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Thursday
August 27, 1987

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

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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.

WASHINGTON, DC

WHEN: September 29, at 9 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: Janice Booker, 202–523–5239

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement—Order of Precedence for Deposits and Redeposits

AGENCY: Office of Personnel Management.

ACTION: Final Regulations.

SUMMARY: The Office of Personnel Management (OPM) is amending its civil service retirement regulations to formally establish an order of precedence for applying installments paid by individuals for deposit and redeposit. OPM's administrative practice has been to apply installment payments in the order of precedence established by OPM unless otherwise requested by the employee. This revision will make OPM's practice a matter of regulation and will also serve to notify employees of their right to elect a change of the automatic order of precedence for application of installment payments.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Wanda Jordan, (202) 632–5582.

SUPPLEMENTARY INFORMATION: On May 6, 1986, we published proposed regulations in the **Federal Register** (51 FR 16701) to give public notice of the order of precedence to be applied by OPM for installment payments on deposits and redeposits.

These regulations apply only to the Civil Service Retirement System (CSRS). Subsequent regulations will be issued in the near future which will address the order of precedence for deposits and redeposits under the Federal Employees Retirement System.

The regulations specified that service credit payments would be applied (1) to redeposits for refunds paid based on applications (for refunds) received on or after October 1, 1982; (2) to redeposits for refunds paid based on applications received before October 1, 1982; (3) to deposits for nondeduction service performed on or after October 1, 1982; and (4) to deposits for nondeduction service performed before October 1, 1982. The regulations also specified that depositors can ask that their service credit payments be applied in any other specified order of precedence.

We received comments from one individual and one Federal agency. Both were greatly in favor of the proposed regulations. The agency suggested that a provision be added to allow survivors to choose an order of precedence if the deceased employee did not specifically make such a request or did not begin to make payments to the CSRS for the deposit or redeposit. We appreciate the concern expressed in this comment but would like to point out that the regulations apply only to installment payments begun by the employee. Survivors of employees are prohibited from making installment payments and must pay the deposit and/or redeposit as applicable within 30 days from the date OPM notifies them of the amount to be deposited.

The agency also suggested that we devise a method of notifying employees of the order of precedence in applying installment payments and the right to request a different order. We will consider adding this notification to the Standard Form 2803 when it becomes necessary to revise it again.

Comments from the individual suggested we change OPM's normal order of precedence. We considered this suggestion but felt that it was inappropriate to change the current practice particularly because employees are free to request any order they feel is beneficial.

E.O. 12291, Federal Regulation

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

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Federal employees and agencies.

List of Subjects in 5 CFR Part 831

Administrative practice and procedure, Claims, Disability benefits, Firefighters, Government employees, Income tax, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

Accordingly, OPM is amending 5 CFR Part 831, Subpart A, as follows:

PART 831—RETIREMENT

Subpart A—Administration and General Provisions

1. The authority citation for Subpart A of Part 831 continues to read as follows:

Authority: 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. Section 831.105 is amended by adding paragraph (i) to read as follows:

* * * * *

§ 831.105 Computation of interest.

* * * * *

(i)(1) When an individual's civilian service involves several deposit and/or redeposit periods, OPM will normally use the following order of precedence in applying each installment payment against the full amount due:

(i) Redeposits of refunds paid on applications received by the individual's employing agency or OPM on or after October 1, 1982;

(ii) Redeposits of refunds paid on applications received by the individual's employing agency or OPM before October 1, 1982;

(iii) Deposits for noncontributory civilian service performed on or after October 1, 1982; and

(iv) Deposits for noncontributory service performed before October 1, 1982.

(2) If an individual specifically requests a different order of precedence, that request will be honored.

[FR Doc. 87–19610 Filed 8–26–87; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 87-019]

Unshu Oranges; Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Citrus Fruit regulations and the Unshu Oranges regulations to allow Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in certain citrus canker-free zones in Japan to be imported and moved into or through all areas of the United States except Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States. This action will relieve unnecessary restrictions on the importation and distribution of these Unshu oranges without increasing the risk of spreading citrus canker.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: Stephen Poe, Senior Plant Pathologist, Biotechnology and Environmental Coordination Staff, APHIS, USDA, Room 400, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; 301–436–7602.

SUPPLEMENTARY INFORMATION:

Background

We proposed, in the **Federal Register** of August 13, 1984 (49 FR 32207–32209, Docket No. 83–333), to amend the Citrus Fruit regulations (contained in 7 CFR 319.28) and the Unshu Oranges regulations (contained in 7 CFR 301.83) to allow Unshu oranges (*Citrus reticulata* Blanco var. *unshu*, also known as Satsuma) grown in certain citrus canker-free zones in Japan to be imported and moved into or through all areas of the United States except Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States. The Citrus Fruit regulations currently allow the importation of these oranges only into Alaska, Hawaii, Idaho, Montana, Oregon, and Washington under specified conditions. In addition, the Unshu Oranges regulations currently prohibit the interstate movement of imported Unshu oranges from these areas into or through any other area of the United States.

We regulate the importation and interstate movement of Unshu oranges grown in Japan to prevent citrus canker from Japan from being introduced into the United States. Citrus canker, a disease that affect citrus, is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The disease exists in the United States in Guam. On August 23, 1984, the disease was also detected in Florida. We are working with the State of Florida to eradicate the disease there.

The **Federal Register** of August 13, 1984, invited the submission of written comments on the proposed rule on or before October 12, 1984, and announced that a public hearing on the proposal would be held on September 18, 1984, in Washington, DC. We received 10 written comments before the close of the comment period. After the detection of citrus canker in Florida, however, we canceled the public hearing (**Federal Register** notice of September 17, 1984, 49 FR 36391, Docket No. 84–351) and postponed action on the proposal until we could learn more about the Florida outbreak.

Having found no evidence linking the infestations of citrus canker in Florida to Unshu oranges, we republished the proposed rule (with minor, nonsubstantive corrections) in the **Federal Register** of December 10, 1986 (51 FR 44481–44483, Docket No. 86–341). This document also reopened the comment period for 60 days ending February 9, 1987, and rescheduled the public hearing for January 6, 1987. Only one person spoke at the public hearing, and his remarks favored the proposed rule. We received 12 written comments between December 10, 1986, and February 9, 1987, giving us a total of 22 written comments. The comments were from state agencies, trade associations, and private individuals. Four comments support the proposal as written; 18 contain objections. All of the objections are discussed below.

Based on the reasons given in the proposal and in this document, we have determined that the proposed geographic restrictions on the movement of Unshu oranges from Japan into and within the United States, combined with the existing safeguards employed in Japan in growing, processing, and packaging the oranges, are adequate to protect citrus in the United States from exposure to citrus canker from Unshu oranges grown in Japan. Therefore, we are adopting the proposal as a final rule, with only minor, nonsubstantive changes for clarity and the addition of due process procedures for the withdrawal of permits to import Unshu oranges.

Comments

Stating that "the California Department of Food and Agriculture has intercepted diseased fruit," one commenter asked whether we are certain that Japan is exporting canker-free Unshu oranges. We have made no changes based on this comment. No interceptions of citrus canker-infected Unshu oranges from Japan have been reported by the California Department of Food and Agriculture. Furthermore, it is extremely unlikely that any Unshu oranges imported into the United States from Japan would be infected with citrus canker. Unshu oranges may be imported into the United States from Japan only in accordance with the Citrus Fruit regulations (contained in 7 CFR 319.28). These regulations impose a number of independent safeguards to ensure that citrus canker is not carried into the United States by Unshu oranges from Japan. These safeguards include growing and packing Unshu oranges in isolated citrus canker-free export areas that are surrounded by cirtus canker-free buffer zones containing no species of citrus other than *Citrus reticulata* Blanco var. *unshu;* inspecting the trees and oranges in the export area and buffer zone during growing, harvesting, and packing; washing each orange to be exported in a chlorine solution that kills surface bacteria; and visually inspecting for evidence of citrus canker each orange to be exported. The export area and surrounding buffer zone are regularly inspected for citrus canker by plant pathologists of both Japan and the United States. Any evidence of citrus canker would disqualify the fruit for export to the United States. All Unshu oranges imported into the United States in accordance with the Citrus Fruit regulations also are subject to a final examination at the port of arrival by inspectors of the United States Department of Agriculture. Citrus canker has never been found on any Unshu oranges exported from Japan under the conditions described above. We are therefore confident that Unshu oranges imported into the United States from Japan present a negligible risk of carrying citrus canker bacteria.

One commenter asserted that Unshu oranges are imported into the United States from areas in Japan that have serious infestations of citrus canker, and, once in the United States, "will spread [citrus canker] due to totally inadequate state-border inspection

procedures"; another commenter maintained that "Type A citrus canker could be transmitted on the Japanese Unshu oranges shipped to a state near our Texas citrus industry and subsequently find its way into our industry"; and a third commenter argued that "once brought into a 'safe state,' canker infected fruit could eventually be transported to a production area in the United States." Several commenters asserted that expanding the area into which Unshu oranges may be imported and distributed would cause an increase in the number of Unshu oranges "transshipped" into citrus-producing states, particularly by tourists and other individuals in private automobiles, and would therefore increase the risk of citrus canker being introduced into these states.

These comments voice two concerns: (1) That the Unshu oranges imported into the United States from Japan are contaminated with citrus canker bacteria, and (2) that the Unshu oranges will be moved into states where they are prohibited by the quarantine imposed by the Unshu Oranges regulations (contained in 7 CFR 301.83). We have made no changes based on these comments. Under the Citrus Fruit regulations, we allow Unshu oranges to be imported from Japan only under permit. The permit states that the oranges may be moved only into certain states. In addition, each box of Unshu oranges must be stamped or imprinted with a warning that Unshu oranges may be moved only into listed states, and each orange must be wrapped in tissue paper stamped or imprinted with the same information. Our experience indicates that the restricted destination permit and the marking requirements are sufficient to notify importers and shippers of the quarantine on Unshu oranges.

There may be some risk of tourists or other individuals carrying Unshu oranges into states where the fruit is prohibited. Even if some Unshu oranges were brought into citrus-producing states, it is extremely unlikely that these oranges would be the source of any citrus canker infection. First, the oranges would have to be contaminated with citrus canker bacteria. As we have already discussed, Unshu oranges may be imported into the United States only under safeguards that have been demonstrated to be effective in keeping Unshu oranges free of citrus canker bacteria. Our regulations prohibit the movement of Japanese Unshu oranges into certain states only as a precaution against the very remote possibility that citrus canker bacteria could go undetected on imported Unshu oranges.

In the event, however remote, that an Unshu orange contaminated with citrus canker bacteria should reach a citrus-producing state, these bacteria could establish a new infection only under an unlikely combination of circumstances. First, the bacteria on the skin of the fruit would have to be released without coming into contact with any of the natural juice of the fruit since citrus canker bacteria are quickly killed by contact with the acidic juice. Then the bacteria would have to settle on young, live twigs or leaves of host plants. Finally, certain conditions of temperature and humidity would have to occur for the bacteria to cause an infection in the host plant. While this combination of circumstances is theoretically possible, there is no evidence that fruit or peel of any citrus variety has ever been the cause of citrus canker infection under field conditions. Furthermore, the amounts of Unshu oranges carried into these states in this manner probably would be negligible because tourists and other individuals would expect to find plenty of citrus fruit already there. Therefore, although the quarantine on Unshu oranges is a valuable safeguard against the establishment of citrus canker in the United States, a breach of the domestic quarantine, or the failure of any other single safeguard, is unlikely to result in the spread of citrus canker.

Two commenters urged careful monitoring of the movement of Unshu oranges within the United States to prevent illegal transshipment, and one of the commenters suggested "following the movement of Unshu oranges to ensure enforcement of the total protocol." Another commenter, asserting that transshipment would increase the risk of citrus canker being introduced into citrus-producing states, asked whether there would be additional inspectors or stations to guard against transshipment and whether the Department of Agriculture would "aid producers whose trees become infected as a result of the relaxation [of the domestic quarantine on Unshu oranges]." We have made no changes based on these comments. Relying on our experience in monitoring and enforcing domestic quarantines, we have determined that adequate personnel are available in citrus-producing areas to monitor the Unshu oranges quarantine. We do not expect that additional inspectors will be required. Also, because we believe that Unshu oranges are an extremely unlikely source of any new citrus canker infections, it does not appear necessary to establish a program to aid producers.

Several commenters linked their objections to the proposed rule to the citrus canker problem in Florida. One of these commenters stated that the "U.S.D.A.'s past track record for keeping imported diseases and pests out of Florida is not good" and that "the present U.S.D.A. inspection and treatment program to prevent the introduction and spread of this disease is . . . inadequate." The others said that the proposed rule should not be adopted until more is known about the source of the citrus canker in Florida. We have made no changes based on these comments. Although the source of the two recent infestations of citrus canker in Florida have not been identified, there is no indication that either infestation can be traced to Unshu oranges from Japan. Also, the introduction of citrus canker into Florida earlier in this century is attributed to importation of infected nursery stock, not fruit. Furthermore, the safeguards employed in Japan in growing, processing, and packaging Unshu oranges have been effective in keeping Unshu oranges free from citrus canker.

One commenter contended that we should not allow importation of any "nonprocessed citrus" from any country where citrus canker exists because "that small portion of Florida that does have "A" strain canker is highly regulated and can only go to processing." We have made no changes based on this comment. Florida citrus fruit is restricted to processing only if it comes from a known canker-infected grove. Fresh fruit from certified canker-free groves in Florida can be moved interstate to noncommercial citrus-producing areas. Our policy has been to allow importation of fruit from countries where exotic plant diseases exist if we can determine that the fruit comes from an area of that country that is free of the disease. Unshu oranges imported into the United States from Japan are grown and packed in isolated, citrus canker-free export areas that are surrounded by citrus canker-free buffer zones.

One commenter maintained that the proposal should not be adopted at this time because "an interception of Unshu oranges with citrus canker at the port of Seattle raises questions about the resistance of Unshu oranges to citrus canker." The commenter also asserted that, because of this interception, "the present procedure for importing Unshu oranges must be reviewed and tightened up before any consideration is given to increased importations of Unshu

oranges from Japan." We have made no changes based on these comments.

No Unshu oranges imported into the United States from Japan under the safeguards imposed by the Citrus Fruit regulations have been found to be infected with citrus canker. These safeguards, with only minor changes, have been in effect since 1967, when our quarantine regulations were amended to allow Unshu oranges imported into the United States from Japan to be moved into certain northwestern states. Furthermore, the history of Unshu orange importation into the United States earlier in this century confirms that Unshu oranges are highly resistant to citrus canker. From 1925 through 1940, more than 28 million pounds of Unshu oranges were imported into the United States from Japan, where citrus canker has been present since before 1899. These oranges were grown under normal orchard conditions. They were inspected and certified free of citrus canker in Japan and imported into the United States under permit, where they were again inspected. Not one imported Unshu orange was found to be infected with citrus canker. (Unshu oranges were not imported into the United States from Japan during and immediately after World War II. In 1947, we prohibited the importation of Unshu oranges from Japan because the United States was by then free of citrus canker. We amended our quarantine regulations in 1952 to allow Unshu oranges to be imported from Japan into the United States, but only into Alaska.)

One commenter declared that any permit issued for importation of Unshu oranges should be revoked if the Unshu oranges are shipped into a state where the oranges are prohibited. Under the proposed rule, one of the conditions for importation of Unshu oranges, which would be specified on the permit, is that the "importation shall not be allowed through ports of entry located in Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, or the Virgin Islands of the United States. Violation of this requirement would be cause for revoking a permit and could be grounds for other penalties as well. In response to this comment, we have added to § 319.28 a paragraph (h) describing procedures for the withdrawal of permits, and a paragraph (i) defining the term inspector.

One commenter objected to our proposal because "this procedure does not consider arrowhead scale, *Unaspis yanonensis*, which is a serious insect pest of citrus." He stated that California border stations intercepted Unshu oranges infested with arrowhead scale 24 times in 1986 and asserted that "these interceptions verify that there must be a change in the present quarantine and inspection program before any consideration for an expansion of the existing program [for importing Unshu oranges]." We have made no changes based on this comment. Unshu oranges imported into the United States from Japan in accordance with the Citrus Fruit regulations also are subject to the Fruits and Vegetables regulations (contained in 7 CFR 319.56), which prohibit the importation of any fruits or vegetables infested with arrowhead scale or other injurious insects, and the emergency provisions of the Federal Plant Pest Act (7 U.S.C. 150dd). Unshu oranges to be imported into the United States from Japan are inspected in Japan and at the port of arrival in the United States for arrowhead scale and other insects as well as for citrus canker. Any evidence of insect infestation would disqualify the fruit for importation into the United States. The Unshu oranges infested with arrowhead scale that were intercepted at the California border were not part of any shipment of fruit from the citrus canker-free export areas in Japan.

One commenter, also referring to the California interceptions of Unshu oranges infested with arrowhead scale, stated that the oranges "were in all probability fruit that had been imported into Canada where there are no quarantine restrictions against the presence of arrowhead scale or citrus canker . . . and then reached the California border by way of transshipments in commercial carriers or private vehicles." He asserted that "more secure measures" should be instituted to prevent the movement of Unshu oranges across the Canadian border into the United States. We have made no changes based on this comment. Unshu oranges imported into Canada from Japan are not eligible to be imported into the United States from Canada. Nevertheless, we recognize that some Unshu oranges imported into Canada are coming across the Canadian border into the United States. We have recently completed a study of inspection procedures at the Canadian border in an effort to resolve this problem. However, the illegal importation of Unshu oranges into the United States from Canada is unrelated to our proposal to expand the area of the United States into which Unshu oranges from the special export areas in Japan may be imported and distributed. In fact, expanding the area into which these Unshu oranges may legally be imported and moved in the United States may be the most effective way of reducing the number of potentially contaminated Unshu oranges smuggled into the United States.

The same commenter further stated that in view of the problem of Unshu oranges coming into the United States from Canada, we should not consider the "importation of presumably canker-free Unshu oranges from Japan into additional States unless, minimally, contiguous buffer areas in state-wide units are provided for added protection against the transshipment of such fruit as well as similar fruit entering the country illegally from Canada." The commenter asserted that the following states should be added to the list of states into which Unshu oranges may not be moved: Arkansas, Colorado, Idaho, Oklahoma, Oregon, Tennessee, Utah, and Virginia. One other commenter also maintained that Oregon should be added to the list of prohibited areas to give California a buffer zone to the north. We have made no changes based on these comments.

As we stated previously, Unshu oranges imported into the United States in accordance with the Citrus Fruit regulations present only a very remote risk of introducing citrus canker into the United States. Nevertheless, to protect citrus in the United States from even this risk, we proposed to continue to prohibit the movement of Unshu oranges into Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States. This list of prohibited areas includes not only the citrus-producing areas of the United States but also areas of the United States where known hosts of the "A" strain of citrus canker can be grown. Thus, our proposal already includes buffer zones, which, around some citrus-producing areas, are quite deep. Moreover, extending the buffer zone around citrus-producing states would not in any way deter the illegal entry of Unshu oranges from Canada.

We are not adding Oregon to the list of prohibited areas because Oregon is not a citrus-producing state and its climate is unsuitable for growing hosts of the "A" strain of citrus canker. It is not necessary to give California a state-wide buffer zone to the north. No commercial citrus is grown in California within 100 miles of the California-Oregon border.

Furthermore, as explained earlier, the buffer zones are intended as one of many safeguards against the spread of citrus canker, and any breach of the domestic quarantine, or the failure of any other single safeguard, is unlikely to result in the spread of citrus canker disease. Therefore, it does not appear that prohibiting the movement of Unshu oranges into Arkansas, Colorado, Idaho, Oklahoma, Oregon, Tennessee, Utah, and Virginia would significantly increase the protection of U.S. citrus against citrus canker.

Two commenters asserted that we should not adopt the proposal because the limited acreage approved in Japan as canker-free export areas "cannot meet the needs of a 7–8 fold increase in the number of receiving states." Another commenter objected to the proposal because "the Japanese have not eased their importation restrictions." We have made no changes based on these comments. It is not our policy to base regulations on economic factors. Our policy is to impose only those restrictions necessary to prevent the spread of plant pests and diseases. In line with this policy, our proposed amendments to the Citrus Fruit and Unshu Oranges regulations are intended to relieve unnecessary restrictions while providing adequate protection against the spread of citrus canker disease.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an annual effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Specifically, Unshu oranges from Japan constitute only about three percent of the total number of tangerines imported into the United States. (Unshu oranges are listed as tangerines for gathering data about commerce.) We do not expect the volume of Unshu oranges imported into the United States under the provisions of this rule to increase significantly compared with importations of other tangerines.

Only three small entities import Unshu oranges from Japan into the United States. The Unshu orange is a premium product aimed at a luxury market. It sells at two to three times the price of tangerines and is available for distribution in the United States only during late November through December of each year. For these reasons, we do not anticipate that this rule will cause a significant increase in the number of Unshu oranges imported into the United States or have a significant economic effect on small entities in the import or domestic tangerine market.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects

7 CFR Part 301

Agricultural commodities, Citrus canker, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

7 CFR Part 319

Agricultural commodities, Citrus canker, Fruit, Imports, Plant diseases, Plant pests, Plants (Agricultural), Quarantine, Transportation.

Accordingly, we are amending 7 CFR 301.83 and 7 CFR 319.28 as follows:

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. The authority citation for Part 319 continues to read as follows:

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 7 CFR 2.17, 2.51, and 371.2(c).

PART 301—[AMENDED]

3. Section 301.83 is revised to read as follows:

§ 301.83 Prohibition and notice of quarantine.

(a) To prevent the interstate dissemination of the citrus canker bacteria, Unshu oranges (*Citrus reticulata* Blanco var. *unshu,* also known as Satsuma) grown in Japan are prohibited from being moved interstate from any quarantined area into or through any nonquarantined area of the United States.

(b) All areas of the United States, except for Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States are quarantined.

PART 319—[AMENDED]

4. In § 319.28, the introductory text of paragraph (b), paragraph (b)(6), and paragraph (g) are revised and new paragraphs (h) and (i) are added to read as follows:

§ 319.28 Notice of quarantine.

* * * * *

(b) The prohibition does not apply to Unshu oranges (*Citrus reticulata* Blanco var. *unshu,* also known as Satsuma) grown in Japan and imported under permit into any area of the United States except for Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States: *Provided,* that each of the following safeguards are fully carried out:

* * * * *

(6) The Unshu oranges may be imported into the United States only through a port of entry listed in § 319.37–14 of this part, except that the importation is prohibited through ports of entry located in Alabama, American Samoa, Arizona, California, Florida, Georgia, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, the Northern Mariana Islands, Puerto Rico, South Carolina, Texas, and the Virgin Islands of the United States.

* * * * *

(g) The term "United States" means the States, District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

(h) Any permit that has been issued for the importation of Unshu oranges may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the permit

has not complied with any of the conditions in the regulations. The holder of the permit shall be informed orally or in writing of the reasons for the withdrawal. If the withdrawal is oral, the decision and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. As promptly as circumstances allow, the Deputy Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Deputy Administrator.

(i) The term "inspector" means any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, who is authorized by the Deputy Administrator to enforce the regulations in this subpart.

Done in Washington, DC, this 21st day of August, 1987.

D. Husnik,

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

[FR Doc. 87-19722 Filed 8-26-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Docket No. R-0600]

Credit by Brokers and Dealers (Regulation T); Mortgage Related Securities

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation T by revising the definition of "OTC margin bond." The amended definition will now include any "mortgage related security," a term defined in the Secondary Mortgage Market Enhancement Act of 1984 (SMMEA) and in section 3(a)(41) of the Securities Exchange Act of 1934. Comments have been received on this proposal which was published in the Federal Register on April 23, 1987 (52 FR 13458) and they were all supportive.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Laura Homer, Securities Credit Officer, Division of Banking Supervision and Regulation, (202) 452-2781, or Carolyn Davis, Economist, Division of Research and Statistics, (202) 452-3633; or for any user of a Telecommunication Device for the Deaf (TDD), Ernestine Hill or Dorothea Thompson, (202) 452-3244.

SUPPLEMENTARY INFORMATION: In October of 1984 the SMMEA amended the Securities Exchange Act of 1934 and the statutes governing investments by depository institutions to provide preferential treatment for securities meeting a new legal definition, "mortgage-related securities." The amendments were designed to facilitate a liquid market in mortgage securities issued by non-governmental entities that would be competitive with the existing market in securities issued by United States government agencies such as GNMA and FNMA. The ultimate goal was to facilitate private sector participation in the secondary market for mortgages.

A vast number of "mortgage related securities" are presently eligible for "good faith" loan value in a margin account because they come within the existing definition of an "OTC margin bond." An increasing number are outside the definition of "OTC margin bond" because they are privately placed and do not meet one criterion in that definition—a requirement for Securities and Exchange Commission registration and reporting. The SMMEA, however, grants preferential treatment in many areas to any "mortgage related security" whether it is publicly offered or privately placed. This amendment will permit similar margin treatment for securities sold either way.

Final Regulatory Flexibility Analysis

The Board's Initial Regulatory Flexibility Analysis indicated that this amendment, if adopted, was not expected to have a significant economic impact on a substantial number of small entities. Comments were invited on the statement; no comments to the contrary were received. The Board, therefore, certifies for the purposes of 5 U.S.C. 605(b), that the amendment is not expected to have any adverse impact on a substantial number of small businesses. The amendment imposes no additional information collection requirements.

The requirement of 5 U.S.C. 553d with respect to deferred effective date is not being followed in connection with this amendment because the amendment relieves a restriction previously imposed.

List of Subjects in 12 CFR Part 220

Banks, Banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

For the reasons set out in this notice, and pursuant to the Board's authority under sections 3, 7, 8, 17 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78c, 78g, 78h, 78q, and 78w), the Board amends 12 CFR Part 220 as follows:

PART 220—[AMENDED]

1. The authority citation for Part 220 continues to read as follows:

Authority: 15 U.S.C. 78c, 78g, 78h, 78q and 78w.

2. Section 220.2(r) is amended by removing the period and adding ";or" at the end of paragraph (r)(2)(iii) and adding a new paragraph (r)(3) as set forth below. The introductory text of paragraph (r)(3) is republished.

§ 220.2 Definitions.

* * * * *

(r) "OTC margin bond" means: * * *

(3) A "mortgage related security" as defined in section 3(a)(41) of the act.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 20, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-19607 Filed 8-26-87; 8:45 am]

BILLING CODE 6210-01-M

ENVIRONMENTAL PROTECTION AGENCY

21 CFR Parts 193 and 561

[OPP-300171; FRL-32526]

Updating of Pesticide Names, Diazinon; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: This document updates the names of three currently listed pesticides in 21 CFR Parts 193 and 561 by changing them to reflect current American National Standards Institute (ANSI) names. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Charles L. Trichilo, Hazard Evaluation Division (TS–769c), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 810, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7324.

List of Subjects in 21 CFR Parts 193 and 561

Food additives, Animal feeds, Pesticides and pests.

Dated: August 17, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 21 CFR Chapter I:

PART 193—[AMENDED]

1. In Part 193: a. The authority citation for Part 193 continues to read as follows:

Authority: Sec. 409, 72 Stat. 1785 (21 U.S.C. 348).

§ 193.142 [Amended]

b. Section 193.142 is amended in the section heading and text by changing "*O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phospohorothioate" to "diazinon" wherever it appears.

§193.430 [Amended]

b. Section 193.430 is amended in the section heading and text by changing "tricyclohexyltin hydroxide" to "cyhexatin" wherever it appears.

PART 561—[AMENDED]

2. In Part 561: a. The authority citation for Part 561 continues to read as follows:

Authority: 21 U.S.C. 348.

§ 561.400 [Amended]

b. Section 561.400 is amended in the section heading and text by changing "trycyclohexyltin hydroxide" to "cyhexatin" wherever it appears.

§ 561.415 [Amended]

c. Section 561.415 is amended in the section heading and text by changing "*O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate" to "diazinon" wherever it appears.

§ 561.425 [Amended]

d. Section 561.425 is amended in the section heading and text by changing "2,3-dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide" to "dimethipin" wherever it appears.

[FR Doc. 87–19650 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1627

Legislative Regulation and Administrative Exemption Allowing for Non-EEOC Supervised Waivers Under the ADEA

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of final rule.

SUMMARY: The Commission hereby provides notice of a legislative regulation and administrative exemption (under section 9 of the Age Discrimination in Employment Act of 1967 (ADEA) and 29 CFR 1627.15) allowing for non-EEOC supervised waivers and releases of private rights under the ADEA.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: John K. Light at (202) 634–7643.

SUPPLEMENTARY INFORMATION: Section 9 of the ADEA, 29 U.S.C. 628, grants the Commission broad authority to promulgate interpretive guidelines and legislative regulations on both procedural and substantive matters. Section 9 also authorizes the Commission "to establish such reasonable exemptions to or from any or all provisions of [the ADEA] as [it] may find necessary and proper in the public interest." The Commission hereby promulgates a legislative regulation and administrative exemption under section 9 of the ADEA and 29 CFR 1627.15, allowing for waivers and releases of private rights under the ADEA, 29 U.S.C. 621 *et seq.*

A Notice of Proposed Rulemaking (NPRM) regarding this rule was published in the **Federal Register** of Monday, October 7, 1985 (50 FR 40870) with a sixty-day period for public comment. In all 36 written comments were received, with 23 generally supporting the NPRM and 13 generally opposing it. A substantial number of the commenters favoring and opposing the NPRM simply stated this fact without significant substantive discussion.

Because the framers of the ADEA were concerned that delay would prejudice the claims of older workers, one of their central goals was to insure expeditious resolution of disputes. *See* 113 Cong. Rec. 7076 (Remarks of Sen. Javits); *Burns v. Equitable Life Assurance Society*, 696 F.2d 21, 24 n.2 (2d Cir. 1982). The Commission believes that requiring government supervision of releases and waivers is at odds with this congressional goal. Accordingly, the Commission has determined that it is necessary and proper in the public interest to permit waivers or releases under the Act without the Commission's supervision or approval, provided that any waivers of ADEA rights in such agreements are "knowing and voluntary." But after considering the comments, the Commission believes it is also important to provide guidance on the standards for determining whether waivers are "knowing and voluntary." The final rule also makes it clear that waivers of prospective rights or claims will not be permitted and declares that a waiver of the right to file an EEOC charge is void as against public policy.

Responding to the specific request in the NPRM that comments address whether it is necessary to develop particular standards to determine whether waivers are "knowing and voluntary," commenters were about evenly divided between those who expressed opposition to the wisdom or need for any specific standards and those who believed that some standards are desirable. Those commenters against development of particular standards generally believed that whether a waiver was "knowing and voluntary" could best be determined by the courts on a case-by-case basis as under Title VII or that such standards would be difficult for the Commission to formulate and would involve the Commission in supervising waivers. Some of the commenters believed that workable standards could not be drawn because of varying factual circumstances involved in waivers.

Those comments favoring the development of standards for "knowing and voluntary" waivers generally thought that such standards would be beneficial in insuring that waivers were transacted in a "knowing and voluntary" manner and thus would avoid later controversy. Several comments in favor of establishing standards included specific suggestions as to standards that should be used. These suggestions included simply citing that the waiver or release was "knowing and voluntary" and giving the employee one week to review the document, making specific reference to the issue of "duress," and presenting multiple item lists of considerations. These latter included suggestions that, in addition to those specified above, the waiver or release be written in plain English, provide more than token consideration, not deal with a benefit to which the employee was already entitled, concern only past acts, include a statement that the agreement was not an admission of liability by the employer, and provide that the employee would not file suit.

While the Commission recognizes that the presence or absence of one or more standards would not be dispositive of whether a particular waiver is "knowing and voluntary," it does believe that relevant factors indicative of "knowing and voluntary" action can and should be articulated in the Final Rule. Thus the rule contains guidance as to what the courts have previously regarded as indicative, and what the Commission is likely to find supportive, in demonstrating that a wiaver is "knowing and voluntary."

It should be noted that the indicators or standards listed below are presented as examples, not as limitations, for assessing the validity of waivers. Other factors that are not listed may be used in evaluating "knowing and voluntary" and not all of the following indicators or standards need be present in every case for a waiver to be valid. The Commission wishes to emphasize that waivers challenged as not "knowing and voluntary" will be evaluated on a case-by-case basis and the Commission will look to the substance, not to the form of the waiver agreement.

Following the principles established under Title VII case law, the Commission would expect valid waivers to incorporate or conform with the following fundamental indicators or standards:

(1) The agreement was in writing, in understandable language, and clearly waived the employee's rights or claims under the ADEA;

(2) A reasonable period of time was provided for employee deliberation;

(3) The employee was encouraged to consult with an attorney.

Another provision in the Notice of Proposed Rulemaking that drew several comments is the sentence that states:

> No such waivers or releases, however, shall affect the Commission's rights and responsibilities to enforce the Act.

Several commenters suggested this sentence be removed or other language substituted, making it clear the Commission will not routinely evaluate waivers but will review waivers of ADEA claims only when a charge is filed or where a waiver is raised during an investigation. In addition, some commenters suggested language stating the Commission will not seek relief for individuals who have "knowingly and voluntarily" executed releases and waivers of their ADEA rights.

After careful assessment of the comments and its enforcement responsibilities, the Commission has concluded that the present language of the provision reserves the necessary maximum flexibility and discretion for the Commission in determining what best serves the public interest in the enforcement of the ADEA. *See Equal Employment Opportunity Commission v. Cosmair, Inc.*, No. 86–1806 (5th Cir. July 16, 1987).

A number of comments addressed "waivers of prospective rights" and the question of "valid or adequate consideration." In accordance with suggestions made by several commenters, the final rule has been changed to indicate clearly that release of prospective rights or claims will not be permitted nor will consideration be recognized that includes benefits to which the employee is already entitled by law or contract.

In promulgating this rule the Commission has taken into consideration the fact that courts have consistently recognized that Congress has expressed a strong preference for voluntary settlements of employment discrimination claims and that Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, permits employers and employees to settle disputes by using waiver agreements as long as the waiver of rights and release of potential liability is "knowing and voluntary." *Alexander v. Gardner-Denver Co.*, 415 U.S. 79, 88 n.14 (1981). There is a similar preference for voluntary resolution of disputes under the ADEA. *See* 29 U.S.C. 626(d) (efforts at conciliation, conference, and persuasion to be made before resort to litigation). The Supreme Court has noted that Title VII and the ADEA share a common purpose and that similar provisions should be similarly interpreted. *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979).

This conclusion is supported by section 2(b) of the ADEA which firmly establishes the goal of encouraging "employers and workers [to] find ways of meeting problems arising from the impact of age on employment." 29 U.S.C. 621(b). Moreover, the framers of the Act were concerned that delay would prejudice the claims of older workers and one of their central goals was to insure expeditious resolution of disputes. *See* 113 Cong. Rec.7076 (Remarks of Sen. Javits) *Burns v. Equitable Life Assurance Society*, 696 F.2d 21, 24 n.2 (2d Cir. 1982).

The Commission has concluded that this exemption serves both purposes by allowing amicable resolution of disputes and releases of rights for valuable benefits, without bureaucratic oversight and delay, where such releases are in the mutual interests of both employees and employers. Requiring government supervision would delay the provision of valuable benefits or additional compensation to older employees who freely choose to release their ADEA rights or claims, and tend to discourage employers from offering such enhanced benefits to older workers. This rule is therefore intended to give older workers maximum freedom of choice. To do otherwise would perpetuate the stereotype that older workers need the protection of a paternalistic government.

The exemption does not affect the rights of victims of age discrimination who do not with to settle their claims. The Commission will ensure that individuals who decline to sign waivers receive all compensation and benefits to which they are otherwise entitled. If an individual wishes EEOC supervision of a settlement, he or she may file an EEOC charge. Furthermore, it is the Commission's position that a waiver cannot prevent an employee from filing a charge with the Commission (*see EEOC v. Cosmair, Inc.*, No. 86–1806 (5th Cir. July 16, 1987) ("A waiver of the right to file a charge is void as against public policy.")), and that older employees are protected from retaliation if they seek to challenge an executed waiver as not knowing and voluntary or otherwise invalid.

Section 7(b) of the ADEA, 29 U.S.C. 626(b), incorporates the enforcement provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. 201 *et seq.* In *Lorillard v. Pons*, 434 U.S. 575 (1978), the Supreme Court held that not only the FLSA enforcement provisions but also pre-ADEA case law dealing with enforcement of FLSA rights were incorporated into ADEA section 7(b). While the FLSA like the ADEA is silent on whether an employee can release his or her rights under the Act, the case law on contractual waivers of FLSA rights does not permit waivers of bona fide disputes as to coverage or liquidated damages without government supervision. *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945); *Schulte, Inc. v. Gangi*, 328 U.S. 108 (1946).

However, the Commission believes the enforcement provisions of the FLSA that are incorporated into the ADEA must be viewed in the context of the different policy considerations underlying the two acts. Cf. *United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 861 (5th Cir. 1975), *cert. denied*, 425 U.S. 944 (1976) (The *O'Neil-Schulte* line of cases "were tied closely to the mandatory terms of particular statutes, the labor conditions that produced those statutes, and what the Court believed was a clearly discernible congressional intent.") The FLSA is a minimum wage statute. The factual issues in FLSA cases concern the number of hours worked and the rate of

pay and are generally "amenable to determination with some precision." (*Runyan v. National Cash Register Corp.*, 787 F.2d 1039, 1044 n.8 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 178 (1986)); under the FLSA there is an absolute presumption that any unsupervised waivers of minimum wage rights would necessarily be against public policy (*see Brooklyn Savings Bank v. O'Neil, supra*). There is no such presumption under Title VII. *United States v. Allegheny-Ludlum Industries, Inc., supra; Rogers v. General Electric Co.*, 781 F.2d 452 (5th Cir. 1986) ("A general release of Title VII claims does not ordinarily violate public policy.") The substantive rights protected by the ADEA are closely analogous to the rights protected by Title VII. Moreover, as earlier noted, the ADEA and Title VII share a common purpose of encouraging the voluntary expeditious resolution of disputes. Accordingly, the Commission believes that mandatory government supervision of ADEA releases would not serve the purpose of the ADEA and that unsupervised ADEA releases, like Title VII releases, should be permitted provided they are knowing, voluntary and non-prospective, as required under the standards governing Tile VII releases.

Recently, the Sixth Circuit Court of Appeals sitting *en banc* held that an unsupervised release of an ADEA claim in a bona fide factual dispute could be valid. *Runyan v. National Cash Register Corp.*, 787 F.2d 1039, *cert. denied*, 107 S. Ct. 178 (1986). The court reasoned that where the dispute is a factual rather than a legal one, *O'Neil* and *Gangi* do not preclude an unsupervised waiver or release under FLSA or ADEA. *Accord Equal Employment Opportunity Commission v. Cosmair, Inc.*, No 86–1806 (5th Cir. July 16, 1987); *Lancaster v. Buerkle Buick Honda Co.*, 809 F.2d 539 (8th Cir. 1987); *Moore v. McGraw Edison Co.*, 804 F.2d 1026 (8th Cir. 1986).

The Commission agrees with the rationale and holding of the Sixth Circuit's *Runyan en banc* decision with regard to unsupervised waivers under the ADEA and has incorporated that approach in the final rule. The Commission believes that the reasoning of the *Runyan en banc* decision responds to those commenters who felt that the ADEA does not permit unsupervised waivers because the FLSA enforcement provisions that it largely incorporates allow no such waivers. To the extent that any circuit court decision could be read to conflict with the *Runyan en banc* decision (*see Lynn's Food Stores, Inc. v. United States Dept. of Labor*, 679 F.2d 1350, 1354–55 (11th Cir. 1982) (where supervised waivers are held to be an exclusive alternative to litigation or court-supervised settlement for all FLSA claims)) the Commission's exemption authority under section 9 of the ADEA is being utilized to permit unsupervised waivers in those jurisdictions.

The Commission has determined that the remedial purposes of the Act will be best served by allowing the use of waiver agreements to resolve claims whenever employees and employers perceive them to serve their mutual interests, provided that any waivers of ADEA rights in such agreements are "knowing and voluntary." Either a clear understanding of the nature of the rights being waived or the presence of an asserted claim satisfy an initial element of whether a waiver is knowing. It is the Commission's position that a release may be valid as to claims of which a signing party has actual knowledge and those that could have been discovered upon reasonable inquiry. *See Oglesby v. Coca-Cola Bottling Co.*, 620 F. Supp. 1336, 1342 (N.D. Ill. 1985).

The Commission will apply the same standards that are applicable under current Title VII case law to ADEA waivers. Under Title VII, waivers are deemed to be "knowing and voluntary" if they clearly provide actual notice of the nature of the rights that are waived and are fully negotiated without fraud or duress. *See Rogers v. General Electric Co.*, 781 F.2d 452 (5th Cir. 1986); *Pilon v. University of Minnesota*, 710 F.2d 466 (8th Cir. 1983); *Lyght v. Ford Motor Co.*, 643 F.2d 435 (6th Cir. 1981); *EEOC v. T.I.M.E.—D.C. Freight, Inc.*, 659 F.2d (5th Cir. 1981); *Cox v. Allied Chemical Corp.*, 538 F.2d 1094 (5th Cir. 1976), *cert. denied*, 434 U.S. 1051 (1978); *Watkins v. Scott Paper Co.*, 530 F.2d 1159 (5th Cir. 1975). Relevant factors that courts have previously regarded as indicative and that the Commission is likely to find supportive in demonstrating that a waiver was entered into in a "knowing and voluntary" manner are set forth in the final rule. Similarly, the Title VII case law prohibition against recognizing a waiver of future or prospective claims (e.g., a waiver agreement dated January 1 of a given year is not applicable to claims arising after that date) will have full application to ADEA waivers. *Alexander v. Gardner-Denver Co.*, 415 U.S. at 51; *United States v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826, 856 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976). In addition, the Commission will require that consideration in exchange for a valid waiver under the ADEA not include employment benefits to which the employee is already entitled either by law or contract. *See Runyan v. NCR Corp.*, 573 F. Supp. 1454, 1460 (S.D. Ohio 1983), *aff'd*, 787 F.2d 1039 (6th Cir. 1986), *cert. denied*, 107 S. Ct. 178 (1986).

Further, while the Commission takes the position that a waiver, if valid, may be a defense to any claim for individual relief for the employee who signed it, such a waiver cannot be used to justify interfering with an employee's protected right to file a charge or participate in a Commission investigation. *Equal Employment Opportunity Commission v. Cosmair*, No. 86–1806, slip op. at 5145 (5th Cir. July 16, 1987). The right to file a charge and participate in a Commission investigation is absolutely protected because it is essential to the Commission's enforcement of the ADEA. *Id.* The plain language of section 4(d) of the ADEA makes it unlawful for an employer to take action against an employee because he has, *inter alia*, filed a charge. *See Id.* at 5144. The enforcement policies underlying the ADEA strongly support this position. *Equal Employment Opportunity Commission v. Cosmair*, No. 86–1806 (5th Cir. July 16, 1987); *see Pettway v. American Cast Iron Pipe Co.*, 411 F.2d 998 (5th Cir. 1969).

The Commission hereby provides notice that it is adopting a legislative rule and exemption allowing non-EEOC supervised waivers and releases of private rights as an exemption to the provisions of section 7 of the ADEA for any waiver of rights or release from liability by an employee or job applicant under the Act that is knowing, voluntary, and in conformity with the other requirements of this rule.

Impact Analysis—Classification-Executive Order 12291

The rule in this document is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Similarly, the Chairman of the EEOC certifies under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this amendment will not

result in a significant impact on a substantial number of small employers.

List of Subjects in 29 CFR Part 1627

Equal employment opportunity, Reporting and recordkeeping requirements.

Accordingly, the Commission amends 29 CFR Part 1627 as follows:

PART 1627—[AMENDED]

1. The authority citation for Part 1627 is revised to read as follows:

Authority: Sec. 7, 81 Stat. 604; 29 U.S.C. 626; sec. 9, 81 Stat. 605; 29 U.S.C. 628; sec. 11, 52 Stat. 1066, as amended, 29 U.S.C. 211; sec. 2, Reorg. Plan No. 1 of 1978, 43 FR 19807.

2. Paragraph (c) is added to § 1627.16 as follows:

§ 1627.16 Specific exemptions:

* * * * *

(c)(1) Pursuant to the authority contained in section 9 of the Act and in accordance with the procedure provided therein and in § 1627.15(b) of this part, it has been found necessary and proper in the public interest to permit waivers or releases of claims under the Act without the Commission's supervision or approval, provided that such waivers or releases are knowing and voluntary, do not provide for the release of prospective rights or claims, and are not in exchange for consideration that includes employment benefits to which the employee is already entitled.

(2) When assessing the validity of a waiver agreement, the Commission will look to, and is likely to find supportive, the following relevant factors that courts have previously identified as indicative of a knowing and voluntary waiver:

(i) The agreement was in writing, in understandable language, and clearly waived the employee's rights or claims under the ADEA;

(ii) A reasonable period of time was provided for employee deliberation;

(iii) The employee was encouraged to consult with an attorney.

These are not intended as exclusive nor must every factor necessarily be present in order for a waiver to be valid, except that a waiver must always be in writing. Moreover, even where these three factors are present, if a waiver is challenged, the Commission will look to the substance and circumstances to determine whether there was fraud or duress.

(3) No such waivers or releases shall affect the Commission's rights and responsibilities to enforce the Act. Nor shall such a waiver be used to justify interfering with an employee's protected right to file a charge or participate in a Commission investigation.

Signed this 6th Day of August at Washington, DC.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 87-19547 Filed 8-26-87; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF DEFENSE

Defense Mapping Agency

32 CFR Part 295

[DMA Instruction 5400.7]

DMA Freedom of Information Act (FOIA) Program

AGENCY: Defense Mapping Agency, DoD.

ACTION: Final rule amendment.

SUMMARY: This amendment to 32 CFR Part 295 provides a change of title to 32 CFR Part 295. It also provides the public with the names and addresses of all DMA Components, including two new Components recently established.

EFFECTIVE DATE: August 27, 1987.

ADDRESS: Defense Mapping Agency, Building 56, U.S. Naval Observatory, Washington, DC 20305-3000.

FOR FURTHER INFORMATION CONTACT: Mr. Del Malkie, (202) 653-1131.

SUPPLEMENTARY INFORMATION: In 40 FR 6336 appearing on Tuesday, February 11, 1975, the Defense Mapping Agency (DMA) published Part 295 of this title establishing the policy of the Defense Mapping Agency regarding the availability to the public of DMA information and implemented 5 U.S.C. 552. This rule states the policy of the DMA with regard to making DMA records available to members of the public and implements Department of Defense Directive 5400.7 and Department of Defense Regulation 5400.7-R, DoD Freedom of Information Act Program. (32 CFR Part 286)

List of Subjects in 32 CFR Part 295

Freedom of information.

Accordingly, 32 CFR Part 295 is amended as follows:

1. The authority citation for Part 295 continues to read as follows:

Authority: Sections 295.1 to 295.11 issued under 5 U.S.C. 301, 552, as amended by Act of Nov. 21, 1974 (Pub. L. 93-502, 88 Stat. 1-3).

2. The heading for 32 CFR Part 295 is revised to read as follows:

PART 295—DMA FREEDOM OF INFORMATION ACT (FOIA) PROGRAM

In § 295.6 paragraphs (b) (1) through (6) are revised and (b) (7) and (8) are added to read as follows:

§ 295.6 Procedure for submission of requests for DMA records by members of the public.

* * * * *

(b) * * *

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Linda M. Lawson,

Alternate OSD Federal Register Liaison, Department of Defense.

August 24, 1987.

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Department of the Navy

32 CFR 732

Nonnaval Medical and Dental Care

AGENCY: Naval Medical Command, Navy, DOD.

ACTION: Final rule.

SUMMARY: The Naval Medical Command has promulgated this regulation to describe and publish the policies and procedures for obtaining inpatient and outpatient maternity, medical, and dental care from nonnaval sources worldwide for active duty Navy and Marine Corps members and reservists; outpatient care in the United States for active duty naval members of North Atlantic Treaty Organization (NATO) nations other than Canada; and inpatient and outpatient care for

Canadian Navy and Marine Corps personnel who receive care in the United States on or after 3 November 1986. To provide guidelines by which claims for the costs of such care are adjudicated and paid by the Navy. It updates a Department of the Navy instruction for conformity with Department of Defense directives.

EFFECTIVE DATE: June 11, 1987.

FOR FURTHER INFORMATION CONTACT: Herbert L. Pelham, Program Analyst, Naval Medical Command, Washington, DC 20372–5120, (202) 653–1179.

SUPPLEMENTARY INFORMATION: This revision relates to internal naval management and personnel handling practices and largely reflects nonsubstantive changes adopted in NAVMED COMINST 6320.1A. It was determined that invitation of public comment on these changes prior to adoption would be impracticable and is therefore not required under public rulemaking provisions of Parts 296 and 701 of 32 CFR.

List of Subjects in 32 CFR Part 732

Emergency medical services, Health care, Health facilities.

Jane M. Virga,

LT, JAGC, USNR, Federal Register Liaison Officer.

Date: August 20, 1987.

Accordingly, 32 CFR Part 732 is revised to read as follows:

PART 732—NONNAVAL MEDICAL AND DENTAL CARE

Subpart A—General

Sec.

Subpart B—Medical and Dental Care From Nonnaval Sources

Subpart C—Accounting Classifications for Nonnaval Medical and Dental Care Expenses and Standard Document Numbers

Authority: 5 U.S.C. 301; 10 U.S.C. 1071–1088, 5031, 6148, 6201–6203, and 8140; and 32 CFR 700.1202.

Subpart A—General

§ 732.1 Background.

When a United States Navy or Marine Corps member or a Canadian Navy or Marine Corps member receives authorized care from other than a Navy treatment facility, care is under the cognizance of the uniformed service medical treatment facility (USMTF) providing care, the USMTF referring the member to another treatment source, or under the provisions of this part. If such a member is not receiving care at or under the auspices of a Federal source, responsibility for health and welfare, and the adjudication of claims in connection with their care, remains within the Navy Medical Department. Part 728 of this chapter and NAVMEDCOMINST 6320.18 contain guidelines concerning care for other eligible beneficiaries, not authorized care by this part.

§ 732.2 Action.

Ensure that personnel under your cognizance are made aware of the contents of this part. Failure to comply with contents may result in delayed adjudication and payment or may result in denial of Navy financial responsibility for expenses of maternity, medical, or dental care obtained.

Subpart B—Medical and Dental Care From Nonnaval Sources

§ 732.11 Definitions.

Unless otherwise qualified in this part the following terms when used throughout are defined as follows:

(a) *Active duty.* Full-time duty in the active military service of the United States. Includes full-time training duty; annual training duty; and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary of the military department concerned.

(b) *Active duty for training.* A specified tour of active duty for Reserves for training under orders that provides for automatic reversion to non-active duty status when the specified period of active duty is completed. It includes annual training, special tours, and the initial tour performed by enlistees without prior military service. The period of duty includes travel to and from training duty, not in excess of the allowable constructive travel time prescribed by SECNAVINST 1770.3 and paragraphs 10242 and 10243 of DOD Military Pay and Allowances Entitlements Manual.

(c) *Constructive return.* For purposes of medical and dental care, an unathorized absentee's return to military control may be accomplished through notification of appropriate military authorities as outlined below.

