and other assistive devices.	Ask Residents: - Is there enough room between tables to allow you to feel safe in getting to your table? - Can you sit comfortably in your wheelchair at the table? - How is the lighting and ventilation level for you? - Are sitting preferences permitted? - Do you go to the dining room for meals?		Regulations clearly set out conditions for compliance. Refer to the regulations.	Dietetic Services 405.1125 442.331 Patient Activities 405.1131 442.345
F276 1. The facility provides one or more clean, orderly, and appropriately furnished rooms of adequate size, designed for resident dining and resident activities.	Table height or design allows residents in wheelchairs to sit a normal distance from the table. Lighting and ventilation in the dining/activity areas is provided according to recommended standards. A multi-purpose room should not be used for storage of items such as beds, mattresses, boxes, etc.				

LONG TERM CARE SURVEY 116

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F277 2. Dining and activity rooms are well lighted and ventilated.	Are dining areas utilized at meal service?				
F278 3. Any multi-purpose room used for dining and resident activities has sufficient space to accommodate all activities and prevent their interference with each other.					
F279 SNF 405.1134(e) Indicators C&D apply to SNFs					

LONG TERM CARE SURVEY 117

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
C. Resident Rooms F280 ICF 442.325 F281 1. Single rooms have at least 100 sq. ft. F282 2. Multiple resident rooms have no more that 4 residents and at least 80 sq. feet per resident. F283 3. Each room is equipped with or conveniently located near toilet and bathing facilities.	Observe rooms and furnishings for maintenance, cleanliness and safety. Look for dust/dirt on lights, high surfaces, under heating units, and in corners. Use a flashlight. Are beds, lights, plumbing all in working order? Observe for all regulatory requirements as noted to the left. Are privacy curtains present, and appropriate to maintain resident privacy? Test several call lights. Are call lights within reach, including emergency lights in toilets and bathing areas? Are toilet and bathing facilities appropriate in number, size, and design to meet resident needs? What personal belongings do residents have in their rooms? Is there	Ask Residents: - Is your room kept clean? Who cleans it? When, and how often? - Is your bed, chair, and other furniture and fixtures kept in good repair? - Do you feel you have enough privacy? - What personal belongings are you allowed to have? - Is the lighting in your room sufficient for you? - Is your chair comfortable?		Refer to the regulations.	Resident Rights 405.1121(k)(1)(5)(9)(13) 442.311(a)(d)(2)(g)(1)(2)(6)(k) Physical Environment 405.1134(d)(e) 442.326

LONG TERM CARE SURVEY 118

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F284 4. There is a capability of maintaining privacy in each. F285 5. There is adequate storage space for each resident. F286 6. There is a comfortable and functioning bed and chair, plus a functional cabinet and light. F287 7. Personal expression is allowed.	sufficient storage and security for their belongings?				

LONG TERM CARE SURVEY 119

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F288 8. The resident call system functions in resident rooms.					
F289 9. Each room is designed and equipped for adequate nursing care and the comfort and privacy of residents.					
F290 10. Each room is at or above grade level.					
F291 11. Each room has direct access to a corridor and outside exposure. Exception: Not required for ICF residents.					

LONG TERM CARE SURVEY 120

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
D. Toilet and bath facilities F292 ICF 442.326 1. Facilities are clean, sanitary and free of odors.	Are there adequate numbers of toilets, baths, and showers for the residents that are accessible to, and functional for all residents? Are these conveniently located in or near resident rooms? Check for water on floors of bath and shower rooms. Is privacy provided? Are facilities clean, sanitary and free of unpleasant odors? Are bathrooms equipped with soap, toilet tissue, towels, etc.? Hot water is between 110-120 degrees or the acceptable State level. Hot water temperature control must be maintained. Single use, disposable towels should be available for handwashing purposes. Note also condition of grab bars, plumbing and fixtures. Bath areas are not used for storage.	Ask Residents: - When was your last bath? The one before? - Do you feel safe getting into and out of the bathtub? - If equipment is needed to get in and out of the tub, do you feel safe with it? - Does your wheelchair fit into the toilet or bathroom? - When, if ever, do you refuse to be bathed?	Bathing schedule for patients in your indepth review.	Privacy is maintained for residents in toilet and bathing areas. Toilet and bathing areas are clean. Water is removed from floors immediately upon completion of bathing. Hot water is within the acceptable temperature range. Soap, toilet paper and towels are available in the bathrooms. Grab bars are present and securely fastened to the wall. Ventilation and lighting systems are correctly functioning. Plumbing and other fixtures are in good condition.	
F293 2. Facilities have safe and comfortable hot water temperatures.					
F295 3. Facilities have the capability of maintaining privacy.					
F296 4. Facilities have grab bars and other safe guards against slipping.					

LONG TERM CARE SURVEY 121

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F297 5. Facilities have fixtures in good condition.					
E. Social Service Area F298, 299 SNF 405.1130(b) ICF 442.344			Facility has appropriate arrangements for providing social services, either using: - outside resources (contract or consultant services) - qualified facility personnel under a clearly defined plan.		
F300 1. Capability to assure privacy for interviewing.	Does the social worker have a locked file available? Where are social service interviews and clerical functions performed?	Ask Resident: - Does the social worker see you in a private room or in your own room? - If in your own room, do you feel that you have enough privacy?		Refer to regulations.	
F301 2. Adequate space for clerical and interviewing functions.	Are rooms in areas easily accessible to residents?				
F302 3. Easily accessible to residents and staff.					

LONG TERM CARE SURVEY 122

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F. Therapy areas F303 SNF 405.1126(a)	Therapy areas are accessible to all residents needing the facilities. Space allows for safe maneuvering of residents and equipment and staff.	Ask Resident: - Do you feel that the equipment you use is safe? - Do you have enough room for your treatment?	Refer to regulations.		
F304 ICF 442.328(a)					
F305 1. Space is adequate for proper use of equipment by all residents receiving treatment	All residents are able to be observed and supervised during therapy. Equipment has labels (stickers, etc.) to indicate proper maintenance. All equipment fastened to floor and walls is secure.	Ask Therapy Staff: - Is your equipment adequately maintained? - Do you have enough room to safely and adequately provide treatment?			
G. Facilities for Special care F307 SNF 405.1134(f)	Are therapy areas properly ventilated to effectively reduce heat, moisture and odors? Are private rooms available that meet regulatory criteria.	Ask Supervisory personnel: - What room(s) do you use for isolation? - What is your procedure if the room is already occupied when you need it for isolation? - Will you show me the signs you use to identify the isolation room?		Rooms meeting the regulatory requirements are available in the facility. There is a procedure that is implemented when an isolation is needed, but it is already occupied.	Resident Rights 405.1121(k)(4) 442.311(c)(2) Infection Control 405.1135(b)
F308 ICF 442.328(b)	If a resident is infected and in isolation, are precautionary signs posted, and are they legible and understandable?			Isolation signs are visable and clearly convey their intended message.	

LONG TERM CARE SURVEY 123

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F309 1. Single rooms with private toilet and handwashing facilities are available for isolating residents.					
F310 2. Precautionary signs are used to identify these rooms when in use.					

LONG TERM CARE SURVEY 124

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
H. Common Resident Areas F311 SNF 405.1134(j) F312 ICF 442.324 F313 1. All common resident areas are clean, sanitary and free of odors. F314 2. Provision is made for adequate and comfortable lighting levels in all areas. F315 3. There is limitation of sounds at comfort levels.	Use senses - sight, hearing, olfactory when surveying common areas as lounges, lobby, corridors. Note levels of lighting for both reading and non-reading areas. Is it bright enough but without glare? Are areas clean and without offensive odors? Do background sound levels allow for ease of communication and comfort for residents/visitors? Do residents seem comfortable with the room temperature - note the use of several layers of clothing, many residents fanning themselves, etc. Are handrails on each side of the corridor and are they secure? Are smoking/no smoking areas designated?	Ask Residents: - Do you think that the lounges and corridors are usually clean? - Do they have any unpleasant odors? - Is the lighting level comfortable for you to read? Is it adequate for you to feel safe walking? - Do you have any difficulty with the noise level? - Is the temperature usually comfortable for you? - Do you feel there is adequate ventilation? - Are there handrails in all of the corridors? - Are they securely fastened to the wall? Ask Supervisory Staff: - If there is a water main break or other interruption in the water supply, how do you obtain water for essential areas and duties?		- Floors and furniture should appear clean - free of gross contamination. - Residents should have lighting bright enough to safely negotiate corridors, lounges, etc., and in reading area, be bright enough to read. But the brightness should be free of glare. Remember, the elderly need a higher level of lighting as their sight diminishes. - Except for times when a louder level of sound is necessary for communication, sounds should be unobtrusive and "comfortable". - Room temperature comfort levels vary widely, and in general the elderly will require a higher temperature for comfort than younger people. Use information from resident interviews and your observations to determine if the temperature is "comfortable" for most residents. - All corridors in	Infection Control 405.1135(c)

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F316 4. A comfortable room temperature is maintained.				resident-used areas are equipped with handrails on each side. These rails securely fastened provide the residents with a firm support. - Supervisory staff are able to tell you how they will obtain water for drinking, cleaning/bathing of residents, and other essential functions if their normal water supply is interrupted.	
F317 5. There is adequate ventilation thru windows or mechanical measures or a combination of both.					
F318 6. Corridors are equipped with firmly secured handrails on each side.					
F319 7. Staff are aware of procedures to ensure water to all essential areas in the event of loss of normal supply.					Disaster Preparedness 405.1136 442.313

LONG TERM CARE SURVEY

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SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F320 I. Maintenance of Building and Equipment SNF 405.1134(i)	- Ceiling and floor tile in good condition - Paint in good repair - No holes in walls - Look for rat and other rodent trails outside and inside - Preventive maintenance program for all equipment is followed - Wheelchairs not stored in hallways, bathrooms, etc. - Window screens are in good repair - Check overbed tables, wheelchairs, etc., for cleanliness and operation	Ask Staff: - How many housekeeping staff are available? - How late are housekeepers on duty? - What about weekends?			Physical Environment 405.1134(d)
F321 1. The interior and exterior of the building are clean and orderly.					
F322 2. All essential mechanical and electrical equipment is maintained in safe operating condition.					
F323 3. Sufficient storage space is available and used for equipment to ensure that the facility is orderly and safe.					

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F324 4. Resident care equipment is clean and maintained in safe operating condition.					

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LONG TERM CARE SURVEY

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Indicator J applies to ICFs. J. Dietetic Service Area F326 SNF 405.1134(h)					Dietetic Services 405.1125(g) 442.331(b)
F327 1. Kitchen and dietetic service areas are adequate to insure proper, timely service for all patients.	Observe for - needed space to carry out routine operations - maintenance of working surfaces equipment, utensils, and serving dishes - operable dish washer machine. - 3-sink method of pot/dish washing properly carried out/or written procedure posted - operable and clean exhaust fan - stored dishes and pots are free of baked-on food particles and chipped/cracked surfaces - food stored off floor - protective covers for fluorescent lights - handwashing sink readily accessible	Ask Staff: - What have you been trained to do? - What type of dishwasher machine do you have? How does it operate?	The proper temperature for the Dishwasher wash cycle is 150-160 degrees Fahrenheit. The dishwasher rinse cycle is acceptable at temperature of 180 degrees Fahrenheit or when there is a change in the temperature-sensitive tape (thermolabel). The individual manufacturers' specifications may countermand these instructions, particulary in the case of chemical sanitization.		
F328 2. Kitchen areas are properly ventilated, arranged, and equipped for storage and preparation of food as well as for dish and utensil cleaning, and refuse storage and removal.					

LONG TERM CARE SURVEY 129

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Indicator K applies to ICF K. Dietetic Sanitary Conditions F329 SNF 405.1125(f)(g) F330 1. Dietetic personnel practice hygienic food handling techniques. F331 2. Food is stored, refrigerated, prepared, distributed, and served under sanitary conditions. F332 3. Waste is disposed of properly.	Observe the following: - cleanliness of hands, fingernails, hair, clothing - use of hair restraint - whether employees wash hands with soap and water after using the toilet, smoking, blowing their nose, touching raw meat, poultry or eggs - employees using hands to mix food when utentils could be used - employees using the same spoon more than once for tasting food while preparing, cooking, or serving. Verify that: - hot foods are 140 degrees or above - cold foods are 45 degrees or lower (*note: food held for more than 2-3 hours between 60 and 125 degrees may not be safe to eat) - cooked meats held longer than 72 hours are used, discarded or put in the freezer	Ask Staff: - What happens when you report to work with a cold, a cut or sore on your hand? - Where is handwashing sink for dietary staff? - Do you use disposable plastic hand covers? If so, when? - Where are your serving utensils located? - What are temperatures for the refrigerators and freezers? Who is responsible for checking temperatures? - Do you have thermometers to check water and food temperatures? (ask them to demonstrate how they take temperatures)			Dietetic Services 405.1125(e)(f)(g)

LONG TERM CARE SURVEY 130

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F332 (cont'd)	- check that the refrigerators are equipped with an accurate thermometer - food does not have an "off" or bad odor - cracked eggs are discarded - foods are dated and then stored as to their preparation date. Observe that waste is in covered containers, bagged and tied for disposal, and that dumpsters are covered.				

LONG TERM CARE SURVEY 131

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
L. Emergency Power F333 SNF 405.1134(b)	Is an emergency generator available? Test generator under full load conditions. Check items of emergency power: - lighting - fire detection - alarms - extinguishing systems - life support systems Transfer time from normal power to emergency power to occur within 10 seconds. Check for gounded extension cords at nurses stations. Where are emergency outlets?			As per regulations and covered by the Life Safety Code surveyor	
F334 1. An emergency source of electrical power necessary to protect the health and safety of residents is available.					
F335 2. Emergency power is adequate at least for lighting in all means of egress; equipment to maintain fire detection, alarm, and extinguishing systems; and life support systems.					

LONG TERM CARE SURVEY 132

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F336 3. Emergency power is provided by an emergency generator located on the premises where life support systems are used.					

LONG TERM CARE SURVEY 133

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
Infection Control F337 SNF 405.1135	- Observation of dressing technique to identify if infection control principles are being adhered to: - sterile technique - sterile/clean field - disposal of dressing - handwashing - use of gloves	Ask Staff: - What type of dressing changes are you performing? - How often are dressings changed? - Why is resident on isolation/precautions? - Do laundry/housekeeping personnel/aides know procedures?	Review records of residents selected for indepth review for infection.	Compliance will be based mainly on your observations. Deficiencies will be cited if you see: - breaks in aseptic or isolation technique - clutter or unclean conditions that would cause unsafe conditions - inadequate supplies of linen to provide proper care and comfort for residents - inadequate techniques for handling clean and dirty linen - evidence of insect or rodent infestation - use flash light to check for roaches in closets, cabinets.	Nursing Services 405.1124 442.338
F338 A. Infection Control SNF 405.1135(b)					
F339 Aseptic and isolation techniques are followed by all personnel.	- Observation of isolation precautions: - signs - linen, double bagged - soiled linen, double bagged - gowns/masks - gloves - handwashing - disposable dishes - information for visitors	Ask Resident: - Do you know why you have dressings? - Do you know why you are on isolation/precautions? - Do you have clean linen when you need it?			
B. Sanitation F340 SNF 405.1135(c)					
F341 The facility maintains a safe, clean, and orderly interior.	- Procedures followed by: - Laundry - Housekeeping How is dirty linen transported to laundry or holding area?				
C. Linen F342 SNF 405.1135(d)	Do aides wash hands after cleaning dirty linen? How do aides handle clean/dirty linen while changing beds?				

LONG TERM CARE SURVEY 134

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F343 ICF 442.327					
F344 1. The facility has available at all times a quantity of linen essential for proper care and comfort of residents.					
F345 2. Linens are handled: stored, processed, and transported in such a manner as to prevent the spread of infection.					
D. Pest Control F346 SNF 405.1135(E)	Look for evidence of insect or rodent presence (mouse or rat droppings, roaches, ants, flies around trash) - Screen doors closed - Windows that can be opened have screens that are in good repair	Ask Staff: - Have you seen insects (roaches, ants, flies, etc.)? - Have you seen rodents and/or droppings? - What foods are residents permitted to keep in their rooms?			
F347 1. The facility is maintained free from insects and rodents.					

LONG TERM CARE SURVEY 135

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
DISASTER PREPAREDNESS F348 SNF 405.1136 F349 SNF 405.1136(a) F350 ICF 442.313	- Disaster plan is located at each nursing station. - Evacuation plans posted in each smoke compartment.	Ask Residents: - Do you know what to do in case of fire? - How often do you rehearse it? Ask Staff: - What are your responsibilities at a fire drill? - What is the facilities disaster plan? (Specify types) - Have you undergone disaster training? - Have you participated in a fire disaster drill? When? - How frequently are drills held? - Have you been trained/instructed in the use of fire equipment, fire containment methods? - Have you been trained in transfer of casualties and records? - Do you know the evacuation routes? - How would staff meet emotional needs of residents during/following a "disaster", e.g., fire		A disaster plan is available and facility staff know their roles.	Physical Environment 405.1134(a)(b) 442.321
Indicators A and B apply to ICFs.					
A. Disaster Plan F351 1. Facility staff are aware of plans, procedures to be followed for fire, explosion or other disaster.					
F352 2. Facility staff are knowledgeable about evacuation routes.					

LONG TERM CARE SURVEY 136

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F353 3. Facility staff are aware of their specific responsibilities in regard to evaluation and protection of residents.					
F354 4. Facility staff are aware of methods of containing fire.					
B. Drills F355 SNF 405.1136(b)					
F356 1. All employees are trained as part of their employment orientation in all aspects of preparedness for any disaster.					

LONG TERM CARE SURVEY 137

SURVEY AREA	OBSERVATION	INTERVIEWING	RECORD REVIEW	EVALUATION FACTORS	CROSS REFERENCE
F357 2. Facility staff participate in ongoing training and drills in all procedures so that each employee promtly and correctly carries out a specific role in case of a disaster. INTENT To ensure a clean, safe environment for residents.					

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federal register

Wednesday
July 1, 1987

Part V

Office of Management and Budget

Circular A-25 User Charges

OFFICE OF MANAGEMENT AND BUDGET

Circular A-25, "User Charges"

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Draft Revision OMB Circular No. A-25; Request for Public Comment.

SUMMARY: Circular A-25 establishes Federal policy regarding fees assessed for Government services and for sale or use of Government property or resources. The revision updates the existing Circular, which was last issued in 1959.

DATE: Comments from the public should be submitted no later than August 1, 1987.

ADDRESS: Comments should be addressed to: Ellen Balis, Budget Review Division, Room 6001 New Executive Office Building, Office of Management and Budget, Washington, DC 20503, Telephone: (202) 395-4574.

SUPPLEMENTARY INFORMATION: Title V of the Independent Offices Appropriation Act of 1952 provided authority for Federal agencies to charge for services or benefits provided to specific beneficiaries. Circular A-25 provides guidance to the agencies to implement this authority.

Analysis of Key Sections

6. General Policy. This section provides the basic policy for when and what type of user charge should be assessed.

—Section 6a discusses special benefits. Paragraph one retains the same definition of special benefits as the existing Circular but provides updated examples. Paragraph two defines the appropriate pricing mechanism for setting charges. It continues to allow net revenues to be earned in specified cases. Paragraph three provides new guidance for cases when there are incidental public benefits. Paragraph four retains existing guidance for cases when the identification of beneficiaries is obscure.

—Section 6b provides new guidance that charges can be made to the direct beneficiary even if part of the benefit is passed on to others.

—Section 6c continues to provide exceptions that can be granted directly by agencies. Some exceptions can also be granted by the Office of Management and Budget upon the recommendation of agencies.

—Section 6d defines full cost recovery and market pricing. An annual rate of return on capital resources has been added to the definition of full cost recovery. The revision also adds examples of how to use commercial practices to determine market pricing.

7. Implementation. This new section provides guidance on agency implementation of user charges.

—Section 7a provides the general policy that, unless there are statutory limitations, charges should be instituted through administrative action.

—Section 7b provides guidance for developing legislation in cases where there are statutory impediments.

—Section 7c states when proposal of excise taxes rather than user charges would be appropriate.

—Section 7d encourages agency coordination of collection efforts and legislative proposals.

—Section 7e promotes designing collection efforts that keep costs to a minimum.

—Section 7f notes that agencies should follow normal legislative clearance procedures for user charge legislation.

8. Agency responsibility. This section outlines the role of the agency in proposing and implementing user charges. In addition to responsibilities as laid out in the existing Circular, agencies are to undergo annual reviews of their user charges and update them to reflect changing conditions, and to maintain readily accessible records related to the base for setting fees and the fees collected.

9. Disposition of receipts. This section allows more flexibility for agency retention of receipts than the existing Circular. When agencies do retain receipts, the new guidance does require, in most circumstances, that the receipts remain under appropriations control. Receipts above the level of full cost recovery are always returned to the general fund under this guidance.

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

Subject: User Charges

1. *Purpose.* The Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government property or resources. It provides information on the scope and types of activities subject to user charges and on the bases upon which user charges are to be set. Finally, it provides guidance for agency implementation of charges and the disposition of receipts.

2. *Rescission.* This rescinds Office of Management and Budget Circular No. A-25, dated September 23, 1959, and Transmittal Memoranda 1 and 2.

3. *Authority.* Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701).

4. *Coverage.* The provisions of this Circular cover all Federal activities that convey special benefits to recipients beyond those accruing to the general public, except where the imposition of user charges is prohibited by law or regulated by executive order, or where specific statutes provide authority for the assessment and imposition of user charges. In such cases, the statute or executive order shall take precedence over this Circular (e.g., sale or disposal under Federal surplus property statutes). In any case where an Office of Management and Budget circular provides guidance concerning a specific user charge area (e.g., OMB Circular No. A-45 concerning charges for rental quarters and OMB Circular No. A-130 concerning costs of disseminating information products and services), or specific beneficiaries (e.g., OMB Circular No. A-97 concerning providing services to State and local governments), the guidance of that circular shall be deemed to meet the requirements of this Circular. This Circular applies to all agencies, as that term is used in 31 U.S.C. 9701, but does not apply to activities of the legislative and judicial branches or to mixed-ownership Government corporations, as defined in 31 U.S.C. 9701.

5. *Objectives.* It is the objective of the United States Government:

a. To ensure that each service, sale, or use of Government property or resources provided by an agency to specific recipients be self-sustaining;

b. To promote efficient allocation of the Nation's resources by establishing charges for special benefits provided to the recipient that are at least as great as costs to the Government of providing the special benefits; and

c. To allow the private sector to compete without disadvantage in supplying comparable services, resources, or property where appropriate.

6. *General policy.* A user charge, as described below, will be assessed against each identifiable recipient for benefits derived from Federal activities beyond those received by the general public. When the imposition of user charges is prohibited or restricted by existing law, agencies will review activities periodically and recommend legislative changes when appropriate. Section 7 gives guidance on drafting legislation to implement user charges.

a. *Special benefits*

(1) *Determining when special benefits exist.* When a service (or privilege)

provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed to recover the full cost to the Federal Government for providing the special benefits. For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:

(a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or

(b) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., inspection and grading of farm products, or insuring deposits in commercial banks); or

(c) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group, or of the general public (e.g., receiving a passport, visa, airman's certificate, or an inspection after regular duty hours).

(2) *Determining the amount of user charges to assess:*

(a) Except as provided in section 6c, user charges will be sufficient to recover the full cost (as defined in section 6d) of providing the service, resource, or property.

(b) User charges will be based on market prices (as defined in section 6d) when the Government is supplying services, property, or resources in its capacity as property owner rather than as sovereign (e.g., leasing space in Federally-owned buildings). Under these conditions, user charges will recover full costs and may yield net revenues.

(c) User charges will normally be collected in advance of, or simultaneously with the rendering of services.

(3) In cases where incidental benefits to the general public are provided along with benefits to specific beneficiaries (e.g., processing a new drug application or inspecting farm products), charges should generally be set in accordance with paragraph (2) of section 6a.

(4) No charge should be made for services when the identification of the specific beneficiary is obscure and the service can be considered primarily as benefiting broadly the general public.

b. *Charges to the direct recipient.* Charges will be made to the direct recipient of the special benefit even though all or part of the special benefits may then be passed to others.

c. *Exceptions.* (1) Agency heads or their designee may make exceptions to the general policy in the following cases:

(a) The provision of a free service is an appropriate courtesy to a foreign government or international organization; or comparable fees are set on a reciprocal basis with a foreign country; or

(b) The recipient of a special benefit is entitled by law to receive such benefits free or at a subsidized rate. However, if the Administration does not agree with the exception, legislation to change the law can be proposed.

(2) Agency heads or their designee may recommend to the Office of Management and Budget that exceptions to the general policy be made when:

(a) The cost of collecting the fees would be an unduly large part of the receipts from the activity; or

(b) Any other condition exists that, in the opinion of the agency head or his designee, justifies an exception.

(3) All exceptions shall be for a period of no more than four years unless renewed by the agency heads or their designee for exceptions granted under 6c(1) or the Office of Management and Budget for exceptions granted under 6c(2) after a review to determine whether conditions warrant their continuation.

(4) Requests for exceptions and extensions under paragraphs (2) and (3) of section 6c, shall be submitted to the Director of the Office of Management and Budget.

d. *Determining full cost and market price.* (1) "Full cost" includes all direct and indirect costs of providing a property, resource, or service. These costs include, but are not limited to, an appropriate share of:

(a) Direct and indirect personnel costs, including salaries and fringe benefits such as retirement and medical insurance.

(b) Physical overhead, consulting, and other indirect costs including material and supply costs, utilities, insurance, travel, and rents or imputed rents on land, buildings, and equipment. If imputed rental costs are applied, they should include:

(i) Depreciation of structures and equipment, based on official Internal Revenue Service depreciation guidelines unless better estimates are available; and

(ii) An annual rate of return (equal to the average long-term Treasury bond rate) multiplied by the value of land and other capital resources used.

(c) The agency's management and supervisory costs.

(d) The costs of enforcement, research, establishment of standards, and regulation, including any required environmental impact statements.

(2) "Market price" means the price for a unit of property, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the property, resource, or service.

(a) When a substantial competitive demand exists for a property, resource, or service, its market price will be determined using commerical practices, for example:

(i) By competitive bidding; or

(ii) By reference to prevailing prices in competitive markets for property, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

(b) In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for property, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the property, resource, or service so that there will be neither a shortage nor a surplus, e.g., campsites in remote areas.

7. *Implementation.* a. The general policy is that, unless there are statutory prohibitions or limitations, user charges will be instituted through administrative action.

b. When there are statutory prohibitions or limitations on charges, legislation to permit charges to be established should be proposed. In general, legislation should seek to remove restraints on user charges and permit their establishment under the guidelines provided in this Circular. When passage of this general authority seems unlikely, more restrictive authority should be sought. The level of charges proposed should be based on the guidelines in Section 6. When necessary, legislation should:

(1) Define in general terms the services for which charges will be assessed and the pricing mechanism that will be used;

(2) Specify that receipts will be collected in advance of or simultaneously with the provision of service; and

(3) Specify where receipts will be credited (see section 9).

Legislation should not specify precise charges. The user charge schedule should be set by regulation. This will allow administrative updating of fees to

reflect changing costs and market values.

Where it is not considered feasible to collect charges at a level specified in Section 6, charges should be set as close to that level as is practical.

c. Excise taxes are another means of charging specific beneficiaries for the Government services they receive. New user charges should not be proposed in cases where an excise tax currently finances the Government services that benefits specific individuals. Where appropriate, agencies may consider proposing new excise taxes rather than user fees. This should be considered where a tax would be significantly cheaper to administer and its burden would rest almost entirely on the user population (e.g., gasoline tax to finance highway construction). Excise taxes cannot be imposed through administrative action but rather require legislation. Legislation should meet the same criteria as in 7(b), except that the level of the tax must be explicitly stated. Agency review of these taxes must be performed periodically and new legislation should be proposed, as appropriate, to update the tax based on changes in cost.

d. In proposing new charges or modifications to existing ones, managers of other programs that provide special benefits to the same or similar user populations should be consulted. Joint legislative proposals should be made and joint collection efforts designed to ease the burden on the users should be used whenever possible.

e. Every effort should be made to keep the costs of collection to a minimum. The principles embodied in Circular No. A–76 (Performance of Commercial Activities) should be considered in designing the collection effort.

f. Legislative proposals will be submitted to the Office of Management and Budget in accordance with the requirements of Circular No. A–19. To ensure the proper placement of user fee initiatives in the budget account structure, agencies are encouraged to inform OMB of proposals at an early stage of development.

8. *Agency responsibility.* Agencies are responsible for the initiation and adoption of user charges schedules consistent with the policies in this Circular. Each agency will:

a. Identify the services and activities covered by this Circular;

b. Determine the extent of the special benefits provided;

c. Apply the principles specified in paragraph 6 in determining full cost or market price, as appropriate;

d. Apply the guidance in section 7 either to implement charges administratively or submit legislation as appropriate;

e. Review charges annually and adjust them to reflect changing costs or market values;

f. Ensure that the requirements of OMB Circular No. A–123 (Internal Control Systems) and appropriate audit standards are applied to collection.

g. Maintain readily accessible records of:

(1) The services or activities covered by this Circular;

(2) The extent of special benefits provided;

(3) The exceptions to the general policy of this Circular;

(4) The information used to establish charges and the specific method(s) used to determine them; and

(5) The receipts from each user charge imposed.

h. Maintain adequate records of the information used to establish charges and provide them upon request to OMB for the evaluation of the schedules.

9. *Disposition of receipts.* a. If user fees are implemented solely under the authority of this Circular, collections will be credited to the general fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. 9701.

b. Legislative proposals to permit the collections to be retained by the agency may be appropriate in certain circumstances. Proposals should meet the guidelines in Section 7b.

(1) Proposals that allow agency retention of receipts may be appropriate when:

(a) The fee charged recovers the outlays of the agency in providing the special benefit in the period in which the service is provided. (For example, a fee calculated as the overtime pay of inspectors charged for after regular duty hour inspections). In these cases, use of the receipts need not be controlled directly through the appropriations process. Generally, the use of receipts credited to an agency's appropriation should, however, be subject to limits set in the annual appropriations language.

(b) The fee charged is tied to the full cost of providing the special benefits. In these cases, the agency's outlays in a given fiscal year to provide the benefit may be less than the full-cost recovery fee charged. Under these circumstances, agency use of the receipts should be subject to control through the appropriations process.

(2) Legislative proposals should always credit collections above the level of full-cost recovery to the general fund.

10. *New activities.* Whenever agencies prepare legislative proposals for new or expanded Federal activities that would provide special benefits, the policies and criteria set forth in this Circular will apply.

11. *Inquiries.* For information concerning this Circular, consult the Office of Management and Budget examiner responsible for the agency's budget estimates.

By direction of the President:

James C. Miller III,

Director.

[FR Doc. 87–14265; Filed 6–30–87; 8:45 am]

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federal register

Wednesday
July 1, 1987

Part VI

Department of Labor

Wage and Hour Division, Employment Standards Administration

29 CFR Part 516

Fair Labor Standards Act; Records To Be Kept by Employers; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

Employment Standards Administration

29 CFR Part 516

Fair Labor Standards Act; Records to be Kept by Employers

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: This document provides the final text of revised recordkeeping regulations for employers subject to the Fair Labor Standards Act, including special recordkeeping rules that apply to employers whose employees fall within various minimum wage and/or overtime pay exemptions in the Act. This action conforms the regulations to statutory amendments which revised, repealed or added certain exemptions. In addition, various editorial changes have been made to simplify the language of the regulations.

EFFECTIVE DATE: July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor, Room S–3502, 200 Constitution Avenue NW., Washington, DC 20210. Phone: (202) 523–8305. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On September 15, 1986, the Department of Labor published in the **Federal Register** (51 FR 32744) proposed changes to 29 CFR Part 516. These regulations set forth the recordkeeping rules applicable to employers under the FLSA, including special recordkeeping requirements for employers whose employees fall within various statutory minimum wage and/or overtime pay exemptions. For the most part, the records that are required would be kept as a matter of customary or usual business practice.

Background

Section 11(c) of the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 *et seq.*), provides for the issuance of regulations governing the records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's minimum wage and overtime provisions and the regulations issued thereunder.

Part 516 was last revised on February 20, 1975 (40 FR 7405) to add recordkeeping requirements for domestic service employees. In 1974 and 1977, the FLSA was amended by repealing, revising or adding certain minimum wage and/or overtime pay exemptions which necessitated special recordkeeping requirements under Part 516. For example, the exemptions from minimum wage compensation for motion picture theater employees, telegraph agency employees, small logging crews and employees employed in growing and harvesting shade grown tobacco were repealed by the 1974 Amendments. Such employees, however, continued to be exempt from the overtime pay requirements. The 1977 Amendments repealed the overtime pay exemption for employees employed in growing and harvesting shade grown tobacco and the partial overtime pay exemption for certain employees of hotels, motels and restaurants. Also, a new complete exemption for minimum wage and overtime pay requirements for casual baby sitters and those who provide companionship services for the aged or infirm was enacted in 1974. Thus it was necessary to amend Part 516 to take account of these amendments.

The regulatory changes to Part 516 also clarify the recordkeeping requirements for State and local government police and firefighters employed on a work period basis under the partial overtime exemption in section 7(k) of the Act. However, other special recordkeeping requirements unique to State and local governments in section 7(o) of the Act regarding the use of compensatory time added by the Fair Labor Standards Amendments of 1985 are contained in 29 CFR Part 553, Application of the Fair Labor Standards Act to Employees of State and Local Governments.

In addition, certain housekeeping changes have been made, such as simplification of language, elimination of gender specific terminology, deletion of repetitive references, etc., to streamline and update the recordkeeping requirements for all employers covered by the Act and particularly for those employers whose employees are subject to specific statutory exemptions.

Discussion of Comments

A total of eleven comments were received. Several of these commenters expressed general approval of the proposed regulations without suggesting any particular changes.

The American Nurses' Association, Inc., commented that where records are maintained on microfilm or automatic word or data processing memory, a provision for safeguarding against unauthorized alteration of previously entered data should be required. While the FLSA requires that employers maintain accurate records, the statute contains no specific requirement of special safeguards applicable to employers who automate their payroll systems. To impose such a requirement by regulation would, in the Department's view, place an unreasonable and unnecessary burden on those employers who use such systems. The association also argued that employees or their unions should be given an opportunity to challenge the veracity of any proposed changes to recorded data. The Department believes the FLSA contains sufficient safeguards to deter the falsification of records and to remedy such violations, and that employers should not be required under the Act to obtain employee approval of corrections. Accordingly, the suggested revisions have not been adopted. Finally, the association suggested that where the prior agreement or understanding required under section 7(j) of the FLSA is not in writing, copies of memoranda summarizing its terms should be furnished each employee. As provided in § 516.23 of the proposal, and the prior existing rule, employers are required to maintain a copy of the memorandum. While the Department intends that such memoranda should be available for inspection by employees, the suggested requirement to furnish a copy to each employee is an unwarranted burden on employers. For these reasons, this change has not been made in the final rule.

The New Jersey Department of Labor and the Kentucky Department for Employment Services argued that Part 516 should contain a statement that where other Federal or State regulations impose more restrictive requirements, the more restrictive rules are applicable. The Department agrees and has added a new paragraph (c) in § 516.1 for this purpose.

One commenter argued that the requirement in § 516.2(a)(5) to maintain a notation of the starting and ending points of the work periods for employees hired under section 7(k) presents a large volume of work in light of shift changes, particularly if such notations must be recorded in personnel files at a central location. Nothing in the regulations require that records be maintained at a central location, although employers generally find it useful to do so for their own purposes. However, it is clear that the commenter incorrectly believed this requirement pertained to "shift schedules" (for example, "M—8:15 AM–4:45 PM; T—10:00 AM–6:00 PM; etc.) rather than "work periods" under section 7(k) (for example, "14-day work period beginning Sunday 12:01 AM and ending Saturday

12:00 midnight). No changes have been made to this section of the regulations.

The Montana Department of Labor and Industry argued that all employers should be required to maintain the basic records in § 516.2, even those employers exempt under the FLSA, in order to insure that the records are available for inspection under State laws. The Department believes Part 516 cannot be used as a vehicle to provide for the many variations of recordkeeping requirements under State laws. However, as noted above, a new paragraph (c) has been added to § 516.1 to address this issue.

The United Bus Owners of America commented that while they recognize that certain of the basic recordkeeping requirements (namely, § 516.2(a)(6) and (9)) do not apply to employees exempt from overtime pay under FLSA section 13(b)(1), the remaining basic requirements in § 516.2 should be reduced for such employees. No specific requirements were proposed for deletion. The Department has reviewed these requirements and believes they are necessary to insure records of compliance with the minimum wage and child labor provisions of the Act. Accordingly, no changes have been made in the final rule.

The West Virginia Legal Services Plan, Inc., commented that § 516.33(a) should be revised to delete the brief discussion, which was carried over from the prior existing rule, concerning the circumstances under which a joint employment relationship is established between farmers and farm labor contractors for purposes of including or excluding workers supplied by crew leaders in the 500 man-day test. They argued that the tests indicated in the proposal were too narrow and did not conform with certain court decisions on this matter. The Department agrees that Part 516 is not the proper vehicle to provide comprehensive guidance on this issue and has deleted the discussion of the conditions under which a joint employment relationship is established. Also, this commenter suggested that 516.33(c), concerning records for agricultural employers, include cross-references to the records retention requirements in §§ 516.5 and 516.6. The Department agrees and has incorporated such cross-references in the final rule.

The National Automobile Dealers Association (NADA) argued that the regulatory language in § 516.4 concerning the posting of notices would preclude their membership from modifying the posters to note that the overtime provisions do not apply to most of the employees pursuant to section 13(b)(10) of the FLSA. The changes to § 516.4 in the prior existing rule were intended to permit employers to modify the poster by including a notation concerning a particular overtime exemption that has broad application to the employees of the establishment. Further changes have been made in the final rule to clarify this matter.

The NADA also suggested that §§ 516.6 and 516.32 of the prior existing rule concerning equal pay recordkeeping requirements be restored in the final rule. However, as indicated in the proposal, the same regulatory language contained in the prior existing rule has been incorporated into regulations issued by the Equal Employment Opportunity Commission (EEOC) which has responsibility for enforcement and administration of the equal pay provisions of the FLSA. (See 29 CFR 1620.32 (b) and (c), formerly 29 CFR 1620.21 (b) and (c). In the Department's view, it is not appropriate to duplicate these requirements in Part 516. However, in order to clarify this matter, § 516.2 has been revised to include a cross reference to the EEOC rules.

Finally, the NADA questioned the reasons for certain deletions of requirements in the prior existing rule. Specifically, former § 516.6 contained a retention requirement for worktime schedules; former § 516.16 contained a recordkeeping requirement concerning the regular rate of pay of commission salespersons; and former § 516.10 contained a procedure for petitions to amend the recordkeeping regulations. All of these items were deleted in the proposal. The first two items were deleted as unnecessary to ensure compliance with the Act. The latter was deleted to eliminate the incorrect impression that special steps were necessary to seek a change in this particular regulation, and to avoid any possible confusion about the application of the Administrative Procedures Act. No further changes with respect to these items have been made in the final rule.

In addition to the changes discussed above, a number of minor editorial and punctuation changes have been made to the final regulatory text.

Classification—Executive Order 12291

The Department has conducted an analysis under the Paperwork Reduction Act of the estimated cost impact of these recordkeeping regulations on covered establishments. Based on that analysis, it is believed that this action is not a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. No comments were received on this determination.

Final Regulatory Flexibility Analysis

(1) Reasons Why Action by Agency is Being Considered

Part 516 contains the recordkeeping requirements applicable to all employers covered by the Fair Labor Standards Act (FLSA), including special requirements for employers whose employees are within the scope of various minimum wage and/or overtime pay exemptions to the Act. Since the last major revision of the regulations, the FLSA has been amended in 1974, 1977 and 1985. Further amendments in 1986 did not affect Part 516. These revisions are being issued to conform the recordkeeping regulations to the amended statute. Additional editorial changes are being made to simplify the rules.

(2) Objectives of and Legal Basis for Rule

The regulations are issued pursuant to section 11(c) of the FLSA which provides for the issuance of rules governing the types of records employers must maintain and preserve to enable the Secretary of Labor to effectively enforce the FLSA's provisions and any regulations issued thereunder. The objective of these revised rules is to provide employers with recordkeeping regulations which not only take into account the amended statute but which also simplify the regulatory requirements, to the extent possible, and the regulatory language in order to enable employers to more easily comply with the requirements of the Act.

(3) Number of Small Entities Covered Under Rule

These regulations apply to all employers (approximately 4.2 million) covered by the provisions of the Fair Labor Standards Act (29 U.S.C. 201 *et seq.*). The majority of such employers would be classified as small entities. In addition, these regulations apply to approximately 83,000 State and local government agencies. It is estimated that 50,000 of thsee agencies would be classified as small entities.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The revised rules decrease the recordkeeping burdens for employers who previously had special recordkeeping requirements for employees subject to various exemptions in the FLSA. When a particular exemption is applicable, specific information, in addition to the basic recordkeeping requirements, is necessary to properly enforce the Act. Once an exemption has been repealed or revised, as occurred with the 1974 and 1977 Amendments, only certain basic information is necessary for enforcement. Therefore, changes have been made to the rules to conform the regulations to the amended statute. Also, changes have been made to simplify and clarify the language and to delete repetitiveness. As a result, the revised rules will provide employers with a better understanding of their recordkeeping obligation and will generally require employers to maintain information which they would normally keep as a matter of customary or usual business practice regardless of the size of the entity.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

There is no duplication of existing Wage-Hour requirements. Certain similar information is required by the Internal Revenue Service (IRS) in 26 CFR Part 31. However, while the FLSA and IRS recordkeeping rules require similar information, the FLSA regulations do not require duplication of those records required by IRS.

(6) Differing Compliance or Reporting Requirements

As an alternative to the proposed approach, consideration was given to requiring a standard format for the collection of information. In that way, all records would be kept in the same form and order. This would arguably provide an easier method for enforcement, since all records would identically present the required information. However, it was determined that requiring a standard format for recordkeeping would be an unnecessary burden, particularly on small entities. Employers who are required to maintain and preserve records under the FLSA have varying capabilities and differing methods of recordkeeping which are most cost efficient and effective for their respective business organizations. By not requiring a standard format, employers can determine the method of recordkeeping which will have the smallest economic impact. This is of particular benefit to small entities which, in most cases, would be unable to expend the same resources as large entities for recordkeeping. Under these rules, small entities can maintain the required information in any order or form which they consider appropriate to their needs.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

As noted above, the updated and streamlined rules will simplify compliance and reporting requirements for all employers covered by the Act, including small entities, by providing regulations that conform to the amended statute in language more easily understandable than the prior existing rule.

(8) Use of Other Standards

Appropriate alternative standards that would impose less burdensome regulations are not available.

(9) Exemptions of Small Entities From Coverage of the Rule

An exemption from recordkeeping for small entities covered by the FLSA is not possible since records are necessary for the enforcement of the Act regardless of the size of the entity. However, there are exemptions in the FLSA itself, reflected in the regulations, which take small entities into account. For example, section 13(a)(2) of the Act exempts from both minimum wage and overtime pay all employees of any retail or service establishment with an annual dollar volume of sales made or business done of less than $362,500 (exclusive of excise taxes at the retail level which are separately stated). This small business exemption is reflected in § 516.11 of the regulations where most of the basic recordkeeping requirements for such small entities have been waived. Thus, the regulations reflect a concern for the burden of recordkeeping on small entities.

As a result of the above analysis, it has been determined that the proposed rule will not have a significant detrimental economic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the recordkeeping or reporting provisions that are included in these regulations have been approved by the Office of Management and Budget (OMB). OMB has assigned control numbers to the information collection requirements in this part: At the headings for Subpart A and Subpart B, OMB Control No. 1215-0017 for the recordkeeping requirements therein; at § 516.31, OMB Control No. 1215-0013 for the recordkeeping requirements of the homeworker handbook; and, OMB Control No. 1215-0006 for the reporting requirements of § 516.8.

Conclusion

The Department has determined in accordance with Executive Order 12291 that this regulation falls within the authority delegated to the Secretary of Labor by the Fair Labor Standards Act (FLSA) (29 U.S.C. 201 *et seq.*). The Department has also determined that this regulation is consistent with the congressional intent of the application of the FLSA to covered employers. Finally, it has been determined that the factual conclusions upon which the rule is based have substantial support in the agency record, viewed as a whole, with full attention given to the comments.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 516

Minimum wage, Reporting and recordkeeping requirements.

For the reasons set forth above, 29 CFR Part 516 is revised as set forth below:

Signed at Washington, DC, on this 26th day of June, 1987.

William E. Brock,

Secretary of Labor.

Paula V. Smith,

Administrator, Wage and Hour Division.

PART 516—RECORDS TO BE KEPT BY EMPLOYERS

Introductory

Sec.

Authority: Sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211. Section 516.33 also issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.

Introductory

§ 516.0 Display of OMB control Numbers.

Subpart or section where information collection requirement is located	Currently assigned OMB control No.
Subpart A (except 516.8)	1215.0017
516.8	1215.0006
Subpart B (except 516.31)	1215.0017
516.31	1215.0013

§ 516.1 Form of records; scope of regulations.

(a) *Form of records.* No particular order or form of records is prescribed by the regulations in this part. However, every employer subject to any provisions of the Fair Labor Standards Act of 1938, as amended (hereinafter referred to as the "Act"), is required to maintain records containing the information and data required by the specific sections of this part. The records may be maintained and preserved on microfilm or other basic source document of an automatic word or data processing memory provided that adequate projection or viewing equipment is available, that the reproductions are clear and identifiable by date or pay period and that extensions or transcriptions of the information required by this part are made available upon request.

(b) *Scope of regulations.* The regulations in this part are divided into two subparts. (1) Subpart A of this part contains the requirements generally applicable to all employers employing covered employees, including the requirements relating to the posting of notices, the preservation and location of records, and the recordkeeping requirements for employers of employees to whom both the minimum wage provisions of section 6 or the minimum wage provisions of section 6 and the overtime pay provisions of section 7(a) of the Act apply. In addition, section 516.3 contains the requirements relating to executive, administrative, and professional employees (including academic administrative personnel or teachers in elementary or secondary schools), and outside sales employees.

(2) Subpart B of this part deals with the information and data which must be kept for employees (other than executive, administrative, etc., employees) who are subject to any of the exemptions provided in the Act. This section also specifies the records needed for deductions from and additions to wages for "board, lodging, or other facilities," industrial homeworkers and employees whose tips are credited toward wages. The sections in Subpart B of this part require the recording of more, less, or different items of information or data than required under the generally applicable recordkeeping requirements of Subpart A.

(c) *Relationship to other recordkeeping and reporting requirements.* Nothing in 29 CFR Part 516 shall excuse any party from complying with any recordkeeping or reporting requirement imposed by any other Federal, State or local law, ordinance, regulation or rule.

Subpart A—General Requirements

§ 516.2 Employees subject to minimum wage or minimum wage and overtime provisions pursuant to section 6 or sections 6 and 7(a) of the Act.

(a) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom section 6 or both sections 6 and 7(a) of the Act apply:

(1) Name in full, as used for Social Security recordkeeping purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records,

(2) Home address, including zip code,

(3) Date of birth, if under 19,

(4) Sex and occupation in which employed (sex may be indicated by use of the prefixes Mr., Mrs., Miss., or Ms.) (Employee's sex identification is related to the equal pay provisions of the Act which are administered by the Equal Employment Opportunity Commission. Other equal pay recordkeeping requirements are contained in 29 CFR Part 1620.)

(5) Time of day and day of week on which the employee's workweek begins (or for employees employed under section 7(k) of the Act, the starting time and length of each employee's work period). If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment will suffice,

(6)(i) Regular hourly rate of pay for any workweek in which overtime compensation is due under section 7(a) of the Act, (ii) explain basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, and (iii) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate" (these records may be in the form of vouchers or other payment data),

(7) Hours worked each workday and total hours worked each workweek (for purposes of this section, a "workday" is any fixed period of 24 consecutive hours and a "workweek" is any fixed and regularly recurring period of 7 consecutive workdays),

(8) Total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation,

(9) Total premium pay for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under item (8) above,

(10) Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments. Also, in individual employee records, the dates, amounts, and nature of the items which make up the total additions and deductions,

(11) Total wages paid each pay period,

(12) Date of payment and the pay period covered by payment.

(b) *Records of retroactive payment of wages.* Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator of the Wage and Hour Division pursuant to section 16(c) and/or section 17 of the Act, shall:

(1) Record and preserve, as an entry on the pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(2) Prepare a report of each such payment on a receipt form provided by or authorized by the Wage and Hour Division, and (i) preserve a copy as part of the records, (ii) deliver a copy to the employee, and (iii) file the original, as evidence of payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) *Employees working on fixed schedules.* With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required by paragraph (a)(7) of this section, the schedule of daily and weekly hours the employee normally works. Also,

(1) In weeks in which an employee adheres to this schedule, indicates by check mark, statement or other method that such hours were in fact actually worked by him, and

(2) In weeks in which more or less than the scheduled hours are worked, shows that exact number of hours worked each day and each week.

§ 516.3 Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to section 13(a)(1) of the Act.

With respect to each employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), or in outside sales, as defined in Part 541 of this chapter (pertaining to so-called "white collar" employee exemptions), employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a) (6) through (10) and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites. (This may be shown as the dollar amount of earnings per month, per week, per month plus commissions, etc. with appropriate addenda such as "plus hospitalization and insurance plan A," "benefit package B," "2 weeks paid vacation," etc.)

§ 516.4 Posting of notices.

Every employer employing any employees subject to the Act's minimum wage provisions shall post and keep posted a notice explaining the Act, as prescribed by the Wage and Hour Division, in conspicuous places in every establishment where such employees are employed so as to permit them to observe readily a copy. Any employer of employees to whom section 7 of the Act does not apply because of an exemption of broad application to an establishment may alter or modify the poster with a legible notation to show that the overtime provisions do not apply. For example: "Overtime Provisions Not Applicable to Taxicab Drivers (Sec. 13(b)(17))".

§ 516.5 Records to be preserved 3 years.

Each employer shall preserve for at least 3 years:

(a) *Payroll records.* From the last date of entry, all payroll or other records containing the employee information and data required under any of the applicable sections of this part, and

(b) *Certificates, agreements, plans, notices, etc.* From their last effective date, all written:

(1) Collective bargaining agreements relied upon for the exclusion of certain costs under section 3(m) of the Act,

(2) Collective bargaining agreements, under section 7(b)(1) or 7(b)(2) of the Act, and any amendments or additions thereto,

(3) Plans, trusts, employment contracts, and collective bargaining agreements under section 7(e) of the Act,

(4) Individual contracts or collective bargaining agreements under section 7(f) of the Act. Where such contracts or agreements are not in writing, a written memorandum summarizing the terms of each such contract or agreement,

(5) Written agreements or memoranda summarizing the terms of oral agreements or understandings under section 7(g) or 7(j) of the Act, and

(6) Certificates and notices listed or named in any applicable section of this part.

(c) *Sales and purchase records.* A record of (1) total dollar volume of sales or business, and (2) total volume of goods purchased or received during such periods (weekly, monthly, quarterly, etc.), in such form as the employer maintains records in the ordinary course of business.

§ 516.6 Records to be preserved 2 years.

(a) Supplementary basic records: Each employer required to maintain records under this part shall preserve for a period of at least 2 years.

(1) *Basic employment and earnings records.* From the date of last entry, all basic time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those

amounts determine in whole or in part the pay period earnings or wages of those employees.

(2) *Wage rate tables.* From their last effective date, all tables or schedules of the employer which provide the piece rates or other rates used in computing straight-time earnings, wages, or salary, or overtime pay computation.

(b) Order, shipping, and billing records: From the last date of entry, the originals or true copies of all customer orders or invoices received, incoming or outgoing shipping or delivery records, as well as all bills of lading and all billings to customers (not including individual sales slips, cash register tapes or the like) which the employer retains or makes in the usual course of business operations.

(c) Records of additions to or deductions from wages paid:

(1) Those records relating to individual employees referred to in § 516.2(a)(10) and

(2) All records used by the employer in determining the original cost, operating and maintenance cost, and depreciation and interest charges, if such costs and charges are involved in the additions to or deductions from wages paid.

§ 516.7 Place for keeping records and their availability for inspection.

(a) *Place of records.* Each employer shall keep the records required by this part safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where such records are customarily maintained. Where the records are maintained at a central recordkeeping office, other than in the place or places of employment, such records shall be made available within 72 hours following notice from the Administrator or a duly authorized and designated representative.

(b) *Inspection of records.* All records shall be available for inspection and transcription by the Administrator or a duly authorized and designated representative.

§ 516.8 Computations and reports.

Each employer required to maintain records under this part shall make such extension, recomputation, or transcription of the records and shall submit to the Wage and Hour Division such reports concerning persons employed and the wages, hours, and other conditions and practices of employment set forth in the records as the Administrator or a duly authorized and designated representative may request in writing.

§ 516.9 Petitions for exceptions.

(a) *Submission of petitions for relief.* Any employer or group of employers who, due to peculiar conditions under which they must operate, desire authority to maintain records in a manner other than required in this part, or to be relieved of preserving certain records for the period specified in this part, may submit a written petition to the Administrator requesting such authority, setting forth the reasons therefor.

(b) *Action on petitions.* If, after review of the petition, the Administrator finds that the authority requested will not hinder enforcement of the Act, the Administrator may grant such authority limited by any conditions determined necessary and subject to subsequent revocation. Prior to revocation of such authority because of noncompliance with any of the prescribed conditions, the employer will be notified of the reasons and given an opportunity to come into compliance.

(c) *Compliance after submission of petitions.* The submission of a petition or the delay of the Administrator in acting upon such petition will not relieve any employer or group of employers from any obligations to comply with all the applicable requirements of the regulations in this part. However, the Administrator will provide a response to all petitions as soon as possible.

§ 516.10 [Reserved]

Subpart B—Records Pertaining to Employees Subject to Miscellaneous Exemptions Under the Act; Other Special Requirements

§ 516.11 Employees exempt from both minimum wage and overtime pay requirements under section 13(a) (2), (3), (4), (5), (8), (10), (12), or 13(d) of the Act.

With respect to each and every employee exempt from both the minimum wage and overtime pay requirements of the Act pursuant to the provisions of section 13(a) (2), (3), (4), (5), (8), (10), (12), or 13(d) of the Act, employers shall maintain and preserve records containing the information and data required by § 516.2(a) (1) through (4).

§ 516.12 Employees exempt from overtime pay requirements pursuant to section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to the provisions of section 13(b) (1), (2), (3), (5), (9), (10), (15), (16), (17), (20), (21), (24), (27), or (28) of the Act, shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the monetary amount paid, expressed as earnings per hour, per day, per week, etc.).

§ 516.13 Livestock auction employees exempt from overtime pay requirements under section 13(b)(13) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(13), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek in which the employee is employed both in agriculture and in connection with livestock auction operations: (a) the total numbers of hours worked by each such employee, (b) the total number of hours in which the employee was employed in agriculture and the total number of hours employed in connection with livestock auction operations, and (c) the total straight-time earnings for employment in livestock auction operations.

§ 516.14 Country elevator employees exempt from overtime pay requirements under section 13(b)(14) of the Act.

(a) With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(14), the employer shall maintain and preserve records containing the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, for each workweek, the names and occupations of all persons employed in the country elevator, whether or not covered by the Act, and

(b) Information demonstrating that the "area of production" requirements of Part 536 of this chapter are met.

§ 516.15 Local delivery employees exempt from overtime pay requirements pursuant to section 13(b)(11) of the Act.

With respect to each employee exempt from the overtime pay requirements of the Act pursuant to section 13(b)(11), the employer shall maintain and preserve payroll or other records, containing all the information and data required by § 516.2(a) except paragraphs (a) (6) and (9) and, in addition, information and data regarding the basis on which wages are paid (such as the dollar amount paid per trip; the dollar amount of earnings per week plus 3 percent commission on all cases

delivered). Records shall also contain the following information:

(a) A copy of the Administrator's finding under Part 551 of this chapter with respect to the plan under which such employees are compensated;

(b) A statement or description of any changes made in the trip rate or other delivery payment plan of compensation for such employees since its submission for such finding;

(c) Identification of each employee employed pursuant to such plan and the work assignments and duties; and

(d) A computation for each quarter-year of the average weekly hours of full-time employees employed under the plan during the most recent representative annual period as described in § 551.8(g) (1) and (2) of this chapter.

§ 516.16 Commission employees of a retail or service establishment exempt from overtime pay requirements pursuant to section 7(i) of the Act.

With respect to each employee of a retail or service establishment exempt from the overtime pay requirements of the Act pursuant to the provisions of section 7(i), employers shall maintain and preserve payroll and other records containing all the information and data required by § 516.2(a) except paragraphs (a) (6), (8), (9), and (11), and in addition:

(a) A symbol, letter or other notation placed on the payroll records identifying each employee who is paid pursuant to section 7(i).

(b) A copy of the agreement or understanding under which section 7(i) is utilized or, if such agreement or understanding is not in writing, a memorandum summarizing its terms including the basis of compensation, the applicable representative period and the date the agreement was entered into and how long it remains in effect. Such agreements or understandings, or summaries may be individually or collectively drawn up.

(c) Total compensation paid to each employee each pay period (showing separately the amount of commissions and the amount of noncommission straight-time earnings).

§ 516.17 Seamen exempt from overtime pay requirements pursuant to section 13(b)(6) of the Act.

With respect to each employee employed as a seaman and exempt from the overtime pay requirements of the Act pursuant to section 13(b)(6), the employer shall maintain and preserve payroll or other records, containing all the information required by § 516.2(a) except paragraphs (a) (5) through (9) and, in addition, the following:

(a) Basis on which wages are paid (such as the dollar amount paid per hour, per day, per month, etc.)

(b) Hours worked each workday and total hours worked each pay period (for purposes of this section, a "workday" shall be any fixed period of 24 consecutive hours; the "payperiod" shall be the period covered by the wage payment, as provided in section 6(a)(4) of the Act),

(c) Total straight-time earnings or wages for each such pay period, and

(d) The name, type, and documentation, registry number, or other identification of the vessel or vessels upon which employed.

§ 516.18 Employees employed in certain tobacco, cotton, sugar cane or sugar beet services who are partially exempt from overtime pay requirements pursuant to section 7(m), 13(h), 13(i) or 13(j) of the Act.

With respect to each employee providing services in connection with certain types of green leaf or cigar leaf tobacco, cotton, cottonseed, cotton ginning, sugar cane, sugar processing or sugar beets who are partially exempt from the overtime pay requirements of the Act pursuant to 7(m), 13(h), 13(i) or 13(j), the employer shall, in addition to the records required in § 516.2, maintain and preserve a record of the daily and weekly overtime compensation paid. Also, the employer shall note in the payroll records the beginning date of each workweek during which the establishment operates under the particular exemption.

§ 516.19 [Reserved]

§ 516.20 Employees under certain collective bargaining agreements who are partially exempt from overtime pay requirements as provided in section 7(b)(1) or section 7(b)(2) of the Act.

(a) The employer shall maintain and preserve all the information and data required by § 516.2 and shall record daily as well as weekly overtime compensation for each employee employed:

(1) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that no employees shall be employed more than 1,040 hours during any period of 26 consecutive weeks as provided in section 7(b)(1) of the Act, or

(2) Pursuant to an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board, which provides that the employee shall be employed not more than 2,240 hours during a specified period of 52 consecutive weeks and shall be guranteed employment as provided in section 7(b)(2) of the Act.

(b) The employer shall also keep copies of such collective bargaining agreement and such National Labor Relations Board certification as part of the records and shall keep a copy of each amendment or addition thereto.

(c) The employer shall also make, and preserve a record, either separately or as a part of the payroll:

(1) Listing each employee employed pursuant to each such collective bargaining agreement and each amendment and addition thereto.

(2) Indicating the period or periods during which the employee has been or is employed pursuant to an agreement under section 7(b)(1) or 7(b)(2) of the Act, and

(3) Showing the total hours worked during any period of 26 consecutive weeks, if the employee is employed in accordance with section 7(b)(1) of the Act, or during the specified period of 52 consecutive weeks, if employed in accordance with section 7(b)(2) of the Act.

§ 516.21 Bulk petroleum employees partially exempt from overtime pay requirements pursuant to section 7(b)(3) of the Act.

With respect to each employee partially exempt from the overtime provisions of the Act pursuant to section 7(b)(3), the employer shall maintain and preserve records containing all the information and data required by § 516.2(a), and, in addition, shall record the daily as well as the weekly overtime compensation paid to the employees, the rate per hour and the total pay for time worked between the 40th and 56th hour of the workweek.

§ 516.22 Employees engaged in charter activities of carriers pursuant to section 7(n) of the Act.

With respect to each employee employed in charter activities for a street, suburban or interurban electric railway or local trolley or motorbus carrier pursuant to section 7(n) of the Act, the employer shall maintain and preserve records containing all the information and data required by § 516.2(a) and, in addition, the following:

(a) Hours worked each workweek in charter activities; and

(b) A copy of the employment agreement or understanding stating that in determining the hours of employment for overtime pay purposes, the hours spent by the employee in charter activities will be excluded and, also, the date this agreement or understanding was entered into.

§ 516.23 Employees of hospitals and residential care facilities compensated for overtime work on the basis of a 14-day work period pursuant to section 7(j) of the Act.

With respect to each employee of hospitals and institutions primarily engaged in the care of the sick, the aged, or mentally ill or defective who reside on the premises compensated for overtime work on the basis of a work period of 14 consecutive days pursuant to an agreement or understanding under section 7(j) of the Act, employers shall maintain and preserve.

(a) The records required by § 516.2 except paragraphs (a) (5) and (7) through (9), and in addition:

(1) Time of day and day of week on which the employee's 14-day work period begins,

(2) Hours worked each workday and total hours worked each 14-day work period,

(3) Total straight-time wages paid for hours worked during the 14-day period,

(4) Total overtime excess compensation paid for hours worked in excess of 8 in a workday and 80 in the work period.

(b) A copy of the agreement or understanding with respect to using the 14-day period for overtime pay computations or, if such agreement or understanding is not in writing, a memorandum summarizing its terms and showing the date it was entered into and how long it remains in effect.

§ 516.24 Employees employed under section 7(f) "Belo" contracts.

With respect to each employee to whom both sections 6 and 7(f) of the Act apply, the employer shall maintain and preserve payroll or other records containing all the information and data required by § 516.2(a) except paragraphs (a) (8) and (9), and, in addition, the following:

(a) Total weekly guaranteed earnings,

(b) Total weekly compensation in excess of weekly guaranty,

(c) A copy of the bona fide individual contract or the agreement made as a result of collective bargaining by representatives of employees, or where such contract or agreement is not in writing, a written memorandum summarizing its terms.

§ 516.25 Employees paid for overtime on the basis of "applicable" rates provided in sections 7(g)(1) and 7(g)(2) of the Act.

With respect to each employee compensated for overtime work in accordance with section 7(g)(1) or 7(f)(2) of the Act, employers shall maintain and preserve records containing all the information and data required by § 516.2(a) except paragraphs (a), (6) and (9) and, in addition, the following:

(a)(1) Each hourly or piece rate at which the employee is employed, (2) basis on which wages are paid, and (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate,"

(b) The number of overtime hours worked in the workweek at each applicable hourly rate or the number of units of work performed in the workweek at each applicable piece rate during the overtime hours,

(c) Total weekly overtime compensation at each applicable rate which is over and above all straight-time earnings or wages earned during overtime worked,

(d) The date of the agreement or understanding to use this method of compensation and the period covered. If the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to use this method of compensation a single notation of the date of the agreement or understanding and the period covered will suffice.

§ 516.26 Employees paid for overtime at premium rates computed on a "basic" rate authorized in accordance with section 7(g)(3) of the Act.

With respect to each employee compensated for overtime hours at a "basic" rate which is substantially equivalent to the employee's average hourly earnings, as authorized in accordance with section 7(g)(3) of the Act and Part 548 of this chapter, employers shall maintain and preserve records containing all the information and data required by § 516.2 except paragraph (a)(6) thereof and, in addition, the following:

(a)(1) The hourly rates, piece rates, or commission rates applicable to each type of work performed by the employee, (2) the computation establishing the basic rate at which the employee is compensated for overtime hours (if the employee is part of a workforce or employed in or by an establishment all of whose workers have agreed to accept this method of compensation, a single entry of this computation will suffice), (3) the amount and nature of each payment which, pursuant to section 7(e) of the Act, is excluded from the "regular rate."

(b)(1) Identity of representative period for computing the basic rate, (2) the period during which the established basic rate is to be used for computing overtime compensation, (3) information which establishes that there is no significant difference between the pertinent terms, conditions and circumstances of employment in the period selected for the computation of the basic rate and those in the period for which the basic rate is used for computing overtime compensation, which could affect the representative character of the period from which the basic rate is derived.

(c) A copy of the written agreement or, if there is no such agreement, a memorandum summarizing the terms of and showing the date and period covered by the oral agreement or understanding to use this method of computation. If the employee is one of a group, all of whom have agreed to use this method of computation, a single memorandum will suffice.

§ 516.27 "Board, lodging, or other facilities" under section 3(m) of the Act.

(a) In addition to keeping other records required by this part, an employer who makes deductions from the wages of employees for "board, lodging, or other facilities" (as these terms are used in sec. 3(m) of the Act) furnished to them by the employer or by an affiliated person, or who furnishes such "board, lodging, or other facilities" to employees as an addition to wages, shall maintain and preserve records substantiating the cost of furnishing each class of facility except as noted in paragraph (c) of this section. Separate records of the cost of each item furnished to an employee need not be kept. The requirements may be met by keeping combined records of the costs incurred in furnishing each class of facility, such as housing, fuel, or merchandise furnished through a company store or commissary. Thus, in the case of an employer who furnishes housing, separate cost records need not be kept for each house. The cost of maintenance, utilities, and repairs for all the houses may be shown together. Original cost and depreciation records may be kept for groups of houses acquired at the same time. Costs incurred in furnishing similar or closely related facilities, moreover, may be shown in combined records. Where cost records are kept for a "class" of facility rather than for each individual article furnished to employees, the records must also show the gross income derived from each such class of facility; e.g., gross rentals in the case of houses, total sales through the store or commissary, total receipts from sales of fuel, etc.

(1) Such records shall include itemized accounts showing the nature and amount of any expenditures entering into the computation of the reasonable cost, as defined in Part 531 of this

chapter, and shall contain the data required to compute the amount of the depreciated investment in any assets allocable to the furnishing of the facilities, including the date of acquisition or construction, the original cost, the rate of depreciation and the total amount of accumulated depreciation on such assets. If the assets include merchandise held for sale to employees, the records should contain data from which the average net investment in inventory can be determined.

(2) No particular degree of itemization is prescribed. However, the amount of detail shown in these accounts should be consistent with good accounting practices, and should be sufficient to enable the Administrator or authorized representative to verify the nature of the expenditure and the amount by reference to the basic records which must be preserved pursuant to § 516.6(c)(2).

(b) If additions to or deductions from wages paid (1) so affect the total cash wages due in any workweek (even though the employee actually is paid on other than a workweek basis) as to result in the employee receiving less in cash than the applicable minimum hourly wage, or (2) if the employee works in excess of the applicable maximum hours standard and (i) any additions to the wages paid are a part of wages, or (ii) any deductions made are claimed as allowable deductions under sec. 3(m) of the Act, the employer shall maintain records showing on a workweek basis those additions to or deductions from wages. (For legal deductions not claimed under sec. 3(m) and which need not be maintained on a workweek basis, see Part 531 of this chapter.)

(c) The records specified in this § 516.27 are not required with respect to an employee in any workweek in which the employee is not subject to the overtime provisions of the Act and receives not less than the applicable statutory minimum wage in cash for all hours worked in that workweek. (The application of section 3(m) of the Act in nonovertime weeks is discussed in Part 531 of this chapter.)

§ 516.28 Tipped employees.

(a) With respect to each tipped employee whose wages are determined pursuant to section 3(m) of the Act, the employer shall maintain and preserve payroll or other records containing all the information and data required in § 516.2(a) and, in addition, the following:

(1) A symbol, letter or other notation placed on the pay records identifying each employee whose wage is determined in part by tips.

(2) Weekly or monthly amount reported by the employee, to the employer, of tips received (this may consist of reports made by the employees to the employer on IRS Form 4070).

(3) Amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of 40 percent of the applicable statutory minimum wage). The amount per hour which the employer takes as a tip credit shall be reported to the employee in writing each time it is changed from the amount per hour taken in the preceding week.

(4) Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours.

(5) Hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earning for such hours.

§ 516.29 Employees employed by a private entity operating an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System who are partially exempt from overtime pay requirements pursuant to section 13(b)(29) of the Act.

With respect to each employee who is partially exempt from the overtime pay requirements of the Act pursuant to section 13(b)(29), the employer shall maintain and preserve the records required in § 516.2, except that the record of the regular hourly rate of pay in § 516.2(a)(6) shall be required only in a workweek when overtime compensation is due under section 13(b)(29).

§ 516.30 Learners, apprentices, messengers, students, or handicapped workers employed under special certificates as provided in section 14 of the Act.

(a) With respect to persons employed as learners, apprentices, messengers or full-time students employed outside of their school hours in any retail or service establishment in agriculture, or in institutions of higher education, or handicapped workers employed at special minimum hourly rates under Special Certificates pursuant to section 14 of the Act, employers shall maintain and preserve records containing the same information and data required with respect to other employees employed in the same occupations.

(b) In addition, each employer shall segregate on the payroll or pay records the names and required information and data with respect to those learners, apprentices, messengers, handicapped workers and students, employed under Special Certificates. A symbol or letter may be placed before each such name on the payroll or pay records indicating that that person is a "learner," "apprentice," "messenger," "student," or "handicapped worker," employed under a Special Certificate.

§ 516.31 Industrial homeworkers.

(a) *Definitions.* (1) "Industrial homeworker" and "homeworker," as used in this section, mean any employee employed or suffered or permitted to perform industrial homework for an employer.

(2) "Industrial homework," as used in this section, means the production by any person in or about a home, apartment, tenement, or room in a residential establishment of goods for an employer who suffers or permits such production, regardless of the source (whether obtained from an employer or elsewhere) of the materials used by the homeworker in such production.

(3) The meaning of the terms "person," "employ," "employer," "employee," "goods," and "production" as used in this section is the same as in the Act.

(b) *Items required.* Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each and every industrial homeworker employed (excepting those homeworkers to whom section 13(d) of the Act applies and those homeworkers in Puerto Rico to whom Part 545 of this chapter apply, or in the Virgin Islands to whom Part 695 of this chapter applies):

(1) Name in full, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records. This shall be the same as that used for Social Security purposes.

(2) House address, including zip code,

(3) Date of birth if under 19,

(4) With respect to each lot of work:

(i) Date on which work is given out to worker, or begun by worker, and amount of such work given out or begun.

(ii) Date on which work is turned in by worker, and amount of such work,

(iii) Kind of articles worked on and operations performed,

(iv) Piece rates paid,

(v) Hours worked on each lot of work turned in,

(vi) Wages paid for each lot of work turned in,

(vii) Deductions for Social Security taxes,

(viii) Date of wage payment and pay period covered by payment,

(5) With respect to each week:

(i) Hours worked each week,

(ii) Wages earned for each week at regular piece rates,

(iii) Extra pay due each week for overtime worked,

(iv) Total wages earned each week,

(v) Deductions for Social Security taxes,

(6) With respect to any agent, distributor, or contractor: The name and address of each such agent, distributor, or contractor through whom homework is distributed or collected and name and address of each homeworker to whom homework is distributed or from whom it is collected by each such agent, distributor, or contractor.

(7) Record of retroactive payment of wages. Every employer who makes retroactive payment of wages or compensation under the supervision of the Administrator pursuant to section 16(c) of the Act, shall:

(i) Record and preserve, as an entry on the payroll or other pay records, the amount of such payment to each employee, the period covered by such payment, and the date of payment.

(ii) Prepare a report of each such payment on the receipt form provided or authorized by the Wage and Hour Division, and *(a)* preserve a copy as part of the employer's records, *(b)* deliver a copy to the employee, and *(c)* file the original, which shall evidence payment by the employer and receipt by the employee, with the Administrator or an authorized representative within 10 days after payment is made.

(c) Homework handbook. In addition to the information and data required in paragraph (b) of this section, a separate handbook (to be obtained by the employer from the Wage and Hour Division and supplied by the employer to each worker) shall be kept for each homeworker. The information required therein shall be entered by the employer or the person distributing or collecting homework on behalf of such employer each time work is given out to or received from a homeworker. Except for the time necessary for the making of entries by the employer, the handbook must remain in the possession of the homeworker until such time as the Wage and Hour Division may request it. Upon completion of the handbook (that is, no space remains for additional entries) or termination of the homeworker's services, the handbook shall be returned to the employer for preservation in accordance with the regulations in this part. A separate record and a separate handbook shall be kept for each person performing homework.

(d) *Preservation of industrial homework certificates.* Certificates issued to permit homework in the restricted industries (as set forth in Part 530 of this chapter) shall be preserved in accordance with the regulations § 530.8 and in § 516.5(b).

§ 516.32 [Reserved]

§ 516.33 Employees employed in agriculture pursuant to section 13(a)(6) or 13(b)(12) of the Act.

(a) No records, except as required under paragraph (f) of this section, need be maintained by an employer who did not use more than 500 man-days [1] of agricultural labor in any quarter of the preceding calendar year, unless it can reasonably be anticipated that more than 500 man-days of agricultural labor will be used in at least one calendar quarter of the current calendar year. The 500 man-day test includes the work of agricultural workers supplied by crew leaders, or farm labor contractors, if the farmer is an employer of such workers, or a joint employer of such workers with the crew leader or farm labor contractor. However, members of the employer's immediate family are not included. (A "man-day" is any day during which an employee does agricultural work for 1 hour or more.)

(b) If it can reasonably be anticipated that the employer will use more than 500 man-days of agricultural labor in at least one calendar quarter of the current calendar year, the employer shall maintain and preserve for each employee records containing all the information and data required by § 516.2(a) (1), (2) and (4) and, in addition, the following:

(1) Symbols or other identifications separately designating those employees who are (i) members of the employer's immediate family as defined in section 13(a)(6)(B) of the Act, (ii) hand harvest laborers as defined in section 13(a)(6)(C) or (D), and (iii) employees principally engaged in the range production of livestock as defined in section 13(a)(6)(E).

(2) For each employee, other than members of the employer's immediate family, the number of man-days worked each week or each month.

(c) For the entire year following a year in which the employer used more than 500 man-days of agricultural labor in any calendar quarter, the employer shall maintain, and preserve in accordance with §§ 516.5 and 516.6, for each covered employee (other than members of the employer's immediate family, hand harvest laborers and livestock range employees as defined in sections 13(a)(6)(B), (C), (D), and (E) of the Act) records containing all the information and data required by § 516.2(a) except paragraphs (a) (3) and (8).

(d) In addition to other required items, the employer shall keep on file with respect to each hand harvest laborer as defined in section 13(a)(6)(C) of the Act for whom exemption is taken, a statement from each such employee showing the number of weeks employed in agriculture during the preceding calendar year.

(e) With respect to hand harvest laborers as defined in section 13(a)(6)(D), for whom exemption is taken, the employer shall maintain in addition to paragraph (b) of this section, the minor's date of birth and name of the minor's parent or person standing in place of the parent.

(f) Every employer (other than parents or guardians standing in the place of parents employing their own child or a child in their custody) who employs in agriculture any minor under 18 years of age on days when school is in session or on any day if the minor is employed in an occupation found to be hazardous by the Secretary shall maintain and preserve records containing the following data with respect to each and every such minor so employed:

(1) Name in full,

(2) Place where minor lives while employed. If the minor's permanent address is elsewhere, give both addresses,

(3) Date of birth.

(g) Where a farmer and a bona fide independent contractor or crew leader are joint employers of agricultural laborers, each employer is responsible for maintaining and preserving the records required by this section. Duplicate records of hours and earnings are not required. The requirements will be considered met if the employer who actually pays the employees maintains and preserves the records specified in paragraphs (c) and (f) of this section.

[1] Sections 3(u) and 13(a)(6) of the Fair Labor Standards Act (29 U.S.C. 201 et seq.) set forth and define the term "man-day."

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Part VII

Office of Personnel Management

Proposed Demonstration Project: To Demonstrate an Alternative Personnel Management System at the National Bureau of Standards; Notice

OFFICE OF PERSONNEL MANAGEMENT

Proposed Demonstration Project: To Demonstrate an Alternative Personnel Management System at the National Bureau of Standards

AGENCY: Office of Personnel Management.

ACTION: Notice of a proposed demonstration project plan.

SUMMARY: The National Bureau of Standards Authorization Act for Fiscal Year 1987 (Pub. L. 99–574) directed the Office of Personnel Management (OPM) and the National Bureau of Standards (NBS) to "jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards." Section 10 of the Act, which covers the project, further provides that "The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code. . ." Section 4703 requires the Office of Personnel Management to publish the proposed project plan in the **Federal Register.** This notice meets that requirement.

DATES: Comment date: Written comments will be considered if received no later than August 31, 1987. Hearing dates: Public hearings will be held on the proposed project plan on: (1) August 10, 1987 in Gaithersburg, Maryland, from 9:00 a.m. to 1:00 p.m. or until testimony is completed, if earlier; (2) August 18, 1987 in Boulder, Colorado, from 9:00 a.m. to 1:00 p.m. or until testimony is completed, if earlier.

ADDRESSES: Comment address: Send written comments to Donna Beecher, Assistant Director for Systems Innovation and Simplification, U.S. Office of Personnel Management, Room 7615, 1900 E Street, NW., Washington, DC 20415. Public hearing addresses: (1) National Bureau of Standards, Administration Building 101, Green Auditorium, Gaithersburg, Maryland; (2) National Bureau of Standards, Radio Building Auditorium, 325 Broadway, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: (1) On proposed demonstration project: Allen Cassady, (301) 975–3031; (2) on public hearings in Gaithersburg, Maryland: Paul Thompson, (202) 632–6164; (3) on public hearings in Boulder, Colorado: Fred McGehan, (303) 497–3246.

SUPPLEMENTARY INFORMATION: Public hearings will be held by the Office of Personnel Management at Gaithersburg, Maryland, and at Boulder, Colorado, during which interested persons or organizations may present their written or oral views concerning the proposed demonstration project plan. So that we may regulate the course of the hearings and provide time for all who wish to present comments, parties who want to testify at one of the hearings are asked to contact one of the persons listed under "For Further Information Contact" for a specific scheduled time. Priority will be given to scheduled parties; others will be heard in the remaining available time. Each speaker's presentation will be limited to 10 minutes. In other respects, the hearings will be informal. The hearing record will be left open until September 1, 1987, to allow additional written data, views, and arguments from the parties participating in the hearings.

Office of Personnel Management.

Constance Horner,

Director.

Many elements of the proposed demonstration plan are required by section 10 of Pub. L. 99–574, National Bureau of Standards Authorization Act for Fiscal Year 1987. The complete text of section 10 is presented here.

Section 10, "Demonstration Project Relating to Personnel Management

Sec. 10. (a)(1) The Office of Personnel Management and the National Bureau of Standards shall jointly design a demonstration project which shall be conducted by the Director of the National Bureau of Standards.

(2) The demonstration project shall, except as otherwise provided in this section, be conducted in accordance with section 4703 of title 5, United States Code, and shall be counted as a single project for purposes of subsection (d)(2) of such section.

(3) Subject to subsections (f) and (g) of section 4703 of title 5, United States Code, the demonstration project shall cover any position within the National Bureau of Standards which would otherwise be subject to—

(A) Subchapter III of chapter 53 of title 5, United States Code, relating to the General Schedule;

(B) Subchapter VIII of chapter 53 of title 5, United States Code, relating to the Senior Executive Service; or

(C) Chapter 54 of title 5, United States Code, relating to the Performance Management and Recognition System.

(b) Under the demonstration project, the Director of the National Bureau of Standards shall provide that—

(1) The rate of basic pay for a position may not be less than the minimum rate of basic pay, nor more than the maximum rate of basic pay, payable for the pay band (as referred to in paragraph (3)) within which such position has been placed;

(2) The minimum and maximum rates of basic pay for each pay band shall be adjusted at the times, and by the amounts, provided for under subsection (c);

(3) Positions shall be classifed under a system using pay bands which shall be established by combining or otherwise modifying the classes, grades, or other units which would otherwise be used in classifying the positions involved;

(4) Employees shall be evaluated under a performance appraisal system which—

(A) Uses peer comparison and ranking wherever appropriate; and

(B) Affords appeal rights comparable to those afforded under Chapter 43 of title 5, United States Code;

(5)(A) The rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee; and

(B) Subject to subsection (c)(4)(A)(i), the adjustment under subparagraph (A) in any year in the case of any employee whose performance is rated at the fully successful level or higher shall be at least the percentage adjustment taking effect under subsection (c)(3) in such year;

(6) Appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided;

(7) Performance-recognition bonuses, and recruitment and retention allowances, shall be awarded in appropriate circumstances, (but shall not be considered a part of basic pay);

(8) There shall be an employee development program which includes provisions under which employees may, in appropriate circumstances, be granted sabbaticals, the terms and conditions of which shall be consistent with those applicable for members of the Senior Executive Service under section 3396(c) of title 5, United States Code (excluding paragraph (2)(B) thereof);

(9) Payment of travel expenses shall be provided for personnel to their first post of duty in the same manner as is authorized for members of the Senior Executive Service under section 5723 of title 5, United States Code, at the discretion of the Director; and

(10) The methods of establishing qualification requirements for, recruitment for, and appointment to positions shall, at the discretion of the Director, include methods involving direct examination and hiring.

(c)(1) For the purpose of this subsection, the term "compensation" means the total value of the various forms of compensation provided, including—

(A) Basic pay;
(B) Bonuses;
(C) Allowances;
(D) Retirement benefits;
(E) Health insurance benefits;
(F) Life insurance benefits; and
(G) Leave benefits.

(2) The director of the National Bureau of Standards shall, by contract or otherwise, provide for the preparation of reports which, based on appropriate surveys—

(A) Shall include findings as to— (i) The extent to which, as of the commencement of the demonstration project, the overall average level of compensation provided with respect to positions under the demonstration project is deficient in comparison to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(ii) With respect to each year thereafter, any net increase occurring during such year in the extent of the deficiency in the overall average level of compensation provided with respect to positions under the demonstration project, as compared to the overall average level of compensation generally provided with respect to positions involving the same types and levels of work in the private sector; and

(B) Shall recommend a single percentage by which basic pay for all positions under the demonstration project must be increased to that, when considered in conjunction with the other forms of compensation generally provided, any net increase determined under subparagraph (A)(ii) will be eliminated.

(3) Whenever the Director of the National Bureau of Standards receives a recommendation under paragraph (2)(B), the Director—

(A) Shall increase the minimum and maximum rates of basic pay for each such pay band by the lesser of—

(i) The percentage recommended; or

(ii) The overall average percentage of the adjustment in the rates of pay under the General Schedule under section 5305 of title 5, United States Code, for the period involved; and

(B) if and to the extent that funds are available for that purpose, may further increase those minimum and maximum rates—

(i) To make up for any part of the difference between the respective percentages under subparagraph (A), if the percentage under subparagraph (A)(ii) is the lesser; and

(ii) After making up for the entirety of any difference determined under clause (i) (including from any previous year), to eliminate any part of any remaining deficiency as originally determined under paragraph (2)(A)(i).

(4)(A) Notwithstanding any other provision of this section—

(i) The maximum rate of basic pay payable under any pay band may not exceed the rate of basic pay payable for level IV of the Executive Schedule; and

(ii) The amount of basic pay, bonuses, and allowances paid during any fiscal year to any employee participating in the demonstration project may not, in the aggregate, exceed the annual rate of basic pay payable for level I of the Executive Schedule.

(B)(i) Any amount which is not paid to an employee during a fiscal year because of the limitation under subparagraph (A)(ii) shall be paid in a lump sum at the beginning of the following fiscal year.

(ii) Any amount paid under this subparagraph during a fiscal year shall be taken into account for purposes of applying the limitation under subparagraph (A)(ii) with respect to such fiscal year.

(5) Notwithstanding any other provision of this section, the demonstration project shall be conducted in such a way so that, with respect to the 12-month period beginning on October 1, 1986, the total cost to the Government relating to providing compensation to participating employees shall not exceed the total cost which would have resulted if this section had not been enacted.

(6)(A) If the minimum rate of basic pay for a pay band, after an increase under paragraph (3)(A), exceeds the rate of basic pay payable to an employee whose position would otherwise be within such pay band, the employee's position may, notwithstanding subsection (b)(1), be placed in the next lower pay band.

(B) Placement of a position in a lower pay band under subparagraph (A) shall not be considered a reduction in grade or pay for purposes of subchapter II of chapter 75 of title 5, United States Code, or a comparable provision under the project.

(d)(1) The rate of basic pay for an employee serving in a position at the time it is converted to a position covered by the demonstration project may not be reduced by reason of the establishment of such project.

(2)(A) Each employee referred to in paragraph (1) shall be paid—

(i) In the case of an employee serving in a position under the General Schedule on the date the position becomes covered by the demonstration project, a lump-sum pro rata share of the equivalent of any within-grade increase which would have been due the employee under section 5335 of title 5, United States Code, computed as provided in subparagraph (B), and

(ii) In the case of an employee serving in a position subject to chapter 54 of title 5, United States Code, on such date, a lump sum pro rata share of the equivalent of the employee's merit increase which would have been due under such chapter, computed as provided in subparagraph (B), taking into account the performance requirements applicable to such increase.

(B) For purposes of subparagraph (A), the pro rata share of an equivalent increase referred to in such subparagraph shall be computed through the day before the date referred to in such subparagraph.

(e)(1)(A) In carrying out section 4703(h) of title 5, United States Code, with respect to the demonstration project, the Office of Personnel Management shall provide that such project will be evaluated on an annual basis by a contractor. Such contractor shall be especially qualified to perform the evaluation based on its expertise in matters relating to personnel management and compensation.

(B) The contractor shall report its findings to the Office in writing. After considering the report, the Office shall transmit a copy of the report, together with any comments of the Office and any comments submitted by the National Bureau of Standards, to—

(i) The Committee on Post Office and Civil Service, and the Committee on Science and Technology, of the House of Representatives; and

(ii) The Committee on Governmental Affairs, and the Committee on Commerce, Science, and Transportation, of the Senate.