(1) For members in an unauthorized absentee (UA) status, constructive return to military control for the purpose of providing medical or dental care at Navy expense is effected when one of the following has occurred:

(i) A naval activity informs a civilian provider of medical or dental care that the Navy accepts responsibility for a naval member's care. The naval activity providing this information must also provide documentation of such notification to the appropriate adjudication authority in § 732.20.

(ii) A member has been apprehended by civil authorities at the specific request of naval authorities and naval authorities have been notified that the member can be released to military custody.

(iii) A naval member has been arrested, while in a UA status, by civil authorities for a civil offense and a naval authority has been notified that the member can be released to military control.

(2) When a naval member has been arrested by civil authorities for a civil offense while in a UA status and the offense does not allow release to military control, constructive return is not accomplished. The individual is responsible for medical and dental care received prior to arrest and the incarcerating jurisdiction is responsible for care required after arrest.

(d) *Designated Uniformed Services Treatment Facilities (Designated USTFs).* Under Pub. L. 97–99, the following facilities are "designated USTFs" for the purpose of rendering medical and dental care to all categories of individuals entitled to care under this part.

(1) *Sisters of Charity of the Incarnate Word Health Care System*, 6400 Lawndale, Houston, TX 77058 (713) 928–2931 operates the following facilities:

(i) St. John Hospital, 2050 Space Park Drive, Nassau Bay, TX 77058, telephone (713) 333–5503. Inpatient and outpatient services.

(ii) St. Mary's Hospital Outpatient Clinic, 404 St Mary's Boulevard, Galveston, TX 77550, telephone (409) 763–5301. Outpatient services only.

(iii) St. Joseph Hospital Ambulatory Care Center, 1919 La Branch, Houston, TX 77002, telephone (713) 757–1000. Outpatient services only.

(iv) St Mary's Hospital Ambulatory Care Center, 3600 Gates Boulevard, Port

Arthur, TX 77640 (409) 985–7431. Outpatient services only.

(2) *Inpatient and outpatient services.* (i) Wyman Park Health System, Inc., 3100 Wyman Park Drive, Baltimore, MD 21211, telephone (301) 338–3693.

(ii) Alston-Brighton Aid and Health Group, Inc., Brighton Marine Public Health Center, 77 Warren Street, Boston, MA 02135, telephone (617) 782–3400.

(iii) Bayley Seton Hospital, Bay Street and Vanderbilt Avenue, Staten Island, NY 10304, telephone (718) 390–5547 or 6007.

(iv) Pacific Medical Center, 1200 12th Avenue South, Seattle, WA 98144, telephone (206) 326–4100.

(3) *Outpatient services only.* (i) Coastal Health Service, 331 Veranda Street, Portland, ME 04103 (207) 774–5805.

(ii) Lutheran Medical Center, Downtown Health Care Services, 1313 Superior Avenue, Cleveland, OH 44113, telephone (216) 363–2065.

(e) *Duty status.* The situation of the claimant when maternity, medical, or dental care is received. Members, including reservists, on leave or liberty are considered in a duty status. Reservists, performing active duty for training or inactive duty training, are also considered in a duty status during their allowable constructive travel time to and from training.

(f) *Emergency care.* Medical treatment of severe life threatening or potentially disabling conditions which result from accident or illness of sudden onset and necessitates immediate intervention to prevent undue pain and suffering or loss of life, limb, or eyesight and dental treatment of painful or acute conditions.

(g) *Federal facilities.* Navy, Army, Air Force, Coast Guard, Veterans Administration, and USTFs (former U.S. Public Health Service facilities listed in § 732.11(d).

(h) *Inactive duty training.* Duty prescribed for Reserves by the Secretary of the Navy under Section 206 of Title 37, United States Code, or any other provision of law. Also includes special additional duties authorized for Reserves by an authority designated by the Secretary of the Navy and performed by Reserves on a voluntary basis in connection with the prescribed training or maintenance activities of units to which they are assigned.

(i) *Maternity emergency.* A condition commencing or exacerbating during pregnancy when delay caused by referral to a uniformed services medical treatment facility (USMTF) or designated USTF would jeopardize the welfare of the mother or unborn child.

(j) *Member.* United States Navy and Marine Corps personnel, Department of National Defence of Canada Navy and Marine Corps personnel, and Navy and Marine Corps personnel of other NATO Nations meeting the requirements for care under this part.

(k) *Non-federal care.* Maternity, medical, or dental care furnished by civilian sources (includes State, local, and foreign MTFs).

(l) *Nonnaval care.* Maternity, medical, or dental care provided by other than Navy MTFs. Includes care in other USMTFs, designated USTFs, VA facilities, as well as from civilian sources.

(m) *Office of Medical Affairs (OMA) or Office of Dental Affairs (ODA).* Designated offices, under program management control of COMNAVMEDCOM and direct control of regional medical commands, responsible for administrative requirements delineated in this part. Responsibilities and functional tasks of OMAs and ODAs are outlined in NAVMEDCOMINST 6010.3.

(n) *Prior approval.* Permission granted for a specific episode of necessary but nonemergent maternity, medical, or dental care.

(o) *Reservist.* A member of the Naval or Marine Corps Reserve.

(p) *Supplemental care.*—(1) *Operation and maintenance funds, Navy.* Supplemental care of all uniformed services members, at Navy expense, encompasses only inpatient or outpatient care augmenting the capability of a naval MTF treating a member. Such care is usually obtained from civilian sources through referral by the treating naval MTF. If a member, authorized care under this part, is admitted to or is being treated on an outpatient basis at any USMTF, all supplemental care is the financial responsibility of that facility regardless of whether the facility is organized or authorized to provide needed health care. The cost of such care is chargeable to operation and maintenance funds (OM&N) available for operation of the USMTF requesting the care regardless of service affiliation of the member (see Part 728 of this chapter for such care under Navy Medical Department facilities).

(2) *Nonnaval medical and dental care program funds.* Adjudication authorities will pay claims, under this part, for care received as a result of a referral when:

(i) A United States Navy or Marine Corps member or a Canadian Navy or Marine Corps member requires care beyond the capability of the referring USMTF and care is obtained for such a member *not* admitted to or *not* being treated on an outpatient basis by a USMTF, and

(ii) The referring USMTF is not organized nor authorized to provide the needed health care.

(3) *Other uniformed services supplemental care programs.* In addition to services that augment other USMTF's capabilities, supplemental care programs of the other uniformed services include care and services comparable to those authorized by this part, e.g., emergency care and pre-approved nonemergency care.

(q) *Unauthorized absence.* Absence or departure without authority from a member's command or assigned place of duty.

(r) *Uniformed Services Medical Treatment Facilities (USMTF).* Health care facilities of the Navy, Army, Air Force, Coast Guard, and the former U.S. Public Health Service facilities listed in § 732.11(d) designated as USTFs per DOD and Department of Health and Human Services directives.

§ 732.12 Eligibility.

(a) *Regular members.* To be eligible for non-Federal medical, dental, or emergency maternity care at Government expense, Regular active duty United States naval members and Canadian Navy and Marine Corps members must be in a duty status when care is provided.

(b) *Reservists.* (1) Reservists on active duty for training and inactive duty training, including leave and liberty therefrom, are considered to be in a duty status while participating in training. Accordingly, they are entitled to care for illnesses and injuries occurring while in that status.

(2) Reservists are entitled to care for injuries and illnesses occurring during direct travel enroute to and from active duty training (ACDUTRA) and to and from inactive duty training.

(c) *NATO Naval Members.* Naval members of the NATO Status of Forces Agreement (SOFA) nations of Belgium, Denmark, Federal Republic of Germany, France, Greece, Iceland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Turkey, and the United Kingdom, are authorized *outpatient care only* under the provisions of this part when stationed in or passing through the United States in connection with official duties. Public Law 99–591 *prohibits inpatient care* of these foreign military members in the United States at the expense of the United States Government. The other NATO SOFA Nation, Canada, entered into a comparable care agreement with the United States requiring the United States to provide inpatient and outpatient care under the provisions of

this part to members of the Department of National Defence of Canada receiving care in the United States.

(d) *Absent without authority.* Naval members absent without authority during an entire episode of treatment are not eligible for non-Federal medical, dental, or emergency maternity care at Government expense. The only exception occurs when a member's illness or injury is determined to have been the direct cause of the unauthorized absentee status. In such an instance, eligibility will be:

(1) Determined to have existed from the day and hour of such injury or illness provided the member was not in an unauthorized absentee status prior to the onset of the illness or injury and initiation of treatment.

(2) Retained when the member is returned directly to military control.

(3) Terminated should the member return to an unauthorized absentee status immediately after completion of treatment. Departmental level (MEDCOM–333 for medical and MEDCOM–06 for dental) review is required before benefits may be extended.

(e) *Constructive return.* When constructive return, defined in § 732.11(c), is effected, entitlement will be determined to have existed from 0001 hours of the day of constructive return, not necessarily the day and hour care was initiated.

§ 732.13 Sources of care.

(a) *Initial application.* If a member requires maternity, medical, or dental care and naval facilities are unavailable, make initial application to other available Federal medical or dental facilities or USTFs. When members are stationed in or passing through a NATO SOFA nation and U.S. facilities are unavailable, ensure that members make initial application for emergency and nonemergency care to military facilities of the host country, or if applicable, to civilian sources under the NATO SOFA nation's health care program. When hospitalized in Hawaii, Alaska, or in a foreign medical facility, members and responsible commands will comply with OPNAVINST 6320.6.

(b) *Secondary sources.* When either emergency or nonemergency care is required and there are no Federal or NATO SOFA facilities available, care may be obtained from non-Federal sources under this part.

§ 732.14 Authorized care.

(a) *Medical.* (1) Consultation and treatment provided by physicians or at medical facilities, and procedures not involving treatment when directed by COMNAVMEDCOM, are authorized. Such care includes, but is not limited to: treatment by physicians, hospital inpatient and outpatient care, surgery, nursing, medicine, laboratory and x-ray services, physical therapy, eye examinations, etc. See § 732.17 for prior approval of these services in nonemergency situations.

(2) When transplant (including bone-marrow) is the treatment of choice, COMNAVMEDCOM approval is required. If time permits, telephone (A) 294–1102, (C) (202) 653–1102 during regular hours or (A) 294–1327, (C) 653–1327 after regular duty hours, and followup with a message. Request approval via message in nonemergency situations.

(b) *Maternity episode.* If a member authorized care under this part qualifies for care under the provisions of § 732.17(c) and delivers in a civilian hospital, routine newborn care (i.e., nursery, newborn examination, PKU test, etc.) is a part of the mother's admission expenses. Regardless of circumstances necessitating delivery in a civilian facility or how charges are separated on the bill, charges will be paid from funds available for care of the mother. If the infant becomes a patient in his or her own right—through an extension of the birthing hospital stay because of complications, transfer to another facility, or subsequent admission—the provisions of Part 728 of this chapter and NAVMEDCOMINST 6320.18 are applicable, and the sponsor becomes responsible for a part of the medical expenses incurred.

(c) *Dental.* (1) With prior approval, the following may be provided:

(i) All types of treatment (including operative, restorative, and oral surgical) to relieve pain and abort infection.

(ii) Prosthetic treatment to restore extensive loss of masticatory function or the replacement of anterior teeth for esthetic reasons.

(iii) Repair of existing dental prostheses when neglect of the repair would result in unserviceability of the appliance.

(iv) Any type of treatment adjunctive to medical or surgical care.

(v) All x-rays, drugs, etc., required for treatment or care in paragraphs (c)(1) (i) through (iv) of this section.

(2) In emergencies (no prior approval), only measures appropriate to relieve pain or abort infection are authorized.

(d) *Eye refractions and spectacles.* Includes refractions of eyes by physicians and optometrists and furnishing and repairing spectacles.

(1) *Refractions.* A refraction may be obtained from a civilian source at Government expense only when Federal facilities are not available, no suitable prescription is in the member's Health Record, and the cognizant OMA or referring USMTF has given prior approval.

(2) *Spectacles.* When a member has no suitable spectacles and the lack thereof, combined with the delay in obtaining suitable ones from a Federal source would prevent performance of duty; repair, replacement, or procurement from a civilian source may be authorized upon initiation of an after-the-fact request per § 732.17. Otherwise, the prescription from the refractionist, with proper facial measurements, must be sent for fabrication to the appropriate dispensing activity set forth in NAVMED COMINST 6810.1. See § 732.15(g) concerning contact lenses.

§ 732.15 Unauthorized care.

The following are not authorized by this part:

(a) Chiropractic services.

(b) Vasectomies.

(c) Tubal ligations.

(d) Breast augmentations or reductions.

(e) Psychiatric care, beyond the initial evaluation.

(f) Court ordered care.

(g) Contact lenses.

(h) Other elective procedures.

§ 732.16 Emergency care requirements.

Only in a bona fide emergency will medical, maternity, or dental services be obtained under this part by or on behalf of eligible personnel without prior authority as outlined below.

(a) *Medical or dental care.* A situation where the need or apparent need for medical or dental attention does not permit obtaining approval in advance.

(b) *Maternity care.* When a condition commences or exacerbates during pregnancy in a manner that a delay, caused by referral to a USMTF or USTF, would jeopardize the welfare of the mother or unborn child, the following constitutes indications for admission to or treatment at a non-Federal facility:

(1) Medical or surgical conditions which would constitute an emergency in the nonpregnant state.

(2) Spontaneous abortion, with first trimester hemorrhage.

(3) Premature or term labor with delivery.

(4) Severe pre-eclampsia.

(5) Hemorrhage, second and third trimester.

(6) Ectopic pregnancy with cardiovascular instability.

(7) Premature rupture of membranes with prolapse of the umbilical cord.

(8) Obstetric sepsis.

(9) Any other obstetrical condition that, by definition, constitutes an emergency circumstance.

§ 732.17 Nonemergency care requirements.

Members are cautioned not to obtain nonemergency care from civilian sources without prior approval from the cognizant adjudication authority in § 732.20. Obtaining nonemergency care, other than as specified herein, without documented prior approval may result in denial by the Government of responsibility for claims arising from such care.

(a) *Individual prior approval.* (1) Submit requests for prior approval of nonemergency care (medical, dental, or maternity) from non-Federal sources to the adjudication authority (§ 732.20) serving the geographic area where care is to be obtained. When the requirements of § 732.14(d)(2) are met and spectacles have been obtained, request after-the-fact approval per this paragraph.

(2) Submit requests on a NAVMED 6320/10. Statement of Civilian Medical/Dental Care, with blocks 1 through 7 and 19 through 25 completed. Assistance in completing the NAVMED 6320/10 can be obtained from the health benefits advisor (HBA) at the nearest USMTF.

(3) Upon receipt, the adjudication authority will review the request and, if necessary, forward it to the appropriate chief of service with an explanation of non-Federal care regulations pertaining to the request. The chief of service will respond to the request within 24 hours. The adjudication authority will then complete blocks 26 and 27, and return the original of the approved/disapproved NAVMED 6320/10 to the member.

(b) *Blanket prior approval.*

(1) Recruiting offices and other activities far removed from USMTFs, uniformed services dental treatment facilities (USDTFs), designated USTFs, and VA facilities may request blanket approval for civilian medical and dental care of assigned active duty personnel. Letter requests should be submitted to the adjudication authority (§ 732.20) assigned responsibility for the geographic area of the requestor.

(2) With full realization that such blanket approval is an authorization to obligate the Government without individual prior approval, adjudication authorities will ensure that:

(i) Each blanket approval letter specifies a maximum dollar amount allowable in each instance of care.

(ii) The location of the activity receiving blanket approval authority is clearly delineated.

(iii) Travel distance and time required to reach the nearest USMTF, USDTF, designated USTF, or VA facility have been considered.

(iv) Certain conditions are specifically excluded, e.g., psychiatric care and elective surgical procedures. These conditions will continue to require individual prior approval.

(v) COMNAVMEDCOM (MEDCOM-333) is made an information addressee on each letter of authorization.

(c) *Maternity care.* (1) Pregnant active duty members residing outside Military Health Services System (MHSS) inpatent catchment areas of uniformed services facilities (including USTFs), designated in Volumes I, II, and III of MHSS Catchment Area Directories, are permitted to choose whether to deliver in a closer civilian hospital or travel to a USMTF or USTF for delivery. If the Government is to assume financial responsibility for non-Federal maternity care of any member regardless of where she resides, the member must obtain individual prior approval as outlined in § 732.17(a). Adjudication authorities should not approve requests from members residing within an inpatient MHSS catchment area unless:

(i) Capability does not (did not) exist at the USMTF or other Federal MTF serving her catchment area.

(ii) An emergency situation necessitated delivery or other treatment in a non-Federal facility (§ 732.16(b)).

(2) Normal delivery at or near the expected delivery date should not be considered an emergency for members residing within an MHSS inpatient catchment area where delivery was expected to occur and, unless provided for in this part, will not be reason for delivery in a civilian facility at Government expense.

(3) When granted leave that spans the period of an imminent delivery, the pregnant member should request a copy of her complete prenatal care records from the prenatal care physician. The physician should note in the record whether the member is clear to travel. If receiving prenatel care from a USMTF, the HBA will assist the member in obtaining a statement bearing the name of the MTF (may be an OMA) with administrative responsibility for the geographic area of her leave address, including the telephone number of the head of the patient administration department or HBA, if available. If a member is receiving prenatal care from other than a USMTF, she should avail herself of the services of the nearest HBA to effect the aforestated services. This statement should be attached to the approved leave request. In normal deliveries, requests for after-the-fact approval should be denied when members have not attempted to adhere to the provisions of this part.

(4) Upon arrival at the designated leave address, members should contact the MTF indicated on the statement attached to their leave request. The MTF will make a determination whether the member's leave address falls within the inpatient catchment area of a USMTF or USTF with the capability of providing needed care. If no such USMTF or USTF exists, the member will be given the opportunity to choose to deliver in a civilian hospital closer to her leave address or travel to the most accessible USMTF or USTF with capability for maternity care.

(5) Upon determination that civilian sources will be used for maternity care, the MTF listed on the attachment to the leave papers will inform the member that she (or someone acting in her behalf) must notify that MTF of the member's admission for delivery or other inpatient care so that medical cognizance can be initiated.

(6) Automatically grant prior or retroactive approval, as the situation warrants, to members requiring maternity care while in a travel status in the execution of permanent change of station (PCS) orders.

(d) *Nonemergency care without prior approval.* (1) If it becomes known that a member intends to seek medical or dental care (inpatient or outpatient) from a non-Federal source and prior approval has not been granted for the use of the Nonnaval Medical and Dental Care Program, the member must be counseled by, or in the presence of, a Medical Department officer. Request that the member sign a statement on an SF 600, Chronological Record of Medical Care, or an SF 603 or 603A, Health Record, Dental as appropriate, for inclusion in the member's Health Record. The statement must specify that counseling has been accomplished, and that the member understands the significance of receiving unauthorized civilian care. This must be accomplished when either personal funds or third party payor (insurance) funds are intended to be used to defray the cost of care. Counseling will include:

(i) Availability of care from a Federal source.

(ii) The requirement for prior approval if the Government may be expected to defray any of the cost of such care.

(iii) Information regarding possible compromise of disability benefits should a therapeutic misadventure occur.

(iv) Notification that should hospitalization become necessary, or other time is lost from the member's

place of duty, such lost time may be chargeable as "ordinary leave."

(v) Notification that the Government cannot be responsible for out-of-pocket expenses which may be required by the insurance carrier or when the member does not have insurance which covers the cost of contemplated care.

(vi) Direction to report to a uniformed services medical officer (preferably Navy) upon completion of treatment for determination of member's fitness for continued service.

(2) If it becomes known that a member has already received non-Federal medical care without prior authorization, refer the member to a uniformed services medical officer (preferably Navy) to determine fitness for continued service. At this time, counseling measures delineated in § 732.17(d)(1)(iii), (iv), and (v) must be taken.

§ 732.18 Notification of illness or injury.

(a) *Member's responsibility.* (1) If able, members must notify or cause their parent command, the nearest naval activity, or per OPNAVINST 6320.6, the nearest U.S. Embassy or consulate when hospitalized in a foreign medical facility to be notified as soon as possible of the circumstances requiring medical or dental attention in a non-Federal facility. The member will also assure (request the facility to make notification if unable to do so personally) that the following information is passed to the adjudication authority serving the area of the source of care (§ 732.20). This notification is in addition to the requirements of article 4210100 of the Military Personnel Command Manual (MILPERSMAN) or Marine Corps Order 6320.3B, as appropriate. The adjudication authority will then arrange for transfer of the member and, if appropriate, newborn infant(s), to a Federal facility or for such other action as is appropriate.

(i) Name, grade or rate, and social security number of patient.

(ii) Name of non-Federal medical or dental facility rendering treatment.

(iii) Date(s) of such treatment.

(iv) Nature and extent of treatment or care already furnished.

(v) Need or apparent need for further treatment (for maternity patients, need or apparent need for further care of infant(s) also).

(vi) Earliest date on which transfer to a Federal facility can be effected.

(vii) Telephone number of attending physician and patient.

(2) Should movement be delayed due to actions of the member or the member's family, payment may be denied for all care received after provision of written notification by the adjudication authority.

(3) The denial is § 732.18(a)(2) will be for care received after the member's condition has stabilized and after the cognizant adjudication authority has made a request to the attending physician and hospital administration for the member's release from the civilian facility. This notification must specify:

(i) Date and time the Navy will terminate its responsibility for payment.

(ii) That care rendered subsequent to receipt of the written notification is at the expense of the member.

(b) *Adjudication authority.* As soon as it is ascertained that a member is being treated in a nonnaval facility, adjudication authorities must make the notifications required in MILPERSMAN, article 4210100.11. See Part 728 of this chapter on message drafting and information addressees.

(1) Article 4210100.11 of the MILPERSMAN requires submission of a personnel casualty report, by priority message, to the primary and secondary next of kin (PNOK/SNOK) of Navy members seriously or very seriously ill or injured, and on those terminally ill (diagnosed and confirmed). While submission of the personnel casualty report to the PNOK and SNOK is a responsibility of the member's command, adjudication authorities must advise the member's command when such a member is being treated or diagnosed by non-Federal sources. The message will also request forwarding of the member's service and medical records to the personnel support detachment (PSD) supporting the activity in which the OMA is located. Additionally, the notification should contain a request for appropriate orders, either temporary additional duty (TEMADD) or temporary duty (TEMPDU).

(i) Request TEMADD orders if care is expected to terminate within the time constraints imposed for these orders.

(ii) Request TEMDU Under Treatment orders for members hospitalized in a NMTF within the adjudication authority's area of responsibility.

(2) Make prompt message notification to the member's commanding officer when apprised of any medical condition, including pregnancy, which will now or in the foreseeable future result in loss of a member's full duty services in excess of 72 hours. Mark the message "Commanding Officer's Eyes Only."

§ 732.19 Claims.

(a) *Member's responsibility.* Members receiving care are responsible for preparation and submission of claims to the cognizant adjudication authority identified in § 732.20. A complete claim includes:

(1) *NAVMED 6320/10, Statement of Civilian Medical/Dental Care.* In addition to its use as an authorization document, the original and three copies of a NAVMED 6320/10 are required to adjudicate claims in each instance of sickness, injury, or maternity care when treatment is received from a non-Federal source under the provisions of this part. The form should be prepared by a naval medical or dental officer, when practicable, by the senior officer present where a naval medical or dental officer is not on duty, or by the member receiving care when on detached duty where a senior officer is not present.

(i) For nonemergency care with prior approval, submit the NAVMED 6320/10 containing the prior approval, after completing blocks 8 through 18.

(ii) For emergency care (or nonemergency care without prior approval), submit a NAVMED 6320/10 after completing blocks 1 through 18. Assure that the diagnosis is listed in block 10. If prior approval was not obtained, state in block 11 circumstances necessitating use of non-Federal facilities.

(iii) Signature by the member in block 17 implies agreement for release of information to the responsible adjudication authority receiving the claim for processing. Signature by the certifying officer in block 18 will be considered certification that documentation has been entered in the member's Health Record as directed in article 16–24 of MANMED.

(2) *Itemized bills.* The original and three copies of itemized bills to show:

(i) Dates on or between which services were rendered or supplies furnished.

(ii) Nature of and charges for each item.

(iii) Diagnosis.

(iv) Acknowledgment of receipt of the services or supplies on the face of the bill or by separate certificate. The acknowledgment must include the statement. "Services were received and were satisfactory."

(3) *Claims for reimbursement.* To effect reimbursement, also submit the original and three copies of paid receipts and an SF 1164. Claim for Reimbursement for Expenditures on Official Business, completed per paragraphs 046377–2 a and b of the Naval Comptroller Manual (NAVCOMPT MAN).

(4) *Notice of Eligibility (NOE) and line of Duty (LOD) Determination.* When a reservist claims benefits for

care received totally after the completion of either an active duty or active duty for training period, the claim should also include:

(i) An NOE issued per SECNAVINST 1770.3.

(ii) An LOD determination from the member's commanding officer.

(b) *Adjudicating authority's responsibility.* Reviewing and processing properly completed claims and forwarding approved claims to the appropriate disbursing office should be completed within 30 days of receipt. Advice may be requested from COMNAVMEDCOM (MEDCOM–333 (A/V 294–1127)) for medical or MEDCOM–06 (A/V 294–1250)) for dental on unusual or questionable instances of care. Advise claimants of any delay experienced in processing claims.

(1) *Review.* The receiving adjudication authority will carefully review each claim submitted for payment or reimbursement to verify whether:

(i) Claimant was entitled to benefits (i.e., was on active duty, active duty for training, inactive duty training, was not an unauthorized absentee, etc.). As required by Part 728 of this chapter, a Defense Enrollment Eligibility Reporting System (DEERS) eligibility check must be performed on claims to all claimants required to be enrolled in DEERS.

(ii) Care rendered was due to a bona fide emergency. (Note: When questions arise as to the emergency nature of care, forward the claim and all supporting documentation to the appropriate clinical specialist at the nearest naval hospital for review.)

(iii) Prior approval was granted if a bona fide emergency did not exist. (Note: If prior approval was not obtained and the condition treated is determined to have been nonemergent, the claim may be denied.) Consideration should always be given to cases that would have received prior approval but, due to lack of knowledge of the program, the member did not submit a request.

(iv) Care rendered was authorized under the provisions of this part.

(v) Care rendered was appropriate for the specific condition treated. (NOTE: When questions arise regarding appropriateness of care, forward all documentation to a clinical specialist at the nearest naval hospital for review. If care is determined to have been inappropriate, the claim may be denied to the extent the member was negligent.)

(vi) Claimed benefits did not result from a referral by a USMTF. If the member was an inpatient or an outpatient in a USMTF immediately prior to being referred to a civilian source of care, the civilian care is supplemental and may be the responsibility of the referring USMTF. See § 732.11(p) for the definition of supplemental care.

(2) *Disapproval.* If a determination is made to disapprove a claim, provide the member (and provider of care, when applicable) a prompt and courteous letter stating the reason for the disapproval and the appropriate avenues of appeal as outlined in § 732.24.

(3) *Processing.* Subpart C contains the chargeable accounting classifications and Standard Document Numbers (SDN) to be cited on the NAVCOMPT 2277, Voucher for Disbursement and/or Collection, on an SF 1164 submitted per § 732.19(a)(3), and on supporting documents of approved claims before submission to disbursing offices.

(i) For payment to providers of care, a NAV COMPT 2277 will be prepared and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation per paragraph 046393–1 of the NAVCOMPTMAN.

(ii) Where reimbursement is requested, the SF 1164 submitted per § 732.19(a)(3) will be completed, per paragraph 046377 of the NAVCOMPTMAN, and certified approved for payment by the adjudicating authority. This form must accompany the NAVMED 6320/10 and supporting documentation.

(c) *Amount payable.* Amounts payable are those considered reasonable after taking into consideration all facts. Normally, payment should be approved at rates generally prevailing within the geographic area where services or supplies were furnished. Although rates specially established by the Veterans Administration, CHAMPUS, or those used in Medicare are not controlling, they should be considered along with other facts.

(1) *Excessive charges.* If any charge is excessive, the adjudication authority will advise the provider of care of the conclusion reached and afford the provider an opportunity to voluntarily reduce the amount of the claim. If this does not result in a proper reduction and the claim is that of a physician or dentist, refer the difference in opinions to the grievance committee of the provider's professional group for an opinion of the reasonableness of the charge. If satisfactory settlement of any claim cannot thus be made, forward all documentation to COMNAVMEDCOM (MEDCOM–333) for decision. Charges determined to be above the allowed amount or charges for unauthorized services are the responsibility of the service member.

(2) *Third party payment.* Do not withhold payment while seeking funds from health benefit plans or from insurance policies for which premiums are paid privately by service members (see § 732.22 for possible recovery of payments action).

(3) *No-fault insurance.* In States with no-fault automobile insurance requirements, adjudication authorities will notify the insurance carrier identified in item 16 of the NAVMED 6320/10 that Federal payment of the benefits in this part is secondary to any no-fault insurance coverage available to the potentially covered member.

(d) *Duplicate payments.* Adjudication authorities and disbursing activities should take precautions against duplicate payments per paragraph 046073 of the NAVCOMPTMAN.

§ 732.20 Adjudication authorities.

(a) *General.* Controlling activities for medical care in the United States are designated as "offices of medical affairs" (OMA) and for dental care, "offices of dental affairs" (ODA). NAVMEDCOMINST 6010.3 delineates responsibilities and functional tasks of OMAs and ODAs, including monthly reporting of receipt of claims and claims payment. Commanders of geographic naval medical commands must communicate with all activities in their regions to ensure that messages and medical cognizance reports are properly furnished per higher authority directives.

(b) *Within the United States (Less Hawaii).* For the 48 contiguous United States, the District of Columbia, and Alaska, the following six regions are responsible for care rendered or to be rendered within their areas of responsibility.

(1) *Northeast Region.* The States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, and Wisconsin are served by 1 ODA and 1 OMA:

(i) Responsibility for dental matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Dental Affairs, Great Lakes, IL 60088, Tele: (A/V) 792–3940 or (C) (312) 688–3940.

(ii) Responsibility for medical matters for States in the Northeast Region is vested in: Commander, Naval Medical Command, Northeast Region, Office of Medical Affairs, Great Lakes, IL 60088, Tele: (A/V) 792–3950 or (C) (312) 688–3950.

(2) *National Capital Region.* For the States of Maryland and West Virginia; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; the Virginia cities of Alexandria, Falls Church, and Fairfax; and the District of Columbia, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, National Capital Region, Office of Medical Affairs, Bethesda, MD 20814, Tele: (A/V) 295–5322 or (C) (301) 295–5322.

(3) *Mid-Atlantic Region.* For the States of North Carolina, South Carolina, and all areas of Virginia south and west of Prince William and Loudoun counties, responsibility for medical and dental matters is vested in: Commander, Naval Medical Command, Mid-Atlantic Region, 6500 Hampton Boulevard, Norfolk, VA 23502, Attn: Office of Medical/Dental Affairs, Tele: (A/V) 565–1074/1075 or (C) (804) 445–1074 or 1075.

(4) *Southeast Region.* For the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Oklahoma, Tennessee, and Texas, medical and dental responsibilities are vested in: Commanding Officer, Naval Medical Clinic, Code O1A, New Orleans, LA 70146, Tele: (A/V) 485–2406/7/8 or (C) (504) 361–2406 2407 or 2408.

(5) *Southwest Region.* For the States of Arizona and New Mexico; the counties of Kern, San Bernadino, San Luis Obispo, Santa Barbara, and all other California counties south thereof; the community of Bridgeport, California (Marine Corps cold-weather training site); and Nevada, except for NAS Fallon and its immediate area; medical and dental responsibilities are vested in: Commander, Naval Medical Command, Southwest Region, Office of Medical Affairs, San Diego, CA 92134–7000, Tele: (A/V) 987–2611 or (C) 233–2611.

(6) *Northwest Region.* The States of Alaska, Colorado, Idaho, Kansas, Montana, Nebraska, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming; the counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area are served by 2 OMAs and 1 ODA:

(i) Responsibility for dental matters for the area of responsibility of the Northwest Region is vested in: Commander, Naval Medical Command, Northwest Region, Office of Dental Affairs, Oakland, CA 94267–5025, Tele: (A/V) 855–6200 or (C) (415) 633–6200.

(ii) Responsibility for medical matters for the States of Colorado, Kansas, and Utah; the California counties of Inyo, Kings, Tulare, and all other counties of California north thereof; and NAS Fallon, Nevada and its immediate area is vested in: Commander, Naval Medical Command, Northwest Region, Oakland, CA 94627–5025, Attn: Office of Medical Affairs, Tele: (A/V) 855–5705 or (C) (415) 633–5705.

(iii) Responsibility for medical matters for the States of Alaska, Idaho, Montana, Nebraska, North Dakota, Oregon, South Dakota, Washington, and Wyoming is vested in: Commanding Officer, Naval Medical Clinic, Naval Station, Seattle, WA 98115, Attn: Office of Medical Affairs, Tele: (A/V) 941–3823 or (C) (206) 526–3823.

(c) *Outside the United States (Plus Hawaii).* For all areas outside the United States plus Hawaii, the following activities are vested with responsibility for approval or disapproval of requests and claims for maternity, medical, and dental care:

(1) Executive Director, OCHAMPUSEUR, U.S. Army Medical Command, APO New York 09102, for care rendered within the U.S. European Command, Africa, the Malagasy Republic, and the Middle East.

(2) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96652–1600 (U.S. Naval Hospital, Subic Bay, Luzon, Republic of the Philippines), for care rendered in Afghanistan, Bangladesh, Hong Kong, India, Nepal Pakistan, the Philippines, Southeast Asia, Sri Lanka and Taiwan.

(3) Commanding Officer, U.S. Naval Hospital, FPO Seattle 98765–1600 (U.S. Naval Hospital, Yokosuka, Japan), for care rendered in Japan, Korea, and Okinawa.

(4) Commanding Officer, U.S. Naval Hospital, FPO San Francisco 96630–1600 (U.S. Naval Hospital, Guam, Mariana Islands), for care rendered in New Zealand and Guam.

(5) Commanding Officer, U.S. Naval Communications Station, FPO San Francisco 96680–1800 (U.S. Naval Communications Station, Harold E. Holt, Exmouth, Western Australia), for care rendered in Australia.

(6) Commanding Officer, U.S. Naval Air Station, FPO New York 09560 (U.S. Naval Air Station, Bermuda), for care rendered in Bermuda.

(7) Commanding Officer, U.S. Naval Hospital, FPO Miami 34051 (U.S. Naval Hospital, Roosevelt Roads, Puerto Rico), for maternity and medical care, and Commanding Officer, U.S. Naval Dental Clinic, FPO Miami 34051 (U.S. Naval Dental Clinic, Roosevelt Roads, PR), for dental care rendered in Puerto Rico, the Virgin Islands, and other Caribbean Islands.

(8) Commanding Officer, Naval Medical Clinic, Box 121, Pearl Harbor, HI 96860, for maternity and medical care, and Commanding Officer, Naval Dental Clinic, Box 111, Pearl Harbor, HI 96860, for dental care rendered in the State of Hawaii, Midway Island, and the Central Pacific basin.

(9) The OMA for either the Southeast Region or the Southwest Region for care rendered in Mexico to members stationed within the respective areas of responsibility of these OMAs. Forward claims for care rendered in Mexico to all other personnel to Commander, Naval Medical Command, Washington, DC 20372–5120 (MEDCOM–333).

(10) Commander, Naval Medical Command, Washington, DC 20372–5120 (MEDCOM–333) for inpatient and outpatient emergency and nonemergency care of active duty Navy and Marine Corps members in Canada and under the circumstances outlined in § 732.20(d).

(11) Outside the 50 United States, commanding officers of operational units may either approve claims and direct payment by the disbursing officer serving the command or forward claims to the appropriate naval medical command in § 732.20(b)(1) through § 732.20(c)(9). This is a local policy decision to enhance the maintenance of good public relations.

(12) The appropriate command in § 732.20(b)(1) through § 732.20(c)(9) for care rendered aboard commercial vessels en route to a location within the geographic areas listed.

(13) The commanding officer authorizing care in geographical areas not specifically delineated elsewhere in § 732.20.

(d) *The Commander, Naval Medical Command (MEDCOM–333), Navy Department, Washington, DC 20372–5120.* Under the following circumstances, responsibility is vested in COMNAVMEDCOM for adjudication of claims:

(1) For reservists who receive treatment after completion of their active duty or inactive duty training as prescribed in § 732.12(b).

(2) For care rendered in Mexico to personnel stationed outside the areas of responsibility of the Southeast and Southwest Regions.

(3) For care rendered to members stationed in or passing through countries in Central and South America.

(4) For outpatient care rendered NATO active duty members.

(5) When Departmental level review is required prior to approval, adjudication, or payment. These claims:

(i) Will be considered on appeal.

(ii) Must be forwarded by the member through the adjudication authority chain of command (In instances of unusual or controversial denial of claims, the

adjudication authority may forward claims to COMNAVMEDCOM on appeal, via the chain of command, with notification to the member.).

(6) For all inpatient and outpatient care of active duty Navy and Marine Corps members stationed in the United States who receive care in Canada.

§ 732.21 Medical board.

When adjudication authorities uncover conditions which may be chronic or otherwise potentially disabling, they should make a determination (with help from appropriate clinical specialists) as to the need for a medical board. Chapter 18 of MANMED and Medical Disposition and Physical Standards Notes, available from COMNAVMEDCOM (MEDCOM–25), provide guidance.

(a) Chronic conditions requiring a medical board include (but are not limited to):

(1) Arthritis,
(2) Asthma,
(3) Diabetes,
(4) Gout,
(5) Heart disease,
(6) Hypertension,
(7) Peptic ulcer disease,
(8) Psychiatric conditions, and
(9) Allergic conditions requiring desensitization.

(b) Other potentially disabling or chronic conditions may be referred to a medical board by the adjudication authority with the concurrence of an appropriate naval clinical specialist and the commander of the regional medical command.

§ 732.22 Recovery of medical care payments.

Adjudication authorities must submit evidence of payment to the action JAG designee per chapter 24 of the Manual of the Judge Advocate General (JAGMAN), in each instance of payment where a third party may be legally liable for causing the injury or disease treated, or when a Government claim is possible under workers compensation, no-fault insurance, or under medical payments insurance (all automobile accident cases).

(a) To assist in identifying possible third party liability cases, item 16 of each NAVMED 6320/10 must be completed whenever benefits are received in connection with a vehicle accident. Adjudication authorities should return for completion, as applicable, any claim received without item 16 completed.

(b) The front of a NAVJAG Form 5890/12 (Hospital and Medical Care, 3rd Party Liability Case) must be completed and submitted by adjudication authorities with evidence of payment. Block 4 of this form requires an appended statement of the patient or an accident report, if available. To ensure that Privacy Act procedures are accomplished and documented, the person securing such a statement from a recipient of care must show the recipient the Privacy Act statement printed at the bottom of the form prior to securing such a statement. The member should be asked to sign his or her name beneath the statement.

(c) For care rendered in States with no-fault insurance laws, comply with procedures outlined in § 732.19(c)(3).

§ 732.23 Collection for subsistence.

The Navy Pay and Personnel Procedures Manual provides guidance regarding pay account checkage procedures to liquidate subsistence charges incurred by members entitled to care under the provisions of this part. Such members must also be entitled to basic allowance for subsistence (BAS) while hospitalized at Government expense. The responsible activity (the adjudication authority or the naval MTF to which such a member is transferred) should follow procedures outlined in the Navy Pay and Personnel Procedures Manual when an eligible officer or enlisted member of the naval service is subsisted at Department of the Navy expense while hospitalized in a nonnaval treatment facility. Subpart C contains the creditable accounting classification for inpatient subsistence collections.

§ 732.24 Appeal procedures.

When a claim for care or a request for prior approval for nonemergency care is initially denied by an adjudication authority, the member may appeal the denial as outlined below. Any level in the appeal process may over-rule the previous decision and order payment of the claim in whole or in part or grant the request for prior approval of care.

(a) Level I—Reconsideration by the adjudication authority making the initial denial. The member should submit any additional information that may mitigate the initial denial.

(b) Level II—Consideration by the commander of the regional medical command having cognizance over the adjudication authority which upheld the initial denial on reconsideration.

(c) Level III—Consideration by COMNAVMEDCOM (MEDCOM–333).

Subpart C—Accounting Classifications for Nonnaval Medical and Dental Care Expenses and Standard Document Numbers

§ 732.25 Accounting classifications for nonnaval and dental care expenses.

Approp.	Sub-Head	OBJ.** Class	BCN	SA	AAA	TT	PAA	Cost Code	Purpose
17*1804	188M	000	00018	M	000179	2D	MDQ000	990010000MDQ	Outpatient Care Service Expenses.[1] [2]
17*1804	188M	000	00018	M	000179	2D	MDT000	990010000MDT	Outpatient Care Supply Expenses.[1] [3]
17*1804	188M	000	00018	M	000179	2D	MDE000	990010000MDE	Ambulance Expenses.[1]
17*1804	188M	000	00018	M	000179	2D	MDQI00	990020000MDQ	Inpatient Care Service Expense.[1] [2]
17*1804	188M	000	00018	M	000179	2D	MDTI00	990020000MDT	Inpatient Care Supply Expenses.[1] [3]
17*1804	188M	006	00018	M	000179	3C	MDZI00	990020000MDZ	Inpatient Subsistence Collections.[1]

NOTES:
*For the third digit of the appropriation, enter the last digit of the fiscal year current at the time claim is approved for payment.

**Refer to NAVCOMPT Manual par. 027003 for appropriate Expenditure Category Codes when disbursement or collection involves a foreign or U.S. Contractor abroad.

[1] Not applicable when care is procured from non-DOD sources for a patient receiving either inpatient or outpatient care at a naval medical facility. In such instances, the expenses incurred are payable from operations and maintenance funds available for support of the naval medical facility.

[2] Service expenses include: hospital, emergency room clinic, office fees; physician and dentist professional fees; laboratory, radiology, operating room, anesthesia, physical therapy, and other services provided.

[3] Supply expenses include: medications and pharmacy charges; IV solutions; whole blood and blood products; bandages; crutches; prosthetic devices; needles and syringes; and other supplies provided.

§ 732.26 Standard document numbers.

Adjudication authorities will assign to each claim approved for payment, a unique 15 position alpha/numeric standard document number (SDN). Prominently display this number on the NAVMED 6320/10, the NAVCOMPT 2277 (Voucher for Disbursement and/or Collection), NAVCOMPT 1164 (Claim for Reimbursement for Expenditures on Official Business) and on all other documentation accompanying claims. Compose SNDs per the following example: N0016887MD00001 or N0016887RV00001.

Position Entry	1	2 thru 6	7 & 8	9 & 10	11 thru 15
	N	00168	87	MD or RV	00001

Position	Data entry
1	"N" identifies Navy.
2 thru 6	Unit Identification Code of document issuing activity.
7 and 8	Last two digits of the fiscal year in which the claim is approved for payment.
9 and 10, or,	For NAVCOMPT 2277s, "MD" identifies the document as Miscellaneous Financial Document.
9 and 10	For SF 1164s, "RV" identifies the document as a Reimbursement Voucher.
11 thru 15	Consecutively assigned five digit serial number beginning with "00001" each fiscal year. Each subsequent claim will then be serially numbered "00002", "00003", etc.

[FR Doc. 87-19550 Filed 8-26-87; 8:45 am]
BILLING CODE 3810-AE-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3508/R903; FRL-3252-9]

Tolerance Exemption; Monourea Sulfuric Acid Adduct

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revises the exemption from the requirement of a tolerance for residues of monourea sulfuric acid adduct in or on all agricultural commodities to include desiccant uses as well as herbicidal uses. This rule to revise the exemption was requested by Unocal Chemicals Division, Unocal Corp., c/o Delta Management Group.

EFFECTIVE DATE: August 27, 1987.

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

FOR FURTHER INFORMATION CONTACT:
Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Office location and telephone number: Rm. 412, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 13, 1987 (52 FR 18020), which announced that Unocal Corp., c/o Delta Management Group, Fenwick Professional Building, 1414 Fenwick Lane, Silver Spring, MD 20910, proposes to amend 40 CFR 180.1084 by revising the exemption to read, "Monourea sulfuric acid adduct is exempted from the requirement of a tolerance when used as a herbicide or desiccant in or on all raw agricultural commodities." Currently, 40 CFR 180.1084 only exempts monourea sulfuric acid adduct from the requirement of a tolerance when used as a herbicide on all raw agricultural commodities.

There were no comments received in response to the notice of filing.

No additional data have been submitted in the petition, nor were additional data required. It is concluded that the exemption established by amending 40 CFR Part 180 will protect the public health. Therefore, the exemption is established as set forth below.

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

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-

354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement of this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

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

Dated: August 12, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. By revising § 180.1084, to read as follows:

§ 180.1084 Monourea sulfuric acid adduct; exemption from the requirements of a tolerance.

Monourea sulfuric acid adduct is exempted from the requirement of a tolerance when used as herbicide or desiccant in or on all raw agricultural commodities.

[FR Doc. 87–19647 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–300170; FRL–3252–5]

Updating of Pesticide Names, Cyhexatin; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendments.

SUMMARY: This document updates the names of 12 currently listed pesticides in 40 CFR Part 180 by changing them to reflect current American National Standards Institute (ANSI) names. These are merely technical amendments that impose no new regulatory requirements; therefore, advance notice and public comment are unnecessary.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT:

Charles L. Trichilo, Hazard Evaluation Division (TS–769c), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Rm. 810, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–7324.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 17, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, the following technical amendments are made to 40 CFR Part 180:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

§ 180.144 [Amended]

2. Section 180.144 is amended in the section heading and text by changing "tricyclohexyltin hydroxide" to "cyhexatin" wherever it appears.

§ 180.153 [Amended]

3. Section 180.153 is amended in the section heading and text by changing "*O,O*-diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate" to "diazinon" wherever it appears.

§ 180.170 [Amended]

4. Section 180.170 is amended in the section heading and text by changing "*O,O,O',O'*-tetramethyl *O,O'*-thiodi-*p*-phenylene phosphorothioate" to "temephos" wherever it appears.

§ 180.250 [Amended]

5. Section 180.250 is amended in the section heading and text by changing "3-(*p*-bromophenyl)-1-methoxy-1-methylurea" to "metobromuron" wherever it appears.

§ 180.255 [Amended]

6. Section 180.255 is amended in the section heading and text by changing "*m*-(1-methylbutyl) phenyl methylcarbamate and *m*-(1-ethylpropyl)phenyl methylcarbamate" to "bufencarb" wherever it appears.

§ 180.266 [Amended]

7. section 180.266 is amended in the section heading and text by changing "amiben" to "chloramben" wherever it appears.

§ 180.295 [Amended]

8. Section 180.295 is amended in the section heading and text by changing "4-*tert*-butyl-2-chlorophenyl methyl methylphosphoroamidate" to "crufomate" wherever it appears.

§ 180.308 [Amended]

9. Section 180.308 is amended in the section heading and text by changing "*O,O*-diethyl-*O*-(2-diethylamino-6-methyl-4-pyrimidinyl)phosphorothioate" to "pirimiphos-ethyl" wherever it appears.

§ 180.327 [Amended]

10. Section 180.327 is amended in the Section heading and text by changing "N^3,N^3-diethyl-2,4-dinitro-6-(trifluoromethyl)-*m*-phenylenediamine" to "dinitramine" wherever it appears.

§ 180.366 [Amended]

11. Section 180.366 is amended in the section heading and text by changing "2-*n*-octyl-4-isothiazolin-3-one" to "octhilinone" wherever it appears.

§ 180.406 [Amended]

12. Section 180.406 is amended in the section heading and text by changing "2,3-dihydro-5,6-dimethyl-l,4-dithiin-1,1,4,4-tetraoxide" to "dimethipin" wherever it appears.

§ 180.423 [Amended]

13. Section 180.423 is amended in the section heading and text by changing "potassium salt of 1-(4-chlorophenyl)-1,4-dihydro-6-methyl-4-oxopyridazine-3-carboxylic acid" to "fenridazon, potassium salt" wherever is appears.

[FR Doc. 87–19651 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 70617–7148]

Atlantic Surf Claim and Ocean Quahog Fisheries

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

ACTION: Notice of adjustment of surf clam fishing time.

SUMMARY: NOAA issues this notice to increase allowable fishing time for surf clams to 42 hours for the third quarter of 1987 for vessels harvesting surf clams in the Mid-Atlantic Area of the exclusive economic zone. This action will provide flexibility to operators in the use of fishing time during the period. The intended effect is to match fishing effort to the available quota for the area.

EFFECTIVE DATES: August 26, 1987 through October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Bruce Nicholls, 617–281–3600 ext. 232.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries contain at § 652.22(a)(3) a provision allowing the Regional Director to revise allowable fishing times to promote fishing for surf clams throughout the year with a minimum of changes. The Regional Director during the first quarter of 1987 decided, with the unanimous support of the Mid-Atlantic Fishery Management Council, to exercise his authority under § 652.22(a)(3) to allocate fishing time by quarter and allow each operator the maximum flexibility possible to schedule that time to best advantage. That program was continued in the second and third quarters.

Based on the rate of harvest and utilization of available quota during the first part of the third quarter, the Regional Director has decided to increase the allocated fishing time to 42 hours per permitted fishing vessel for the quarter. That time must be scheduled in seven fishing trips of six hours' duration each, which may be taken on any seven separate days during the normal daily and weekly fishing times established in § 652.22(a)(1), (2), and (3). The fishing trips must be scheduled with 15 days' advance written notice to the Surf Clam Coordinator, NMFS, 2 State Fish Pier, Gloucester, MA 01930.

Other Matters

This action is taken under the authority of 50 CFR Part 652 and is taken in compliance with Executive Order 12291.

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

List of Subjects in 50 CFR Part 652

Fisheries, Reporting and recordkeeping requirements.

Dated: August 21, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–19690 Filed 8–26–87; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 166
Thursday, August 27, 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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

Milk in the Eastern Colorado Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern Colorado Federal milk order for the months of September 1987 through February 1988. Provisions proposed to be suspended relate to the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February period. Suspension of the provisions was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due to later than September 3, 1987.

ADDRESS: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7311.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Department Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern Colordao marketing area is being considered for September 1987 through February 1988:

In the second sentence of § 1137.7(b), the works "plant which has qualified as a", and "of March through August".

All persons who want to send written data, views or arguments about the proposed suspension should sent two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include September 1987 in the suspension period.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

Mid-America Dairymen, Inc. (Mid-Am), an association of producers that supplies some of the market's fluid milk needs and handles some of the market's reserve milk supplies, requested the suspension. The suspension would remove the limit on the period of automatic pool plant status for a supply plant which met pool shipping standards during a previous September through February.

Mid-Am states that after two years of increasing production, producer receipts pooled under the Eastern Colordo order declined 0.4 percent during the first six months of 1987 from the same period of the previous year. The cooperative also states that the volume of producer milk used in Class I fell 2.0 percent during the first six months of 1987 from the same period of the previous year. Mid-Am expects that ample supplies of locally-produced milk will be available to the Eastern Colorado marketing area due to the relative decline in Class I use, ideal weather conditions for milk production and ample feed supplies. Without the suspension, Mid-Am would be required to move 50 percent of the producer milk receipts at its supply plants located in Kansas and Nebraska to the Denver area. In the absence of the requested suspension, the cooperative expects to incur substantial unnecessary costs for the movement of its milk solely for the purpose of pooling the milk of its members currently associated with the Eastern Colorado market.