(2) The Comptroller General shall, not later than 4 years after the date on which the demonstration project commences, submit to each of the committees referred to in paragraph (1)(B) a final report concerning such project. Such report shall include any recommendations for legislation or other action which the Comptroller General considers appropriate.

(f) The authority to enter into any contract under this section may be exercised only to such extent or in such amounts as are provided in advance in appropriation Acts.

(g) The demonstration project shall commence not later than January 1, 1988.

The proposed demonstration project plan reads as follows:

An Alternative Personnel Management System to Improve the Ability of the National Bureau of Standards to Attract Highly Qualified Candidates, Motivate Employees, and Retain Successful Performers. Prepared by the National Bureau of Standards, U.S. Department of Commerce, Gaithersburg, Maryland 20899.

Executive Summary

The project was designed by the National Bureau of Standards, with participation of and review by the U.S. Department of Commerce (DoC) and the Office of Personnel Management (OPM). The Bureau will conduct the project over a 5-year period beginning January 1, 1988. The Office of Personnel Management will evaluate the project annually through contract; the Comptroller General will make a final report to Congress that will make any recommendations for legislation or other action which the Comptroller General considers appropriate.

The project will be built upon the concepts of (1) Total compensation comparability rather than pay comparability only; (2) market sensitivity, by surveying compensation for private sector positions similar to NBS positions, linking entry salary to market forces by occupation, and selectively granting recruiting and retention allowances; (3) performance, by linking performance to pay for all covered positions; (4) administrative simplicity, by simplifying paperwork and processing in classification and other personnel systems; (5) management flexibility and accountability, through the delegation of classification and other authorities to line managers; and (6) Government-wide applicability, by designing an alternative system not just for NBS but for use by any agency.

The demonstration system was designed to (1) improve hiring and allow NBS to compete more effectively for high-quality researchers, through direct hiring, selective use of higher entry salaries, and selective use of recruiting allowances; (2) motivate and retain staff, through higher pay potential, pay-for-performance, more responsive personnel systems, and selective use of retention allowances; (3) strengthen the manager's role as personnel manager, through delegation of personnel authorities; and (4) increase the efficiency of personnel systems, through installation of a simpler and more flexible classification system based on pay banding, through reduction of guidelines, steps, and paperwork in classification, hiring, and other personnel systems, and through automation.

The Director of the National Bureau of Standards will initiate the project through a Steering Committee of the directors of the six NBS major organizational units (MOUs) under the chairmanship of the NBS Deputy Director. The NBS Personnel Officer, the NBS EEO Officer, the DoC Personnel Director, and a representative of the DoC Office of the General Counsel will also be on the Steering Committee. Each MOU director will also chair a task force with responsibility for a major segment of the project. A Project Office will provide administrative support to the Steering Committee and task forces. An Employee Advisory Committee with broad employee representation will provide employee views to the Steering Committee. One or more external advisory groups will be established to represent outside views.

Purpose

In presenting the FY 1987 NBS Authorization bill to the Senate, Senator Slade Gorton stated that the bill "creates a National Bureau of Standards demonstration project relating to personnel compensation and management. The demonstration project enhances the Bureau's ability to recruit and retain capable employees by giving the Bureau flexibility in setting salaries competitive with those available outside the Government and in adjusting compensation on the basis of merit. The project addresses the Government's problem attracting and keeping qualified personnel, especially in high-technology fields."

Participating Organizations

Both sites of the National Bureau of Standards will participate in the project. The two sites are located at Gaithersburg, Maryland, which is also the headquarters of NBS, and at Boulder, Colorado. The two sites are similar in employment profiles, with the following exceptions: (1) Of the approximately 3050 positions covered by the project, about 85 percent are in Gaithersburg; (2) all heads of major organizational units and all but one center head are located in Gaithersburg; and (3) certain administrative services at the Boulder facility, such as personnel administration and procurement, are handled by the DoC administrative support center in Boulder, which is not covered by the project and which services other DoC organizations also not covered by the project; in Gaithersburg those services are provided by NBS positions under the coverage of the project.

Types and Numbers of Participating Employees

The project will cover approximately 3050 NBS employees. By pay category, the coverage is 87.5 percent General Schedule (GS), 9 percent Performance Management and Recognition System (PMRS), .5 percent 5 U.S.C. 3104 positions, and 3 percent Senior Executive Service (SES). Under the PATCO categories, the coverage is 51 percent "professional," 12 percent "administrative," 18 percent "technician," 16 percent "clerical," and 3 percent "other." The professional category is 98 percent scientists, engineers, and mathematicians.

The ten most populous occupations are Physicist (427), Chemist (258), Secretary (249), Engineering Technician (170), Electronics Engineer (155), Physical Science Technician (152), General Physical Scientist (146), Computer Scientist (134), Computer Specialist (110), and Mechanical Engineer (93).

Of the approximately 3050 covered employees, 78 percent are full-time permanent (FTP), 5 percent are part-time permanent (PTP) and 17 percent are "other" than FTP or PTP. The "other" category, made up of such categories as student, post-doctoral, temporary, and intermittent, shifts significantly during the year, particularly in the summer when many students are hired.

Labor Participation

A few employees covered by the project are represented by labor unions. These employees at the Gaithersburg site are represented by the International Association of Firefighters (IAFF), and at the Boulder site by the American Federation of Government Employees (AFGE). Union representatives will be separately notified about the project and will be given the opportunity to negotiate or comment, as appropriate, under 5 U.S.C. 4703(f).

Project Implementation Date

January 1, 1988.

Project Ending Date

In accordance with section 4703 of title 5, United States Code, the project shall terminate before the end of the 5-year period beginning on the date on which the project takes effect, except that the project may continue beyond that period to the extent necessary to validate the results of the project. The

Comptroller General is required to submit a final report to Congress not later than 4 years after the date on which the project commences, including any recommendations for legislation or other action.

Methodology

This proposal explains the methodology for introducing the following innovations in personnel management and demonstrating their results over a 5-year period: (1) Simplified position classification through pay banding, occupational groupings by career paths, and delegation of classification authority to managers; (2) compensation comparability based on total compensation; (3) improved staffing through direct examination and hiring, extended probation, qualification standards more in line with private sector practice, more flexible use of recruiting tools, such as paid advertising and retention allowances, travel expenses, and competitive areas based on career paths; (4) pay-for-performance, supervisory and managerial pay differentials, and market-based entry salaries; and (5) sabbaticals.

Senior Executive Service and 5 U.S.C. 3104 Positions

The Personnel systems for SES positions will not change for the project. SES classifications, staffing, compensation, performance appraisal, awards, and reduction in force will be based on current methods.

The personnel systems for 5 U.S.C. 3104 positions will change only to the extent that 3104 positions are in the same performance appraisal, awards, and reduction in force systems as General Schedule positions. Classification, staffing, and compensation, however, will not change.

Neither SES nor 5 U.S.C. 3104 employees will be subject to the pro rata share payouts upon conversion to the demonstration system. Pay adjustments for their positions under the project will be carried out in accordance with existing Federal rules pertaining to SES and 3104 pay adjustments.

Performance Management and Recognition System (PMRS) and General Schedule (GS) Positions

The PMRS and GS categories will no longer exist as identified categories under the project. Both will be incorporated in the new career path/pay band system. Laws and regulations pertaining to the GS that have not been waived for this project, however, such as those pertaining to leave and overtime pay, will continue in force for all covered positions to which they now apply.

Position Classification

Introduction

The objectives of the new classification system are to simplify the classification process, make the process more understandable, and place more decision-making authority with line managers. The goal is to develop a system for which NBS managers will accept responsibility, which employees can more readily understand, and which can be used to increase the quality and productivity of the NBS staff.

Coverage

All positions listed under "Types and Numbers of Participating Employees" above will be accounted for in the classification structure. All General Schedule occupations currently represented at NBS will be included. Provisions will be made for including others as employment requirements change in response to changing technical programs.

Career Paths

Occupations at NBS which can be treated in a similar fashion will be aggregated into career paths. Occupations will be grouped according to similarities in type of work and in customary requirements for formal training or credentials. Consideration will also be given to the common patterns of advancement within the occupations as practiced at NBS and in the private sector. The current occupations and grades at NBS have been examined, and their characteristics and distribution have served as guidelines to the development of career paths.

Four career paths will be established:

(a) *Scientific and Engineering.* This path will include all technical professional positions, such as physical, biological, and social scientists, engineers, computer scientists, mathematicians, and computer specialists. Ordinarily, specific course work or educational degrees are required for these occupations.

(b) *Scientific and Engineering Technician.* This path consists of the jobs that support the various scientific and engineering activities. Employees in these jobs are not required to have college course work. However, training and skills in the various electrical, mechanical, chemical, or computer crafts and techniques are required.

(c) *Administrative.* This career path contains the specialized support functions in such fields as finance, procurement, personnel, public information, technical information, library science, accounting, administrative computing, and management analysis. Special degrees or skills are involved.

(d) *Support.* This career path is composed of positions for which a minimal formal education is required, but for which special skills and knowledge, such as typing or shorthand, are usually required. The duties of a majority of the positions in this path are a function of the manner in which tasks are assigned and responsibilities delegated by the supervisor. Clerical work usually involves the processing and maintenance of records. Assistant work requires knowledge of methods and procedures within a specific administrative area. Other support functions include the work of secretaries, guards, firefighters, and mail clerks.

Pay Bands

Each career path will be composed of discrete pay bands (levels) corresponding to recognized advancement within the occupations. These pay bands will replace grades. They will not be the same for all career paths. Each career path will be divided into either five or six pay bands, each pay band covering the same pay range now covered by one or more grades. The maximum rate of a pay band will be the maximum rate among positions within that career path and band, including any position with a special pay rate. A salary overlap, similar to the current overlap between grades, will be maintained.

Ordinarily an individual will be hired at the lowest salary in a pay band. Superior qualifications may lead to a higher entrance level within a band.

The proposed pay bands for the four career paths appear in Chart I. The General Schedule (GS) grades being replaced appear at the bottom of the figure. The salary overlap is not represented here.

The pay band concept has the following advantages:

—Reduces the number of classification decisions required during an employee's career: In the current system a classification action is required for each promotion to a higher grade, while in the new system a classification action is required for promotion to a higher band. Because there will be fewer bands than grades, there will be fewer classification decisions.

—Simplifies the classification decision-making process and paperwork. A pay band is a larger target than a grade, and thus may be defined in shorter and simpler language. At the same time, the definition for one band can be made more distinct from the definition for adjacent bands, reducing the potential for disagreement.
—Supports delegation of classification authority to line managers with review or post-audit by personnel specialists.
—Provides a broader range of performance-related pay for each level: In many cases, employees whose pay would have been frozen at the top step of a grade will now have more potential for upward movement in the broader pay band.

The chart below shows all four proposed career paths and how they relate to the current General Schedule grades.

Chart I: Career Paths and Pay Bands

Career Path	Levels (or Bands)														
Scientific and Engineering	I					II			III		IV		V	3104/ SES	
Scientific and Engineering Technician	I				II			III	IV		V				
Administrative	I					II			III		IV		V	3104/ SES	
Support	I			II		III		IV	V						
GS Grade	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	3104/ SES

Occupational Series

The present General Schedule classification system has 434 occupations (also called series) which are divided into 22 groups. NBS has positions in 115 occupations and in 16 groups. The occupational series, which frequently provide well-recognized disciplines with which employees wish to be identified, will be maintained. New series may be added as physical, chemical, and biological sciences, engineering, and computer science change. Chart II lists the occupations currently represented at NBS by career path. This arrangement may be modified from time to time as experience is gained in applying it.

Classification Standards

The present system of classification standards will be simplified for routine use by NBS managers. The objective is to record the essential criteria for each pay level within each career path by stating the general duties and responsibilities and the knowledge, skills, and abilities required.

Position Descriptions

Now position descriptions will emphasize the knowledges, skills, and abilities required. Line managers will follow an automated menu-driven process to classify positions and produce position descriptions. The objectives in developing these new descriptions are to:

—Simplify the description by using short standard-format descriptors rather than long narrative descriptions and by holding the length of a position description to no more than two pages:
—Allow supervisors to prepare descriptions on a personal computer; and
—Make the position description a more useful and accurate tool for other functions of personnel management, such as recruiting, reduction in force, performance appraisal, and employee development.

Promotion

A promotion is a move from one pay level to another within a career path, or a move from one career path to a higher level in another career path. Promotions will follow basic Federal merit promotion practices, and will be linked to performance ratings. In the scientific, engineering and computer science fields the qualifications for promotion will rest largely upon the qualifications of the individual. Some of this emphasis on individual knowledge, skills and abilities will be applied to other career paths. Each position will have promotion potential to a specific level within a career path, but not all positions in a career path will have promotion potential to the same level. Movement from one career path to another will depend upon individual knowledges, skills and abilities and upon the availability of positions requiring them.

Delegation of Classification Authority

Line managers will have classification authority. Supervisors at the lowest levels will have recommendation authority only. Higher-level managers will have approval authority, the level of approval depending on the proposed career path and pay band. The current system of approval of SES and 5 U.S.C. 3104 positions will be maintained. Each classification action will receive a post audit by the personnel office. Periodic audit reports will be made to the NBS Director. Errors in classification will be corrected when discovered.

Chart II: Occupational Series by Career Path

I. Scientific and Engineering

101—Social Scientist
110—Economist
180—Psychologist
185—Social Worker
334—Computer Specialist
401—Biologist
403—Microbiologist
690—Industrial Hygienist
801—General Engineer
804—Fire Prevention Engineer
806—Materials Engineer
808—Architect
810—Civil Engineer
830—Mechanical Engineer
840—Nuclear Engineer
850—Electrical Engineer
855—Electronics Engineer

858—Biomedical Engineer
892—Ceramic Engineer
893—Chemical Engineer
896—Industrial Engineer
899—Engineering Student
1301—General Physical Scientist
1306—Health Physicist
1310—Physicist
1320—Chemist
1321—Metallurgist
1330—Astronomer
1360—Oceanographer
1372—Geodesist
1384—Textile Technologist
1399—Physical Science Student
1515—Operations Research Analyst
1520—Mathematician
1529—Mathematical Statistician
1530—Statistician
1550—Computer Scientist
1599—Mathematics Student

II. Scientific and Engineering Technicians

332—Computer Operator
404—Biology Technician
462—Forestry Technician
802—Engineering Technician
809—Construction Inspector
856—Electronics Technician
1311—Physical Science Technician
1521—Mathematics Technician

III. Administration

018—Safety Specialist
080—Security Officer
201—Personnel Management Specialist
221—Position Classification Specialist
230—Employee Relations Specialist
235—Employee Development Specialist
260—Equal Employment Specialist
301—Miscellaneous Administration and Program
340—Program Manager
341—Administrative Officer
343—Management Analyst
345—Program Analyst
393—Communication Specialist
501—Financial Administrator
510—Accountant
511—Auditor
560—Budget Analyst
1001—General Arts and Information
1020—Illustrator
1035—Public Affairs Specialist
1060—Photographer
1071—Audio-Visual Production Specialist
1082—Writer/Editor
1083—Technical Writer/Editor
1084—Visual Information Specialist
1101—General Business Specialist
1102—Contracts Specialist
1410—Librarian
1412—Technical Information Specialist
1420—Archivist
1601—General Facilities Manager
1640—Facility Manager
1654—Printing Manager
2003—Supply Manager
2010—Inventory Manager
2050—Supply Cataloger
2130—Traffic Manager
2150—Transportation Operator

V. Administrative Support

081—Firefighter
085—Guard
099—Student Trainee
203—Personnel Clerk/Assistant
303—Miscellaneous Clerk/Assistant
304—Information Receptionist
305—Mail and File Clerk
309—Correspondence Clerk
312—Clerk-Stenographer
318—Secretary
322—Clerk-Typist
335—Computer Clerk/Assistant
344—Management Clerk/Assistant
350—Equipment Operator
351—Printing Clerk
357—Coding Clerk
382—Telephone Operator
392—General Communications Assistant
394—Communications Clerk
525—Accounting Technician
544—Payroll Clerk/Technician
561—Budget Clerk/Assistant
1021—Office Draftsman
1087—Editorial Clerk/Assistant
1105—Purchasing Agent
1106—Procurement Clerk/Assistant
1152—Production Controller
1411—Library Technician
2001—General Supply Assistant
2005—Supply Clerk/Assistant
2102—Transportation Clerk/Assistant
2132—Travel Clerk/Assistant

Total Compensation Comparability

Introduction

An objective of the demonstration project is to improve the quality of NBS by making compensation more competitive. The Bureau will provide for the preparation of reports, by contract or otherwise, that include findings as to the extent to which the overall average level of total compensation for covered NBS positions is deficient in comparison with the overall average level of total compensation for similar positions in the private sector. Annually thereafter during the project, the Bureau will determine the change in the deficiency.

Definition of Total Compensation

The legislation defines compensation as the total value of the various forms of compensation, including:

(A) Basic pay;
(B) Bonuses;
(C) Allowances;
(D) Retirement benefits;
(E) Health insurance benefits;
(F) Life insurance benefits; and
(G) Leave benefits.

NBS will develop a comparability measurement system, with contractor assistance, based on calculations and comparisons of the costs of compensation to the private sector and to the Federal Government.

Process To Determine Overall Deficiency and Net Changes in the Deficiency

The NBS Director is authorized to adjust the ranges of pay bands based on surveys conducted of total compensation paid to individuals in positions in private sector firms and universities that are similar in levels of work and responsibility to NBS positions. The Director will determine the criteria for selecting private sector organizations to be surveyed. The first survey will establish the extent to which compensation for covered NBS positions is deficient in comparison with compensation for comparable positions in the private sector prior to the start of the project, thus setting a baseline. Additional surveys will be conducted annually to determine the change occurring from year to year in private sector total compensation.

NBS will select a representative sample of private sector firms to be used in the surveys on the following basis:

(A) National coverage for scientists and engineers based on peer groups of private sector firms and universities that perform R&D work similar to that performed at the NBS;

(B) National coverage for senior administrative positions; and

(C) Local coverage (Gaithersburg, Maryland and Boulder, Colorado) for science and engineering technicians, junior administrative and administrative support positions.

To the extent possible NBS will use available data and will participate in existing compensation surveys. As an example, NBS is participating in the Department of Energy's National Compensation Survey of Research and Development Scientists and Engineers. NBS, using contractor support, will devise ways to build hybrid queries to access various compensation data bases in order to match the pay and benefits components of compensation of individual private sector positions in a mix of occupations similar to those at NBS. The nation's leading actuarial and compensation consulting firms and the Office of Personnel Management have developed and tested costing models for the various benefit plans. NBS will use one or more of these models to generate total compensation values.

Comparability Decision by the Director

Each year, the NBS Director will receive three comparability figures: (1) The annual percentage pay increase for General Schedule employees (General Federal Increase); (2) the net percentage by which the overall average level of compensation for NBS positions covered by the project has fallen behind the overall average level of compensation for similar private sector positions over the past year (Net Increase in the Deficiency); and (3) the overall percentage by which the average level of compensation for NBS positions covered by the project was deficient, as of the commencement of the project, as compared with the average level of compensation for similar private sector positions (Overall Deficiency). The Director must select at least the lesser of the first two figures as the annual NBS comparability percentage increase. If the Net Increase in the Deficiency is larger than the General Federal Increase, the Director may increase the comparability by some or all of the difference, if budget considerations permit. If the Director makes up all of the Net Increase in the Deficiency, he may, if budget considerations permit, authorize an additional adjustment to further decrease the Overall Deficiency.

The percentage comparability increase selected by the Director will apply directly to: (1) The minimum and maximum rates of basic pay for each pay band (the same percentage increase will apply to all pay bands), and (2) the basic pay of each employee receiving a fully successful or higher performance rating. An employee receiving a rating of less than fully successful will not receive an increase in basic pay.

Staffing

Introduction

Bureau-based examining and hiring procedures coupled with simplified classification procedures will shorten the hiring process. Other features, such as payment of recruiting allowances, can help attract candidates in essential occupations. Retention allowances will be used to retain highly skilled and productive employees. Line managers will work with the personnel offices to develop hiring strategies. Priority placement, reeemployment priority, and the merit assignment process will be addressed in developing these strategies. The personnel offices will assure that proper procedures are followed. Line managers will participate actively in the examining and hiring process.

Direct Examination and Hiring

NBS may expand current Bureau-controlled hiring to cover all occupations. Personnel office staff will maintain records, provide monthly reports, and be trained as examiners. Selected line managers will also be trained as examiners.

Probation Period

The hiring system will include a flexible probation period for all scientific and engineering career path hires. A formal process will be developed and put in place under which the probation period may be extended up to 3 years for employees on career conditional appointments in this career path. Employees appointed prior to the implementation of the project will not be affected.

Qualification Standards

The qualifications required for placement within a pay band and within a career path will be based on present qualifications found in *OPM Handbook X-118: Qualification Standards for Positions Under the General Schedule.* The minimum qualifications for the occupation and for the General Schedule grade corresponding to the lowest grade incorporated in the pay band will apply. In a few cases these standards will be updated to reflect current practices in the scientific, engineering, and computer science fields and to reflect modern curricula in recognized degree programs. Where new occupation series are defined, new minimum qualification standards will be written following the pattern of *OPM Handbook X-118.*

Recruitment

NBS will make greater use of paid advertisements in journals, professional magazines, and newspapers to expand recruiting sources and attract the best candidates. Advertising will become one of the first steps in recruitment. Procedures will also be developed for using private sector employment services.

Recruitment Allowances

Recruitment allowances will be available for selective use in recruiting candidates for scientific and engineering positions.

Travel Expenses

Funds to cover travel expenses associated with entering employment at NBS will be made available at the discretion of the NBS Director.

Affirmative Action/Equal Employment Opportunity

NBS is committed to positive affirmative action/equal employment opportunity goals. Line managers will be accountable for understanding and implementing polices designed to meet these goals.

Reduction in Force

Introduction

The current NBS process for reduction in force will be essentially maintained. Current reduction-in-force procedures will be adjusted in the context of the career path and pay band classification system. Retention registers will maintain the elements of career status, veteran preference, length of service, and service computation date adjustments based on performance ratings. Position descriptions will become a better tool for reduction in force by focusing on specific knowledges, skills, and abilities required.

Competitive Areas

Each of the four career paths will be a competitive area. Although not included in the Demonstration Project, Wage Grade positions will constitute a fifth competitive area. This will place employees with similar knowledges, skills, abilities and in similar occupations together. It will also eliminate the disruption caused by scientists or engineers displacing administration or support staff. Displacements, bumps, and retreats will occur only within career paths. Current reduction-in-force regulations will be modified by substituting "same level" for "same grade" and "one level lower" for "three grades lower". Whereas in the current system an employee may bump another employee in a lower retention subgroup and at the same grade or up to three grades below the bumping employee, in the demonstration system an employee may bump another employee in a lower retention subgroup and at the same level or up to one level below the bumping employee.

Saved Grade and Pay

Saved grade and pay will follow current regulations, except that career path "level" will substitute for "grade."

Pay Administration

Introduction

The objective is to establish a pay system that will improve the ability of NBS to attract and retain quality employees. The new system will be a pay-for-performance system and, when implemented, will result in a

redistribution of current pay resources based upon individual performance. The authorizing legislation states that "the rate of basic pay of each participating employee will be reviewed annually, and shall be adjusted on the basis of the appraised performance of the employee."

The first decision in the annual pay-setting process is the Director's selection of the percentage comparability increase that must be given to all covered employees rated fully successful or higher (see "Comparability Decision by the Director" above). The minimum and maximum rates of each pay band must also be increased by this percentage.

Pay for Performance

Pay increases will be allocated to employees through organizational pay pools. These pools will have three components: (A) Comparability increases; (B) performance increases; and (C) bonuses and awards. The first component, comparability increases, will consist of the percentages selected by the Director in the comparability process, and will be given as a minimum pay increase to all covered employees rated fully successful or higher. The second component, performance increases, will be made up of money previously available for within-grade increases, quality step increases, merit pay increases, and promotion from one grade to another, where both grades will now be in the same pay band. Decisions on these pay increases will take into account all of the following: (A) performance of the employee; (B) maximum salary range of the employee; and (C) employee's current salary on that range. The third and final component will be bonuses and awards, and will be composed of former cash awards.

Placement in a Lower Pay Band

An employee whose performance rating is less than fully successful will not receive the comparability increase. Because the minimum pay rate for each pay band will be increased each year by at least the amount of the comparability increase, it is possible that the new minimum rate of a pay band will exceed the basic pay of an employee in that pay band who did not receive the comparability increase. When this happens, the employee will be placed in the next lower pay band. The legislation specifically allows for this and provides that it will not be considered a reduction in grade or pay.

Supervisory and Managerial Pay Differentials

The legislation provides that "appropriate supervisory and managerial pay differentials (which shall be considered a part of basic pay) shall be provided." This pay differential will be provided for those supervisory and managerial positions that do not now receive additional compensation for supervisory or managerial responsibility through the classification process. The differential will not apply to SES and 5 U.S.C. 3104 positions.

Pay and Compensation Ceilings

Each pay band will have its own pay ceiling, just as do grades in the current system. Pay rates for the various pay levels will be directly keyed to the General Schedule rates with consideration given to the special pay rates. The legislation specifies the following two overall pay ceilings: The basic pay under any pay band may not exceed the basic pay of Executive Level IV, and an employee's total monetary compensation for a fiscal year may not exceed the basic pay of Executive Level I. Any amount that cannot be paid to an employee in a given fiscal year because of the ceiling on total monetary compensation shall be paid in the following fiscal year.

Pay Setting for New Hires

The setting of initial salaries within pay bands for new appointees will be flexible, particularly for hard-to-fill positions in the scientific and engineering career path.

Pay Setting for Promotion

Promotions from one classification level to a higher level will follow basic merit promotion practices. The minimum basic pay increase upon promotion to a higher level will be 6 percent.

Conversion of Employees to the Demonstration System

Current grades will translate directly to the new career-path and pay-band structure. Employees will be converted at their current salaries at the time of conversion. No one's salary will be reduced or increased as a result of the conversion. At the time of conversion each converted employee will be given a lump sum cash payment for the time credited to the employee toward what would have been the employee's next within-grade (step) increase or PMRS merit increase.

Performance Evaluation

Introduction

The Performance Appraisal System will link pay to performance through annual performance evaluations, performance ratings, and pay decisions based on performance ratings. Individual performance objectives will be tied to organizational goals and objectives. The proposed performance appraisal system will use peer comparison and ranking wherever appropriate.

Process

The current Department of Commerce (DoC) Performance Management Recognition System (PMRS) will be the model for the project performance appraisal system.

Performance plans will be developed each year by the employee and supervisor to clarify NBS and DoC goals and objectives and identify individual accountability for their accomplishment. Critical elements for each position will be established and weighted on the basis of importance. Performance standards developed by DoC will be used along with specific supplemental performance standards developed by the supervisor to evaluate levels of accomplishment for each critical element. A mid-year review will determine whether objectives are being met and whether critical elements should be modified to reflect changes in planning, work-load, and resource allocation. Additional reviews may be held if needed. There are five rating categories: Outstanding, Commendable, Fully Successful, Marginal, and Unsatisfactory.

After the initial rating is given, an employee's performance will, if appropriate, be reviewed at higher levels and ranked in relation to his or her peers, i.e., all other employees in same pay band and career path. This peer ranking process may take place three times, at division, center, and MOU level, and will result in assignment of a final rating. Pay adjustments will be based on employee ratings. The performance appraisal cycle for all covered employees will begin October 1 and end September 30 of the following year.

All performance plans and appraisals will be reviewed by at least the next higher level of management. A written performance review at the end of the rating period will be required.

An employee who disagrees with the rating received may comment in writing to the approving official. The approving official makes the final decision and

must document any changes in the rating.

Senior Executive Service

Members of the Senior Executive Service will remain under the current DoC/NBS SES performance appraisal system. 5 U.S.C. 3104 employees will be under the structure of the project performance evaluation system, but will not be in the project pay-for-performance pay system.

Awards

Introduction

NBS currently has an extensive awards program consisting of both internal and external awards. Performance recognition bonuses will replace current performance recognition awards (Quality Step Increases, Superior Accomplishment Awards, and PMRS Performance Awards). The Special Act or Service Awards (SAS), internal NBS awards, suggestion awards, Department of Commerce Medal Awards, and other honorary non-cash awards will be retained.

Performance Bonuses

Bonuses are cash awards to recognize and encourage special contributions. Bonuses must be supported by a total summary rating of at least Fully Successful. They must be approved at a managerial level at least one level higher than the official who recommended the bonus. Cash bonuses will not become a part of employee base pay.

Senior Executive Service and 5 U.S.C. 3104 Employees

Members of the Senior Executive Service (SES) will remain under their current awards system and will not participate in the project performance recognition bonus awards program. SES members will continue to be eligible for the SES bonus awards and the Presidential Rank Awards.

5 U.S.C. 3104 employees will be eligible for cash awards.

Employee Development

Introduction

The objective of the NBS's Employee Development Program is to develop the competence of employees for maximum achievement of Bureau goals and objectives. The legislation mandates the continuation of an employee development program including, in appropriate circumstances, a sabbatical program. The legislation requires that any sabbatical program be consistent with the terms and conditions of the sabbatical program currently applicable to members of the Senior Executive Service.

Sabbaticals

The proposed NBS Sabbatical Program under the Project will cover all career appointees whose current performance is above the fully successful level. Employees will be eligible after completion of seven years of Federal service.

One sabbatical of 3 to 11 months may be granted to an employee in any 10-year period. Each sabbatical should benefit NBS, as well as increase the employee's individual effectiveness. Various learning or developmental experiences may be considered for purposes of granting a sabbatical, such as advanced academic teaching or research, or on-the-job work experience with public, private, or non-profit organizations.

Final approval authority for all training during the project will be the major organizational unit (MOU) director or designated management level. The personnel offices will provide policy guidance, information, scheduling, and administrative processing.

Employee relations

Introduction

The legislation mandates that employees covered by the project are to be evaluated under a performance evaluation system that affords appeal rights comparable to those provided currently under chapter 43 of title 5, United States Code. NBS will maintain, under the project, the substantive and procedural appeal rights that employees now have.

Placement in a Lower Pay Band

Employees whose ratings are marginal or unsatisfactory will receive no pay increase and may move to a lower pay band as the minimum rates of basic pay in a pay band increase (as the result of comparability increases). Such placement in a lower pay band, with no decrease in pay, and due to a failure to attain a performance rating of fully successful, will not be considered a reduction in grade or pay or an adverse action.

Safeguards for Employees

Employees may be removed from their positions or reduced to a lower level for unacceptable performance. These performance based actions will follow the same procedures and allow the same appeal rights as current performance-related removals and reductions in grade.

Evaluation

Introduction

The Demonstration Project enabling legislation mandates evaluations and reports by organizations external to NBS.

The Office of Personnel Management is to have the Project evaluated annually by a contractor. The contractor must be especially qualified to perform the evalution based on its expertise in matters relating to personnel management and compensation.

The contractor is to report its findings to OPM in writing. After reviewing the report, OPM is to transmit the report, along with comments by OPM, the Department of Commerce, and NBS, to Congress.

The Comptroller General must submit a final report to Congress no later than 4 years after the commencement of the project. This report is to include any recommendations for legislation or other action which the Comptroller General considers appropraite.

The Evaluation Plan incorporates both internal and external evaluation efforts. Elements of the plan are outlined below.

Evaluation Methodology

The evaluation effort will be carried out in four phases. The *design phase* is intended to aid in the structuring of the demonstration project and is primarily an internal NBS effort. Baseline data will be collected prior to implementation of the demonstration scheduled for January 1988. These data will be made available to the OPM contract evaluator.

Following the implementation of the project, the monitoring of the *implementation* phase begins. An evaluation of this phase is necessary to determine that the project is implemented as designed and that the stated processes are stable and operational.

The *formative evaluation phase* begins once it has been determined that the project is stable and operational. This phase will extend over the full 5-year experimental period. Data will be collected annually and periodic reports will be issued. The *summative phase* will assess the overall impact of the project upon conclusion of the experiment.

The evaluation will focus on overall personnel management issues and will be based on before-and-after comparisons of the personnel management data, using both quantitative and qualitative criteria. Personnel records and reports, as well as previously validated survey instruments, will be used to develop

appropriate measures. New data collection methods and measures or modifications to existing instruments may be required for some criteria. A private research firm will design, conduct and analyze the results of employee attitude surveys in order to assure the validity of results and to protect the confidentiality of individual employee responses. In addition to the specific requirements, as mandated by the legislation, the design of the survey will benefit from the experience of the Office of Personnel Management, the Department of Commerce, the National Bureau of Standards, and other organizations. The first survey is scheduled for the fall of 1987.

Evaluation criteria will be derived from the following Demonstration Project goal and objectives.

Goal: Demonstrate improved personnel management by tying pay more closely to the job market, linking pay increases to performance, and introducing efficient personnel structures and processes.

Objectives: Compete more effectively for high-quality staff; motivate staff and retain key employees; increase management responsibility and accountability; remain budget neutral; and create a model that could be adopted by other government agencies.

Project-training

One of the keys to the success or failure of the project will be the training provided to all participants. Training will not only provide the necessary knowledges and skills to carry out the proposed changes, but will also promote a commitment to the program on the part of all participants.

Training will be structured to meet the specific needs of:

1. Supervisors
2. Administrative Staff: generally personnel specialists, personnel assistants, and administrative officers
3. Employees

Training will also include orientation and periodic status updates. This training will focus on overviews and in-depth descriptions of all elements of the demonstration project, including:

1. Objectives
2. Implementation plan and timetable
3. Organization for the demonstration project
4. How employees will enter the project
5. Pay adjustment process
6. Position classification/position description preparation
7. Promotion
8. Staffing
9. Performance evaluation
10. Bonuses
11. Link between management accountability and personnel office oversight
12. Automation
13. Internal and external evaluation processes

Supervisors

The focus of the demonstration project on a management-centered personnel administration, with increased supervisory and managerial personnel management authority and accountability, demands thorough training of supervisors and managers in the knowledges and skills that will prepare them for their new responsibilities. Training will include detailed information on the policies and procedures of the demonstration project, skills training in classification, position description preparation, and performance evaluation using peer comparison and ranking.

Administrative Staff

The administrative staff, generally personnel specialists, technicians, and administrative officers, will play a key role in advising, training, and coaching supervisors and employees in implementing the demonstration project. This staff will also need training in the procedural and technical aspects of the project. They will undergo at least the same block of training provided to all supervisors.

Employees

NBS will train employees for the demonstration project. In the months leading up to the implementation date, meetings will be held for employees to fully inform them of all project decisions, procedures, and processes.

Costs

Allthough the enabling legislation for the project does not require budget neutrality, NBS has set for itself an objective to control total compensation costs associated with the project. NBS programs must have the flexibility to respond to emerging technologies and to industry and other agency demands. Nearly half of NBS resources come from government and private sector customers. The proposed measures will allow NBS to meet these demands and yet control total compensation costs.

NBS intends to maintain total compensation, during the course of the project, at the level it would have reached under the current Government-wide pay system. This would permit changes in NBS expenditures which result from legislatively mandated program changes and changes in Federal pay and benefits. NBS will measure its adherence to cost control by preparing budget estimates which are based on prescribed Federal Budget processes and monitor actual spending under the Demonstration Project against this budget estimate.

Implementation

NBS intends to strike an appropriate balance between supervisors' personnel management authority and accountability and personnel office oversight responsibility. Supervisors will be thoroughly trained for exercising their delegated authorities in accordance with demonstration procedures and safeguards.

Conversion to the Demonstration Project

Initial entry into the demonstration project for covered employees will be accomplished through a full employee protection approach that ensures each employee an initial place in the appropriate career path and pay band without loss of pay (see "Conversion of Employees to the New System" under "Pay Administration" above).

Personnel Administration

All personnel laws, regulations, and guidelines not superseded by Public Law 99–574 authorizing the project or waived by this plan will remain in effect. Basic employee rights will be safeguarded and merit principles will be maintained. The personnel offices will oversee the personnel management decisions made by supervisors, and will continue to process all personnel and payroll actions.

Automation

NBS will continue using the U.S. Department of Agriculture's National Finance Center's automated personnel/payroll processing system. NBS will automate internal personnel processes and systems associated with the demonstration project wherever proper and appropriate, and will design a personal computer system to handle the production of position descriptions.

Conversion Back to the Former System

In the event the project ends and the demonstration system is not made permanent, a conversion back to the former (regular) Federal civil service system will be required for positions equivalent to GS/GM–15 and below (SES and 3104 position classification will not change under the project).

Experimentation and Revision

Many aspects of a demonstration project are experimental. Modifications

must be made from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. The Bureau, with DoC and OPM approval, will make minor modifications, such as changes in the occupational series in a career path, without further notice. Major changes, such as a change in the number of career paths, will be published in the Federal Register.

Authorities and Waiver of Laws and Regulations Required

Public Law 99–574 gives the National Bureau of Standards the authority to experiment with several specific personnel system innovations which are otherwise prohibited by law and regulation. In addition to the authorities granted by that act, the following waivers of law and regulation are necessary:

Title 5, U.S. Code

Section 5333(a) Minimum rate for new appointments

Title 5, Code of Federal Regulations

Section 315.801 Requirement for one-year probationary period

Section 315.802 Length of probationary period

Section 351.401 Scope of competition in RIF

Section 351.402 Competitive area in RIF

Section 351.403 Competitive level in RIF

Section 351.701 Assignment involving displacement

Section 531.203 Minimum rate for new appointments

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Part VIII

Department of Education

34 CFR Part 206

Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork; High School Equivalency Program and College Assistance Migrant Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 206

Special Programs for Students Whose Families Are Engaged in Migrant and Seasonal Farmwork; High School Equivalency Program and College Assistance Migrant Program

AGENCY: Department of Education.

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the High School Equivalency Program (HEP) and College Assistance Migrant Program (CAMP). These amendments are needed to implement changes to the Higher Education Act of 1965, enacted as part of the Higher Education Amendments of 1986. The final regulations provide for a three-year grant period; a minimum annual award; an expansion of allowable services that can be provided to participating students; inclusion of a management plan in each grant application; and, in evaluating grant applications, consideration of an applicant's prior experience.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Bertoglio, Office of Migrant Education, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2145, FOB–61 (MS 6275), Washington, DC 20202. Telephone No. (202) 732–4758.

SUPPLEMENTARY INFORMATION: In section 101 of the Higher Education Amendments of 1986 (Pub. L. 99–498), Congress amended the Higher Education Act of 1965 by enacting a new Title IV, Subpart 5, "Special Programs For Students Whose Families Are Engaged in Migrant and Seasonal Farmwork." Subpart 5 contains a new section 418A that authorizes the HEP and CAMP programs. The new section 418A revises the previous provisions governing these programs that had been contained in the predecessor statute (section 418A of the Higher Education Act of 1965, as amended by the Education Amendments of 1980 (Pub. L. 96–374)).

These final regulations for the HEP and CAMP programs amend 34 CFR Part 206 to implement the new statutory provisions. Like the statute, the regulations expand the types of services that grant recipients may provide to participating students (§ 206.10). Other changes required by statute provide that only institutions of higher education (IHEs) or private nonprofit agencies (and not public nonprofit agencies) cooperating with IHEs are eligible to receive grants (§ 206.2); except in extraordinary circumstances, projects will be approved for three years; minimum grant awards will be $150,000 (§ 206.20); applicants must submit detailed management plans (§ 206.20); and the Secretary must consider prior experience in evaluating applications and selecting grantees (§§ 206.20, 206.30, and 206.31).

In large part, these final regulations derive expressly from the statue. Under existing regulations for the HEP and CAMP programs, any child who is a migrant or other seasonal farmworker, or who is a dependent of a migrant or other seasonal farmworker, is eligible to participate in a HEP or CAMP program. The new sections 418A (b) and (c) of the Higher Education Act, as amended, authorize HEP and CAMP project recipients to conduct recruitment services to reach appropriate students who are themselves or whose parents are migrant or seasonal farmworkers. The statue does not expressly authorize the participation of children who may not live with their parents but whose guardians perform migratory or seasonal farmwork. Because the new section 418A(a) of the statute directs the Secretary to maintain and expand existing HEP and CAMP programs, and because Congress has not indicated an intent otherwise to prevent the participation of students who reside not with their parents but with guardians who are migrant or seasonal farmworkers, the regulations permit HEP and CAMP grantees to conduct recruitment services to reach these persons as well (§ 206.10(b) (1)(i) and (2)(i)).

Second § 206.10(b) repeats statutory provisions contained in the new sections 418A (b) and (c) of the Higher Education Act, as amended, that enumerate newly authorized services that HEP and CAMP grantees may provide. Among other things, the statute authorizes recipients of HEP grants to provide health services and weekly stipends to program participants, and recipients of CAMP grants to provide both health services and assistance to participants in obtaining stipends, student travel and other identified forms of financial aid. In the past, individual CAMP grantees have received authorization to use limited amounts of grant funds to provide financial aid, as necessary support services, directly to project participants. In view of Congress' intent to maintain and expand existing programs, and again without evidence of a contrary congressional intent, the regulations permit CAMP grantees to continue providing that financial assistance, as needed, to appropriate recipients.

A new § 206.10(c) has been added to clarify the basis for the use of program funds to provide health services, stipends, and other forms of financial support. Program funds may be used to provide the services for students as necessary to ensure that they can participate in the HEP and CAMP projects. The aggregate amount, however, may not be an amount that detracts from the basic educational purpose of the HEP or CAMP. The Secretary considers the establishment in these regulations of quantitative limits on the kinds and amounts of those health and other financial support services to be made available to persons enrolled in the programs to be unnecessary at this time. Third, while the new section 418A(f) of the Higher Education Act, as amended, requires a minimum allocation of $150,000 for any HEP or CAMP project, it does not clarify whether this minimum award is to be for the entire three-year project period or for each year. Through the new statute, Congress intended to strengthen HEP and CAMP projects. Since the Department until now has funded each HEP or CAMP project at an annual level that significantly exceeds $50,000, the Secretary believes that in enacting this statutory minimum, Congress intended to ensure a minimum annual level of support of $150,000 per HEP or CAMP project. Therefore, under § 206.20(b), the Secretary will approve projects at a minimum annual basis of $150,000.

The new section 418A(e) of the Higher Education Act, as amended, also directs the Secretary to consider the prior experience of each grant applicant in delivering HEP or CAMP services in selecting grantees, and to give that prior experience "the same level of consideration given this factor for applicants" for the Special Programs for Students From Disadvantaged Backgrounds (TRIO Program). In addition, Congress expressed its intention that the HEP and CAMP Projects "be administered in a manner comparable to the administration" of the TRIO Program (H. Rept. 383, 99th Cong., 1st Sess. 33). Therefore, the Secretary will evaluate the prior experience of applicants for HEP and CAMP grants in a manner that is comparable to that required in 34 CFR 646.32 of the TRIO program regulations. Sections 206.30 and 206.31(i) of the regulations provide up to

15 additional points for evidence of the applicant's prior experience during the three previous fiscal years in administering and operating any HEP or CAMP project. In accordance with § 206.31(i)(1) the Secretary will award points only to those agencies for their administration of HEP or CAMP projects during the previous three years. The Secretary may review and consider negative information or reports, if any, about other projects the applicant has managed. In awarding points, the Secretary will consider the same kinds of reports and other information that applicants for TRIO projects provide. While the Secretary will use the same kinds of criteria as in 34 CFR 646.32(c) of the TRIO regulations, § 206.31(i)(2) addresses areas of a HEP or CAMP applicant's prior experiences that specifically pertain to the unique purposes of the HEP and CAMP and how the Secretary will evaluate them.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for consideration and review of proposed Federal financial assistance. In accordance with the order, this document is intended to provide early notification of the Department's specific plans and action for this program.

Public Participation

In a Notice of Proposed Rulemaking published in the **Federal Register** on April 8, 1987 (52 FR 11448–51), the Secretary invited comments on the proposed regulations. The Secretary received only a small number of comments. Commenters favored the minimum annual award of $150,000 and a grantee's entitlement to recruit a child whose guardian performed migrant or seasonal farmwork.

Several commenters expressed opinions concerning the establishment of reasonable limits on the expenditure of program funds to provide health, stipends, and other financial support services. Their comments suggested various ways of limiting expenditures, including establishing percentages of the total award, setting specific per pupil allowances, and alternatively having no quantitative limitations for the expenditure of funds for support services allowed in § 206.10 of the regulations. One commenter also proposed that grantees be permitted to provide health services to dependents of participating students. Because of the limited number of comments and the varied suggestions concerning this matter, the Secretary believes the response to his specific invitation for comments indicates that previous HEP and CAMP grantees perceive no problems with the establishment of reasonable limitations. Given the lack of response, and the desire to promote flexibility in the development of HEP and CAMP proposals, the Secretary does not believe that these regulations need to address the establishment of quantifiable limits. Instead, the Secretary has added paragraph (c) to § 206.10 to require that health services, stipend, and other financial support service must be necessary to permit students to participate in the HEP and CAMP programs, and must not detract, because of their amount, from the basic educational services to be provided. The Secretary believes that this regulation will satisfy the objectives of the commenters. The Secretary has determined that support services should not be extended to nonparticipating family members because of limited program resources and the potential for obtaining these services elsewhere. If this statement of limitations proves to be inadequate, the matter may be reconsidered after an opportunity for further public comment.

Commenters expressed concern about implementation of the requirement to evaluate prior experience. Some suggested that the Secretary not consider the prior experience of an applicant with two or more years of interruption in conducting previous HEP and CAMP projects. Others suggested that the Secretary should consider the prior experience of applicants who had conducted projects that were similar to HEP and CAMP projects. The Secretary believes the Congress intended that only private nonprofit organizations and IHEs that had operated HEP and CAMP projects should be entitled to receive additional consideration because of their past experiences in operating those projects. The Secretary has determined that evaluating the prior experience of applicants during any of the previous three years, under § 206.31, is a reasonable way of meeting the Congressional intent and that therefore no change in that section is necessary.

One commenter suggested generally that the criteria for awarding points for an applicant's prior experience in § 206.31(i)(2) should more specifically pertain to the unique purposes of the HEP and CAMP. The Secretary has designed this regulation with those purposes in mind. If the regulation proves to be inadequate, this matter, too, may be reconsidered after an opportunity for further public comment.

One commenter suggested that geographical distribution should be a factor in awarding HEP and CAMP projects. The Secretary has determined that he lacks the authority to include such criteria in these regulations.

Finally, one commenter suggested that it should not be essential for a private nonprofit organization to operate a HEP project with the facilities of an IHE so long as it provides students access to the IHE's facilities and schedules some events for them at the IHE. The Secretary agrees, and has amended § 206.2(b) of the regulation to clarify that some aspects of a HEP project, rather than the entire project, must be operated with facilities of an IHE.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 206

Colleges and universities, Education, Education of disadvantaged, Grant programs—education, Migrant labor, Reporting and recordkeeping requirements.

Dated: June 15, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Nos. 84.141 Migrant Education Program—High School Equivalency Program, and 84.149 Migrant Education Program—College Assistance Migrant Program.)

The Secretary amends Part 206 of Title 34 of the Code of Federal Regulations as follows:

PART 206—SPECIAL EDUCATIONAL PROGRAMS FOR STUDENTS WHOSE FAMILIES ARE ENGAGED IN MIGRANT AND OTHER SEASONAL FARMWORK—HIGH SCHOOL EQUIVALENCE PROGRAM AND COLLEGE ASSISTANCE MIGRANT PROGRAM

1. The authority citation for Part 206 is revised to read as follows:

Authority: 20 U.S.C. 1070d–2, unless otherwise noted.

2. The citation of authority following §§ 206.1 through 206.5 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a))

3. The citation of authority following § 206.10 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(b) and (c))

4. The citation of authority following § 206.20 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (d)–(f))

5. The citation of authority following § 201.30 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (e))

6. The citation of authority following § 201.31 is revised to read as follows:

(Authority: 20 U.S.C. 1070d–2(a) and (E))

7. Section 206.2 (a) and (b) are revised to read as follows:

§ 206.2 Who is eligible to participate as a grantee?

(a) *Eligibility.* An IHE or a private nonprofit organization may apply for a grant to operate a HEP or CAMP project.

(b) *Cooperative planning.* If a private nonprofit organization other than an IHE applies for a HEP or a CAMP grant, that agency must plan the project in cooperation with an IHE and must propose to operate the project, or in the case of a HEP grant, some aspects of the project, with the facilities of that IHE.

* * * * *

8. Section 206.4 is amended by revising paragraph (a) to read as follows:

§ 206.4 What regulations apply to these programs?

* * * * *

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of grants), 34 CFR Part 75 (Direct Grant Programs), 34 CFR Part 77 (Definitions That Apply to Department Regulations), 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 78 (Education Appeal Board), and 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

* * * * *

9. Section 206.5 is amended by revising paragraph (c)(1) to read as follows:

§ 206.5 What definitions apply to these programs?

* * * * *

(c)* * *

(1) "Act" means the Higher Education Act of 1965, as amended.

* * * * *

10. Section 206.10 is amended by revising paragraphs (b)(1)(i)–(viii) and (b)(2)(i)–(iii), and by adding new paragraphs (b)(2)(iv)–(vi), and (c) to read as follows:

§ 206.10 What types of services may be provided?

* * * * *

(b) * * *

(1) * * *

(i) Recruitment services to reach persons who are at least 17 years of age, who themselves or whose parents or guardians have spent a minimum of 75 days during the past 24 months in migrant and seasonal farmwork, and who lack a high school diploma or its equivalent.

(ii) Educational services that provide instruction designed to help students pass an examination and obtain a certificate that meets the guidelines for high school equivalency established by the State in which the project is located.

(iii) Supportive services that include the following—

(A) Personal, vocational, and academic counseling;

(B) Placement services designed to place students in a university, college, or junior college program, or in military services or career positions; and

(C) Health services.

(iv) Information concerning and assistance in obtaining available student financial aid.

(v) Weekly stipends for high school equivalency program participants.

(vi) Housing for those enrolled in residential programs.

(vii) Exposure to cultural events, academic programs, and other educational and cultural activities usually not available to migrant youth.

(viii) Other essential supportive services, as needed, to ensure the success of eligible students.

(2) * * *

(i) Outreach and recruitment services to reach persons who themselves or whose parents or guardians have spent a minimum of 75 days the past 24 months in migrant and seasonal farmwork, and who meet the minimum qualifications for attendance at a college or university.

(ii) Supportive and instructional services, including—

(A) Personal, academic, and career counseling as an ongoing part of the program;

(B) Tutoring and academic-skillbuilding instruction and assistance;

(C) Assistance with special admissions;

(D) Health services; and

(E) Other services as necessary to assist students in completing program requirements.

(iii) Assistance in obtaining student financial aid that includes, but is not limited to, the following:

(A) Stipends.

(B) Scholarships.

(C) Student travel.

(D) Career-oriented work-study.

(E) Books and supplies.

(F) Tuition and fees.

(G) Room and board.

(H) Other assistance necessary to assist students in completing their first year of college or university.

(iv) Housing support for student living in institutional facilities and commuting students.

(v) Exposure to cultural events, academic programs, and other activities not usually available to migrant youth.

(vi) Other support services as necessary to ensure the success of eligible students.

(c) The health services, and other financial support services provided to participating students must—

(1) Be necessary to ensure their participation in the HEP or CAMP; and

(2) Not detract, because of the amount, from the basic educational services provided under those programs.

* * * * *

11. Section 206.20 is amended by removing "and" at the end of paragraph (a), redesignating paragraph (b) as (d), and adding new paragraphs (b) and (c) and or OMB control number to the end of the section to read as follows:

§ 206.20 What must be included in an application?

* * * * *

(b) Submit a grant application that—

(1) Covers a period of three years unless extraordinary circumstances warrant a shorter period; and

(2) Includes an annual budget of not less than $150,000;

(c) Include a management plan that contains—

(1) Assurances that the staff has a demonstrated knowledge of and will be sensitive to the unique characteristics

and needs of the migrant and seasonal farmworker population; and

(2) Provisions for—

(i) Staff Inservice training;

(ii) Training and technical assistance;

(iii) Staff travel;

(iv) Student travel;

(v) Interagency coordination; and

(vi) Project evaluation; and

* * * * *

(Approved by the Office of Management and Budget under control number 1810–0055)

12. Section 206.30 is amended by revising paragraph (b) to read as follows:

§ 206.30 How does the Secretary evaluate an application?

* * * * *

(b) The Secretary awards up to 115 possible points for meeting these criteria.

* * * * *

13. Section 206.31 is amended by revising paragraph (a)(2)(ii), and adding a new paragraph (i) and an OMB control number to the end of the section, to read as follows:

§ 206.31 What selection criteria does the Secretary use to evaluate an application?

* * * * *

(a) * * *

(2) * * *

(ii) An effective plan of management, as described in § 206.20(d), that ensures the proper and efficient administration of the project.

* * * * *

(i) *Prior experience.* (15 points) (1) The Secretary considers the applicant's success, in any HEP or CAMP project conducted during the three fiscal years preceding the fiscal year for which the applicant is applying, in meeting the administrative requirements and programmatic objectives in paragraphs (a) (2) and (b)(2) of this section.

(2) The Secretary—based on information contained in the project application and in one or more of the following documents at the Secretary's disposal: performance reports, audit reports, site visit reports, project evaluation reports, the previously funded application, the negotiated program plan(s), the application under consideration, and similar reports and applications about the other projects the applicant has managed—considers—

(i) The extent to which the project's anticipated number of students were served and given access to college or university activities as provided in the approved grant application;

(ii) The extent to which project participants persisted toward completion of the academic programs in which they were enrolled. The Secretary considers—

(A) For a HEP project, the number of participants who successfully completed their specified courses of study and the number of participants who passed an examination and obtained a certificate that meets the guidelines for high school equivalency established by the State in which the project is located.

(B) For a CAMP project, the number of participants who completed their course of study, for the first year of the college or university attended, in good standing;

(iii) The extent to which an effective plan of management existed and was implemented to ensure the proper and cost effective administration of the project through provisions for—

(A) Staff inservice training and technical assistance; and

(B) Coordination with other existing programs that benefit the participating students and their families;

(iv) The extent to which the project assisted—

(A) HEP graduates to be placed in universities, junior colleges, the military services, career positions, or other post-secondary school activities; and

(B) CAMP students to continue in a post-secondary program of study after completion of the CAMP project; and

(v) The extent to which the applicant has met the administrative requirements—including recordkeeping, reporting, and financial accountability—under the terms of previously funded awards.

(3) The Secretary gives equal weight to each criterion listed in paragraphs (i)(2)(i)-(v) of this section.

(Approved by the Office of Management and Budget under control number 1810–0055)

(Authority: 20 U.S.C. 1070d–2)

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Part IX

Department of Labor

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

Safety Standards for Methane in Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final rule updates, clarifies and revises MSHA's existing safety standards for gassy metal and nonmetal mines. These revisions upgrade provisions consistent with advances in mining technology, eliminate duplicative and unnecessary standards, provide alternative methods of compliance, and reduce recordkeeping requirements. This final rule establishes a new procedure for categorizing mines with a history of, or a potential for, methane liberation. The title of this final rule has been changed from that of gassy mines to reflect the applicability of these standards, that is, whether a mine liberates methane, has the potential to do so, or could encounter a strata which contains methane. Safety standards to protect persons against the hazards of methane in each category are dependent upon, among other things, the quantity and type of gas emission, the geological area in which the mine is located, and the product being mined.

EFFECTIVE DATE: October 29, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary for Mine Safety and Health, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Background

This final rule is part of MSHA's comprehensive review of its metal and nonmetal safety and health standards. MSHA announced the availability of a preproposal draft in the **Federal Register** of June 10, 1983 (48 FR 27025). After reviewing suggestions and recommendations from mine operators, labor groups, mining organizations, and other interested parties, MSHA published a proposed rule in the **Federal Register** of June 4, 1985 (50 FR 23612).

Three public hearings were held in Carlsbad, New Mexico; Salt Lake City, Utah; and New Orleans, Louisiana in October 1985. Following the public hearings, interested persons were allowed to submit supplementary statements and data until the record closed on November 29, 1985. MSHA reviewed all written and oral statements submitted in response to the proposed rule and public hearings. Comments were received from all segments of the mining community.

The comments received by the Agency on the existing classification system and safety standards have underscored the need for a complete revision to the existing gassy mines standards.

II. Summary of the Final Rule

A. General Discussion

Methane is a flammable gas found in underground mining. Although methane is often associated with underground coal mines, it also occurs in some metal and nonmetal mines. The potential for methane exists in every underground mine in the United States. Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is ligher than air. Although methane itself is nontoxic, its presence reduces the oxygen content by dilution when mixed with air, and consequently can act as an asphyxiant when present in large quantities.

Methane may enter the mining environment from a variety of sources including fractures, faults, or shear zones overlying or underlying the strata that surrounds the ore body, or from the ore body itself. It may occur as an occluded gas within the ore body. Methane also may be generated by the action of bacteria on mine timbers. Methane mixed with air is explosive in the range of approximately 5 to 15 percent, provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in the mine atmosphere may further enhance the explosion potential of methane in a mine.

After a gas or dust ignition, the mine atmosphere often contains toxic gases and oxygen-deficient air. Flammable dust, timbers and other combustibles can be ignited by fires following a methane explosion. For these reasons, methane cannot be permitted to accumulate underground.

Under the existing classification system in § 57.21001, a mine is either gassy or nongassy, and is considered to be gassy if one or more of the following criteria are met: a State classifies it as gassy; a flammable gas ignition has occurred; a concentration of 0.25 percent or more of flammable gas has been detected; or it is connected to a gassy mine. Every mine that is classified gassy must presently comply with identical safety standards regardless of the type and frequency of methane occurrence, the mining method, the combustibility of the ore being mined, the geology of the ore body or the surrounding strata, or other related factors.

This final rule revises MSHA's existing standards for gassy underground mines to upgrade provisions consistent with advances in mining technology. The final rule also eliminates unnecessary standards, consolidates duplicative standards, provides alternative methods of compliance, and reduces recordkeeping requirements. The final rule results in effective standards for protecting the safety of persons, with consideration to the practical concerns of the affected mining industries.

The final rule has resulted in many substantive changes from the existing regulations. These changes are generally consistent with commenters' suggestions and recommendations. They also implement the goals of Executive Order 12291, the Regulatory Flexibility Act, and the Paperwork Reduction Act.

Under the existing regulations, all mines classified gassy were required to comply with all standards in Subpart T, regardless of the amount or type of methane liberation or specific mine conditions. The final rule presents a new concept and procedure for categorizing mines with a history of, or potential for, methane liberation based upon the particular conditions in a mine. The new category system considers both the actual liberation of methane and the potential to liberate methane, the type of gas occurrences, the degree of hazards, the combustibility of the material being mined, and the diversity of mining methods. It also considers the history of the mine and the history of the geological area in which the mine is located. The potential to liberate methane takes into consideration such factors as combustible ore being mined (Subcategories I–B, oil shale; and V–B, liquid petroleum), dust containing volatile matter and the geological area of the mine (Subcategory I–C, gilsonite), the noncombustible ore being mined and the geological area of the mine (Subcategory II–B, domal salt; and Category IV, potash and bedded salt). Due to MSHA's concern for the safety of persons in these types of mines, the final rule contains requirements to protect persons from the danger of methane and volatile dust. This new category system, which was introduced in the preproposal draft and appeared in the proposed rule, has received wide support from the metal and nonmetal mining community.

In this final rule, the Agency has developed standards which are unique to each category of mines. Consequently, with respect to methane-

related hazards, mines are required to comply only with standards that apply to a particular category or subcategory. The standards address hazards to persons and are not directed toward protection of property where life would not be endangered. In addition, recordkeeping provisions have been reduced. Wherever possible, a system of certification by signature and date has been established to indicate that a required inspection or task has been accomplished.

B. Discussion of the Final Rule

This final rule reflects the Agency's agreement with commenters that the identification and categorization of mines based on the types of occurrence, mine history and geological area of the mine more appropriately addresses methane and volatile dust hazards than the existing classification system. A deep mine extracting carbonaceous material would be expected to encounter greater concentrations of methane than an outcrop mine extracting the same material. Mines that have experienced or have the potential for an outburst, or liberate explosive concentrations of methane, or irregularly liberate methane, have different types of emissions and different methane hazards, all of which are considered prior to category placement.

Under this final rule, each underground mine is placed into one of six categories. Category placement or a change in placement includes consideration of: the liberation of methane or the potential to liberate methane; scope of each category or subcategory; the history and geology of the mine or the geological area in which the mine is located; the ore body and host rock; analysis of methane gas samples, and the character, amount, duration, origin and nature of methane emissions; and the presence of explosive dust or inert gases. This procedure is applicable to all mines. If a new mine is opened or a closed mine is reopened, the placement procedures apply.

Categories I through V will cover mines which have experienced a methane or volatile dust hazard, or have the potential to do so. The sixth category will include the remaining underground mines which have no established methane hazard. This category includes only basic precautionary standards to be followed. Mines in Category VI would not have to comply with any standards in this final rule if there is no methane liberation.

Under the final rule, the Administrator for Metal and Nonmetal Mine Safety and Health (Administrator) is responsible for category placement and notification to the affected mine operators. Initially, the Administrator will place all mines that have been classified as gassy under the existing standards and those which have the potential for a methane or volatile dust hazard into Categories I through V, as appropriate. These mines will be notified in writing of category placement. All other mines will be placed into Category VI because the presence of methane has not been established. In addition, the operator or the representative of miners has the right to request that the mine be recategorized if the conditions set forth in § 57.22003(a) indicate that the hazards exist under circumstances more appropriately governed by a different category or subcategory.

Upon notification of the opening or reopening of a mine under existing § 57.1000, or an occurrence reportable under § 57.22004 of this final rule, such as a change in methane conditions, an outburst, a blowout, or a methane ignition or other occurrence requiring notification, the Administrator may appoint a committee to investigate the ocurrence reported. While conducting the investigation, the Administrator may hold a fact-finding hearing, interview company officials, employees and other persons having knowledge of the occurrence or the mine, and obtain all records relating to a methane occurrence, or dust explosion. Representatives of the mine operator, the miners and the State agency responsible for miner safety may participate in the investigation.

Under the existing gassy mines regulations, the minimum level of methane that must be present in the mine atmosphere to classify a mine as gassy is 0.25 percent. During the rulemaking process, other levels of methane were considered; however, the 0.25 percent level is retained in the final rule. It is low enough to permit corrective action and evaluation of potential hazards prior to reaching explosive levels in mines that might have no experience with methane. In addition, this level can be readily detected by hand-held instruments. It is essential to safety that mines with no history of methane liberation and no methane protection procedures and equipment, be able to detect low levels of methane to allow time for corrective action. Low-level liberations can be an indicator of changing mine conditions.

During the public hearings on the proposal, commenters expressed concern that a single gas sample exceeding 0.25 percent methane might be collected in a mine and, based on that single sample, the mine would automatically be placed into a category or subcategory with more stringent safety requirements. However, under the final rule, a single sample of methane will not automatically cause a change in category or subcategory placement. Such a detection or occurrence will likely initiate an investigation by MSHA to evaluate the circumstances and to determine if the safety of the miners is adequately provided by standards within the existing category. During an investigation, many samples will be collected and analyzed in an effort to determine if a methane hazard is reasonably expected to continue. Upon completion of the investigation, a report of findings will be submitted to the Administrator. If the Administrator concludes that a methane hazard will continue to exist, the Administrator may determine that a change in category or subcategory placement is warranted. The Administrator's decision is subject to administrative review.

The Administrator will make a decision with respect to category placement or change in placement, and will provide the mine operator and representatives of the miners with a copy of the decision. The Administrator's determination of category placement or change in placement will become final 30 days after it is served upon the mine operator and the representative of the miners unless a request for a hearing is filed with the Assistant Secretary of Labor for Mine Safety and Health within the 30-day period. The Administrator's determination and the request for a hearing, if any, is required to be posted on the mine bulletin board and to remain there while the appeal is pending. The Assistant Secretary will refer the appeal request to the Chief Administrative Law Judge, United States Department of Labor, who will appoint an Administrative Law Judge to preside over the hearing and make an initial decision. The initial decision by the Administrative Law Judge becomes final unless discretionary review is taken by the Assistant Secretary who, upon review, makes the final decision. Only a decision by the Assistant Secretary is subject to judicial review, to be filed in the appropriate circuit of the United States Court of Appeals.

Commenters recommended that the final rule provide interim operating procedures while appeals of initial category placement are in process for mines presently classified gassy under existing Subpart T. The final rule specifies that while appeals of category placement are pending, the mine will

continue to comply with existing Subpart T—Gassy Mines standards.

The hearing rules are the rules of practice and procedure published in 29 CFR Part 18. They are substantially similar to those currently provided for Petitions for Modification under 30 CFR Part 44. This allows for the development of a record prior to a final decision by the Assistant Secretary.

On January 29, 1985, MSHA published a recodification and renumbering of the safety and health standards for metal and nonmetal mines in Title 30 of the Code of Federal Regulations which reorganized and restructured § 57.21 as new Subpart T (gassy mines), and renumbered the standards (50 FR 4048).

The standards appear in a different manner in the final rule than they did in the proposed rule. In the proposed rule, the applicable standards appeared in each category or subcategory. Identical standards were repeated in each category or subcategory, creating the appearance of redundancy. In order to alleviate this problem, the final rule has been reorganized. A standard that applies to more than one category or subcategory appears only once, with its applicability noted in parentheses on the title line. For example, there are two standards entitled "Smoking", each with distinctive requirements. The applicability of the standard is stated in parentheses next to the title. However, when a mine operator receives the Category or Subcategory placement notice from the Administrator, such notices will include all the standards that are applicable to that mine.

Eight standards of this final rule (§§ 57.22214, 57.22232, 57.22234, 57.22301, 57.22306, 57.22307, 57.22308, and 57.22309) require deenergization of electrical power under specific conditions. Each of these standards exempts intrinsically safe monitoring equipment from the deenergization requirement. Power to such intrinsically safe monitoring equipment may be left on or deenergized at the discretion of the mine operator. If the mine operator chooses to allow the sensor to remain energized, the sensor head and its power supply must not provide a potential ignition source. Atmospheric monitoring systems are often powered by 110-volt supplies which can be rendered explosion-proof. Therefore, safety is achieved by ensuring that all components which remain energized are either explosion-proof or intrinsically safe.

Two standards of this final rule (§§ 57.22215 and 57.22222) require that materials with a flame spread rating of 25 or less be used. Currently, when requested by manufacturers, the Agency informally tests brattice cloth and ventilation tubing using the American Society of Testing Method (ASTM) E-162. The ASTM test was designed to evaluate the flame resistance of a variety of materials, not just brattice cloth and ventilation tubing. A revised laboratory test to specifically evaluate the flame resistance of brattice cloth and ventilation tubing has been developed by the MSHA Approval and Certification Center. The new test requirements were proposed by the Agency in the Federal Register of February 6, 1986 (51 FR 4686, 30 CFR Part 7). Upon promulgation of these new approval requirements, §§ 57.22215 and 57.22222 will be revised to require the use of approved brattice cloth and ventilation tubing in accordance with Part 7.

Standard 57.22221 of this final rule specifies construction requirements for overcasts and undercasts when used in Subcategories I-A, II-A, and V-A, the Category III mines. During last stages of the rulemaking process, the Agency becomes aware of certain hazards associated with aluminum overcasts and undercasts. The hazards associated with failed overcasts and undercasts have the potential to impact all types of metal and nonmetal underground mines; therefore, a separate rule for overcast and undercast construction may be developed. The Agency would revise an appropriate 57.22221 of this rule upon promulgation of any new overcast/undercast standard in Subpart C of 30 CFR Part 57 (Fire Prevention and Control). In the interim, mine operators who presently use or anticipate the use of aluminum overcasts and undercasts may want to obtain a copy of the report entitled "Protection of Aluminum Overcast Construction Against Fire" by Steven J. Luzik, MSHA Report No. 02-070-87, dated March 11, 1987. This report focuses attention on the method of protecting aluminum overcasts or undercasts from the effects of a fire, and is available from any MSHA District Office or applicable Technical Support Office. In addition, the Agency is conducting further tests to determine the most appropriate method to best protect these aluminum devices from potential fire sources.

The procedural and safety standards for the final rule are placed in related groups under the following headings: General; Mine Categorization; Fire Prevention and Control; Ventilation; Equipment; Underground Retorts; Illumination; and Explosives. MSHA intends to establish a comprehensive index to the metal and nonmetal standards when revisions to Parts 56 and 57 are complete. To further assist in understanding this final rule, the Agency has provided three Appendices. Appendix I is a chart which shows, by final rule standard numbers, which standards are applicable to each Category or Subcategory. Appendix II is a redesignation table that cross-references existing standards with final rule standards. Appendix III is a derivation table that cross-references final rule standards with proposed rule standards and existing standards.

C. Deletions

The following standards which appeared in the proposed rule are deleted in the final rule:

Sections 57.31207, 57.33207, 57.34207, 57.36207, 57.38207 Reentry after shutdown of main fans.

This standard, which required restarting of the main fans and examinations for methane prior to reentry, has been revised and combined into the final rule standard entitled "Main ventilation failure".

Sections 57.31210, 57.33210, 57.34219, 57.36210, 57.38210 Minimum air flow.

This standard, which required a minimum flow of air at specific locations in the mine, has been revised and combined into the final rule standard entitled "Air flow".

Sections 57.31217, 57.34214, 57.36217, 57.38217 Abandoned areas.

This standard, which provided safety protection from potential methane emissions in abandoned areas, is duplicative of the requirements and protection afforded by existing § 57.8528.

Sections 57.31220, 57.34217, 57.36220, 57.38220 Line brattice and fan ducting.

This standard required line brattice for fans with ducting to ensure positive air flow across the face. Protection provided by this standard is afforded by the final rule §§ 57.22211, 57.22212, and 57.22213 requiring air flow at the face.

Sections 57.36224 and 57.38224 Air locks, overcasts, and undercasts.

This standard required certain mines to arrange ventilation systems by means of air locks, overcasts and undercasts. The specific requirement that a mine's ventilation be arranged by air locks, overcasts and undercasts has been deleted to allow the mine operator to determine the best way to ventilate the mine. Specific construction requirements for such devices, if used, were transferred to the final rule entitled "Overcast and undercast construction".

Sections 57.36225 and 57.38225 Air doors.

This standard required that ventilation doors which control the flow of air by being closed, shall be kept closed, except when persons or equipment are passing through. This standard is duplicative of the requirements and protection afforded by existing §§ 57.8531 and 57.8532.

Section 57.36230 Air flow in intake and return aircourses.

This standard, which required that air flow be maintained in intake and return aircourses, is duplicative of the protection afforded by existing § 57.8518 and the requirements of the final rule entitled "Air flow".

Section 57.33301 Electrical grounding.

This standard, which specified electrical grounding requirements for Subcategory I–C mines, has been deleted from the final rule because the shock hazard addressed by this standard is more appropriately addressed in 30 CFR Part 57, Subpart K—Electricity. The only electrical equipment used underground in these mines are submersible sump pumps, which are addressed in final rule § 57.22310. In addition, final rule § 57.22303 also requires that any additional electrical equipment to be used underground in these mines must be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 29.

D. Section-by-Section Discussion

The following is a summary section-by-section discussion of the development of the final rule.

Section 57.22001 Scope.

This final rule replaces existing § 57.21000. It provides that all metal and nonmetal underground mines be placed into one of the categories or subcategories to protect persons against the hazards of methane gas. Each mine is required to operate in accordance with the standards applicable to its category or subcategory. Mines placed in Category VI have limited compliance responsibility only in the event of methane detection. The Agency received no comments on this section and it is incorporated into the final rule with editorial changes.

Mines affected by these final rule standards are also required to comply with the other applicable health and safety standards published in 30 CFR Part 57. Some examples are presented below to amplify this point for underground metal/nonmetal mines.

Section 57.4600 specifies that certain types of fire protection devices be present when welding or cutting with an open flame. Final rule § 57.22103 (for mines in Subcategories I–A, II–A, V–A, and Category III) requires tests for methane prior to welding and cutting underground. Therefore, full compliance with MSHA standards would include both the fire protection devices required by § 57.4600 and the testing requirements of § 57.22103.

Section 57.8535 requires that all seals be provided with a means for sampling the quality of air behind seals. Final rule §§ 57.22218 (for mines in Subcategories I–C, V–A, V–B and Category III) and 57.22219 (for mines in Subcategory II–A) require that any seal constructed of materials which may be combustible must be coated with fire resistant materials. In this situation, compliance with MSHA standards would require both the means for sampling behind seals and that seals of combustible materials be coated with fire resistant materials.

Section 57.8528 requires that unventilated areas in all metal/nonmetal mines be sealed, or barricaded and posted against entry. Final rule § 57.22220 (for mines in Subcategories I–A, II–A, V–A and Category III) requires that air passing through an unsealed area shall not be used to ventilate work places if such air contains more than 0.25% methane. Therefore, only where such an area is not sealed would both standards become applicable.

Section 57.4161 specifically requires that fires shall not be lit underground, except for open-flame torches. Final rule § 57.22401 (for mines in Subcategories I–A and I–B) allows the use of fire to ignite underground retorts with specific safety precautions and requirements. In this case, final rule § 7.22401 supersedes the restriction against fires underground in § 7.4161 by allowing underground fires for igniting and operating retorts.

Section 57.8518 specifies operating requirements for main and booster fans. Final rules §§ 57.22202 (for mines in Subcategories I–A, I–B, I–C, II–A, V–A, V–B and Category III) and 57.22207 (for mines in Subcategories I–A, II–A, V–A, and Category III) are more detailed and specific as to compliance requirements. Therefore, full compliance would be with the more specific standard, which in this case would be final rule §§ 57.22202 and 57.22207.

Section 57.22002 Definitions.

In this final rule, the standards in Subpart T are preceded by a section of definitions which are discussed below. Under the existing format for metal and nonmetal standards, Part 57 contains a definition section which applies to all subparts within Part 57, except subparts preceded by a separate section of definitions. Under the existing arrangement, most defined terms are inapplicable to all subparts. For this reason and consistent with other recent rulemakings under the Standards Review Project, MSHA will list only those defined terms which apply to each subpart. The final rule for Subpart T contains three defined terms from Part 57.2, and nine additional definitions that were included in the proposed rule.

Abandoned areas. The final rule adopts a new definition of "abandoned areas" as areas where work has been completed, further work is not planned, and travel is not permitted. This definition distinguishes such areas from other areas that are temporarily inactive.

Approved. The final rule deletes the definition of "approved" which appeared in the proposed rule. Definition of this term is not included because particular standards in the final rule refer to the applicable approval regulations in Title 30, CFR (Parts 18 through 36) which govern the approval of the equipment or material in question.

Auxiliary fan. The final rule includes the definition of "auxiliary fan" as a fan used to deliver air to a working place off the main airstream; generally used with ventilation tubing. This term was not included in § 57.30002 in the proposed rule. However, the term is used in this final rule since it is an existing definition and is applicable to Subpart T under existing § 57.2. It is adopted without change.

Blowout. The final rule defines "blowout" to mean a sudden, violent, release of gas or liquid due to reservoir pressure in Category V mines. This definition distinguishes blowouts that could occur in petroleum mining from outbursts that have or could occur in certain domal salt mines and other mines. The word "unplanned", which appeared in the proposed rule definition, has been deleted from the final rule since it does not provide any clarification to the definition.

Booster fan. The final rule includes the definition of "booster fan" as a fan installed in the main airstream or a split of the main airstream to increase airflow through a section or sections of a mine. This term was not defined in the proposed rule. However, the term is used in this final rule since it is an existing definition and is applicable to Subpart T under existing § 57.2. It is adopted without change.

Certified. The final rule deletes the definition of "certified" which appeared

in the proposed rule. Definition of this term is not included because, as with the term "approved", particular standards in the final rule refer to the applicable regulations governing the certification of the equipment or material in question.

Combustible material. The final rule definition of "combustible material" is the same as MSHA's fire standards definition (30 CFR Part 57.4000, 1986 Edition). The term "combustible material" means a material that in the form in which it is used and under the conditions anticipated will ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Examples of such materials are wood, paper, rubber and plastics.

Competent person. The final rule definition of "competent person" is "a person designated by the mine operator who has sufficient experience and training to perform the assigned task." Commenters interpreted the proposed definition to mean that the training had to be performed directly by the person's current employer. Since the Agency's intent was to allow for any appropriate training received at another mine or from another source to suffice, the final rule has been changed to reflect commenters' recommendations.

Explosive materials. The final rule combines the existing § 57.2 definitions for blasting agents, detonators and explosives. Explosive and blasting agent means any substance classified as an explosive or a blasting agent by the Department of Transportation in Title 49 of the Code of Federal Regulations, 1986 Edition, rather than the 1979 edition used in the existing definition. The 1986 Edition is readily available and no substantive changes were made from the 1979 edition cited in the existing regulations or the 1984 edition cited in the proposed rule. The term detonators has been clarified in the definition by listing the devices which are considered to be detonators by the industry. These definitions are consistent with the Department of Transportation regulations and are currently in use industry-wide.

Geological area. This is a new definition of one criteria for placing a mine in a category or subcategory. The term "geological area" means an area characterized by the presence of the same ore body, the same stratigraphic sequence of beds, or the same ore-bearing formation.

Intermittently liberates methane. The final rule deletes the proposed definition of "intermittently liberates methane" because the term is not used in the descriptions of Categories III and IV. Commenters had questioned the validity and preciseness of the term as used in the proposal. Since the final rule makes a distinction only between "liberating" or having the "potential to liberate", such a term is no longer relevant to the regulatory concept of this rule. In addition, a table that illustrates explosive mixtures of methane and air was adopted in the final rule to clearly distinguish between Categories III and IV at commenters' requests.

Intrinsically safe. The final rule deletes the definition of "intrinsically safe" which appeared in the proposed rule. Definition of this term is not included because the final rule in discussing intrinsically safe refers to the applicable regulations governing the meaning of the term.

Mine atmosphere. The definition of "mine atmosphere" clarifies the locations where tests for methane are to be taken. Mine atmosphere means any point at least 12 inches away from the back, face, rib, and floor. However, in a Category IV mine, the measurement is also required to be at least three feet laterally away from the collar of a borehole which releases gas into the mine.

Noncombustible material. The final rule definition of the term "noncombustible material" is the same as MSHA's fire standards definition (30 CFR Part 57.4000, 1986 Edition). The term "noncombustible material" is defined as a material that in the form in which it is used and under the anticipated conditions will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Examples of such material are concrete, masonry block, brick, and steel.

Outburst. The final rule contains a new definition that distinguishes an outburst from a blowout and a rockburst. Commenters suggested a revised definition of the term "Outburst" to exclude rockbursts. Commenters also suggested limiting use of the term "outbursts" to Category II mines. The definition promulgated in the Federal Register on October 8, 1986 for 30 CFC Part 57—Subpart B—Ground Control (51 FR 36192) precludes consideration of a rockburst as an outburst. By definition, "rockbursts" do not contain pressurized mine gases. "Outbursts" are limited to domal salt mines for the purposes of categorization since they must contain occluded methane gas and are limited to Category II mines as commenters suggested. Therefore, "Outburst" means the sudden, violent release of solids and high-pressure occluded gases including methane gas in a domal salt mine.

Permissible. This definition was included in the proposed rule but has been deleted in the final rule. Definition of this term is not included because particular standards in the final rule which address permissible equipment refer to the applicable regulations governing permissibility.

Substantial construction. The final rule revises the existing definition of "substantial construction" to mean construction of such strength, material, and workmanship that the object will withstand air blasts, blasting shock, ground movement, pressure differentials, wear, and usage which may be expected to occur in the mine environment. These are factors to be considered in determining the construction of seals, certain stoppings, overcasts and undercasts.

Mine Categorization

Section 57.22003 Mine Category or Subcategory.

Under existing § 57.21001, a mine is considered to be gassy if one or more of the following criteria are met: a State classifies it as gassy; a flammable gas ignition has occurred; a concentration of 0.25 percent or more of flammable gas has been detected; or it is connected to a gassy mine. The existing system requires compliance with a single set of standards which are generally of coal mining origin; it does not appropriately address the variety and types of methane occurrences associated with the metal and nonmetal mining industry.

In the final rule, all underground metal and nonmetal mines will be placed in one of six categories based on the nature and likelihood of methane hazards. The first five categories address mines which have either experienced methane hazards or have the potential for such hazards. The sixth category represents the remaining underground mines in which the presence of methane has not been established. Should methane be detected or an ignition occur in a Category VI mine, immediate actions are required to be taken to protect persons in the mine. In Category VI, no action is required of the mine operator if methane is not detected.

The category system in the final rule more appropriately addresses the varying degree of hazards and the diversity of metal and nonmetal mining. Commenters supported the concept of mine categories and subcategories. However, they requested that conditions encountered during primary or access development be distinguished as temporary or permanent in terms of category placement. A new paragraph has been added to § 57.22003 to address this concern. Commenters also suggested that gas samples taken for the purposes of category placement or change in placement be taken in the

mine atmosphere and that laboratory analysis be used instead of air analysis of a methane sample. These provisions have been incorporated into § 57.22003(c). However, gas samples taken to determine the nature and extent of a gas occurrences may be taken at any location, including the source, point of entry, and the mine atmosphere.

Individual categories and subcategories are discussed as follows:

Category I. This category applies to mines operating in a combustible ore body. It is further divided into three subcategories which address (A) methane occurrences in deep mines; (B) methane occurrence in outcrop mines; and (C) methane occurrences in conjunction with violatile ore dust such as that which occurs in gilsonite mines and mills.

Category II. This category applies to domal salt mines where the history of the mine or geological area indicates the occurrence of or the potential for outbursts. It is further divided into two subcategories which address (A) domal salt mines where an outburst reportable under § 57.22004(c)(1) has occurred; and (B) domal salt mines where an outburst reportable under § 57.22004(c)(1) has not occurred, but which have the potential for an outburst based on the history of the mine or the geological area in which the mine is located. Commenters suggested that an outburst must contain methane in order to affect category placement or change in placement and that the amount correspond to the amount reportable under § 57.22004(c)(1). Final rule § 57.22004(c)(1) specifies that only an outburst that results in 0.25 percent or more methane in the mine atmosphere is reportable to MSHA.

Category III and Category IV. Category III was defined in the proposed rule as mines in which noncombustible ore is extracted and either continuously liberate methane or have the potential to do so based on the history of the mine or the geological area in which the mine is located. Category III also included mines which intermittently liberate explosive mixtures of methane. In the final rule, Category III applies to mines in which noncombustible ore is extracted and which liberate a concentration of methane that is explosive or have the potential to do so based on the history of the mine or the geological area in which the mine is located. Explosive mixtures are illustrated by a table entitled "Relation Between Quantitative Composition and Explosibility of Mixtures of Methane and Air". This table was incorporated in the final rule in response to commenters' suggestions.

Category IV, as defined in the proposed rule, includes mines in which noncombustible ore is extracted and either intermittently liberate methane in nonexplosive mixtures or have the potential to do so based on the history of the mine or the geological area in which the mine is located. In the final rule, Category IV applies to mines in which noncombustible ore is extracted and which liberate methane, but not in a concentration that is explosive, based on the history of the mine or the geological area in which the mine is located.

Commenters were opposed to the term "intermittently liberates methane" proposed in the definitions for Category III and Category IV mines. They suggested the following language to define methane occurrences in Category III mines: "A concentration of methane that is explosive per se or is capable of forming explosive mixtures if mixed with air as determined by Figure 22 in U.S. Bureau of Mines Bulletin No. 503 (4th Edition)." This recommendation was accepted in concept and Categories III and IV were redefined. In the final rule, explosive mixtures of methane are illustrated by a table entitled, "Relation Between Quantitative Composition and Explosibility of Mixtures of Methane and Air."

Category V. Category V applies to petroleum mines and is divided into Subcategories V–A and V–B. Subcategory V–A includes mines that operate entirely or partially within an oil reservoir, and all other petroleum mines in which methane has been detected. Subcategory V–B includes mines that operate outside of and drill into an oil reservoir and in which methane has not been detected.

Category VI. Category VI applies to mines in which the presence of methane has not been established and are not included in another category or subcategory. The Agency received no comment on the proposed description of this category, and it is adopted without change.

Section 57.22004 Category placement or change in placement.

This section describes the process and criteria for mine category placement or change in placement. It also provides for notification of placement, and provides for an investigation of a methane occurrence. Commenters recommended that the final rule distinguish conditions encountered during primary or access development from those conditions under which the mine will ultimately operate. Commenters also recommended that the final rule establish procedures to change a category placement when conditions encountered during development no longer exist. Both recommendations are incorporated in the final rule.

The proposed requirement that MSHA be immediately notified when there has been a change from intermittent to continuous liberation of methane has been deleted to correspond with the changes made in the scope statement for Categories III and IV. In addition, the Agency has deleted, as unnecessary, the statement in the proposal that "all notifications are in addition to those requirements in 30 CFR Part 50."

Commenters suggested that the final rule include a provision to allow mine operators to request category reassignment and that it be limited to mine operators. Since the miners also have an integral role in safety and health activities, the final rule allows both the mine operator and the representative of miners to request category reassignment.

Commenters requested that the scope of the Agency investigation concerning category placement or change in placement include consideration of whether a methane hazard no longer exists or exists under circumstances more appropriately governed by a different category. Additionally, commenters recommended that the Agency limit participation in investigative hearings to persons with firsthand knowledge. The final rule is generally responsive to commenter's concerns except that the Agency has not limited the information to be obtained during investigations to person with firsthand knowledge. Other persons, such as experts, have useful information bearing on the subject of methane occurrences and category placement. Therefore, the final rule does not deny the Agency the benefit of such information.

Section 57.22005 Notice and appeal of placement or change in placement.

This section provides a procedure for administrative review and judicial appeal of MSHA's notice of category or subcategory placement or change in placement. Commenters generally agreed with the proposed rule. Commenters recommended addition of a new subparagraph which would provide interim operating procedures while appeals are in process and for a transition between existing standards and this final rule. To this end, where a mine has been classified as gassy prior to the effective date of these standards, the final rule specifies that the existing

gassy mine standards (30 CFR 57.21001 through 57.21101, 1986 Edition) shall continue to be applicable until initial category placement is final. For a mine that has not been classified as gassy prior to the effective date of this final rule and it is placed in Categories I through V, the mine shall comply with Category VI standards of this final rule pending any appeal Any appeal will be processed as expeditiously as possible.

Commenters recommended that appeals of the Administrator's determination of category placement be solely within the initiative of mine operators, although they were not opposed to intervention by the representative of the miners in later review proceedings before Administrative Law Judges. However, because miners played an integral role in promoting safety and health, the final rule permits both the mine operator and the representative of miners to appeal the administrator's decision.

Fire Prevention and Control

Sections 57.22101 and 57.22102 Smoking (I–A, I–C, II–A, III, and V–A mines).