List of Subjects in 7 CFR Part 1137

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1137 continues to read as follows:

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

Signed at Washington, DC on: August 24, 1987.

J. Patrick Boyle,
Administrator.

[FR Doc. 87-19723 Filed 8-26-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL-57-86]

Foreign Base Company Oil Related Income

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to current taxation of foreign base company oil related income. Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and by the Tax Reform Act of 1984. These regulations would provide guidance needed to comply with these changes and would affect controlled foreign corporations

with foreign oil related income and their U.S. shareholders.

DATES: The amendments are proposed to be effective for taxable years of foreign corporations beginning after December 31, 1982, and to taxable years of United States shareholders in which, or with which, those taxable years of foreign corporations end. Written comments and requests for a public hearing must be delivered or mailed by October 26, 1987.

ADDRESS: Send comments and request for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [INTL–57–86], Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Richard L. Chewning of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attn: CC:LR:T). Telephone 202–566–6384, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 952, 954, and 964 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 212 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 451) and to section 712(f) of the Tax Reform Act of 1984 (98 Stat. 494).

Discussion

Under present law, foreign corporations are taxed by the United States only on income effectively connected with the conduct of a trade or business in the United States and on certain other income derived from sources within the United States. As a result, the United States does not impose a tax on the foreign source income of a foreign corporation not effectively connected with the conduct of a trade or business in the United States, even though the corporation may be owned or controlled by a U.S. corporation or by individuals who are U.S. citizens or residents. These shareholders are subject to U.S. income tax on dividends when received from the foreign corporation.

Present law, however, provides under the subpart F provisions of the Code (section 951 through 964) that subpart F income, which includes foreign base company income, of controlled foreign corporations is currently taxed to certain U.S. shareholders, whether or not it currently distributed in the form of a dividend

Section 212 of TEFRA added foreign base company oil related income as a additional item to the category of foreign base company income (under the subpart F provisions). See section 954(a)(5) and (g)(1). Foreign base company oil related income is defined, with certain exceptions, as foreign oil related income (FORI) as defined in section 907(c)(2) and (3) of the Code. Initially, as enacted by TEFRA, foreign base company oil related income included only FORI as defined in section 907(c)(2). The definition of foreign base company oil related income was expanded, however, by the Tax Reform Act of 1984 to include also FORI as defined in section 907(c)(3). This change was made retroactive to the effective date of TEFRA, January 1, 1983. Section 907(c)(2), as amended by TEFRA, states that FORI means the taxable income from foreign oil related activities of processing, transportation, distribution or sales, dispositions of related assets and related services. Section 907(c)(3) states that FORI also includes other income, such as certain dividend and interest income.

A common characteristic of the various items of foreign base company income is that they include income which, generally either because of its passive nature or because it is derived from providing services or selling products outside the country in which the foreign corporation is organized or maintains its head office, is not likely to be taxed either in the country in which the transaction occurs or in the country in which the corporation is organized or maintains its head office. Income earned by a corporation in the country where it is organized or maintains its head office generally is not classified as foreign base company income. In keeping with the general foreign base company concepts, FORI is not classified as foreign base company oil related income by section 954(g)(1) if it is derived from sources within a foreign country in connection with (1) oil or gas that was extracted from a well located in that foreign country, or (2) oil or gas, or a primary product of oil or gas (collectively sometimes referred to as "fuel"), that is sold by the foreign corporation or a related party for use or consumption within that foreign country. In each of these cases, since the foreign oil related income is derived within the country in which the oil or gas is extracted or sold, it is probable that the source country exercises taxing jurisdiction over the income derived. Income derived from sources within a foreign country in connection with fuel transferred into the fuel tank of a vessel or an aircraft (*e.g.*, a bunker with respect to a vessel) for consumption by the vessel or aircraft is also excepted from foreign base company oil related income. Unless the foreign corporation can show that the fuel that is sold for use or consumption within the foreign country is fuel which was not in fact extracted from a well located in that country, it will be presumed that any oil or gas extracted within that country was the fuel sold for use or consumption within that country.

In applying the country of extraction and country of consumption exceptions the emphasis is generally on the source of income and not the place where the controlled foreign corporation is incorporated. The source of FORI is determined generally under the rules of sections 861 to 865.

An item of income which otherwise would be classified as foreign base company oil related income will, nevertheless, not be so classified unless it is income of a corporation which is a large oil producer for the taxable year. A corporation is considered a large oil producer if, for its current or immediately preceding taxable year, the average daily production of foreign crude oil and natural gas of the related group which includes the corporation equals or exceeds 1,000 barrels. Average daily production is computed under rules similar to those rules set forth in section 613A except that only oil and gas produced from wells outside the U.S. are considered.

An item of foreign base company oil related income which may also be another type of foreign base company income, generally is considered, under section 954(b)(8), to be only foreign base company oil related income. Therefore, if an item of income qualifies both as foreign base company oil related income and as another type of foreign base company income such as, for example, foreign base company services income, the income will be classified as foreign base company oil related income. An item of income which qualified both as foreign base company oil related income and foreign base company shipping income is treated, however, as foreign base company shipping income.

The exception from subpart F of the Code for certain income subject to high foreign taxes does not, under section 954 (b)(4), apply to foreign base company oil related income. Therefore, items of income which otherwise would not be classified as foreign base company income by reason of this exception will nonetheless be classified as foreign base company income (and subpart F income) if the items are within

the definition of foreign base company oil related income.

Comments and Requests for a Public Hearing

Before adopting as final regulations these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. In addition, these proposed regulations will not be adopted as final regulations before the close of the comment period of any proposed regulations defining FORI under section 907(c) (2) and (3) for post-TEFRA years. Such regulations defining FORI have not as yet been proposed. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Executive Order 12291 and Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the proposed regulations are interpretative and that the notice and public comment procedural requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6). The Commissioner of Internal Revenue has determined that this proposed rule is not a major legislative regulation subject to Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required.

Drafting Information

The principal author of these regulations is Mary Frances Pearson, formerly of the Legislative and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, United States investments abroad.

Proposed amendments to the regulations

Accordingly, the proposed amendments to 26 CFR Part 1 are as follows:

Income Tax Regulations

Paragraph 1. The authority for Part 1 continues to read in part:

PART 1—[AMENDED]

Authority: 26 U.S.C. 7805. * * *

§ 1.952-1 [Amended]

Par. 2. Section 1.952-1 is amended by removing "1.954-7" in paragraph (a)(2) and by inserting in lieu thereof "1.954-8".

Par. 3. Section 1.952-3 (b)(3) is revised to read as follows:

§ 1.952-3 Order of foreign base company and subpart F income computations.

* * * * *

(b) *General rule.* * * *

(3) *Step 3.* Determine net foreign personal holding company income, net foreign base company sales income, net foreign base company services income, and net foreign base company oil related income as follows:

(i) *First.* Determine foreign personal holding company income under § 1.954-2, foreign base company sales income under § 1.952-1 (b) (2) or which are services income under § 1.954-4, and foreign base company oil related income under § 1.954-8;

(ii) *Second.* Exclude from each such type of income the items thereof which are excluded from subpart F income under § 1.954-1 (b) (2) or which are excluded from foreign base company income under § 1.954-1(b) (2) and (3); and

(iii) *Third.* Reduce the balance of each such type of income by the deductions allocable thereto under § 1.954-1(c).

Par. 4. Section 1.954-1 is amended as follows:

1. Paragraph (a) is amended by inserting immediately following the third sentence and immediately preceding the fourth sentence the following sentence "For taxable years beginning after December 31, 1982, the foreign base company income of a controlled foreign corporation also includes foreign base company oil related income, as defined in § 1.954-8".

2. The first sentence of paragraph (b)(3)(i) is amended by removing the first word "Foreign" and by inserting in lieu thereof the clause "Except for income which is foreign base company oil related income as defined in section 954(g) and § 1.954-8, foreign".

3. The first sentence in paragraph (c) is amended by removing the word "and" immediately before "foreign base company shipping income as defined in § 1.954-6" and by inserting ", and foreign base company oil related income as defined in § 1.954-8" between "§ 1.954-6" and "shall"

4. The introductory text of (e) is amended by removing "1.954-7," and inserting in lieu thereof "1.954-8,".

5. The introductory text of (f) is amended by removing "1.954-5," and inserting in lieu thereof "1.954-8,".

6. The first sentence of paragraph (f)(3) is amended by removing "or foreign base company services income. See section 954(b)(6)(A)." and by inserting in lieu thereof "foreign base company services income, or foreign base company oil related income. See sections 954 (b)(6)(A) and (b)(8)."

7. A new paragraph (f)(4) is added immediately after paragraph (f)(3) to read as follows:

§ 1.954-1 Foreign base company income; taxable years beginning after December 31, 1975.

* * * * *

(f) *Classification of an item of income.* * * *

(4) *Priority of foreign base company oil related income.* Foreign base company oil related income (as determined under § 1.954-8) of a controlled foreign corporation shall not also be considered foreign personal holding company income, foreign base company sales income, or foreign base company services income. See section 954 (b)(8). If an item of income qualifies both as foreign base company oil related income and foreign base company shipping income, it is treated as foreign base company shipping income.

Par. 5. A new § 1.954-8 is added immediately after § 1.954-7 to read as follows:

§ 1.954-8 Foreign base company oil related income.

(a) *Foreign base company oil related income*—(1) *In general.* Under section 954(g), the foreign base company oil related income of a controlled foreign corporation (except as provided under paragraph (b) of this section) consists of the items of foreign oil related income described in section 907(c) (2) and (3), other than such income derived from a source within a foreign country in connection with—

(i) Oil or gas which was extracted from an oil or gas well located in that foreign country, or

(ii) Oil, gas, or a primary product of oil or gas which is sold by the controlled foreign corporation or a related person for use or consumption within that

country or is loaded in that country on a vessel or aircraft as fuel for the vessel or aircraft.

For special rules for applying these exceptions, see paragraph (c) of this section.

(2) *Source of income.* The source of foreign base company oil related income is determined generally under the principles of §§ 1.861–1 to 1.863–5. See § 1.863–6. Thus, income from the performance of a service generally is sourced in the country where the service is performed. See § 1.861–4. Underwriting income from insuring a foreign oil related activity is sourced at the location of the risk. See section 861(a)(7) and § 1.953–2(b)(2).

(3) *Primary product.* The term "primary product" of oil or gas has the meaning given this term by § 1.993–3(g)(3) (i) (other than the second sentence thereof) and (ii), which relate to the denial of DISC benefits for the export of certain primary products.

(4) *Vessel.* For the definition of the term "vessel", see § 1.954–6(b)(3)(ii).

(5) *Foreign country.* For purposes of this section, the term "foreign country" has the same meaning as in section 638 (relating to continential shelf areas). Thus, for example, oil or gas extracted from a sea area will be deemed to be extracted in the country which has exclusive rights of exploitation of natural resources with respect to that area if the other conditions of section 638 are met.

(6) *Country of use or consumption.* For rules for determining the country of use or consumption, see § 1.954–3(a)(3)(ii).

(7) *Insurance income.* For purposes of this section, income derived from or attributable to insurance of section 907(c)(2) activities means taxable income as defined in section 832(a) and as modified by the principles of § 1.953–4 (other than as the section is applied to life insurance).

(8) *Fuel product.* For purposes of this section, the term "fuel product" means oil, gas or a primary product of oil or gas.

(9) *Effective date.* The provisions of section 954(g) and this section are applicable to taxable years of foreign corporations beginning on or after January 1, 1983, and to taxble years of United States shareholders in which or with which those taxable years of foreign corporations end.

(b) *Exemption for small oil producers*—(1) *In general.* Foreign base company oil related income does not include any income of a foreign corporation is not as large oil producer.

(2) *Large oil producer.* A corporation is a large oil producer (within the meaning of section 954(g)(2)) if the average daily production (extraction) of foreign crude oil and natural gas by the group which includes the corporation and related persons for the taxable year or immediately preceding taxable year is 1,000 or more barrels. The average daily production of foreign crude oil or natural gas for any taxable year (and the conversion of cubic feet of natural gas into barrels) is determined under rules similar to the rules of section 613A, except that only crude oil or natural gas from a well located outside the United States is taken into account. See proposed regulation § 1.613A–7(f) as it appeared in the **Federal Register** of May 13, 1977 (42 FR 24279).

(c) *Special rules for applying exception to foreign base company oil related income*—(1) *In general.* For purposes of paragraph (a)(1) of this section, if foreign oil related income is derived from a source within a foreign country in connection with a fuel product described in either or both subdivisions (i) and (ii) of that paragraph, then the following rules apply. A fuel product extracted within a foreign country shall be considered to be the fuel product sold within that country unless the controlled foreign corporation demonstrates that such fuel product was sold elsewhere. Similarly, a fuel product sold within a foreign country shall be considered to be the fuel product extracted within that country unless the controlled foreign corporation demonstrates that such fuel product was extracted elsewhere.

(2) *Illustrations.* The following examples illustrate the application of this paragraph.

Example (1). Controlled foreign corporation M has a refinery in foreign country A that refines 250x barrels of oil during its taxable year beginning in 1984. It is determined that 75x barrels of that oil were extracted in country A and 150x barrels of refined oil were sold by M in country A for consumption in country A. M also sold within foreign country B for consumption in country B, 50x barrels of its refined oil. M, however, cannot show that any portion of the 50x barrels sold within country B were extracted in country A. Income from refining is considered derived from the country in which the refining occurs. M has foreign base company oil related income with respect to its refining of 100x barrels of oil, determined as follows:

(1) Total number of barrels of oil refined in country A by M		250x
(2) Greater of the number of barrels of oil extracted (75x) or sold for consumption (150x) in country A		(150x)
(3) Balance		100x

Example (2). Assume the same facts as in *Example (1).* In addition, the 50x barrels sold by M within country B, a contiguous country, were transported to and from M's refinery in country A to country B by a pipeline which is owned by M. These 50x barrels can be traced to 50x of the 75x barrels extracted in country A. M has foreign base company oil related income with respect to its refining of the 50x barrels of oil, determined as follows:

(1) Total number of barrels of oil refined in country A by M		250x
(2) Greater of the number of barrels of oil extracted (75x) or sold for consumption (150x) in country A	150x	
Number of barrels of oil sold outside country A which are traced to oil extracted in country A	50x	(200x)
(3) Balance		50x

M has no foreign base company oil related income with respect to its pipeline transportation of the 50x barrels because such income was derived in part from a source within country A (where the 50x barrels were extracted) and the remaining part from country B (where the 50x barrels were sold for consumption). M has no foreign base company oil related income with respect to its sale of the 50x barrels in country B because such income was derived from the country in which the oil was sold for consumption. M has no foreign base company oil related income for its extraction activity because extraction income is excluded in all events. See section 954(g)(1)(A).

Par. 6. Section 1.964–4 is amended as follows:

1. Paragraphs (d) (4), (5), (6), (7), (8), (9), and (10) are redesignated as (d) (5), (6), (7), (8), (9), (10) and (11), respectively.

2. A new paragraph (d)(4) is added immediately following paragraph (d)(3) to read as follows:

§ 1.964–4 Verification of certain classes of income.

* * * * *

(d) *Foreign base company income and exclusions therefrom.* * * *

(4) *Foreign base company oil related income.* (i) The foreign base company oil related income described hin section 954(g) and § 1.954–8, for which purpose there must be established, with respect to each foreign country, the gross income derived from—

(A) The processing of minerals extracted (by the taxpayer or by any other person) from oil or gas wells into their primary products, as determined under section 907(c)(2)(A),

(B) The transportation of such minerals or primary products, as determined under section 907(c)(2)(B),

(C) The distribution or sale of such minerals or primary products, as determined under section 907(c)(2)(C),

(D) The disposition of assets used by the taxpayer in a trade or business described in subdivision (A), (B) or (C), as determined under section 907(c)(2)(D),

(E) Dividends, interest, partnership distributions, and other amounts, as determined under section 907(c)(3).

Where an item of income falls within more than one subdivision of this paragraph (d)(4)(i), it shall be sufficient to establish that it falls within any one of them.

(ii) If any of the foregoing items of income arising from sources within a foreign country relates to oil, gas, or a primary product thereof and is described in section 954(g)(1) (A) or (B) and § 1.954–8(a)(1) (i) or (ii) (and, hence, is not foreign base company oil related income), then there must be established facts sufficient to verify the amount of such item of income which is not foreign base company oil related income. In this regard, the total quantities of oil, gas, and primary products thereof which gave rise to such item of income and the portions of such quantities which were extracted or sold within the foreign country must be established.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87–19580 Filed 8–26–87; 8:45 am]

BILLING CODE 4830–01–W

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, 1917, and 1918

[Docket No. H–004I]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of change of date for informal public hearing and for close of comment period.

SUMMARY: On August 3, 1987 (52 FR 28727), OHSA published a notice inviting public comment and setting the date for an informal public hearing on the feasibility of meeting the permissible exposure limit (PEL) specified in the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work-practice controls in nine specified industry sectors. This notice defers the date for the hearing from September 15, 1987 to September 29, 1987. It also defers the close of the written comment period from September 2, 1987 to September 16, 1987.

DATES: Written comments must be received by September 16, 1987. An informal public hearing will begin September 29, 1987. All notices of intention to appear at the public hearing and all written testimony and documentary evidence to be introduced into the hearing record must be received by September 16, 1987.

ADDRESSES: The hearing will start at 9:30 a.m. on September 29, 1987 in the Auditorium, Frances Perkins Building, Department of Labor, Third and Constitution Avenue NW., Washington, DC. On the second day of the hearing, September 30, 1987, the proceedings will start at 9:30 a.m. and be held in Room N–5437 of the Frances Perkins Building. On subsequent days the hearing will be held in the Auditorium of the Frances Perkins Building.

Comments, in quadruplicate, should be mailed or delivered to the Docket Office, Occupational Safety and Health Administration, Docket No. H–004I, Roon N–3670, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 523–7894.

Notices of Intention to Appear, in quadruplicate, should be mailed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8615.

All materials submitted will be available for public inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: James F. Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N–3641, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 523–8151.

SUPPLEMENTARY INFORMATION: On August 3, 1987 (52 FR 28727), the Occupational Safety and Health Administration (OSHA) gave notice of a limited reopening of the rulemaking record for the OSHA lead standard to receive specific information relating to the feasibility of meeting the permissible exposure limit (PEL) of the lead standard (29 CFR 1910.1025(e)(1)) through engineering and work practice controls in the following nine industry sectors: lead chromate pigments (SIC 2816), lead chemicals (SIC 2816/2819), nonferrous foundries (SIC 3362/3369), brass and bronze ingot production (SIC 3341/3362), secondary copper smelting (SIC 3341), battery breaking, when not part of secondary lead smelting (SIC 5093), leaded steel (SIC 3312/3313), shipbuilding and ship repair (SIC 3731) and stevedoring (SIC 4463). The August 3, 1987 notice set September 15, 1987 as the date for beginning an informal public hearing on this issue and September 2, 1987 as the date by which written comments and notices of intention to appear at the hearing had to be received.

OSHA's action was taken in accordance with a March 31, 1987 order by the Court of Appeals for the District of Columbia, granting the Agency's earlier request that the record be remanded to OSHA for further administrative proceedings to determine the feasibility of implementing paragraph (e)(1) of the lead standard in the nine industry sectors listed above. In that order, the court mandated that OSHA return the record to the court on or before October 1, 1987.

On June 17, 1987, OSHA filed with the court a motion requesting a 90-day extention of time, from October 1, 1987 to January 1, 1988, in which to return to the court the record of the nine remand industry sectors. That motion was granted by the court on July 31, 1987.

Thereafter, on August 18, 1987, OSHA received a request from the Oxide and Chemicals Committee of the Lead Industries Association, the main trade association for the lead industries, that the dates for the public hearing and for submission of written comments be deferred for at least 30 days, or in the alternative, that the date for submission of written comments be extended beyond the September 2, 1987 deadline.

In light of the July 31, 1987 court order granting OSHA additional time to make feasibility determinations concerning the nine industry sectors and to return the record to the court, OSHA has decided that it can defer the dates for the beginning of the public hearing and the submission of written comments for two weeks. Thus, the public hearing will begin at 9:30 A.M. on September 29,

1987, in the Auditorium of the Frances Perkin's Building, U.S. Department of Labor, and written comments and notices of intention to appear at the hearing must be received by September 16, 1987. All other aspects of the rulemaking remain as indicated in OSHA's notice of August 3, 1987.

List of Subjects

29 CFR Part 1910

Hazardous materials, Health, Lead, Lead poisoning, Occupational safety and health, Protective equipment, Respiratory protection.

29 CFR Part 1915

Hazardous materials, Health, Lead, Lead poisoning, Occupational Safety and health, Protective equipment, Respiratory protection, Shipyard employment, Vessels.

29 CFR Part 1917

Hazardous materials, Health, Lead, Lead poisoning, Marine terminals, Occupational safety and health, Protective equipment, Respiratory protection, Vessels.

29 CFR Part 1918

Hazardous materials, Health, Lead, Lead poisoning, Longshoremen, Occupational safety and health, protective equipment, Respiratory protection, Vessels.

Authority

This document was prepared under the direction of John A. Pendergrass, Assistant Secretary of Labor for Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, DC 20210. It is issued pursuant to section 6(b) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593; 29 U.S.C. 655), and section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941).

Signed at Washington, DC, this 24th day of August 1987.

John A. Pendergrass,

Assistant Secretary of Labor.

[FR Doc. 87-19680 Filed 8-26-87; 8:45 am]

BILLING CODE 4510-26-M

Mine Safety and Health Administration

30 CFR Part 11

Respiratory Protective Devices

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This proposal would remove existing rules in 30 CFR Part 11 for the joint approval of respiratory protective equipment by the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH). The existing rules would be replaced by revised approval procedures and technical requirements for respirators being proposed by NIOSH in a separate rulemaking. Removal of Part 11 would be contingent upon the NIOSH rulemaking becoming final. Under the NIOSH proposal, MSHA would continue to have a consultative role regarding respirators used in mines.

DATES: Written comments must be submitted on or before October 26, 1987.

ADDRESS: Send written comments to the Mine Safety and Health Administration (MSHA), Office of Standards, Regulations and Variance, Room 631, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Acting Associate Assistant Secretary for Mine Safety and Health, Phone (703) 235-1910.

SUPPLEMENTARY INFORMATION:

I. Background

The existing rules and procedures in 30 CFR Part 11 for approval of respiratory protective devices, or respirators, evolved from rules and procedures developed by the U.S. Department of the Interior, Bureau of Mines. Until 1972, the Bureau of Mines was solely responsible for testing and approving respirators. In 1972, Part 11 was published jointly by the Bureau of Mines and NIOSH. These regulations replaced the Bureau of Mines' rules and procedures, and delineated the responsibilities of the two agencies. Under these regulations, the Bureau of Mines evaluated respirator performance, and NIOSH was responsible for administration of the quality control provisions. The Bureau of Mines also tested the safety of electrical components of respirators for use in potentially explosive atmospheres in underground gassy mines (intrinsic safety) under the requirements of 30 CFR Part 18.

A Memorandum of Understanding between the two agencies of May 30, 1972, refined their respective roles and in 1973, Part 11 was amended. Under this arrangement, NIOSH undertook primary responsibility for performance testing of respirators. Although all approvals continued to be issued jointly, the Bureau of Mines primarily retained only the responsibility to test for intrinsic safety the small number of respirators which have electrical components.

In 1974, the Mining Enforcement and Safety Administration, MSHA's predecessor agency, was created and the responsibilities of the Bureau of Mines under Part 11 were transferred to that agency. Since it was created in 1978, MSHA has continued to test electrical components of respirators for intrinsic safety and has issued separate approvals for respirators meeting the requirements of 30 CFR Part 18. While MSHA currently reviews applications for respirator approvals and has conducted some product evaluations, laboratory testing, quality assurance, and product audit for certain respirators, the principal testing and certification activities specified by Part 11 are primarily conducted by NIOSH.

II. Discussion of Proposal

NIOSH is proposing, in a separate rulemaking, new requirements for the approval of respiratory protective equipment. These rules would replace Part 11 with updated and improved testing procedures and technical requirements, and would be codified at Title 42 of the Code of Federal Regulations (CFR). MSHA's rulemaking would remove Part 11 from Title 30. Removal of Part 11 would, however, be contingent on publication of the NIOSH proposal as a final rule.

MSHA anticipates that the Title 42 regulations, when final, would be consistent with the current MSHA and NIOSH respirator approval program by placing responsibility for approving respirators primarily with NIOSH. This would recognize the expertise of NIOSH in the area of respirator performance and administration of the respirator approval program. MSHA would continue to test electrical components of respirators to be used in mines and issue an MSHA approval under 30 CFR Part 18 for these components. Also, the Title 42 rules as proposed would preserve a consultative role for MSHA in the approval of respirators used in mining in order to protect the health and safety of miners. Among the types of devices for which this role would be particularly important are self-contained self-rescue devices and other rescue equipment used by miners during emergency situations. All existing MSHA respirator-use provisions would be maintained and recodified elsewhere in Title 30 of the Code of Federal Regulations.

Commenters responding to the separate NIOSH proposal to revise the administrative and technical provisions for approving respirators should direct

their comments to NIOSH so that this information can be included in the appropriate rulemaking record. The issue of MSHA's consultative role in the approval of respirators will also be the subject of the NIOSH proposal and, therefore, commenters should direct responses on this issue to that agency as well. Both rulemaking activities will be coordinated to ensure that the level of protection afforded to miners and other affected workers is maintained at all times during the development and transition period. All technical data and commenter information will be shared by the respective agencies. A new Memorandum of Understanding will be developed by the two agencies to implement the appropriate regulatory responsibilities.

III. Other Sections Affected

After the Title 42 rulemaking is completed and Part 11 is removed, MSHA anticipates that conforming nomenclature revisions would be needed in standards in Title 30 that reference the use of approved respirators.

These conforming nomenclature revisions may require that references be made to NIOSH, or that references to MSHA or the Secretary of Labor be deleted. For example, the words "the Secretary and" would be deleted from 30 CFR 70.300 after the word "approved" so that the standard would then specify that respirators be provided to miners that are "approved by the Secretary of Health and Human Services." Similar changes may be required for five other mine safety and health standards, depending on final resolution of the NIOSH rule. As indicated by the above example, however, nothing in the anticipated nomenclature revisions would change the compliance responsibility of operators, who would continue to be required to provide miners with "approved" respirators.

IV. E.O. 12291 and Regulatory Flexibility Act

This is not a major rule under Executive Order 12291. In addition, the rule would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis has not been prepared.

V. Paperwork Reduction Act

The recordkeeping and reporting requirements in 30 CFR Part 11 are addressed in NIOSH's Title 42 rulemaking proposal. Comments on these requirements should be addressed directly to NIOSH.

List of Subjects in 30 CFR Part 11

Mine safety and health, Administrative practice and procedure, Reporting and recordkeeping requirements.

Accordingly, it is proposed to amend Chapter I of Title 30, Code of Federal Regulations as set forth below.

Date: August 13, 1987.

Alan C. McMillan,

Deputy Assistant Secretary for Mine Safety and Health.

Subchapter B—[Removed and Reserved]

1. It is proposed to remove and reserve Subchapter B which consists of Part 11.

Authority: 30 U.S.C. 957.

[FR Doc. 87-18914 Filed 8-26-87; 8:45 am]

BILLING CODE 4510-43-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[86-40]

Safety Zone; San Juan Harbor, San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering establishing a Safety Zone in San Juan Harbor San Juan, Puerto Rico for Liquified Petroleum Gas (LPG) ships transiting the harbor, and in the Army Terminal Turning Basin when non-gas free LPG vessels are moored at the Catano Oil Dock and at the Gulf Oil Refinery Dock. This Safety Zone is necessary due to two recent marine casualties where large ships failed to negotiate the turn colliding with the adjacent dock. Such casualties would impact on the Catano Oil Dock.

DATES: Comments must be received on or before October 13, 1987.

ADDRESSES: Comments should be mailed to: Commanding Officer, U.S. Coast Guard Marine Safety Office, P.O. Box S-3666, Old San Juan, PR 00904. The comments and other materials referenced in this notice will be available for inspection and copying at the Coast Guard Marine Safety Office, located at the Coast Guard Base, San Juan at La Puntilla Final. Normal office hours are between 7:30 a.m. and 3:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR M.W. Brown, at the above address, phone number (809) 725-0857.

SUPPLEMENTARY INFORMATION: On Monday, February 9, 1987, the Coast Guard published a Notice of Proposed Rulemaking concerning the establishment of a safety zone in San Juan Harbor, San Juan, Puerto Rico (52 FR 4039). Interested persons were given until March 26, 1987 for written comments. Initially, no comments were received. On February 26, 1987 the Captain of the Port, San Juan (COTP) wrote personal letters to all parties that could be identified as being affected by the proposed rules soliciting comments.

On March 16, 1987 the COTP held a meeting with representatives from Crowley, Sealand, Navieras de Puerto Rico (Navieras), and ESSO concerning the proposed rules. Most of these companies have regularly scheduled vessels transiting the Army Terminal Turning Basin.

On March 25, 1987 in COTP met with a representative of Tropigas International Corporation (Tropigas) concerning the proposed rules. Tropigas is the corporation that will be bringing LPG into the Catano Oil Facility.

On March 26, 1987 the COTP addressed a meeting of the Propeller Club of San Juan. At this meeting, he outlined the rationale behind, and the provisions of the proposed safety zone, and discussed various aspects of the proposed rule. The COTP noted the concerns of several of the interested parties and solicited alternative proposals that would offer an equivalent level of safety. The COTP also noted that the comment period expired on that date. He informed those present, however, that upon request, additional time wold be granted to formulate comments.

On May 4, 1987 the COTP met with members of the San Juan Harbor Pilots to get advice on technical matters regarding the waterway configuration, vessel maneuverability in the Army Terminal Turning Basin, and the proposed safety zone.

The following entities provided comments as a result of the proposed rules:

A joint comment from ESSO Standard Oil (Puerto Rico), Texaco Puerto Rico Inc., and The Shell Company (Puerto Rico) Ltd. These companies are in a consortium with Tropigas and have rebuilt the Catano Oil Dock to handle petroleum and LPG products.

A combined comment from Puerto Rico Maritime Shipping Authority (PRMSA or also known as Navieras de Puerto Rico), Sealand Service Inc., Luis Ayala Colon Sucrs., Continental Shipping, Puerto Rico Electric Power Authority, and the Puerto Rico Steamship Association. These concerns are either steamship operators, shipping agents or other concerned parties shipping cargo through the Army Terminal Turning Basin.

The Puerto Rico Manufacturers Association.

Antilles Shipping Corporation.

Crowley Maritime Corporation.

The U.S. Army Corps of Engineers.

The Puerto Rico Ports Authority.

McAllister Bros. Towing Company.

There was a typographical error in the February 9, 1987 Notice of Proposed Rulemaking in the Economic Assessment and Certification Section. The first paragraph read in part "When an LPG vessel is in port, vessels requiring access to Puerto Nuevo Channel can transit the Graving Dock Channel via Army Terminal Channel." The word "vice" should have been subsituted for the "via". This error was pointed out to virtually every affected party during the preliminary meetings discussed above. In any case, based on the comments received, it appears that this typographical error did not cause any confusion.

Drafting Information

The drafters of this notice are LCDR M.W. Brown, Project Officer, and LCDR S.T. Fuger, Project Attorney, Seventh Coast Guard District Legal Office.

Discussion of Comments

No comments were received indicating that there was not a safety problem at the Army Terminal Turning Basin nor were any comments received suggesting an alternative vessel movement schemes to provide an equivalent level of safety to that of the original proposed rule.

One commenter suggested making the following modification to the proposed rule: "vessels bound for facilities on the Puerto Nuevo Channel and in the Army Terminal Basin are allowed into the Army Terminal Basin if the vessel enters the safety zone at minimum maneuvering speed with at least two tugs in assistance." This suggestion would not appear to provide an increased level of safety as both vessels that were involved in casualties in the Army Terminal Turning Basin had two tugs in company.

Several commenters stated that the proposed rule, if enacted, would "paralyze and close San Juan Harbor while LPG carriers are present in San Juan Harbor." The Coast Guard believes this is not true. While the LPG vessel is in the harbor the proposed rule would establish a moving safety zone around the vessel. This relatively small envelope around the vessel would prevent meeting and overtaking situations. The maximum transit time for a LPG vessel would be approximately one hour. The Coast Guard feels that causing a one hour delay to those few vessels that would be meeting either an inbound or outbound LPG vessel is not unreasonable or onerous. Once the vessel is moored the only area in the harbor affected is the Army Terminal Turning Basin. The remainder of the harbor is unaffected and traffic can proceed as normal. The proposed rule does not dictate or require that the LPG vessel receive any preferential treatment while either waiting in any queue outside the harbor or waiting to depart. The safety zone would only take effect in the relatively narrow confines of the harbor.

Several commenters stated that "the most realistic solution is not to close the harbor off to all other traffic but to restrict the entry of LPG carriers into the port of San Juan." These commenters also questioned whether the necessary "safety infrastructure" was available and suggested that the LPG facility should not be located in a heavily populated area. LPG has been coming into San Juan Harbor at the Catano location since at least 1959. The Coast Guard's involvement in LPG facility siting is one of indirect control via vessel operational safety regulation and enforcement. Under a Memorandum of Understanding with the Department of Transportation's Material Transportation Bureau (now known as the Office of Hazardous Materials), the Coast Guard is responsible for development of regulatory requirements for Liquefied Natural Gas (LNG) and LPG facility site selection as it relates to management of vessel traffic in and around the facility. The Coast Guard may address the following items: depth of water, width of channel, aids to navigation, vessel traffic patterns, anchorage area, maneuvering area, exposure to weather, tides and currents, facility fire protection, availability of emergency response to the facility, and facility security. The physical LNG/LPG facility site is a responsibility of local and other Federal agencies. Among the other Federal agencies involved are the U.S. Army Corps of Engineers, Environmental Protection Agency, Council of Environmental Quality and Department of Interior. None of the Federal agencies have indicated the Catano Oil Dock violates any of their regulations. The Coast Guard has no authority to order any particular commodity not to enter the port of San Juan. LPG continues to enter San Juan Harbor and be off-loaded at the Gulf Oil Refinery located 300 yards from the Catano Oil Dock. The location of the Catano Oil Facility at the junction of the Army Terminal and Puerto Nuevo Channels and the recent marine casualty record have resulted in the Coast Guard's proposed rule. If all LPG is to be prohibited from being transported through San Juan Harbor that decision must be made by the Commonwealth of Puerto Rico. The Coast Guard notes that it has no accident history involving the LPG facility per se; only vessels transiting the area. The Federal infrastructure to insure safety is in place and operating. The Coast Guard believes that LPG can be safely transported and off-loaded if certain restrictions are imposed. The Commonwealth's infrastructure is beyond the scope of these proposed regulations and is a matter of concern of the Puerto Rico Public Service Commission.

One commenter stated that the Coast Guard was benefiting only one party, Tropigas, at the expense of all other shipping interests. This commenter went on to say that such action was "arbitrary and capricious". The Coast Guard does not agree. The Coast Guard believes that the proposed rule is in the public interest. Certainly the operator of the facility benefits if his facility is not damaged. But a major accident would have an affect beyond the one facility. Considering the consequences of an accident, the Coast Guard feels this proposed rulemaking is not arbitrary and capricious but prudent.

Several commenters stated that the proposed rule is only a short term solution to the problem. They state that the Army Terminal Turning Basin should be dredged to widen the basin and reduce the 122 degree turn now necessary. The Coast Guard concurs with these comments. The U.S. Army Corps of Engineers in response to questions raised by the COTP stated that the 1986 Water Resources Development Act authorized the construction of a San Juan Harbor project. Total construction cost for the project is $72.3 million. However, the 1986 law requires that the local sponsor (the Puerto Rico Ports Authority) contribute about 25% of the total construction cost. The Port Authority has expressed support for the project but no interest in entering into a cost

sharing agreement to move with it in the near future.

Several comments were received that the proposed fixed safety zone would block access to the Puerto Nuevo Channel. Some of these commenters also pointed out that certain vessels could only moor starboard side to the dock, hence they could not use the Graving Dock Channel as it would require the vessel to back down the Puerto Nuevo Channel. These commenters felt that this could not be accomplished with other vessels moored in the Puerto Nuevo Channel, especially in regards to the Navieras feeder ships which moor cross-channel. Based on conversations with the San Juan Pilots, the Coast Guard believes that it is possible to bring vessels down the Graving Dock Channel to the Puerto Nuevo Channel. The Coast Guard further believes that such vessels could be backed down the Puerto Nuevo Channel to their berth. The pilots pointed out that such operations have occurred in the past without incident. With regard to the potential disruptions of the Navieras Feeder vessels that moor cross-channel in the Puerto Nuevo Channel, the Coast Guard acknowledges that such disruptions could occur. However, the Coast Guard feels that this is not a legitimate concern as no vessel has the "right" to block a navigable channel. It is standard procedure for the various feeder vessels that moor cross-channel to move alongside the pier when a large vessel wishes to transit.

Several commenters stated "the proposed rule . . . will have a major adverse economic impact upon the operations of over forty percent of the maritime traffic within San Juan Harbor and affect some seventy-four percent of the cargo which comes into Puerto Rico." Some of these commenters went on to challenge the Coast Guard's finding of minimal impact and requested a public hearing. They contend the port would be closed and all segments of industry would not be able to receive raw materials with consequent shutdowns. The Coast Guard believes that the purported adverse economic effect is overstated. The fixed Safety Zone would only be in effect while a non-gas free LPG vessel is at the Catano Oil Dock. The data provided to the COTP by Tropigas indicates this would only occur twice a month, with a turnaround time for each vessel estimated to be 24 to 30 hours. Based on the Coast Guard's experience in vessel cargo operations, this turn around time seems reasonable. However, for analysis purposes, it was assumed that a LPG vessel will be in the harbor for 48 hours twice a month. The storage capacity of the LPG facility at Catano makes it unlikely that a LPG vessel would be calling more than twice a month. Therefore, this Safety Zone would only be in effect for four days a month, or 13% of the time. Thus only 5% of the harbor traffic and only 10% of the cargo moving through San Juan Harbor will be affected, and most, if not all of that traffic, could use the alternative Graving Dock Channel route. However, the Coast Guard does recognize that there would be inconvenience, some extra expense, and scheduling difficulties. The Coast Guard has developed an alternative proposal that is discussed further in this notice. The Coast Guard feels that this is not a major rule now, and with the alternative proposal, will have even less effect on maritime commerce. The Coast Guard does not plan to hold a public hearing because the effect of this rulemaking is not significant to the majority of industry. Those entities that it would effect have commented in some detail. The Coast Guard feels that no new information would be developed at a public hearing.

Several commenters suggested the proposed rules would substitute one unsafe operation (backing a ship down the Puerto Nuevo Channel) for a possible unsafe operation (having an LPG vessel moored at the Catano Oil Dock while large ships turn in the adjacent basin). The Coast Guard recognizes that backing a ship down a channel is inherently more dangerous than a normal transit. In addition, the Coast Guard acknowledges that there is an increased risk of damage to a ship's rudder or screw when it backs down. Of particular concern to the Coast Guard is the fact that there is no drydock in Puerto Rico that can accommodate any ship greater than 650 feet in length should a casualty affecting her rudder or screws occur. Nonetheless, the Coast Guard feels that the increased risk of an accident while backing down is less than that of any accident at the LPG facility. More importantly, the Coast Guard feels that the consequences of an accident at the LPG facility would be far more severe. The Coast Guard knows of no casualties that have occurred as a result of backing vessels down the Puerto Nuevo Channel. At the same time, there are two casualties of vessels attempting to negotiate the turn where the LPG facility is located.

Some commenters indicated that the Safety Zone encompassed some of the dock area along the Puerto Nuevo Channel and would prevent them from bringing in vessels to the dock. These comments related to the severe economic effect comment mentioned previously. The Coast Guard has changed the boundaries of the proposed safety zone so as to allow access to most berths along the Puerto Nuevo Channel. Part of Shed A will still be impacted, however. The Coast Guard understands that the Catano Oil Dock will replace most of the operations now currently conducted at Shed A. Most of the manifolds located there were established on a *temporary* basis when the old Catano Oil Dock was abandoned, with the intention that they would be removed when the new Catano Oil Dock came on line. The Coast Guard recognizes that some dredging is currently needed at the Catano Oil Dock to allow tank ship access, and in the interim, such vessels must use the manifolds at Shed A. The Puerto Rico Power Authority will be adversely affected by this rule, as vessels utilizing their manifolds at Shed A would partially be in the fixed safety zone. The general regulations concerning safety zones allow vessels to enter or remain in the safety zone if they have the permission of the COTP. Provided that they can demonstrate that they can do so safely, the COTP will grant favorable consideration on a case by case basis to allow vessels in the proposed safety zone while discharging at Shed A.

One commenter expressed concern over the effect that the safety zone would have over the Catano commuter ferry. The Coast Guard believes that there would be no significant effect. The ferries are relatively maneuverable and can easily avoid the moving safety zone by staying 100 yards away from a LPG vessel while it is transiting. As the ferries are less than 400 feet long, they would be premitted in the Safety Zone at the Army Terminal Turning Basin and could remain 100 yards away from the moored LPG vessel.

One commenter indicated that LPG vessels of 125,000 cubic meter capacity routinely transmit the Houston Ship Channel with no safety zone or other restrictions. The Coast Guard acknowledges this. The configuration of the Port of Houston is significantly different than the Port of San Juan. In addition, the Port of Houston has a Vessel Traffic Service (VTS). The Coast Guard believes it inappropriate to compare regulatory schemes in this instance. Each port is different and regulations must be tailored to suit local conditions.

One commenter pointed out establishing regulations regarding LPG

vessels at the Catano Oil Dock while not addressing similar petroleum operations at the same dock was "incongruous", as the same hazard exists for other tankers. These tankers would be larger and handle highly violatile products. LPG, however, it is a "Cargo of Particular Hazard" as defined in Title 33, Code of Federal Regulations, Part 126, and as such, the Coast Guard believes that a higher degree of safety is required. The Coast Guard acknowledges this point and will continue to evaluate this situation.

One combined commenter indicated that the Safety Zone as presently configured would have an adverse affect on them as they would not be able to use the Catano Oil Dock while an LPG vessel is in port. They also indicated that they had obtained permission to moor tankers simultaneously with LPG vessels at the Catano Oil Dock from the COTP in 1984. The Coast Guard feels that if suitable tugs are provided, large tanker traffic can approach and moor at the Catano Oil Dock safely. As a result, the proposed Safety Zone has been modified accordingly.

Discussion of Proposed Regulations

The Coast Guard feels that the Safety Zone as presently proposed is not a significant rulemaking effort. It could cause some scheduling difficulties and poses additional operational concerns. In weighing the two risks, (the consequences of an accident at the LPG facility as opposed to an accident involving a vessel backing down the Puerto Nuevo Channel) the consequences of an accident at the LPG facility are far more severe.

The Coast Guard believes that the primary hazard is the difficulty in negotiating the 122 degree turn at the Army Terminal Turning Basin, especially for large vessels. When an LPG vessel is at the Catano Oil Dock it may extend beyond the dock into the Turning Basin itself. The exact amount will vary according to the size of the LPG vessel, and its cargo manifold location. The ship could extend into the Turning Basin up to 100 feet. The width of the Turning Basis is only 825 feet so that any obstruction is critical. The two recent marine casualties involved vessels that were 695 feet and 805 feet long.

Discussions with the San Juan Harbor Pilots resulted in their recommendation that for large ships a minimum of three tugs should be required if *any* vessel moored at the Catano Oil Dock protrudes into the Basin thus reducing the available maneuvering area. The Coast Guard feels that the Pilots suggestion offers a valid alternative. However, the Coast Guard does not feel that a Safety Zone need be in effect when all vessels are at the Catano Oil Dock at this time.

Regardless of whether the vessel extends into the Turning Basin or not, the Coast Guard believes that the risk of accident to the facility is real and the consequences severe, unless some type of regulatory action is taken. The Coast Guard, in considering all the comments feels that a viable alternative has been offered to the original total exclusion proposal. That is, a specified minimum number of tugs (based on the transiting ships size) would provide sufficient maneuvering assistance to large ships to reduce the risks of loss of vessel control in the Turning Basin to acceptable levels. Consequently, the following proposal when non-gas free LPG ships are moored at the Catano Oil Dock will be made:

Vessel size	Minimum No. of tugs required
Less than 400 feet	None.
401–600 feet	Two tugs.
Greater than 600 feet	Three tugs.

Given the hazard of LPG the Coast Guard further feels that it is important that all unnecessary traffic be kept away from LPG vessels. Hence, vessels must remain at least 100 yards away. The Coast Guard notes that LPG vessels also moor at the Gulf Oil Refinery Docks also located in the Army Terminal Turning Basin. The Coast Guard does not believe that there is any navigational problem with that facility. But the Coast Guard does feel that a limited access area is desirable. Therefore the proposed regulation has been modified to include the water area in a 100 yard radius of LPG vessels moored at the Gulf Oil Refinery Docks as well as the Catano Oil Dock. No additional tugs will be required when LPG vessels are moored at the Gulf Facility only. While not specifically commented on, the Coast Guard notes that when a LPG vessel is moored at the Catano Oil Dock, the safety zone encompasses the Gulf Oil Refinery Dock and the berths at the Army Terminal. As mentioned previously, the general regulations concerning safety zones allow vessels to enter or remain in the safety zone if they have the permission of the COTP. Provided that they can demonstrate that they can do so safely, the COTP will grant favorable consideration on a case by case basis to allow vessels in the proposed safety zone while at the Gulf Oil Refinery Dock and the berths at the Army Terminal.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected and copied at the address listed under **ADDRESSES.** Copies may also be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** Industry would have two ways to comply with this proposed regulation. They can utilize the Graving Dock Channel, or they can use tugs and proceed through the Army Terminal Turning Basin. The Coast Guard estimates that this proposed rule would cost industry a maximum of five million dollars (not adjusted for inflation) over a 20 year period on a worst case basis. This is based on the assumption that an LPG vessel will be in port 4 days a month and that 5 vessels of over 600 feet will arrive each day that the LPG vessel is in port. Vessels of this size currently use two tugs to transit the Army Terminal Turning Basin. It should be noted, however, that both of the figures are overestimates. One additional tug will cost each vessel $800 per transit for a total of $16,000 per month (4 days × 5 vessels × $800). This equates to $192,000 per year, or $3,940,000 over twenty years. Allowing over a 20% error factor, a total cost of 5 million is estimated. Based on the fact that there were two casualties in one year, the Coast Guard feels that these regulations will prevent at least one catastrophic casualty over this period. The Coast Guard envisions this catastrophic casualty to involve a large vessel colliding with a moored LPG vessel with a resulting explosion and conflagation. Using the Chemical Hazard Response Information System (CHRIS), the Coast Guard determined that the primary hazard would be the fire, and the radiant heat produced. The hazard to unprotected personnel would exceed one mile, and the hazard to buildings would be approximately 200 yards. The Coast Guard further estimates that the facility, worth $4,000,000 would be totally destroyed and both vessels worth at least 5.5 million dollars each would be constructive total losses. The total cost of such an accident would be at least 15 million dollars. This does not take into account any possible ancillary damage to the Catano Power Plant (which provides 30% of the power to the north

coast of the island of Puerto Rico), or personnel injuries and deaths. The Coast Guard has not estimated any costs for the requirement for the Navieras feeder vessels to move, as they are now required to move so as not to obstruct the channel. Based on the information in the draft evaluation, the Coast Guard certifies that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

There was some discussion at the various meetings with segments of industry as to who would have to pay for the additional tugs. The Coast Guard takes no position on this issue.

As mentioned previously, the boundaries of the Safety Zone have been decreased to allow vessels to moor at all berths along the Puerto Nuevo Channel.

List of Subjects in 33 CFR Part 165

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

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 1231:s 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(q) §6.04–6 and 160.5.

2. Section 165.740 is added to read as follows:

§ 165.740 San Juan Harbor, San Juan, PR.

(a) The waters and waterfront facilities located within the following areas are established as Safety Zones during the specified conditions:

(1) For inbound non-gas free Liquefied Petroleum Gas (LPG) carriers: The waters within a 100 yard radius while the vessel transits the waters of San Juan Harbor to the LPG receiving facility commencing with its entry into the Bar Channel.

(2) For non-gas free LPG carriers maneuvering in the Army Terminal Turning Basin and when an LPG carrier is moored at the Catano Oil Dock; a line beginning at the point located at 18 Deg 26'01.0" N. Latitude, 66 Deg 6'40.5" W. Longitude, thence 050 Deg T to Army Terminal Channel bouy "7" located at 18 Deg 26'09.5" N. Latitude, 66 Deg. 6'29.0" W. Longitude; thence 150 Deg T to Army Terminal Channel Buoy "9" located at 18 Deg 26'01.0" N. Latitude, 66 Deg 6'24.0" W. Longitude; thence to NW corner of building "Shed A" 18 Deg 25.48.0" N. Latitude, 66 Deg 6'26.0" W. Longitude.

Note.—Chart #25670, 33rd Ed. Jan 7/87.

(3) For non-gas free LPG carriers moored at the Gulf Oil Refinery Dock; the water area for 100 yards around such vessel.

(4) For outbound non-gas free Liquefied Petroleum Gas (LPG) carriers; The water within a 100 yard radius while the vessel transits the waters of San Juan Harbor from the LPG receiving facility until the vessel exists the Bar Channel.

(5) The general regulations governing safety zones contained in 33 CFR 165.23 apply; with the following exceptions;

(i) Vessels of under 400 feet are allowed within the safety zone without restriction, Such vessels must remain at least 100 yards from any non-gas free LPG vessel unless they are tugs or pilot boats engaged in the assistance of the LPG vessel.

(ii) Vessels of over 400 feet in length but less than 600 feet in length are allowed to transit the safety zone while traveling between the Army Terminal and Puerto Nuevo Channels or vice versa, and/or moor at the Gulf Oil Refinery and berths on the west side of the Army Terminal, if such vessels have at least two tugs of at least 1500 horsepower each made up to the vessel.

(iii) Vessels of 600 feet in length or greater are allowed to transit the safety zone while traveling between the Army Terminal and Puerto Nuevo Channels or vice versa, if such vessels have at least three tugs of at least 1500 horsepower each made up to the vessel.

(iv) Owners or operators of LPG vessels wishing to use the Catano Oil Dock will give COTP San Juan 72 hour notice of date of arrival.

(6) The Captain of the Port will notify the maritime community of periods which this safety zone will be in effect by providing advance notice of scheduled arrivals and departures of non-gas free LPG vessels via a Marine Safety Information Broadcast.

Dated: August 6, 1987.

G.M. Williams,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.

[FR Doc. 87–19668 Filed 8–26–87; 8:45 am]

BILLING CODE 4910–14–M

VETERANS ADMINISTRATION

38 CFR Part 4

Evaluations of Diplopia (Double Vision)

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The Veterans Administration (VA) is proposing to amend its Schedule for Rating Disabilities to provide a new method for evaluating the degree of disability caused by diplopia (double vision). The amendment is necessary for compatibility between evaluation methods and new testing techniques. The effect of the amendment will be to provide VA adjudication personnel with an appropriate method for evaluating the results of the new testing techniques.