This final rule revises existing § 57.21010. It prohibits smoking and carrying smoking materials underground and requires the operator to institute a reasonable program to assure compliance. The word "reasonable" which was deleted in the proposed rule, has been retained in the final rule at commenters' requests. Agency experience indicates that use of the word "reasonable" in this context results in the implementation of a program which will assure that smoking materials, matches or lighters are not carried underground without requiring a complete search of each person on each shift before entering the mine. This final rule does not substantially change the existing standard.

The proposed rule for Subcategories I–B and V–B mines restricted smoking underground. Commenters recommended that this standard be deleted from the final rule as being inappropriate. This standard has been deleted from the final rule for Subcategories I–B and V–B mines since methane would not have been detected.

Sections 57.22103 and 57.22104 Open Flames (I–A, I–C, II–A, III, and V–A mines).

This final rule revises and combines existing §§ 57.21011, 57.21012, and 57.21013. It prohibits the use of open flames underground in Subcategory I–C mines, and restricts the use of open flames underground to welding, cutting and other maintenance operations in other mines. Such maintenance operations may be performed in other than fresh air only if tests for methane have been conducted before and every 10 minutes during the maintenance operation. A compliance alternative is provided in the final rule by allowing continuous methane monitors with audible alarms to be used in lieu of a person performing the 10-minute interval methane test.

Commenters for Subcategories I–A, II–A, and V–A, and Category III objected to the proposed 5-minute test interval as being too short and unwarranted in light of other monitoring requirements, and recommended that the test interval be extended to 20 minutes. Other commenters recommended that such monitoring be performed continuously as required by the existing standard. These commenters stated that continuous monitoring is necessary because methane could enter the mine atmosphere during maintenance operations at the face. They further stated that a 20-minute time interval was too long and might encourage the performance of major repairs or maintenance involving cutting and welding in the face area. Commenters for Category III mines stated that minor methane ignitions had occurred at the face area in the past.

In view of testimony received, the final rule requires testing for methane before work is started and at 10-minute intervals thereafter, and provides a compliance alternative by allowing the use of continuous methane monitors after the initial test has been made in lieu of the 10-minute interval. The Agency believes that this requirement will assure safety of miners during short-term maintenance operations in other than fresh air, particularly in light of other methane monitoring standards. The final rule reflects the Agency's intent that equipment be moved to fresh air for other than short-term repairs.

Commenters for Subcategory V–B mines recommended deletion of the proposed standard since methane has not been detected in these mines. Consistent with commenter's suggestions, this provision is not included in the final rule for these mines.

Commenters for Subcategory I–C (gilsonite) mines objected to this standard, indicating that there are safe methods of cutting and welding in these types of mines. They stated that the need for maintenance of equipment will increase as mechanization advances. However, fire and explosion protection in these mines is currently achieved by prohibiting sources of ignition underground since the product mined is combustible and the dust is extremely volatile. Commenters from the gilsonite industry also pointed out that they recognize the volatility of the gilsonite dust; they prohibit any source of ignition underground to effectively deal with the associated hazards of this dust. Therefore, the final rule retains the prohibition of the use of open flame in these mines. Further protection is provided by the requirement that no welding or cutting shall be conducted within 50 feet of the mine opening unless all persons are out of the mine and the mine opening is covered. This cover is required to be of a substantial material, such as metal or wood. In addition, a layer of wet material, such as water-soaked burlap, must be used over the cover to prevent sparks and flames from entering the mine opening.

Section 57.22105 Smoking and Open Flames (IV mines).

The final rule revises and combines existing § § 57.21010, 57.21011, 57.21012, and 57.21013. It restricts smoking and the use of open flames in Category IV mines. Commenters objected to use of the terms "heading" and "free of methane" in the proposed standard, and recommended that the restriction be limited to faces or raises where extraction is taking place. Commenters also recommended that the methane level be consistent with methane action level requirements. Commenters' recommendations were incorporated, except for restricting the application of the standard to areas where extraction is taking place. The final rule retains the proposed restriction to faces and raises because some mines that may be placed into this category have experienced ignitions in these areas in the past. Consequently, testing is essential to safety at faces and raises prior to smoking or using open flames. The final rule also restricts smoking and use of open flames during the release of gas from a borehole. This provision was incorporated into the final rule because of the occasional release of significant amounts of gas into the mine atmosphere from boreholes drilled for the purpose of pressure relief in some mines that may be placed in Category IV.

Section 57.22106 Dust Containing Volatile Matter (I–C mines).

The final rule adopts a new standard for Subcategory I–C mines which requires dust control measures to prevent the accumulation of explosive quantitities of volatile dust. During the public hearings, some commenters stated that an explosive amount of dust was not defined. Therefore, the final rule defines an explosive amount of dust containing volatitle matter to be 0.02 ounce or more per cubic foot of air. This amount was determined by dust explosibility laboratory reports for tests conducted in 1983 by the Industrial Safety Divsision of MSHA's Technical Support Group and by the Bureau

of Mines Report of Investigations RI 6597 entitled "Explosibility of Carbonaceous Dusts". Agency experience indicates that this dust, if allowed to accumulate in any visible amount, would be a potential hazard and has, in fact, resulted in explosions.

Ventilation

Section 57.22201 Mechanical ventilation (I–A, I–B, I–C, II–A, II–B, III, IV, V–A, and V–B mines).

This final rule revises existing standard § 57.21067. It requires that all mines be ventilated mechanically. A commenter for Subcategory I–C mines suggested deletion of this standard, contending that natural ventilation is adequate for these mines. Gilsonite mines typically use air-lift fans to transport the gilsonite ore from the mine. Such fans are also used to provide mine ventilation. Because of the configuration of these mines, Agency experience has shown that natural ventilation is not reliable for maintaining air quantity and direction of flow. Due to the presence of methane and volatile dust in these mines, provisions for controlled ventilation must be maintained; changes in atmospheric pressure can interrupt the flow of air through a mine that is naturally ventilated. Therefore, this standard is adopted in the final rule without change.

Section 57.22202 Main fans (I–A, I–B, I–C, II–A, III, V–A, and V–B mines).

The final rule revises existing § 57.21020 and specifies requirements for main fan installations. Commenters objected to the provision in the proposed rule which required an automatic alarm when air volume delivered by the fan slowed, and recommended the term "singificantly decreases" be used in lieu of the term "slows". Since both terms lack preciseness, reference to the term "slows" has been deleted, and the final rule requires that fans be provided with automatic signal devices to give an alarm should the fan stop.

Commenters interpreted the proposed rule to require MSHA's approval of all electrical equipment in the fresh air stream. They recommended that only equipment integral to the main fan itself be approved, and suggested alternative language that special "main fan-related" electrical equipment. The final rule reflects this change.

The requirement that main exhaust fans be equipped with methane monitors was proposed for Subcategories I–A an I–B mines. Since the presence of methane has not been established in Subcategory I–B mines, the final rule provision for these mines does not contain such a requirement. However, this requirement has been retained for Subcategory I–A mines since it is anticipated that the main ventilation system in these mines will be handling dense clouds of methane produced during production blasts. Should a cloud of methane pass toward an exhaust fan, the fan must be deenergized at the leading edge of the cloud before an explosive mixture of methane crosses the fan. Requiring an alarm to activate at 0.5 percent will provide the necessary mechanism to ensure that the fan is quickly deenergized.

The proposed rule specified that fan blades be constructed of nonsparking meterials and also limited the amount of magnesium in aluminum alloy blades. The nonsparking requirement has been deleted from the final rule since sparks can be generated when aluminum is contacted by rusty steel. The goal of the standard is to prevent the generation of sufficient heat to ignite methane. This goal is achieved by limiting the content of magnesium when aluminum alloy blades are used.

Commenters recommended that fan blade construction requirements be deleted for Subcategory I–C (gilsonite) mines because air-lift systems in these mines are typically filtered through bag houses that removed dust from the airstream before it reaches the fan. The recommendation was incorporated in the final rule.

The existing rule and the proposed rule specified that all main fans be offset at least 15 feet from mines openings to protect against potential damage from an underground explosion. The 15-foot requirement may be difficult to achieve in certain mountainside locations or in the presence of other physically-limiting factors at mine openings. Therefore, the final rule standard specifies that fan installations be offset so that the fan and its components are not in direct line with possible explosive forces. This approach provides a performance requirement for addressing the hazard of main fan damage or destruction due to an explosion in the mine, in light of the variety of metal and nonmetal mine configurations.

This standard was proposed for Subcategory II–B and Category IV mines with a grandfather clause that exempted existing mines in these categories from compliance. Upon review, MSHA determined that this standard provided no increase of safety for the miners in existing mines and the presence of methane has not been established in these mines. Therefore, the final rule does not apply to Subcategory II–B and Category IV mines.

Section 57.22203 Main fan operation (I–C mines).

The final rule revises existing § 57.21021 and requires continuous operation of main fans while ore production is in progress for Subcategory I–C mines. Commenters suggested a provision that would require continuous operation only when tests for methane and volatile dust concentrations indicated an air quality problem. Adequate ventilation is essential to prevent hazardous accumulations of methane or volatile dust. For this reason, the final rule retains the requirement that main fans be operated continuously during ore production.

Section 57.22204 Main fan operation and inspection (I–A, II–A, III, and V–A mines).

This final rule revises existing § 57.21021. It requires pressure recording systems and daily inspection of main fans and certification of inspections. Commenters recommended that the standard be revised to allow the use of roll charts and microprocessors as recording devices as an alternative to gage charts. The final rule provides for alternative means of compliance and allows discretion in the selection of equipment. Commenters objected to the requirement for daily main fan inspections when persons are not underground. The final rule requires main fan inspection daily only if the fan is operating and persons are underground.

The proposed rule required continuous operation of main fans while persons are underground. This requirement has been deleted because existing § 57.8518 provides the same protection. In addition, to assure adequate ventilation, other standards in this final rule include air flow requirements and specify actions required in the event of main ventilation failure.

Section 57.22205 Doors on main fans (I–A, II–A, III, and V–A mines).

This final rule revises existing § 57.21069. It retains the general requirements of the existing standard and requires doors at main fan installations to close automatically following fan failure. Commenters agreed with the proposed standard. It is adopted in the final rule with editorial changes.

Section 57.22206 Main ventilation failure (I–A, II–A, III, and V–A mines).

This final rule revises existing § 57.21024 and incorporates the requirements of existing §§ 57.21024 and 57.21027. It prescribes actions to be taken when main fans stop or where there has been a total failure of the ventilation system other than main fans.

Commenters recommended retention of existing § 57.21024. The requirements of the existing standards have been retained in the final rule with editorial changes, except for the provision that

required examination of places where methane may accumulate if ventilation has been interrupted for more than 15 minutes. This provision was deleted because protection is afforded by methane action level requirements in the final rule.

The final rule also requires testing for methane prior to reentry of persons underground following total ventilation failure. Commenters stated that the 30-minute time delay before reentry in the proposed rule was unnecessary if the mine had been tested and methane levels were below prescribed limits. The final rule allows reentry into the mine after the main fans have been operational for at least 30 minutes or after the mine atompshere has been tested and methane has been determined to be below prescibed limits.

A commenter expressed concern that failure of a single fan in a multiple fan installation would be allowed under the proposed rule which could adversely effect mine ventilation. Other standards in the final rule which specify air flow, air quality, methane action levels, and actions during main and booster fan failure would afford adequate protection.

This standard was proposed for Subcategory I–C mines. However, since the requirement for operation of main fans in these mines only applies during ore production, the requirements of this final rule standard do not apply to Subcategory I–C mines.

Section 57.22207 Booster fans (I–A, II–A, III, and V–A mines).

The final rule revises and combines existing §§ 57.21028 and 57.21029. It provides safety precautions for the use of booster fans. Commenters objected to the provision in the proposed rule which required that an automatic signal device give an alarm when the air volume delivered by the fan slowed, and recommended the term "significantly decreases" be used in lieu of the term "slows". Since both terms lack the necessary preciseness as previously discussed, the final rule requires that booster fans be provided with automatic signal devices to alarm should the fan stop.

Commenters for Subcategory II–A mines recommended raising the level for deenergizing booster fans from 0.5 to 1.0 percent methane at the fan. In consideration of air flow and methane action level requirements, deenergizing a booster or main fan is a judgmental issue to be determined following an evaluation of circumstances and conditions at each mine. Therefore, the automatic deenergization requirement has been deleted from the final rule, but the provisions for the automatic signal at 0.5% methane level, applies.

The requirements for a booster fan installation have been deleted in the final rule for Subcategory I–B mines since the presence of methane has not been established in these mines.

Sections 57.22208 and 57.22209 Auxiliary fans (I–A, I–C, II–A, III, and V–A mines).

The final rule revises existing § 57.21030. It provides safety precautions for the use of auxiliary fans. Commenters suggested alternate language to recognize that auxiliary fans may be the primary ventilation for a working place. This comment is addressed in the definition of the term "auxiliary fan". Other commenters suggested that auxiliary fans need not be permissible when used in areas where other equipment is not required to be permissible and no methane hazard exists. The final rule reflects this change.

Commenters for Subcategory I–A mines suggested language that would permit the use of portable fans to break methane stratification, stating that these fans should not be deenergized when methane reaches 1.0 percent methane. To assure maximum safety of miners, auxiliary fans and other equipment must be deenergized when methane reaches 1.0 percent. Consequently, this suggestion was not incorporated into the final rule.

Existing § 57.21031 required that auxiliary fans be inspected at least twice each shift. Inspection of auxiliary fans twice each shift is unnecessary because air flow and air quality must be maintained in accordance with other ventilation standards. Therefore, the final rule deletes this existing requirement.

Section 57.22210 In-line filters (I–C mines).

This is a new provision that requires filters to be installed on air-lift fan systems in Subcategory I–C (gilsonite) mines to prevent an explosive amount of dust from being drawn through the fan. The proposed rule is adopted without change.

Sections 57.22211, 57.22212, and 57.22213 Air flow (I–A, I–C, II–A, III, and V–A mines).

This final rule revises and combines existing §§ 57.21033, 57.21034, and 57.21068. It requires designated air flow at specific locations in the mine. Specific amounts of air are required for Subcategory I–A and Category III mines. Air flow requirements for Subcategory I–A mines are expressed in velocity rather than volume because the large cross sectional openings are often difficult to measure. Air flow in Category III mines is expressed in volume since cross sectional areas are smaller and can be measured. Air movement at the working faces of Subcategories I–C, II–A and V–A mines may sometimes be difficult to perceive and calculate but is considered to be sufficient so long as it carries away accumulations of methane, smoke, fumes and dust. Commenters generally supported the proposed standard and recommended that intrinsically safe monitoring equipment not be deenergized if required air flow cannot be maintained. The requirements for withdrawal and deenergization of equipment have been transferred from this standard to the methane action level standards for each Category or Subcategory (§§ 57.22231 through 57.22240). A provision for continuing the operation of intrinsically safe monitoring equipment in the event of power deenergization underground has been included in the methane action level standards (§§ 57.22231 through 57.22240).

Commenters for Subcategories I–C and II–A mines recommended that perceptible air flow be provided in lieu of a specific velocity requirement. The final rule for these mines and Subcategory V–A mines requires that air flow be sufficient to carry away accumulations of methane, smoke, fumes, and dust from the working face.

Section 57.22214 Changes in ventilation (I–A, II–A, III, and V–A mines).

This final rule revises existing § 57.21038. It requires that safety precautions be taken when changes are made that affect the main air currents. Commenters suggested insertion of the word "adversely", stating that the proposed rule wording would preclude increasing air flow if necessary. Commenters also requested that power to intrinsically safe monitoring equipment be exempted from the deenergization requirements. Both changes have been incorporated into the final rule.

Sections 57.22215 and 57.22216 Separation of intake and return air (I–A, I–C, II–A, III, and V–A mines).

This final rule revises and combines two existing standards. Section 57.21022 requires that main intake and return airways be in separate mine openings, but permits this separation to be accomplished with ventilation tubing during the initial shaft or slope

development. Until a second opening to the surface is completed, single shafts must be provided with a curtain wall or partition. Standard 57.21023 stipulates construction requirements for curtain walls and partitions used for separation of intake and return air currents in single shafts. The final rule for Subcategories I–A, II–A, V–A and Category III mines has been clarified to emphasize the need to maintain a separation between fresh intake air and methane-laden exhaust air in the mine openings and throughout the mine environment. This separation is necessary to prevent fires and explosions.

The final rule provides compliance alternatives when multiple ventilation shafts are used but intake and return air currents are coursed through any individual opening. In this instance, a curtain wall or partition is permitted provided that it is constructed of reinforced concrete or some other noncombustible equivalent, and is equipped with pressure-relief devices. Requiring that such partition or wall be constructed of a noncombustible material will ensure that it will not burn through in the event of a fire. The strength requirements of reinforced concrete or the equivalent will provide resistance to explosive forces in the event of an underground explosion. The pressure-relief devices also serve as a method to relieve the impact of the resultant forces from an explosion.

Compliance alternatives which assure necessary safety are also provided during the development of openings to the surface. The use of ventilation tubing is an effective industry method for providing adequate ventilation at the face of an opening under development. This alternative, however, like the curtain wall or partition alternative, provides the necessary separation of the intake and return air current for protecting miners. This degree of protection can only be achieved through the use of rigid, noncombustible ventilation tubing. Commenters for Subcategory V–A mines requested that rigid ventilation tubing with a flame spread rating of 25 or less be permitted in drifts because it is generally lighter in weight, easier to handle, and is no more hazardous for use in this instance than for its subsequent use in later development connections. This practice would permit the use of combustible fiberglass/resin tubing while developing an opening to the surface in the early stages of a mine. Although such tubing would be lighter in weight and perhaps easier to handle, the fact remains that such tubing is combustible and should not be used in mine openings. Separation of the two air currents by a product which can burn does not provide the necessary degree of safety during these early stages of mine development when the mine ventilation system is still being established. Flexible ventilation tubing with a flame spread rating of 25 or less is permitted; however, its length cannot exceed 250 feet. This length is permitted in recognition of the need to move the tubing frequently to avoid its destruction during blasting.

The final rule restricts the distance which mining can be performed beyond the initial shaft to 250 feet unless such mining is related to making a primary ventilation connection. This requirement stresses the importance of developing an additional opening to the surface for ventilation purposes.

The final rule for Subcategory I–C mines recognizes the unique circumstances that are present in gilsonite mines. Past and current mining practices at these mines indicate that intake and return air currents can be safety coursed in the same shaft, provided that a substantial curtain wall or ventilation tubing is provided. This final rule allows this practice. Commenters for Subcategory I–C mines requested that ventilation tubing which has a flame spread rating of 25 or less be allowed as a means of separation. The final rule does not permit this type of separation for the same reasons as stated above.

Ventilation tubing, curtain walls, and partition alternatives permitted under certain circumstances by this standard have proven to be effective in the separation of intake and return air in the same openings in gassy coal mines and metal and nonmetal mines in the past. If any of these separation devices became damaged to the extent that they did not provide separation, they would no longer meet the compliance requirements of these standards.

The requirements of this final rule have been deleted from Subcategories I–B, II–B, and V–B mines, since the presence of methane has not been established and methane action levels provide the necessary protection.

Sections 57.22217, 57.22218, and 57.22219 Seals and stoppings (I–A, I–B, I–C, II–A, III, V–A, and V–B mines).

This final rule revises and combines existing §§ 57.21044, 57.21045, and 57.21053. It addresses the construction of seals and those stoppings that separate main intake and main return airways. Commenters objected to the proposed requirement for vertical supports, stating that this should be left to the discretion of the mine operator to use the best engineering practices appropriate for each mine. Commenters further objected to a specified thickness of foam blocks as being arbitrary and unproven by documented testing and that specifying exact dimensions limits the operator's flexibility. They stated that their own tests indicate that some foam blocks less than 20 inches thick served the intended purpose. Tests conducted by MSHA's safety technology center confirm that phenolic foam blocks that are at least 12 inches thick need not be treated for fire resistance. The final rule does not specify thickness of other types of foam blocks. However, these other types must be coated with fire-resistant coatings specified in the final rules.

Commenters objected to the requirement that areas surrounding seals and stoppings constructed of combustible or foam-type materials be kept free of sources of heat, such as power cables and combustible materials. The final rule recognizes that some combustible materials may be used in constructing seals and stoppings and that fire hazards exist in these mines. Safety is achieved through application of specific noncombustible coatings, and the final rule reflects this approach.

A commenter questioned the requirement for coating seals and stoppings with shotcrete, stating that other materials provide greater fire protection and are not as difficult to maintain and that due to the rigid characteristics of shotcrete, it tends to crack and spall during normal ground movement. A report of recent tests conducted by the Industrial Safety Division, Bruceton Safety Technology Center, entitled "An Engineering Evaluation of Foam Block Stopping Constructions in Gassy Metal and Nonmetal Underground Mines in which Noncombustible Ore is Extracted" (MSHA Report No. 007–86), indicates that other coatings for seals and stoppings provide required fire resistance, and have been incorporated into the final rule. However, the final rule still allows the use of other coatings with equivalent fire resistance. As a result of this testing and in response to commenters' suggestions, the final rule requires that stoppings constructed of certain foam-type blocks or combustible materials be coated with one inch of construction plaster containing perlite and gypsum; one inch of expanded vermiculite, Portland cement and limestone; or other coatings with equivalent fire resistance. The coating requirement of the final rule applies only to seals and stoppings constructed after

the effective date of this standard. The provision for sampling behind seals has been deleted as it is duplicative of existing § 57.8535.

A commenter objected to the use of foam-type blocks for stoppings, stating that they do not provide any support between the back, ribs and floor. Stoppings are not intended to serve as ground support. Stoppings are normally constructed in areas that are well-traveled, and the need for any maintenance is readily apparent. Therefore, the final rule allows foam-type blocks for use as stoppings.

Commenters for Subcategory II–A mines suggested the use of brattice material for construction of stoppings. They stated that modern brattice materials have many characteristics which make them suitable for use as stoppings in large mine openings. The final rule reflects this change for Subcategory II–A mines, and allows brattice stoppings in face areas of Subcategory I–A, I–B, and I–C mines. The proposed rule for Subcategory I–C mines contained inappropriate requirements for the construction of seals and stopings. In recognition of the combustible nature of the ore in these mines, the final rule requires seals and stoppings in Subcategory I–C mines to be constructed of noncombustible materials.

Seals must be constructed of materials that will withstand pressures from behind the seals to prevent the intrusion of bad air into the mine atmosphere. In addition, seals may be located in abandoned areas of the mine and any damage may not be readily apparent. For these reasons, foam-type blocks are not allowed for use as seals.

Section 57.22220 Air passing unsealed areas (I–A, II–A, III, and V–A mines).

This final rule revises and combines existing §§ 57.21041 and 57.21042. It establishes methane limits for ventilating air that has passed by or through unsealed abandoned or unsealed inactive areas. It also requires that air which contains 0.25 percent methane be coursed directly to a return airway, that it be tested daily for methane, and that it not be used to ventilate workplaces. The existing regulation required examination of such air to be conducted during the preshift examination. The final rule requirement of daily examinations of these areas for methane will ensure that air containing more than 0.25 percent methane does not enter the active workings. Commenters recommended that the term "unsealed" be added to the standard. The final rule reflects this change.

A commenter requested that this standard be deleted for Subcategory V–A mines since the initial action level for these mines occurs at 1.0 percent methane. Air from abandoned or inactive areas is subject to intrusions of methane due to ground movement which cannot be anticipated since many of these areas are inaccessible. Falls of ground are known sources of methane emissions. Therefore, the final rule retains this standard for Subcategory V–A mines.

Existing § 57.21043 requires abandoned areas to be sealed or ventilated. Areas not sealed are required to be barricaded and posted against unauthorized entry. The hazards covered by this standard are addressed by existing ventilation standard § 57.8528 (Subpart G).

Existing § 57.21061 specified that only qualified persons enter areas where danger signs are posted. Existing § 57.21062 prohibited the removal of danger signs until the hazard had been corrected. The hazards covered by these standards are adequately addressed in the testing requirements and methane action level standards in this final rule. Additionally, existing § 57.20011 (Subpart S) requires barricading and posting areas where health or safety hazards exist.

Section 57.22221 Overcast and undercast construction (I–A, II–A, III, and V–A mines).

This final rule revises existing §§ 57.21055 and 57.21058. It addresses the construction and installation requirements for overcasts and undercasts, if used. Commenters interpreted the proposed standard to require that both sides of overcasts and undercasts be coated and suggested changes that would require coating of overcasts and undercasts on the intake exposed surface.

The final rule requires that the coating be applied on the outside surface which is exposed to the potential ignition source. Haulage equipment, electrical cables and welding and cutting activities are examples of such ignition sources in these type mines. The proposed standard required a coating of shotcrete, which has been changed. MSHA Report No. 007–86 indicates that other coatings provide required fire resistance. The final rule requires coatings of at least one inch of construction plaster containing perlite and gypsum; one inch of expanded vermiculite, Portland cement and limestone; or other coatings with equivalent fire resistance. These coatings, required for overcasts and undercasts, are consistent with coatings required in the final rule for seals and stoppings.

Existing § 57.21056 required that air locks be ventilated to prevent accumulations of methane. Compliance with action level standards for each Category or Subcategory will prevent any buildup of methane in an air lock. Therefore, the final rule deletes this requirement.

As mentioned earlier in this preamble in section II.B. entitled "Discussion of the Final Rule", the Agency will address the hazards associated with overcasts and undercasts used in all underground metal and nonmetal mines in a separate proposed rulemaking to Subpart C—Fire Prevention and Control.

Section 57.22222 Ventilation materials (I–A, I–B, I–C, II–A, III, V–A, and V–B mines).

This final rule revises existing standard § 57.21049 which required brattice cloth to be of flame-resistant material. It appeared in the proposed rule under the title of "Brattice Cloth and Ducting Flame Resistance". The final rule standard specifies a flame spread rating of 25 or less for brattice cloth and ventilation tubing.

Existing § 57.21050 required that damaged brattice be repaired promptly. Air flow and air quality standards in this final rule adequately address the provisions of this standard. Therefore, this requirement has been deleted from the final rule.

Section 57.22223 Crosscuts before abandonment (III mines).

This final rule revises existing § 57.21051. It requires that a means of ventilating faces in abandoned unsealed areas be provided unless crosscuts are provided within 30 feet of the faces. A commenter expressed concern that compliance with this standard would leave some abandoned areas unventilated. The final rule specifically requires that abandoned faces be ventilated or that crosscuts be provided within 30 feet of abandoned faces. The application of the standard is to the entire mine. The final rule was reworded for clarity, and the distance for crosscuts of 18 feet in the proposed rule has been increased to 30 feet to recognize that larger mining machinery that is presently safely operated in these mines is capable of making wider and deeper cuts.

Existing § 57.21046 specified maximum intervals for crosscuts. Existing § 57.21052 established a maximum depth for room necks and stub entries beyond the last open crosscut. Air flow and air quality

standards in the final rule adequately address these concerns. Therefore, the final rule does not contain these requirements.

Sections 57.22224 and 57.22225 Auxiliary equipment stations (I-A, I-C, and III mines).

The final rule revises existing § 57.21036. It requires that certain electrically powered support equipment be installed in intake air at locations which are sufficiently ventilated to prevent accumulation of methane for Subcategory I-A and Category III mines. The proposed rule is adopted in the final rule with editorial changes for Subcategory I-A and Category III mines.

The proposed standard for Subcategory I-C mines required that certain electrical support equipment not be installed underground or within 100 feet of a mine opening on the surface. Commenters suggested that the 100-foot distance be reduced to 50 feet because the 100-foot requirement would require relocation of existing surface facilities at some gilsonite mines and that a 50-foot restriction provides an adequate margin of safety. Final rule § 57.22104 prohibits flame-producing activities such as welding and cutting within 50 feet of the mine opening unless all persons are out of the mine and the opening is covered. This requirement is consistent with Utah State regulations for gilsonite mines. It would be inappropriate to allow these types of ignition sources to be located 50 feet from the mine opening, and then require an electrical installation, which is less likely to generate a flame, to be 100 feet from the same opening. Therefore, the final rule has been changed to reflect a 50-foot distance at commenters' request. These commenters also requested a provision in the final rule that would allow for installation of this equipment underground. Since these mines are required to operate main fans only while ore production is in progress, airflow could be reduced considerably during non-production cycles. The installation of certain electrical equipment underground would present a potential source for methane or volatile dust ignition while the fans are not operating. Therefore, the final rule retains the prohibition on installation of certain electrical equipment underground for Subcategory I-C mines.

Section 57.22226 Testing for methane (IV mines).

This final rule standard is new and applies to Category IV mines. It requires testing for methane at designated locations in the mine before work is done. Commenters suggested additional language that would limit testing for methane prior to starting work in each face or raise to only those faces or raises where extraction is taking place. The Agency is concerned that "extraction" may be interpreted as the mucking cycle only. The potential for methane liberation exists during any mining cycle; therefore, the final rule requires methane tests to be conducted in faces or raises prior to any work being done. Commenters also requested that testing for methane be conducted upon initial release of gas from boreholes into the mine atmosphere. The final rule reflects this change. Another commenter recommended that the frequency of such tests be weekly instead of prior to the start of work on each shift. This suggestion does not provide for adequate detection of methane since methane may be liberated at any time. Therefore, the final rule does not adopt this recommendation.

Section 57.22227 Approved testing devices (I-A, I-B, I-C, II-A, II-B, III, IV, V-A, and V-B mines).

This final rule revises existing § 57.21064. It requires that portable, self-contained methane detectors and other devices, such as oxygen detectors and dust pumps, be approved by MSHA under the applicable requirements of 30 CFR Parts 18, 21, 22, 23, 27, and 29. It also provides for calibration and maintenance of these instruments.

Section 57.22228 Preshift examination (I-A, I-C, II-A, III, and V-A mines).

The final rule revises existing § 57.21059 and requires preshift examinations for methane within three hours prior to the beginning of a shift following an idle shift. Commenters interpreted the proposed rule to require preshift examination of working places throughout the mine, including remote areas where methane was not likely to occur and suggested alternate language. The final rule reflects commenters concerns and the requirement for preshift examination when one shift immediately follows another applies only to active working faces and places blasted. However, where there has been an idle shift, the preshift examination is to cover all work places. A provision requiring that an approved vehicle be used to conduct these examinations is included in the final rule in recognition of the fact that these examinations need to be conducted as expeditiously as possible. Vehicles are used underground for this purpose. These vehicles, however, must not be a source of ignition since they may enter areas of recent methane liberation during the examination. This is consistent with the same requirement in the final rules §§ 57.22601, 57.22603 and 57.22605 for tests to be conducted after blasting in Subcategories I-A, II-A, and V-A mines.

Sections 57.22229 and 57.22230 Weekly testing (I-A, II-A, III, and V-A mines).

This final rule revises and combines existing §§ 57.21035, 57.21065, and 57.21066. It requires testing for methane and carbon monoxide (CO) and requires air flow measurements (except for Subcategory II-A mines) at designated locations in the mine at least once every seven days. Weekly testing for CO is required by existing standards. Elevated CO levels are a reliable indication of an undetected mine fire which is a source of ignition in a gassy atmosphere. The final rule also requires certification of such tests and measurements. Commenters suggested the inclusion of a mine monitoring system (known as "Atmospheric Monitoring System" in this final rule) as a means of performing the required tests to accommodate and promote advances in mine sampling technology. The final rule has been revised to allow a competent person, an atmospheric monitoring system, or a combination of the two, to perform the required tests. Commenters also suggested alternative language so that at least one seal of each sealed area would be tested. The final rule reflects this change.

In response to commenters for Subcategory I-C mines, the final rule deletes the weekly testing requirements which appeared in the proposed rule, as these requirements were duplicative of the preshift testing requirements for these mines. The requirements of this final rule have been deleted from Subcategory I-B mines, since the presence of methane has not been established in these mines.

Sections 57.22231, 57.22232, 57.22233, and 57.22234 Actions at 0.25, 0.5 and 1.0 percent methane (I-A, I-B, I-C, II-A, II-B, III, IV, V-A, V-B, and VI mines).

This final rule revises existing §§ 57.21039 and 57.21040. These standards establish initial action levels for methane for mines in each category and subcategory. They require that ventilation changes be made and, in certain Category and Subcategory mines, that electrical equipment be deenergized and that diesel equipment be shut off or removed from the affected areas.

Commenters for Subcategory I-C mines requested an increase in the proposed action level from 0.25 to 0.5 percent methane, stating that the minute quantity of methane encountered in

gilsonite mines does not warrant the low action level. The final rule reflects this change. Other commenters requested an exception to the deenergization requirement for intrinsically safe monitoring equipment, stating that this equipment does not release enough energy to cause an ignition, and that retaining monitoring capability in these instances enhances safety. The final rule incorporates this change.

Sections 57.22232, 57.22234, 57.22235, 57.22236, 57.22237, 57.22238, 57.22239, and 57.22240 Actions at 0.5, 1.0, 2.0 to 2.5, and at 2.0 percent methane (I–A, I–B, I–C, II–A, II–B, III, IV, V–A, V–B, and VI mines).

These final rule standards revise existing §§ 57.21039 and 57.21040. These standards set forth additional action levels for each category and subcategory mine. In addition to ventilation changes and equipment deenergization, they require withdrawal of persons at designated levels of methane. The proposed standards are adopted in the final rule with editorial changes.

Section 57.22241 Advance face boreholes (I–C mines).

This final rule is a new standard for Subcategory I–C mines. It requires drilling advance boreholes as mining approaches abandoned mines or abandoned workings. The standard is adopted in the final rule without change.

Equipment

Section 57.22301 Atmospheric monitoring systems (I–A, II–A, and V–A mines).

This final rule is a new standard and requires that an atmospheric monitoring system be installed undergound in Subcategories I–A, II–A, and V–A mines to give warning and to deenergize power at specific methane concentrations. The term "atmospheric" was substituted for the term "mine-wide" that appeared in the proposed rule to be more descriptive of the system's function.

Commenters objected to the proposed requirement that power underground be automatically deenergized when power to a sensor is interrupted and when specific action levels are reached. They recommended that the system give warning when power to a sensor is interrupted instead of deenergizing all power underground. The proposed requirement, therefore, has not been included in the final rule. However, the requirement to deenergize mine power when the monitoring system fails or malfunctions has been incorporated into final rule § 57.22603 (Blasting from the surface), with changes to afford safety after blasting when everyone is out of the mine. Commenters also recommended that monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18 be excluded from the requirement that all power be deenergized. Because it would not be appropriate to deenergize power underground when power to an individual sensor is interrupted, and to allow the monitoring system to continue to function, these changes have been incorporated into the final rule. It is important to note that the standard does not require the deenergization of intrinsically safe monitoring equipment. To preclude damage to the sensors, mine operators may choose to deenergize power to the sensors when methane levels are anticipated to exceed prescribed action levels. The need for this discretion was evidenced in a recent outburst which occurred during blasting in a Subcategory II–A mine during the Spring of 1987.

Commenters for Subcategory II–A mines expressed concern that the proposed 0.25 percent methane level was too low for accurate measurement due to the corrosive atmosphere in these mines and its affect on methane sensors. They suggested that the warning level be raised to 0.5 percent and the deenergization level be raised to 1.0 percent. The final rule adopts the suggested 0.5 percent warning level, but retains in all situations except during blasting, the proposed 0.5 percent deenergization level to be consistent with other methane action level standards for these mines. However, the action level for deenergizing power in affected areas has been set at 1.0 percent during blasting to allow the continued operation of auxiliary fans up to 1.0 percent methane.

The final rule permits a 30-second delay period to avoid nuisance tripping due to power fluctuations. However, the 30–second delay is not permitted during blasting or ventilation following blasting in Subcategory II–A mines because a delay could allow the power to remain on during an inundation of high concentrations of methane during a blast.

The requirement for an atmospheric monitoring system in Subcategory V–B mines has been deleted from the final rule in response to commenters' request since the presence of methane has not been established in these mines.

Sections 57.22302, 57.22303, 57.22304, and 57.22305 Approved equipment (I–A, I–C, II–A, III, and V–A mines).

This final rule revises and combines existing §§ 57.21076 and 57.21078. It requires that equipment used in or beyond the last open crosscut be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36, for Subcategories I–A and V–A, and Category III mines, to prevent a source of ignition. It prohibits operating equipment in atmospheres containing 1.0 percent or more methane. It also requires that equipment used in areas where methane may enter the air current in pillar recovery workings, longwall faces and shortwall faces in Category III mines be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36. It requires that electrical equipment used in the mine be approved under the applicable requirements of 30 CFR Parts 18 through 29, except for submersible sump pumps in Subcategory I–C mines. The standard requires that cutting and drilling equipment used at a face or bench be approved under the applicable requirements of 30 CFR Parts 18 through 36, but allows nonapproved equipment to be used at the face after cutting, drilling, and blasting in Subcategory II–A mines, which are known activities that produce methane. These areas would have been tested and determined to contain no methane hazard before the nonapproved equipment enters the area to begin work. It also requires nonapproved mine power transformers and stationary equipment be installed in fresh air or downwind from an atmospheric methane monitor sensor. Such equipment would be more likely to contribute to an ignition. Fresh air would eliminate the methane hazard. Installing such equipment downwind from the methane monitor sensor ensures that air which will pass over the equipment has been monitored for methane.

If nonapproved equipment is taken into areas where methane is being released in the atmosphere, there is the danger that such equipment could be the source of an ignition or gas explosion. Accordingly, the final rule continues to require the use of MSHA-approved equipment.

Commenters for Categories I and V mines stated that equipment used in these mines will ultimately involve substantially larger machines than those traditionally identified with underground mining. These commenters stated that the MSHA approval requirements could not accommodate the mining equipment contemplated, but that such equipment could meet explosion-proof requirements. They further stated that the use of such equipment may require numerous field changes that would be impossible to

make in a reasonable time if the equipment was required to be approved by MSHA, although the change might have nothing to do with the safety of the machine with respect to methane.

Comments received on the proposed rule suggested that MSHA focus its permissibility requirements on the potential fire and explosion hazards of mining equipment. MSHA is aware of certain requirements in 30 CFR Part 36 which are now duplicative of safety standards contained in 30 CFR Part 57. In addition, some of the requirements in 30 CFR Part 36 may not adequately address the equipment which could be used in certain metal/nonmetal mines. MSHA recognizes the merit of these comments, and contemplated that future rulemaking efforts involving 30 CFR Part 36 (Mobile Diesel-Powered Transportation Equipment for Gassy Noncoal Mines and Tunnels) may be the proper way to address these concerns.

Commenters for Subcategory II–A mines recommended that only permissible equipment be allowed at or within 100 feet of a face or bench while undercutting or drilling operations are in progress because local areas of methane can be drained during these activities. They also contended that the loading of broken salt does not liberate methane and therefore, nonapproved loading equipment should be allowed at the face after tests have shown that no methane was produced by the blast. They further suggested that transformers and nonapproved stationary equipment be installed downwind of area methane detectors or in fresh air in lieu of installing methane monitors on the nonapproved equipment. These recommendations have been incorporated into the final rule.

Comments for Category III mines objected to the proposed 150-foot restriction for nonapproved equipment used in pillar recovery workings, longwall faces, or shortwall faces, stating that the restrictions on nonapproved equipment in by the last open crosscut are sufficient. The Agency agrees and the specific limitation of 150 feet has been omitted from the final rule. Performance-oriented language is substituted in the final rule which addresses the potential for methane forced out of gob areas due to caving resulting from pillar recovery and longwall and shortwall mining.

Existing § 57.21077 specified that trolley wires cannot extend into the last open crosscut or within 150 feet of pillar recovery workings. Any hazards involving trolley wires would be controlled by testing, minimum air flow, and action level standards in this final rule. Therefore, the final rule deletes this existing requirement.

Sections 57.22306, 57.22307, 57.22308, and 57.22309 Methane monitors (I–A, II–A, III, and V–A mines).

This final rule revises existing § 57.21080. It requires that methane monitors be installed on certain mining equipment in each category and subcategory mine, and that these monitors give warning and denergize equipment at designated methane levels. A commenter for Subcategory V–A mines recommended higher action levels for methane to be consistent with coal mining standards since there is no similar dust propagation hazard. However, the levels from the proposed rule have been retained. The 0.5 percent difference between the action level standards that require manual corrective actions versus this standard which requires the monitors to automatically alarm and deenergize equipment takes into consideration that more time is necessary for manual corrective action. In addition, these levels will continue to provide a greater measure of safety for affected persons than the higher levels suggested by the commenter. Commenters for Subcategory V–A mines suggested that methane monitors be required only on continuous mining machines rather than all electric and diesel-powered face equipment, stating there is no unique hazard justification for introducing diesel monitors to these mines only. The final rule adopts this suggestion.

The final rule requires that methane monitors be installed on continuous mining machines, longwall mining systems, and loading and haulage equipment used in or beyond the last open crosscut in Subcategory I–A mines. Requiring these monitors on loading and haulage machines, which was not included in the proposed rule, is considered essential to safety since it is anticipated that significant amounts of methane can be liberated during loading and haulage activities in these mines. Without monitors, equipment operators would not know when methane action levels had been reached or exceeded.

The requirements of this final rule has been deleted for Subcategory V–B mines since the presence of methane has not been established in these mines.

Sections 57.22310 and 57.22311 Electrical cables (I–C and II–A mines).

These final rule standards are new. Final rule § 57.22310 for Subcategory I–C mines requires that electrical cables used to power submersible sump pumps be approved by MSHA under 30 CFR Part 18.64, or that such cables be installed in continuous metal conduit or metal pipe. Commenters requested that this standard apply only to new installations after the effective date of this standard. The final rule responds to these concerns by providing a compliance alternative which allows the installation of electrical cables in metal conduit or metal pipe, a practice which is currently in use at these mines.

Commenters for Subcategory II–A mines suggested alternative language to clarify that the jacketed cable requirement apply to equipment located in active working faces and benches. The final rule reflects this change.

Sections 57.22312 Distribution boxes (II–A and V–A mines).

The final rule revises existing § 57.21079. It requires that distribution boxes containing short circuit protection for approved equipment shall be approved by MSHA under 30 CFR Part 18. The Agency received no comment and the proposed rule is adopted in the final rule with minor editorial change.

Section 57.22313 Explosion protection systems (I–C mines).

This provision in the final rule is a new standard for Subcategory I–C mines. It requires pressure-relief systems with vents or explosion suppression systems to be installed on all dust handling and drying equipment and on facilities housing such equipment. Commenters suggested language to allow weak-walls to be used as part of the pressure-relief system. Weak-walls used alone are not accepted as compliance with this standard. However, weak-walls are recognized as an integral part of some pressure-relief systems as long as the pressure required to overcome them would not cause injury to persons the system was designed to protect.

Section 57.22314 Flow-control devices (V–A and V–B mines).

The final rule is a new standard requiring that oil recovery drill holes have devices to control the release of liquid hydrocarbons and hazardous gases during the initial penetration of pressurized, oil-bearing formations. It also allows for recovery of such devices after they are no longer needed. Commenters suggested alternate language that would exclude drill holes such as blast holes, roof bolt holes and hanger holes. The final rule adopts these suggestions with editorial changes.

Section 57.22315 Self-contained breathing apparatus (V–A mines).

The final rule contains a new standard which requires self-contained breathing apparatus of a sufficient duration to allow for escape from the mine to be provided and strategically located in the mine. Strategic locations are those locations where the apparatus will be readily available to persons working underground. Miners will need to be aware of these locations and will need to be trained in the use of and familiar with the operation of the selected apparatus. These apparatus are necessary in single-entry petroleum mines. In response to a commenter's suggestion, an exception to requiring these apparatus has been provided for double-entry mining systems where crosscut intervals do not exceed 250 feet.

Underground Retorts

Section 57.22401 Underground retorts (I–A and I–B mines).

The final rule is a new standard which is applicable to Subcategories I–A and I–B mines. The proposed rule required that an ignition and operation plan for underground retorts be submitted to the appropriate MSHA District Manager for approval. The approval by MSHA has been deleted from the final rule. The criteria and operational concerns of the proposed plan have been included directly in the final rule.

Commenters suggested clarification that the two independent power sources be required only for main mine ventilation fans and those fans directly ventilating retort bulkheads, and for retort blowers to ensure that the standard would not be applied to booster and auxiliary fans. They requested a provision for switching promptly instead of automatically from one power source to the other. They further stated that automatic switching would be prohibitively costly and unnecessary, and that switching promptly will meet the intent of the standard. The final rule adopts these changes.

Commenters stated that the proposed requirement to monitor for oxygen deficiency in the mine atmosphere would be an added and unnecessary burden. They further stated that monitors for hazardous gas would indicate potential problem areas so that corrective action could be taken long before an oxygen deficiency occurs. In response to comments and due to the oxygen deficiency requirement in the air quality standards (§ 57.5015), the final rule reflects this change.

Illumination

Section 57.22501 Personal electric lamps (I–A, I–B, I–C, II–A, II–B, III, IV, V–A, and V–B mines).

This final rule revises existing § 57.21090. It requires that electric lamps used to provide personal illumination be approved by MSHA under the requirements of 30 CFR Part 19 or 20. The proposed standard is adopted into the final rule with editorial change. This standard was intended to be proposed for all Categories and Subcategories, except Category VI. However, Subcategory II–B was inadvertently omitted in the proposed rule. Since these mines have these approved personal electric lamps already in use, there will be no significant impact on these mines.

Explosives

Sections 57.22601, 57.22602, 57.22603, 57.22604, and 57.22605 Blasting from the surface (I–A, I–C, II–A, II–B, and V–A mines).

This final rule is a new standard and requires that blasting be done from the surface after everyone is out of the mine. It prohibits reentry until the mine has been examined by persons or the atmospheric monitoring system indicates that the mine contains less than specified minimum methane levels. All places blasted are also required to be tested for methane before work is started. It requires that vehicles used for transportation when conducting tests be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36.

This new requirement should result in little adverse economic impact on Subcategory I–A, II–A, and II–B mines, since they presently blast from the surface while everyone is out of the mine. Blasting is rarely performed underground in Subcategory I–C (gilsonite) mines. However, when blasting is performed, the breakage of in-place gilsonite ore by blasting generates amounts of volatile dust and methane which can reach explosive levels. Due to the unique configuration of gilsonite mines, the only safe place for miners when blasting underground is on the surface. Subcategory II–A mines are domal salt mines with histories of outbursts and they have released large quantities of methane during underground blasting. Subcategory II–B mines are domal salt mines with the potential for an outburst, and have the potential to release large quantities of methane during underground blasting. This methane could be ignited by blasting and would affect the entire underground mining environment. Therefore, the safe location for persons in these mines during underground blasting is on the surface.

Commenters for Subcategories I–A and V–A mines objected to the requirement that blasting be done from the surface with all persons out of the mine. They recommended that blasting be allowed with persons underground at fresh air locations. They also requested reentry to affected areas when methane has been determined to be less than 1.0 percent.

Current available information indicates that large volumes of methane can be released during blasting in Subcategory I–A mines. When large volumes of gas are released, there is no safe place for persons underground. The potential presence of extremely high methane concentrations during deep mining is a concern of the mining community. (See, "Designing An Oil Shale Mine Ventilation System," by Floyd C. Bossard and Associates, Inc. presented at the Fall 1983 SME–AIME meeting at Salt Lake City, Utah). In addition, there is the explosive potential of oil shale dust. (See, "Fire and Explosion Properties of Oil Shale" presented during the Tenth Oil Shale Symposium Proceedings by J.K. Richmond and L.F. Miller, April 21–22, 1977, at the Colorado School of Mines). A mining research contract report recommends that personnel be on the surface if sudden bursts of methane into the mine atmosphere are anticipated when blasting in gassy metal and nonmental mines. (See, "Recommended Blasting Procedures," by Calder and Workman, Inc., May 1983). A Bureau of Mines Report indicates a major gas problem in these mines and potential problems when blasting. (See, "Methane Encountered At The Bureau of Mines Oil Shale Shaft," by Vinson, Cox, and Kissell, presented during the Twelfth Oil Shale Symposium Proceedings, at the Colorado School of Mines, April 1979). Investigations of three gas ignitions at oil shale mines indicate that these ignitions resulted from blasting operations. Further, a report entitled "Blasting in Oil Shale Mines" dated September 1984 was prepared by a group consisting of representatives from MSHA, U.S. Bureau of Mines, the oil shale industry, and the explosives industry. This report concluded that ". . . the lack of basic information on the true nature of the hazards in this type of mining forces the regulatory agencies to apply the most conservative safety measures, such as off-shift blasting." For these reasons, the final rule requires that all development, production, and bench round blasting be

done while persons are out of the mine for Subcategory I–A mines. This same rationale can be applied to mines in Subcategories I–C, II–A and II–B, where the potential for large volumes of methane to be released during blasting exists.

Mines in Subcategory V–A either mine into an oil horizon or methane has been detected in the mine atmosphere. The configuration of these mines will not provide a safe location for persons underground during blasting if an ignition occurs. Therefore, the final rule continues the requirement for these mines that all development and production blasting be done while persons are out of the mine.

Commenters for subcategory II–A mines requested an increase to 0.5 percent in the methane action level for reentry after blasting. They also requested reentry after ventilating air has passed over the blast area and through the closest monitoring sensor. They objected to the 30-minute waiting period for reentry after blasting and also objected to the term "free of methane". Subcategory II–A mines are large volume mines with slow moving air currents. Therefore, the final rule requires a ventilating period of at least 15 minutes after blasting to allow adequate time for air to pass over the monitoring system to ensure that methane levels are below prescribed limits prior to reentry.

The final rule for Subcategory II–A mines requires that when the monitor system is inoperable or has failed, (1) mine power be deenergized prior to reentry of the examiner (§ 57.22228 Preshift examination requires that a competent person test the mine atmosphere at each face blasted before work is started), and (2) no vehicles be used during examination. These requirements are necessary to protect the examiner in the event that an outburst has occurred simultaneously with failure of the monitor. If an outburst should occur without such requirements, an examiner could inadvertently drive a vehicle into an explosive concentration of methane enroute to the blast site. Hazards to the examiner in this situation would be increased if the mine power was left on.

Section 57.22606 Explosive materials and blasting units (III mines).

This final rule revises and combines existing §§ 57.21095, 57.21096, 57.21097, 57.21098, and 57.21101. These requirements were proposed for Subcategories I–A, I–B, I–C, II–A and V–A mines, and Category III mines. This standard has been deleted from the final rule for Subcategories I–A, I–C, II–A, and V–A mines because blasting is conducted with all persons out of the mine. The standard was also deleted from the final rule for Subcategory I–B mines because the presence of methane gas has not been established.

The final rule applies to Category III mines and allows blasting on shift with persons underground with specific requirements. The final rule requires that explosives approved by MSHA be used or alternatively, that certain precautionary procedures be followed. In developing the alternative procedures, the Agency used experience gained from the petition for modification program for Category III mines. Specifically, safety provisions from such petitions which have been granted without opposition are included in the final rule. The final rule requires mine operators to notify MSHA of all nonapproved explosive materials and blasting units to be used prior to their use. Such notice must also include the nominal delay interval between successive shots which should not exceed 800 milliseconds, and the nominal delay interval between the first and last shot in a round which should not exceed 3800 milliseconds. These values reflect current blasting practices in Category III mines and are prudent for eliminating the probability of methane ignition. This specification also recognizes and accommodates the need of adequate breakage using prescribed blasting techniques.

The existing standard restricted the capacity of blasting units to a maximum of 20 detonators, the limitation for currently approved blasting units. The final rule provides compliance alternatives for blasting units that are larger than those specified in existing 30 CFR Part 25, recognizing the need for these larger blasting machines in Category III mines. To this end, the final rule does not restrict the number of detonators which can be initiated by a blasting unit. Instead, performance requirements have been included into the final rule which will allow the mine operator to shoot any number of detonators safely, so long as certain safety precautions are taken. New technical specifications for blasting units are under development by MSHA and may be the subject of a future rulemaking as a part of the Agency's revised approval procedures for mine equipment. (See proposed Part 7 rule, 51 FR 4686, February 6, 1986). The requirements of the final rule for blasting units may be superseded by the promulgation of any such new technical specifications. In addition, requirements for stemming blast holes have been included in this final rule. A compliance alternative has been included in the final rule that permits the use of explosive materials and blasting units that have been evaluated and determined to be safe for blasting in a potentially gassy mining environment, instead of requiring the use of explosives that are approved by MSHA under 30 CFR Part 15.

Paragraph (f) of this final rule prohibits the use of mudcaps or other nonapproved unconfined shots. The Agency is currently developing the final rule for 30 CFR Part 15 (51 FR 41046, and 52 FR 9620) Requirements for Approval of Explosives and Sheathed Explosive Units, which will specifically address the use of sheathed charges used outside of blast holes. These sheathed charges would, when approved, be permitted under this final rule.

Section 57.22607 Blasting on shift (III mines).

This final rule revises and combines existing §§ 57.21099 and 57.21100. It reqyires testing for methane before blasting in Category III mines, and prohibits blasting when 1.0 percent methane is present. This standard is adopted into the final rule with no change.

Section 57.22608 Secondary blasting (I–A, II–A, and V–A mines).

This final rule is a new standard which requires testing for methane prior to secondary blasting. This standard is adopted in the final rule without change.

III. Executive Order 12291 and Regulatory Flexibility Act

In accordance with Executive Order 12291, MSHA has prepared an analysis to identify potential costs and benefits associated with the revisions to the Agency's standards for methane in metal and nonmetal mines. This analysis has been incorporated into the final Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act. In this analysis, which is summarized below, MSHA has determined that the final rule will neither result in major cost increases nor have an effect of $100 million or more on the economy. Since the final rule does not meet the criteria for a major rule, a Regulatory Impact Analysis is not necessary.

The Regulatory Flexibility Act requires that, in developing regulations, agencies evaluate and include wherever possible, compliance alternatives that minimize any adverse impact on small businesses. Many of the standards in

this final rule provide alternatives for compliance. A primary benefit of this final rule is the protection provided to persons who could be endangered by explosive atmospheres and hazards associated with methane. Over the past several years, explosions in metal and nonmetal mines have resulted in multiple fatalities and serious injuries. Eighteen people were killed in an explosion during development of a potash mine in Utah; an explosion of dust at a gilsonite mine, caused by electric arcing from an electrical box, resulted in eight deaths and three injuries; two methane explosions at a limestone mine resulted in two injuries each; and an explosion at a salt mine killed five miners.

The final rule also clarifies compliance responsibilities and structures the standards to reflect the degree of hazard. Standards are also performance-oriented where possible. The final rule will benefit both large and small underground metal and nonmetal mining operations. The final rule maximizes flexibility because it establishes the safety objective without limiting the means to achieve it. Because of this, MSHA anticipates that fewer mine operators will need to petition the agency for modification of a standard (variance, 30 CFR Part 44).

For purposes of the Regulatory Flexibility Act, MSHA has defined small business entities as mining operations with fewer than 20 employees. The final rule will affect approximately 29 mines. MSHA estimates that all mines will be classified in Categories I through V, except those in Subcategories I–C and V–B, have more than 20 employees. The estimated 8 mines in Subcategory I–C and one mine in Subcategory V–B employ fewer than 20 miners each; however, all of these mines are controlled by large corporations.

In the final rule, MSHA has reorganized, updated, and clarified the existing gassy mine standards. The final rule consolidates related standards and reduces recordkeeping provisions to the minimum without diminishing safety of persons working in these mines. There are 60 existing safety standards, each one applicable to mines which have been classified as gassy. MSHA's final rule reduces the total number of standards applicable to each mine to a maximum of 30 and a minimum of 4, depending upon category placement. The number of standards applicable to each mine is as follows:

Category or subcategory	Number of standards
I-A	29
I-B	11
I-C	23
II-A	29
II-B	8
III	28
IV	8
V-A	30
V-B	11
VI	4

During the revision process, MSHA found that not only could existing standards be deleted for certain categories of mines, but also that new standards needed to be developed for certain categories. As a result, some mines, which were not existing gassy mines, would experience an increase in costs under the final rule; whereas, all existing gassy mines would experience a decrease in costs under the final rule. MSHA made considerable effort during the rulemaking process to investigate and understand current industry practices and new technologies. This has been reflected in the final rule wherever possible, consistent with prudent safe practices, to minimize any significant adverse cost impact on any industry segment or any individual mine.

The potential increase or decrease in costs was measured by comparing the costs associated with the existing requirements to costs associated with the final rule. Costs for both the existing and final rules were calculated as if all mine operators would purchase required equipment the effective date of the regulation. MSHA realizes that this may overstate the cost because existing gassy mines currently have equipment which meets the requirements of the final rule and normal replacement of old equipment would occur. Also, the cost of approved equipment may be overstated because some types of equipment are not available in a nonapproval model. In some cases, where alternative methods of compliance are offered for an existing standard, there may be an overstatement of the reduction in cost because those mine operators already in compliance may not select a less costly alternative.

Under the existing gassy mine standards, the annual cost for industry compliance is estimated at $14.9 million. The annual cost for the final rule is estimated at $12.9 million. The net reduction in cost under the final rule is 13.3%. The Regulatory Flexibility Analysis is summarized below. A copy of the full analysis is available upon request.

MSHA estimated that the requirement for approved equipment was the single, most costly provision of both the existing and final rules. This requirement alone contributed 88% of the cost of the existing rule and 97% of the cost of the final rule. The cost impact of this requirement, however, was reduced from $13,068,030 under the existing rule to $12,525,788 under the final rule.

The final rule modification of existing §§ 57.21076 and 57.21078, to reflect the specific hazard at each mine category, results in a 51% decrease or about $443,000 less for approved equipment in the two Subcategory II–A mines. This cost remains the same, however, for the six Category III mines.

Costs of requirements in the existing rule, which were deleted in the final rule, accounted for $379,659 (2.6%) of the cost of the existing rule. The remaining cost of the existing rule was reduced by $1,927,146 (13.3%) under the final rule, despite the fact that the number of mines affected increased from 12 to 29 (142%).

For mines in Subcategory II–A and Category III, all of which are existing gassy mines, the modification of existing §§ 57.21044, 57.21045, and 57.21053 to allow the introduction of new technologies for seals and stoppings, results in a total decrease in costs of about $1.2 million or an average of over $150,000 per mine.

The one existing gassy mine which would be in Category IV under the final rule, would potentially save 95% of the cost of the existing rule or about $148,000 because 15 existing standards would no longer apply to that mine. This savings is partially offset, however, by the cost impact of two new standards which would add less than $6,000 to the cost of the final rule at this mine.

Cost of new requirements in the final rule account for $333,603 (2.6%) of the cost of the final rule. These new requirements, however, address specific hazards at individual categories or subcategories of mines. For example, final rule § 57.22106 includes a new requirement to address the explosive hazard of gilsonite dust at gilsonite mills. In 1953, eight persons were killed and three injured by a dust explosion in a gilsonite mill. This one standard would account for 75% of the cost of the final rule at gilsonite operations.

One mine each in Subcategories I–B, II–B, and V–B and nine mines in Category IV would incur new costs as a result of the final rule. The requirement for fire-resistant stoppings accounts for 88% of the cost of the final rule at the Subcategory I–B mine. The requirement for blasting from the surface accounts for 97% of the cost of the final rule at the Subcategory II–B mine. The

requirements concerning smoking, open flames, and monitoring for methane account for over 91% of the cost of the final rule at Category IV mines. The requirement for flow-control devices accounts for about 73% of the cost of the final rule at the Subcategory V–B mine.

In effect, the major portion of the cost impact of the final rule is related to those requirements which directly address the significant hazards at each category or subcategory of mines.

IV Paperwork Reduction Act

Existing § 57.21021 requires that main fans be provided with pressure-recording gages, and be inspected daily and logs kept of such inspections and of fan maintenance. Charts and logs are required to be retained for at least one year. The requirement that logs be kept of main fan inspection has been deleted from the final rule § 57.22204. Rather than continue keeping logs and signing and countersigning records of inspection, the final rule requires that certifications of inspections be made by signature and date, and that such certifications, gage charts and other pressure recordings shall be retained for at least one year.

The recordkeeping provision in existing § 57.21035 requiring weekly air flow measurements has been eliminated in the final rule. In lieu of this recordkeeping requirement, final rules §§ 57.22229 and 57.22230 require certification by signature and date that the examinations were made, and retention of such certifications for at least one year.

The provisions contained in existing § 57.21066 that require the mine foreman or other designated official to read and countersign reports of required examinations made by competent persons, have been deleted from the final rule.

Standards 57.22004(c), 57.22231, and 57.22239 require mine operators to notify MSHA immediately when (a) there is an outburst that results in 0.25 percent or more methane in the mine atmosphere, (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere, (c) there is an ignition of methane, (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B, or Category VI mine, or (e) methane reaches 2.0 percent in a Category IV mine. Although the standards do not specify how MSHA is to be notified, MSHA anticipates that the notifications would be made by telephone.

Final rule § 57.22301 is new and requires the installation of a reliable atmospheric monitoring system. The standard requires certification by signature and date that calibration tests were performed monthly, and retention of such certifications for at least one year.

Final rule standard § 57.34101 is new for Subcategory I–A and I–B mines, and requires mine operators to submit an underground retort plan to the appropriate MSHA District Manager. This plan provides site-specific safeguards and safety procedures for the underground areas affected by the retorts.

Existing § 57.21095 requires that mine operators apply for and obtain approval to use explosive materials and blasting units that are not designated as permissible. Instead of this requirement, § 57.22606 of the final rule (which applies only to Category III mines) requires mine operators to notify the appropriate MSHA District Manager of all nonapproved explosive materials and blasting units to be used prior to their use.

Information collection requirements contained in this regulation have been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511).

List of Subjects in 30 CFR Part 57

Mine safety and health, metal and nonmetal mining, Safety standards for methane.

Dated: June 26, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

PART 57—SAFETY AND HEALTH STANDARDS—METAL AND NONMETAL UNDERGROUND MINES

1. Subpart T. Part 57, Subchapter N, Chapter I, Title 30 of the Code of Federal Regulation, is revised to read as follows:

Subpart T—Safety Standards for Methane in Metal and Nonmetal Mines

General

Mine Categorization

Fire Prevention and Control

Ventilation

Sec.

Subpart T—Safety Standards for Methane in Metal and Nonmetal Mines

Authority: 30 U.S.C. 811.

General

§ 57.22001 Scope.

This Subpart T sets forth procedures and safety standards for each metal and nonmetal underground mine subject to the Federal Mine Safety and Health Act of 1977. All metal and nonmetal mines will be placed into one of the categories or subcategories defined in this Subpart. Mines shall operate in accordance with the applicable standards in this Subpart to protect persons against the hazards of methane gas and dust containing volatile matter. The standards in this Subpart apply to underground mines as well as surface mills at Subcategory I–C mines. These mines are also required to be operated in accordance with the other applicable health and safety standards published in 30 CFR Part 57.

§ 57.22002 Definitions.

The following definitions apply in this Subpart:

Abandoned areas. Areas in which work has been completed, no further work is planned, and travel is not permitted.

Auxiliary fan. A fan used to deliver air to a working place off the main airstream; generally used with ventilation tubing.

Blowout. A sudden, violent, release of gas or liquid due to reservoir pressure in a petroleum mine.

Booster fan. A fan installed in the main airstream or a split of the main airstream to increase airflow through a section of a mine.

Combustible material. A material that, in the form in which it is used and under the conditions anticipated, will ignite, burn, support combustion or release flammable vapors when subjected to fire or heat. Wood, paper, rubber, and plastics are examples of combustibles.

Competent person. A person designated by the mine operator who has sufficient experience and training to perform the assigned task.

Explosive material. Explosives, blasting agents, and detonators. Explosives are substances classified as explosives by the Department of Transportation in §§ 173.53, 173.88, and 173.100 of Title 49 of the Code of Federal Regulations (1986 Edition). Blasting agents are substances classified as blasting agents by the Department of Transportation in § 173.114(a) of Title 49 of the Code of Federal Regulations (1986 Edition). Detonators are devices containing a detonating charge used to initiate explosives. Examples of detonators are blasting caps, electric or non-electric instantaneous or delay blasting caps and delay connectors. [A copy of Title 49 is available at any Metal and Nonmetal Mine Safety and Health District Office of the Mine Safety and Health Administration].

Geological area. An area characterized by the presence of the same ore bodies, the same stratigraphic sequence of beds, or the same ore-bearing geological formation.

Mine atmospher. Any point at least 12 inches away from the back, face, rib, and floor in any mine; and additionally, in a Category IV mine, at least 3 feet laterally away from the collar of a borehole which releases gas into the mine.

Noncombustible material. A material that, in the form in which it is used and under the conditions anticipated, will not ignite, burn, support combustion, or release flammable vapors when subjected to fire or heat. Concrete, masonry block, brick, and steel are examples of noncombustible materials.

Outburst. The sudden, violent release of solids and high-pressure occluded gases, including methane, in a domal salt mine.

Substantial construction. Construction of such strength, material, and workmanship that the object will withstand air blasts, blasting shock, ground movement, pressure differentials, wear, and usage which may be expected to occur in the mining environment.

Mine Categorization

§ 57.22003 Mine Category or subcategory.

(a) All underground mines, and the surface mills of Subcategory I–C mines (gilsonite), shall be placed into one of the following categories or subcategories to protect persons against the hazards of methane and dusts containing volatile matter. Categories and subcategories are defined as follows:

(1) *Category I* applies to mines that operate within a combustible ore body and either liberate methane or have the potential to liberate methane based on the history of the mine or the geological area in which the mine is located. Category I is divided into Subcategories I–A, I–B, and I–C as follows:

(i) *Subcategory I–A* applies to mines that operate within a combustible ore body and liberate methane and in which—

(A) A concentration of 0.25 percent or more methane has been detected in the mine atmosphere and confirmed by laboratory analysis; or

(B) An ignition of methane has occurred.

(ii) *Subcategory I–B* applies to mines that operate within a combustible ore body and have the potential to liberate methane based on the history of the mine or geological area in which the mine is located and in which—

(A) A concentration of 0.25 percent or more methane has not been detected in the mine atmosphere; and

(B) An ignition of methane has not occurred.

(iii) *Subcategory I–C* applies to mines in which the product extracted is combustible and the dust has a volatile matter content of 60 percent or more measured on a moisture free basis[1].

(2) *Category II* applies to domal salt mines where the history of the mine or geological area indicates the occurrence of or the potential for an outburst.

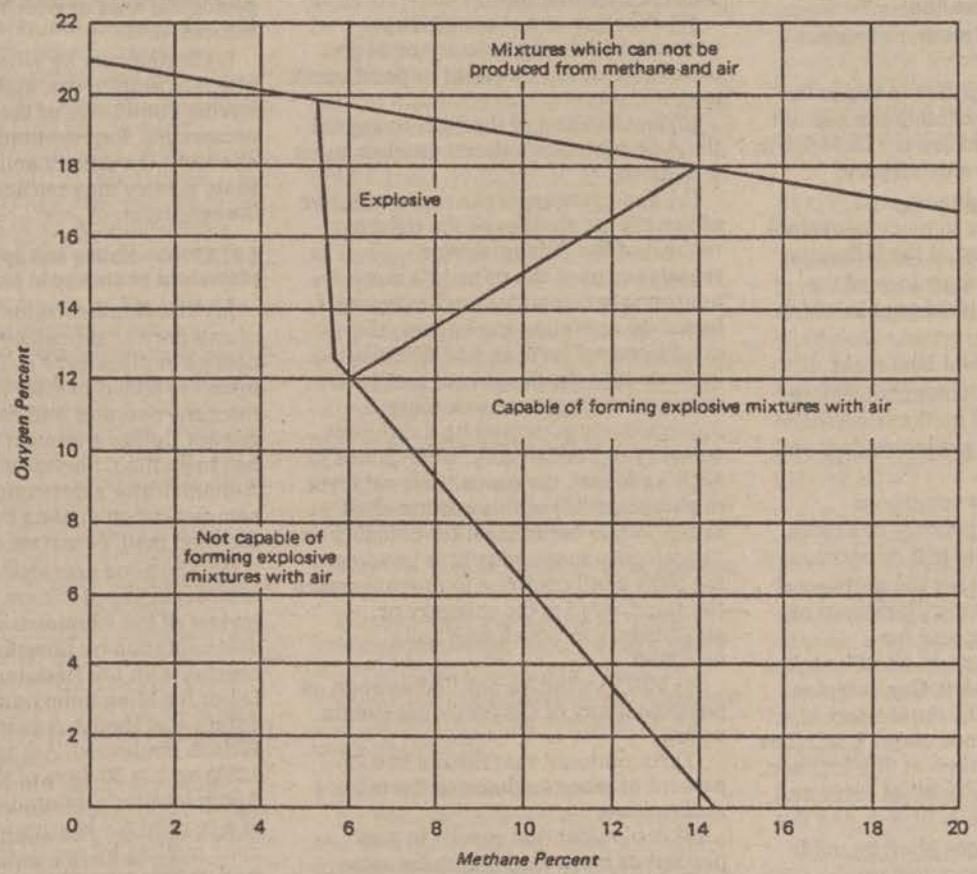
Category II is divided into Subcategories II–A and II–B as follows:

(i) *Subcategory II–A* applies to domal salt mines where an outburst reportable under § 57.22004(c)(1) has occurred.

(ii) *Subcategory II–B* applies to domal salt mines where an outburst reportable under § 57.22004(c)(1) has not occurred, but which have the potential for an outburst based on the history of the mine or geological area in which the mine is located.

(3) *Category III* applies to mines in which noncombustible ore is extracted and which liberate a concentration of methane that is explosive, or is capable of forming explosive mixtures with air, or have the potential to do so based on the history of the mine or the geological area in which the mine is located. The concentration of methane in such mines is explosive or is capable of forming explosive mixtures if mixed with air as illustrated by Table 1 below, entitled "Relation Between Quantitative Composition and Explosibility of Mixtures of Methane and Air".

Table 1



Relation Between Quantitative Composition and Explosibility of Mixtures of Methane and Air.

(4) *Category IV* applies to mines in which noncombustible ore is extracted and which liberate a concentration of methane that is not explosive nor capable of forming explosive mixtures with air based on the history of the mine or the geological area in which the mine is located. The concentration of methane in such mines is not explosive nor capable of forming explosive mixtures if mixed with air as illustrated by Table 1 above, entitled "Relation Between Quantitative Composition and Explosibility of Mixtures of Methane and Air".

[1] Measured by the American Society for Testing and Materials, ASTM D 3175–82, Standard Test Method for Volatile Matter in the Analysis Sample of Coal and Coke. (This document is available at any Metal and Nonmetal Mine Safety and Health District Office of the Mine Safety and Health Administration).

(5) *Category V* applies to petroleum mines. Category V is divided into Subcategories V–A and V–B as follows:

(i) *Subcategory V–A* applies to petroleum mines that operate entirely or partially within an oil reservoir; and all other petroleum mines in which—

(A) A concentration of 0.25 percent or more methane has been detected in the mine atmosphere and confirmed by laboratory analysis; or

(B) An ignition of methane has occurred.

(ii) *Subcategory V–B* applies to petroleum mines that operate outside of and drill into an oil resevoir and in which—

(A) A concentration of 0.25 percent or more methane has not been detected in the mine atmosphere; and

(B) An ignition of methane has not occurred.

(6) *Category VI* applies to mines in which the presence of methane has not been established and are not included in another category or subcategory.

(b) Category or subcategory placement or change in placement shall include consideration of the following:

(1) The history and geology of the mine or of the geological area in which the mine is located;

(2) The ore body and host rock;

(3) The character, amount, duration, origin, and nature of methane emission and the presence of explosive dust and inert gases; and

(4) Whether or not conditions encountered during primary or access development are transient or permanent.

(c)(1) Gas samples for the purpose of category or subcategory placement or change in placement, and for determining action levels, shall be taken in the mine atmosphere. Gas samples taken to determine the nature and extent of an occurrence under § 57.22004 (c) and (d) may be taken at any location, including the source, point of entry and the mine atmosphere.

(2) Tests for methane shall be made with hand-held methanometers, methane monitors, atmospheric monitoring systems, devices used to provide laboratory analysis of samples, or with other equally effective sampling devices. However, only methane samples that have been confirmed by laboratory analysis shall be used for category or subcategory placement or change in placement.

(d) Each mine and mill shall be required to operate in accordance with the safety standards applicable to its particular category or subcategory.

§ 57.22004 Category placement or change in placement.

The Administrator for Metal and Nonmetal Mine Safety and Health (Administrator) shall be responsible for category and subcategory placement, change in placement, and notification of placement of mines.

(a) The Administrator's proposed notice of placement or change in placement shall be sent to the mine operator and the appropriate representative of miners and shall include—

(1) The category or subcategory;

(2) The reasons for placement or change in placement;

(3) The data considered;

(4) The applicable standards and a time schedule for the mine operator to achieve compliance;

(5) Whether or not conditions encountered during primary or access development are transient or permanent; and

(6) Notification of the right to appeal the Administrator's determination under § 57.22005.

(b) The operator or the representative of the miners shall have the right to request of the Administrator reassignment of the mine to a more appropriate category or subcategory if, based on operating experience, the conditions set forth in § 57.22003(b) indicate that the hazards of methane exist under circumstances more appropriately governed by a different category or subcategory. In response to such a request, the procedures set forth in paragraph (d) of this section shall apply. While the request for category or subcategory reassignment is pending, the mine shall continue to operate under the standards for the category or subcategory to which originally assigned.

(c) MSHA shall be notified as soon as possible if any of the following events occur:

(1) An outburst that results in 0.25 percent or more methane in the mine atmosphere;

(2) A blowout that results in 0.25 percent or more methane in the mine atmosphere;

(3) An ignition of methane; or

(4) Air sample results that indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B or Category VI mine.

(d) The Administrator shall promptly appoint an MSHA committee to investigate occurrences reported in accordance with paragraph (c) of this section or requests filed in accordance with paragraph (b) of this section. Upon completion of an investigation, the committee shall make a written report of the findings. These investigations may include an evaluation of the following:

(1) Source, nature, and extent of occurrences;

(2) Conditions under which the incident occurred;

(3) Samples and tests;

(4) Physical conditions at the time of the occurrence;

(5) Charts, logs, and records related to the occurrence;

(6) Whether the occurrence is isolated, continuous, or could recur;

(7) Conditions indicating that the hazards of methane no longer exist or exist under circumstances more appropriately governed by a different category or subcategory;

(8) The geology of the mine and the geological area in which the mine is located; and

(9) Statements by witnesses, company officials, employees, and other persons having knowledge of the mine or the occurrence. Representatives of the mine operator, the miners and the appropriate State agency may participate in the investigation.

§ 57.22005 Notice and appeal of placement or change in placement.

(a) The Administrator's determination of category or subcategory placement or change in placement shall become final upon the 30th day after it is served on the mine operator and representative of miners, unless a request for a hearing has been filed. Service of the Administrator's determination is complete upon mailing by registered or certified mail, return receipt requested.

(b) The mine operator or representative of miners may obtain review of the Administrator's determination by filing a request for a hearing with the Assistant Secretary of Labor for Mine Safety and Health, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203 within 30 days of the Administrator's determination. Service of a request for hearing is completed upon mailing by registered or certified mail, return receipt requested. Requests for a hearing shall be in writing and contain the following information:

(1) Name, address, and mine identification number;

(2) A concise statement of the reason why the Administrator's determination is inappropriate; and

(3) A copy of the Administrator's determination.

(c) The mine operator shall post a copy of the Administrator's determination and the request for a hearing on the mine bulletin board, and

shall maintain the posting until the placement becomes final.

(d) Promptly after receipt of the request for a hearing, the Assistant Secretary shall refer to the Chief Administrative Law Judge, United States Department of Labor, the following:

(1) The request for a hearing;

(2) The Administrator's determination; and

(3) All information upon which the Administrator's determination was based.

(e) The hearing shall be regulated and conducted by an Administrative Law Judge in accordance with 29 CFR Part 18, entitled, "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges." Once the Administrative Law Judge has made an initial decision and served each party, the decision shall be final on the 30th day after service, unless discretionary review is undertaken by the Assistant Secretary or an appeal is filed by the mine operator or representative of the miners under paragraph (f) of this section.

(f) Within 30 days after service of an initial decision of an Administrative Law Judge, the Assistant Secretary for Mine Safety and Health may undertake a discretionary review of the initial decision, or the mine operator, or representative of the miners may appeal the initial decision of the Administrative Law Judge to the Assistant Secretary.

(1) The Assistant Secretary shall give notice of discretionary review to the mine operator and representative of the miners. The mine operator or representative of the miners shall give notice of the appeal to the other party. The notice shall specify the suggested changes and refer to the specific findings of fact, conclusions of law, and terms of the initial decision to be reviewed or appealed. The Assistant Secretary shall fix a time for filing any objections to the suggested changes and supporting reasons.

(2) The Assistant Secretary shall promptly notify the Administrative Law Judge of a discretionary review or an appeal. The entire record of the proceedings shall be transmitted to the Assistant Secretary for review.

(3) The Assistant Secretary shall make the final decision based upon consideration of the record of the proceedings. The final decision may affirm, modify, or set aside in whole or in part, the findings and conclusions contained in the initial decision. A statement of reasons for the action taken shall be included in the final decision. The final decision shall be served upon the mine operator and representative of the miners.

(g) Unless a decision by the Administrator for Metal and Nonmetal Mine Safety and Health, or the initial decision of the Administrative Law Judge, is appealed within 90 days, it becomes final, and is not subject to judicial review for the purposes of 5 U.S.C. 704. Only a decision by the Assistant Secretary shall be considered final Agency action for purposes of judicial review. Any such appeal must be filed in the appropriate circuit of the United States Court of Appeal.

(h) While a final decision of category placement is pending the following procedures shall apply:

(1) Where a mine has been classified as gassy prior to the effective date of these standards, existing gassy mines standards 30 CFR 57.21001 through 57.21101 (1986 Edition) shall continue to be applicable until placement is final.

(2) Where a mine has not been classified as gassy prior to the effective date of these standards and it is placed in Categories I through V, the mine shall comply with Category VI standards (§§ 57.22231, 57.22232, 57.22236, and 57.22238) until placement is final.

(3) Where a mine has been classified in Categories I through V after the effective date of these standards and category reassignment is being considered, the mine shall comply with the standards applicable to the category to which presently assigned until category placement is final.

Fire Prevention and Control

[Note.—The Category or Subcategory applicability of each standard appears in the parentheses of each standard's title line].

§ 57.22101 Smoking (I-A, II-A, III, and V-A mines).

Persons shall not smoke or carry smoking materials, matches, or lighters underground. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

§ 57.22102 Smoking (I-C mines).

(a) Persons shall not smoke or carry smoking materials, matches, or lighters underground or within 50 feet of a mine opening. The operator shall institute a reasonable program to assure that persons entering the mine do not carry such items.

(b) Smoking is prohibited in surface milling facilities except in designated, dust-free smoking areas.

§ 57.22103 Open flames (I-A, II-A, III, and V-A mines).

Open flames shall not be permitted underground except for welding, cutting, and other maintenance operations, and for igniting underground retorts in a Subcategory I-A mine. When using open flames in other than fresh air, or in places where methane may enter the air current, tests for methane shall be conducted by a competent person before work is started and every 10 minutes until the job is completed. Continuous methane monitors with audible alarms may be used after the initital test has been conducted as an alternative to the ten-minute interval testing requirement. Open flames shall not be used in atmospheres containing 0.5 percent or more methane.

§ 57.22104 Open flames (I-C mines).

(a) Open flames, including cutting and welding, shall not be used underground.

(b) Welding and cutting shall not be done within 50 feet of a mine opening unless all persons are out of the mine and the mine opening is covered. The cover shall be a substantial material, such as metal or wood, topped with a layer of wetted material to prevent sparks and flames from entering the mine opening.

§ 57.22105 Smoking and open flames (IV mines).

Smoking or open flames shall not be permitted in a face or raise, or during release of gas from a borehole until tests have been conducted in accordance with § 57.22226 and the methane level has been determined to be below 0.5 percent.

§ 57.22106 Dust containing volatile matter (I-C mines).

Dust containing volatile matter shall not be allowed to accumulate on the surfaces of enclosures, facilities, or equipment used in surface milling in amounts that, if suspended in air, would become an explosive mixture. An explosive mixture of dust containing volatile matter is 0.02 ounce or more per cubic foot of air.

Ventilation

§ 57.22201 Mechanical ventilation (I-A, I-B, I-C, II-A, II-B, III, IV, V-A, and V-B mines).

All mines shall be ventilated mechanically.

§ 57.22202 Main fans (I-A, I-B, I-C, II-A, III, V-A, and V-B mines).

(a) Main fans shall be—

(1) Installed on the surface in noncombustible housings provided with noncombustible air ducts;

(2) Provided with an automatic signal device to give an alarm when the fan stops. The signal device shall be located so that it can be seen or heard by a person designated by the mine operator.

(b) Fan installations shall be—

(1) Offset so that the fan and its associated components are not in direct line with possible explosive forces;

(2) Equipped with explosion-doors, a weak-wall, or other equivalent devices located to relieve the pressure that would be created by an explosion underground. The area of the doors or weak-wall shall be at least equivalent to the average cross-sectional area of the airway.

(c) (1) All main fan-relatd electrical equipment and cables located within or exposed to the forward or reverse airstream shall be approved by MSHA under the appliable requirements of 30 CFR Part 18;

(2) Drive belts and nonmetallic fan blades shall be constructed of static-conducting material; and

(3) Aluminum alloy fan blades shall not contain more than 0.5 percent magnesium. [Paragraph (c)(3) of this section does not apply to Subcategory I–C mines].

(d) When an internal combustion engine is used to power a main fan or as standby power, the engine shall be—

(1) Installed in a noncombustible housing;

(2) Protected from a possible fuel supply fire or explosion; and

(3) Located out of direct line with the forward and reverse airstream provided by the fan. Engine exhaust gases shall be vented to the atomsphere so that exhaust cannot contaminate mine intake air.

(e) For Subcategory I–A mines only: Main exhaust fans shall be equipped with methane monitors to give an alarm when methane in the return air reaches 0.5 percent. The alarm shall be located so that it can be seen or heard by a person designated by the mine operator.

§ 57.22203 Main fan operation (I–C mines).

Main fans shall be operated continuously while ore production is in progress.

§ 75.22204 Main fan operation and inspection (I–A, II–A, III, and V–A mines).

Main fans shall be—

(a) Provided with a pressure-recording system; and

(b) Inspected daily while operating if persons are underground. Certification of inspections shall be made by signature and date. Certifications and pressure recordings shall be retained for at least one year and made available to an authorized representative of the Secretary.

§ 57.22205 Doors on main fans (I–A, II–A, III, and V–A mines).

In mines ventilated by multiple main fans, each main fan installation shall be equipped with noncombustible doors. Such doors shall automatically close to prevent air reversal through the fan. The doors shall be located so that they are not in direct line with explosive forces which could come out of the mine.

§ 57.22206 Main ventilation failure (I–A, II–A, III, and V–A mines).

(a) When there has been a main ventilation failure, such as stoppage of main fans or failure of other components of the main ventilation system, tests for methane shall be conducted in affected active workings until normal air flow has resumed.

(b) If a total failure of ventilation occurs while all persons are out of the mine and the failure lasts for more than 30 minutes, only competent persons shall be allowed underground to examine the mine or to make necessary ventilation changes. Other persons may reenter the mine after the main fans have been operational for at least 30 minutes, or after the mine atmosphere has been tested and contains less than 1.0 percent methane. Persons other than examiners shall not reenter a Subcategory II–A mine until the methane level is less than 0.5 percent.

§ 57.22207 Booster fans (I–A, II–A, III, and V–A mines).

(a) Booster fans shall be approved by MSHA under the applicable requirements of 30 CFR Part 18, and be—

(1) Provided with an automatic signal device located so that it can be seen or heard by a person designated by the mine operator to give an alarm when the fan stops or when methane reaches the following levels:

(i) 1.0 percent at the fan in Subcategory I–A, Category III, and Subcategory V–A mines; and

(ii) 0.5 percent at the fan in Subcategory II–A mines.

(2) Equipped with a device that automatically deenergizes power in affected workings should the fan stop; and

(3) Equipped with starting and stopping controls located at the fan and at another accessible remote location.

(b) Booster fan installations, except for booster fans installed in ducts, shall be—

(1) Provided with doors which open automatically when all fans in the installation stop; and

(2) Provided with an air lock when passage through the fan bulkhead is necessary.

§ 57.22208 Auxiliary fans (I–A, II–A, III, and V–A mines).

(a) Auxiliary fans, except fans used in shops and other areas which have been so designed that methane cannot enter the airway, shall be approved by MSHA under the applicable requirements of 30 CFR Part 18, and be operated so that recirculation is minimized. Auxiliary fans shall not be used to ventilate work places during the interruption of normal mine ventilatioin.

(b) Tests for methane shall be made at auxiliary fans before they are started.

§ 57.22209 Auxiliary fans (I–C mines).

Electric auxiliary fans shall be approved by MSHA under the applicable requirements of 30 CFR Part 18. Tests for methane shall be made at electric auxiliary fans before they are started. Such fans shall not be operated when air passing over or through them contains 0.5 percent or more methane.

§ 57.22210 In-line filters (I–C mines).

Filters or separators shall be installed on air-lift fan systems to prevent explosive concentrations of dust from passing through the fan.

§ 57.22211 Air flow (I–A mines).

The average air velocity in the last open crosscut in pairs or sets of developing entries, or through other ventilation openings nearest the face, shall be at least 40 feet per minute. The velocity of air ventilating each face at a work place shall be at least 20 feet per minute.

§ 57.22212 Air flow (I–C, II–A, and V–A mines).

Air flow across each working face shall be sufficient to carry away any accumulation of methane, smoke, fumes, and dust.

§ 57.22213 Air flow (III mines).

The quantity of air coursed through the last open crosscut in pairs or sets of entries, or through other ventilation openings nearest the face, shall be at least 6,000 cubic feet per minute, or 9,000 cubic feet per minute in longwall and continuous miner sections. The quantity of air across each face at a work place shall be at least 2,000 cubic feet per minute.

§ 57.22214 Changes in ventilation (I–A, II–A, III, and V–A mines).

(a) Changes in ventilation which affect the main air current or any split thereof and which adversely affect the safety of persons in the mine shall be made only when the mine is idle.

(b) Only persons engaged in making such ventilation changes shall be permitted in the mine during changes.

(c) Power shall be deenergized in affected areas prior to making ventilation changes, except power to

monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18. Power shall not be restored until the results of the change have been determined and a competent person has examined affected working places for methane.

§ 57.22215 Separation of intake and return air (I-A, II-A, III, and V-A mines).