DATES: Comments must be received on or before September 28, 1987. Comments will be available for public inspection until October 13, 1987. This amendment is proposed to be effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding these regulations to Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until October 13, 1987.

FOR FURTHER INFORMATION CONTACT: Robert M. White, Chief, Regulations Staff, Compensation and Pension Service, Department of Veterans Benefits, (202) 233–3005.

SUPPLEMENTARY INFORMATION: For many years, the generally accepted method of testing for visual impairment caused by diplopia has been by use of a motor field chart. This chart is composed of 20 rectangles covering an area of approximately 42 square inches. The evaluation for diplopia was based on the number of rectangles in which the veteran had double vision (diplopia). The evaluation segment on diplopia in the Schedule for Rating Disabilities (38 CFR 4.84a) is designed to conform to the findings expressed on a medical examination using the motor field chart. The Department of Medicine and Surgery has proposed a new testing method using what is referred to as a Goldmann perimeter chart. This new testing method is more sensitive in identifying the actual areas of vision in which the veteran suffers from double vision. If this new testing method is to be used by VA examining physicians, it is necessary to revise the diplopia segment of the Schedule for Rating Disabilities so that the evaluation technique is compatible with the new

testing protocol. The purpose of this proposed change is to keep pace with modern testing methods, and is not intended to increase or decrease evaluations. The proposed change, however, does provide for recognition of the principle that double vision in the Central 20 degree field produces the greatest visual impairment; that double vision in the downward field is more serious than double vision in the upward and lateral fields; and that double vision in a lateral field is more serious than in the upward field.

The Administrator hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this proposed regulatory amendment would not directly affect any small entities. Only claimants for VA benefits would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed regulatory amendment is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the VA has determined that this proposed regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Catalog of Federal Domestic Assistance Program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

Approved: July 10, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 4, Schedule for Rating Disabilities is proposed to be amended as follows:

PART 4—[AMENDED]

1. The authority citation of Part 4 continues to read:

Authority: 72 Stat. 1125; 38 U.S.C. 355.

2. Section 4.77 is revised to read as follows:

§ 4.77 Examination of muscle function.

The measurement of muscle function will be undertaken only when the history and findings reflect disease or injury of the extrinsic muscles of the eye, or of the motor nerves supplying these muscles. The measurement will be performed using a Goldmann perimeter chart as in Figure 2 below. The chart identifies four major quadrants, (upward, downward, and two lateral) plus a central field (20° or less). The examiner will chart the areas in which diplopia exists, and such plotted chart will be made a part of the examination report. Muscle function is considered normal (20/40) when diplopia does not exist within 40° in the lateral or downward quadrants, or within 30° in the upward quadrant. Impairment of muscle function is to be supported in each instance by record of actual appropriate pathology. Diplopia which is only occasional or correctable is not considered a disability.

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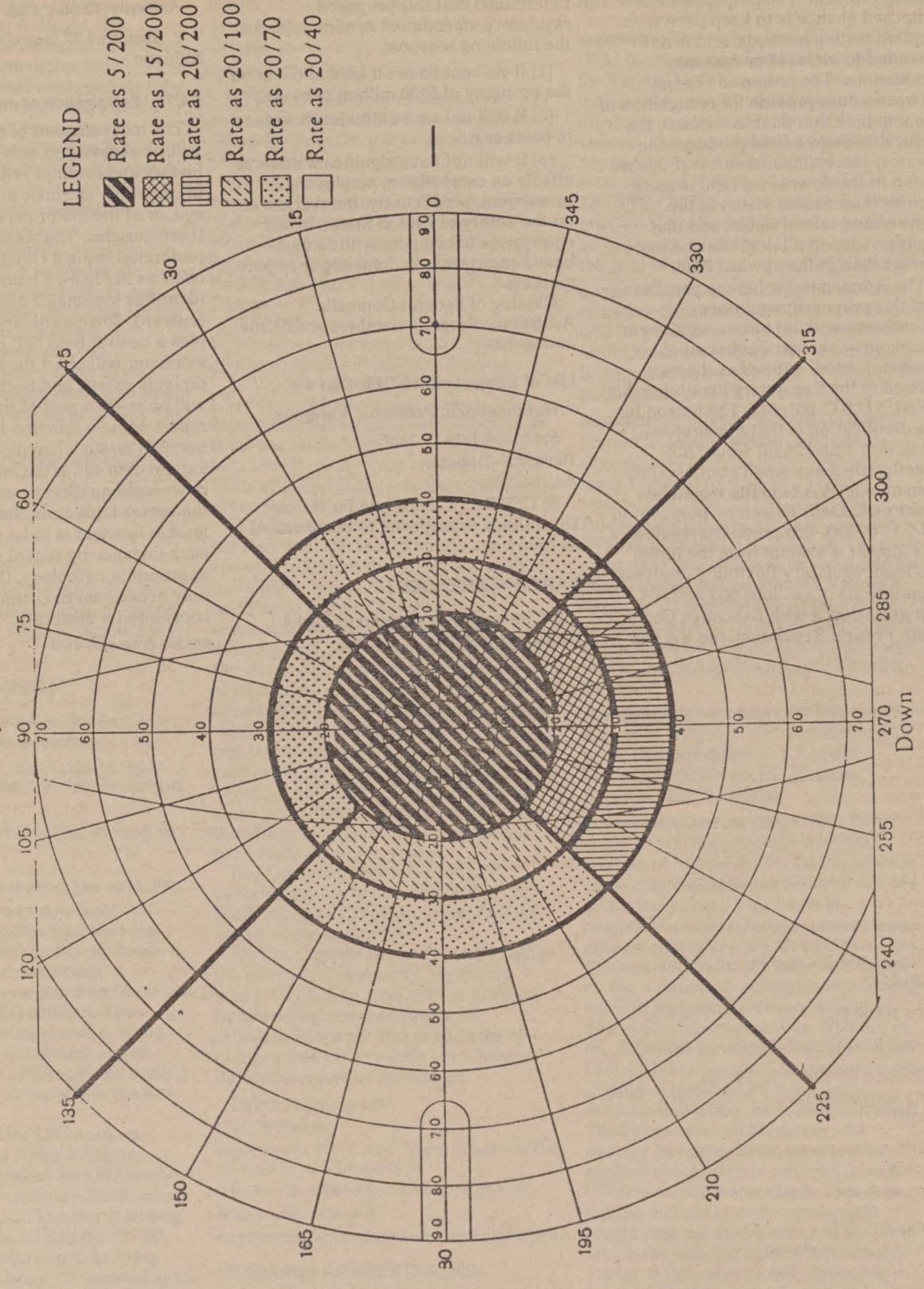

Figure 2
(Goldmann Perimeter Chart)

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3. In § 4.84a, the chart entitled "Ratings for Impairment of Muscle Function" is revised to read as follows:

§ 4.84a Schedule of ratings—eye.

* * * * *

Ratings for Impairment of Muscle Function.

6090 Diplopia (double vision)

	Equivalent visual acuity
Degree of diplopia:	
(a) Central 20°	5/200
(b) 21° to 30°	
(1) Down	5/200
(2) Lateral	20/100
(3) Up	20/70
(c) 31° to 40°	
(1) Down	20/200
(2) Lateral	20/70
(3) Up	20/40

Notes:

(1) Correct diagnosis reflecting disease or injury should be cited.

(2) The above ratings will be applied to only one eye. Ratings will not be applied for both diplopia and decreased visual acuity or field of vision in the same eye. When diplopia is present and there is also ratable impairment of visual acuity or field of vision of both eyes the above diplopia ratings will be applied to the poorer eye while the better eye is rated according to the best corrected visual acuity or visual field.

(3) When the diplopia field extends beyond more than one quadrant or more than one range of degrees, the evaluation for diplopia will be based on the quadrant and degree range that provide the highest evaluation.

(4) When diplopia exists in two individual and separate areas of the same eye, the equivalent visual acuity will be taken one step worse, but no worse than 5/200.

[FR Doc. 87-19602 Filed 8-26-87; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[(A-3-FRL 3246-9); Docket No. AM069MD]

Proposed Revision to the Maryland State Implementation Plan; Stack Height

AGENCY: Environmental Protection Agency.

ACTION: Proposed rulemaking.

SUMMARY: This notice proposes the approval of a revision to the Maryland State Implementation Plan (SIP). The proposed revision consists of a draft amendment to Maryland's Regulation [COMAR] 10.18.01.08, Determination of Ground Level Concentrations Acceptable Techniques. EPA has reviewed this revision and has concluded that it conforms to 40 CFR Part 51, including the July 8, 1985 amendments (50 FR 29906). Therefore, EPA proposes to approve the amendment, following its final enactment by the State as a revision to the Maryland SIP.

DATES: Comments must be received on or before September 28, 1987.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, ATTN: Ms. Esther Steinberg 3AM11

Maryland Air Management Administration, 201 West Preston Street, Baltimore, Maryland 21201, ATTN: George P. Ferreri

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking proceeding by submitting written comments to: Mr. David L. Arnold, Chief, Delmarva/DC Section (3AM13) at the EPA Region III address stated above. Please reference the EPA Docket Number found at the heading of this document.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Mageer (3AM13) at the EPA Region III address above or call (215) 597-6863.

SUPPLEMENTARY INFORMATION:

Parallel Processing

The revisions are being proposed under a procedure called "parallel processing" (47 FR 27073). If the proposed revisions are substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish a revised Notice of Proposed Rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revision. The final rulemaking action by EPA will occur only after the SIP revisions have been adopted by Maryland and Submitted to EPA for incorporation into the SIP. Parallel processing can reduce the time necessary for final approval of these SIP revisions by 3 to 4 months.

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by section 123 of the Clean Air Act. These regulations were challenged in the U.S. Court of Appeals for the D.C. circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club* v. *EPA*, 719 F.2d 436 (DC Cir. 1983). On October 11, 1983, the Court issued its decision ordering EPA to reconsider portions of the stack height regulations, reversing certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals' mandate was formally issued, implementing the Court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878) and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms including "excessive concentrations," "dispersion techniques," "nearby," and other important concepts, and modified some of the criteria for determining Good Engineering Practice (GEP) stack height.

Pursuant to section 406(d)(2) of the Act, all states were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations; and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by section 406.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, the states were to prepare inventories of stacks greater than 65 meters in height, and sources with emissions of sulfur dioxide (SO_2) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP

stack height and the *de minimis* (SO_2) emission exemption from prohibited dispersion techniques. These sources were then subject to detailed review for conformance with the revised regulations.

Regulation Description

The State of Maryland, in order to conform with the requirements of the stack height regulation amendments of July 8, 1985, made the following change. Maryland drafted an amendment to the State air pollution regulation, (COMAR) 10.18.01.08, Determination of Ground Level Concentrations Acceptable Techniques. This regulation applies to new sources or modifications in Maryland as required in 40 CFR 51.164, as well as existing sources as required in 40 CFR 51.118. This means that this rule applies to all sources that were constructed, reconstructed or modified subsequent to December 31, 1970. The amendment incorporates by reference the applicable requirements of the Federal Regulation including the July 8, 1985 revisions.

EPA Action

EPA proposes approval of the revision to the Maryland SIP. The Regional Administrator's decision to propose approval of this revision is based on a determination that the amendments meet the requirements of the Clean Air Act and 40 CFR Part 51 Requirements for Preparation, Adoption, and Submittal of State Implementation Plans.

The public is invited to submit comments on the proposed SIP revision. All comments submitted within 30 days of publication of this notice will be taken into account in the Administrator's decision to approve or disapprove the revision.

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

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

List of Subjects in 40 CFR Part 52

Air Pollution control, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7641.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 87–18486 Filed 8–26–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 7E3482, 7E3483, 7E3484/P425; FRL–3252–4]

Pesticide Tolerance for Malathion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for residues of the insecticide malathion in or on a variety of raw agricultural commodities. The proposed regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in petitions submitted by the Interregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [pp 7E3482, 7E3483, 7E3484/P425], must be received on or before September 28, 1987.

ADDRESS: By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. 22202, (703) 557–1806.

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petitions (PP) 7E3482, 7E3483, and 7E3484 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project and the Agricultural Experiment Station of Hawaii.

The petitions requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of malathion (*O,O*-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the raw agricultural commodity crop groups *Brassica* (cole) leafy vegetables group (7E3482), leafy vegetables (except *Brassica* vegetables) group (7E3483), and on the raw agricultural commodity chayote fruit and roots (7E3484) at 8 parts per million (ppm). Tolerances have already been established on the representative commodities and additional commodities within the *Brassica* (cole) leafy vegetables group as follows: broccoli, brussels sprouts, cabbage, cauliflower, collards, kale, kohlrabi, and mustard greens. With the establishment of the proposed crop group tolerance, tolerances would also be established for residues of the insecticide in or on Chinese broccoli (gai lon), broccoli raab (rapini), Chinese cabbage (bok choy, napa), Chinese mustard cabbage (gai choy), and rape greens at 8 ppm. Tolerances have already been established on the representative commodities and additional commodities within the leafy vegetables (except *Brassica)* group as follows: Celery, dandelions, endive (escarole), lettuce, parsley, spinach, Swiss chard, and watercress at 8 ppm. With the establishment of the proposed crop group tolerance, tolerances would also be established for residues of the insecticide in or on amaranth (leafy amaranth, Chinese spinach, tampala), arrugula (Roquette), celtuce, chervil, corn salad, edible-leaved chrysanthemum, garland chrysanthemum, dock (sorrel), Florence fennel, orach, garden purslane, winter purslane, fine spinach, New Zealand spinach and rhubarb at 8 ppm.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purposes for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. A 47-day (voluntary) human feeding study with a no-observed-effect level (NOEL) of 0.2 milligram (mg/kilogram (kg) of body weight per day for cholinesterase inhibition.

2. Rat acute oral studies with LD50 values of 1,000 to 1,845 mg/kg.

3. Mouse acute oral studies with LD50 values of 700 to 3,321 mg/kg.

4. An 80-week rat feeding study with no oncogenic effects observed under the conditions of the study at dosage levels of 4,700 and 8,150 ppm (equivalent to 235 and 407.5 mg/kg/day).

5. An 80-week mouse feeding study with no oncogenic effects observed under the conditions of the study at dosage levels of 8,000 and 16,000 ppm (equivalent to 1,200 and 2,400 mg/kg/day).

6. A rabbit teratology study with a NOEL for developmental toxicity of 25 mg/kg/day and a maternal NOEL of 25 mg/kg/day.

7. A rec-assay mutagenicity study which was negative.

The provisional acceptable daily intake (PADI), based on the human feeding study (NOEL of 0.2 mg/kg/day) and using a 10-fold safety factor, is calculated to be 0.02 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 1.2 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.10244 mg/kg/day; the current action will increase the TMRC by 0.024 mg/kg/day (0.39 percent).

The nature of the residues is adequately understood and an adequate analytical method, gas-liquid chromatography, is available in the Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical.

Based on the above information considered and the fact that these commodities are not considered animal feed commodities, the Agency concludes that the tolerances established by amending 40 CFR 180.111 would protect the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 7E3482, 7E3483, 7E3484/P425]. All written comments filed in response to these petitions will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects 40 in Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: August 14, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.111 is amended by (1) removing the already established tolerances for broccoli, Brussels sprouts, cabbage, cauliflower, celery, collards, dandelion, endive, kale, kohlrabi, lettuce, mustard greens, parsley, spinach, Swiss chard, and watercress now covered by the new crop groups, and (2) by adding and alphabetically inserting the crop groups *Brassica* (cole) leafy vegetables and leafy vegetables (except *Brassica* vegetables) and the raw agricultural commodity chayote fruit and roots to read as follows:

§ 180.111 Malathion; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Chayote fruit	8
Chayote roots	8
* * * * *	
Vegetables, leafy, *Brassica* (cole)	8
Vegetables, leafy (except *Brassica*)	8
* * * * * *	

[FR Doc. 87-19652 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 233

Aid to Families With Dependent Children—Treatment of Utility Payments by Applicants or Recipients Living In Certain Federally Assisted Housing

AGENCY: Family Support Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would implement section 221 of Pub. L. 98–181 of the Domestic Housing and International Recovery and Financial Stability Act enacted November 30, 1983, as amended by section 102 of Pub. L. 98–479, the Housing and Community Development Technical Amendments Act of 1984, enacted October 17, 1984. The above legislation addresses the problem of the treatment of certain utility payments for Aid to Families with Dependent Children (hereafter referred to as AFDC) families living in dwellings assisted by the U.S. Department of Housing and Urban Development (hereafter referred to as HUD). The legislation was designed to provide these families with some money in their AFDC grant for rent. HUD requires that all those assisted pay toward their housing expenses. The categories to which the legislation applies are applicants or recipients who live in Federal housing assisted under the United States Housing Act of 1937, as amended, or section 236 of the National Housing Act. This includes all Indian and public housing, section 8 rental housing, and section 236 rental assistance housing.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than September 28, 1987.

ADDRESSES: Comments should be submitted in writing to the Administrator of the Family Support Administration, Attention: Mark Ragan, Acting Director, Division of Policy, Office of Family Assistance, 2100 Second Street, SW., Washington DC

20201 or delivered to the Office of Family Assistance, Family Support Administration, Room B–428, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during the same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Ragan, Room B–428, Transpoint Building, 2100 Second Street, SW., Washington, DC 20201, telephone 202–245–3290.

SUPPLEMENTARY INFORMATION:

Background

An AFDC family living in HUD-assisted housing is required to contribute an amount for the cost of its housing. If the dwelling does not include individual utility metering, the family makes its required contribution as a single payment to either the landlord or the public housing agency. That payment is considered a rental or shelter payment by AFDC. If the dwelling does include individual utility metering, HUD's determination of the family's required housing expense includes not only an amount the family is to pay the landlord or the public housing agency but also an amount (which is a reasonable estimate) that the family is expected to pay the utility company. (Note: Individual utility metering may be for one or more utilities. For purposes of this regulation, utility payment can mean payment to more than one utility company. In the same way, utility company may be considered plural.) In such cases, the HUD-assisted family makes its utility payment directly to the utility company and pays the remainder of its required contribution to the landlord or public housing agency. When the family's required housing contribution is less than or equal to HUD's estimate of reasonable utility costs, HUD requires the family to pay all of its required housing contribution to the utility company and not make any direct payment to the landlord or the public housing agency.

The following discussion illustrates these principles. In each case, the HUD estimate of utilities that is used in computing the family's required contribution is $110. In Case A, the family's required contribution is $120. The family pays $110 to the utility company and $10 to the landlord or housing authority. In Case B, the family's required contribution is $110. Therefore the family pays all of its $110 to utility company. In Case C, the family's required contribution is $80. In this example, the family pays all of the $80 to the utility company. In addition, HUD provides the family $30 (the difference between the $110 and the $80) to pay the utility company.

These offsets between utility estimates and required contributions are done to avoid multiple payments between recipients, HUD, and the utility companies. For HUD's purpose, the family contribution in Case B and Case C does in fact represent payment for both rent and utilities. HUD's instruction to a family to pay their contribution to a utility company is merely for HUD's convenience. HUD does not specify the portion of a family's contribution that is for rent nor the portion that is for utilities.

Under the AFDC program, financial eligibility and the amount of assistance are determined in accordance with a Statewide standard of need. The standard represents a money amount as defined by the State for those items of living costs that the State wishes to recognize as essential for applicants and recipients of the AFDC program. The money amount of the standard for these items may be expressed as one flat amount by family size, that is, a specified dollar amount for all items.

The money amount of the standard may also be expressed as flat amounts for certain groups of need items or as amounts for each individual item in the need standard or as a combination of both. Some States have elected to treat shelter costs as separate item which is included only where the family actually incurs a shelter expense. In some of these States verification of housing costs results in the inclusion of a standard shelter allowance in the AFDC grant. Others of these States include an amount for shelter on an "as paid" basis subject to a maximum. The usual terminology for this latter situation is an AFDC standard that provides for "shelter as paid to a maximum."

As stated above, for AFDC grant purposes, there are some States that provide an amount for shelter solely upon evidence that such expense is incurred by the family. In those States, a HUD-assisted AFDC family would not receive an amount in their AFDC grant for shelter if its entire "total tenant payment" (HUD's terms for the family's contribution) was made directly to the utility company. This has significantly disadvantaged some families. Payment for shelter is often the largest part of the AFDC payment. The intent of this provision and its subsequent amendment was to remedy this situation. As a result, when the total tenant payment of the AFDC family is paid to the utility company, that contribution shall be considered a shelter payment for AFDC purposes. States still have the option to count HUD subsidies as income as permitted under section 402(a)(7)(C) of the Social Security Act and to prorate shelter and utilities as permitted under section 412 of the Social Security Act.

Implementation of Section 221 of Pub. L. 98–181 as Amended by Pub. L. 98–479

As specified in the statute, only those AFDC applicants and recipients living in Federally-assisted housing under the United States Housing Act of 1937 as amended, and section 236 of the National Housing Act are to be included. Housing assisted under the United States Housing Act of 1937 and section 236 of the National Housing Act means all Federal public and Indian housing programs, section 8 rental housing, and section 236 rental assistance housing. Persons receiving HUD mortgage subsidies are not included.

The majority of States remain unaffected by the provision. This regulation does not apply to States in which all AFDC applicants or recipients already receive an AFDC grant amount which includes a portion for shelter. In addition, in the other States, this regulation will not apply to any AFDC families living in HUD-assisted housing who acutally make some direct payment to a landlord or public housing authority. In this situation, the usual AFDC rules apply.

This legislation is addressed to those States which include an amount in the grant for rent only upon evidence of that expense being incurred by the assistance unit. In some of these States, evidence has meant documentation of payment made to the landlord. Prior to this legislation, AFDC assistance units in some of these States would not have received an amount for rent in their grant because the entire total tenant payment for rent and utilities was paid to the utility company.

Now, under the provisions of this new regulation, any HUD-assisted AFDC family have all or a part of its utility payments considered a rental payment for AFDC. However, for purposes of AFDC grant calculation, only the amount HUD designates as the family's "total tenant payment" shall be considered a rental or shelter payment. Payments in excess of the amount of the total tenant contribution which the AFDC unit may make to a utility company will not be considered as rental payments. This is because the

statute provides that only those utility payments which are made in lieu of a rental payment shall be considered as shelter payments. The maximum payment that could be made to a landlord as rent is the "total tenant payment." Any remaining amount above the "total tenant payment" will be considered a payment for utilities. Of course, the amount the AFDC State agency includes in the grant for shelter can not exceed the State's AFDC maximum for shelter as authorized in the State plan.

Finally, the applicable utility payments that may be considered as rental payments are payments for gas, electricity, water, heating fuel, sewerage systems, and trash and garbage collection. Not included in this list of utilities are telephone and cable television costs. This is the same definition as is used by HUD to compute a family's required housing expense under the various HUD-assisted programs.

Regulatory Procedures

Executive Order 12291

This regulation does not meet any of the three criteria which require a regulatory impact analysis under Executive Order 12291. Specifically, this regulation will not have any annual effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have any significant effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The estimated Federal costs resulting from the legislative provisions which this regulation implements are $2 million per year. These program costs result from implementing the Domestic Housing and International Recovery and Financial Stability Act of 1983 (Pub. L. 98–181) as amended by the Housing and Community Development Technical Amendments of 1984 (Pub. L. 98–479) and not the result of actions taken under the discretionary latitude of the Secretary. It is expected that the additional $2 million in Federal AFDC costs will be offset by recoupments in HUD subsidies and Food Stamp allocations.

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

We certify that this regulation, if promulgated, will not have a significant impact on a substantial number of small entities because it primarily affects State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

This regulation is issued under the authority of the Domestic Housing and International Recovery and Financial Stability Act, section 221 of Pub. L. 98–181, as amended by section 102 of Pub. L. 98–479, and section 1102 of the Social Security Act.

Catalog of Federal Domestic Assistance Program 13.780, Assistance Payments—Maintenance Assistance.

List of Subjects in 45 CFR Part 233

Aliens, Grant programs/social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: August 14, 1987.

Wayne A. Stanton,

Administrator of Family Support Administration.

Approved: August 20, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY

Part 233 of Chapter II, Title 45 Code of Federal Regulations is amended as set forth below:

1. The Authority citation for Part 233 is revised to read as follows and all other authority citations which appear throughout Part 233 are removed:

Authority: Sections 1, 402, 406, 407, 1002, 1102, 1402, and 1602 of the Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1352, and 1382 note), and Section 6 of Pub. L. 94–114, 89 Stat. 579 and Part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Section 221 of Pub. L. 98–181, as amended by Section 102 of Pub. L. 98–479 (42 U.S.C. 602 note).

2. Section 233.20 is amended by adding paragraph (a)(2)(ix) to read as follows:

§ 233.20 Need and amount of assistance.

(a) Requirements for State Plans.***

(2) Standards of assistance.***

(ix) For AFDC, provide that a State shall consider utility payments made in lieu of any direct rental payment to a landlord or public housing agency to the shelter costs for applicants or recipients living in housing assisted under the U.S. Housing Act of 1937, as amended, and section 236 of the National Housing Act. The amount considered as a shelter payment shall not exceed the total amount the applicant or recipient is expected to contribute for the cost of housing as determined by HUD. "Utility payments" means only those payments made directly to a utility company or supplier which are for gas, electricity, water, heating fuel, sewerage systems, and trash and garbage collection. Utility payments are made "in garbage collection. Utility payments are made "in lieu of any direct rental payment to a landlord or public housing agency" when, and only when, the AFDC family pays its entire required contribution at HUD's direction to one or more utility companies and does not make any direct payment to the landlord or the public housing agency. Housing covered by the "U.S. Housing Act of 1937 and Section 236 of National Housing Act" means Department of Housing and Urban Development assisted housing which includes Indian and public housing, section 8 new and existing rental housing, and section 236 rental housing

* * * * *

[FR Doc. 87–19628 Filed 8–26–87; 8:45 am]

BILLING CODE 4150-04-M

Notices

Federal Register
Vol. 52, No. 166
Thursday, August 27, 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.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting; Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m., on September 17, 1987, at the Sheraton Hotel, 1400 6th Avenue, Seattle, Washington 98101. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Allen D. Israel or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–19636 Filed 8–26–87; 8:45 am]

BILLING CODE 6335–01–M

Agenda and Notice of Public Meeting; Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Wyoming Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 1:00 p.m., on September 19, 1987, at the Downtowner Hotel, I–25 and Center Street, Casper, Wyoming 82602. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald Tolin or Philip Montez, Director of the Western Regional Division (213) 894–3437, (TDD 213/894–0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 21, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87–19637 Filed 8–26–87; 8:45 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1987 Census of Governments—Survey of Government Employment
Form Number: Agency—E–1, E–2, E–3, E–4, E–5, E–6, E–7, E–8, and E–9; OMB–NA
Type of Request: New collection
Burden: 67,862 respondents; 74,553 reporting hours
Needs and Uses: This collection requests data on state and local government employment, gross employee pay, government costs for employee benefits, and labor-management relations. Results are used by Federal, state and local government officials and agencies, as well as by public interest groups, academic instructors and researchers and the general public
Affected Public: State or local governments
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: August 24, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–19679 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–588–705]

Initiation of Antidumping Duty Investigation; Bimetallic Cylinders From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of this product materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before September 18, 1987. If that determination is affirmative, we will make a preliminary determination on or before January 11, 1988.

EFFECTIVE DATE: August 27, 1987.

FOR FURTHER INFORMATION CONTACT: Raymond Busen or John Brinkmann, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution

Avenue NW., Washington, DC 20230; telephone (202) 377–3464 or 377–3965.

SUPPLEMENTARY INFORMATION:

The Petition

On August 4, 1987, we received a petition in proper form by Xaloy Incorporated and Bimex Corporation, on behalf of U.S. producers of bimetallic cylinders. In compliance with the filing requirements of 19 CFR 353.36, petitioners allege that imports of bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury to, a U.S. industry.

United States Price and Foreign Market Value

United States purchase price was based on the sales prices of a Japanese manufacturer to its unrelated U.S. distributor. Petitioners deducted, where appropriate, ocean freight and marine insurance, handling costs, U.S. Customs duties, and U.S. inland freight.

Petitioners based foreign market value on the Japanese manufacturer's retail price quotes to a Japanese user of bimetallic cylinders.

Based upon a comparison of United States price and foreign market value, petitioners allege dumping margins of between 17.38 and 37.37 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations.

We examined the petition on bimetallic cylinders from Japan and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determsine whether imports of bimetallic cylinders from Japan are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by January 11, 1988.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. The U.S. Congress is considering legislation to convert the United States to this Harmonized System (HS) by January 1, 1988. In view of this, we will be providing both the appropriate *Tariff Schedules of the United States Annotated* (*TSUSA*) item numbers and the appropriate HS item numbers with our product descriptions on a test basis, pending Congressional approval. As with the *TSUSA*, the HS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

We are requesting petitioners to include the appropriate HS item number(s) as well as the *TSUSA* item number(s) in all new petitions filed with the Department. A reference copy of the proposed HS schedule is available for consultation at the Central Records Unit, Room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. Additionally, all Customs officers have reference copies and petitioners may contact the Import Specialist at their local Customs office to consult the schedule.

The products covered by this investigation are bimetallic cylinders currently provided for under *TSUSA* item numbers 678.3570 and 678.3575 and currently classifiable under HS item numbers 84779000–0.

The bimetallic cylinder under investigation is a hollow metal cylinder which serves as part of a machine to process plastics materials, either by injection molding or by extrusion. The product consists of an outer shell of steel and an inner lining of an alloy which are metallurgically bonded, the inner lining being of a material which is resistant to a corrosive and abrasive environment.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by September 18, 1987, whether there is a reasonable indication that imports of bimetallic cylinders from Japan materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

August 21, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–19697 Filed 8–26–87; 8:45 am]

BILLING CODE 3510–DS–M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held September 14, 1987, 10:30 a.m., Herbert C. Hoover Building, Room B–841, 14th Street and Constitution Avenue NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agenda:

Open Session

1. Opening remarks by the Chairman.
2. Introduction of Public Attendees.
3. Introduction of Invited Guests.
4. Presentation of Papers or Comments by the Public.
5. Discussion of Proposals/ Recommendations by the Technical Data task Group.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of

the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes contact Ruth D. Fitts, 202–377–2583.

Date: August 21, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87–19694 Filed 8–26–87; 8:45 am]

BILLING CODE 3510-DT-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

A meeting of the Semiconductor Technical Advisory Committee will be held September 30, 1987 at 9:30 a.m., Herbert C. Hoover Building, Room 6802, 14th Street and Constitution Avenue, NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to semiconductors and related equipment or technology.

Agenda:

General Session

1. Opening remarks by the Chairman.
2. Introduction of Members and Visitors.
3. Presentation of Papers or Comments by the Public.
4. Public Presentations on Computer Aided Design (CAD):
   - Computervision Corporation will Discuss (CAD) Printed Circuit Boards.
   - Mentor Graphics Corporation will discuss (CAD) Microcircuits.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes call Ruth D. Fitts, 202–377–4959.

Date: August 21, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Analysis.

[FR Doc. 87–19659 Filed 8–26–87; 8:45 am]

BILLING CODE 3510-DT-M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council and its Committees will convene public meetings at the Embassy Suites Hotel, 4400 West Cypress, Tampa, FL, as follows:

Council—Convene at 8:30 a.m., September 16, 1987, discuss committee reports, including actions on advisory panel selection, administrative policy, habitat protection, discussions of Mackerel Amendment 3, approve a draft Billfish FMP, conduct a hearing before taking final action to approve the Shrimp Amendment 4, and continue discussion of the reef fish amendment options paper; recess at 5 p.m., reconvene at 8:30 a.m., September 17 to continue discussion of the reef fish amendment options paper, and adjourn at noon.

Committees—Convene September 14 with the Habitat Protection Committee 1 p.m., and recess at 5 p.m., reconvene at 8 a.m., with the Administrative Policy Committee followed by Advisory Panel Selection Committee, Billfish Management Committee, Shrimp Management Committee, and Mackerel Management Committee and adjourn at 5 p.m. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Dated: August 21, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–19691 Filed 8–26–87; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Pacific Whiting Joint Venture Policy Committee will convene September 9, 1987, at 10 a.m., at the Metro Center, Room 330, 2000 SW. First Avenue, Portland, OR, to prepare recommendations to the Pacific Council regarding objectives for the Pacific whiting fishery and means to achieve these objectives. The Committee also will recommend a list of priorities for the Pacific Council to use in judging foreign and joint venture applications, and for determining allocations in 1988 and beyond.

For further information about the public meeting, contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 221–6352.

Dated: August 21, 1987.

Bill A. Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–19692 Filed 8–26–87; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Intent to Grant Exclusive Patent License; Cancer Prognostics, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Cancer Prognostics, Inc., having a place of business at 1250 Broadway, New York, NY 10001, an exclusive right in the United States to practice the invention embodied in U.S. Patent Application S.N. 6–911,863, "Recombinant DNA Clone Encoding Laminin Receptor." The

patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-19619 Filed 8-26-87; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Changes in Officials Authorized To Issue Export Visas and Exempt Certifications for Certain Textiles and Textile Products From the Republic of the Philippines

August 21, 1987.

FOR FURTHER INFORMATION CONTACT: Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, DC, (202) 377-4212.

Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of March 4, 1987 and the export visa arrangement and exempt certification requirements, announced in the CITA directive of April 3, 1987 (52 FR 11308), the Government of the Republic of the Philippines has notified the United States Government that Gloria M. Arroyo, Zenaida G. Maglaya, Marissa G. Arzadon, Mercedita M. Pulmones and Mirabel A. Reyes have been authorized by the Government of the Republic of the Philippines to issue export visas and exempt certifications for textiles and textile products exported from the Philippines on or after September 1, 1987, subject to the terms of the bilateral agreement.

The following is a complete list of officials of the Government of the Philippines who are currently authorized to sign export visas and exempt certifications:

Lorna A. del Rosario
Gloria M. Arroyo
Zenaida G. Maglaya
Marissa G. Arzadon
Mercedita M. Pulmones
Mirabel A. Reyes

The purpose of this notice is to advise the public of these changes.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-19678 Filed 8-26-87; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; Altered Systems of Records

AGENCY: Department of the Army, DOD.

ACTION: Notice of altered systems of records for public comment.

SUMMARY: The Army proposes to alter five existing systems of records notices subject to the Privacy Act of 1974.

DATES: This proposed action will be effective without further notice on September 28, 1987 unless comments are received which would result in a contrary determination.

ADDRESS: Send comments to the system manager identified in the particular system notice.

FOR FURTHER INFORMATION CONTACT: Mr. Cliff Jones, HQ USAISC (AS-OPS-MR), Fort Huachuca, AZ 85613-5000. Telephone: 602-538-6528, Autovon: 879-6528.

SUPPLEMENTARY INFORMATION: The Army's systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published to date in the Federal Register as follows:

FR Doc. 85-10237 (50 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86-14667 (51 FR 223576) June 30, 1986
FR Doc. 86-19534 (51 FR 30900) August 29, 1986
FR Doc. 86-25274 (51 FR 40479) November 7, 1986
FR Doc. 86-27580 (51 FR 44361) December 9, 1986
FR Doc. 87-8140 (52 FR 11847) April 13, 1987
FR Doc. 87-11379 (52 FR 16798) May 19, 1987
FR Doc. 87-15611 (52 FR 25905) July 9, 1987

These existing Army record systems that are being altered have been published in the Federal Register as follows:

A0302.03DACA—50 FR 22118, May 29, 1985
A0305.10DACA—50 FR 22122, May 29, 1985
A0306.02DACA—50 FR 22125, May 29, 1985
A0412.07DACA—50 FR 22145, May 29, 1985
A0708.03aDAPE—50 FR 22187, May 29, 1985

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on August 13, 1987, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Linda M. Lawson,

Alternate Federal Register Liaision Officer, Department of Defense.

August 24, 1987.

A0302.03DACA

SYSTEM NAME:

Subsidiary Ledger Files (Accounts Receivable).

SYSTEM LOCATION:

Finance and Accounting Offices, world-wide; addresses may be obtained from the System Manager.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel with the Department of the Army, Department of Defense, and other Government agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual control files for services rendered.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 97-365, Debt Collection Act of 1982.

PURPOSE(S):

To maintain records of charges due the Army for services provided to effect collection action, i.e., telephone, quarters, food, clothing, etc.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; card files; magnetic tapes; computer printouts; and microfiche.

RETRIEVABILITY:

By individual's surname or SSN.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after closing ledger accounts.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Finance and Accounting Center, Ft Benjamin Harrison, IN 46249.

NOTIFICATION PROCEDURE:

Individuals desiring to know whether or not information on them exists in this system of records may inquire of the System Manager or from the finance and accounting office where service was provided. Individual should provide full name, SSN, current address, and sufficient details to enable locating the record.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records pertaining to them should follow the requirements in 'Notification procedure'.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, finance and accounting offices, member's commanding officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0305.10cDACA

SYSTEM NAME:

Joint Uniform Military Pay System-Army-Retired Pay.

SYSTEM LOCATION:

U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Retired Army members, beneficiaries of deceased retired Army members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual retired military pay records, correspondence with individuals concerning their retired pay accounts, all documents substantiating entitlements to retired pay.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C., section 1401.

PURPOSES:

To establish and compute pay of retirees and their beneficiaries; to produce permanent record of transactions; and to prepare financial, budgetary, and actuarial reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Information in this system may be disclosed to:

(1) Veterans Administration: To record the collection of premiums for National Service Life Insurance.

(2) Fiscal Agent for Veterans Group Life Insurance (VGLI): To initiate starts, stops, and changes for VGLI premium payments by allotment for retirees.

(3) Trustees/Guardians of Mental Incompetents (MI): To exercise a fiduciary responsibility on behalf of MI retirees and annuitants.

(4) States and Cities: To verify tax liability against retiree's state and city income tax returns.

(5) American Red Cross: To assist military personnel and their dependents in determining status of monthly pay, dependents' allotments, loans, and related financial transactions.

(6) Military banking facilities: Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan that, if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

(7) Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, computer disk files, microfiche, micro-computer hard and floppy disks.

RETRIEVABILITY:

By SSN and name.

SAFEGUARDS:

The U.S. Army Finance and Accounting Center employs security guards. An employee badge and visitor registration system is in use. Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Access to computer disk files is controlled by USERID and password. Computer equipment and files are in separate secured area.

RETENTION AND DISPOSAL:

Individual retired military pay records are converted to microfiche and retained for 56 years; destruction is by shredding. The retention periods for other records vary according to category of record, but total retention periods do not exceed 56 years after termination of the account. (Account is terminated by either death of retiree, or if the retiree has designated annuitants under Retired Servicemen's Family Protection Plan or the Survivor Benefit Plan, the subsequent death or eligibility of the annuitant.) Records are destroyed at the end of the 56 year retention period.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Finance and Accounting Center, Indianapolis, IN 46249.

NOTIFICATION PROCEDURE:

Information may be obtained from the Director, Retired Pay Operations by calling (317) 542–2931.

RECORD ACCESS PROCEDURES:

Individuals may request access to records in this system pertaining to them by writing to the Commander, U.S. Army Finance and Accounting Center, ATTN: Department 90, Indianapolis, IN 46249. Individual should provide full name, SSN of retiree, and signature. Visits are limited to the U.S. Army Finance and Accounting Center, Indianapolis, IN.

CONTESTING RECORD PROCEDURES:

The Army's rules of access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From Department of Defense agencies, the Veteran's Administration, Social Security Administration, Department of Treasury, financial institutions and insurance companies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0306.02DACA

SYSTEM NAME:

Nonappropriated Funds Central Payroll System (NAFCPS).

SYSTEM LOCATION:

System Proponent: Assistant Comptroller of the Army for Finance

and Accounting (ACOA(F&A)), ATTN: DACA-FAP-N, Indianapolis, IN 46249–1056. NAFCPS is operational at two sites: Central Nonappropriated Funds Payroll Office, P.O. Box 75, Texarkana, TX 75504–0075, and the Nonappropriated Funds Central Payroll Division, U.S. Army Finance and Accounting Center Europe (USAFACEUR), APO NY 09007–0137.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees of the Department of the Army, Defense Logistics Agency, and Panama Local Nationals who are paid from nonappropriated funds (NAF).

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual records of appointment or assignment; officially authenticated time and attendance records, supported by substantiating documents; individual leave records, payroll control files, individual withholding authorization files, withholding tax exemption certificate files, withholding tax files, savings bond schedule files, other deduction type files, payroll journal and check register, earnings statement, earning records, tips received, earnings and leave statements, subsistence and quarters files, unemployment compensation data request files, health and life insurance files, income tax withheld, employer and employee Federal Insurance Contributions Act files, Employer Quarterly Federal Tax Return, state tax files, local tax files, Fair Labor Standards Act files, and total employer liability for accrued leave at separation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 2105, 5531, 5533; Pub. L. 92–203; Fair Labor Standards Act.

PURPOSE(S):

To calculate the net pay due each employee; provide a history of pay transactions, entitlements and deductions; maintain a record of leave accrued and taken; keep a schedule of bonds due and issued; record taxes paid; respond to inquiries or claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Data required by law, e.g., employees' earnings, taxes withheld, Federal Insurance Contributions Act contributions, are provided to the Treasury Department, the Social Security Administration, Internal Revenue Service, states and localities which have an agreement with the Department of the Army to receive taxable earnings information. Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f), the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3), or Title III, section 301 of Pub. L. 97–253, the 1982 Omnibus Reconciliation Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and bulk storage, magnetic tapes, discs, microfilm, microfiche, and computer printouts.

RETRIEVABILITY:

By individual's social security number (SSN) within each nonappropriated fund Standard NAF Number (Installation, fund, location, and department code).

SAFEGUARDS:

Files are maintained in areas accessible only to designated personnel who have need therefor in the performance of official duties.

RETENTION AND DISPOSAL:

Individual pay records are permanent; they are forwarded to the National Personnel Records Center after three years. They are retained at servicing payroll office while individual is actively employed. Upon separation or termination of employment, files are placed in an inactive status and retained 18 months after close of pay year. Leave records are retained 10 years and then destroyed. Other management and accounting information reports are retained from one to three years before destruction.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Comptroller of the Army for Finance and Accounting, ATTN: DACA–FAP–N, Indianapolis, IN 46249–1056.

NOTIFICATION PROCEDURE:

Information may be obtained from the Chief, Central NAF Payroll Office, P.O. Box 75, Texarkana, TX 75504–0075, or Commander, USAFACEUR, ATTN: AEUTCF–NAF, APO NY 09007–0137. Individual should furnish full name, SSN, period and location of employment, and signature.

RECORD ACCESS PROCEDURES:

Requests for system information should be sent to the System Manager. Requests from individuals should be sent to the appropriate servicing payroll office furnishing details required by 'Notification procedures'.

CONTESTING RECORD PROCEDURES:

The Department of the Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Time and Attendance reports, former employers, Social Security Administration, Treasury Department, DOD staff agencies and field installations, Government benefit programs, servicing civilian personnel offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SYSTEM NAME:

Witness Appearance Files.

SYSTEM LOCATION:

Office of The Judge Advocate General, Headquarters, Department of the Army, Litigation Division, Washington, DC 20310–2210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Witnesses requested by the United States Attorneys for Federal Court proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name and address of witnesses; name and address of U.S. Attorneys requesting same; name and location of trial.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

PURPOSE(S):

To locate and provide witnesses to U.S. Attorneys conducting trials on behalf of the Department of the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and magnetic tapes/discs.

RETRIEVABILITY:

Records are accessible only to authorized personnel who are properly instructed in the permissible use thereof; buildings housing records are protected by security guards.

RETENTION AND DISPOSAL:

Destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Information may be obtained by writing to the System Manager, ATTN: Chief, Litigation Division, at the above address. Individual should provide his/her full name, current address and telephone number, case number appearing on correspondence, and any other personal identifying data that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records in this system about themselves should submit a written request as indicated in 'Notification procedure', providing information required therein.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, Department of Justice, U.S. Attorneys, opposing Counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0708.03aDAPE

SYSTEM NAME:

Special Review Board Appeal Case Summary File.

SYSTEM LOCATION:

Office of the Deputy Chief of Staff for Personnel, Special Review Board (DAPE–MPD–CD), Washington, DC 20310.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army officer and enlisted personnel who have submitted substantive, as opposed to administrative, appeal of Officer Evaluation Reports, Enlisted Evaluation Reports, Academic Evaluation Reports, and cases referred for promotion reconsideration.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identification data on individual, date of appeal, dates of contested OER/EER/AER period, and supporting documentation; promotion reconsideration referrals including information provided by the promotion board and relevant documents from individual's OMPF, names of voting SRB member, names of persons contacted by SRB, summary of evidence considered, discussion, recommendations, conclusions, final determination of appeal, and disposition.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3012.

PURPOSE(S):

To review and adjudicate appeals of officer and noncommissioned officer ratings, academic ratings, and promotion board reconsideration cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See 'Blanket Routine Uses' set forth at the beginning of the Army's listing of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to designated authorized persons in buildings which employ security guards.

RETENTION AND DISPOSAL:

Records are retained by the Special Review Board for 20 years; then destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, DC 20310.

NOTIFICATION PROCEDURES:

Information may be obtained from the System Manager, ATTN: DAPE–MPD–CD, Room 2C–749, The Pentagon, Washington, DC 20310; telephone: 202–697–7619.

RECORD ACCESS PROCEDURES:

Individuals desiring access to records in this system of records pertaining to them should write to the System Manager, ATTN: DAPE–MPD–CD, Room 2C–749, The Pentagon, Washington, DC 20310, furnishing full name, current address and telephone number. For personal visits, individual must provide acceptable identification such as military identification card.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determination are contained in Army Regulation 340–21 (32 CFR Part 505).

RECORD SOURCE CATEGORIES:

From the individual, relevant Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 87–19686 Filed 8–26–87; 8:45 am]

BILLING CODE 3810–01–M

Open Meeting of the Army Science Board Ad-Hoc Panel on Army Information Management Concepts and Architecture

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 17 September 1987.

Time of meeting: 1000–1100 hours.

Place: GAO Building, 441 G Street NW., Washington, DC.

Agenda: The Army Science Board Ad-Hoc Panel on Army Information Management Concepts and Architecture will meet for a briefing. The Panel will brief GAO representatives and Congressional staffers on their findings and recommendations. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–19620 Filed 8–26–87; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

Closed Meeting of the Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 16 and 17 September 1987.

Times of meeting:

0800–1700 hours, 16 September 1987.

0800–1200 hours, 17 September 1987.

Place: SAIC Corp, San Diego, CA.

Agenda: The Army Science Board Ad Hoc Subgroup for Ballistic Missile Defense Follow-On will meet to draft a report on a study which they conducted regarding the transfer of U.S. Army Strategic Defense Command technology to the Army. The material utilized for the study is classified. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 19(d). The classified and unclassified matters to be discussed are

so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner

Administrative Officer, Army Science Board.

[FR Doc. 87–19621 Filed 8–26–87; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Advisory Council on Education Statistics (ACES); Meeting

AGENCY: Education Department.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 21–22, 1987.

ADDRESS: 555 New Jersey Avenue NW., Room 326, Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Iris Silverman, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, Room 400J, Washington, DC 20208, Telephone: (202) 357–6831.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the Center for Education Statistics (CES) in the Office of Educational Research and Improvement and is responsible for establishing standards to insure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence. The meeting of the Council is open to the public. The proposed agenda includes the following:

- CES: One Year After the NAS Evaluation
- 1990 NAEP/SASS:
  State-by-State comparisons
  Consensus Development
  Linkage—Merger of NAEP/SASS (rationale, design issues, 1990 time schedule, and management)
- Such old and new business as the Council membership may present.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., Room 400J, Washington, DC 20208.

Date: August 20, 1987.

Chester E. Finn, Jr.,

Assistant Secretary and Counselor to the Secretary, Office of Educational Research and Improvement.

[FR Doc. 87–19689 Filed 8–26–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Floodplains/Wetlands Involvement in an Application for Presidential Permit; Westmin Resources Ltd.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Floodplain/Wetlands Involvement and Opportunity for Comment.

SUMMARY: Westmin Resources Limited (Westmin) has applied to the Economic Regulatory Administration (ERA) for a Presidential permit to construct, connect, operate and maintain electric transmission facilities at the International Border between the United States and Canada. The proposed transmission facilities will connect two locations in British Columbia and only pass through Alaska.

Pursuant to the requirements of the Department of Energy's (DOE) "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), DOE has determined that this project would involve activities within floodplain/wetlands areas.

SUPPLEMENTARY INFORMATION: On July 17, 1987, Westmin applied to the ERA, pursuant to Executive Order 10485, as amended, for a Presidential permit to construct a 35 kilovolt transmission line which would cross the U.S. international border from British Columbia, Canada, pass through the State of Alaska, and re-enter British Columbia at a second point on the U.S. international border. This application is contained in Docket No. PP–85. The proposed facilities would be used to transmit electric energy from an existing powerplant located in Stewart, British Columbia, to a new mine to be developed by Westmin in British Columbia, about 10 miles north of Hyder, Alaska. These transmission facilities will not connect with any existing U.S. transmission lines and no electric energy will flow to or from any U.S. electric utility as a result of this project.

The proposed line would extend about 11.2 miles through Alaska, with about 2.5 miles constructed underground and about 8.7 miles constructed above ground on wooden poles. All construction in Alaska would be within the right-of-way of the existing Granduc Road.

The proposed facilities would be within the floodplain of the Salmon River for about 7.5 miles. The powerline would be constructed on the side of the road farthest from the river. The road is protected by a series of dykes, which are in turn protected by revetment.

DATE: Any comments or suggestions are due September 11, 1987.

ADDRESS: Send written comments or suggestions to: Anthony J. Como, Department of Energy, Economic Regulatory Administration (RG–22), 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5935.

Issued in Washington, DC, on August 17, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19615 Filed 8–26–87; 8:45 am]

BILLING CODE 6450–01–M

[ERA Docket No. 87–30–NG]

Application To Extend Blanket Authorization To Import Natural Gas From Canada and Increase the Volumes Imported; Dome Petroleum Corporation

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application to extend blanket authorization to import natural gas from Canada and increase the volumes imported.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on June 22, 1987, of an application from Dome Petroleum Corporation (Dome Corp.) to extend its existing import authorization from December 1, 1987, the current expiration date, to December 1, 1989, and to increase the volume from the currently authorized 50 Bcf per year, or a term maximum of 100 Bcf, to 200 Bcf over the extended two-year term.

DOE/ERA Opinion and Order No. 85 (1 ERA Para. 70,601), issued July 5, 1985, authorized Dome Corp. to import up to 50 Bcf per year of Canadian gas for short-term or spot market sales in the U.S. The blanket authorization was for a

two-year period beginning on the date of first delivery which occurred on December 1, 1985. Gas imported under the requested extension would continue to be supplied by various Canadian suppliers and sold on a short-term or spot market basis to U.S. purchasers, including industrial or agricultural users, electric utilities, pipelines, and distribution companies. Dome Corp. states that it intends to use existing facilities to transport the gas and expects that the majority of the short-term or spot market sales made to U.S. purchasers will be used to displace higher-priced energy supplies.

Dome Corp. states that it would continue to file reports with ERA within 30 days after the end of each calendar quarter. Quarterly reports filed with ERA as ordered by the existing authorization indicate that Dome Corp. has imported approximately 4.2 Bcf of natural gas under Order No. 85 through June 30, 1987.