Main intake and return air currents shall be coursed through separate mine openings and shall be separated throughout the mine, except—

(a) Where multiple shafts are used for ventilation and a single shaft contains a curtain wall or partition for separation of air currents. Such wall or partition shall be constructed of reinforced concrete or other noncombustible equivalent, and provided with pressure-relief devices.

(b) During development of openings to the surface—

(1) Ventilation tubing may be used for separation of main air currents in the same opening. Flexible ventilation tubing shall have a flame spread rating of 25 or less and shall not exceed 250 feet in length. Rigid ventilation tubing shall be constructed of noncombustible material.

(2) Only development related to making a primary ventilation connection may be performed beyond 250 feet of the shaft.

§ 57.22216 Separation of intake and return air (I-C mines).

The main intake and return air currents in single shafts shall be separated by ventilation tubing, curtain walls, or partitions. Ventilation tubing shall be constructed of noncombustible material. Curtain walls or partitions shall be constructed of reinforced concrete or other noncombustible equivalent, and provided with pressure-relief devices.

§ 57.22217 Seals and stoppings (I-A, I-B, and I-C mines).

All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction and constructed of noncombustible materials, except that stoppings constructed of brattice materials may be used in face areas.

§ 57.22218 Seals and stoppings (III, V-A, and V-B mines).

(a) All seals, and those stoppings that separate main intake from main return airways, shall be of substantial construction, except that stoppings constructed of brattice materials may be used in face areas.

(b) Exposed surfaces on the intake side of stoppings constructed of combustible materials or foam-type blocks shall be coated with at least one inch of construction plaster containing perlite and gypsum; at least one inch of expanded vermiculite, Portland cement and limestone; or other coatings with equivalent fire resistance. Stoppings constructed to phenolic foam blocks at least 12 inches thick need not be coated for fire resistance. All foam-type blocks used for stopping construction shall be solid.

(c) Exposed surfaces on the fresh air side of seals constructed of combustible materials shall be coated with at least one inch of construction plaster containing perlite and gypsum; at least one inch of expanded vermiculite, Portland cement and limestone; or other coatings with equivalent fire resistance. Foam-type blocks shall not be used for seals.

§ 57.22219 Seals and stoppings (II-A mines).

(a) Exposed surfaces on the intake side of stoppings constructed of combustible materials, except brattice, shall be coated with at least one inch of construction plaster containing perlite and gypsum; at least one inch of expanded vermiculite, Portland cement and limestone; or other coatings with equivalent fire resistance.

(b) Seals shall be of substantial construction. Exposed surfaces on the fresh air side of seals constructed of combustible materials shall be coated with at least one inch of construction plaster containing perlite and gypsum; at least one inch of expanded vermiculite, Portland cement and limestone; or other coatings with equivalent fire resistance. Foam-type blocks shall not be used for seals.

§ 57.22220 Air passing unsealed areas (I-A, II-A, III, and V-A mines).

Air that has passed by or through unsealed abandoned or unsealed inactive areas and contains 0.25 percent or more methane shall—

(a) Be coursed directly to a return airway;

(b) Be tested daily for methane by a competent person; and

(c) Not be used to ventilate work places.

§ 57.22221 Overcast and undercast construction (I-A, II-A, III, and V-A mines).

Overcasts and undercasts shall be—

(a) Of substantial construction;

(b)(1) Constructed of noncombustible materials; or

(2) Where constructed of combustible materials, the outside surfaces shall be coated with at least one inch of construction plaster containing perlite and gypsum; at least one inch of expanded vermiculite, Portland cement and limestone; or other coatings with equivalent fire resistance;

(c) Kept clear of obstructions.

§ 57.22222 Ventilation materials (I-A, I-B, I-C, II-A, III, V-A, and V-B mines).

Brattice cloth and ventilation tubing shall have a flame spread rating of 25 or less.

§ 57.22223 Crosscuts before abandonment (III mines).

A means of ventilating faces shall be provided before workings are abandoned in unsealed areas, unless crosscuts are provided within 30 feet of the face.

§ 57.22224 Auxiliary equipment stations (I-A and III mines).

Battery charging stations, compressor stations, pump stations, and transformer stations shall be installed in intake air at locations which are sufficiently ventilated to prevent the accumulation of methane.

§ 57.22225 Auxiliary equipment stations (I-C mines).

Battery charging stations, compressor stations, and electrical substations shall not be installed underground or within 50 feet of a mine opening.

§ 57.22226 Testing for methane (IV mines).

Tests for methane shall be conducted in the mine atmosphere by a competent person—

(a) At least once each shift prior to starting work in each face and raise; and

(b) Upon initial release of gas into the mine atmosphere from boreholes.

§ 57.22227 Approved testing devices (I-A, I-B, I-C, II-A, II-B, III, IV, V-A, and V-B mines).

(a) Methane monitoring devices and portable, battery-powered, self-contained devices used for measuring methane, other gases, and contaminants in mine air shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18, 21, 22, 23, 27, and 29. Such devices shall be maintained in accordance with manufacturers' instructions, or an equivalent maintenance and calibration procedure.

(b) (1) Flame safety lamps shall not be used to test for methane except as supplementary devices.

(2) Flame safety lamps shall not be used in Subcategory I-C mines.

(c) (1) If electrically powered, remote sensing devices are used, that portion of the instrument located in return air or other places where combustible gases may be present shall be approved by MSHA under the applicable

requirements of 30 CFR Parts 18, 22, 23, 27, and 29.

(2) If air samples are delivered to remote analytical devices through sampling tubes, such tubes shall be provided with in-line flame arrestors. Pumping equipment and analytical instruments shall be located in intake air.

§ 57.22228 Preshift examination (I-A, I-C, II-A, III, and V-A mines).

(a) Preshift examinations shall be conducted within three hours prior to the start of the shift for which the examination is being made.

(b) Prior to the beginning of a shift following an idle shift, a competent person shall test the mine atmosphere for methane at all work places before persons other than examiners enter the mine.

(c) When one shift immediately follows another, a competent person shall test the mine atmosphere at each active working face for methane before work is started on that shift.

(d) A competent person shall test the mine atmosphere at each face blasted before work is started.

(e) Vehicles used for transportation when examining the mine shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36.

§ 57.22229 Weekly testing (I-A, III, and V-A mines).

(a) The mine atmosphere shall be tested for methane and carbon monoxide at least once every seven days by a competent person or an atmospheric monitoring system, or a combination of the two. Such testing shall be done at the following locations:

(1) The return of each split where it enters the main return;

(2) Adjacent to retreat areas, if accessible;

(3) At least one seal of each sealed area, if accessible;

(4) Main returns;

(5) At least one entry of each intake and return;

(6) Idle workings; and

(7) Return air from unsealed abandoned workings.

(b) The volume of air (velocity in Subcategory I-A mines) shall be measured at least once every seven days by a competent person. Such measurement shall be done at the following locations:

(1) Entering main intakes;

(2) Leaving main returns;

(3) Entering from each main split;

(4) Returning from each main split;

(5) In the last open crosscuts or other ventilation openings nearest the active faces where the air enters the return.

(c) Where such examinations disclose hazardous conditions, affected persons shall be informed and corrective action shall be taken.

(d) Certification of examinations shall be made by signature and date. Certifications shall be retained for at least one year and made available to authorized representatives of the Secretary.

§ 57.22230 Weekly testing (II-A mines).

(a) The mine atmosphere shall be tested for methane at least once every seven days by a competent person or an atmospheric monitoring system, or a combination of the two. Such testing shall be done at the following locations:

(1) Active mining faces and benches;

(2) Main returns;

(3) Returns from idle workings;

(4) Returns from abandoned workings; and

(5) Seals.

(b) Where such examinations disclose hazardous conditions, affected persons shall be informed and corrective action shall be taken.

(c) Certification of examinations shall be made by signature and date. Certifications shall be kept for at least one year and made available to authorized representatives of the Secretary.

§ 57.22231 Actions at 0.25 percent methane (I-B, II-B, V-B, and VI mines).

If methane reaches 0.25 percent in the mine atmosphere, changes shall be made to improve ventilation, and MSHA shall be notified immediately.

§ 57.22232 Actions at 0.25 percent methane (I-B, II-A, II-B, IV, V-B, and VI mines).

If methane reaches 0.25 percent in the mine atmosphere, ventilation changes shall be made to reduce the level of methane. Until methane is reduced to less than 0.5 percent, electrical power shall be deenergized in affected areas, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18. Diesel equipment shall be shut off or immediately removed from the area and no other work shall be permitted in affected areas.

§ 57.22233 Actions at 0.25 percent methane (I-C mines).

If methane reaches 0.25 percent in the mine atmosphere, ventilation changes shall be made to reduce the level of methane. Until methane is reduced to less than 0.5 percent, no other work shall be permitted in affected areas.

§ 57.22234 Actions at 1.0 percent methane (I-A, I-B, III, V-A, and V-B mines).

(a) If methane reaches 1.0 percent in the mine atmosphere, ventilation changes shall be made to reduce the methane to less than 0.5 percent. Until such changes are achieved—

(1) All persons other than competent persons necessary to make the ventilation changes shall be withdrawn from affected areas;

(2) Electrical power shall be deenergized in affected areas, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18; and

(3) Diesel equipment shall be shut off or immediately removed from the area.

(b) If methane reaches 1.0 percent at a main exhaust fan, electrical power underground shall be deenergized, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18, and all persons shall be withdrawn from the mine.

(c) If methane reaches 1.0 percent at a work place and there has been a failure of the main ventilation system, all persons shall be withdrawn from the mine.

§ 57.22235 Actions at 1.0 percent methane (I-C, II-A, II-B, and IV mines).

(a) If methane reaches 1.0 percent in the mine atmoshpere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from affected areas until methane is reduced to less than 0.5 percent.

(b) If methane reaches 1.0 percent at a work place and there has been a failure of the main ventilation system, all persons shall be withdrawn from the mine.

§ 57.22236 Actions at 1.0 percent methane (VI mines).

If methane reaches 1.0 percent in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from affected areas until methane is reduced to less than 0.5 percent.

§ 57.22237 Actions at 2.0 to 2.5 percent methane in bleeder systems (I-A and III mines).

If methane reaches 2.0 percent in bleeder systems at the point where a bleeder split enters a main return split, mining shall not be permitted on ventilation splits affected by the bleeder system. If methane has not been reduced to less than 2.0 percent within 30 minutes, or if methane levels reach 2.5 percent, all persons other than competent persons necessary to take

corrective action shall be withdrawn from affected areas.

§ 57.22238 Actions at 2.0 percent methane (I-B, II-B, V-B, and VI mines).

If methane reaches 2.0 percent in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until methane is reduced to less than 0.5 percent.

§ 57.22239 Actions at 2.0 percent methane (IV mines).

If methane reaches 2.0 percent in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until methane is reduced to less than 0.5 percent. MSHA shall be notified immediately.

§ 57.22240 Actions at 2.0 percent methane (V-A mines).

If methane reaches 2.0 percent in the mine atmosphere, all persons other than competent persons necessary to make ventilation changes shall be withdrawn from the mine until methane is reduced to less than 1.0 percent.

§ 57.22241 Advance face boreholes (I-C mines).

(a) Boreholes shall be drilled at least 25 feet in advance of a face whenever the work place is within—

(1) 50 feet of a surveyed abandoned mine or abandoned workings which cannot be inspected; or

(2) 200 feet of an unsurveyed abandoned mine or abandoned workings which cannot be inspected.

(b) Boreholes shall be drilled in such a manner to insure that the advancing face will not accidently break into an abandoned mine or abandoned working.

Equipment

§ 57.22301 Atmospheric monitoring systems (I-A, II-A, and V-A mines).

(a) An atmospheric monitoring system shall be installed to provide surface readings of methane concentrations in the mine atmosphere from underground locations. Components of the system shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18, 22, 23, and 27; or be determined by MSHA under 30 CFR Part 18 to be intrinsically safe or explosion-proof.

(b) Atmospheric monitoring systems shall—

(1) Give warnings on the surface and underground when methane at any sensor reaches 0.5 percent or more, and when power to a sensor is interrupted. Warning devices shall be located so that they can be seen and heard by a person designated by the mine operator; and

(2) Automatically deenergize power in affected areas, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18, when methane at any sensor reaches—

(i) 1.0 percent in a Subcategory I-A or V-A mine; or

(ii) 0.5 percent while persons are underground and 1.0 percent during blasting in a Subcategory II-A mine. Timing devices are permitted to avoid nuisance tripping for periods not to exceed 30 seconds, except during blasting or the ventilation time following a blast in a Subcategory II-A mine.

(c) Atmospheric monitoring systems shall be checked with a known mixture of methane, and calibrated if necessary at least once every 30 days. Certification of calibration tests shall be made by signature and date. Certifications of tests shall be retained for at least one year and made available to authorized representatives of the Secretary.

§ 57.22302 Approved equipment (I-A and V-A mines).

Equipment used in or beyond the last open crosscut shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36. Equipment shall not be operated in atmospheres containing 1.0 percent or more methane.

§ 57.22303 Approved equipment (I-C mines).

Only electrical equipment that is approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 29, shall be used underground, except for submersible sump pumps.

§ 57.22304 Approved equipment (II-A mines).

(a) Cutting and drilling equipment used at a face or bench shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36.

(b) While cutting or drilling is in progress, equipment not approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36 shall remain at least 100 feet from the face or bench being mined.

(c) Tests for methane shall be conducted immediately before nonapproved equipment is taken to a face or bench after blasting.

(d) Mine power transformers and stationary equipment not approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36 shall be installed in fresh air or downwind from an atmospheric methane monitor sensor.

§ 57.22305 Approved equipment (III mines).

Equipment used in or beyond the last open crosscut and equipment used in areas where methane may enter the air current, such as pillar recovery workings, longwall faces and shortwall faces, shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36. Equipment shall not be operated in atmospheres containing 1.0 percent or more methane.

§ 57.22306 Methane monitors (I-A mines).

(a) Methane monitors shall be installed on continuous mining machines, longwall mining systems, and on loading and haulage equipment used in or beyond the last open crosscut.

(b) The monitors shall—

(1) Give warning at 1.0 percent methane;

(2) Automatically deenergize electrical equipment, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18, and prevent starting such equipment when methane levels reach 1.5 percent. Diesel equipment shall be shut off or immediately removed from the affected area; and

(3) Automatically deenergize electrical equipment when power to a sensor is interrupted. Diesel equipment shall not be operated if the monitor is inoperative.

(c) Sensing units of monitors shall be positioned at a location which provides for the most effective measurement of methane.

§ 57.22307 Methane monitors (II-A mines).

(a) Methane monitors shall be installed on continuous mining machines, longwall mining systems, bench and face drills, and undercuttig machines used in or beyond the last open crosscut.

(b) The monitors shall—

(1) Give warning at 0.5 percent methane;

(2) Automatically deenergize electrical equipment, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18, and prevent starting such equipment when methane levels reach 1.0 percent; and

(3) Automatically deenergize the equipment when power to a sensor is interrupted.

(c) Sensing units of monitors shall be positioned at a location which provides for the most effective measurement of methane.

§ 57.22308 Methane monitors (III mines).

(a) Methane monitors shall be installed on continuous mining machines and longwall mining systems.

(b) The monitors shall—

(1) Give warning at 1.0 percent methane;

(2) Automatically deenergize electrical equipment, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18, and prevent starting such equipment when methane levels reach 1.5 percent; and

(3) Automatically deenergize the equipment when power to a sensor is interrupted.

(c) Sensing units of monitors shall be positioned at a location which provides for the most effective measurement of methane.

§ 57.22309 Methane monitors (V-A mines).

(a) Methane monitors shall be installed on continuous mining machines used in or beyond the last open crosscut.

(b) The monitors shall—

(1) Give warning at 1.0 percent methane.

(2) Automatically deenergize electrical equipment, except power to monitoring equipment determined by MSHA to be intrinsically safe under 30 CFR Part 18, and prevent starting of such equipment when methane levels reach 1.5 percent; and

(3) Automatically deenergize the equipment when power to a sensor is interrupted.

(c) Sensing units of monitors shall be positioned at a location which provides for the most effective measurement of methane.

§ 57.22310 Electrical cables (I-C mines).

Electrical cables used to power submersible sump pumps shall be approved by MSHA under 30 CFR 18.64, or be installed in continuous metal conduit or metal pipe. The ends of such conduit or pipe shall be sealed to prevent entry of explosive gas or dust.

§ 57.22311 Electrical cables (II-A mines).

Only jacketed electrical cables, which are approved by MSHA under 30 CFR 18.64, shall be used to supply power to distribution boxes and electrical equipment operating in face and bench areas.

§ 57.22312 Distribution boxes (II-A and V-A mines).

Distribution boxes containing short circuit protection for trailing cables of approved equipment shall be approved by MSHA under 30 CFR Part 18.

§ 57.22313 Explosion-protection systems (I-C mines).

Pressure-relief systems including vents, or explosion suppression systems, shall be provided on explosive dust handling and processing equipment and on facilities housing such equipment. Vents shall be installed so that forces are directed away from persons should an explosion occur. The ratio of vent size to internal size of the equipment or facility shall not be less than one square foot of vent for each 80 cubic feet of volume or space.

§ 57.22314 Flow-control devices (V-A and V-B mines).

Oil recovery drill holes that penetrate oil bearing formations shall have devices to control the release of liquid hydrocarbons and hazardous gases during the drilling process. Such devices may be recovered for reuse after the formation has been depressurized or the well or borehole has been capped or connected to a collection system.

§ 57.22315 Self-contained breathing apparatus (V-A mines).

Self-contained breathing apparatus of a duration to allow for escape from the mine and sufficient in number to equip all persons underground shall be strategically located throughout the mine. Such apparatus shall be approved by MSHA under the applicable requirements of 30 CFR Part 11, and shall be maintained in accordance with manufacturers' specifications. This standard does not apply to double entry mining systems where crosscut intervals do not exceed 250 feet.

Underground Retorts

§ 57.22401 Underground retorts (I-A and I-B mines).

(a) Retorts shall be provided with—

(1) Two independent power sources for main mine ventilation fans and those fans directly ventilating retort bulkheads, and for retort blowers, and provisions for switching promptly from one power source to the other; and

(2) An alarm system for blower malfunctions and an evacuation plan to assure safety of personnel in the event of a failure.

(b) Prior to the ignition of underground retorts, a written ignition and operation plan shall be submitted to the MSHA District Manager for the area in which the mine is located. The mine operator shall comply with all provisions of the retort plan. The retort plan shall include—

(1) Acceptable levels of combustible gases and oxygen in retort off-gases during start-up and during burning; levels at which corrective action will be initiated; levels at which personnel will be removed from the retort areas, from the mine, and from endangered surface areas; and the conditions for reentering the mine;

(2) Specification and locations of off-gas monitoring procedures and equipment;

(3) Specifications for construction of retort bulkheads and seals, and their locations;

(4) Procedures for ignition of a retort and for reignition following a shutdown; and

(5) Details of area monitoring and alarm systems for hazardous gases and actions to be taken to assure safety of personnel.

Illumination

§ 57.22501 Personal electric lamps (I-A, I-B, I-C, II-A, II-B, III, IV, V-A, and V-B mines).

Electric lamps used for personal illumination shall be approved by MSHA under the requirements of 30 CFR Parts 19 or 20, as applicable.

Explosives

§ 57.22601 Blasting from the surface (I-A mines).

(a) All development, production, and bench rounds shall be initiated from the surface after all persons are out of the mine. Persons shall not enter the mine until ventilating air has passed over the blast area and through at least one atmospheric monitoring sensor.

(b) After blasting, if the monitoring system indicates that methane in the mine is less than 1.0 percent, persons may enter the mine. All places blasted shall be tested for methane by a competent person before work is started.

(c) If the monitoring system indicates the presence of 1.0 percent or more methane, persons other than examiners shall not enter the mine until the mine has been examined by a competent person and the methane content has been reduced to less than 1.0 percent.

(d) Vehicles used for transportation when examining the mine shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36.

§ 57.22602 Blasting from the surface (I-C mines).

(a) All blasting shall be initiated from the surface after all persons are out of the mine and any connecting mines.

(b) Persons shall not enter the mine until a competent person has examined the blast sites and methane concentrations are less than 0.5 percent.

§ 57.22603 Blasting from the surface (II-A mines).

(a) All development, production, and bench rounds shall be initiated from the surface after all persons are out of the mine. Persons shall not enter the mine until the mine has been ventilated for at least 15 minutes and the ventilating air has passed over the blast area and through at least one atmospheric monitoring sensor.

(b) If the monitoring system indicates that methane in the mine is less than 0.5 percent, competent persons may enter the mine to test for methane in all blast areas.

(c) If the monitoring system indicates that methane in the mine is 0.5 percent or more, the mine shall be ventilated and persons shall not enter the mine until the monitoring system indicates that methane in the mine is less than 0.5 percent.

(d) If the monitoring system is inoperable or malfunctions, the mine shall be ventilated for at least 45 minutes and the mine power shall be deenergized before persons enter the mine. Only competent persons necessary to test for methane may enter the mine until the methane in the mine is less than 0.5 percent.

(e) Vehicles used for transportation when examining the mine shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36. Vehicles shall not be used to examine the mine if the monitoring system is inoperable or has malfunctioned.

§ 57.22604 Blasting from the surface (II-B mines).

All development, production, and bench rounds shall be initiated from the surface after all persons are out of the mine. Persons other than those designated by the mine operator to make methane tests shall not enter the mine until all blast areas have been tested for methane.

§ 57.22605 Blasting from the surface (V-A mines).

(a) All development and production blasting shall be initiated from the surface after all persons are out of the mine. Persons shall not enter the mine until ventilating air has passed over the blast area and through at least one atmospheric monitoring sensor.

(b) If the monitoring system indicates that methane in the mine is less than 1.0 percent, persons may enter the mine, and all places blasted shall be tested for methane by a competent person before work is started.

(c) If the monitoring system indicates the presence of 1.0 percent or more methane, persons other than examiners shall not enter the mine until the mine has been examined by a competent person and the methane level is less than 1.0 percent.

(d) Vehicles used for transportation when examining the mine shall be approved by MSHA under the applicable requirements of 30 CFR Parts 18 through 36.

(e) This standard applies only to mines blasting within an oil reservoir.

§ 57.22606 Explosive materials and blasting units (III mines).

(a) Mine operators shall notify the appropriate MSHA District Manager of all nonapproved explosive materials and blasting units to be used prior to their use. Explosive materials used for blasting shall be approved by MSHA under 30 CFR Part 15, or nonapproved explosive materials shall be evaluated and determined by the District Manager to be safe for blasting in a potentially gassy environment. The notice shall also include the millisecond-delay interval between successive shots and between the first and last shot in a round.

(b) Faces shall be examined for proper placement of holes, possible breakthrough, and water. Ammonium nitrate blasting agents shall not be loaded into wet holes.

(c) Multiple-shot blasts shall be initiated with detonators encased in copper-based alloy shells. Aluminum and aluminum alloy-cased detonators, nonelectric detonators, detonating cord, and safety fuses shall not be used. All detonators in a round shall be made by the same manufacturer.

(d) Nonapproved explosives shall be used only as primers with ammonium nitrate-fuel oil blasting agents. Such primers shall be placed at the back or bottom of the hole.

(e) Blast holes shall be stemmed with a noncombustible material in an amount to confine the explosive charge. Breakthrough holes shall be stemmed at both ends.

(f) Mudcaps or other nonapproved unconfined shots shall not be blasted.

(g)(1) Blasting units shall be approved by MSHA under 30 CFR Part 25; or

(2) Blasting units used to fire more than 20 detonators shall provide at least 2 amperes through each detonator but not more than 100 amperes through one ohm, and provide necessary current for at least the first 5 milliseconds with a cutoff not to exceed 10 milliseconds.

§ 57.22607 Blasting on shift (III mines).

When blasting on shift, tests for methane shall be made in the mine atmosphere by a competent person before blasting. Blasting shall not be done when 1.0 percent or more methane is present.

§ 57.22608 Secondary blasting (I-A, II-A, and V-A mines).

Prior to secondary blasting, tests for methane shall be made in the mine atmosphere at blast sites by a competent person. Secondary blasting shall not be done when 0.5 percent or more methane is present.

Appendix I to Subpart T—Standard Applicability by Category or Subcategory

Subcategory I-A

57.22101
57.22103
57.22201
57.22202
57.22204
57.22205
57.22206
57.22207
57.22208
57.22211
57.22214
57.22215
57.22217
57.22220
57.22221
57.22222
57.22224
57.22227
57.22228
57.22229
57.22234
57.22237
57.22301
57.22302
57.22306
57.22401
57.22501
57.22601
57.22608

Subcategory I-B

57.22201
57.22202
57.22217
57.22222
57.22227
57.22231
57.22232
57.22234
57.22238
57.22401
57.22501

Subcategory I-C

57.22102
57.22104
57.22106
57.22201
57.22202
57.22203
57.22209
57.22210
57.22212
57.22216
57.22217
57.22222
57.22225
57.22227
57.22228

57.22233
57.22235
57.22241
57.22303
57.22310
57.22313
57.22501
57.22602

Subcategory II–A

57.22101
57.22103
57.22201
57.22202
57.22204
57.22205
57.22206
57.22207
57.22208
57.22212
57.22214
57.22215
57.22219
57.22220
57.22221
57.22222
57.22227
57.22228
57.22230
57.22232
57.22235
57.22301
57.22304
57.22307
57.22311
57.22312
57.22501
57.22603
57.22608

Subcategory II–B

57.22201
57.22227
57.22231
57.22232
57.22235
57.22238
57.22501
57.22604

Category III

57.22101
57.22103
57.22201
57.22202
57.22204
57.22205
57.22206
57.22207
57.22208
57.22213
57.22214
57.22215
57.22218
57.22220
57.22221
57.22222
57.22223
57.22224
57.22227
57.22228
57.22229
57.22234
57.22237
57.22305
57.22308
57.22501
57.22606
57.22607

Category IV

57.22105
57.22201
57.22226
57.22227
57.22232
57.22235
57.22239
57.22501

Subcategory V–A

57.22101
57.22103
57.22201
57.22202
57.22204
57.22205
57.22206
57.22207
57.22208
57.22212
57.22214
57.22215
57.22218
57.22220
57.22221
57.22222
57.22227
57.22228
57.22229
57.22234
57.22240
57.22301
57.22302
57.22309
57.22312
57.22314
57.22315
57.22501
57.22605
57.22608

Subcategory V–B

57.22201
57.22202
57.22218
57.22222
57.22227
57.22231
57.22232
57.22234
57.22238
57.22314
57.22501

Category VI

57.22231
57.22232
57.22236
57.22238

[Note.—Appendices II and III will appear in the Finding Aids Section of 30 CFR Parts 0–199.]

APPENDIX II.—REDESIGNATION TABLE

Existing No.	Final rule No.
57.21000	57.22001
57.21001	57.22003
57.21002	Deleted.
57.21010	57.22101

APPENDIX II.—REDESIGNATION TABLE—Continued

Existing No.	Final rule No.
	57.22102
	57.22105
57.21011	57.22103
	57.22104
	57.22105
57.21012	57.22103
	57.22104
	57.22105
57.21013	57.22103
	57.22104
	57.22105
57.21020	57.22202
57.21021	57.22203
	57.22204
57.21022	57.22215
	57.22216
57.21023	57.22215
	57.22216
57.21024	57.22206
57.21025	57.22206
57.21027	57.22206
57.21028	57.22207
57.21029	57.22207
57.21030	57.22208
	57.22209
57.21031	Deleted.
57.21033	57.22211
	57.22212
	57.22213
57.21034	57.22211
	57.22212
	57.22213
57.21035	57.22229
	57.22230
57.21036	57.22224
	57.22225
57.21038	57.22214
57.21039	57.22231
	57.22232
	57.22233
	57.22234
57.21040	57.22232
	57.22234
	57.22235
	57.22236
	57.22237
	57.22238
	57.22239
	57.22240
	57.22220
57.21041	57.22220
57.21042	57.22220
57.21043	Deleted.
57.21044	57.22217
	57.22218
	57.22219
57.21045	57.22217
	57.22218
	57.22219
57.21046	Deleted.
57.21048	Deleted.
57.21049	57.22222
57.21050	Deleted.
57.21051	57.22223
57.21052	Deleted.
57.21053	57.22217
	57.22218
	57.22219
57.21055	57.22221

APPENDIX II.—REDESIGNATION TABLE—Continued

Existing No.	Final rule No.
57.21056	Deleted.
57.21057	Deleted.
57.21058	57.22221
57.21059	57.22228
57.21061	Deleted.
57.21062	Deleted.
57.21064	57.22227
57.21065	57.22229
57.22230	
57.21066	57.22229
	57.22230
57.21067	57.22201
57.21068	57.22211
	57.22212
	57.22213
57.21069	57.22205
57.21076	57.22232
	57.22234
	57.22302
	57.22305
57.21077	Deleted.
57.21078	57.22302
	57.22303
	57.22304
	57.22305
57.21079	57.22313
57.21080	57.22306
	57.22307
	57.22308
	57.22309
57.21090	57.22501
57.21095	57.22606
57.21096	57.22606
57.21097	57.22606
57.21098	Deleted.
57.21099	57.22607
57.21100	57.22607
57.21101	57.22606

Appendix I—Derivation Table

Final rule No.	Proposed rule No.	Existing No.
57.22001	57.30001	57.21000
57.22002	57.30002	New
57.22003	57.30003	57.21001
57.22004	57.30004	New
57.22005	57.30005	New
57.22101	57.31101	57.21010
	57.34101	
	57.36101	
	57.38101	
57.22102	57.33101	57.21010
57.22103	57.31102	57.21011
	57.34102	57.21012
	57.36102	57.21013
	57.38102	
57.22104	57.33102	57.21011
		57.21012
		57.21013
57.22105	57.37101	57.21010
		57.21011
		57.21012
		57.21013
57.22106	57.33103	New
57.22201	57.31229	57.21067
	57.32222	
	57.33223	
	57.34226	
	57.35229	
	57.36229	
	57.37202	
	57.38229	
	57.39229	
57.22202	57.31201	57.21020
	57.32201	
	57.33201	
	57.34201	
	57.35201	
	57.36201	
	57.37201	
	57.38201	
	57.39201	
57.22203	57.33202	57.21021
57.22204	57.31202	57.21021
	57.34202	
	57.36202	
	57.38202	
57.22205	57.31230	57.21069
	57.34227	
	57.36231	
	57.38231	
57.22206	57.31205	57.21024
	57.34205	57.21025
	57.36205	57.21027
	57.38205	
57.22207	57.31208	57.21028
	57.32207	57.21029
	57.34208	
	57.36208	
	57.38208	
57.22208	57.31209	57.21030
	57.34209	
	57.36209	
	57.38209	
57.22209	57.33209	57.21030
57.22210	57.33208	New
57.22211	57.31210	57.21033
		57.21034
		57.21068
57.22212	57.33210	57.21033
	57.34219	57.21034
	57.38210	57.21068
57.22213	57.36210	57.21033
		57.21034
		57.21068
57.22214	57.31213	57.21038
	57.34210	
	57.36213	
	57.38213	
57.22215	57.31203	57.21022
	57.34203	57.21023
	57.36203	
	57.38203	
57.22216	57.33203	57.21022
		57.21023
57.22217	57.31218	57.21044
	57.32213	57.21045
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	57.36218	57.21045
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	57.36212	
57.22225	57.33212	57.21036
57.22226	57.37204	New
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	57.36211	57.21066
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57.22240	57.38215	57.21040
57.22241	57.33701	New
57.22301	57.31301	New
	57.34301	

Final rule No.	Proposed rule No.	Existing No.
	57.38301	.....
	57.39301	.....
57.22302	57.31303	57.21076
	57.38302	57.21078
57.22303	57.33304	57.21078
57.22304	57.34303	57.21078
57.22305	57.36302	57.21076
		57.21078
57.22306	57.31305	57.21080
57.22307	57.34305	57.21080
57.22308	57.36303	57.21080
57.22309	57.38303	57.21080
	57.39303	.....
57.22310	57.33303	New
57.22311	57.34302	New
57.22312	57.34304	57.21079
	57.38305	.....
57.22313	57.33302	New
57.22314	57.38306	New
	57.39306	.....
57.22315	57.38307	New
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	57.34501	.....
	57.36501	.....
	57.37501	.....
	57.38501	.....
	57.39501	.....
57.22601	57.31601	New
57.22602	57.33603	New
57.22603	57.34601	New
57.22604	57.35601	New
57.22605	57.38601	New
57.22606	57.36601	57.21095
		57.21096
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57.22608	57.31602	New
	57.34602	.....
	57.38602	.....

[FR Doc. 87-14978 Filed 6-29-87; 1:11 pm]
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Wednesday
July 1, 1987

Part X

Department of Education

34 CFR Part 32

Salary Offset to Recover Overpayment of Pay or Allowances from Department of Education Employees; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Part 32

Salary Offset To Recover Overpayments of Pay or Allowances From Department of Education Employees

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues regulations for collecting an overpayment of pay or allowances by involuntary offset against the disposable pay of a current or former employee of the Department of Education (ED) who is entitled to pay from ED or another agency. These regulations implement amendments authorizing offset under the Debt Collection Act of 1982, Public Law 97–365. An employee who has been overpaid will be given the opportunity to enter into a voluntary repayment agreement or to show that the amount of the involuntary offset from disposable pay will create an extreme financial hardship. The employee may request a hearing to contest the Secretary's determination of the existence or amount of the overpayment and an involuntary repayment schedule.

EFFECTIVE DATE: These regulations take effect July 31, 1987.

FOR FURTHER INFORMATION CONTACT: Charles J. Walter, U.S. Department of Education, Personnel Resource Management Service, 400 Maryland Avenue, SW., Room 1083, Washington, DC 20202. Telephone: (202) 245–3087.

SUPPLEMENTARY INFORMATION:

Background

Prior to passage of the Debt Collection Act of 1982, Pub. L. 97–365, the heads of agencies were authorized under section 5514 of Title 5 of the United States Code to offset from the current pay of Federal employees an erroneous payment by the agency. The amendments to 5 U.S.C. 5514 made by the Debt Collection Act of 1982 expand that authority to offset debts owed to the United States against current pay but impose new procedural requirements and limit the offset to 15 percent of the employee's current pay. The Debt Collection Act of 1982 also amended the Federal Claims Collection Act, now codified at 31 U.S.C. 3711 *et seq.*, and authorized agency heads to collect debts owed to the United States by involuntary offset. Offset under this statute is not limited to current pay, nor does it have a 15 percent limit.

On September 11, 1984, the Secretary published a Notice of Proposed Rulemaking soliciting comments from interested parties concerning these regulations; no comments were received. On July 31, 1986, the Department conducted negotiations on these proposed regulations with the American Federation of Government Employees, Council No. 252. Changes to the proposed regulations resulting from these negotiations are incorporated in the final regulations. The Secretary now issues final regulations to implement the amendments to 5 U.S.C. 5514 and 31 U.S.C. 3716 made by the Debt Collection Act of 1982, to authorize the Department to collect overpayments of pay or allowances made to current or former employees against current disposable pay or against severance pay and/or lump sum annual leave payments.

Overview of These Regulations

The proposed wording of Title 32 has been reworded for clarity, and other clarifying changes have been made in the regulations.

The authority cited in the proposed regulations has been expanded to include 31 U.S.C. 3716 to recognize that the agency may offset overpayments from two commonly recurring sources of pay, severance pay and lump sum annual leave payments, since 5 U.S.C. 5514 allows the recapture of overpayments from current pay only. The 15 percent limitation for offset from current pay does not apply to the offset of severance pay or of lump sum annual leave payments, and conforming changes have been made in the regulations.

Section 32.1, explaining the scope of the regulations, is clarified by rearranging the word order in paragraph (a), and by referring to offset of severance pay and lump sum payments under 31 U.S.C. 3716 in paragraph (b)(3).

Section 32.2, containing definitions used in the regulations, was changed by—

(1) Adding the definitions of "Department", "former employee", and "paying agency;"

(2) Deleting as redundant the word "Federal" in the definition of "disposable pay," and clarifying in that definition that only premiums for "basic" life insurance are excluded from disposable pay, since premiums for "optional" life insurance are intended to be part of disposable pay for purposes of calculating repayment amounts;

(3) Clarifying in the definition of "Pay" that severance pay and/or lump sum annual leave payments are included; and,

(4) Changing the definition of "Secretary" to conform with that used in 34 CFR Part 77.

Section 32.3 outlines the required information which must be contained in the pre-offset notice. Proposed § 32.3(e) was expanded to include the statement "or a specified amount if the disposable pay is severance pay and/or a lump sum annual leave payment," since the 15 percent limitation is not applicable to these types of payments.

Section 32.4 explains the required steps for entering into a voluntary repayment agreement, seeking a waiver, or contesting the financial hardship of the involuntary offset. Grammatical changes were made to the title and to the reference to "waiver" in proposed § 32.4(b). Proposed § 32.4(a) was modified to ensure that the "written repayment agreement" is "approved by the Secretary." The timeframes of "7 days" were changed to "10 days" in proposed §§ 32.4(b) and 32.4(c) as a result of negotiations with the Union. In proposed § 32.4(c), the amount of the involuntary offset was amended from "15 percent" to "the amount of" to cover offset of severance pay and/or lump sum annual leave payments.

Section 32.5 explains the issues covered in the pre-offset hearing. The reference in proposed § 32.5(a)(2) to "deduction of 15 percent of" [the employee's disposable pay] was changed to "the amount of the involuntary deduction from" to cover offset from severance pay and/or lump sum annual leave payments, and a technical correction was made to proposed § 32.5(d).

Section 32.6 outlines the steps which must be taken by an employee requesting a hearing, as well as the documentation which must be provided by the employee. Grammatical changes were made to the references to the 15-day requirement and to "waiver" in proposed § 32.6(a). As a result of negotiations with the Union, the "5 day" timeframes were changed to "10 days" in proposed section 32.6(b) and to "7 days" in proposed § 32.6(e). A grammatical change was also made in the reference to the 3-day requirement in proposed § 32.6(f)(1).

Section 32.7 explains the nature of the pre-offset oral hearing as well as the manner in which it will be conducted. One sentence was deleted in proposed § 32.7(a) as unnecessary. Proposed § 32.7(e)(1) was changed from "in a city other than Washington, D.C." to "in a city outside the Washington, DC area" for greater accuracy.

Section 32.8 describes hearings on the written submissions. No changes to the proposed section were made.

Section 32.9 describes the issuance and content of the written decision. To conform with OPM's final regulations on salary offset, at the end of proposed

§ 32.9(a) the exception "unless the employee requests, and the hearing official grants, a delay in the proceedings" was added.

Section 32.10 describes how and when the deductions process occurs, as well as the amount(s) of the deduction(s). The format of proposed § 32.10(a) was amended without any change in content. Proposed § 32.10(d) was amended to delete as redundant "before collection of the debt is completed" and to add at the end "After the Secretary has complied with the procedures in this part, the Secretary may refer the debt to a paying agency for collection by offset under 5 CFR 550.1108." to comply with the process described in OPM's final regulations.

In issuing these final regulations for offset from the pay of government employees, the Secretary takes note of his earlier decision to consolidate and simplify, where possible, the procedures for administrative review of Department determinations. In determining whether the many existing administrative review procedures could be consolidated into fewer procedures of more general applicability, the Department expects to reassess whether a more general set of hearing procedures could supersede part or all of the hearing procedures described herein. Until new regulations are issued through additional rulemaking, however, these final regulations will govern hearings concerning offset determinations against Departmental employees.

Paperwork Reduction Act of 1980

Under Section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to the Office of Management and Budget's review and approval.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the Order.

List of Subjects in 34 CFR Part 32

Administrative practice and procedure, Debt collection, Federal employees.

Dated: June 2, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance number does not apply.)

The Secretary adds a new Part 32 to Title 34 of the Code of Federal Regulations to read as follows:

PART 32—SALARY OFFSET TO RECOVER OVERPAYMENTS OF PAY OR ALLOWANCES FROM DEPARTMENT OF EDUCATION EMPLOYEES

Sec.

Authority: 5 U.S.C. 5514; 31 U.S.C. 3716.

§ 32.1 Scope.

(a) The Secretary establishes the standards and procedures in this part that apply to the deductions through offset from disposable pay of a current or former employee of the Department of Education to recover overpayments of pay or allowances.

(b) This part does not apply to—

(1) Recovery through offset of an indebtedness to the United States by an employee of the Department under a program administered by the Secretary of Education covered under 34 CFR Part 31;

(2) The offset of an indebtedness to the United States by a Federal employee to satisfy a judgment obtained by the United States against that employee in a court of the United States;

(3) The offset of any payment to an employee of the Department of Education which is expressly allowed under statutes other than 5 U.S.C. 5514, except as to offsets of severance pay and/or lump sum annual leave payments as authorized under 31 U.S.C. 3716;

(4) Offsets under 34 CFR Part 30; or

(5) An employee election of coverage or of a change of coverage under a Federal benefits program which requires periodic deductions from pay if the amount to be recovered was accumulated over four pay periods or less.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.2 Definitions.

The following definitions apply to this part:

"Department" means the Department of Education.

"Disposable pay" means the amount that remains from an employee's pay after required deductions for Federal, State, and local income taxes; Social Security taxes, including Medicare taxes; Federal retirement programs; premiums for health and basic life insurance benefits; and such other deductions that are required by law to be withheld.

"Employee" means a current or former employee of the Department.

"Former employee" means a former employee of the Department who is entitled to pay from the Department or another agency.

"Pay" means basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an individual not entitled to basic pay, other authorized pay, including severance pay and/or lump sum payments for accrued annual leave.

"Paying agency" means a Federal agency currently employing an individual and authorizing the payment of his or her current pay.

"Secretary" means the Secretary of the Department of Education or an official or employee of the Department acting for the Secretary under a delegation of authority.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.3 Pre-offset notice.

At least 30 days before initiating a deduction from the disposable pay of an employee to recover an overpayment of pay or allowances, the Secretary sends a written notice to the employee stating—

(a) The origin, nature and amount of the overpayment;

(b) How interest is charged and administrative costs and penalties will be assessed, unless excused under 31 U.S.C. 3716;

(c) A demand for repayment, providing for an opportunity for the employee to enter into a written repayment agreement with the Department;

(d) Where a waiver of repayment is authorized by law, the employee's right to request a waiver;

(e) The Department's intention to deduct 15 percent of the employee's disposable pay, or a specified amount if the disposable pay is severance pay and/or a lump sum annual leave payment, to recover the overpayment if a waiver is not granted by the Secretary and the employee fails to repay the overpayment or enter into a written repayment agreement;

(f) The amount, frequency, approximate beginning date and duration of the intended deduction;

(g) If Government records on which the determination of overpayment are not attached, how those records will be

made available to the employee for inspection and copying;

(h) The employee's right to request a pre-offset hearing concerning the existence or amount of the overpayment or an involuntary repayment schedule;

(i) The applicable hearing procedures and requirements, including a statement that a timely petition for hearing will stay commencement of collection proceedings and that a final decision on the hearing will be issued not later than 60 days after the hearing petition is filed, unless a delay is requested and granted;

(j) That any knowingly false or frivolous statements, representations or evidence may subject the employee to applicable disciplinary procedures, civil or criminal penalties; and

(k) That where amounts paid or deducted are later waived or found not owed, unless otherwise provided by law, they will be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514, 31 U.S.C. 3716)

§ 32.4 Employee response.