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 28, 1987.

FOR FURTHER INFORMATION CONTACT:

Larine A. Moore, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION:

The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitivenes of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-076, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. They must be filed no later than 4:30 p.m., e.d.t., September 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts. If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Dome Corp.'s application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 20, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-19613 Filed 8-26-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-26-NG]

Order Granting Blanket Authorization To Import Natural Gas; Kimball Energy Corp.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting Kimball Energy Corporation (Kimball) blanket authorization to import Canadian natural gas for sale in the domestic spot market. The order issued in ERA Docket No. 87-26-NG authorizes Kimball to import up to 75 Bcf of gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 20, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-19614 Filed 8-26-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-44-NG]

Application To Export Natural Gas to Canada; Northridge Petroleum Marketing U.S., Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to export natural gas to Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt

on August 14, 1987, of an application from Northridge Petroleum Marketing U.S., Inc. (Northridge), for blanket authorization to export natural gas to Canada for short-term or spot market sales to customers, including gas distribution companies, electric utilities, agriculture users, pipelines, and industrial and commercial end users. Authorization is requested to export up to 300 Bcf of natural gas over a two-year period beginning on the date of first delivery. Northridge, a wholly-owned subsidiary of Northridge Petroleum Marketing, Inc., a Canadian corporation, is currently authorized to import up to 100 Bcf of Canadian natural gas over a two-year term under an authorization issued September 27, 1985, in ERA Docket No. 85–14–NG. Northridge is a corporation registered in the State of Colorado and operates solely as a natural gas marketing company.

Northridge proposes to export natural gas either as a broker or agent on behalf of a variety of U.S. and/or Canadian suppliers and/or foreign purchasers, or as an exporter on its own behalf for sale to foreign purchasers. In the case of gas supplied by Canadian suppliers, such gas will be imported to the U.S., and exported for delivery to the Canadian purchaser. Northridge intends to use existing facilities at the border and within the United States for the transportation of the proposed exports. Northridge will advise the ERA of the date of first delivery of the export and submit quarterly reports giving details of individual transactions.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than September 28, 1987.

FOR FURTHER INFORMATION:

Robert M. Stronach, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9222.

Diane J. Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6–E042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: This export application will be reviewed pursuant to section 3 of the Natural Gas Act and the authority contained in DOE Delegation Order No. 0204–111. The decision on whether the export of natural gas is in the public interest will be based upon the domestic need for the gas and on whether the arrangement is consistent with the DOE policy of promoting competition in the natural gas marketplace by allowing parties to freely negotiate their own trade arrangements. The applicant asserts that the requested authorization would promote competition and, in light of the continuing "gas bubble", would benefit the public interest. Parties, especially those that may oppose this application, should comment in their responses on these matters.

Public Comment Procedures

In responses to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t., September 28, 1987.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Northridge's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, August 20, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–19612 Filed 8–26–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. CP87–488–000 et al.]

Natural Gas Certificate Filings; United Gas Pipe Line Co. et al.

August 20, 1987.

Take notice that the following filings have been make with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP87–488–000]

Take notice that on August 10, 1987, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP87–488–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a firm direct industrial sales service to Georgia-Pacific Corporation (Georgia-Pacific) at a point near Wanilla, Lawrence County, Mississippi, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it notified Georgia-Pacific by letter dated August 4, 1986, that its present firm industrial gas sales contract would be cancelled effective 7:00 a.m. on January 1, 1987. United

further states that continuation of the present service is not in the public interest and it requests that the Commission permit the termination of the direct sale service to the extent required.

United is not requesting abandonment authority of any facilities. United states that the subject delivery facilities would be left in place to accommodate either future transportation service or new sales service if appropriate contractual arrangements can be made. United states that if such new arrangements are not made, it will file to abandon such facilities.

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

2. Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

[Docket No. CP87-131-001]

Take notice that on August 5, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-131-001 an amendment to the pending Niagara Spur Expansion application in Docket No. CP87-131-000 pursuant to section 7(c) of the Natural Gas Act to request the following additional authorizations: (1) Authorization to construct and operate a 4,500 horsepower compressor station at Lockport, New York; (2) authorization to operate, on a permanent basis, the 1,000 horsepower compressor facilities authorized for interim service in Docket No. CP86-251-000 at Station 230B, East Aurora, New York, and to construct and operate an additional 1,200 horsepower compressor unit at Station 230B, East Aurora, New York; and (3) authorization for phased construction and operation of the proposed facilities as the need for capacity evolves, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

Tennessee requests authority to construct and operate additional compression for its Niagara Spur Expansion as a result of the fact that TransCanada Pipelines Ltd. (TransCanada) would deliver gas to Tennessee at the Niagara River at a pressure of 700 psig rather than 867 psig. Tennessee also requests that the construction and operation of facilities be authorized in phases as the need for capacity evolves. Tennessee states that each phase would involve the following facilities authorizations:

Phase I

(1) Authority to operate on a permanent basis the 3,500 horsepower compressor facilities authorized for interim service in Docket No. CP86-251-000 at Station 233, Livingston County, New York.

(2) Authority to operate on a permanent basis the 1,000 horsepower compressor facilities authorized for interim service in Docket No. CP86-251-000 at Station 230B, East Aurora, New York.

Phase II

(1) Authority to install check measurement and authorization facilities for approximately 300,000 Mcf of natural gas per day at the Niagara River.

(2) Authority to instruct and operate an additional 1,200 horsepower compressor unit at Station 230B, East Aurora, New York.

(3) Authority to construct and operate a 4,500 horsepower compressor station at Lockport, Niagara County, Nw York.

Tennessee states that the total estimated cost of the revised facilities is $22,783,000, an increase of $8,216,000 over the $14,567,000 estimated cost of the original facilities design. Tennessee proposes to use the expanded capacity to handle quantities of gas for Boundary Gas, Inc. (Boundary Phase 2), Canadian Gateway Pipeline System (Canadian Gateway), Ocean State Power (Ocean State), and Tennessee's own system supply. The following table shows the quantities (in Mcf per day) proposed by Tennessee for these customers in the year [1] indicated.

	1987	1988	1989	1990
Tennessee Supply	10.0	40.0	100.0	150.0
Boundary Phase 2	92.5	92.5	92.5	92.5
Canadian Gateway	.....	.....	50.0	50.0
Ocean State	.....	.....	50.0	.....
Total	102.5	132.5	292.5	292.5

Tennessee states that the quantities designated for its system supply are attributable to contracts between Tennessee and KannGaz Producers Ltd. (up to 125,000 Mcf per day in 1990) and Tennessee and TransCanada (up to 25,000 Mcf per day in 1990).

Tennessee proposes to delete its request to provide firm transportation service for Canadian Gateway in light of the Commission's decision to dismiss Canadian Gateway's application in Docket No. CP86-513-000. It is stated, however, that Tennessee expects Canadian Gateway to file a new application in the near future and that Tennessee would file a separate application to provide a firm transportation service for Canadian Gateway.

Tennessee states that, in the event the utilization of 500,000 Mcf per day of the proposed Niagara Spur capacity is not required by Ocean State as is now proposed for 1989, the resulting available capacity would be available for additional firm transportation service for Canadian Gateway until 1990. Tennessee further states that, to the extent firm capacity in excess of 50,000 Mcf per day is not available on the Niagara Spur as of November 1, 1989, and Canadian Gateway requests such additional firm transportation service, Tennessee would seek authorization to render that service and to construct and operate the facilities required for such service.

Tennessee states that it plans to transport 50,000 dekatherms per day for Ocean State through the expansion proposed in this docket from the date Tennessee is ready to commence firm transportation to Ocean State (estimated to be November 1, 1989) until the date that the capacity must be recalled for Tennessee's system supply (November 1, 1990, when Tennessee's firm purchase commitment for the KannGaz and TransCanada volumes reaches 150,000 Mcf per day) after which time service would be rendered as proposed by Tennessee at Docket No. CP87-132-000. Tennessee asserts that its application at Docket No. CP87-132-000 will be amended in the very near future to request authorization to use the above referenced capacity in the Niagara Spur until that capacity is needed for Tennessee's system supply.

Authorization to operate Phase I facilities is requested by November 1, 1987, when system supply and Boundary Phase 2 volumes are scheduled to flow. Tennessee states that no additional facilities construction would be required for this phase; Tennessee would only need authority to operate compression that is being constructed pursuant to its certificate authorization in Docket No. CP86-251-000. It is stated that if Phase I authorization is not received by the date on which all permanent facilities for Boundary Phase 2 transportation are in service, there would be a gap in authorization for the compression facilities due to pregranted abandonment in Docket No. CP86-251-000.

Tennessee states that Phase II facilities would be required to be ready for service on November 1, 1989, when any combination of the above-mentioned designated uses exceeds 132,500 Mcf per day.

[1] Each "year" is the twelve-month period commencing November 1 of the year indicated.

Tennessee asserts that the proposed phasing of construction and operation is desirable because it would postpone expenditures until such time as they are necessary to handle scheduled deliveries and because it would allow Phase I volumes to flow while any necessary environmental review of Phase II construction is completed.

Comment date: September 10, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.

[Docket No. CP87–483–000]

Take notice that on August 5, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco, Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP87–483–000, an application pursuant to section 7(b) of the Natural Gas Act for Authorization to abandon the following described facilities:

1. 2.7 miles of 26" pipeline from M.P. 527A–104 + 7.7 to M.P. 527A–105 + 0.000;

2. The 26" underwater Mississippi River crossing, Line No. 527A–100 from MLV 527A–105 + 0.00 to M.P. 527A–105 + 0.80,

all located in Plaquemines Parish, Louisiana, and all as more fully set forth in its request which is on file with the Commission and open to public inspection.

Tennessee proposes to remove and salvage 1,050 feet of the 26" Mississippi River crossing. The remaining .55 mile of the Mississippi River crossing and the contiguous 2.7 miles of 26" pipeline would be abandoned in place, it is stated.

Tennessee states that the facilities proposed to be abandoned constitute one of three river crossings through which gas can be moved on Tennessee's system from the South Pass gas supply areas southeast of the Mississippi River to Tennessee's facilities northeast of the Mississippi River, from whence the gas would flow to Tennessee's Compressor Station 527. Because of declining deliverability in the South Pass gas supply area, it is stated that the facilities remaining in place after abandonment as proposed herein would be adequate to move all gas available from the South Pass gas supply area into Tennessee's facilities northwest of the Mississippi River.

Tennessee estimates that the cost of removing 1,050 feet of the Mississippi River crossing and abandoning in place the remaining 0.55 mile of the Mississippi River crossing would be $420,500. Tennessee further estimates that the 1,050 feet of pipe would have a salvage value of $5,500. Cost of abandoning the contiguous 2.7 miles of pipe in place is estimated to be $40,000, it is stated.

Tennessee submits that abandonment of these facilities is in the public interest in that such abandonment would avoid the cost of replacing the 26" river crossing that would otherwise be required because of dredging operations in the Mississippi River.

Comment date: September 20, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Williams Natural Gas Co.

[Docket No. CP87–477–000]

Take notice that on August 3, 1987, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP87–477–000 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of compression facilities and replacement of approximately 78.6 miles of 16-inch pipeline on WNG's Cotton Valley-Saginaw 16-inch pipeline, and the abandonment of certain compression facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, WNG seeks authority to replace approximately 78.6 miles of 16-inch pipeline and appurtenant facilities between Washington County, Oklahoma and Newton County, Missouri; construct approximately 0.9 mile of 16-inch pipeline and abandon approximately 1.0 mile of 16-inch pipeline in Washington County, Oklahoma; reclaim the 4,000-horsepower Buffalo compressor station in Harper County, Oklahoma; construct the Cotton Valley compressor station in aWashington County, Oklahoma using horsepower from the Buffalo compressor station; install a 4,250-horsepower turbine compressor at the existing Saginaw compressor station in Newton County, Missouri; abandon the eight 170-horsepower compressor units at the Welch compressor station in Craig County, Oklahoma, by reclaim; reclaim ten 170- and one 660-horsepower compressor units at the Saginaw compressor station. WNG states that the proposed projects would enable WNG to more reliably serve the growing Joplin and Springfield, Missouri market areas during peak periods and to allow for automation of this portion of WNG's pipeline system.

WNG asserts that the estimated cost of the proposed facilities is $23,324,132, which will be paid from treasury cash. The total estimated reclaim cost for the porposed abandonments is $1,099,000 with a salvage value of $2,245,835, it is stated.

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

5. Wyoming-California Pipeline Co.

[Docket No. CP87–479–000]

Take notice that on August 4, 1987, Wyoming-California Pipeline Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87–479–000 an application pursuant to section 7(c) and 7(b) of the Natural Gas Act and Subparts E and F of Part 157 of the Commission's Regulations thereunder for (A) an optional certificate of public convenience and necessity authorizing: (1) The construction and operation of facilities, (2) the transportation of natural gas in interstate commerce, and (3) conditional pregranted abandonment authority; and (B) a blanket certificate authorizing the construction and operation of facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states it is a general partnership whose partners are Coastal Western Pipeline Company and CIG Western Pipeline Company.

Applicant asserts it does not have any present operations but would, upon Commission approval of the certificate requested herein, be a natural gas company engaged in the transportation of natural gas in interstate commerce and would be subject to the Commission's jurisdiction under the NGA.

Applicant, as more fully set forth, proposes to construct and operate a major natural gas transmission system to transport natural gas to (1) serve the requirements of the enhanced oil recovery ("EOR") operations in the heavy oil fields in Kern County, California and (2) serve such other natural gas requirements which may be in the proximity of the proposed pipeline system. Applicant proposes to serve as an open access transporter as provided by Subpart G of Section 284.221 of the Commission's Regulations. Applicant asserts it does not propose to make any sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic commercial, industrial or any other use.

Applicant proposes to construct and operate approximately 1,000 miles of pipeline and ten compressor units totalling 53,000 compression

horsepower. The proposed pipeline would extend in a generally southwesterly direction from a point in the vicinity of Hams Fork, Lincoln County, Wyoming, to Piute Junction, San Bernardino County, California ("Piute Junction"), and then in a generally westerly direction to its terminus in the vicinity of Bakersfield, Kern County, California ("Bakersfield"). It is estimated that the facilities would cost $665,510,000.

Applicant states that the facilities would have an initial capacity to transport a total of up to 650 MMcf per day; up to 400 MMcf per day from the Overthrust area to Piute Junction and up to an additional 250 MMcf per day from Topock to Piute Junction, then the combined amount from Piute Junction to Bakersfield.

The subject filing includes the following provisions:

(1) Applicant proposes a facility equalization charge which would be applicable to short-term service. Applicant states that this charge is required in order to insure that short-term shippers pay their proportionate share of the depreciation expense.

(2) In Article 2.2 of the proposed General Terms and Conditions, Applicant states it reserves the right to suspend receipts or deliveries in order to reduce any out-of-balance conditions.

(3) In Article 3 of the proposed general terms and conditions, Applicant states that the requests for firm transportation service should be ranked on the basis of the term of service requested and the maximum receipt volume.

(4) In Article 3 of the proposed General Terms and Conditions, Applicant states that priority for firm service shall be based upon the economic value of the transaction to Applicant, with the transaction producing the greatest economic value having the highest priority of service.

(5) Applicant refers to Original Sheet No. 4, as attached, for proposed rates.

It is stated that the Applicant is filing concurrently and would accept a blanket transportation certificate under § 284.221 of the Commission's Regulations and would comply with the conditions set forth in Subpart A of Part 284 of such regulations.

SCHEDULE OF TRANSPORTATION RATES

Rate schedule	Rates per Mcf (Note 1)	
	Minimum	Maximum
WC-F:		
Gas Supply Area Segment—		
Reservation rate	$0	$1.83
Commodity rate	0.50	1.47
Authorized overrun rate	0.50	7.49
Unauthorized overrun rate	14.96	
Anschutz to Bakersfield Segment—		
Reservation Rate	0	17.49
Commodity rate	1.00	15.96
Authorized overrun rate	1.00	73.19
Unauthorized overrun rate	1.4638	
Topock to Bakersfield Segment—		
Reservation rate	0	6.73
Commodity rate	1.00	6.10
Authorized overrun rate	1.00	28.23
Unauthorized overrun rate	56.46	
WC-1:		
Gas Supply Area Segment—		
Commodity rate	0.50	7.49
Authorized overrun rate (Note 2)	0.50	7.49
Unauthorized overrun rate	14.98	
Anschutz to Bakersfield Segment—		
Commodity rate	1.00	73.19
Authorized overrun rate (Note 2)	1.00	73.19
Unauthorized overrun rate	1.4638	
Topock to Bakersfield Segment—		
Commodity rate	1.00	28.23
Authorized overrun rate (Note 2)	1.00	28.23
Unauthorized overrun rate	56.46	

SCHEDULE OF TRANSPORTATION RATES—Continued

Notes.—(1) Rates are stated in Mcf at a pressure base of 14.73 p.s.i.a.

(2) The Authorized Overrun Rate for WC-I shall be the same as the Commodity Rate stated in Exhibit B of the Transportation Service Agreement (Agreement).

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Wyoming-California Pipeline Co.

[Docket No. CP87-480-000]

Take notice that on August 4, 1987, Wyoming-California Pipeline Company (Applicant), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP87-480-000 an application pursuant to section 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. 717f(c), and § 284.221 of the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder for authorization to provide open access non-discriminatory transportation service for others, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Wyoming-California states it is a general partnership whose partners are Coastal Western Pipeline Company and CIG Western Pipeline Company.

It is further stated that Wyoming-California does not have any present operations but would, upon the Commission's issuance of the optional expedited certificate of public convenience and necessity requested in *Wyoming-California Pipeline Company*, Docket No. CP87-480-000, be a natural gas company engaged in the business of transporting natural gas in interstate commerce and thus subject to the Commission's jurisdiction under the NGA.

Comment date: September 10, 1987, in accordance with Standard Paragraph F at the end of this notice.

7. Natural Gas Pipeline Co. of America

[Docket No. CP87-484-000]

Take notice that on August 5, 1987, Natural Gas Pipeline Company of America (NGPL), 701 East 22nd Street, Lombard Illinois 60148, filed in Docket No. CP87-484-000 an application pursuant to section 7(b) and 7(c) and for permission and approval to abandon a portion of its firm sales service and for authority to convert the abandoned sales service to firm transportation, all as more fully set forth in the application which is on file and open to public inspection.

NGPL states that its sales, while fairly stable from 1975 to 1985, have declined dramatically since 1985. NGPL notes that its annual sales fell from 991 Bcf in 1984-1985 to 401 Bcf in 1986-1987 and that its average daily sales have slipped from a historical level of nearly 3.0 Bcf per day to only 0.1 Bcf in March and April of 1987. NGPL estimates that its sales for the next 12 months will not exceed 200 Bcf. NGPL indicates that even its winter season sales are minimal except on peak days.

NGPL asserts that the sales decline threatens its viability as a long-term supplier in its traditional market area. NGPL further asserts that it cannot afford to maintain a gas inventory necessary for a full merchant role if it continues in the role of a swing supplier for many of its customers. It is explained that NGPL's take or pay and physical take obligations to producers preclude it from continuing to develop and maintain large gas reserves in the current market environment.

To address what it regards as an untenable position, NGPL asserts that it must adjust its gas supply to the realities of current gas markets and therefore seeks to bring its sales certificates in line with current conditions. Specifically NGPL proposes to reduce the aggregate Daily Contract Quantities (DCQ's) under Rate Schedules DMQ and G-1 by 20 percent, or about 0.7 Bcf per day to a level of 2.8 Bcf per day. NGPL further proposes to reduce its customers' Daily Quantity Entitlements to the extent required to reflect the proposed new DCQ levels. NGPL also requests authority to render firm transportation service for each of its customers, corresponding to the volume of the reduction in sales DCQ's. NGPL propose that the conversion to firm transportation be subject to the terms of

NGPL's Rate Schedule FTS or successor rate schedules. NGPL notes that its DCQ adjustments, while similar to what could be done under Order No. 436, are proposed outside of Order No. 436 because NGPL cannot afford to wait until completion of the Order No. 436 transition period to begin to solve its critical problems.

It is stated that the specific proposed DCQ conversions for each customer are shown in Summary of Contract Quantities which is available from the Federal Energy Regulatory Commission, 825 N. Capitol St., NE, Washington, DC 20426.

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 herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19632 Filed 8-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP87-461-000]

Request Under Blanket Authorization, Tennessee Gas Pipeline Company

August 20, 1987.

Take notice that on July 24, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77252, filed at Docket No. CP87-461-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211), as supplemented on August 17, 1987, and Applicant's blanket authority granted at Docket No. CP82-413-000 on September 1, 1982, for permission to establish an additional sales tap and metering facilities for the Town of Centerville, Tennessee (Centerville), all as more fully set forth in the request on file with the Commission and open to public inspection.

Applicant states that the proposed additional sales point and interconnection would enable Centerville to accommodate the need for additional natural gas in a developing area northeast of Centerville.

Applicant also states that the proposed sales point would consist of a 2-inch hot tap to be placed on Tennessee's Line No. 500-1 at M.P. 559-1+5.9 in Hickman County, Tennessee, and metering facilities, including regulation, to be located on property provided by Centerville.

Applicant further states that Centerville has not provided an estimate of the quantity of gas to be delivered through the proposed facility, but Applicant states that its estimated incremental quantity, if any, delivered through the proposed facility would not exceed 150 Mcf (154 dt) during the first heating season and would not increase Centerville's maximum daily quantity.

Because Centerville's maximum daily quantity would not be increased and because of the relative proximity of Centerville delivery points (Centerville and Only), there would be no impact on Tennessee's peak day and annual deliveries as a result of the proposed facilities, it is stated.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-19631 Filed 8-26-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP81-54-033, RP87-26-009, and RP85-178-016]

Rate Change Filing; Tennessee Gas Pipeline Co., a Division of Tenneco Inc.

August 20, 1987.

Take notice that on August 17, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) tendered for filing revised tariff sheets in Second Revised Volume No. 1 and Original Volume No. 2 to its FERC Gas Tariff to be effective August 1, 1987.[1]

Tennessee states that it is filing these revised tariff sheets pursuant to Opinion No. 249-A and the Order Approving Uncontested Offers of Settlement in Docket Nos. RP85-178, *et al.* both issued July 31, 1987. Tennessee states that in accord with these orders it is establishing new base tariff rates to be effective August 1, 1987 and is eliminating the minimum bill charge provisions from its sales and transportation rate schedules.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211, 385.214.) All such motions or protests should be filed on or before August 27, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

[1] The revised tariff sheets are listed in the appendix.

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Second Revised Volume No. 1

First Revised Sheet No. 1
Third Revised Sheet No. 20
Original Sheet No. 20A
Fourth Revised Sheet No. 21
Second Revised Sheet Nos. 22–24
Original Sheet No. 39
Original Sheet Nos. 40 through 45
First Revised Sheet Nos. 47–48
First Revised Sheet No. 53
First Revised Sheet Nos. 57–59
First Revised Sheet Nos. 77–81
Substitute First Revised Sheet No. 110
Second Revised Sheet No. 110
Original Sheet No. 110A
First Revised Sheet No. 110A
Substitute First Revised Sheet No. 115
Second Revised Sheet No. 115
Substitute First Revised Sheet No. 116
Second Revised Sheet No. 116
First Revised Sheet Nos. 219–224
First Revised Sheet No. 230
First Revised Sheet No. 242
First Revised Sheet Nos. 350–359
Original Sheet Nos. 360–367

Original Volume No. 2

First Revised Sheet No. 1
Substitute Fourth Revised Sheet No. 5
Substitute Third Revised Sheet No. 6
Substitute Second Revised Sheet No. 7
Substitute Third Revised Sheet No. 8
Substitute Third Revised Sheet No. 9
Substitute Original Sheet No. 10
First Revised Sheet Nos. 15–17
First Revised Sheet Nos. 50–51
First Revised Sheet Nos. 60–61
First Revised Sheet No. 78
First Revised Sheet No. 104
First Revised Sheet Nos. 105 through 118
First Revised Sheet No. 119
First Revised Sheet Nos. 120 through 133
First Revised Sheet No. 134
First Revised Sheet Nos. 135 through 148
First Revised Sheet No. 158
First Revised Sheet Nos. 181–182
First Revissd Sheet No. 196
First Revised Sheet No. 208
First Revised Sheet Nos. 244–245
First Revised Sheet No. 261
First Revised Sheet Nos. 263–265
First Revised Sheet No. 316
First Revised Sheet No. 328
First Revised Sheet No. 341
First Revised Sheet Nos. 356–357
First Revised Sheet No. 369
First Revised Sheet No. 424
First Revised Sheet No. 436
First Revised Sheet No. 453
First Revised Sheet No. 484
First Revised Sheet No. 503
First Revised Sheet No. 521
First Revised Sheet No. 537
First Revised Sheet No. 554
First Revised Sheet Nos. 570–572
First Revised Sheet No. 600
First Revised Sheet Nos. 633–636
First Revised Sheet Nos. 653–654
First Revised Sheet Nos. 672–674
First Revised Sheet Nos. 685–686
First Revised Sheet Nos. 703–706
First Revised Sheet Nos. 723–724
First Revised Sheet Nos. 764–765
First Revised Sheet No. 783
First Revised Sheet No. 800
First Revised Sheet Nos. 818–819
First Revised Sheet Nos. 854–855
First Revised Sheet Nos. 873–874
First Revised Sheet No. 890
First Revised Sheet No. 909
First Revised Sheet No. 948
First Revised Sheet No. 967
First Revised Sheet No. 985
First Revised Sheet No. 998
First Revised Sheet No. 1017
First Revised Sheet Nos. 1038–1039
First Revised Sheet No. 1051
First Revised Sheet No. 1063
First Revised Sheet No. 1092
First Revised Sheet No. 1106
First Revised Sheet No. 1117
First Revised Sheet No. 1130
First Revised Sheet No. 1141
First Revised Sheet No. 1151
First Revised Sheet No. 1175
First Revised Sheet No. 1191
First Revised Sheet No. 1206
First Revised Sheet No. 1222
First Revised Sheet No. 1237
First Revised Sheet No. 1251
First Revised Sheet No. 1267
First Revised Sheet No. 1278
First Revised Sheet Nos. 1287–1288
First Revised Sheet No. 1302
First Revised Sheet Nos. 1317–1318
First Revised Sheet No. 1332
First Revised Sheet No. 1345
First Revised Sheet No. 1359
First Revised Sheet No. 1373
First Revised Sheet No. 1389
First Revised Sheet No. 1405
First Revised Sheet No. 1418
First Revised Sheet No. 1435
First Revised Sheet No. 1450
First Revised Sheet No. 1467
First Revised Sheet No. 1481
First Revised Sheet No. 1497
First Revised Sheet Nos. 1512–1513
First Revised Sheet No. 1527
First Revised Sheet Nos. 1541–1542
First Revised Sheet No. 1560
First Revised Sheet No. 1577
First Revised Sheet No. 1593
First Revised Sheet No. 1611
First Revised Sheet No. 1626
First Revised Sheet No. 1656
First Revised Sheet No. 1673
First Revised Sheet No. 1689
First Revised Sheet No. 1706

[FR Doc. 87–19635 Filed 8–26–87; 8:45 am]
BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[PF–487 FRL–3252–7]

Pesticide Tolerance Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition for an exemption from the requirment of a tolerance for the biological insecticide UCB–87 (codling moth granulosis technical concentrate containing at least 2×10^{12} capsules/gram). Dr. Louis A. Falcon petitioned for this exemption.

ADDRESS: By mail, submit comments identified by the document control number [PF–487] to the following address.

Information Services Section (TS–757C), Attn: Product Manager (PM) 17, Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, bring comments to: Information Services Section (TS–757C) Room 236, CM #2 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. Written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Joseph M. Tavano, Acting Product Manager (PM) 17, Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 207, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2690.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition, PP 7G3548, from Dr. Louis A. Falcon, Professor of Entomology and Insect Pathologist, University of California, 349 Hilgrad Hall, Berkley, CA 94720, requesting an exemption from the requirement of a tolerance for the biological insecticide UCB–87 (codling moth granulosis virus technical concentrate containing at least 2×10^{12} capsules/gram) to be used on applies, pears, walnuts, plums, and prunes in connection with an experimental use permit. Residues

would be determined by biological laboratory techniques.

Authority: 21 U.S.C. 346a.

Dated: August 19, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-19653 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180742; FRL-3253-3]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 23 States listed below and eight crisis exemptions initiated by various States. Also listed are five denials from EPA of requests for specific exemptions from the Department of Agriculture in various States. These exemptions, issued during the months of May and June, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific or crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460

Office location and telephone number: Room 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of iprodione on rice to control sheath blight; May 29, 1987 to September 1, 1987. (Stan Austin)

2. Arkansas Plant Board for the use of bromoxynil on rice (dry seeded) to control hemp sesbania, morningglory, pale smartweed, and cocklebur; May 8, 1987 to August 1, 1987. (Jim Tompkins)

3. California Department of Food and Agriculture for the use of glyphosate on dates to control Bermudagrass; June 17, 1987 to December 1, 1987. (Stan Austin)

4. California Department of Food and Agriculture for the use of formetanate hydrochloride on strawberries to control two-spotted mites; June 30, 1987 to June 29, 1988. (Libby Pemberton)

5. California Department of Food and Agriculture for the use of carbaryl on pomegranates to control filbert moth; June 18, 1987 to August 31, 1987. (Libby Pemberton)

6. Florida Department of Agriculture and Consumer Services for the use of cyromazine on tomatoes grown for fresh market only to control leafminers; May 27, 1987 to December 31, 1987. Florida had initiated a crisis exemption for this use. (Gene Asbury)

7. Georgia Department of Agriculture for the use of permethrin on southern peas to control cowpea curculio; June 30, 1987 to October 31, 1987. Georgia had intiated a crisis exemption for this use. (Libby Pemberton)

8. Idaho Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control aphids, weevils, and grasshoppers; June 9, 1987 to August 31, 1987. (Gene Asbury)

9. Idaho Department of Agriculture for the use of iprodione on irrigated potatoes to control Sclerotinia stem rot; June 2, 1987 to July 31, 1987. (Jim Tompkins)

10. Idaho Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 18, 1987 to September 15, 1987. (Stan Austin)

11. Illinois Department of Agriculture for the use of sethoxydim on snap beans to control Johnsongrass; June 17, 1987 to August 31, 1987. (Jim Tompkins)

12. Louisiana Department of Agriculture for the use of iprodione on rice to control sheath blight; May 29, 1987 to September 1, 1987. (Stan Austin)

13. Louisiana Department of Agriculture for the use of bromoxynil on rice to control hemp sesbania, morningglory, and cocklebur; May 12, 1987 to August 1, 1987. (Jim Tompkins)

14. Maine Department of Agriculture, Food, and Rural Resources for the use of iprodione on potatoes to control Sclerotinia; June 10, 1987 to July 31, 1987. (Jim Tompkins)

15. Massachusetts Department of Food and Agriculture for the use of metalaxyl on cranberries to control Phytophthora; June 5, 1987 to December 1, 1987. (Jim Tompkins)

16. Michigan Department of Agriculture for the use of fluazifop-butyl on celery to control grassy weeds; May 13, 1987 to September 1, 1987. (Libby Pemberton)

17. Michigan Department of Agriculture for the use of Pro-Gro (50% thiram/30% carboxin) on onion seedlings to control onion smut; May 1, 1987 to April 30, 1988. (Stan Austin)

18. Minnesota Department of Agriculture for the use of sethoxydim on snap beans to control wild proso millet; June 10, 1987 to August 31, 1987. (Jim Tompkins)

19. Minnesota Department of Agriculture for the use of (±)-2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1-H-imidazol-2-yl]-5-ethyl-3-pyridinecarboxylic acid on soybeans to control Jerusalem artichokes; May 22, 1987 to June 30, 1987. Solicitation of public comment was published in the **Federal Register** of May 27, 1987 (52 FR 19775), no comments were received. The exemption was granted based on the finding that there are no registered alternative pesticides which will provide adequate control of this pest is soybeans. A significant economic loss may result if an effective pesticide is not made available to those soybean growers with fields infested with Jerusalem artichokes. Residues of imazethapyr will not exceed 0.1 ppm in soybeans. This residue level can be toxicologically supported and will not pose a threat to the public health. The percent PADI occupied by all current uses is 0.023 percent. The proposed use should not pose an unreasonable hazard to the environment. (Libby Pemberton)

20. Mississippi Department of Agriculture for the use of iprodione on rice to control sheath blight; May 29, 1987 to September 1, 1987. (Stan Austin)

21. Mississippi Department of Agriculture and Commerce for the use of bromoxynil on rice (dry seeded) to control hemp sesbania, morningglory, and cocklebur; May 8, 1987 to August 1, 1987. (Jim Tompkins)

22. Montana Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control grasshoppers; June 9, 1987 to August 31, 1987. (Gene Asbury)

23. Nebraska Department of Agriculture for the use of fluazifop-butyl on bulb onions to control grasses; June 18, 1987 to August 15, 1987. (Jim Tompkins)

24. Nevada Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control lygus bugs and aphids; June 1, 1987 to August 31, 1987. (Gene Asbury)

25. New Mexico Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 18, 1987 to September 1, 1987. (Stan Austin)

26. New York Department of Environmental Conservation for the use of vinclozolin on snap beans to control gray mold; June 1, 1987 to September 15, 1987. (Gene Asbury)

27. New York Department of Environmental Conservation for the use of sodium fluoaluminate on potatoes to control Colorado potato beetles; May 18, 1987 to September 30, 1987. (Gene Asbury)

28. New York Department of Environmental Conservation for the use of permethrin on dry bulb onions to control onion thrips; May 20, 1987 to November 30, 1987. (Jim Tompkins)

29. Ohio Department of Agriculture for the use of sodium chlorate on navy beans as a desiccant to aid in harvesting; May 27, 1987 to October 31, 1987. (Jim Tompkins)

30. Ohio Department of Agriculture for the use of fluazifop-butyl on lettuce, and endive (escarole) to control fall panicum, large crabgrass, and barnyard grass; June 4, 1987 to September 30, 1987. (Libby Pemberton)

31. Oregon Department of Agriculture for the use of glyphosate on wheat to control volunteer rye grain; May 21, 1987 to July 1, 1987. (Stan Austin)

32. Oregon Department of Agriculture for the use of cypermethrin on dry bulb onions to control onion thrips; May 18, 1987 to September 1, 1987. (Stan Austin)

33. Oregon Department of Agriculture for the use of iprodione on irrigated potatoes to control Sclerotinia stem rot; June 2, 1987 to July 31, 1987. (Jim Tompkins)

34. Oregon Department of Agriculture for the use of iprodione on craneberries to control botrytis fruit rot; May 29, 1987 to September 30, 1987. (Jim Tompkins)

35. Oregon Department of Agriculture for the use of fluvalinate on alfalfa grown on seed to control aphids and weevils; June 9, 1987 to August 31, 1987. (Gene Asbury)

36. Oregon Department of Agriculture for the use of fluazifopbutyl on onions and garlic to control grasses; May 13, 1987 to October 30, 1987. (Donald Stubbs)

37. Pennsylvania Department of Agriculture for the use of anilazine on watercress to control leaf spot; May 22, 1987 to October 31, 1987. (Libby Pemberton)

38. Texas Department of Agriculture for the use of sodium chlorate on wheat as a desiccant to aid in harvest; June 26, 1987 to July 21, 1987. (Jim Tompkins)

39. Washington Department of Agriculture for the use of iprodione on irrigated potatoes to control Sclerotinia stem rot; June 2, 1987 to July 31, 1987. (Jim Tompkins)

40. Washington Department of Agriculture for the use of vinclozolin on snap beans to control gray mold; June 1, 1987 to September 30, 1987. (Gene Asbury)

41. Washington Department of Agriculture for the use of fluvalinate on alfalfa grown for seed to control lygus bugs and aphids; June 1, 1987 to August 31, 1987. (Gene Asbury)

42. Washington Department of Agriculture for the use of glyphosate on wheat to control volunteer rye grain; May 21, 1987 to July 1, 1987. (Stan Austin)

43. Washington Department of Agriculture for the use of iprodione on raspberries to control fruit rot; May 13, 1987 to July 31, 1987. (Jim Tompkins)

44. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of fluazifop-butyl on celery to control grassy weeds; May 13, 1987 to September 1, 1987. (Libby Pemberton)

45. Wisconsin Department of Agriculture, Trade, and Consumer Protection for the use of sodium chlorate on dry edible beans as a desiccant to aid in harvest; May 27, 1987 to October 31 1987. (Jim Tompkins)

Crisis exemptions were initiated by the:

1. Georgia Department of Agriculture on May 28, 1987 for the use of permethrin on southern peas to control the cowpea curculio. The need for this program is expected to last until October 31, 1987. (Libby Pemberton)

2. Massachusetts Department of Food and Agriculture on June 30, 1987 for the use of sodium fluoaluminate on potatoes to control the Colorado potato beetle. The need for this program is expected to last until September 30, 1987. (Gene Asbury)

3. North Carolina Department of Agriculture on May 13, 1987 for the use of sethoxydim on Irish potatoes to control Johnsongrass. This program has ended. (Jim Tompkins)

4. North Dakota Office of the Governor on June 2, 1987 for the use of metribuzin (4-amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4*H*)-one) on lentils to control wild mustard. This program has ended. (Libby Pemberton)

5. Oregon Department of Agriculture on June 18, 1987 for the use of sethoxydim on snap beans to control wild proso millet. This program has ended. (Jim Tompkins)

6. Oregon Department of Agriculture on May 11, 1987 for the use of sethoxydim on green peas to control annual ryegrass and barnyard grass. This program has ended. (Jim Tompkins)

7. Texas Department of Agriculture on June 12, 1987 for the use of iprodione on rice to control sheath blight. This program has ended. (Stan Austin)

8. Wisconsin Department of Agriculture, Trade, and Consumer Protection on May 13, 1987 for the use of metalaxyl on cultivated ginseng to control phytophthora cactorum. This program is expected to last until May 12, 1988. (Jim Tompkins)

EPA has denied requests from the:

1. Michigan Department of Agriculture for the use of clofentezine on apples to control European red mites.

2. Ohio Department of Agriculture for the use of clofentezine on apples to control European red mites.

3. Oregon Department of Agriculture for the use of clofentezine on pears and pears interplanted with apples to control spider mites.

4. Virginia Department of Agriculture and Consumer Services for the use of clofentezine on apples to control European red mites.

5. West Virginia Department of Agriculture for the use of clofentezine on apples to control European red mites.

Notices of receipt and opportunity for public comment were published in the **Federal Register** for these requests listed above on April 1, 1987 (52 FR 10406 and 10407). No comments were received in connection with these notices. The basis for the denials were that the Agency has unresolved questions regarding some of the toxicological data submitted to support the establishment of permanent tolerances for clofentezine, and information submitted did not support the contention that significant economic losses were likely to result. (Jack E. Housenger)

Authority

7 U.S.C. 136.

Dated: August 18, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-19655 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3251-4]

Final Determination; Unconsolidated Valley—Fill Underlying Pleasant City in Guernsey County, OH

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to section 1424(e) of the Safe Drinking Water Act, the U.S. Environmental Protection Agency (EPA) Region V Administrator has determined that the Unconsolidated Valley—Fill Aquifer underlying Pleasant City in Guernsey County, Ohio, hereafter called the Pleasant City Aquifer, is the sole or principal source of drinking water for

Pleasant City and that this aquifer, if contaminated, would create a significant hazard to public health. As a result of this action, all Federal financially assisted projects constructed in the Pleasant City Aquifer area and its principal recharge zone will be subject to EPA's review to ensure that these projects are designed and constructed such that they do not create a significant hazard to public health.

DATES: This determination shall be promulgated for purposes of judicial review at 1:00 P.M. Eastern time on September 10, 1987.

ADDRESSEES: The data on which these findings are based are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Office of Ground Water 5WG–TUB9, 230 S. Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Wm. Turpin Ballard, Office of Ground Water, U.S. Environmental Protection Agency, Region V, at 312–886–2504.

SUPPLEMENTARY INFORMATION:

1. Background

Section 1424(e) of the Safe Drinking Water Act (42 U.S.C. 300f, 300h–3(e), Pub. L. 93–523) states:

(e) If the Administrator determines on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the Federal Register. After the publication of any such notice, no commitment for Federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for Federal financial assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

Effective March 9, 1987, authority to make a Sole Source Aquifer Designation Determination was delegated to EPA Regional Administrators.

On August 27, 1984, EPA received a petition from the Pleasant City Council and the Honorable Clayton Short, Mayor, which petitioned EPA to designate the Pleasant City Aquifer as a Sole Source Aquifer. On January 5, 1987, EPA published a notice in the *Daily Jeffersonian*, a local newspaper, which served to reprint the petition, to announce a public comment. The public was permitted to submit comments and information on the petition until February 5, 1987.

II. Basis for Determination

Among the factors to be considered by the U.S. EPA in connection with the designation of an area under section 1424(e) are: (1) whether the Pleasant City Aquifer is the area's sole or principal source of drinking water, and (2) whether contamination of the aquifer would create a significant hazard to public health. On the basis of technical information available to this Agency, the Region V Administrator has made the following findings, which are the bases for the determination noted above:

1. The Pleasant City Aquifer currently serves as the "sole source" of drinking water for approximately 990 persons in the Pleasant City area.

2. There is no existing alternative drinking water source or combination of sources which provides 50 percent or more of the drinking water to the designated area, nor is there any available cost-effective future source capable of supplying the drinking water demands for the Pleasant City community.

3. The Pleasant City Aquifer is an unconfined aquifer consisting of water bearing layers of sand and gravel interbedded with less permeable layers of silt and clay. The upper limits of the screened interval of Pleasant City's wells are within 25 to 36 feet of the ground surface. At such depths, downward migration of surface or near-surface contaminants into the upper water producing zone could occur in a relatively short time, with little opportunity for attenuation of the contaminant. Sources for such contamination include, but are not limited to: (1) residential or commercial sewage disposal sites, (2) use and improper storage of agricultural chemicals, (3) chemical spills associated with rail and highway transport, (4) leaking underground storage tanks, (5) leachment of spoil and gob piles associated with proposed and existing coal mining operations, (6) leachment from improperly constructed landfills. Should any of the above sources of contamination enter the public water supply, there could be a significant negative effect on drinking water quality with a consequent adverse effect on public health.

III. Description of the Pleasant City Aquifer, Along With Its Recharge Zone

The Pleasant City Aquifer is an unconfined shallow aquifer composed of permeable sands and gravels interbedded with less permeable silt and clay layers. The unconsolidated sediments are of glacial or alluvial origin and reach a total thickness of up to 60 feet. Estimated areal extent of the aquifer is approximately 1.5 to 1.75 square miles.

Principal recharge of the aquifer is due mainly to precipitation and infiltration downward through the unconsolidated aquifer materials. Secondary sources of recharge may include infiltration of intermittent floodwaters and ground water underflow from upstream alluvial deposits. Due to the average amount of annual rainfall of 30–32 inches, the streams can be classified as gaining streams. Therefore, they do not contribute appreciably to aquifer recharge.

The review area for Federal financially assisted projects will be the alluvial valley occupied by Pleasant City from S.R. 313 south and west to end at the SW ¼ of Section 7, T8N, R9W Byesville, Ohio (USGS 7½ minute quadrangle). The aquifer recharge area is coincident with the aquifer boundary to a line across the valley ½ mile northeast of and downflow from the Pleasant City wellfield.

IV. Information Utilized in Determination

The information utilized in this determination includes the petition, written and verbal comments submitted by the public and various technical publications. The above data are available to the public and may be inspected during normal business hours at the U.S. Environmental Protection Agency, Region V, Office of Ground Water, 230 S. Dearborn (5WG–TUB9), Chicago, Illinois 60604.

V. Project Review

EPA Region V is working with the Federal agencies that may in the future provide financial assistance to projects in the area of concern. Interagency procedures and Memoranda of Understanding will be developed through which EPA will be notified or proposed commitments by Federal agencies for projects which could contaminate the Pleasant City Aquifer, upon which Pleasant City depends for its sole source water supply. EPA will evaluate such projects and, where necessary, conduct an in-depth review, including soliciting public comments where appropriate. Should the Regional Administrator determine that a project may contaminate the aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for Federal financial

assistance may be made. However, a commitment for Federal financial assistance may, if authorized under another provision of law, be made to plan or design the project to ensure that it will not so contaminate the aquifer.

Although the project review process cannot be delegated, the U.S. Environmental Protection Agency will rely to the maximum extent possible on existing or future State and local control mechanisms in protecting the ground water quality of the Pleasant City Aquifer. Included in the review of any Federal financially assisted project will be the coordination with the State and local agencies. Their comments will be given full consideration, and the Federal review process will attempt to complement and support State and local ground water protection mechanisms.

VI. Summary and Discussion of Public Comments

None of the comments received from the public were opposed to designation. The area considered for designation was determined to meet the criteria of an area which depends upon an aquifer for its sole or principal drinking water source and which, if contaminated, would pose a serious threat to the health of the residents of Pleasant City.

VII. Economic and Regulatory Impact

Pursuant to the provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), I hereby certify that the attached rule will not have a significant impact on a substantial number of small entities. For purposes of this Certification, the "small entity" shall have the same meaning as given in section 601 of the RFA. This action is only applicable to the Pleasant City area.

The only affected entities will be those area-based businesses, organizations or governmental jurisdictions that request Federal financial assistance for projects which have the potential to contaminate the aquifer so as to create a significant hazard to public health. EPA does not expect to be reviewing small isolated commitments of financial assistance on an individual basis, unless a cumulative impact on the aquifer is anticipated; accordingly, the number of affected small entities will be minimal.

For those small entities which are subject to review, the impact to today's action will not be significant. Most projects subject to this review will be preceded by a ground water impact assessment required pursuant to other Federal laws, such as the National Environmental Policy Act (NEPA) as amended 42 U.S.C. 431, et seq. Integration of those related review procedures with sole source aquifer review will allow EPA and other Federal agencies to avoid delay or duplication of effort in approving financial assistance, thus minimizing any adverse effect on those small entities which are affected. Finally, today's action does not prevent grants of Federal financial assistance which may be available to any affected small entity in order to pay for the redesign of the project to assure protection of the aquifer.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it will not have an annual effect of $100 million or more on the economy, will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States enterprises to compete in domestic or export markets. Today's action only affects the Pleasant City Aquifer of the Pleasant City, Ohio, area. It provides an additional review of ground water protection measures, incorporating State and local measures, whenever possible, for only those projects which request Federal financial assistance.

Dated: August 17, 1987.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 87-19658 Filed 8-26-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review by the Office of Management and Budget

August 21, 1987.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR § 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)

OMB Desk Officer—Robert Fishman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. Report title: Application for Prior Approval 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
Significant effect on small businesses is not expected.

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 conpetitive 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 for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company:

Agency Form Number: FR Y-2
OMB Docket Number: 7100-0171
Frequency: Event-generated
Reporters: Registered bank holding companies
Annual reporting hours: 35,743 hours
Significant effect on small businesses is not expected.

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 for Prior Approval 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
Significant effect on small businesses is not expected.

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 portions granted confidential treatment at applicant request (5 U.S.C. 552(b) (4) and (8)].

4. Report title: Application for Prior Approval 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–IF
OMB 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
Significant effect on small businesses is not expected.

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)].

Proposal to approve under OMB delegated authority the extension, without revision, of the following report:

1. Report Title: OTC Margin Stock Report
Agency Form Number: FR 2048
OMB Docket Number: 7100–0004
Frequency: quarterly
Reporters: Corporations with over-the-counter stock
Annual reporting hours: 100
Small businesses are not affected.

General description of the report: This information collection is voluntary [15 U.S.C. 78g, 78w] and is not given confidential treatment.

This report is used to gather information on certain corporations which have stock trading over-the-counter and that are being considered for inclusion on the Board's List of OTC Margin Stocks.

Board of Governors of the Federal Reserve System, August 21, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19604 Filed 8–26–87; 8:45 am]

BILLING CODE 6210–01–M

Agency Forms Under Review by the Office of Management and Budget

August 21, 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 CFR 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 instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial 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, Division 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, without revision, of the following reports:

1. Report title: Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer:

Agency Form Number: FR MSD–5
OMB Docket Number: 7100–0101
Frequency: On occasion
Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives

Annual Reporting Hours: 47
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78o–4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)].

This notice must be filed within 30 days after a person associated in a professional capacity with a bank municipal securities dealer terminates employment. The notice is a compliance vehicle for rules of the Municipal Securities Rulemaking Board and for related securities and banking laws. It is also a source document for updating information on interagency computer system of records.

2. Report title: Uniform Form for Registration as a Transfer Agent and for Amendment to Registration:
Agency Form Number: FR TA–1
OMB Docket Number: 7100–0099
Frequency: On occasion
Reporters: State number banks, bank holding companies, and nondeposit trust company subsidiaries of bank holding companies.
Annual Reporting Hours: 80
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [Section 17A(c) of the Securities Exchange Act of 1934; and 12 CFR 208.8(f)(2)] and is not given confidential treatment.

This interagency form fulfills the statutory registration requirements for entities acting as transfer agents and enables certain basic information changes concerning the transfer agents to become known by the supervisory agencies.

3. Report title: Notice Claiming Status as an Exempt Transfer Agent:
Agency Form Number: FR 4013
OMB Docket Number: 7100–0137
Frequency: On occasion
Reporters: Banks, bank holding companies, and trust companies
Annual Reporting Hours: 16
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78q–1(c)(1)] and is not given confidential treatment.

This notice provides a method for banks, bank holding companies, and trust companies who are subject to Federal Reserve Board supervision and who are engaged as a transfer agent on behalf of an issuer of securities to claim exemption from several of the Securities and Exchange Commission's rules applicable to registered transfer agents.

Board of Governors of the Federal Reserve System, August 21, 1987.
William W. Wiles,
Secretary of the Board.
[FR Doc. 87–19605 Filed 8–26–87; 8:45 am]
BILLING CODE 6210–01–M

Agency Forms Under Review by the Office of Management and Budget

August 21, 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 CFR 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 instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial 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, Division 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 for Prior Written Consent to Effect a Merger:
Agency Form Number: FR 2070
OMB Docket Number: 7100–0045
Frequency: On occasion
Reporters: State chartered banks that are members of the Federal Reserve System
Annual reporting hours: 1,540
Significant effect on small businesses is not expected.

General description of the report: This form provides information on the pro forma financial condition of the applicant, a description of the proposed merger and the advantages it offers to the public's needs and convenience. The form is used by the Federal Reserve to evaluate the proposed merger as to financial soundness, competitive acceptability and consistency with the public interest. The proposed revisions include clarifications, changes to conform with recent revisions of bank holding company application forms (FR Y–1, FR Y–2), and requests for certain financial data in accord with changes in the Board's capital guidelines.

This report is required by law [12 U.S.C. 1828 (c)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

2. Report title: Change in Bank Control Form:
Agency Form Number: FR 2081
OMB Docket Number: OMB No. 7100–0134
Frequency: On occasion
Reporters: Persons proposing to acquire control of a bank holding company or State member bank
Annual Reporting Hours: 11,067
Significant effect on small businesses is not expected.

General description of report: This form is mandatory under the Change in

Bank Control Act, which seeks to maintain public confidence in the banking system by preventing anti-competitive or otherwise adverse combinations of banks. The form requests information regarding the factors that must be considered by the Board under the statute, including a description of the proposal, and financial and employment data concerning the acquiring party. The proposed revisions include certain additional information and publication requirements pursuant to the Anti-Drug Abuse Act of 1986.

This information collection is required by law [12 U.S.C. 1817(j)]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

3. Report title: Applications for Membership in the Federal Reserve System:

Agency Form Number: FR 2083, 2083A–2083E
OMB Docket Number: 7100–0046
Frequency: On occasion
Reporters: Commercial banks and certain mutual savings banks
Annual Reporting Hours: 3,071
Significant effect on small businesses is not expected.

General description of the report: This application provides managerial, financial and structural data necessary for the Federal Reserve Board to evaluate a new or existing bank's application for admission to the Federal Reserve System pursuant to criteria established by statute and regulation (Regulation H). The proposed revisions would standardize the format of certain information and request certain additional information usually developed in the normal course of business in opening a new bank.

This information collection is authorized by law [12 U.S.C. 321–328]. Parts may be given confidential treatment at applicant's request [5 U.S.C. 552(b)(4)].

4. Report title: Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer:

Agency Form Number: FR MSD–4
OMB Docket Number: 7100–0100
Frequency: On occasion
Reporters: Banks who engage in activities as a municipal securities dealer and persons designated as municipal securities principals and representatives
Annual reporting hours: 773
Significant effect on small businesses is not expected.

General description of report: This information collection is mandatory [15 U.S.C. 78o–4(c)(5), 78q and 78w] and is given confidential treatment [5 U.S.C. 552(b)(6)]. The filing of this application is required of a Municipal Securities Dealer Bank (MSD) and a person associated with a MSD, prior to such person functioning in a professional capacity. This application serves to verify compliance with the rules of the Municipal Securities Rulemaking Board and with related securities and banking laws. It is also used as a source document for entry into an interagency computer system of records. The proposed revisions are deletion of certain spaces for notations by receiving agency personnel, since these items are rarely used; and changing the requested record of residential addresses from the past ten years to the past five, corresponding to changes in MSRB rule G–7.

Board of Governors of the Federal Reserve System, August 21, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19606 Filed 8–26–87; 8:45 am]

BILLING CODE 6210–01–M

Formation of, Acquisition by, or Merger of Bank Holding Companies; Alaska Mutual Bancorp.

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than September 4, 1987.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Alaska Mutual Bancorporation,* Anchorage, Alaska; to merge with United Bancorporation Alaska, Inc., Anchorage, Alaska, and thereby indirectly acquire United Bank Alaska, Anchorage, Alaska, and United Bank Alaska Southeastern, Juneau, Alaska.

Board of Governors of the Federal Reserve System, August 24, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19701 Filed 8–26–87; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds for Project Grants for Health Services to the Homeless Population

AGENCY: Public Health Service, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications are being accepted for a program of grants to provide primary health care services and substance abuse services to homeless populations. These grants will be administered under the provisions of Pub. L. 100–77, the "Stewart B. McKinney Homeless Assistance Act." A "homeless individual" is defined as one who lacks housing, including those persons in emergency shelters or in transition housing. The grants will be available to public or nonprofit private entities. HRSA will consider applications only in areas with sufficient concentration of homeless individuals to insure efficiency in the deployment of health care resources. Applications that can demonstrate broad based community support and linkages with other providers of critical support needs of this population such as the provision of emergency shelter and food will be given priority. The application must have a written plan and written commitment of active support of local resources. The application must contain the agreements required by statute.

DATE: To receive consideration as being on time, mailed applications must be postmarked on or before October 5, 1987. Hand delivered applications must be received by 5:00 PM on October 5, 1987.

FOR FURTHER INFORMATION CONTACT: Application kits (Form PHS 5161–1 with

revised factsheet DHHS Form 424 as approved by the Office of Management and Budget under control number 0348–0006) and additional information (including a complete copy of the applicable statutory provisions) may be obtained from, and completed applications should be mailed to, the appropriate Regional Health Administrator (See appendix).

SUPPLEMENTARY INFORMATION: Pub. L. 100–77 adds a new section 340 to the Public Health Service Act to authorize the Secretary, acting through the Administrator of HRSA, to award grants for the purpose of enabling grantees, directly or through contracts, to provide for the delivery of health care services, including primary care services, alcohol and substance abuse services, and mental health services, for homeless persons. The Fiscal Year 1987 Supplemental Appropriations Act (Pub. L. 100–71) provides $46 million for such grants, to remain available through September 30, 1988. Grantees must meet the following minimum qualifications: be a public or nonprofit private entity; have the capacity to efficiently administer the grant; and, for services provided under the grant that are covered by the approved State Medicaid plan, the entity must: (1) Have entered into a participation agreement under the State plan and be qualified to receive payments under the plan, or (2) the entity must have contracted for the provision of services with an organization which can meet these participation requirements. Under the statute, preference in the award of grants was given to applicants which: (1) Are experienced in the direct delivery of primary health care services to homeless individuals or medically underserved populations or are experienced in the treatment of substance abuse and in the provision of substance abuse services to homeless individuals or medically underserved populations; and (2) agree to provide health care services to homeless individuals through both public entities and private organizations. The purpose of the latter preference criterion is to encourage applicants to use a broad cross-section of community providers and to obtain maximum community support and participation.

Grantees will be required to provide the following services: primary health care services at locations assessible to homeless persons; substance abuse services, which may include detoxification and residential treatment for substance abuse provided in settings other than hospitals; 24-hour emergency health services; a system for referrals to mental health services; and a system for inpatient referral, outreach, and aid in establishing eligibility for and obtaining services under entitlement programs. A grantee may choose, in lieu of mental health referral services, to provide mental health services to homeless individuals either directly or through contract.

Grant funds may not be expended for the following: inpatient care except for residential treatment for substance abuse provided in settings other than hospitals; cash payments to recipients of services; or purchase or improvement of real property (other than minor remodeling) or purchase of major medical equipment unless waived by the Secretary under the provisions of the statute. Federal grant funds may not supplant existing public or private resources that are currently allocated to assist the homeless populations. Under section 340(e), the amount of federal grant funds may not exceed 75 percent of the cost of providing health care services under the grant. The applicant must make available non-Federal contributions equal to the remaining portion of providing health care services. Non-Federal contributions may be in cash or in-kind, fairly evaluated, including plant, equipment or services. Funds currently provided by the Federal Government, under this or other programs, or services assisted to any significant extent by the Federal Government, may not be counted toward the non-Federal contribution requirement. Any cash or in-kind contributions that, prior to February 26, 1987, were made available by any public or private entity for the purpose of assisting homeless individuals, including the provision of health services for the homeless, may not be counted in meeting the non-Federal matching requirement. The Secretary may waive the 25 percent contribution requirement if the applicant is a private nonprofit community health center (CHC) as defined under section 330 of PHS Act and the Secretary determines that it is not feasible for the applicant to comply with that requirement.

Application Evaluation Criteria

Each grant application will be evaluated based upon the following criteria:

(1) The documented number of homeless persons to be served and the extent of the unmet need for the provision of health care services.

(2) The adequacy and feasibility of the applicant's proposed delivery system.

(3) The extent to which the project plan has received written commitments for active participation from community health care providers.

(4) The qualifications and experience of the proposed project staff.

(5) The adequacy of the proposed budget and the feasibility of the proposed plans for continuation without Federal assistance after the project period.

Administration

To receive an award, the applicant must demonstrate an ability to follow all administrative requirements contained in the authorizing statute and must submit a Statement of Agreement in which the applicant agrees to comply with requirements of the statute concerning the provision of matching funds; the provision of specified health services; restrictions on the use of funds; limitations on charges for services; administration of grants; and limitation on administrative expenses. With regard to charges for services grantees must provide health care, regardless of the patient's ability to pay. The fees, if any, will be set according to a schedule of charges that are made available to the public and will be adjusted to reflect the income and resources of the homeless person, and the charges may not be imposed on any homeless individual with an income below the Federal poverty income level.

Grantees may not spend more than 10 percent of grant awards on administrative expenses. Because of the newness of the program, no predetermined or average grant award level can be projected until the size of the population groups to be served is determined.

Other Award Information

This program is considered to be subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs and 45 CFR Part 100. Executive Order 12372 allows States/territories the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available by DHHS (Form PHS–5161 with revised facesheet DHHS 424) will contain a listing of States which have chosen to set up a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at

the same time it is submitted to the Regional Office.

HRSA has applied for a listing for this program in the OMB Catalog of Federal Domestic Assistance.

Dated: August 24, 1987.

David N. Sundwall,

Administrator.

Appendix

Regional Health Administrators

Edward J. Montminy, Regional Health Administrator, DHHS Region I., John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 565–1426

Vivian Chang, M.D., Regional Health Administrator, DHHS Region II, 26 Federal Plaza, New York, New York 10278, (212) 264–2560

William Lassek, M.D., Regional Health Administrator, DHHS Region III, P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596–6637

John Whitney, Regional Health Administrator, DHHS Region IV, 101 Marietta Tower, Suite 1202, Atlanta, Georgia 30323, (404) 331–2316

E. Frank Ellis, M.D., Regional Health Administrator, DHHS Region V, 300 South Wacker Drive, Chicago, Illinois 60606, (312) 353–1385

John M. Dyer, M.D., Regional Health Administrator, DHHS Region VI, 1200 Main Tower Building, Dallas, Texas 75202, (214) 767–3879

Mr. Youn Bock Rhee, Regional Health Administrator, DHHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374–3291

Audrey H. Nora, M.D., Regional Health Administrator, DHHS Region VIII, 1961 Stout Street, Denver, Colorado 30294, (303) 844–6163

Sheridan L. Weinstein, M.D., Regional Health Administrator, DHHS Region IX, 50 United Nations Plaza, San Francisco, California 34102, (415) 556–5810

Ms. Dorothy H. Mann, Regional Health Administrator, DHHS Region X, 2901 Third Avenue, Mail Stop 405, Seattle, Washington 98121, (206) 442–0430.

[FR Doc. 87–19676 Filed 8–26–87; 8:45 am]

BILLING CODE 4160–15–M

Public Health Service

Statement of Organization, Functions, and Delegations of Authority; National Institutes of Health

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently in pertinent part at 52 FR 16457, May 5, 1987) is amended to reflect the following changes within the National Cancer Institute (HNC): (1) Abolish the Office of Program Planning and Analysis (HNC12) in the Office of the Director (HNC1); (2) establish the Office of Program Operations and Planning (HNC16) in the Office of the Director (HNC1); and (3) revise the functional statement of the Office of Administrative Management (HNC13) in the Office of the Director (HNC1).

The proposed changes will: (1) Clarify, realign, and reconstitute the functions and responsibilities of designated organizational entities within the Office of the Director of the National Cancer Institute in order to achieve a more accurate, efficient, and effective assignment of functions; and (2) provide adequate leadership and recognition for important Institute activities.

Sec. HN–B, Organizations and Functions is amended as follows: (1) Under the heading *National Cancer Institute (HNC), Office of the Director (HCN1),* delete the title and statement for the *Office of Program Planning and Analysis (HNC12)* and the statement for the *Office of Administrative Management (HNC13)* in their entirety.

(2) Under the heading *National Cancer Institute (HNC), Office of the Director (HNC1),* insert the statement for the *Office of Administrative Management (HNC13)* and the title and statement for the *Office of Program Operations and Planning (HNC16)* as follows:

Office of Administrative Management (HNC13). (1) Plans, directs, and coordinates the administrative management activities of the Institute. Areas of responsibility include grants management; contracts management; finance and budget; personnel; management analysis; financial data and statistics; office automation, automatic data processing, and management information systems; and other areas related to the general administration of the Institute; (2) advises the Institute Director and senior staff on the administrative management of the Institute and its programs; (3) develops and promulgates policies, guidelines and procedures on matters relating to the administrative management of the Institute; and (4) formulates and executes action plans in response to administrative problems or initiatives, directives, regulations, legislation, or anything else that might require administrative action or have administrative implications.

Office of Program Operations and Planning (HNC16). (1) Provides advice, guidance, and assistance in the preparation, analysis, implementation, and monitoring of Institute-wide and Divisional plans including plans for specific programs or projects; (2) provides direct support in the form of analysis, advice, and assistance to the Director, NCI, in both the decision-making process and in the development, documentation, implementation, and monitoring of policy and operating decisions; (3) provides professional advice, technical assistance, and guidance in implementing the planning decisions made by senior Institute officials; (4) prepares or coordinates the preparation of regular, periodic reports to higher echelons on Institute activities (e.g., Biennial Report) as well as special reports, documents, and speeches; (5) serves as the Institute focal point for legislative analysis, planning, implementation, and liaison activities; and (6) provides advice on and assistance with the Institute's program evaluation and assessment efforts including coordination and preparation of required evaluation reports and plans and the provision of instruction and advice to Institute staff on evaluative methods and techniques.

Dated: August 17, 1987.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 87–19629 Filed 8–26–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–040–07–4322–02]

Cedar City District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 992–463 that a meeting of the Cedar City District Grazing Advisory Board will be held on Thursday, October 1, 1987. The meeting will begin at 9:30 a.m. in the Escalante Area Office located on State Highway 12 approximatley one mile west of Escalante, Utah.

The meeting will consist of a short discussion at the Area Office followed by a field tour of the Lower Cattle Allotment. The purpose of the tour is to discuss the Allotment Management Plan and proposed use adjustments needed following an evaluation of monitoring data. Those planning on going on the tour should provide their own transportation and a lunch.

Grazing Advisory Board meetings are open to the public. Interested persons may make oral statements or file written

statements for the Board's consideration. Oral statements will be received at 9:30 a.m. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, UT 84720, phone 801–586–2401, by September 28, 1987. Depending on the number of persons wishing to make statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meetings will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Dated: August 21, 1987.

Morgan S. Jensen,

District Manager.

[FR Doc. 87–19702 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-DQ-M

[OR120–6310–01: GP7–275]

Meeting of the Coos Bay District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting of Coos Bay District Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94–579 and 43 CFR, Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Tuesday, September 29, 1987, beginning at 9:00 a.m. The meeting will be held in the conference room of the BLM Coos Bay District Office, 333 South Fourth Street, Coos Bay, Ore.

Agenda: The agenda for the meeting will include:

1. Election of Officers.
2. Discussion of the background and current state of BLM's western Oregon planning process, leading up to the Proposed State Director Guidance Topics listed in the recent mailer to the general public. Deliberations should result in a Council recommendation to the District Manager, which will be entered as public comment to the proposed guidance.
3. Discussion of the current state of management of the Dean Creek Elk Viewing Area.
4. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council from 10:00 a.m. to 10:30 a.m. on Tuesday, September 29, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Monday, September 28, 1987 (Telephone 503–269–5880).

ADDRESS: Bureau of Land Management, Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR 97420.

Minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: August 18, 1987.

Robert T. Dale,

District Manager.

[FR Doc. 87–19638 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-33-M

[UT–060–4322–02]

Meeting of the Moab District Grazing Advisory Board

August 20, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Moab District Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 92–463 that a meeting of the Moab District Grazing Advisory Board will be held on October 1, 1987. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management District Office at 82 East Dogwood, Moab, Utah 84532.

The agenda for the meeting will include:

1. Proposed Grazing Regulations Changes.
2. Shrub Die-off Update.
3. Grand Change-of-Class RMP Amendment.
4. Grazing Decision Status, Grand RMP.
5. RMP Status (San Juan and San Rafael).
6. Indian Creek Riparian Demonstration Area.
7. Range Improvement Prioritization.
8. San Rafael Grazing Management Problems.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 p.m. and 4:00 p.m. on October 1, 1987 or file written statements for the Board's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, P.O. Box 970, Moab, Utah 84532, by September 25, 1987.

Summary minutes of the Board meeeting will be maintained in the District Office and will be available within thirty (30) days following the meeting.

Kenneth V. Rhea,

Acting District Manager.

[FR Doc. 87–19639 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-DQ-M

[CO–010–07–4332–09]

Craig, Colorado Advisory Council Meeting

Time and date: October 7, 1987 at 10:00 a.m.

Place: Craig District Office, 455 Emerson Street, Craig, Colorado.

Status: Open to public; interested persons may make oral statements at 10:30 a.m. Summary minutes of the meeting will be maintained in the Craig District Office.

Matters to be considered:

1. Role of the Advisory Council.
2. Grazing Regulations.
3. Toxic Waste.
4. Land Disposal, Exchanges, and Access.
5. Riparian Management.
6. BLM's Role in Developing Sections of the Yampa River for Recreation.

Contact person for more information: Mary Pressley, Craig District Office, 455 Emerson Street, Craig, Colorado 81625–1129, Phone: (303) 824–8261.

Dated: August 17, 1987.

Robyn Shoop,

Acting Associate District Manager.

[FR Doc. 87–19623 Filed 8–26–87; 8:45 am]

BILLING CODE 4310-JB-M

[Alaska AA–48539–AF]

Proposed Reinstatement of a Terminated Oil and Gas Lease; Fairbanks Meridian, AK

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease AA–48539–AF has been received covering the following lands:

Fairbanks Meridian, Alaska

T. 21 S., R. 7 E.,
Sec. 3, NW¼SW¼.
(40 acres.)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to $5 per acre per year, and royalty increased to 16⅔ percent. The $500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from March 1,

1985, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA–48539–AF as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective March 1, 1985, subject to the terms and conditions cited above.

Dated: August 19, 1987.

Kay F. Kletka,

Chief, Branch of Mineral Adjudication.

[FR Doc. 87–19640 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–JA

[WY–920–07–4111–15; W–62396]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–62396 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this Federal Register notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–62396 effective March 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Fred O'Ferrall,

Acting Chief, Leasing Section.

[FR Doc. 87–19704 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–22–M

[MT–930–07–4212–11; M–9415–A]

Order Providing for Opening of Public Lands; North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This order restores 40 acres of public land to the operation of the public land and mining laws. The land has been and will remain open to mineral leasing. The lands affected reverted to the United States under the provisions of the Recreation and Public Purposes Act.

EFFECTIVE DATE: September 28, 1987.

FOR FURTHER INFORMATION CONTACT: James Binando, BLM, Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6090.

The segregation created by the classification of May 7, 1969, and continued on issuance of patent number 33–71–0014 to Golden Valley County, North Dakota on September 15, 1970, has terminated pursuant to the reversionary provisions of the Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq. (1982). Under the reversion, full title to the following-described land was restored to the United States:

Fifth Principal Meridian

T. 139 N., R. 104 W.,
Sec. 6, SE¼SE¼.

The area described contains 40 acres in Golden Valley County.

At 9 a.m. on September 28, 1987, the land will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 28, 1987, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on September 28, 1987, the land will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. § 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

John A. Kwiatkowski,

Deputy State Director, Division Lands and Renewable Resources.

August 19, 1987.

[FR Doc. 87–19624 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–DN–M

[AZ–020–7–4212–13; A–18968]

Public Land Exchange; Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of continuation.

SUMMARY: Notice is hereby given that the segregative effect of the Notice of Realty Action published in the Federal Register on September 20, 1985 at 50 FR 38,214, for public land exchange case A–18968 is to be continued for an additional two (2) years.

SUPPLEMENTARY INFORMATION: Private exchange case A–18968 is under appeal to the Department's Interior Board of Land Appeals. The Bureau of Land Management does not anticipate completing action on the case prior to September 19, 1987. The Notice of Realty Action published on September 20, 1985, segregated the public lands involved from entry under the public land and mining laws but not from entry under the mineral leasing laws.

DATES: The effective date of this action is September 19, 1987.

FOR FURTHER INFORMATION CONTACT: Mike Berch, Realty Specialist, Kingman Resource Area, 2475 Beverly Avenue, Kingman, Arizona 86401, (602) 757–3161.

Dated: August 18, 1987.

Henri R. Bisson,

District Manager.

[FR Doc. 87–19641 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–32–M

[AZ–050–07–4212–13: A–22677]

Realty Action, Land Exchange with Private Party; La Paz and Mohave Counties, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—land exchange with private party, La Paz and Mohave Counties, Arizona.

SUMMARY: The following described lands and interests therein have been determined to be suitable for disposal for exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 3 N., R. 15 W.,
Sec. 2, lots 1–4,
Sec. 2, remainder of section north of I–10.
T. 4 N., R. 15 W.,
Sec. 25, S½,
Sec. 36, W½.

Containing 879.2 acres, more or less.

In exchange for these lands, the United States will acquire the following described lands from Crowder Investments, an Arizona corporation.

Gila and Salt River Meridian, Arizona

T. 12 N., R. 19 W.,
Sec. 11, SW¼SW¼,
T. 14 N., R. 18 W.,
Sec. 1, lots 3 and 4, N½SW¼,
Sec. 5, lots 1–4, S½, S½NE¼, S½NW¼,
Sec. 9, NW¼, S½, N½NE¼, SE¼NE¼, E½SW¼NE¼, SW¼SW¼NE¼,
Sec. 11, E½,
Sec. 15, all,
Sec. 23, all,
T. 15 N., R. 19 W.,
Sec. 19, W½NE¼,
Sec. 21, N½SE¼, NE¼NW¼, SW¼NE¼, SE¼SW¼,
Sec. 25, S½, NW¼NE¼, SE¼NW¼, W½SW¼NW¼,
Sec. 29, E½NE¼SE¼,
Sec. 31, N½SE¼SE¼, N½NE¼SW¼, NW¼NW¼SE¼,
Sec. 33, S½SW¼NE¼, N½NW¼SE¼, S½SE¼SW¼,
Sec. 35, NW¼, W½SW¼, SE¼NE¼SW¼,
T. 19 N., R. 19 W.,
Sec. 23, SW¼.

Containing 4,313.81 acres, more or less.

The public land to be transferred will be subject to the following terms and conditions:

1. Reservations to the United States: (a) Right-of-way for ditches and canals pursuant to the act of August 30, 1890; (b) all the oil and gas in S½, sec. 25, T. 4 N., R. 15 W., and with it the right to prospect for, mine, and remove same.

2. Subject to: (a) Those rights for a telephone line granted to Southwestern Telephone Company by right-of-way No. A–9595; (b) those rights for a 12 kV electrical line granted to Arizona Public Service Company by rights-of-way No. A–19095 and A–7979; (c) those rights for a road granted to Vicksburg Land Association by right-of-way No. A–18959; (d) those rights for public highways under R.S. 2477 and to Arizona Department of Transportation by right-of-way No. AR–031625; and (e) the lands in sec. 2, T. 3 N., R. 15 W., and sec. 36, T. 4 N., R. 15 W., are subject to a reservation of all minerals.

Private lands to be acquired by the United States will be subject to a reservation of all minerals.

The value of the lands to be exchanged is approximately equal. The acreages will be adjusted or money will be used to equalize the values after the final appraisal is received.

Publication of this Notice will supersede and cancel that portion of the NORA published October 10, 1985, Vol. 50, No. 197, pertaining to property in T. 3 N., R. 15 W., and NORA published December 18, 1986, Vol. 51, NO. 222, as to property in T. 4 N., R. 15 W., and will segregate the subject lands from all appropriations under the public land laws (only affects S½, sec. 25, T. 4 N., R. 15 W.). This segregation will terminate upon the issuance of a document conveying such lands, 2 years from the date of this publication, or upon publication of a Notice of Termination.

DATES: For a period up to October 13, 1987, interested parties may submit comments to Mike Ford, Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, or Bill Childress, Area Manager, Lower Gila Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Mike Ford, Area Manager, Havasu Resource Area, Bureau of Land Management, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86403, 602–855–8017.

Dated: August 20, 1987.

Robert Moody,

Acting District Manager.

[FR Doc. 87–19642 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–32–M

[CA–060–07–4212–11; CA20057]

Classification of Public Lands for Recreation and Public Purposes: San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, CA 20057.

SUMMARY: The following described public land has been examined and found suitable for recreation and public purposes. The land is hereby classified as suitable for recreation and public purposes under the Recreation and Public Purposes Act (R&PP) of June 14, 1926, as amended (44 Stat. 741; 43 U.S.C. 869 et. seq.) and the regulations thereunder (43 CFR 2710; 2912):

San Bernardino Meridian, California

T.5N., R.14E.

Section 15: NW¼SW¼, Within and more specifically described as:

Beginning at NW corner of SW quarter of Section 15, T5N, R14E, SBM, being westerly line of Section 15, thence southerly along said Section line 15, a distance of 240.6 feet, thence S 84 34'E 1000 feet plus or minus to point of beginning of said lease, thence N 5 26'E a distance of 300 feet, thence S 84 34'E a distance of 1000 feet, thence S 5 25'W, a distance of 300 feet, thence N 84 34'W to the point of beginning, an area of 299,692.8 sq. ft. or 6.88 acres.

DATE: For a period up to October 13, 1987, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Objections will be reviewed by the State Director, Bureau of Land Management, who may sustain, vacate or modify this realty action. In the absence of any objection, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Ronald Morrison, Needles Resource Area, (619) 326–3896. Information relating to this action, including the environmental assessment and land report, is available for review at the California Desert District Office, 1695 Spruce Street, Riverside, California 92507.

SUPPLEMENTARY INFORMATION: The Cadiz Community Improvement Association, a non-profit organization, has filled an application to lease the above described public land under authority of the Act of June 14, 1926, as amended. The proposed public use is for the lands to be utilized as a playground, ball park and rest area for the unincorporated community of Cadiz, California.

The classification is consistent with the regulations set forth in 43 CFR 2410. The land is located between Cadiz and County Road 199050 and is physically suitable for the proposed use.

The lease, when issued, will be subject to the provisions of the R&PP Act, applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. All mineral deposits in the land so leased and/or sold, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations as the Secretary of the Interior may proscribe.

2. A right-of-way therein for ditches and canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945.

3. An existing distribution line right-of-way granted by the United States to Southern California Edison, its successors and assigns by right-of-way grant LA–0166523, under authority of the Act of March 4, 1911, (43 U.S.C. 961).

The land is not required for any federal purposes. The lease is consistent with the objectives and recommendations of the California Desert Plan.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of other public land laws, and the mining laws, except for mineral leasing. The segregative effect will end either upon issuance of patent, or, failing the consummation of a lease, 18 months from the date of publication, whichever occurs first.

Date: August 17, 1987.

Gerald E. Hillier

District Manager.

[FR Doc. 87–19643 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–40–M

[CO-070-07-212-13; C-43116]

Exchange of Lands in Eagle County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of exchange of lands.

SUMMARY: Pursuant to sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), the Bureau of Land Management, Glenwood Springs Resource Area, has identified parcels of public and private land as preliminarily suitable for exchange.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this proposed exchange, including the planning documents and environmental assessment, is available for review in the Glenwood Springs Resource Area Office at 50629 Highway 6 & 24, P.O. Box 1009, Glenwood, Springs, Colorado 81602.

For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to the District Manager, Grand Junction District, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this Notice of Realty Action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following-described lands have been determined to be preliminarily suitable for exchange under Sections 205, 206, 302(b) and 310 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Disposal Parcel 175—40.00 Acres

T. 2 S., R. 83 W.,
Sec. 31: SE¼NW¼.

Disposal Parcel 174—42.36 Acres

T. 3 S., R. 83 W.,
Sec. 5: Lot 1.

Disposal Parcel 200—282.57 Acres

T. 3 S., R. 83 W.,
Sec. 4: Lot 2, SW¼NE¼, S½NW¼, N½SW¼, NW¼SE¼.

Disposal Parcel 303—320.00 Acres

T. 3 S., R. 83 W.,
Sec. 2: S½NW¼, N½SW¼, SW¼SW¼;
Sec. 3: N½SE¼, SW¼SE¼.

Offered Private Land

Parcel A—Approximately 129.80 Acres

T. 3 S., R. 83 W.,
Sec. 1: Portion of Lots 3 & 4 west of Highway 131;
Sec. 2: Lots 1 & 2.

Parcel B—400.00 Acres

T. 2 S., R. 83 W.,
Sec. 28: S½S½;
Sec. 33: NE¼NE¼;
Sec. 34: SW¼NE¼, NW¼.

Parcel C—160.00 Acres

T. 2 S., R. 83 W.,
Sec. 31: N½NE¼, NE¼NW¼;
Sec. 32: NW¼NW¼.

Any adjustments to offered private land to equalize values would be made in T. 2 S., R. 83 W., Sec. 32, N½NW¼.

These 684.93 acres of public land under the jurisdiction of the Bureau of Land Management have been identified as preliminarily suitable for exchange. The determination has been made in response to a Bureau-benefiting exchange proposal developed cooperatively between the Bureau and J. Perry Olsen.

In the proposal, 689.80 acres of offered private land with public values would be exchanged for 684.93 acres of public land which have been identified for disposal. The exchange proposal has been made to facilitate the consolidation of public land holdings. The consolidation would increase managerial efficiency and provide public access to natural resources on public lands being managed by the Bureau.

The values of the lands to be exchanged have been determined to be approximately equal. Upon completion of the final appraisal of the lands, the acreages will be adjusted or money will be used to equalize the exchange values.

Terms and Conditions

The following reservations would be made in a patent issued for public land:

For All Parcels

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. A reservation to the Untied States of all mineral deposits of known value.

3. A reservation for all existing and valid land uses, including grazing leases, unless waived.

For Parcel 174

1. The reservation of oil and gas lease C-29265.

For Parcel 175

1. The reservation of oil and gas lease C-34921.

For Parcel 200

1. The reservation of oil and gas lease C-29265.

For Parcel 303

1. The reservation of highway rights-of-way C-0138 and C-03118.

2. The reservation of telephone line right-of-way C-15148.

3. The reservation of oil and gas lease C-44356.

The publication of the notice in the **Federal Register** will segregate the public lands described above to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be considered as filed and shall be returned to the applicant.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 87-19708 Filed 8-26-87; 8:45 am]

BILLING CODE 4310-JB-M

[OR-010-07-4212-13:GP7-265]

Realty Action; Exchange of Public and Private Lands in Lake and Harney Counties, OR

The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

T. 30 S., R. 23 E., W.M., Oregon

Section 34: Lots 1 and 2, NE¼, N½SE¼.

T. 30 S., R. 23 E., W.M., Oregon

Section 3: Lots 1, 2, 3 and 4, S½ NE¼, S½ NW¼.

comprising 653.24 acres of public land.

In exchange for these lands, the United States will acquire the following described lands from Leehman & Sons, Inc.

T. 28 S., R. 24 E., W.M., Oregon

Section 22: SE¼ NW¼, NE¼SW¼, S½SW¼,
Section 27: S½NE¼, NW¼, N½SW¼, SE¼.

comprising 640 acres of private land.

The purpose of this exchange is to acquire the non-Federal land which have high public values for recreation and wildlife habitat. The land to be acquired lies within an area heavily used by outdoor recreationists and is in a designated Bighorn sheep range. The pubic interest will be served by completing the exchange.

The value of the lands to be exchanged are considered equal; however, if equalization of value is necessary it will be achieved by payment to the United States by Leehmann & Sons, Inc. of funds in an

amount not to exceed 25% of the total value of the lands to be transferred out of Federal ownership.

The land to be transferred from the United States will be subject to the following reservations, terms and conditions.

Reservations:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890, 26 Stat. 391; 43 U.S.C. 945;

2. All minerals in the lands subject to this exchange including, without limitation, substances subject to disposition under the general mining laws, the general mineral leasing laws, the Materials Act and the Geothermal Steam Act.

Subject to:

1. Those rights for road purposes pursuant to BLM right-of-way OR 42903, 60 feet in width, issued under section 507 of the Federal Land Policy and Management Act of 1976; and

2. Those rights for road purposes granted to the State of Oregon, pursuant to highway right-of-way OR 017183, 100 feet in width, issued under the Act of November 9, 1921, (42 Stat. 212); and

3. Those rights for powerline purposes granted to Harney Electric Coop., Inc., pursuant to powerline right-of-way OR 4004, 20 feet in width, issued under the Act of March 4, 1911, (43 U.S.C. 9).

Publication of this notice segregates the public lands from operation under the public land and mining laws for a period of two (2) years from the date of first publication. The segregative effect of the notice of realty action on the public lands shall terminate upon issuance of patent or other document of conveyance to such lands, upon publication in the **Federal Register** of a termination of the segregation or two (2) years from the date of its publication, whichever occurs first.

Further information concerning the exchange, including the Environmental Assessment is available for review at the Bureau of Land Management, Warner Lakes Resource Area Office, 1000 South 9th Street, Lakeview, Oregon 97630, telephone (503) 947–2177.

For a period of forty-five days from the date of first publication, interested parties may submit comments to the Lakeview District Manager, Bureau of Land Management at the above address. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: August 18, 1987.

Dick Harlow,

Associate District Manager.

[FR Doc. 87–19730 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–060–07–4410–08]

Availability of Draft Environmental Impact Statements and Resource Management Plan; Central Artic Management Area Wilderness Study Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Draft Utility Corridor Resource Management Plan/Environmental Impact Statement (RMP/EIS): and Draft Environmental Impact Statement on the Preliminary Wilderness Recommendations for the Central Arctic Management Area Wilderness Study Area (CAMA WSA), Arctic District Office, Alaska.

The Bureau of Land Management announces the availability of the Utility Corridor Draft RMP/EIS and Draft EIS on preliminary CAMA WSA wilderness recommendations for public comment and review. This document analyzes and reviews land use planning options for approximately 6,080,000 acres of federal land located in and near the Utility Corridor north of Fairbanks, Alaska. This land area includes the Central Arctic Management Area (CAMA). Section 1001 of the Alaska National Interest Lands Conservation Act of December 2, 1980, directs the Secretary of the Interior to review CAMA lands for their oil and gas resources, wildlife resources and wilderness characteristics and to make recommendations for wilderness designation. This wilderness review has been conducted as a component of the RMP and wilderness recommendations have been integrated into the RMP land use options. The BLM also recommends the designation of 13 new Areas of Critical Environmental Concern (ACEC).

A copy of the Draft RMP/EIS with the Draft EIS on preliminary wilderness recommendations will be sent to all individuals, government agencies and groups who have expressed an interest in the Utility Corridor RMP planning effort and requested copies. Comments on the Draft RMP/EIS, preliminary wilderness recommendations and recommended ACECs will be accepted until November 30, 1987. All comments must be sent to: M. Thomas Dean, Arctic District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703.

Public meetings on the Draft RMP/EIS and/or hearings on wilderness and subsistence aspects of the plan will be held during the 90 day comment period at times and places to be announced later. The schedule for the public hearings addressing the wilderness aspects of the plan is as follows:

September 29, 1987—Barrow, Alaska. North Slope Borough Chambers. 1:00 p.m. to 4:00 p.m.

October 7, 1987—Fairbanks, Alaska. Noel Wien Library, 1215 Cowles Street. 1:00 p.m. to 4:00 p.m.

October 9, 1987—Anchorage, Alaska. Anchorage Museum of History and Art, 121 W. 7th Ave. 1:30 p.m. to 4:30 p.m.

Thirty days notice shall be provided to attendees of meetings or hearings to submit or further clarify views expressed.

SUMMARY: Five alternatives for managing BLM administered lands in the Utility Corridor planning area are proposed in the Draft RMP/EIS. Each alternative recognizes the transportation of energy resources as the primary function of the Utility Corridor and discusses the following issues:

1. Mineral and Commercial (Node) Development.
2. Land Disposals and Acquisitions.
3. Recreation.
4. Access.
5. Subsistence.
6. Wilderness.
7. Wildlife Resources.

The preferred alternative emphasizes development of the recreational opportunities within the Utility Corridor. Alternative A is the "no action" alternative; it proposes continuation of present management throughout the planning area. Alternative B represents a program of environmental protection and enhancement; this alternative emphasizes wilderness recommendations. Alternative C focuses on the development of economic opportunities in the planning area by maximizing land available for mineral development; it also provides at least as many opportunities for recreational development as in the preferred alternative. Alternative D is a land disposal option. All currently withdrawn lands would be opened to state selection and present management would continue on remaining lands.

Wilderness

The Draft Wilderness EIS included as an appendix to the RMP/EIS is a draft for both a Final EIS on the plan and a Final legislative EIS on the wilderness element of the plan. The Draft Wilderness EIS assesses the impacts of managing CAMA WSA lands (3,680,000 acres) as wilderness or non-wilderness. The alternatives analyzed include: (1) A no wilderness alternative, (2) an all wilderness alternative, (3) a partial wilderness alternative and (4) a preferred wilderness alternative. A no action alternative was considered, but not analyzed in detail because there is no existing land use plan for CAMA WSA lands. The preferred wilderness alternative was incorporated with the RMP preferred alternative.

The acreages considered suitable and unsuitable for wilderness recommendation under each wilderness alternative are as follows:

Alternative	Suitable acres	Unsuitable acres
No	0	3,680,000
All	3,365,000	316,000
Partial	486,000	3,194,000
Preferred	41,000	3,369,000

All wilderness recommendations at this time are preliminary recommendations subject to change during administrative review. The BLM recommendations will be forwarded to the Secretary of the Interior and ultimately, from the Secretary to the President and the Congress. The final decision on wilderness designation rests with Congress.

Areas of Critical Environmental Concern

Thirteen Areas of Critical Environmental Concern (ACES) including one Research Natural Area (RNA) would be designated under the preferred alternative. The ACECs and use limitations are listed below:

1. Galbraith Lake ACEC (115,000 acres). This area has the highest concentration of historic and prehistoric resources of any area yet surveyed within the Utility Corridor. Particular care will be exercised in permitting activities within the area; no campgrounds, other recreational facilities or FLPMA leases for guiding services will be allowed.

2. Ivishak River ACEC (5,120 acres). The lower Ivishak River contains the highest concentration of overwintering arctic char in the central arctic management area. The area will be closed to mineral entry, no gravel extraction will be allowed, nonoccupancy stipulations will apply to mineral leases. Only temporary and casual use permits will be issued.

3. Jim River ACEC (200,320 acres). The Jim River drainage is an excellent sport fishery, contains a rich concentration of archaeological sites, is of high scenic quality and contains known raptor nesting sites including peregrine falcon. The area's resources are threatened by present and potential developments and activities including placer mining, gravel extraction, roads and related facilities and recreational use. A designated area of the Jim River floodplain will be closed to gravel extraction, the Jim River streambed will be closed to mineral entry to the upstream limit of anadromous fish spawning, nonoccupancy stipulations will apply for mineral leasing, and mining plans of operation will be required prior to surface-disturbing activities.

4. Kanuti Hot Springs ACEC (640 acres). This is an undeveloped hot springs about 12 miles from the Dalton Highway. Most hot springs in Interior Alaska are developed for commercial or recreational uses and there is interest in developing this hot spring. Undeveloped hot springs are important habitat for wildlife and rare plant species. This hot springs area will be closed to FLPMA Leases at least until such time as intensive inventory of the area can be completed to determine what level of development (if any) is appropriate.

5. Nigu-Iteriak ACEC (64,062 acres). This area contains known archaeological resources, including two potential national register sites; contains unique geological resources, including ice-cored kame terraces and a collapsed pingo; and exhibits high scenic quality. The southern (upper Nigu) portion of the area is also bordered by two park system wilderness areas. The upper Nigu portion of this ACEC would be closed to mineral entry and leasing. Particular care will be exercised in authorizing any activities within the ACEC.

6. Nugget Creek ACEC (3,300 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities taking place.

7. Poss Mountain ACEC (600 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities taking place.

8. Sagwon Bluffs ACEC (42,240 acres). This is habitat for several species of raptors, including peregrine falcon, and contains at least one sensitive plant species. Due to its proximity to the Dalton Highway, this area is potentially threatened by surface-disturbing activities. Protective measures for peregrine falcon will be those contained in the Peregrine Falcon Recovery Plan (September 1982).

9. Slope Mountain ACEC (2,600 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of

access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities taking place.

10. Snowden Mountain ACEC (19,520 acres). This area exhibits important geologic and associated paleontological resources including excellent exposures of Devonian and lower Paleozoic rocks, Devonian corals and Cambrian trilobites. This area also contains two natural salt lick sites used by Dall's sheep. The area immediately surrounding the lick sites (up to ¼ square mile each) will be closed to mineral entry and location. Particular care will be exercised in permitting the sale of mineral materials and in authorizing any activities to ensure no undue disturbance of sheep habitat or hindrance of access to lick sites.

11. Sukakpak Mountain ACEC (2,944 acres). This mountain exhibits unique geologic structures, folds and faults and is in an excellent location for public viewing. The area is also the site of a rare plant species and offers one of the more outstanding scenic views along the Dalton Highway. This area also is a potential source of gravel. Mineral material sales will not be allowed on the slopes of this mountain. In all permitted activities the emphasis will be on preservation of the ACEC's scenic qualities.

12. Toolik Lake ACEC and RNA (34,560 acres). This area is representative of a north slope lake and tundra biome. A large number of research projects have been based in and around this lake area and the University of Alaska maintains a research facility at this site. Recreational camping and guiding operations will be restricted to the northeastern portion of the lake and any campsite development will carefully assess the impacts to ongoing research. Special consideration will be given to scientific research in progress in the area.

13. West Fork Atigun ACEC (4,700 acres). This is a Dall's sheep lambing area and contains a natural salt lick. The area immediately surrounding the lick site (up to ¼ square mile) will be closed to mineral entry and location. Particular care will be exercised in authorizing any activities in the ACEC to avoid undue disturbance of habitat or hindrance of access to that habitat. Plans of operation will be required prior to any surface-disturbing mining activities.

DATE: Comments will be accepted until November 30, 1987.

ADDRESS: Comments should be sent to: M. Thomas Dean, Arctic District Manager, Bureau of Land Management, 1541 Gaffney Road, Fairbanks, Alaska 99703.

FOR FURTHER INFORMATION OR COPIES CONTACT: Dave Ruppert, Project Manager, Bureau of Land Management, Arctic District Office, 1541 Gaffney Road, Fairbanks, Alaska 99703. Telephone Number: (907) 356-5182.

Dated: August 18, 1987.

Michael J. Penfold,

State Director.

[FR Doc. 87-19601 Filed 8-26-87; 8:45 am]

BILLING CODE 4310-84-M

[ID-040-4322-09]

Salmon District, Availability of the Rangeland Program Summary (RPS) on the Lemhi Resource Area Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Department of Interior has prepared a Rangeland Program Summary (RPS) on the Lemhi Resource Area Environmental Statement.

The Rangeland Program Summary (RPS) summarizes the grazing decisions reached as a result of the Lemhi Resource Management Plan/Environmental Impact Statement (RMP/EIS) and for the 8 grazing allotments from the Ellis-Pahsimeroi EIS area which are now part of the Lemhi Resource Area. These decisions, based on the information provided from the planning and consultation process, will give direction for range management, in the Lemhi Resource Area, towards the improvement and maintenance of the range resource according to a multiple-use and sustained yield concept. The decisions include: (1) The kind of livestock; (2) the period of grazing use; (3) the level of grazing use; and (4) the allotments within which grazing use will occur. The RPS also summarizes the rangeland monitoring and evaluation efforts to be made.

Copies of the Rangeland Program Summary are available for review at the following location.

FOR FURTHER INFORMATION CONTACT: Jerry Wilfong, Bureau of Land Management, P.O. Box 430, Salmon, ID 83467; telephone (208) 756-5400.

Dated: August 17, 1987.

Robert W. Heidemann,

Associate District Manager.

[FR Doc. 87-19622 Filed 8-26-87; 8:45 am]

BILLING CODE 4310-22-M

[OR-943-07-4520-12: GP7-276]

Filing of Plats of Survey; Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands have been officially filed in the Oregon State Office, Portland, Oregon on the dates hereinafter stated:

Willamette Meridian

Oregon

T. 7 S., R. 10 W.
T. 19 S., R. 12 W.

The above-listed plats were accepted April 24, 1987 and officially filed May 1, 1987.

T. 21 S., R. 3 E.
T. 21 S., R. 2 E.

The above-listed plats were accepted June 5, 1987 and officially filed June 8, 1987.

T. 22 S., R. 7 W., accepted May 1, 1987.
T. 2 S., R. 6 E., accepted May 1, 1987.
T. 2 N., R. 3 W., accepted May 8, 1987.
T. 21 S., R. 3 W., accepted May 8, 1987.
T. 15 S., R. 10 W., accepted May 15, 1987.
T. 16 E., R. 16 E., accepted May 15, 1987.

The above-listed plats were officially filed June 2, 1987.

T. 3 S., R. 7 W., accepted June 5, 1987 and officially filed June 15, 1987.
T. 23 S., R. 8 W., accepted June 19, 1987.
T. 28 S., R. 10 W., accepted June 19, 1987.
T. 21 S., R. 2 W., accepted June 26, 1987.
T. 1 S., R. 35 E., accepted July 2, 1987.

The above-listed plats were officially filed July 9, 1987.

T. 1 N., R. 36 E.,
T. 1 S., R. 36 E.,

The above-listed plats were accepted July 2, 1987 and officially filed July 23, 1987.

Washington

T. 8 N., R. 13 E., accepted June 12, 1987 and officially filed June 15, 1987.
T. 30 N., R. 8 W., accepted June 26, 1987 and officially filed July 9, 1987.
T. 38 N., R. 33 E., Suppl. Plat.
T. 30 N., R. 7 W.

The above-listed plats were accepted July 10, 1987 and officially filed July 23, 1987.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 825 N.E. Multnomah Street, P.O. Box 2965, Portland, Oregon 97208.

Dated: August 21, 1987.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87-19703 Filed 8-26-87; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Royalty Management Advisory Committee Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that the Royalty Management Advisory Committee will hold a meeting in Lakewood, Colorado, at the location and on the dates indicated below to review a report of the Systems Improvement Working Panel. The Advisory Committee will make recommendations to the Secretary of the Interior, as appropriate.

Location and Dates: The "Systems Improvement" meeting of the Royalty Management Advisory Committee will be held at the Sheraton Hotel, 360 Union Boulevard, Lakewood, Colorado, on September 21, 22, and 23, 1987, from 8:00 a.m. to 5:00 p.m. each day, except that the meeting on September 23 will adjourn at noon.

In addition, evening sessions may be held on September 21 and 22 if considered necessary. These meetings will be open to the public. Public attendance may be limited by the space available. Questions and answers from the public will be addressed at a designated time during each meeting. Written statements should be submitted by September 15, 1987, to the address listed below. Minutes of this meeting will be available for public inspection and copying by November 30, 1987, at the same address.

FOR FURTHER INFORMATION CONTACT: Vernon B. Ingraham, Minerals Management Service, Royalty Management Program, Office of External Affairs, Denver Federal Center, Building 85, P.O. Box 25165, Mail Stop 651, Denver, Colorado 80225, telephone number (303) 231–3360, (FTS) 326–3360.

SUPPLEMENTARY INFORMATION: The Systems Improvement Working Panel was established by the Royalty Management Advisory Committee. The panel is composed of both Advisory Committee members and non-Committee members and was established to provide the Advisory Committee with analysis of specific issues and proposed recommendations. Panel recommendations will be reviewed by the Advisory Committee which will then decide what advice and recommendations to give to the Department of the Interior and MMS.

Date: August 19, 1987.

David W. Crow,

Acting Director, Minerals Management Service.

[FR Doc. 87–19705 Filed 8–26–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[No. MC–F–17934]

Intention To File Application for Acquisition of Control of Motor Carrier; Norfolk Southern Corporation and North American Van Lines, Inc.[1]

On July 31, 1987, pursuant to 49 CFR 1180.4(b), Norfolk Southern Corporation (NS) and North American Van Lines, Inc. (NAVL) have notified the Commission of their intent to file an application seeking Commission approval for NAVL's acquisition of control of motor carrier Tran-Star, Inc. (Tran-Star) through stock ownership.

NS is a noncarrier holding company that owns all of the stock of motor carrier NAVL, as well as Norfolk and Western Railway Company and Southern Railway Company, each of which is a class I railroad. NAVL's principal business is the domestic transportation of household goods and general commodities. Tran-Star specializes in the temperature controlled transportation of processed foods, dairy products and frozen vegetables. Its operations are focussed in the upper Midwest.

Under the terms of an agreement dated August 18, 1986, NAVL contracted to purchase 80.1 percent of the stock of Tran-Star. Applicants filed a petition for exemption of the proposed acquisition on October 31, 1986. On December 23, 1986, Tran-Star's stock was acquired and placed in an independent voting trust pending disposition of the exemption. Notice of the proposed exemption was published in the *ICC Register* and the **Federal Register** on February 17, 1987, in accordance with the procedural guidelines established in *Procedures—Handling Exemptions Filed by Motor Carriers*, 367 I.C.C. 113 (1982). A number of persons filed comments.

In their notice of intent, applicants now request that the proceeding instead be processed as an application under its present docket number and that the evidentiary record in the exemption proceeding be made part of the application. By decision served August 26, 1987, the Commission granted these requests and denied motions filed by the Regular Common Carrier Conference, a party in the exemption proceeding, for oral hearing and discovery.

The Commission's regulations at 49 CFR Part 1180, Subpart A do not specifically apply to intermodal transactions involving the acquisition of motor carriers by railroads or rail affiliates. Nevertheless, the Commission has previously found these regulations, subject to appropriate notification, to be a suitable procedural means of processing such transactions. *See* Finance Docket No. 31000, *Union Pacific Corporation and BTMC Corporation—Control—Overnite Transportation Company* (Notice of Intent published at 51 FR 37666, October 23, 1986).

Pursuant to 49 CFR 1180.4(b)(1), applicants state that they intend to file an application on or about September 1, 1987. We find, under 49 CFR 1180.4(b)(2), that the proposed acquisition is a minor transaction that does not involve a matter of regional or national transportation importance. Accordingly, applicants need not furnish market impact analyses required under 49 CFR 1180.7 for major or significant transactions. We find that the transaction should be processed under the procedural requirements of 49 U.S.C. 11345(d) and be considered under the substantive decisional standards of 49 U.S.C. 11344 (c) and (d). Applicants must comply with the informational requirements of 49 CFR Part 1180, Subpart A relating to minor transactions, subject to such modifications as may be ordered by the Commission in response to appropriate requests or on our own motion. An order calling for submission of additional information on specific issues may be issued subsequent to the publication of this notice and accompanying decision.