(a) *Voluntary repayment agreement*—Within 7 days of receipt of the written notice under § 32.3, the employee may submit a request to the Secretary to arrange for a voluntary repayment schedule. To arrange for a voluntary repayment schedule, the employee shall submit a financial statement and sign a written repayment agreement approved by the Secretary. An employee who arranges for a voluntary repayment schedule may nonetheless request a waiver of the overpayment under paragraph (b) of this section.

(b) *Waiver*—An employee seeking a waiver of collection of the debt that is authorized by law must request the waiver in writing to the Secretary within 10 days of receipt of the written notice under § 32.3. The employee must state why he or she believes a waiver should be granted.

(c) *Involuntary repayment schedule*—If the employee claims that the amount of the involuntary deduction will cause extreme financial hardship and should be reduced, he or she must submit a written explanation and a financial statement signed under oath or affirmation to the Secretary within 10 days of receipt of the written notice under § 32.3. An employee who fails to submit this financial information in a timely manner waives the right to object to the involuntary repayment schedule at a hearing under § 32.5. The Secretary notifies the employee, in writing, whether the Secretary will reduce the rate of the involuntary deduction.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.5 Pre-offset hearing—general.

(a) An employee who wishes a review of the existence or amount of the overpayment or an involuntary repayment schedule may request a pre-offset hearing. The pre-offset hearing does not review—

(1) The denial of a waiver of repayment under 5 U.S.C. 5584;

(2) The involuntary repayment schedule or financial hardship caused by the amount of the involuntary deduction from the employee's disposable pay, unless the employee has submitted the financial statement and written explanation required under § 32.4(c); and

(3) The determination under paragraph (b) of this section that the pre-offset hearing is on the written submissions.

(b) Unless the Secretary determines that a matter reviewable under paragraph (a) of this section turns on an issue of credibility or veracity or cannot be resolved by a review of the documentary evidence, the pre-offset hearing is on the written submissions.

(c) A pre-offset hearing is based on the written submissions for overpayments arising from—

(1) A termination of a temporary promotion;

(2) A cash award;

(3) An erroneous salary rate;

(4) Premature granting of a within-grade increase;

(5) A lump sum payment for annual leave;

(6) Unauthorized appointment to a position;

(7) An error on time and attendance records; or

(8) Other circumstances where the Secretary determines that an oral hearing is not required.

(d) The hearing is conducted by a hearing official who is not an employee of the Department or under the supervision or control of the Secretary.

(e) Formal discovery between the parties is not provided.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.6 Request for a pre-offset hearing.

(a) Except for an employee who has requested a waiver of collection of the debt under § 32.4(b), an employee who wishes a pre-offset hearing must request the hearing within 15 days of receipt of the written notice given under § 32.3. The Secretary waives the 15-day requirement if the employee shows that the delay was because of circumstances beyond his or her control or because of failure to receive notice and lack of knowledge of the time limit.

(b) An employee who has requested a waiver under § 32.4(b) may request a hearing within 10 days of receipt of a determination by the Secretary denying a waiver.

(c) The request for a hearing must—

(1) Be in writing;

(2) State why the employee—

(i) Contests the existence or amount of the overpayment; or

(ii) Claims that the involuntary repayment schedule will cause extreme financial hardship;

(3) Include all documents on which the employee is relying, other than those provided by the Secretary under § 32.3; any document which is a statement of an individual must be in the form of an affidavit; and

(4) Be submitted to the designated hearing official with a copy to the Secretary.

(d) If the employee timely requests a pre-offset hearing or the timelines are waived under paragraph (a) of this section, the Secretary—

(1) Notifies the employee whether the employee may elect an oral hearing; and

(2) Provides the hearing official with a copy of all records on which the determination of the overpayment and any involuntary repayment schedule are based.

(e) An employee who has been given the opportunity to elect an oral hearing and who does elect an oral hearing must notify the hearing official and the Secretary of his or her election in writing within 7 days of receipt of the notice under paragraph (d)(1) of this section and must identify all proposed witnesses and all facts and evidence about which they will testify.

(f) Where an employee requests an oral hearing, the hearing official notifies the Secretary and the employee of the date, time, and location of the hearing. However—

(1) The employee subsequently may elect to have the hearing based only on the written submissions by notifying the hearing official and the Secretary at least 3 calendar days before the date of the oral hearing. The hearing official may waive the 3-day requirement for good cause when the employee notifies the hearing official before the date of the hearing; and

(2) The request for a hearing of an employee who fails to appear at the oral hearing must be dismissed and the Secretary's decision affirmed.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.7 Pre-offset oral hearing.

(a) Oral hearings are informal in nature. The Secretary and the employee, through their representatives, and by

reference to the documentation submitted, explain their case. The employee may testify on his or her own behalf, subject to cross examination. Other witnesses may be called to testify only where the hearing official determines that their testimony is relevant and not redundant.

(b) The hearing official shall—

(1) Conduct a fair and impartial hearing; and

(2) Preside over the course of the hearing, maintain decorum, and avoid delay in the disposition of the hearing.

(c) The employee may represent himself or herself or may be represented by another person at the hearing. The employee may not be represented by a person whose representation creates an actual or apparent conflict of interest.

(d) Oral hearings are open to the public. However, the hearing official may close all or any portion of the hearing where to do so is in the best interests of the employee or the public.

(e) Oral hearings may be conducted by conference call—

(1) If the employee is located in a city outside the Washington, DC Metropolitan area;

(2) At the request of the employee; or

(3) At the discretion of the hearing official.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.8 Pre-offset hearing on the written submissions.

If a hearing is to be held on the written submissions, the hearing official reviews the records and responses submitted by the Secretary and the employee under § 32.6.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.9 Written decision.

(a) The hearing official issues a written decision stating the facts supporting the nature and origin of the debt and the hearing official's analysis, findings and conclusions as to the amount of the debt and the repayment schedule within 60 days of filing of the employee's request for a pre-offset hearing, unless the employee requests, and the hearing official grants, a delay in the proceedings.

(b) The hearing official decides whether the Secretary's determination of the existence and the amount of the overpayment or the extreme financial hardship caused by the involuntary repayment schedule is clearly erroneous. A determination is clearly erroneous if although there is evidence to support the determination, the hearing official, considering the record as a whole, is left with a definite and firm conviction that a mistake was made.

(c) In making the decision, the hearing official is governed by applicable Federal statutes, rules and regulations.

(d) The hearing official decides the issue of extreme financial hardship caused by the involuntary repayment schedule only where the employee has submitted the financial statement and written explanation required under § 32.4(c). Where the hearing official determines that the involuntary repayment schedule creates extreme financial hardship, he or she must establish a schedule that alleviates the financial hardship but may not reduce the involuntary repayment schedule to a deduction of zero percent.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

§ 32.10 Deductions process.

(a) Debts must be collected in one lump sum where possible. If the employee does not agree to a lump sum that exceeds 15 percent of disposable pay, the debt must be collected in installment deductions at officially established pay intervals in the amount established under—

(1) A voluntary repayment agreement;

(2) An involuntary repayment schedule where no hearing is requested; or

(3) The schedule established under the written hearing decision.

(b) Installment deductions must be made over a period not greater than the anticipated period of employment, except as provided under paragraph (d) of this section. If possible, the installment payment must be sufficient in size and frequency to liquidate the debt in, at most, three years. Installment payments of less than $25 may be accepted only in the most unusual circumstances.

(c) Deductions must begin—

(1) After the employee has entered a voluntary repayment schedule;

(2) If a waiver is requested under § 32.4(b), after the employee has been denied a waiver by the Secretary; or

(3) If a hearing is requested under § 32.5, after a written decision.

(d) If the employee retires or resigns or his or her employment ends before collection of the debt is completed, the amount necessary to liquidate the debt must be offset from subsequent payments of any nature (for example, final salary payment and/or lump sum annual leave payment) due the employee on the date of separation. If the debt cannot be liquidated by offset from any such final payment due the employee on the date of separation, the debt must be liquidated by administrative offset pursuant to 31 U.S.C. 3716 from later payments of any kind due the employee, where appropriate. After the Secretary has complied with the procedures in this part, the Secretary may refer the debt to a paying agency for collection by offset under 5 CFR 550.1108.

(e) Interest, penalties and administrative costs on debts collected under this part must be assessed, in accordance with the provisions of 4 CFR 102.13.

(f) An employee's payment, whether voluntary or involuntary, of all or any portion of an alleged debt collected pursuant to this part may not be construed as a waiver of any rights which the employee may have under this part or any other provision of law, except as otherwise provided by law.

(g) Amounts paid or deducted pursuant to this part by an employee for a debt that is waived or otherwise found not owing to the United States or which the Secretary is ordered to refund must be promptly refunded to the employee.

(Authority: 5 U.S.C. 5514; 31 U.S.C. 3716)

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federal register

Wednesday
July 1, 1987

Part XI

Department of Education

34 CFR Parts 270, 271, and 272

Desegregation of Public Education; Final Regulations

34 CFR Parts 270, 271, and 272

Desegregation of Public Education

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations implementing Title IV of the Civil Rights Act of 1964. These final regulations change existing policy for the award of funds to State educational agencies (SEAs) and to desegregation assistance centers (DACs). Each SEA will submit one noncompetitive application describing all the desegregation assistance it will provide. Each DAC will provide services for race, sex, and national origin desegregation assistance in its geographic region. DAC awards will be made on a competitive basis. In addition, these regulations consolidate existing provisions to reduce administrative burdens on recipients of awards and eliminate certain existing unnecessary regulations.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: M. Patricia Goins, Director, Division of Educational Support, Office of Elementary and Secondary Education, U.S. Department of Education, Mail Stop 6264, 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–4059.

SUPPLEMENTARY INFORMATION: The previous regulations implementing Title IV of the Civil Rights Act of 1964 provided for financial assistance to assist personnel operating public schools who request assistance in eliminating discrimination on the basis of race, sex, and national origin. Section 403 of the Act authorizes the Secretary to make available to school districts, upon request, persons specially equipped to assist them in addressing problems related to eliminating discrimination in the public schools. Subparts B and C of the previous regulations implemented this section by authorizing the provision of this assistance by the SEAs and DACs. Section 404 of the Act authorizes the Secretary to arrange with institutions of higher education for the offering of special training institutes to improve the ability of elementary and secondary school personnel to deal with the educational problems occasioned by desegregation. Subpart D of the previous regulations governed grants for race and sex desegregation training institutes. Finally, section 405 of the Act authorizes the Secretary to make grants to school boards to pay the costs of inservice training of school personnel and the employment of specialists to deal with problems incident to desegregation. Subparts E and F of the previous regulations governed grants to school boards.

These final regulations implement section 403 of the Act and incorporate the Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79), except as otherwise noted. They reflect a thorough deregulation review, which was necessary to consolidate, revise, and update the format of, and to delete unnecessary requirements from, the previous regulations. When effective, these final regulations will replace the previous Title IV regulations at 34 CFR Part 270.

There are no regulations to implement sections 404 and 405 of the Act. The Training Institutes and Grants to School Boards programs that are authorized by these sections of the Act have not been funded for several years, and no funds are available for them in fiscal year (FY) 1987. If funds were made available for them in future years, grants under these programs would be made pursuant to the applicable provisions of EDGAR and the authorizing provisions of the statute, or program-specific regulations would be issued at that time.

On February 17, 1987 the Secretary published a notice of proposed rulemaking (NPRM) for the Desegregation of Public Education Programs in the **Federal Register** (52 FR 4850). The major provisions for each part are summarized on pages 4850 and 4851 of that NPRM.

There are no major substantive differences between the NPRM and these final regulations that would require applicants to amend their applications for FY 1987 funds. However, based on comments received on the NPRM, sections of these regulations have been amended for the purpose of clarification. Section 270.6 has been amended to clarify that funds for national origin and race desegregation assistance may not be used to provide assistance in the development or implementation of activities, or the development of curriculum materials for the direct instruction of students, except that assistance may be provided in the development or implementation of activities or the development of curriculum materials for the direct instruction of students of limited English proficiency, to afford them a full opportunity to participate in all educational programs. Sections 271.1 and 272.1 have been revised, to add—as stated in § 270.1—that Title IV funds may be used to assist in the development of effective methods of coping with special educational problems occasioned by desegregation. Sections 271.31(b) and 272.32(c)—describing one of the factors the Secretary considers in determining the amount of a grant—have been amended to clarify that the Secretary compares the magnitude of the expected needs of responsible governmental agencies for desegregation assistance in a geographic area, and the cost to the SEA or DAC approved for funding of providing that assistance, with all of the expected needs for desegregation assistance and the cost to all SEAs and DACs of providing it.

The comments submitted in response to the proposed regulations are summarized in the appendix to these regulations. Each comment is followed by a response to that comment. The comments are grouped according to the section of the regulations to which they pertain.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the public comments on the proposed regulations and on its own review, the Department has determined

that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Parts 270 and 272

Civil rights, Desegregation assistance, Education, Elementary and secondary education, Grant programs—education, Nonprofit organizations, Reporting and recordkeeping requirements.

34 CFR Part 271

Civil rights, Desegregation assistance, Education, Elementary and secondary education, Grant programs—education, Reporting and recordkeeping requirements.

Dated: June 15, 1987.

William J. Bennett,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.004, Desegregation of Public Education)

The Secretary amends Title 34 of the Code of Federal Regulations as follows:

1. The Secretary revises Part 270 to read as follows:

PART 270—DESEGREGATION OF PUBLIC EDUCATION

Sec.

Authority: 42 U.S.C. 2000c–2000c–2, 2000–5, unless otherwise noted.

§ 270.1 What are the Desegregation of Public Education Programs?

The Desegregation of Public Education Programs provide grants to projects that help public school districts and personnel in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of coping with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.2 What regulations apply to these programs?

The following regulations apply to these programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants), Part 75 (Direct Grant Programs), Part 77 (Definitions That Apply to Department Regulations), Part 78 (Education Appeal Board), and Part 79 (Intergovernmental Review of Department of Education Programs and Activities), except that 34 CFR 75.200 through 75.217 (relating to the evaluation and competitive review of grants) do not apply to grants awarded under 34 CFR Part 271 and 34 CFR 75.232 (relating to the cost analysis) does not apply to grants under 34 CFR Part 272.

(b) The regulations in this part and in 34 CFR Parts 271 and 272.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.3 What definitions apply to these programs?

In addition to the definitions in 34 CFR 77.1, the following definitions apply to the regulations in this part:

"Desegregation assistance" means the provision of technical assistance (including training) in the areas of race, sex, and national origin desegregation of public elementary and secondary schools.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

"Desegregation assistance areas" means the areas of race, sex, and national origin desegregation.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

"Desegregation Assistance Center" means a regional desegregation technical assistance and training center funded under 34 CFR Part 272.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

"Limited English proficiency" has the same meaning under this part as the same term defined in 34 CFR 500.4 of the General Provisions regulations for the Bilingual Education Program.

(Authority: 20 U.S.C. 3223(a)(1))

"National origin desegregation" means the assignment of students to public schools and within those schools without regard to their national origin, including providing students of limited English proficiency with a full opportunity for participation in all educational programs.

(Authority: 42 U.S.C. 2000c(b))

"Public school" means any elementary or secondary educational institution operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predemoninantly from or through the use of governmental funds or property, or funds or property derived from governmental sources.

(Authority: 42 U.S.C. 2000c(c))

"Public school personnel" means school board members and persons who are employed by or who work in the schools of a responsible governmental agency, as that term is defined in this section.

(Authority: 42 U.S.C. 2000c(c); 2000c–2000c–2, 2000c–5)

"Race desegregation" means the assignment of students to public schools and within those schools without regard to their race including providing students with a full opportunity for participation in all educational programs regardless of their race. "Race desegregation" does not mean the assignment of students to public schools to correct conditions of racial separation that are not the result of State or local law or official action.

(Authority: 42 U.S.C. 2000c(b))

"Responsible governmental agency" means any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools.

(Authority: 42 U.S.C. 2000c–2)

"School board" means any agency or agencies that administer a system of one or more public schools and any other agency that is responsible for the assignment of students to or within that system.

(Authority: 42 U.S.C. 2000c(d))

"Sex desegregation" means the assignment of students to public schools and within those schools without regard to their sex including providing students with a full opportunity for participation in all educational programs regardless of their sex.

(Authority: 42 U.S.C. 2000c(b))

§ 270.4 What types of projects are funded under these programs?

The Secretary may fund—

(a) State Educational Agency (SEAs) projects; and

(b) Desegregation Assistance Centers (DACs).

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.5 What stipends and related reimbursements are authorized under this program?

(a) The recipient of an award under 34 CFR Parts 271 and 272 may pay—

(1) Stipends to public school personnel who participate in technical assistance or training activities funded under these parts for the period of their attendance, if the person to whom the

stipend is paid receives no other compensation for that period; or

(2) Reimbursement to a responsible governmental agency that pays substitutes for public school personnel who—

(i) Participate in technical assistance or training activities funded under these parts; and

(ii) Are being compensated by that responsible governmental agency for the period of their attendance.

(b) A recipient may pay the stipends and reimbursements described in this section only if it demonstrates that the payment of these costs is necessary to the success of the technical assistance or training activity, and will not exceed 20 percent of the total award.

(c) If a recipient is authorized by the Secretary to pay stipends or reimbursements (or any combination of these payments), the recipient shall determine the conditions and rates for these payments in accordance with appropriate State policies, or in the absence of State Policies, in accordance with local policies.

(d) A recipient of a grant under 34 CFR Parts 271 and 272 may pay a travel allowance described in these parts only to a person who participates in a technical assistance or training activity.

(e) If the participant does not complete the entire scheduled activity, the recipient may pay the participant's transportation to his or her residence or place of employment only if the participant left the training activity because of circumstances not reasonably within his or her control.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 270.6 What limitation is imposed on providing race and national origin desegregation assistance under these programs?

(a) Except as provided in paragraph (b) of this section, a recipient of a grant for race or national origin desegregation assistance under these programs may not use funds to assist in the development or implementation of activities or the development of curriculum materials for the direct instruction of students to improve their academic and vocational achievement levels.

(b) A recipient of a grant for national origin desegregation assistance under these programs may use funds to assist in the development and implementation of activities or the development of curriculum materials for the direct instructional of students of limited English proficiency, to afford these students a full opportunity to participate in all educational programs.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

2. The Secretary adds a new Part 271 to read as follows:

PART 271—STATE EDUCATIONAL AGENCY DESEGREGATION PROGRAM

Subpart A—General

Sec.

271.1 What is the State Educational Agency Desegregation Program?

271.2 Who is eligible to apply for assistance under this program?

271.3 What regulations apply to this program?

271.4 What definitions apply to the program?

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

271.10 What types of projects may be funded?

271.11 Who may receive desegregation assistance under this program?

Subpart C—How Does An SEA Apply for a Grant?

271.20 What conditions must an applicant meet to obtain funding?

Subpart D—How Does the Secretary Make a Grant?

271.30 How does the Secretary evaluate an application?

271.31 How does the Secretary determine the amount of the grant?

Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5, unless otherwise noted.

Subpart A—General

§ 271.1 What is the State Educational Agency Desegregation Program?

This program provides grants to State educational agencies (SEAs) to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools and in the development of effective methods of coping with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

§ 271.2 Who is eligible to apply for assistance under this program?

An SEA is eligible to apply for a grant under this program. An SEA shall submit one application to provide technical assistance in one, two, or all three of the desegregation assistance areas, as defined in 34 CFR 270.3.

(Authority: 42 U.S.C. 2000c–2)

§ 271.3 What regulations apply to this program?

The following regulations apply to the SEA program:

(a) The regulations in 34 CFR Part 270.

(b) The regulations in this part.

(Authority: 42 U.S.C. 2000c–2)

§ 271.4 What definitions apply to this program?

The definitions in 34 CFR Part 270.3 apply to the SEA program

(Authority: 42 U.S.C. 2000c–2)

Subpart B—What Kinds of Activities Does the Secretary Assist Under This Program?

§ 271.10 What types of projects may be funded?

The Secretary awards grants to SEAs for projects offering technical assistance (including training) to school boards and other responsible governmental agencies, at their request, for desegregation assistance in the preparation, adoption, and implementation of desegregation plans. Desegregation assistance may include, among other activities—

(a) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation;

(b) Assistance and advice in coping with these problems; and

(c) Training designed to improve the ability of teachers, supervisors, counselors, parents, community members, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C.3000c–2)

§ 271.11 Who may receive desegregation assistance under this program?

(a) A grantee may provide assistance only if the assistance is requested by a responsible governmental agency (other than the SEA) in its State.

(b) A grantee may provide assistance only to the following persons:

(1) Public school personnel.

(2) Students enrolled in public schools, parents of those students, and other community members.

(Authority: 42 U.S.C. 2000c–2)

Subpart C—How Does an SEA Apply for a Grant?

§ 271.20 What conditions must an applicant meet to obtain funding?

To obtain funding under this program—

(a) An applicant must demonstrate its leadership in facilitating desegregation (in each of the desegregation assistance areas for which it has applied) as indicated by policies and procedures adopted by the SEA to assist in the desegregation process;

(b) The applicant's project director must have access to the Chief State School Officer;

(c) The applicant must have a plan of the steps that it has taken or would take to inform the LEAs it will serve, public school personnel, students, and parents of the desegregation assistance available;

(d) The applicant must have familiarity with the desegregation-related needs and problems of the school boards and other responsible governmental agencies in its State;

(e) The assistance to be provided by the applicant must be designed to meet the desegregation needs (in each of the desegregation assistance areas for which it has applied) within its State;

(f) The applicant must identify specific desegregation problems that would be addressed by its proposed project;

(g) The applicant must have a plan for coordination with other related desegregation programs in its State, that will prevent duplication of assistance when a responsible governmental agency requests assistance from both the SEA and the DAC or other program;

(h) The Applicant must provide a plan of operation for the proposed project that includes—

(1) An effective plan of management that ensures proper and efficient administration of the project;

(2) A clear description of how the objectives of the project relate to the purposes of the program;

(3) The way the applicant plans to use its resources and personnel to achieve each objective; and

(4) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, national origin, color, sex, age, or handicapping condition.

(i) The applicant must have familiarity with materials used in providing technical assistance and training in each of the desegregation assistance areas for which it has applied;

(j) The key personnel the applicant plans to use on the project must be qualified, as determined by—

(1) The experience and training of the project director and other key personnel; and

(2) The time that the project director and other key personnel will devote to the project to ensure its success;

(k) The applicant, as part of its nondiscriminatory employment practices, shall ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age or handicapping condition.

(l) The project must have an adequate budget to support the project activities, and costs must be reasonable in relation to the objectives of the project; and

(m) The applicant must have an evaluation plan that includes methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(Approved under OMB Control No. 1810–0030)

(Authority: 42 U.S.C. 2000c–2)

Subpart D—How Does the Secretary Make a Grant?

§ 271.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application submitted under this part on the basis of the requirements in § 271.20.

(b) The Secretary identifies those applications that satisfactorily address each of the factors included in § 271.20.

(c) The Secretary notifies an SEA whose application does not satisfactorily address each of the requirements in § 271.20 and permits the SEA to amend its application. If the amended application meets each of the requirements of § 271.20, the Secretary approves it for funding.

(Authority: 42 U.S.C. 2000c–2)

§ 271.31 How does the Secretary determine the amount of the grant?

The Secretary awards a grant to each SEA whose application meets the requirements of § 271.20. The Secretary determines the amount of a grant, pursuant to the cost analysis under 34 CFR 75.232, on the basis of—

(a) The amount of funds available for all grants under this part;

(b) The magnitude of the expected needs of responsible governmental agencies for desegregation assistance and the cost of providing that assistance to meet those needs, in the State for which an application is approved, as compared with the magnitude of the expected needs for desegregation assistance, and the cost of providing it, in all States for which applications are approved for funding;

(c) The size and the racial or ethnic diversity of the student population of the State;

(d) The extent to which the applicant will effectively and efficiently use funds awarded to it, including, if relevant, consideration of its previous use of funds awarded under this program; and

(e) Any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant's State.

(Authority: 42 U.S.C. 2000c–2)

3. The Secretary adds a new Part 272 to read as follows:

PART 272—DESEGREGATION ASSISTANCE CENTER PROGRAM

Subpart A—General

Sec.

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

Subpart E—What Conditions Must Be Met by a Recipient of a Grant?

Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5, unless otherwise noted.

Subpart A—General

§ 272.1 What is the Desegregation Assistance Center Program?

This program provides financial assistance to operate regional Desegregation Assistance Centers (DACs), to enable them to provide technical assistance (including training) at the request of school boards and other responsible governmental agencies in the preparation, adoption, and implementation of plans for the desegregation of public schools, and in the development of effective methods of copying with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C. 2000c–2)

§ 272.2 Who is eligible to receive a grant under this program?

A public agency (other than a State educational agency or a school board) or private, nonprofit organization is eligible to receive a grant under this program.

(Authority: 42 U.S.C. 2000c–2)

§ 272.3 What regulations apply to this program?

The following regulations apply to the DAC program:

(a) The regulations in 34 CFR Part 270.

(b) The regulations in this part.

(Authority: 42 U.S.C. 2000c–2)

§ 272.4 What definitions apply to this program?

The definitions in 34 CFR 270.3 apply to the DAC program.

(Authority: 42 U.S.C. 2000c–2)

Subpart B—What Kinds of Activities Does the Secretary Fund Under This Program?

§ 272.10 What types of projects may be funded?

(a) The Secretary may award funds to DACs for projects offering technical assistance (including training) to school boards and other responsible governmental agencies, at their request, for assistance in the preparation, adoption, and implementation of desegregation plans.

(b) A project must provide technical assistance in all three of the desegregation assistance areas, as defined in 34 CFR 270.3.

(c) Desegregation assistance may include, among other activities—

(1) Dissemination of information regarding effective methods of coping with special educational problems occasioned by desegregation;

(2) Assistance and advice in coping with these problems; and

(3) Training designed to improve the ability of teachers, supervisors, counselors, parents, community members, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation.

(Authority: 42 U.S.C. 2000c–2)

§ 272.11 Who may receive desegregation assistance under this program?

(a) The recipient of a grant under this part may provide assistance only if requested by school boards and other responsible governmental agencies located in its geographical service area.

(b) The recipient may provide assistance only to the following persons:

(1) Public school personnel.

(2) Students enrolled in public schools, parents of those students, and other community members.

(Authority: 42 U.S.C. 2000c–2)

§ 272.12 What geographic regions do the DACs serve?

The Secretary awards a grant to provide race, sex, and national origin desegregation assistance under this program in each of the following geographic regions:

(a) Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

(b) New York, New Jersey, Puerto Rico, Virgin Islands.

(c) Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia.

(d) Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

(e) Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

(f) Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

(g) Iowa, Kansas, Missouri, Nebraska.

(h) Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

(i) Arizona, California, Nevada.

(j) Alaska, American Samoa, Guam, Hawaii, Idaho, Northern Mariana Islands, Oregon, Trust Territory of the Pacific Islands, Washington.

(Authority: 42 U.S.C. 2000c–2000c–2, 2000c–5)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant?

§ 272.30 What criteria does the Secretary use to make a grant?

The Secretary uses the following criteria to evaluate applications for DAC grants.

(a) *Mission and strategy.* (30 Points) The Secretary reviews each application to determine the extent to which the applicant understands effective practices for addressing problems in each of the desegregation assistance areas, including the extent to which the applicant—

(1) Understands the mission of the proposed DAC;

(2) Is familiar with relevant research, theory, materials, and training models;

(3) Is familiar with the types of problems that arise in each of the desegregation assistance areas;

(4) Is familiar with relevant strategies for technical assistance and training; and

(5) Is familiar with the desegregation needs of responsible governmental agencies in its designated region.

(b) *Organizational capability.* (15 Points) The Secretary reviews each application to determine the ability of the applicant to sustain a long-term, high-quality, and coherent program of technical assistance and training, including the extent to which the applicant—

(1) Demonstrates the commitment to provide the services of appropriate faculty or staff members from its organization;

(2) Selects project staff with an appropriate mixture of scholarly and practitioner backgrounds; and

(3) Has had past successes in rendering technical assistance and training in the desegregation assistance areas, including collaborating with other individuals and organizations.

(c) *Plan of operation.* (25 Points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including the extent to which—

(1) The design of the project is of high quality;

(2) The plan of management ensures proper and efficient administration of the project;

(3) The applicant plans to use its resources and personnel effectively to achieve each objective; and

(4) The applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, sex, age, or handicapping condition.

(d) *Quality of key personnel.* (15 Points)

(1) The Secretary reviews each application to determine the qualifications of the key personnel that the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(1) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine personnel qualifications, under paragraphs (d)(1) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the quality of the project.

(e) *Budget and cost effectiveness.* (5 Points) The Secretary reviews each application to determine the extent to which—

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (5 Points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the methods of evaluation—

(1) Are appropriate for the project; and

(2) To the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 Points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

(Approved under OMB Control No. 1810-0517)

(Authority: 42 U.S.C. 2000c-2)

§ 272.31 How does the Secretary evaluate an application for a grant?

(a) The Secretary evaluates the application on the basis of the criteria in § 272.30.

(b) The Secretary selects the highest ranking application for each geographical service area to receive a grant.

(Authority: 42 U.S.C. 2000c-2)

§ 272.32 How does the Secretary determine the amount of a grant?

The Secretary determines the amount of a grant on the basis of—

(a) The amount of funds available for all grants under this part;

(b) A cost analysis of the project (that shows whether the applicant will achieve the objectives of the project with reasonable efficiency and economy under the budget in the application), by which the Secretary—

(1) Verifies the cost data in the detailed budget for the project;

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations;

(c) The magnitude of the expected needs or responsible governmental agencies for desegregation assistance in the geographic region, and the cost of providing that assistance to meet those needs, as compared with the magnitude of the expected needs for desegregation assistance, and the cost of providing it, in all geographic regions for which applications are approved for funding;

(d) The size and the racial or ethnic diversity of the student population of the geographic region for which the DAC will provide services; and

(e) Any other information concerning desegregation problems and proposed activities that the Secretary finds relevant in the applicant's geographic region.

(Authority: 42 U.S.C. 2000c-2)

Subpart E—What Conditions Must Be Met by a Recipient of a Grant?

§ 272.40 What conditions must be met by a recipient of a grant?

A recipient of a grant under this part must—

(a) Operate a DAC in the geographic region to be served;

(b) Have a full-time project director; and

(c) Coordinate assistance in its geographic region with appropriate SEAs funded under 34 CFR Part 271. As part of this coordination, the recipient shall develop plans to prevent duplication of assistance when a responsible governmental agency requests assistance from both the DAC and the appropriate SEA.

(Authority: 42 U.S.C. 2000c-2)

Appendix A—Summary of Comments and Responses

Note.—This Appendix will not be published in the Code of Federal Regulations.

Section 270.3 What Definitions Apply to These Programs?

Comment: A few commenters requested clarification of the definition of the term "national origin desegregation", and asked whether the definition places restrictions on the types of students whose needs could be addressed and the types of technical assistance available to different categories of limited English proficient students.

Response: No change has been made. The definition of "national origin desegregation" does not limit the provision of equal educational opportunity only to students of limited English proficiency (LEP) (as defined in 34 CFR 500.4 of the General Provision Regulations for the Bilingual Education Act), but has been expended in these regulations to also address student assignment issues, where assignments have been based on students' national origin. This expanded definition of "national origin desegregation" is consistent with the Title IV statute and allows grantees flexibility in providing assistance to school districts that are planning or implementing desegregation plans involving LEP and English speaking students of different national origins.

Comment: One commenter believed that the definition of "race desegregation" was unclear with respect to its intent and the limitation imposed by the definition.

Response. No change has been made. This definition, which was also included in the previous regulations, is based on the definition of "desegregation" in section 401(b) of the Title IV legislation. This definition limits race desegregation under Title IV to correcting conditions of *de jure*, and not *de facto*, racial separation in assigning students to public schools. In other words, although the student assignment plans for which Title IV assistance is sought may be voluntary or court-ordered, race desegregation assistance under Title IV can be provided only to school districts correcting segregated educational conditions that were caused by State or local law or official action.

Section 270.6 What Limitation Is Imposed on Providing Race Desegregation Assistance Under These Programs?

Comment: A few commenters asked whether the prohibition on the development of curriculum materials applies only to materials used to instruct students or also includes materials needed for teacher training activities.

Response. A change has been made. The regulations have been revised to clarify that the prohibition on providing assistance in the development of curriculum materials in race and national origin desegregatioin activities applies to providing assistance in the development of curriculum materials for use directly in the instruction of students, except that assistance may be provided in the development of curriculum materials for the direct instruction of students of limited English proficiency. Curriculum materials may, however, be developed for teacher training activities.

Comment: One commenter suggested that the limitations on the development and implementation of activities related to the direct instruction of students presents a potential conflict if national origin minority students are involved in the race desegregation process, and recommended that activities designed to complement programs developed under Chapter 1 of the Education Consolidation and Improvement Act of 1981 and other Federal programs be permitted.

Response. A change has been made. The prohibition on providing Title IV assistance in the development or implementation of activities or the development of curriculum materials for the direct instruction of students has been revised to apply to national origin desegregation assistance, except that Title IV assistance may be provided for developing and implementing activities

and for developing curriculum materials for the direct instruction of LEP students. Under the definition of "national origin desegregation" in these regulations, there may be overlap between students affected by national origin desegregation activities and students affected by race desegregation activities, because national origin desegregation assistance is not limited to educational services for students of limited English proficiency, but may also include assistance with student assignment issues.

Section 271.2 Who Is Eligible To Apply for Assistance Under This Program?

Comment: A number of comments were received concerning the requirement that a State educational agency submit a single application to provide technical assistance in one, two, or all three of the desegregation assistance areas. Commenters opposed to the requirement cited the diversity of issues addressed in the three areas of desegregation, and questioned whether the requirement would interfere with existing SEA organizational structures. Other commenters expressed concerns related to funding levels and the maintenance of adequate resources for sex desegregation activities.

Response. No change has been made. The requirement that an SEA submit only one application instead of three has no implications for an SEA's organizational structure. With regard to budget resources, an applicant must demonstrate that its proposed budget for the Title IV project—including the resources for the sex desegregation assistance to be provided—is both adequate and reasonable. All budget costs must relate to activities in each desegregation area addressed in an application, in a manner that demonstrates that the budget is adequate to implement those activities.

Section 271.31 How Does the Secretary Determine the Amount of the Grant?

Comment: One commenter requested clarification of how the amount of a grant is determined and, in particular, how "the magnitude of the problems . . . " would be ranked and how "the size and the racial or ethnic diversity of the student population [of the State]" would be considered.

Response. A change has been made. Language in subpart (b) of this provision has been clarified to state that the Secretary considers the magnitude of the expected needs for desegregation assistance of responsible governmental agencies in the State for which an application is approved, as compared with the magnitude of the expected needs for desegregation assistance in all States that have applied for Title IV funds. In considering expected needs, the Secretary reviews available information on desegregation plans being implemented in a State, information submitted in the SEA application, and any other relevant information available that may assist the Secretary in assessing the needs in a particular State. Information about the student population of a State is another factor the Department considers in the cost analysis that is used to determine the amount of a grant. The cost analysis at 34 CFR 75.232 includes procedures for evaluating the costs of the project to determine whether they are necessary, reasonable, and allowable. Information about the student population of a State assists the Secretary in evaluating factors such as travel costs and in assessing the magnitude of expected need for desegregation assistance.

Section 272.10 What Types of Projects May Be Funded?

Comment: Most of the comments received concerned the change in the desegregation assistance center program that requires each DAC to provide technical assistance in all three desegregation assistance areas. One commenter supported this change, while others recommended the maintenance of separate DACs to provide technical assistance on the basis of race, sex, and national origin. The concerns expressed by commenters who recommended retention of separate DACs included the following: That this proposed consolidation would sacrifice effective technical assistance or result in inadequate services; that a similar arrangement had been in effect prior to 1978 and, in their view, had failed; that this change would undermine the goals of the Title IV program or lead to the dissolution of the DAC program; that sex equity would be overshadowed by other issues; and that the expertise needed to address distinct problems related to race, sex, or national origin desegregation would no longer be available. Several commenters also recommended that if the change is implemented, steps be taken to ensure adequate funding and expertise in all three desegregation areas.

Response: No change has been made. The Secretary believes that this change is necessary to strengthen the DAC program by using the available funds for the program more effectively and efficiently. In particular, the Secretary believes that consolidation should reduce the grantees' costs of administering the DAC programs, thereby freeing up additional funds for the provision of technical assistance.

DAC applicants will be evaluated on their ability to provide technical assistance in all three desegregation assistance areas. They must demonstrate that the key personnel involved in the project collectively have experience and training in all three desegregation assistance areas and will spend adequate time on the project. Currently, several agencies have DAC awards in more than one of the desegregation assistance areas and are providing effective assistance in each area. The Secretary believes that requiring each DAC to be responsible for providing assistance in all three desegregation assistance areas will not diminish or dilute the quality of the technical assistance or expertise available from DACs, but instead will improve the ability of DACs to provide comprehensive and coherent long-term assistance to the many school districts whose needs cover a broad range of issues related to race, sex, and national origin desegregation.

For FY 1986, 40 DACs were funded and the average size of an award was approximately $240,000. In FY 1987, under the new regulations, the number of DACs will be reduced to 10, but the average size of an award will be $820,000. Although the new DACs may experience increased travel costs because of the larger size of many of the service areas, these increases should be more than offset by reduced administrative, planning, and coordination costs, and greater flexibility in allocating resources to ensure that needs are adequately addressed in all three desegregation areas.

Finally, the Secretary believes that the approach to the DAC program that was implemented through the 1978 regulations was not a response to an earlier failure of the DAC program, but rather a response to needs that existed at that time. Those needs have changed over time, and the Secretary believes that requiring each DAC to provide assistance in the areas of race, sex, and national origin desegregation offers a more effective method of assisting school districts.

Comment: One commenter suggested that an Educational Equity Clearinghouse be established under Title IV. This clearinghouse would receive Title IV funds and would be coordinated with the Educational Resources Information Center (ERIC) system of the Department's Office of Educational Research and Improvement, to provide support and dissemination

services to Title IV projects, existing clearinghouses, and networking and publishing organizations dealing with sex, race, bilingual, and disability issues in education.

Response: No change has been made. Though Title IV funds could support such a clearinghouse, at this time the Secretary believes that it is more pruduent to use all of the available funds for technical assistance and training activities provided by the SEAs and DACs. Materials produced by the SEAs and DACs can be reviewed for referral to the ERIC system.

Section 272.12 What Geographic Regions do the DACs Serve?

Comment: There were a number of comments about the proposed geographic service regions. One commenter questioned whether the DAC in the region including Chicago could also provide adequate assistance to other school districts in its region; one commenter requested that a separate region be established for the "Pacific entities"; and one commenter recommended that the region consisting of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee be split into two service regions because of that region's size and the diversity of its population.

Response: No change has been made. All of the geographic regions contain diverse student populations and school districts. Each applicant for a DAC must demonstrate its familiarity with the desegregation needs in the region to be served and describe its plans to address those needs. The diversity of the student population, as well as costs (travel, for example) that are related to the size of a geographic region, are taken into account in determining the size of each DAC award. To the extent that a DAC is required to provide additional services to the Chicago Public Schools, pursuant to the United States' obligation under a 1980 consent decree, that DAC will receive a higher award. The Secretary anticipates that each DAC, including the one that will serve Chicago, will provide services to as many and as varied a group of school districts as possible.

Section 272.40 What Conditions Must Be Met by a Recipient of a Grant?

Comment: Two commenters requested clarification of the requirement that each DAC have a full-time project director. These commenters asked whether the project director's position means one full-time person or a full-time equivalent position, whereby more than one person would share the position.

Response: No change has been made. Each DAC must select one person to serve on a full-time basis as project director for the grant.

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FEDERAL REGISTER PAGES AND DATES, JULY

CFR PARTS AFFECTED DURING JULY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List June 29, 1987

TABLE OF EFFECTIVE DATES AND TIME PERIODS—JULY 1987

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
July 1	July 16	July 31	August 17	August 31	September 29
July 2	July 17	August 3	August 17	August 31	September 30
July 6	July 21	August 5	August 20	September 4	October 5
July 7	July 22	August 6	August 21	September 8	October 5
July 8	July 23	August 7	August 24	September 8	October 6
July 9	July 24	August 10	August 24	September 8	October 7
July 10	July 27	August 10	August 24	September 8	October 8
July 13	July 28	August 12	August 27	September 11	October 13
July 14	July 29	August 13	August 28	September 14	October 13
July 15	July 30	August 14	August 31	September 14	October 13
July 16	July 31	August 17	August 31	September 14	October 14
July 17	August 3	August 17	August 31	September 15	October 15
July 20	August 4	August 19	September 3	September 18	October 19
July 21	August 5	August 20	September 4	September 21	October 19
July 22	August 6	August 21	September 8	September 21	October 20
July 23	August 7	August 24	September 8	September 21	October 21
July 24	August 10	August 24	September 8	September 22	October 22
July 27	August 11	August 26	September 10	September 25	October 26
July 28	August 12	August 27	September 11	September 28	October 26
July 29	August 13	August 28	September 14	September 28	October 27
July 30	August 14	August 31	September 14	September 28	October 28
July 31	August 17	August 31	September 14	September 29	October 29

CFR ISSUANCES 1987
January–April 1987 Editions and Projected July, 1987 Editions

This list sets out the CFR issuances for the January–April 1987 editions and projects the publication plans for the **July, 1987** quarter. A projected schedule that will include the **October, 1987** quarter will appear in the first **Federal Register** issue of October.

For pricing information on available 1986–1987 volumes consult the CFR checklist which appears every Monday in the Federal Register.

Pricing information is not available on projected issuances. Individual announcements of the actual release of volumes will continue to be printed in the **Federal Register** and will provide the price and ordering information. The weekly CFR checklist or the monthly List of CFR Sections Affected will continue to provide a cumulative list of CFR volumes actually printed.

Normally, CFR volumes are revised according to the following schedule:

Titles 1–16—January 1
Titles 17–27—April 1
Titles 28–41—July 1
Titles 42–50—October 1

All volumes listed below will adhere to these scheduled revision dates unless a notation in the listing indicates a different revision date for a particular volume.

*Indicates volume is still in production.

Titles revised as of January 1, 1987:

Title	
CFR Index	200–End
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	0–199
3 (Compilation)	200–399
	400–499
4	500–End
5 Parts:	**11 (Revised as of July 1, 1987)**
1–1199	
1200–End	**12 Parts:**
6 [Reserved]	1–199
	200–299
7 Parts:	300–499
0–45	500–End
46–51	
52	**13**
53–209	
210–299	**14 Parts:**
300–399	1–59
400–699	60–139
700–899	140–199
900–999	200–1199
1000–1059	1200–End
1060–1119	
1120–1199	**15 Parts:**
1200–1499	0–299
1500–1899	300–399
1900–1944	400–End
1945–End	
	16 Parts:
8	0–149
	150–999
9 Parts:	1000–End
1–199	

Titles revised as of April 1, 1987:

Title	
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1–199	**23**
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240–End	**24 Parts:**
	0–199
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1–149	500–699
150–279	700–1699*
280–399	1700–End
400–End	
	25
19 Parts:	
1–199	**26 Parts:**
200–End	1 (§§ 1.0–1–1.60)
	1 (§§ 1.61–1.169)*
20 Parts:	1 (§§ 1.170–1.300)*
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400–499*	1 (§§ 1.401–1.500)*
500–End	1 (§§ 1.501–1.640)
	1 (§§ 1.641–1.850)
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Projected July 1, 1987 editions:

Title	
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