Dated: August 18, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–19671 Filed 8–26–87; 8:45 am]

BILLING CODE 7035–01–M

[1] Reentitled from *Norfolk Southern Corporation and North American Van Lines, Inc.—Control Exemption—Tran-Star, Inc.*

[Finance Docket No. 31072]

Acquisition and Operation of Rail Lines; The Indiana and Ohio Central Railroad, Inc.; Correction

The notice of exemption published at

52 FR 27863 (July 24, 1987) indicated that The Indiana & Ohio Central Railroad, Inc. (IOCR), a noncarrier, had filed a notice of exemption to acquire and operate approximately 43.5 miles of rail line from milepost 9.1, near Valley Crossing, OH, to milepost 52.56 at Logan, OH, presently owned by CSX Transportation, Inc. (CSX). The notice should be corrected to reflect The Chesapeake and Ohio Railway Company (C&O) as the transferor. The notice of exemption should also be corrected to indicate that incidental trackage rights also will be granted over the lines of the C&O (rather than CSX) from milepost 9.1 at Valley Crossing, OH, to milepost 6.0 at Parsons Yard, near Columbus, OH, solely for purposes of interchange between IOCR and the C&O at the latter point.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19672 Filed 8-26-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31073]

Filing of Exemption to Continue in Control; Indiana & Ohio Rail Corp.; Correction

The notice of exemption published at 52 FR 27864 (July 24, 1987) indicated that Indiana & Ohio Rail Corp. (IORC), a non-carrier, had filed a notice of exemption to continue in control of The Indiana & Ohio Central Railroad, Inc. (IOCR), a corporation organized for the purpose of acquiring and operating approximately 43.5 miles of rail line presently owned by CSX Transportation, Inc. (CSX). The notice should be corrected to reflect The Chesapeake and Ohio Railway Company (C&0) as the transferor. The notice of exemption should also be corrected to indicate that incidental trackage rights also will be granted to IOCR over the lines of the C&0 (rather than CSX) from milepost 9.1 at Valley Crossing, OH, to milepost 6.0 at Parsons Yard, near Columbus, OH, solely for purposes of interchange between IOCR and the C&0 at the latter point.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-19673 Filed 8-26-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

Notice of Certification; Third Circuit

The Attorney General pursuant to section 303 of the Bankruptcy Judges, United States Trustees, and Family Farmer Act of 1986, Pub. L. 99-554, hereby certifies to the United States Court of Appeals for the Third Circuit on this date that, in the region specified in paragraph 581(a)(21) of title 28, United States Code, composed of the federal judicial districts for the states of Florida and Georgia, the Commonwealth of Puerto Rico, and the Virgin Islands, the amendments made by section 113 and subtitle A of title II of the Act and section 1930(a)(6) of title 28, United States Code, will apply 30 days after this date as to all cases commenced under chapter 7, 11, 12, or 13 of title 11, United States Code, on or after November 26, 1986. The amendments will also apply in cases commenced prior to November 26, 1986, one year after this certification, unless a final report and account of the administration of the estate required under section 704 of title 11, United States Code, has been filed, or a plan has been confirmed under section 1129, 1225, or 1325 of title 11.

The amendments cited above implement the United States Trustee system in the region and also impose quarterly fees in chapter 11 cases commenced on or after November 26, 1986. The implementation of the United States Trustee system and the imposition of quarterly fees in those chapter 11 cases commenced prior to November 26, 1986, in which a plan has not been confirmed, will become effective one year after the date of this certification.

The United States Trustee to be appointed for that region is responsible, pursuant to section 301(a) of the Act, for implementing the amendments made by the Act in the region hereby certified.

Dated: August 18, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-19683 Filed 8-26-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 87-34]

Revocation of Registration; Eusebio Hernandez-Samper, M.D.

On March 6, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Eusebio Hernandez-Samper, M.D. (Respondent), of 536 S.W. 18th Avenue, Miami, Florida, proposing to revoke DEA Certificate of Registration AH8205735, and to deny his pending application for renewal of said registration, executed on September 11, 1986. The grounds for the proposed revocation were that: (1) On January 10, 1986, the Florida Department of Professional Regulation restricted Respondent's medical license in that state by prohibiting him from handling any controlled substances; consequently, Respondent is not authorized to handle controlled substances in the state in which he is registered with the Drug Enforcement Administration, (2) On March 10, 1986, in the Circuit Court for the Seventeenth Judicial Circuit of Florida, in and for Broward County, Respondent was convicted, after entering pleas of nolo contendere, of two counts of bad-faith delivery of a controlled substance by prescription; both offenses constituted felony convictions relating to controlled substances, (3) Respondent falsified the application for renewal of his DEA Certificate of Registration, executed on September 11, 1986, by failing to indicate that he had been convicted of two felony offenses relating to controlled substances, and (4) Respondent's continued registration is inconsistent with the public interest, as evidenced by, but not limited to, the fact that during 1985, Respondent issued numerous prescriptions for controlled substances to various persons for other than a legitimate medical purpose.

In a letter dated April 1, 1987, Respondent, through counsel, requested a hearing on issues raised in the Order to Show Cause. On April 14, 1987, Government counsel filed a Motion for Summary Disposition based upon Respondents's lack of state authorization to handle controlled substances. Subsequently, Respondent's counsel filed a response to the Government's Motion for Summary Disposition, admitting that Respondent was no longer authorized to handle controlled substances in Florida, but claiming that he wished to maintain a DEA registration number to enable him to participate in Federally funded programs such as Medicaid and Medicare.

After reviewing the filings in this matter, the Administrative Law Judge recommended that Respondent's DEA Certificate of Registration be revoked and his application for renewal be denied on the basis of his lack of state authorization to handle controlled

substances. No other issues were considered in the proceedings.

The Administrator agrees with the Administrative Law Judge's recommendation. The Drug Enforcement Administration does not have statutory authority to maintain an individual's registration unless he is authorized to handle controlled substances in the state in which he maintains his practice. See 21 U.S.C. 823(f) and 824(a)(3); *Emerson Emory, M.D.*, Docket No. 85–46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85–8, 50 FR 34208 (1985), and *Agostino Carlucci, M.D.*, Docket No. 82–20, 49 FR 33184 (1984). In this matter, Respondent is no longer authorized to handle controlled substances in the state in which he is registered with the Drug Enforcement Administration. Therefore, the Administrator cannot maintain his registration in that state, nor can he grant Respondent's pending application for renewal of that registration.

In this matter, a Motion for Summary Disposition is properly entertained and should be granted. It is well-settled that when no question of fact is involved, or when the parties agree upon the substantive factual matters, there is no need to conduct an evidentiary hearing. Instead, only a legal determination need be made based upon the agreed facts. See *United States v. Consolidated Mines and Smelting Co. Ltd.* 445 F.2d 432, 453 (9th Cir. 1971); *NLRB v. Int. Assoc. of Bridge, Structural and Ornamental Ironworkers, AFL–CIO*, 549 F.2d 634 (9th Cir. 1977); *Philip E. Kirk, M.D.*, Docket No. 82–36, 48 FR 32887 (1983), aff'd *sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984).

With respect to Respondent's request to maintain a DEA Certificate of Registration for identification purposes so that he can participate in Federally funded programs, there is no provision in the Controlled Substances Act which would allow the Administrator to grant such a request. The only purpose for granting a practitioner a DEA Certificate of Registration is to give him authority to handle controlled substances. See 21 U.S.C. 801 et seq. Therefore, the Administrator cannot allow Respondent to maintain his DEA Certificate of Registration for the reason requested.

The Administrator concludes that, based upon Respondent's lack of state authorization to handle controlled substances, his DEA Certificate of Registration must be revoked, and his pending application for renewal must be denied. Having concluded that, under the facts and circumstances presented in this matter, Respondent's registration must be revoked, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), orders that DEA Certificate of Registration AH8205735 be, and it hereby is, revoked, and that Respondent's pending application for renewal, executed on September 11, 1986, be, and it hereby is, denied.

This order is effective August 27, 1987.

John C. Lawn,

Administrator.

Dated: August 24, 1987.

[FR Doc. 87–19674 Filed 8–26–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–18]

Revocation of Registration; Nicetown Pharmacy

On January 20, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued to Nicetown Pharmacy (Respondent) of 4201 Germantown Avenue, Philadelphia, Pennsylvania 19140, an Order to Show Cause proposing to revoke the pharmacy's DEA Certificate of Registration AN2013693 and to deny any pending applications for registration as a retail pharmacy under 21 U.S.C. 823(f). The statutory predicate for the Order to Show Cause was that the pharmacy's continued registration would be inconsistent with the public interest as defined in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). This was evidenced by the fact that: (1) An accountability audit of controlled substances conducted at the pharmacy for the period June 3, 1984, to June 3, 1986, revealed substantial shortages of the controlled substances glutethimide and Bromanyl; (2) The pharmacy failed to maintain complete and accurate records of transactions involving the acquisition, dispensing and inventory of controlled substances; and (3) Bernard Orkin, pharmacist at Nicetown Pharmacy, dispensed Schedule IV controlled substances without a prescription or order of a physician.

Respondent, proceeding through counsel, requested a hearing on the issues raised in the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young. Judge Young issued an Order for Prehearing Statements to be filed by Government Counsel and by Counsel for Respondent. These statements were filed, and a hearing was scheduled for July 16, 1987.

In a letter dated July 10, 1987, Respondent's counsel advised Judge Young that neither Respondent nor his attorney would appear for the hearing set for July 16, 1987. Therefore, the Administrator finds that Nicetown Pharmacy has waived its opportunity for a hearing and enters this final order based on the record as it appears. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that an accountability investigation of Nicetown Pharmacy was initiated in response to the pharmacy's purchase of excessive quantities of Bromanyl liquid (Schedule V) and gultehimide 500 mg. (Schedule III). Codeine-based cough syrups and glutethimide in combination are widely abuse in Philadelphia where it is known as "pancakes and syrup." This combination is sold in the illicit market as a substitute for heroin.

The accountability audit revealed numerous violations of regulations involving order forms, receipt invoices, and prescription forms. Fourteen controlled substances were audited, including Bromanyl liquid and gluthethimide 500 mg. Records provided by Respondent pharmacy revealed overages and shortages of the controlled substances audited. Another audit, conducted using records obtained from pharmaceutical wholesalers, revealed even larger diviations including substantial shortages of Bromanyl and glutethimide 500 mg. These shortages prompted investigators to conduct verification investigations of various pharmaceutical suppliers. The names of most of these suppliers were not disclosed by Respondent. It was discovered that Respondent pharmacy had purchased 249,880 ounces (1952 gallons) of Bromanyl liquid and 260,500 tablets of glutethimide 500 mg. during the twenty-four month audit period. The pharmacy could not account for 99% of these controlled substances.

The Administrator further finds that in 1984 an agent from the State of Pennsylvania went to Nicetown Pharmacy in an undercover capacity possessing only a piece of white paper written by Nicetown Medical Center's receptionist. Although the paper was not a valid prescription form and was not issued by a physician, Bernard Orkin, Respondent's managing pharmacist, dispensed phentermine 30 tablets (a Schedule IV stimulant drug) and Lasix 30 tablets (a diuretic). Bernard Orkin dispensed phentermine on subsequent occasions to undercover agents without valid prescriptions. These controlled substances were dispensed in envelopes which were not properly labelled.

The Administrator is charged with protecting the public health and safety from the illicit diversion of controlled substances. Respondent's actions, as set forth in the record, clearly indicate that

Nicetown Pharmacy lacks the ability to handle the requisite responsibilities attendant to a DEA registration. The large scale shortages of controlled susbtances which are widely abused in the area can only lead to the conclusion that these substances are not being dispensed pursuant to a valid prescription or for a legitimate medical purpose.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AN2013693, previously issued to Nicetown Pharmacy be, and it hereby is, revoked. The Administrator further orders that any pending applications for registration, be, and they hereby are, denied. This order is effective September 28, 1987.

John C. Lawn,

Administrator.

Date: August 24, 1987.

[FR Doc. 87-19675 Filed 8-26-87; 8:45 am]

BILLING CODE 4401-09-M

Office of Juvenile Justice and Delinquency Prevention

Youth Drug and Alcohol Abuse: The Introduction of Effective Strategies Systemwide; Extension of Deadline Data for Demonstration Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of extension of deadline date.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 224(b)(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces the extension of the deadline date for the demonstration program entitled Youth Drug and Alcohol Abuse: The Introduction of Effective Strategies Systemwide, **Federal Register**, Vol. 52. No. 161, Thursday, August 20, 1987 from September 14, 1987 to September 21, 1987.

Other information published in the **Federal Register** on August 20, 1987 regarding this solicitation is current and applicable. For further information, contact John E. Dawson, Jr., at (202) 724-8491.

Verne L. Speirs,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87-19729 Filed 8-26-87; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Advisory Council on Employee Welfare and Pension Benefit Plans; Meeting

Pursuant to section 512 of the Employee Retirement Income Security Act of 1974 (ERISA) 29 U.S.C. 1142, a meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held on Wednesday, September 16, 1987, in Room N-3437C, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC.

The purpose of the meeting, which will begin at 9:30 a.m., is to consider items listed below and to invite public comment on any aspect of the administration of ERISA.

1. General business of the Advisory Council
2. Report of the Advisory Council Work Group on Individual Benefit Statements
3. Report of the Advisory Council Work Group on ESOP
4. Statements from the Public

Members of the public are encouraged to file a written statement pertaining to any topic concerning ERISA by submitting 20 copies on or before September 11, 1987, to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Individuals wishing to address the Advisory Council should forward their request to the Executive Secretary or telephone (202/523-8753). Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record.

Signed at Washington, DC, this 24th day of August 1987.

David M. Walker, CPA,

Assistant Secretary-Designate for Pension and Welfare Benefits Administration.

[FR Doc. 87-19698 Filed 8-26-87; 8:45 am]

BILLING CODE 4510-29-M

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Retiree Health of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:00 a.m., Friday, September 25, 1987, at the American Association of Retired Persons, (AARP), 1909 K Street, NW., Room 830, Washington, DC 20049.

This eight-member work group was formed by the Advisory Council to study issues relating to retiree health benefit programs for employee welfare plans covered by ERISA.

The purpose of the September 25 meeting is to hear from several experts in the field of Retiree Health who have been invited to participate in a round-table discussion of the following issues:

1. How secure are retiree health insurance promises in general, and how do they vary across companies and industries?
2. Are there changes in the law that should be made to make retiree health benefits more secure? If so, what are those changes?
3. Were changes in the law made to allow retiree health benefits to be advance funded, would bargaining parties and non-bargaining employers be likely to advance fund?
4. What are the relative advantages and disadvantages of using the now common "defined benefit" approach to provision of retiree health versus moving towards "defined contribution" accumulations that retirees could then use to pay retiree health expenses? Would one approach or the other make it more likely that retiree health protection will continue to be provided?
5. What impact would FASB standards that required booking of liabilities likely have on the decision to provide retiree health benefits?

In addition, the work group will take testimony from employee representatives, employer representatives and other interested individuals and groups regarding subject matter.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before September 21, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to 10 minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before September 21, 1987.

Signed at Washington, DC this 24th day of August 1987.

David M. Walker, CPA,

Assistant Secretary-Designate for Pension and Welfare Benefits Administration.

[FR Doc. 87-19699 Filed 8-26-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Dance Advisory Panel (Dance Presenters Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Dance Presenters Section) to the National Council on the Arts will be held on September 15, 1987 from 9:00 a.m.-8:00 p.m. and on September 16, 1987 from 9:00 a.m.-6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

If time permits, a portion of this meeting will be open to the public on September 16, 1987 from 4:00 p.m.-6:00 p.m. The topics for discussion will include guidelines and policy issues.

The remaining sessions of this meeting on September 15, 1987 from 9:00 a.m.-8:00 p.m. and September 16, 1987 from 9:00 a.m.-4:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disabililty, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 24, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-19725 Filed 8-26-87; 8:45 am]

BILLING CODE 7537-01-M

Dance Advisory Panel (Services to the Field Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (Services to the Field Section) to the National Council on the Arts will be held on September 17, 1987 from 9:00 a.m.—8:00 p.m. and on September 18, 1987 from 9:00 a.m.—6:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

If time permits, a portion of this meeting will be open to the public on September 18, 1987 from 4:00 p.m.—6:00 p.m. The topic for discussion will be policy issues.

The remaining sessions of this meeting on September 17, 1987 from 9:00 a.m.—8:00 p.m. and September 18, 1987 from 9:00 a.m.—4:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Dated: August 24, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations National Endowment for the Arts.

[FR Doc. 87-19726 Filed 8-26-87; 8:45 am]

BILLING CODE 7537-01-M

Inter-Arts Advisory Panel (Presenting Organizations Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on September 14-17, 1987 from 9:00 a.m.-7:30 p.m. and on September 18, 1987 from (9:00-5:00 p.m. in room M-07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 18, 1987 from 9:00 a.m.-1:00 p.m. The topics for discussion will include guidelines and other policy issues.

The remaining sessions of this meeting on September 14-17, 1987 from 9:00 a.m.-7:30 p.m. and September 18, 1987 from 1:00-5:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-19727 Filed 8-26-87; 8:45 am]

BILLING CODE 7537-01-M

Partnership Advisory Panel (Locals Program Section); Meeting

Pursuant to section 10(a)(2) of the Federal advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Office for Partnership Advisory Panel (Locals Program Section) to the National Council on the Arts will be held on September 11, 1987 from 9:00 a.m.-5:30 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on September 11, 1987 from 1:00 p.m.-5:30 p.m. The topics for discussion will be Service Organizations, Local Government Incentive Program, Local Arts Agency Development Program, FY 89 Initiatives, and FY 89 Guidelines.

The remaining sessions of this meeting on September 11, 1987 from 9:00 a.m.-1:00 p.m. are for the purpose of application review. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to

subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506 or call 202/682–5433.

Dated: August 24, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–19728 Filed 8–26–87; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 21, 1987. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESS: Comments should be addressed to Permit Office, Room 627, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers at the above address or (202) 357–7934.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed in 1964 by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest. Additional information was published in the **Federal Register** on July 24, 1987.

The applications received are as follows:

1. Applicant

Mark A. Chappell, Biology Department, University of California, Riverside, California 92521

Activity for Which Permit Requested

Taking, Import into U.S.A. The applicant is conducting physiological studies of Antarctic birds. He proposes to take the following:

Species	Number	Age	Condition
Adelie penguin	8	Chick	Sacrificed.
	25	Chick	Studied/released.
	5	Adult	Studied/released.
Antarctic tern	10	Eggs	Sacrificed.
Southern black-backed gull	10	Eggs	Sacrificed.
	6	Adults	Studied/released.
	18	Young	Studied/released.
Southern giant petrel	6	Adults	Studied/released.
	18	Young	Studied/released.
	50	Young	Banded/released.
Wilson's storm petrel	6	Adults	Studied/released.
	18	Young	Studied/released.
South Polar skua	6	Adults	Studied/released.
	18	Young	Studied/released.
	10	Eggs	Sacrificed.
Blue-eyed shag	6	Adults	Studied/released.
	18	Young	Studied/released.
	2	Adults	Sacrificed.
	4	Young	Sacrificed.

Location

Vicinity of Palmer Station, Antarctic Peninsula.

Dates

November 1987—March 1988.

2. Applicant

G. Richard Harbison, Harbor Branch Oceanographic Institution, Inc., Fort Pierce, Florida 34946

Activity for Which Permit Requested

Enter site of Special Scientific Interest. The applicant proposes to conduct a study of systematics and feeding behavior of gelatinous zooplankton in Antarctic waters. The applicant proposes to dive in the vicinity of Cape Royds and may enter the protected area incidental to the diving activity.

Location

Cape Royds, Ross Island, Antarctica.

Dates

October—December 1987.

Charles E. Myers,

Permit Office.

[FR Doc. 87–19644 Filed 8–26–87; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–60402; ASLBP No. 87–552–03–SP]

Senior Operator License for Beaver Valley Power Station, Unit 1; Designation of Presiding Officer for Hearing of David Held

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding: David W. Held, Senior Operator License for Beaver Valley Power Station, Unit 1.

By letter dated September 1, 1986, David W. Held, an applicant for a senior operator license for the Beaver Valley Nuclear Power Station, Unit 1, was informed by NRC's Region I office that he had failed the simulator examination administered in late July, 1986, and that his license application was thus denied. In accordance with directions contained in the letter of denial dated September 16, 1986, Mr. Held requested a hearing on the denial.

The presiding officer is being designated pursuant to the provisions of an Order issued by the Commission on August 7, 1987 granting a request for a hearing filed by Mr. Held on March 6, 1987, with the Director, Operator Licensing Branch, Division of Human

Factors Technology, Office of Nuclear Reactor Regulation.

The presiding officer in this proceeding is Administrative Judge Peter B. Bloch.

All correspondence, documents and other materials shall be filed with Judge Bloch in accordance with 10 CFR 2.701. His address is: Administrative Judge Peter B. Bloch, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 18th day of August 1987.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc 87-19719 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-293]

Issuance of Interim Director's Decision; Boston Edison Co., Pilgrim Nuclear Power Station

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued an interim decision concerning a request filed pursuant to 10 CFR 2.206 by the Honorable William B. Golden which requested that the Pilgrim Nuclear Power Station remain shut down or have its license suspended because of (1) deficiencies in the licensee management, (2) inadequacies in the emergency radiological plan, and (3) inherent deficiencies in the containment structure.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petition, with the exception of the license management issue, should be denied. The reasons for this decision are explained in the "Interim Director's Decision Under 10 CFR 2.206," DD-87-14, which is available for public inspection in the Commission's Public Document Room, 1717 H Street, W., Washington, DC and at the Local Public Document Room at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360. That portion of the Petition concerning licensee management will be addressed in a subsequent response.

A copy of the Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission twenty-five (25) days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Bethesda, Maryland, this 21st day of August 1987.

For the Nuclear Regulatory Commission.

Vernon Rooney,

Acting Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 87-19716 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Issuance of Facility Operating License to Houston Lighting & Power Co. et al.; South Texas Project, Unit 1

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-71 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas, (the licensees) which authorizes operation of the South Texas Project, Unit 1 (the facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Evironmental Protection Plan with a condition currently limiting operation to five percent of full power (190 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The South Texas Project, Unit 1 is a pressurized water reactor located in Matagorda County, Texas, west of the Colorado River, 8 miles north-northwest of the town of Matagorda and about 89 miles southwest of Houston. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the South Texas Project was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement of the South Texas Project, Unit 1 (dated August 1986) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the**Federal Register** on June 18, 1987 (52 FR 23217) and July 2, 1987 (52 FR 25094 and 52 FR 25095).

For further details with respect to this section, see (1) Facility and Operating License No. NPF-71, with Technical Specifications (NUREG-1255) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated June 10, 1986; (3) the Commission's Safety Evaluation Report, dated April 1986 (NUREG-0781), and Supplements 1, 2, 3 and 4; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1986 (NUREG-1711).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the Facility Operating License No. NPF-71 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects—III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1, 2, 3 and 4 (NUREG-0781) and the Final Environmental Statement (NUREG-1171) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Bethesda, Maryland, this 21st day of August, 1987.

For the Nuclear Regulatory Commission.

N. Prasad Kadambi,

Project Manager, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-19720 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-237 and 50-249]

Exemption; Commonwealth Edison Co., Dresden Nuclear Power Station Unit Nos. 2 and 3

I

The Commonwealth Edison Company (CECo, the licensee) is the holder of Provisional Operating License No. DPR-19, which authorizes operation of Dresden Nuclear Power Station Unit No. 2, and Facility Operating License No. DPR-25, which authorizes operation of Unit No. 3. These licenses provide, among other things, that Dresden Nuclear Power Station Unit Nos. 2 and 3 are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station comprises two boiling water reactors at the licensee's site located in Grundy County, Illinois.

II

On November 19, 1980, the Commission published a revised section 10 CFR 50.48 and a new Appendix R to 10 CFR Part 50 regarding fire protection features of nuclear power plants (45 FR 76602). The revised § 50.48 and Appendix R became effective on February 17, 1981. Section 50.48(c) established the schedules for satisfying the provisions of Appendix R.

By letters dated March 1, 1985 and December 4, 1985, the licensee requested schedular exemptions for the completion of the installation of the following fire protection items in both Dresden Units Nos. 2 and 3:

- Fire Detection and Suppression: Installation complete except for documentation (August 1987)
- Fire Barrier Pipe and Conduct Penetration: Seals complete — verification (August 1987)
- Emergency Lighting: Complete except for hand held fluorescent light fixture (August 1987)
- Fire Wrap: Turbine Building Center Corridor (August 1987)

By letters dated March 12, April 18, May 30, and August 18, 1986 and January 30 and April 14, 1987, the licensee provided additional information.

III

Reasonable interim compensatory measures for fire protection and post-fire safe shutdown capability must be provided in order to grant schedular exemptions from the implementation schedules defined in 10 CFR 50.48.

The licensee has implemented compensatory measures as detailed in the May 30, 1986 letter, which include roving fire watches until completion of the fire protection work identified in the exemption. The roving watch enters each area where compensatory measures are required *every 20 minutes.*

All procedures and training required for the fire watches for each area identified in the exemption have been completed. The fire watches will identify any indication of fire, smoke or burning odor and will immediately notify the control room; in addition, the watches have been trained in the use of portable fire extinguishers.

If a fire should occur within any fire area monitored by the roving fire watch patrols, there is reasonable assurance that the fire will be detected in its incipient stage before significant flame propagation or temperature rise occurs. Upon discovery of a fire, the control room will be immediately notified and a fire brigade response initiated. The fire patrols and watches will be capable of controlling or suppressing the fire to minimize damage pending arrival of the fire brigade.

The status for completion of Appendix R fire protection work for Dresden Unit Nos. 2 and 3 is as follows:

- Fire Detection and Suppression: Installation complete except for documentation (August 1987)
- Fire Barrier Pipe and Conduct Penetration: Seals complete — verification (August 1987)
- Emergency Lighting: Complete except for hand held fluorescent light fixture (August 1987)
- Fire Wrap: Turbine Building Center Corridor (August 1987)

All other Appendix R related items are complete.

The above schedule represents a best effort under the circumstances by the utility. Since 1980, the utility has spent over 25 million dollars in Appendix R modifications and has proceeded expeditiously to resolve technical open items and in completing modifications. The licensee is currently over 95 percent complete with Appendix R modifications. The licensee has been delayed in completing all modifications because of the industry-wide concerns regarding the proper interpretation of Appendix R requirements. NRC issued Generic Letter 83-33 to provide clarification. The licensee participated in a number of meetings and workshops in 1983 held by the NRC concerning Appendix R and as a result initiated a major re-verification effort to assure compliance with the clarified intent of Appendix R. This effort resulted in additional modifications. It is this situation which in spite of best efforts, prevented the licensee from achieving compliance with the schedular requirements of 10 CFR 50.48. These delays were beyond the control of the licensee.

IV

Based on the considerations and current status of the fire protection related work discussed above, the staff has concluded that the licensee has provided a sound rationale for the need of schedular relief; a best effort is being expended to complete the Appendix R related work; the utility has proceeded expeditiously to meet the Commission's requirements; delays were caused by circumstances beyond the utilities control; and reasonable and acceptable interim measures for fire protection and alternate shutdown capability to support the requested schedular exemption have been provided. Therefore, based on our evaluation, the staff has concluded that the requested schedular exemption from the requirements of 10 CFR 50.48, section (c)(4) should be granted.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the schedular exemption requested by the licensee's letter of March 1, 1985 and December 4, 1985 as supplemented is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely that the exemption provides temporary relief from the schedular requirements of 10 CFR 50.48(c) and the licensee has made good faith efforts to comply with the schedules in 10 CFR 50.48(c).

The Commission hereby grants the licensee exemption from the schedular requirements of 10 CFR 50.48 section (c)(4) for the following items and duration:

- Fire Detection and Suppression: Installation complete except for documentation (August 1987)
- Fire Barrier Pipe and Conduct Penetration: Seals complete— verification (August 1987)
- Emergency Lighting: Complete except for hand held fluorescent light fixture (August 1987)
- Fire Wrap: Turbine Building Center Corridor (August 1987)

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of the exemption will have no significant impact on the environment (51 FR 10954 dated March 31, 1986, renoticed 52 FR 31100 dated August 19, 1987).

For further details with respect to this action, see the requests for exemption dated March 1, 1985 as supplemented

December 4, 1985, March 12, April 18, May 30 and August 18, 1986, and January 30 and April 14, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland this 21 day of August 1987.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nucler Reactor Regulation.

[FR Doc. 87-19717 Filed 8-26-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-413 and 50-414]

Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Prior Hearing; Duke Power Co. et al.

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License No. NPF-35 and Facility Operating License No. NPF-52, to Duke Power Company, et al., (the licensee), for operation of the Catawba Nuclear Station, Units 1 and 2, located in York County, South Carolina.

The proposed amendments requested in the licensee's letter dated June 12, 1987 and supplemented June 23 and August 12, 1987, would change the Technical Specifications (TS) to allow operation at up to 100% rated power with the Upper Head Injection (UHI) system removed. It is the licensee's intent to remove the UHI system from Units 1 and 2 during their upcoming refueling outages. Catawba Unit 1 is currently scheduled to enter its second refueling outage in October 1987 and Unit 2 is scheduled to enter its first refueling outage in December 1987. Similar changes to allow either or both McGuire Units to operate with the UHI system installed and functionally disabled (i.e., with UHI isolation valves closed and gagged) as well as with the system physically removed have been reviewed and approved by the NRC staff on May 13, 1986, through the issuance of license amendments 57 for McGuire Unit 1 and 38 for Unit 2.

The TS changes associated with the removal of the UHI system are discussed below.

(1) *3/4.3.3.8—Fire Detection Instrumentation*

The fire detection instruments in the UHI buildings, Table 3.3-11, will no longer be required to be in the TSs because they will not be needed to provide protection for Safety-Related equipment.

(2) *3/4.4.6—Reactor Coolant System Leakage*

The deletion of the UHI System will involve capping of the reactor vessel upper head pentrations as close as practicable to the upper head. Associated piping and valves are thus removed from the Reactor Coolant System and leakage verification is no longer applicable for the UHI related equipment in Table 3.4-1.

(3) *3/4.5.1.—ECCS, Cold Leg Injection*

The following changes would be accomplished by renumbering the existing TS 3/4.5.1.1 and including appropriate changes to the APPLICABILITY Section.

The contained water volume will be revised to reflect the volume assumed in the new analyses. The nitrogen cover pressure will be increased to a minimum value of 585 psig (from a previous value of 385 psig) in order to enhance cold leg injection water delivery during LOCA scenarios. Other TSs related to the accumulators remain unchanged.

(4) *3/4.5.1.2—ECCS, Upper Head Injection*

The TSs associated with the maintenance of the UHI System within specified tolerances will be deleted.

(5) *3/4.6.1—Primary Containment*

Table 3.6-1 will be revised to reflect the sealing of UHI related containment penetrations.

(6) *3/4.6.3—Containment Isolation Valves*

Table 3.6-2 will be revised to reflect the removal of containment isolation valves associated with UHI containment penetrations.

(7) *3/4.8.4—Electrical Equipment Protective Devices*

Tables 3.8-1A and 3.8-1B will be revised to reflect the deletion of the UHI System and related containment penetration conductor overcurrent protective devices.

The proposed amendments would also supplement Bases 3/4.5.1 to acknowledge the analyses that demonstrate the UHI system is not required provided minor changes to Cold Leg Accumulator parameters and discharge paths are implemented. They also discuss the applicability of these TSs in terms of two proposed UHI modes (i.e., operable and disconnected).

By letter dated August 12, 1987, the licensee updated the previously transmitted information concerning the radiological aspects of UHI removal and related radiological impacts on plant operations. This information further supports the licensee's proposed amendments, and does not alter the specific changes requested nor the bases thereto.

The significant differences between Catawba and McGuire are: (1) Catawba analyses utilize the improved BASH computer code while McGuire utilized WREFLOOD and BART; and (2) Catawba utilizes the optimized fuel assemblies while McGuire utilized the mixed standard and optimized fuel assemblies.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended, (the Act) and the Commission's regulations.

By September 28, 1987, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularly the interest of the petitioner in the proceedings, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reason 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 amendments 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States 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 or representative for 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 3737 and the following message addressed to D.S. Hood, Acting Director, PHII–3: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, P.O. Box 33189, 422 South Church Street, Charlotte, North Carolina 282842, 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 amendments dated June 12, 1987 and its supplements dated June 23 and August 12, 1987. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730.

Dated at Bethesda, Maryland, this 21st day of August 1987.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Project Manager, Project Directorate II–3, Division of Reactor Projects I/II.

[FR Doc. 87–19718 Filed 8–26–87; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S.C. Chapter 35), this notice announces a request to extend a public information collection. Civil service annuitants who marry, divorce or remarry after retirement may provide a survivor annuity benefit for their spouse and/or former spouse. Depending on the circumstances of the marriage or divorce, the annuitant would complete one of the following forms for electing a reduced annuity with survivor benefits: RI 20–63, Election of Reduced Annuity with Survivor Benefit for a Post-Retirement Spouse; RI 20–64, Post-Retirement Election of Reduced Annuity with Survivor Benefit for a Former Spouse; and RI 20–65, Election of Reduced Annuity with Survivor Benefit for a Post-Retirement Spouse. It is estimated that 5400 individuals will respond annually for a total burden of 630 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87–19608 Filed 8–26–87; 8:45 am]

BILLING CODE 6325–01–M

Information Collection Submitted to OMB for Clearance

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44, U.S. Code, Chapter 35), this notice announces a request to extend a public information collection. RI 30–2, Annuitant's Report of Income, is used to identify Civil Service Retirement System disability annuitants (under 60 years of age) whose incomes have been restored. If the annuitant's income exceeds more than 80 percent of the current rate of pay of the position occupied immediately before retirement, the Office of Personnel Management discontinues the annuity. It is estimated that 150,000 individuals will respond annually for a total burden of 10,000 hours. For copies of this proposal call William C. Duffy, Agency Clearance Officer, on (202) 632–7714.

DATE: Comments on this proposal should be received within 10 working days from the date of this publication.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415

and

Richard Eisinger, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-19609 Filed 8-26-87; 8:45 am]

BILLING CODE 6325-01-M

Civil Service Retirement System; Alternative Forms of Annuity Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to employees who elect the alternative form of annuity under section 8343a of title 5, United States Code. This notice is necessary to conform the present value factors to changes in economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: Revised present value factors will apply to anyone whose annuity commences October 1, 1987, or later.

ADDRESS: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt, (202) 632-4682.

SUPPLEMENTARY INFORMATION: Section 831.2205(a) of Title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5. U.S.C. 8343a. That reduction is required in order to produce an annuity that is actuarially equivalent to the annuity of a retiree who does not elect an alternative form of annuity. The present value factors currently used to compute the reduction were published by OPM (51 FR 42988) on November 28, 1986.

On June 18, 1987, OPM published (52 FR 23222) a notice in the **Federal Register** to revise the normal cost percentages under the FERS Act of 1986, Pub. L. 99-335, bsed on changed economic assumptions approved by the Board of Actuaries. Those changed economic assumptions require corresponding changes in the present value factors used to compute an alternative form of annuity. OPM is, therefore, revising the table of present value factors to read to follows:

PRESENT VALUE FACTORS

Age at retirement	Present value of a monthly annuity
40	317.4
41	312.1
42	306.7
43	301.3
44	295.6
45	288.5
46	280.8
47	271.7
48	264.3
49	258.3
50	251.3
51	245.1
52	239.9
53	234.2
54	228.5
55	222.2
56	216.2
57	210.5
58	204.9
59	199.0
60	194.1
61	189.5
62	182.3
63	176.4
64	169.9
65	163.6
66	157.5
67	152.2
68	146.5
69	140.7
70	135.5
71	129.7
72	124.9
73	119.5
74	114.2
75	108.1
76	103.9
77	99.6
78	93.9
79	87.9
80	82.5
81	78.0
82	74.2
83	70.8
84	67.7
85	64.8
86	61.2
87	57.7
88	54.3
89	51.0
90	48.0

Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-19569 Filed 8-25-87; 8:45 am]

BILLING CODE 6325-01-M

Federal Employees Retirement System; Alternative Forms of Annuity Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to employees who elect the alternative form of annuity under section 8420a of title 5, United States Code. This notice is necessary to conform the present value factors to changes in economic assumptions approved by the Board of Actuaries.

EFFECTIVE DATE: Revised present value factors will apply to anyone whose annuity commences October 1, 1987, or later.

ADDRESS: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Robert Rosenblatt (202) 632-4682.

SUPPLEMENTARY INFORMATION: Section 842.706(a) of Title 5, Code of Federal Regulations, prescribes the method for computing annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8420a. That reduction is required in order to produce an annuity that is actuarially equivalent to the annuity of a retiree who does not elect an alternative form of annuity. The present value factors currently used to compute the reduction were published by OPM (52 FR 2066) on January 16, 1987.

On June 18, 1987, OPM published (52 FR 23222) a notice in the **Federal Register** to revise the normal cost percentages under the FERS Act of 1986, Pub. L. 99-335, based on changed economic assumptions approved by the Board of Actuaries. Those changed economic assumptions require corresponding changes in the present value factors used to compute an alternative form of annuity. OPM is, therefore, revising the tables of present value factors to read as follows:

TABLE I—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii) EXCEPT 62 AND OVER

Age at retirement	Present value of a monthly annuity
40	262.2
41	258.2
42	254.2
43	250.0
44	245.6
45	241.2
46	236.7
47	232.3
48	228.0
49	223.7
50	219.3
51	214.8
52	210.2
53	205.6
54	200.7
55	195.7
56	190.7
57	185.6
58	180.5
59	175.4
60	170.2
61	165.1
62	160.0
63	154.9
64	149.7
65	144.5
66	139.4
67	134.4
68	129.4

TABLE I—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii) EXCEPT 62 AND OVER—Continued

Age at retirement	Present value of a monthly annuity
69	124.5
70	119.6
71	114.8
72	110.1
73	105.5
74	100.9
75	96.4
76	92.1
77	87.9
78	83.8
79	79.7
80	75.8
81	72.1
82	68.4
83	64.9
84	61.6
85	58.3
86	55.1
87	52.1
88	49.3
89	46.5
90	43.9

TABLE II—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES NOT LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii)

Age at retirement	Present value of a monthly annuity
40	170.0
41	169.8
42	169.6
43	169.3
44	168.7
45	167.7
46	166.3
47	164.8
48	164.0
49	163.4
50	162.8
51	162.8
52	162.8
53	162.8
54	162.8
55	162.8
56	163.0
57	163.6
58	164.2
59	165.3
60	167.2
61	168.4
62	166.1
63	160.9
64	155.5
65	150.2
66	145.3
67	140.6
68	135.7
69	130.9
70	126.0
71	121.4
72	116.9
73	112.1
74	107.0
75	102.3
76	98.5
77	93.9
78	88.6
79	83.3
80	78.8
81	74.9
82	71.5
83	68.4
84	65.6
85	62.5
86	59.1
87	55.8
88	52.6
89	49.6

TABLE II—PRESENT VALUE FACTORS (APPLICABLE TO RETIREES NOT LISTED IN 5 U.S.C. 8462(c)(3)(B)(ii)—Continued

Age at retirement	Present value of a monthly annuity
90	46.7

Office of Personnel Management.

James E. Colvard,

Deputy Director.

[FR Doc. 87-19568 Filed 8-25-87; 8:45 am]

BILLING CODE 6325-01-M

PRESIDENT'S COMMISSION ON COMPENSATION OR CAREER FEDERAL EXECUTIVES

Meeting

The President's Commission on Compensation of Career Federal Executives will hold its first meeting Thursday, September 17, 1987 from 12:00 noon until 3:00 p.m. in room 4830 of the Department of Commerce located at 14th and Constitution Avenue NW., Washington, DC.

Waiver has been sought under 5 U.S.C. 552b(c)(2) to close the first hour of the meeting for administrative purposes. The Commission has also requested waiver of the rule requiring that such request be lodged 30 days in advance of the meeting scheduled September 17, 1987, pursuant to 41 CFR 101-6.10, due to the short term of the Commission. The open portion of the meeting, beginning at 1:15 p.m., will consist of a brief review of the Senior Executive Service and review of the mandate and objectives of the Commission.

Organizations and individuals are invited to submit for consideration written views or recommendations which are relevant to the mandate of the Commission as authorized by Executive Order 12592 of April 10, 1987. A limited amount of time is available for verbal testimony, amounting to five minutes per organization or individual. Those organizations and individuals wishing to testify should submit a written request no later than Friday, September 11, 1987 to the following address:

President's Commission on Compensation of Career Federal Executives, Office of Personnel Management, 1900 E Street NW., Room 5554, Washington, DC 20415.

Written recommendations or views for consideration by the Commission should also be addressed as noted above. These submissions should be made at the earliest date possible, but no later than November 2, 1987. For further information, please contact Steve Gleason at (202) 632-8703.

Note. The Commission originally authorized was due to report its findings no later than August 1, 1987, however, approval has been obtained to extend to February 28, 1988 and this approval will be published shortly.

Steve Gleason,

Executive Director.

August 24, 1987.

[FR Doc. 87-19700 Filed 8-26-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24831; File No. SR-AMEX-87-10]

On April 6, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder,[2] a propose rule change to request Commission approval of a Memorandum of Understanding ("Surveillance Memorandum") that the Exchange proposes to enter into with the European Options Exchange ("EOE") providing for the exchange of surveillance information.

The proposed rule change was noticed in Securities Exchange Act Release No. 24462 (May 15, 1987), 52 FR 19943 (May 28, 1987). No comments were received by the Commission on the proposed rule change.

I. Background

The Amex has developed a broad-based market index, known as the Major Market Index ("XMI"), that is based on the values of 20 well-known, highly-capitalized U.S. stocks traded on the New York Stock Exchange ("NYSE"). The XMI is a price-weighted stock index designed to measure the market performance of major U.S. industrial corporations.[3] The stocks comprising the XMI represent a broad spectrum of industries, including merchandising, computer technology, oil and gas, communications, chemicals, pharmaceuticals, manufacturing, and

[1] 15 U.S.C. 78s(b) (1982).

[2] 17 CFR 240.19b-4 (1986).

[3] In a price-weighted index, an issue's relative weight in the total index value is based on its price rather than its total capitalization. A price-weighted index is calculated by adding the prices of one share of each of the companies in the index and dividing that sum by a pre-established divisor.

consumer products. The Amex currently trades cash-settled options based on the XMI. Such options are issued by, and cleared and settled through, the Options Clearing Corporation ("OCC").[4]

The Amex and the EOE have proposed to enter into a licensing agreement that will atuhorize the EOE to trade XMI options and to use the names "Major Market Index" and "XMI" in connection with options traded on the EOE and based on the XMI. The EOE is located in Amsterdam, the Netherlands. It trades options on individual Dutch stocks, Dutch government bonds, foreign currencies, and gold and silver.

XMI options traded on the EOE will have the same terms and conditions as XMI options traded on the Amex. In addition, XMI options traded on the EOE will be issued by and cleared and settled through the facilities of the OCC. Because EOE-traded XMI options will be issued, cleared, and settled by OCC, OCC rules generally will be applicable to EOE-traded XMI options. More specifically, EOE-traded XMI options will be identical to and fungible with the XMI options traded on the Amex. Consequently, positions in XMI options established in transactions effected on the EOE may be liquidated in transactions effected on the Amex, and vice versa. For example, a short XMI position established on the Amex may receive an assignment notice based on transactions effected on the EOE.

The EOE will commence trading XMI options on its trading floor each business day several hours prior to the opening of trading on the Amex. XMI options will trade on the EOE from 6 a.m. to 10:30 a.m., New York time, corresponding to noon to 4:30 p.m. Amsterdam time. There will be a one hour overlap of trading in XMI options on both exchanges starting at 9:30 a.m. New York time. The EOE will trade XMI options during all business days on which the EOE is open for trading. This will include certain U.S. holidays, when the Amex may be closed.

All exercises of XMI options on a given day, whether purchased in transactions on the EOE or the Amex, will be settled on the basis of the closing XMI index value as computed at the close of the Amex. In cases where the EOE is open for trading and the Amex is closed, any XMI exercises will be based on the XMI closing index value of the next U.S. trading day.

[4] The OCC has filed a proposed rule change (File No. SR–OCC–87–09) enabling it to issue, clear, and settle XMI options traded on the EOE. That proposal is being approved contemporaneously with the Amex proposal.

No official XMI index value will be calculated or published by the Amex or the EOE prior to the opening of the securities markets in New York. All of the stocks comprising the XMI are, however, to varying extents traded in one or more European markets during the hours the EOE is open for trading. The Amex and the EOE have agreed to cooperate in efforts to collect and disseminate European pricing information regarding such stocks and to display such information in a manner that will reflect the impact of current European prices on the previous day's closing level of the XMI. During the initial three and one-half hours of XMI trading on the EOE (6:00 to 9:30 a.m. New York time), prior to the opening of the New York securities markets, quotation for all the XMI component stocks will be available through the Stock Exchange Automatic Quotation International System ("SEAQ International") [5]. The Amex and EOE are negotiating with private vendors to calculate the index prior to the Amex opening based on the SEAQ International quotations, but it is unlikely that an agreement will be reached before trading begins on August 24. As soon as the New York markets open each day and the Amex commences to calculate the XMI, the index valuations will be displayed on the EOE trading floor and will be available through vendors servicing European business centers.

XMI options will trade in U.S. dollars on the EOE. Trading increments of eights (for premiums over $3) and sixteenths (for premiums less than $3) will be used on the EOE as is the case on the Amex. The EOE will disseminate to vendors real-time quotation and trade reports for XMI options. While the Amex and EOE will not provide one another directly real-time quotations and reports from their markets for the XMI options, each exchange will have access to this information from private vendors and will display it on their floors.

The EOE will introduce for trading only those series of XMI options as the Amex has determined to introduce. To the extent possible, all new series will commence trading on both exchanges on the same day. Because of EPE's earlier start of trading, it is likely that new series announced by the Amex will be introduced first on the EOE. Limit order books will not be passed between the Amex and the EOE or vice versa. Therefore, limit orders entered on one exchange cannot be guaranteed execution if the limit order's price is bettered at the other market.

The EOE will adopt rules and requirements relating to index options that are similar to the Amex's rules and requirements for index options. Among other things, these rules will provide for position and exercise limits, procedures that govern the allocation of exercise notices and option exercises, including the time for submission of exercise notices, margin requirements and disclosure document delivery requirements (limited to the EOE's own disclosure documents.[6]

[5] The SEAQ International System is a screen-based quotation dissemination system for non-United Kingdom international equities operated by the International Stock Exchange of the United Kingdom and the Republic of Ireland Ltd., formerly the Stock Exchange, London, England. For the XMI component stocks, SEAQ International will display firm quotations in U.S. dollars.

[6] For purposes of compliance with Rule 9b–1 under the Act, 17 CFR 240.9b–1 (1986), the Commission believes that, in view of the similarity of trading procedures between the Amex and EOE and the provisions for surveillance information sharing described herein, as well as the fact that these procedures do not involve a direct trading link, the current Options Disclosure Document ("ODD"), as approved by the Commission on September 17, 1985 (*see* Securities Exchange Act Release No. 22418, September 24, 1985, 50 FR 38732) adequately describes the risks of buying and writing index options including the internationally-traded XMI options contemplated by the Amex/EOE licensure agreement. In this regard, the Commission notes that the preparers of the ODD plan within the near future to revise the ODD and, in that context, anticipate adding further expository material to the ODD regarding internationally-traded options. In addition, because OCC will issue and guarantee the internationally-traded XMI options, which are identical to, and fungible with, XMI options traded on the Amex and covered by the ODD, the Commission does not believe it is necessary for EOE, or its affiliated clearing organization, the Associate Clearing House Amsterdam, B.C., to become a preparer of the ODD.

This is not to say, however, that sales and marketing literature, as well as customer recommendations, directed to U.S. customers regarding XMI options traded on the EOE should not be tailored to reflect any special risks involved in such trading. Apart from the general antifraud provisions of the federal securities laws (*i.e.*, Section 17(a) of the Securities Act of 1933 ("1933 Act") and Section 10(b) of the Act), Rule 134a under the 1933 Act, 17 CFR 230.134a (1986), specifically states that "written materials relating to standardized options . . . shall not be deemed to be a prospectus" only in so far as "[t]he potential risks related to options trading generally and to each strategy addressed are explained" in those materials. Similarly, Amex rules separately cover advertising by Amex members regarding standardized options (see Amex Rule 991: Communications to Customers) and set forth specific suitability requirements (*see* Amex Rule 923: Suitability). For example, the EOE will trade XMI options for a substantial period of time when the relevant U.S. underlying markets are not open, although the exercise of such XMI options will be based on U.S. prices. Accordingly, the Commission expects that sales and marketing literature, as well as recommendations to U.S. customers, will highlight the fact that premiums for XMI options may not reflect the U.S. market prices for the underlying securities. In this regard, the

Continued

II. Description of Surveillance Memorandum

The purpose of the Surveillance Memorandum is to provide for the exchange of surveillance information as needed by the two exchanges to carry out their respective surveillance functions. Paragraph 1 of the Surveillance Memorandum provides for each exchange to conduct routine surveillance of trading in XMI options in its own marketplace and, to the best of its ability, assure compliance by its members with all rules and requirements applicable to options trading in such marketplace. Paragraph 2 requires each exchange to report all transactions in XMI options and to grant the other exchange access to such information. Paragraph 3 further calls for the daily delivery by OCC to each exchange of the combined clearing information regarding the previous day's activity in XMI options on both exchanges. This constitutes the bulk of the information needed to carry out routine market surveillance.

Paragraph 4 of the Memorandum generally provides that the Amex and EOE may request the assistance of the other exchange with regard to investigating a complaint or other question relating to or arising from transactions in XMI options. Upon receipt of such a request, the Amex or EOE would be obligated, using its best efforts and in accordance with its respective rules, to cooperate in the investigation and provide the requested information. Pursuant to paragraph 5 of the Surveillance Memorandum, the results of any such investigation generally shall be made available promptly to the exchange making the request ("requesting exchange"). However, when the inquiry involves details concerning the identity and trading activity of specific customers of member firms ("client information"), the exchange to whom the request is directed ("requested exchange") may decline to furnish the information in certain limited circumstances. An exchange only may refuse to provide the information if it determines disclosure of such client information: (1) Would not necessarily serve the interests of maintaining fair and orderly securities markets and options markets and/or protecting the investing public, or (2) would be inconsistent with the laws applicable to such exchange or with its rules and regulations. Even in cases where one of the exchanges determines that, in accordance with the above standards, it is precluded from turning over specific customer information, it is nevertheless required by paragraph 6 to make full inquiry into the matter and furnish such of the information as it is not prohibited from disclosing. In addition, under paragraph 7, each exchange agrees to notify the other of any disciplinary action taken against its members with respect to activities that could affect the markets on both exchanges. Finally, at the request of either exchange, a joint task force will be established to promptly review unusual or disruptive market conditions in XMI options or in the markets for the stocks comprising the XMI.

To further clarify the procedures to be followed by the Amex and the EOE in exchanging surveillance information concerning trading in XMI options pursuant to the Surveillance Memorandum, the Amex sent a letter to the EOE on June 17, 1987.[7] This letter sets forth the particular circumstances under which either exchange might fail to provide client information requested by the other exchange in reliance on clauses (1) and (2) of paragraph 5 of the Surveillance Memorandum. The Amex stated in the letter that it understands that any request for information by one exchange from the other must, pursuant to paragraph 4 of the Surveillance Memorandum, be accompanied by a statement of the reasons underlying such request. If the request is in proper form, the requested exchange will inquire into the matter, using its best efforts and in accordance with its rules, and furnish the relevant information promptly to the requesting exchange. The only exception would be where the requested information involves details concerning the identity and trading activity of specific clients of members of the requested exchange and even then, only if the requested exchange shall have made a good faith determination that the furnishing of such client information would not necessarily serve the interests of maintaining fair and orderly markets and protecting the investing public, or would be inconsistent with applicable law (including the rules of the requested exchange).

The Amex stated that it expected that any request made by either exchange for information pursuant to these provisions of the Surveillance Memorandum would be consistent with the exchange's obligation to fulfill its regulatory responsibilities. Further, the Amex stated that it expected that the reasons accompanying such request would explain the need for the information. Accordingly, the Amex noted that it seems unlikely that circumstances would arise justifying a determination that the furnishing of such requested information, including client information, would be inconsistent with the interests of maintaining fair and orderly markets or protecting the investing public. The Amex stated also that its outside counsel had indicated that it was not aware of any applicable law or rule that would preclude the furnishings of information by the Amex to the EOE for surveillance purposes, and futher noted it understanding that the EOE's counsel had opined [8] that it was unaware of any Dutch Law or rule that would preclude the furnishing of information by the EOE to the Amex for surveillance purposes.

The Amex further indicated that information requests normally would be directed to surveillance personnel at each exchange. If Amex surveillance personnel should have questions concerning the furnishing of specific information as requested by the EOE, the Amex indicated that it would expect that such questions would first be addressed to persons with supervisory responsibility at the Amex for surveillance activities. If the question of providing the information could not be resolved at that level, the Amex would further expect the matter to be referred to the exchange's top executives, who then would contact EOE management to discuss the nature, scope, and intent of the request before there would ever be a refusal to furnish information relevant to an EOE inquiry. The Amex stated that because of its belief that both exchanges will confine their requests for information to those instances where the data is necessary to carry out an appropriate inquiry in fulfilling

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Commission notes that it traditionally has been concerned about the pricing problems which may exist when a derivative product is trading in absence of reliable real-time information regarding the underlying instrument (*see* Securities Exchange Act Release No. 21580 (December 18, 1984), 49 FR 50342 [approving a proposal by the Chicago Board Options Exchange, Inc. to allow opening rotations for index options to be held at 9:00 a.m., Chicago time]). Here, however, the very purpose of the licensure arrangement is to facilitate such trading and it is physically impossible both to extend the time period when XMI options are available for trading and still ensure the availability of real-time information on the underlying securities. Accordingly, in view of the Amex's and EOE's efforts to make available such information as is obtainable (*e.g.*, SEAQ International quotations), if appropriate disclosure is made, the Commission does not believe it would be inappropriate for a broker-dealer to recommend the purchase or sale of XMI options on the EOE to U.S. customers.

[7] Leter from Howard A. Baker, Senior Vice President, Amex, to the EOE, dated June 17, 1987.

[8] *See* Letter from Maxim Lauman, Legal Counsel, EOE, to T.E. Westerterp Esq., President, EOE, dated April 16, 1987.

regulatory responsibilities, it would find it very unlikely that these procedures would ever have to be invoked or that circumstances would arise justifying the Amex to refuse furnishing relevant information to the EOE.

The EOE confirmed that it would be subject to the same understandings and procedures as noted in the Amex letter in regard to the above matters by signing and returning a copy of the letter on June 24, 1987.

In addition, the EOE has eliminated any concerns that Dutch law or the EOE's Articles of Association might impede the sharing of information contemplated by the above surveillance memorandum. For example, in contemplation of the licensure agreement, the EOE adopted a new rule that requires EOE members to inform their customers that by trading the XMI index option on the EOE they consent to the EOE's providing information concerning customer accounts to other regulatory organizations, including those of a foreign regulatory organization with whom the EOE has entered into a surveillance agreement.[9] Accordingly, EOE's counsel has concluded that a customer who decides to trade the XMI index option on the EOE waives any rights he may have with regard to confidentiality of information regarding his XMI transactions.[10] The Dutch Ministry of Finance has indicated that such a waiver is legally valid under Dutch law.[11]

III. Discussion

The Commission generally views agreements between American and foreign securities exchanges as positive developments in the increasing internationalization of the world's securities markets. Such agreements serve to facilitiate the flow of capital and financial services across national borders. Before approving these trading links, however, the Commission must be satisfied that adequate safeguards and procedures have been established and implemented to protect investors and detect fraudulent or manipulative acts or practices.[12] In this regard, the Commission believes that an effective surveillance program is critical, especially the coordination of surveillance activities between the U.S. and foreign exchanges.

The purpose of the Surveillance Memorandum is to ensure adequate surveillance of XMI index option trading on both exchanges. In an environment where XMI index options will be traded in more than one market, effective surveillance requires routine review of the trading in all markets where the option is traded, as well as trading in the underlying stocks. In addition, where specific questions arise from these routine trade reviews, the Commission believes that each market must be able to obtain additional detailed information, where appropriate, from the other marketplaces trading the security and their members. The Commission believes this is particularly so where the markets trading the security are located in different countries and subject to different regulatory oversight.

Because the XMI option traded on the EOE will be identical to and fungible with the XMI option traded on the Amex, positions established in these options on one exchange may be offset by transactions on the other exchange. Consequently, the Amex needs the ability to obtain access to information concerning XMI option trading on the EOE. Without access to this information, where appropriate, the Amex would not be able to ensure that its members were complying with Amex rules or the securities laws. More specifically, the Amex would not be able to detect possible fraudulent or manipulative acts or practices involving the XMI index. In addition, because the XMI is comprised of U.S. securities, it is essential that the appropriate U.S. exchanges or regulatory authorities be able to investigate international intermarket manipulations involving XMI options traded on the EOE and stocks traded in the U.S. Similarly, the EOE will benefit from access to information concerning trading of XMI options on the Amex and trading in the underlying stocks in carrying out its surveillance and compliance functions under Dutch law.

The Amex believes that the statutory basis for the proposed rule change is sections 6(b)(1), (5), and (6) of the Act.[13] The Amex believes that mutual access to surveillance information, pursuant to the Surveillance Memorandum, and the ability of one exchange to request the other exchange to conduct specific inquiries, will foster cooperation and coordination with persons engaged in regulating, clearing, settling, and facilitating transactions in securities. Such cooperation helps perfect the mechanism of a free and open market and, in general, protects investors.

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,[14] and the rules and regulations thereunder. As discussed above, trading of XMI options on the EOE will be subject to rules and disclosure requirements generally parallel to those in the United States.[15]

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[9] *See* Letter from P.C. Maas, Chairman, and T.E. Westerterp, President, EOE, to Amex, dated February 11, 1987, and Letter from Gordon L. Nash, Lord, Day & Lord, counsel to Amex, to Howard Kramer, Assistant Director, Division of Market Regulation, dated March 6, 1987.

[10] *See* Letter from Maxim L. Lauman, Legal Counsel, EOE, to T.E. Westerterp, Esq., President, EOE, dated April 16, 1987.

[11] *See* Letter from Dr. Marius J.L. Jonkhart, Director, Domestic Monetary Affairs, Financial Markets and Institutions Division, Ministry of Finance, to Richard G. Ketchum, Director, Division of Market Regulation and Gary G. Lynch, Director, Division of Enforcement, dated May 19, 1987 ("As the customer must authorize the member of EOE to provide information about him for the sake of exchange of information, he will waiver in this context possible rights in a way which I regard as legally acceptable.").

[12] *See* Securities Exchange Act Release No. 21449 (November 1, 1984), 49 FR 44575 [approving the trading link between the Montreal Stock Exchange ("ME") and the Boston Stock Exchange ("BSE")]; Securities Exchange Act Release No. 22442 (September 20, 1985), 50 FR 39201 (approving the link between the Toronto Stock Exchange ("TSE") and the Amex); and Securities Exchange Act Release No. 23075 (March 28, 1986), 51 FR 11854 (approving a two-way trading link between the Midwest Stock Exchange ("MSE") and the TSE).

[13] 15 U.S.C. 78f(b)(1), (5), and (6) (1982).

[14] 15 U.S.C. 78f (1982).

[15] The Commission notes, however, that while there is consolidated trade and quote information among domestic standardized options markets, there is generally no consolidation of foreign and domestic trade and quote information for U.S. securities. With the growth of foreign markets for U.S. securities, some of which, like the XMI options here, have overlapping trading hours with U.S. markets and U.S. dollar denominated trade and quote reports, and the continuing development of international trading mechanisms, it may be desirable to develop consolidated U.S. displays of information for such internationally-traded securities. Thus, although the Commission does not believe it is necessary for the Amex and EOE to develop such consolidation facilities to commence simultaneous trading of XMI options, the Commission may revisit the need for consolidated information, at least during overlapping trading hours, if circumstances indicate that such consolidation is appropriate and necessary for the protection of investors. At a minimum, where two markets contemplate creating a direct trading link it would seem essential for these two markets to have access to each other's trade and quote information. For example, the Amex's trading link with the TSE specifically provides for the display of trade and quote information regarding linkage-eligible securities on each respective floor. Indeed, even the Amex-EOE arrangement contemplates that as soon as the New York markets open each day and the Amex commences to calculate the XMI index value, such value will be displayed on the EOE trading floor and will be available through vendors servicing European business centers. Furthermore, the Commission expects that U.S. broker-dealers handling customer orders would consider the liquidity of the EOE market in recommending that their U.S. customers execute their orders in that market.

Moreover, the Commission believes that the Amex and the EOE have made adequate arrangements to provide for the exchange of surveillance information. The Surveillance Memorandum sets forth the mutual undertakings by the parties to conduct surveillance and to furnish each other with surveillance information. The June 17, 1987 letter written by the Amex and signed by the EOE on June 24, 1987 clarifies the circumstances under which either exchange might fail to provide information requested by the other exchange and states that it is unlikely that circumstances would arise justifying one exchange to refuse to furnish relevant information to the other exchange, and that such refusal would occur only after top executives at both exchanges have had an opportunity to discuss the nature, scope, and intent of the request.

The Commission believes that the circumstances under which either exchange would fail to provide requested information concerning the identity and trading activity of specific customers or clients of member firms are sufficiently narrow so as to make their occurrence unlikely.[16] Most surveillance information, such as transaction and clearance information, will be routinely available to each exchange. In regard to client information, the Commission agrees with the Amex and EOE that it is difficult to imagine situations where either exchange's failure to provide requested customer identity and trading activity would serve the interests of maintaining fair and orderly securities and options market and/or protect the investing public.[17] Ordinarily, investor protection would be furthered to the extent an exchange is better able to surveil its market. Investor protection in turn creates investor confidence in the markets' integrity and facilitates the development of liquid, fair, and orderly markets.

The Commission also believes that legal barriers to establishing the identity of customers of foreign brokers or banks are absent here. The EOE, by rule,[18] requires EOE members to obtain from their customers signed forms acknowledging that by trading XMI options on the EOE they consent to the EOE's provision of client and trading information to other regulatory organizations, including those of a foreign country, with whom the EOE has entered into a surveillance agreement. The Commission also notes that the Dutch Ministry of Finance has indicated that such a waiver is valid under Dutch law.[19] Finally, the Commission notes that counsel to both the EOE and Amex have indicated that they are unaware of any U.S. or Dutch law that would prohibit either exchange from providing information concerning the identity and trading activity of specific customers or clients of member firms where specific requests are made in accordance with the provisions of the Surveillance Memorandum.[20]

The Commission also believes that the Surveillance Memorandum adequately provides for surveillance of intermarket manipulation involving XMI options traded on the EOE and underlying stocks traded on the NYSE. Both the Amex and NYSE are members of the Intermarket Surveillance Group ("ISG"). The ISG maintains a facility for the routine exchange of essential surveillance information and provides a mechanism for coordinating intermarket investigations regarding securities traded in either market. Through the ISG, the Amex would have access to information regarding transactions in the component securities of the XMI traded on the NYSE, and the NYSE would have access to information regarding transactions in XMI options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Dated: August 21, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19659 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24800; File No. SR-PSE-87-19]

Self-Regulatory Organizations; Filing and Order Granting Partial Accelerated Approval to Amendment 1 to Proposed Rule Change by the Pacific Stock Exchange Inc. Relating to the Adoption of its Pilot Program for the Appointment and Evaluation of Specialists as a Permanent Part of its Rules of the Board of Governors

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 18, 1987 and July 28, 1987, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities Exchanges 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.[1] 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 PSE originally filed its pilot program for the Appointment and Evaluation of Specialists and the Creation of New Specialist Posts ("Pilot Program") with the Commission on March 13, 1981.[2] The pilot program expired on June 30, 1987. In order to adopt the structure of the pilot program as a permanent part of the PSE Rules, the Board of Governors ("Board") is submitting this proposed rule change.

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

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[16] If either market refuses to divulge such information pursuant to a bona fide request, the Commission should be promptly informed of the nature of the request and the reasons for its refusal. If the refusal called into question the ability of the Amex to maintain the integrity of its options market, the ability of the NYSE to police stock-related options trading or the ability of the Commission to oversee those markets, the Commission would consider taking steps to terminate the arrangement.

[17] In addition, both the Amex and EOE have exchanged letters stating that a party making an information request pursuant to the Surveillance Memorandum need not demonstrate that the conduct being investigated is an offense under the other exchange's rules or its country's laws. *See* Letter from Gordon L. Nash, Lord, Day & Lord, counsel to Amex, to Howard Baker, Senior Vice President, Amex, dated August 3, 1987 and Letter from Maxim L. Laumen, Legal Counsel, EOE, to Howard Baker, Senior Vice President, Amex, dated August 4, 1987.

[18] *See* Letter from Maxim L. Laumen, Legal Counsel, EOE, to T.E. Westerterp Esq., President, EOE, dated April 16, 1987.

[19] *See* Letter from Dr. Marius J.L. Jonkhart, Director, Domestic Monetary Affairs, Ministry of Finance, to Richard G. Ketchum, Director, Division of Market Regulation and Gary G. Lynch, Director, Division of Enforcement, Securities and Exchange Commission, dated May 19, 1987.

[20] *See* Letter from Howard A. Baker, Senior Vice President, Amex, to the EOE, dated June 17, 1987.

[21] 15 U.S.C. 78s(b)(1) (1982).

[22] 17 U.S.C. 200.30-3(a)(12) (1986).

[1] The PSE filed Amendment No. 1 to its proposed rule change extend the effectiveness of the Exchange's current pilot program for an additional three months and was submitted in response to a Commission staff request.

[2] See Securities Exchange Act Release Nos. 17647 (March 20, 1981) 46 FR 19372 and 17818 (May 27, 1981) 46 FR 30016. The PSE filed an amendment to the original filing on May 4, 1981.

on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory 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 PSE's pilot program for the Appointment and Evaluation of Specialists and Creation of New Specialist Posts was originally filed with the Commission on March 13, 1981. The then and still current purpose of the pilot program is to establish an effective procedure and criteria for (a) the appointment of new specialists, and (b) the evaluation of the performance of PSE specialists. In 1982 and 1986, the pilot program was amended to provide for changes in the specialist evaluation system.[3] Since its original adoption the pilot has been reviewed on a continual basis.

The pilot program has been based upon a system that provides that PSE specialists will be judged on a quarterly basis in three distinct categories: (1) National Market System Quota Performance, (2) Specialist Evaluation Questionnaire Survey, and (3) SCOREX Limit Order Acceptance Performance. Each of these criteria forms the basis for rating the specialist on a total scale of 100%. Currently, the market system quote performance and evaluation questionnaire are each 45% of the total score. The SCOREX portion is equal to 10%.

At the end of each quarter each specialist is ranked with the other specialists on his trading floor and specialists who fall into the bottom 10% of all specialists for that quarter as determined by the overall evaluation score are asked to meet on an informal basis with the Equity Allocation Committee ("Committee").

The purpose behind this informal meeting with the Committee is to allow the Committee to review with the specialist his individual scores and determine if any remedial measures are needed.

Under provisions of the current pilot program, should a specialist fall into the bottom 10% of all specialists in any two of four consecutive quarters, the Committee has the discretion to either commence formal reallocation proceedings or require a second informal meeting with the specialist to discuss his performance.[4] The formal reallocation proceedings are designed to allow the specialist the opportunity to present his case before the Committee, or designated panel, to explain his situation. Under the provisions of the program, the Committee or panel is empowered to impose sanctions which can range from the reallocation of a stock or stocks to the withdrawal of approval of act as a specialist. A key factor in determining whether or not to impose such sanction is whether mitigating circumstances exist which would account for the specialist's substandard performance in the preceding quarters.

It is important to understand that the program satisfies due process requirements since notice, and opportunity for a hearing, and the ability to appeal Committee decisions to the Board are included within its provisions.

What is also crucial to the program is that it is considered and administered as a remedial program rather than a disciplinary program. The goal is to provide an effective means to measure and evaluate the performance of PSE specialists in order to help maintain their ability to adequately function within the market system.

The PSE program for the Appointment and Evaluation of Specialists has been shown to be an effective and useful tool during its existence at the PSE. It plays an important part in the maintenance of high standards of performance for PSE specialists as well as a means to help determine which specialist unit will be allocated new securities. It is on this basis that the Board voted to adopt the structure of the pilot program as a permanent part of the PSE rules.

The proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it helps to promote just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, removes impediments to, and perfects the mechanics of a free and open market, and protects investors and the public interest by allowing for an adequate and effective measurement of specialist performance.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments on the proposed rule change were neither solicited nor received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests that Amendment 1 to the proposed rule change be given accelerated effectiveness pursuant to section 19(B)(2) of the Act. Amendment 1 seeks to extend the pilot program for an additional three months to provide the Commission with sufficient time to thoroughly analyze all aspects of the PSE's pilot program [5] and determine whether the pilot program should be approved on a permanent basis.

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 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. 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 offices of the PSE. All

[3] See, Securities Exchange Act Rel. Nos. 19555 (March 1, 1983), 48 FR 9722; and 22895 (February 12, 1986), 51 FR 6190.

[4] If the Committee elects to meet with the specialist for a second time, the burden is on the specialst to prove the existence of mitigating circumstances. If the Committee determines that mitigating circumstances contributed to the specialist's poor performance for the quarters at issue, formal reallocation proceedings will not be commenced. If, however, the specialist fails to prove the existence of mitigating circumstances as the underlying reason for his poor performance, formal reallocation proceedings will be commenced. We note that the Committee has the discretion to waive the second informal meeting with the specialist and immediately commence formal reallocation proceedings when the Exchange determines that the specialist has fallen into the bottom 10% for two consecutive quarters.

[5] As noted above, the Exchange requested approval of its pilot program on a permanent basis. The Commission, however, requested the PSE to amend its filing for the purpose of extending the effectiveness of the pilot program for an additional three months while it considered permanent approval.

submissions should refer to the file number in the caption above and should be submitted by September 17, 1987.

V. Conclusion

The Commission finds that Amendment 1 to the proposed rule change that would extend the pilot temporarily 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 and the rules and regulations thereunder. In this regard, we note that the extension of the pilot furthers the protection of investors and the public interest by allowing for the continued evaluation of specialist performance while the Commission considers permanent approval.

The Commission finds good cause for approving Amendment 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in that the current pilot program expired on June 30, 1987. The Commission believes it is appropriate to permit the program to remain in effect for an additional three months while the Commission considers the Exchange's proposal to approve the pilot program on a permanent basis. The Commission believes, therefore, that accelerated effectiveness of the extension of the pilot program until September 30, 1987 is appropriate.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that Amendment 1 to the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

Dated: August 14, 1987.

[FR Doc. 87-19660 Filed 8-26-87; 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.

August 21, 1987.

The above named national security 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:

Zenith National Insurance Corp.
Common Stock, $1.00 Par Value (File No. 7-0364)
Helvetia Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7-0365)
Placer Dome Inc.
Common Stock, No Par Value (File No. 7-0366)
Neiman-Marcus Group Inc. (The)
Common Stock, $.01 Par Value (File No. 7-0367)

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 September 14, 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19661 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24833; File No. SR-MBS-87-7]

Self-Regulatory Organizations; Proposed Rule Change by MBS Clearing Corp. Relating to the Depository Division Rules Regarding Guarantees and Representation

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 27, 1987 the MBS Clearing Corporation 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

Attached as Exhibit A is a proposed rule change to the Depository Division ("Depository Division") rules of MBS Clearing Corporation (the "Corporation") which, among other things, make revisions and modifications to the Depository Division rules in connection with warranties Participants give regarding Securities transferred to their Proprietary Accounts, assumptions made by the Corporation in computing a Participant's Net Free Equity, and the corporation filing of claims for payment under any guarantee, as agent for Participants.

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory 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 proposed rule changes clarify and revise certain Depository Division rules applicable to Depository Transactions, Depository Services and Depository Participants. Capitalized terms used herein have the same meanings ascribed to them in the Depository Division Rules.

Article II, Rule 1 section 2(a) has been modified to limit the warranty Participants give with respect to Securities transferred to their Proprietary Accounts. Participants' ownership, free from adverse claims, of securities transferred to their Proprietary Accounts results from the making of appropriate entries on the books of the Corporation, as a clearing corporation within the meaning of the New York Uniform Commercial Code. While Participants are not required to warrant that the Corporation is a clearing corporation or that it has made appropriate entries in its books, the proposed rule change requires Participants to warrant that once Securities have been transferred to their Proprietary Accounts, such Participants have not subjected the Securities to any liens other than those granted to the Corporation pursuant to the Depository Division rules.

Article II, Rule 1, section 2(c) has been amended to indicate, consistent with

[6] 17 CFR 200.30-3.

Article II, Rule 13, that funds are transferrable from Agency Cash Balances to Agency Transfer Cash Balances, not *vice versa*.

In Article II, Rule 3, Section 3, a new subparagraph (c) is added to reflect the Corporation's ability to make an intra-day transfer of Securities from one Transfer Account to another Transfer Account in a transaction Versus Payment. In section 4, the proposed rule change now provides that the Corporation warrants that, except as otherwise provided in the Rules, it will not have created any lien or encumbrance on Securities transferred from a Transfer Account to the Depository Account with which it is associated. Otherwise, as previously provided, the Corporation makes no independent warranty of title.

Article I, Rule 11, section 1, subparagraphs (c)(11)(C) (1), (2) and (3) have been amended to make clear that the Corporation, when making a *pro forma* computation of a receiving Participant's Net Free Equity before effecting a requested Account Transfer of Securities, assumes the crediting of the Securities to the Transfer Account associated with the Receiving Participant's Proprietary, Agency or Pledgee Account, as the case may be.

Proposed new Article III, Rule 2, section 6 addresses the concerns raised by Participants that the Corporation may be "appropriating" a Government National Mortgage Association (GNMA) or other similar guarantee for its own purposes. These concerns are based in part on the fact that since GNMA securities are registered in the name of the Corporation's nominee, only the Corporation can file appropriate claims for payment under the GNMA guarantee. The proposed rule change is intended to resolve these concerns by making clear that the Corporation, in filing claims for payment under any guarantee, will be acting solely as agent for its Participants except to the extent that (i) the Corporation has made a principal and interest advance or has pledged principal and interest to a third party lender to fund a principal and interest advance, or (ii) the Securities with respect to which principal and interest are payable have been pledged in connection with a Participants failure to pay its Debit Balance.

The proposed rule changes are consistent with the Securities Exchange Act of 1934 in that it facilitates the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Corporation does not believe that any burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change have not yet been solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 17, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 21, 1987.

Exhibit A—MBS Depository Division Rule Changes

Article II—Depository Transactions

Note.—Italics Denote Addition, [ ] Denotes Deletion.

Rule 1. Depository Accounts

Sec. 3. Representations and Warranties of Participants Regarding Depository Accounts. Each Participant maintaining a Depository Account shall be deemed to represent and warrant that such Depository Account is maintained in accordance with applicable law and:

(a) In the case of a Proprietary Account, that all Securities deposited in [or transferred to/from] such Proprietary Account [(except for Securities credited to the associated MBSCC Proprietary Transfer Account pursuant to Section 2 of Rule 3 of this Article II)] are owned by such Participant *and that the Participant has not subjected any Securities deposited in or transferred to such Proprietary Account to any lien other than the lien of the Corporation pursuant to these Rules.*

* * * * *

(c) In the case of an Agency Account, that all funds transferred from the Agency [Transfer] Cash Balance to the Agency *Transfer* Cash Balance pursuant to Rule 13 of this Article II, and all Securities permitted to remain in the associated Agency Transfer Account by reason of an Instruction submitted pursuant to the last paragraph of Section 3 of Rule 3 of this Article III, are so transferred or permitted to remain in conformity with the terms of any applicable customer agreement.

* * * * *

Rule 3. Transfer of Securities

Sec. 3. Corporation's Transfer of Securities. Any Security credited to an MBSCC Transfer Account *of a Receiving Participant* shall be transferred by the Corporation from such Account upon the first to occur of the following:

* * * * *

(b) the transfer of such Security by such Receiving Participant to another Depository Account (including an associated Seg Account) *of such Participant or another Participant* in any [other] transaction not Versus Payment which satisfies the requirements of Section 1(b) of Rule 11 of this Article II; [or]

(c) *the transfer of such Security by such Receiving Participant to the MBSCC Transfer Account associated with another Depository Account of such Participant or another Participant*

in any transaction Versus Payment which satisfies the requirements of Sections 1(b) and 1(e) of Rule 11 of this Article II; or

[(c)] (*d*) satisfaction by the Receiving Participant of all cash settlement obligation with respect to the Depository Account with which such MBSCC Transfer Account is associated pursuant to Section 3 of Rule 2 of this Article II (including any adjustment of such cash settlement obligation pursuant to Section 1(c) of Rule 5 of this Article II) or determination by the Corporation that no cash settlement obligation exists with respect to such Depository Account (after such adjustment, if any).

At the end of each Business Day, upon satisfaction of the requirements of clause [(c)] (*d*) above, the Corporation shall transfer all Securities then held in an MBSCC Transfer Account to the Depository Account with which such MBSCC Transfer Account is associated, except for Securities in an MBSCC Agency Transfer Account which the Participant has directed the Corporation, in accordance with the Procedures, not to transfer.

Sec. 4. Warranties. The Corporation *warrants that, except as otherwise provided in these Rules, it shall not have created any lien or encumbrance on* [expressly disclaims any independent warranty with respect to] Securities transferred from the Corporation to any Receiving Participant *pursuant to Section 3 of this Rule 3. The Corporation otherwise expressly disclaims any independent warranty of title with respect to such Securities.* However, notwithstanding any intervening transfers of Securities to MBSCC Transfer Accounts, all Receiving Participants shall be entitled to rely upon the representations and warranties made by Delivering Participants in connection with the transfer of Securities to the MBSCC Transfer Accounts including those pursuant to Section [2] *3* of Rule 1 and Section 1(c) of Rule 10 of this Article II.

* * * * *

Rule 10. Physical Deposit and Withdrawal of Securities

Sec. 1. Deposits of Securities

* * * * *

(d) All deposits of Securities acceptable in form and substance as prescribed by Section 1(c) of this Rule 10 initially shall be credited to the Corporation's Internal Control Account. After a predetermined processing interval, Securities that have been credited to the Internal Control Account automatically will be transferred to a Participant's Proprietary Account or Agency Account, as specified on the deposit ticket and subject to the Receipt Mode the Participant has elected for Account Transfers in which it is both the Delivering and the Receiving Participant, whereupon the Participant's Proprietary Account or Agency Account, as the case may be, will be given Face Value credit for the deposited Securities. No crediting of Securities to the Corporation's Internal Control Account pursuant to this subparagraph (d) shall give the Corporation any lien or other interest in such Securities. *Deposited Securities credited to Participant's Depository Accounts shall be registered in the name of the Corporation's nominee.*

* * * * *

Rule 11. Account Transfers

Sec. 1. Permitted Transfers

* * * * *

(c) If a requested Account Transfer meets the requirements of subparagraph (b) of this Section 1, the Corporation shall proceed with the following steps:

* * * * *

(ii) If the Account Transfer is Versus Payment:

* * * * *

(C) Third:

(1) If the Securities are to be transferred to the Proprietary Account of the Receiving Participant and automatically can be credited to the associated MBSCC Proprietary Transfer Account in accordance with the Receipt Mode elected by the Receiving Participant, or the Securities have been placed on an Await Match List and the transfer is approved, the Corporation shall determine whether, after giving effect to a debit to the Receiving Participant's Proprietary Cash Balance equal to the Contract Value *and a credit of the Securities to the MBSCC Proprietary Transfer Account associated with the Receiving Participant's Proprietary Account,* the Receiving Participant will have negative Proprietary Net Free Equity which is not offset by the Collateral Value of the Participant's Collateral in the Proprietary Participants Fund and the Participant's Excess Market Margin Differential (to the extent not used to offset negative Agency Net Free Equity or Pledgee Net Free Equity). If the Receiving Participant has sufficient Proprietary Net Free Equity and/or Collateral Value, the Securities will be credited to the MBSCC Proprietary Transfer Account associated with the Proprietary Account of the Receiving Participant and the Receiving Participant's Proprietary Cash Balance will be debited. If not, the Corporation, if it determines in its discretion that time permits, shall advise the Receiving Participant of the deficiency in Proprietary Net Free Equity and/or Collateral and afford the Receiving Participant an opportunity to cure the deficiency. If the deficiency is cured by the time specified by the Corporation, the Corporation shall proceed in the manner described in the preceding sentence. If not, the debit to the Delivering Participant's Depository Account or the associated MBSCC Transfer Account and the credit to its Cash Balance shall be reversed.

(2) If the Securities are to be transferred to the Agency Account of the Receiving Participant and automatically can be credited to the associated MBSCC Agency Transfer Account in accordance with the Receipt Mode elected by the Receiving Participant, or the Securities have been placed on an Await Match List and the transfer is approved, the Corporation shall determine whether, after giving effect to a debit to the Receiving Participant's Agency Transfer Cash Balance equal to the Contract Value *and a credit of the Securities to the MBSCC Agency Transfer Account associated with the Receiving Participant's Agency Account,* the Receiving Participant will have negative Agency Net Free Equity which is not offset by the Collateral Value of the Participant's Collateral in the Agency Participants Fund, the Applicable Percentage of the Market Value of the Securities which the Participant has pledged to the MBSCC Depository Pledgee Account and the Participant's Excess Market Margin Differential (to the extent not used to offset negative Proprietary Net Free Equity or Pledgee Net Free Equity). If the Receiving Participant has sufficient Agency Net Free Equity, Collateral Value and/or Market Value, the Securities will be credited to the MBSCC Agency Transfer Account associated with the Agency Account of the Receiving Participant and the Receiving Participant's Agency Transfer Cash Balance will be debited. If not, the Corporation, if it determines in its discretion that time permits, shall advise the Receiving Participant of the deficiency in Agency Net Free Equity, Collateral Value and/or Market Value and afford the Receiving Participant an opportunity to cure the deficiency. If the deficiency is cured by the time specified by the Corporation, the Corporation shall proceed in the manner described in the preceding sentence. If not, the debit to the Delivering Participant's Depository Account or the associated

MBSCC Transfer Account and the credit to its Cash Balance shall be reversed.

(3) If the Securities are to be transferred to the Pledgee Account of the Receiving Participant and automatically can be credited to the associated MBSCC Pledgee Transfer Account in accordance with the Receipt Mode elected by the Receiving Participant, or the Securities have been placed on an Await Match List and the transfer is approved, the Corporation shall determine whether, after giving effect to a debit to the Receiving Participant's Pledgee Cash Balance equal to the Contract Value *and a credit of the Securities to the MBSCC Pledgee Transfer Account associated with the Receiving Participant's Pledgee Account,* the Receiving Participant will have negative Pledgee Net Free Equity which is not offset by the Collateral Value of the Participant's Collateral in the Pledgee Participants Fund and the Participant's Excess Market Margin Differential (to the extent not used to offset negative Proprietary Net Free Equity or Agency Net Free Equity). If the Receiving Participant has sufficient Pledgee Net Free Equity and/or Collateral Value, the Securities will be credited to the MBSCC Transfer Account associated with the Pledgee Account of the Receiving Participant and the Receiving Participant's Pledgee Cash Balance will be debited. If not, the Corporation, if it determines in its discretion that time permits, shall advise the Receiving Participant of the deficiency in Pledgee Net Free Equity and/or Collateral and afford the Receiving Participant an opportunity to cure the deficiency. If the deficiency is cured by the time specified by the Corporation, the Corporation shall proceed in the manner described in the preceding sentence. If not, the debit to the Delivering Participant's Depository Account or the associated MBSCC Transfer Account and the credit to its Cash Balance shall be reversed.

* * * * *

Article III—Depository Services

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Sec. 6. Enforcement of Guarantees. To the extent entitled or permitted to do so, the Corporation shall, in the event that any issuer or paying agent fails to timely pay principal or interest on any deposited Securities registered in the name of MBSCC's nominee, file appropriate claims for payment under any guarantee by FHLMC, FNMA or GNMA, as the case may be. Except to the extent that (i) the Corporation has made a principal and interest advance to a Participant with the Corporation's own funds pursuant to Section 2(a) of this Rule 2 and is entitled to retain the subject principal and interest payment or has borrowed funds to make a principal and interest advance from a third-party lender pursuant to Section 2(b) of this Rule 2 and the subject principal and interest payment has been assigned to the third-party lender or (ii) the Securities with respect to which principal and interest have been pledged pursuant to Section 1 of Rule 5 of Article II, the Corporation, in filing such claim for payment and in receiving, holding and disbursing any funds received pursuant to such claim, shall be deemed to be acting solely as agent for the benefit of the Participant entitled to crediting of principal and interest under Section 1 of this Rule 2.

[FR Doc. 87-19710 Filed 8-26-87; 8:45 a.m.]

BILLING CODE 8010-01-M

[Release No. 34-24832; File No. SR-OCC-87-9]

Self-Regulatory Organizations; Options Clearing Corp.; Order Approving Proposed Rule Change Enabling the Options Clearing Corp. to Clear "Major Market Index" Options To Be Traded on the European Options Exchange

On April 14, 1987, the Options Clearing Corporation ("OCC"), filed a proposed rule change (File No. SR-OCC-87-9) under section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder.[2] The proposal would enable OCC to issue, clear and settle options on the "Major Market Index" ("XMI options") to be traded on the European Options Exchange ("EOE") that are identical to and fungible with XMI options currently traded on the American Stock Exchange ("Amex"). The Commission published notice of the proposal in the **Federal Register** on May 5, 1987.[3] OCC amended the proposed rule change on May 6, 1987. No comments were received. For the reasons discussed below, the Commission has determined to approve the proposed rule change.[4]

I. Description of the Proposal

The proposal will enable OCC to issue and clear XMI options traded on the EOE that are identical to and fungible with XMI options currently traded on the Amex. The proposal would amend OCC's By-Laws and Rules to establish procedures for the clearance of transactions in XMI options in the EOE. The proposal also contains a proposed International Market Agreement ("IMA") to be signed by OCC, Amex and EOE. The IMA will govern the relationship among those three entities for the trading and clearance of transactions in XMI options. In addition, the proposal contains an Associate Clearinghouse Agreement ("Clearing Agreement") to be signed by OCC and the ACHA Associate Clearing House Amsterdam, B.C. ("ACHA"), a wholly owned subsidiary of the European Stock Options Clearing Corporation B.V. ("ESCC") (the clearing organization for EOE). Under the agreement, ACHA will act as an associate clearinghouse of OCC. Finally, the proposal contains amendments to OCC's Participant Exchange Agreement ("PEA") designed to identify additional responsibilities for OCC participant exchanges that form a link with a non-U.S. market.

A. Issuance, Trading and Clearance of XMI Options

Under the proposal, XMI options will continue to be issued, cleared and settled by OCC in accordance with its By-Laws and Rules with some changes and modifications to account for the inclusion of EOE and ACHA. OCC anticipates that trading of XMI options will occur on EOE between the hours of 12 noon and 4:30 p.m., Amsterdam time [6:00 a.m. and 10:30 a.m. Eastern Standard Time ("EST")]. Trading in XMI options on Amex is conducted between 9:30 a.m. and 4:15 p.m. (EST). Therefore, from 9:30 a.m. to 10:30 a.m. (EST) XMI options will be available for trading on both the Amex and EOE at the same time.

Each market, at the end of its trading day, will submit to OCC a report of matched trades. OCC will then open or close positions in XMI options in the accounts of OCC members based upon the matched trade reports, the same as it does not. When EOE is open for trading on a day on which Amex is closed, EOE will transmit matched trade reports resulting from such trading on the next business day, although OCC member reports will show the actual date on which the trade was effected. Positions in XMI options arising from trades on EOE will be identical to and fungible with positions arising from trades on Amex. Thus, a position in XMI options

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 24404 (April 29, 1987), 52 FR 16469.

[4] The Commission today also has approved a related rule filing SR-AMEX-87-10, whereby the Amex will enter into a Surveillance Sharing Memorandum with the EOE providing for the exchange of surveillance information.

may be opened on one market and closed out in the other.[5]

A U.S. investor may effect a transaction in XMI options on EOE through its broker. The broker, if it is a member of EOE, will effect the transaction at EOE and, if the broker is also an OCC member, the resulting position ultimately will be carried in the broker's customer account at OCC. If the broker is not a member of OCC, the position will be carried in the customer account of the OCC member through which the broker clears its XMI options transactions. If neither the broker nor its clearing firm are members of OCC, the trade would be executed for the broker by an EOE member, cleared by the EOE member through ACHA, and could be held by the ACHA and EOE member.

B. The IMA

The relationship among OCC, Amex and EOE will be governed by the IMA. The IMA is similar to the Restated Participant Exchange Agreement, which governs the relationship among OCC and the U.S. options exchanges. The IMA, however, is applicable only to the XMI option and contains provisions referring to its issuance, disclosure, expiration months, exercise prices, units of trading, margin, comparison, clearing and settlement.

The IMA also governs information sharing among Amex, OCC and EOE. For example, the IMA would require EOE to notify OCC of (1) any determination by EOE's management authority that an OCC member that is also an EOE member is not in compliance with EOE's financial responsibility standards; and (2) any action or proposed action concerning the financial condition of any such OCC member taken or to be taken by EOE managing authority. OCC also will be required to notify EOE if a similar situation occurs with an OCC member that is also an EOE member.[6]

C. The Clearing Agreement

Under the proposal, ACHA will act as an associate clearing house to OCC. The proposal defines the term "associate clearing house" and sets forth the relationship between OCC and ACHA. Under that definition, ACHA is deemed to be an OCC member except to the extent provided otherwise in the Clearing Agreement. ACHA was established by ESCC for the limited purpose of clearing, settling and holding member positions in XMI options and to act as an associate clearinghouse to OCC.[7] ACHA only will process XMI options for EOE members and, if they so desire, OCC members. An ACHA participant [8] also may apply to become an OCC member.[9]

OCC will maintain separate subaccounts for each ACHA participant, similar to those that it maintains for OCC members. OCC will maintain: (1) A firm subaccount for proprietary activity, (2) a separate market professional's subaccount for XMI options transactions of the market professional for whom the account is held, (3) a combined market professional's account, for XMI options transactions of the market professionals for whom the account is held, and (4) a customer's subaccount for XMI options transactions of the ACHA participant's customers.[10]

Similar to the provisions for other OCC members, the Clearing Agreement will provide OCC security interests in certain positions in ACHA's accounts. OCC will have a lien on and a security interest in all long positions and all other securities margin and other funds in each ACHA subaccount, except segregated customer long positions, for which OCC will not hold a lien or other security interest. In the event that Dutch law, and not Delaware law, is held applicable in a dispute over a security interest, the Clearing Agreement provides that, where necessary to protect OCC, the positions in ACHA's account will be transferred to OCC.

The Clearing Agreement requires ACHA to maintain margin in accordance with OCC Rules and at the same levels required of all other OCC members. In addition, ACHA must make an initial $100,000 contribution to OCC's Non-Equity Securities Clearing Fund and additional contributions as required by OCC Rule 1001. ACHA will be required to maintain minimum shareholders' equity of at least 10% of its aggregated daily OCC margin requirement, subject to a $250,000 minimum. ACHA also must maintain liquid net current assets of at least 10% of aggregate daily OCC margin requirements with a $150,000 minimum.[11] In addition, ACHA covenants not to incur obligations, other than in respect of XMI options positions, in the aggregate in excess of $50,000 without OCC's consent.

ACHA and its participants also will maintain a clearing fund at ACHA that is separate from ACHA's contribution to OCC's clearing fund.[12] Under ACHA rules, that clearing fund would be available to ACHA to satisfy its obligations to OCC in the event of (1) ACHA participant default, or (2) assessment of ACHA by OCC under OCC's rules.[13] ACHA, like OCC, also is authorized to assess its participants in an amount equal to 100% of each participant's required contribution to ACHA's clearing fund.

The Clearing Agreement requires ACHA to provide specific financial information to OCC. ACHA must provide OCC annual audited financial statements and monthly unaudited financial statements, which must be in accordance with generally accepted accounting principles in the Netherlands.[14] Finally, ACHA must

[5] The proposal treats the XMI option as the first of a new category of OCC options known as "international options." International options are defined as options issued by OCC pursuant to an international market agreement or otherwise designated by OCC as such. Any new international market agreement would be required to be filed by OCC with the Commission under Rule 19b-4 of the Act. The proposal also enables OCC to designate options that are not the subject of an international market agreement as fungible with options that are subject to such an agreement. The proposal defines transactions in international options as "international transactions."

[6] *See* Section 18 of IMA.

[7] ESCC is a subsidiary of, and the clearing organization for EOE. OCC expects ACHA's participants initially will include of the nine clearing members of ESCC.

[8] The Commission understands that ACHA's participants currently include six Dutch banks and three subsidiaries of Dutch banks. Those participants are regulated by the Dutch central bank, which is regulated by the Dutch Ministry of Finance. OCC's By-Laws and Rules do not provide applicant and membership standards for participants other than broker-dealers. *See* Securities Exchange Act Release No. 20221 (September 23, 1983). Accordingly, the Commission expects OCC to develop such standards for Commission review and approval, before or concurrent with, developing standards for admission of non-U.S. bank clearing members.

[9] *See* OCC By-Laws, Article I Section 1.

[10] OCC will not enter into agreements with ACHA participants, market-makers, or professionals. Instead, the Clearing Agreement specifies that neither it nor OCC's Rules provide any ACHA participant or any market professional any right or claim against OCC with respect to XMI options. ACHA will obtain acknowledgements from each ACHA participant granting OCC liens, as appropriate, in options positions in lien accounts and recognizing that the rights of the ACHA participant are against ACHA and not OCC.

[11] The Commission understands that ACHA has arranged an initial $5 million line of credit with its U.S. clearing bank as overdraft protection for ACHA's obligations to OCC.

[12] OCC represents that ACHA's clearing fund will be maintained at an amount equal to 25% of ACHA's required contribution to OCC's clearing fund. Accordingly, the size of ACHA's aggregate clearing fund will vary directly with ACHA member trading activity in XMI options.

[13] OCC is authorized to assess its members' clearing fund contributions, and can further assess each member (including ACHA) in an amount equal to 100% of that member's required OCC clearing fund contribution, in the event of OCC member or clearing bank default.

[14] OCC represents that it has retained a reputable major U.S. accounting firm with offices in the Netherlands to assist OCC in reviewing ACHA's financial reports.

immediately notify OCC of a number of events which may indicate to OCC potential financial problems of ACHA.[15]

D. The PEA

The proposal would amend the PEA to clarify exchange responsibilities for compliance with disclosure requirements under federal and state securities laws. In general, the amendments will require a participating exchange that has entered into an international market agreement to furnish to OCC any information regarding the international market agreement that is required to be included in the federal or state disclosure documents.

II. OCC's Rationale for the Proposal

OCC believes the proposal is consistent with section 17A of the Act. OCC believes that the proposal will promote the prompt and accurate clearance and settlement of securities transactions, consistent with section 17A(b)(3) of the Act, particularly for XMI options traded on the EOE. OCC also believes that its proposed clearing arrangements are consistent with its obligation to safeguard securities and funds, among other things, because it incorporates the same basic safeguards and procedures applicable to other option transactions cleared by OCC.

III. Discussion

For the reasons discussed below, the Commission is approving OCC's proposal. The Commission believes that OCC's proposal is consistent with section 17A of the Act because it should promote the prompt and accurate clearance and settlement of options transactions while safeguarding funds and securities in OCC's custody and control, or for which it is responsible.

The Commission believes that the proposal provides a structure for prompt, accurate, and safe clearance and settlement of fungible U.S.-issued options traded on a U.S. registered securities exchange and a non-U.S. exchange. Clearance and settlement of those options is effected through OCC and the ACHA, a subsidiary created for that purpose by ESCC. ACHA acts as a clearing facility for its participants to clear and settle XMI options and enables those participants to use OCC's centralized processing services for XMI options. ACHA acts as the principal in relation to OCC on all its participants' XMI options transactions.

OCC's proposal and Amex's related rule filing (SR–AMEX–87–10) mark the first time that a U.S. option product has been made available for trading on a non-U.S. overseas exchange. It is also the first instance where a U.S. registered clearing agency will issue and clear securities traded on a non-U.S. overseas exchange. The Amex/EOE/OCC proposals evidence the increasing internationalization of securities markets and the growing relationships among exchanges and clearing entities in different markets and countries.

As the only issuer and guarantor of XMI options under the proposal, OCC will receive data and maintain records to enable prompt processing of opening and closing transactions in MXI options. OCC also will conduct centralized processing of exercise notices and randomly assign those exercises to OCC members and the ACHA. Net cash settlement will be made in U.S. dollars between OCC and its members and between OCC and ACHA. In the Commission's view, the proposal provides procedures for communications, dissemination of OCC reports, tendering of exercise notices, and settlement timing that should permit smooth processing of XMI options transactions on the EOE and Amex.

ACHA's relationship with OCC under the Clearing Agreement will be similar to that of other OCC members with two principal exceptions concerning financial and reporting requirements. Like other OCC members, ACHA will receive daily position, margin and other reports. ACHA separately must list the positions carried in each participant subaccount and must provide OCC with the information necessary to prepare the daily reports. ACHA also will be required to maintain sufficient margin with OCC for each of its participant subaccounts and must make an initial clearing fund contribution of $100,000 and additional contributions as necessary, under OCC's Rules. Unlike OCC clearing members, however, ACHA will not be required to meet OCC's financial requirements for clearing members, such as initial and continuous net capital levels. ACHA also will not be required to file certain financial reports with OCC, such as FOCUS reports on Form X–17A–5. Instead, ACHA, under the Clearing Agreement, will have its own financial requirements and will file its own financial reports as mentioned in the description section above.

Although the proposal allows ACHA to operate essentially as a regular OCC member (with certain modifications) without requiring it to adhere to OCC's financial responsibility and recordkeeping requirements, the Commission believes that the difference in treatment, on balance, is consistent with the Act. The Act requires a registered clearing agency to balance several competing interests. First, under section 17A(b)(3)(B), a clearing agency must provide National Clearance and Settlement System services to a broad community of participants. Second, under section 17A(b)(3)(F) of the Act, a clearing agency may not create rules that permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency. Finally, section 17A(b)(4) of the Act allows the clearing agency to limit or deny admission, under appropriate standards concerning for example, financial responsibility, operational capability standards, experience and competence.

The Commission believes that OCC's proposal has met these statutory objectives. Although ACHA generally will act as an OCC member, it has a limited purpose. ACHA's sole function is to provide access to OCC clearing services for transactions in XMI options.[16] ACHA will not itself invest in securities, and will not clear securities options or investment products other than XMI options. ACHA nevertheless must post the same clearing fund and margin deposits applicable to all other OCC members.[17]

The Commission believes that OCC has developed appropriate additional standards that apply specifically to ACHA. First, as mentioned above,

[15] The events upon the occurrence or belief of occurrence which ACHA must report to OCC are: (1) ACHA has incurred pre-tax losses during any month that are in excess of either 10%, 20% or 30% (notice to be required when each successive limit is exceeded) of ACHA's shareholders' equity as set forth on the most recent financial statement furnished to OCC ("Most Recent Financial Statement"); (2) ACHA's shareholders' equity (after deduction from assets of all contingent liabilities) is less than 75% of the shareholders' equity set forth in the Most Recent Financial Statement; (3) ACHA is unable to pay its debts as they mature; (4) ACHA is unable to meet any obligation under this Agreement; (5) any participant of or debtor to ACHA has defaulted in any material obligation to ACHA; (6) any material litigation has been filed or threatened against ACHA; (7) any resolution is proposed or petition presented for the winding up of ACHA; or (8) any scheduled capital withdrawals or maturing obligations within the next 90 days will cause ACHA's shareholders' equity to decline by 25% or more.

[16] The Commission views ACHA's relationship to OCC to be a unique accommodation to facilitate clearance and settlement of XMI transactions on the EOE. As a general matter, the Commission believes that OCC-issued options should be cleared through full OCC clearing members and not through intermediaries created only for clearing purposes.

[17] Of course, notwithstanding the limited nature of the proposed arrangement, the Commission expects OCC to monitor trading activity in connection with the arrangement and to evaluate, periodically, whether additional refinements are necessary.

ACHA will be subject to its own special financial responsibility and reporting requirements.[18] Second, ACHA has agreed not to incur obligations greater than $50,000 in the aggregrate other than to its participants or OCC with respect to XMI options positions, without OCC's consent. That condition should prevent ACHA from assuming obligations not necessary to its clearing functions or that would threaten its financial position. Third, ACHA must notify OCC on the occurrence of one of a number of "early warning" events. That requirement should provide OCC early notice of possible financial difficulties at ACHA and allow OCC to act accordingly. Finally, under the Clearing Agreement, OCC will hold a security interest over all long options positions in ACHA's participants' subaccounts, except segregated long customer positions. In the event of a default or insolvency by ACHA, OCC could liquidate ACHA's long unsegregated options in order to cover any unpaid debits.

The Commission believes that the proposal should promote the prompt and accurate clearance and settlement of XMI options transactions both in the U.S. and in Europe. OCC's and Amex's proposal are designed to afford investors in XMI Options greater opportunity and flexibility while extending the proven benefits of OCC's options clearing systems to XMI options transactions executed on the EOE.

IV. Conclusion

For the foregoing reasons, the Commission believes that OCC's proposal is consistent with the Act and section 17A in that it is designed to promote the prompt and accurate clearance and settlement of options transactions and the safeguarding of funds and options related thereto.

It is therefore ordered, pursuant to section 19(b) of the Act, that OCC's proposed rule change (File No. SR–OCC–87–9) be, and hereby is, approved.

[18] As described above, those standards include maintenance of a minimum level of shareholder equity and liquid net assets. In addition, and as described above, ACHA will maintain its own clearing fund and also will be able to assess its participants up to the amount of their contributions to that fund if the fund is needed to cover a default by an ACHA participant.

As a practical matter, the Commission notes that ACHA represents, in effect, a consortium of Dutch banks, each of which is subject to oversight by EOE, Dutch banking authorities and the Dutch Ministry of Finance. Thus, in view of the diversified activities of these banks, the Commission considers it unlikely that such institutions will present a significant risk of financial loss to OCC solely as a result of their limited trading activity in XMI options.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 21, 1987.

[FR Doc. 87–19711 Filed 8–26–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24827; File No. SR–PSE–87–22]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Transaction and Order Book Charges In Certain Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on July 28, 1987, the Pacific Stock Exchange Incorporated ("PSE" or the "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

Pursuant to the Schedule of Rates and Charges published by the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") the Exchange will waive the transactions charges for all orders sent to the floor, and all Order Book charges, for trades executed in two dually-listed options: Microsoft Corporation and Mentor Corporation. These charges will be waived from July 20, 1987 through September 18, 1987.

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. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory 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 waiver of Order Book and transaction charges in these classes of options traded on over-the-counter ("OTC") stocks is a competitive response to Securities and Exchange Commission Release No. 34–22026, which permits the multiple trading of OTC options. Although the Exchange believes that its Market Makers will provide excellent markets in these options, the Exchange is of the opinion that a waiver of certain fees is necessary to remain on a competitive footing with other option exchanges. This waiver of Order Book and transaction fees will encourage decisions regarding where to trade given options to be made on the basis of the strength of the marketplace.

The proposed rule change is consistent with section 6(b)(5) of the Securities Exchange Act of 1934, in that it will increase competition and the quality of markets.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that a waiver of certain transaction and Book fees will increase competition between marketplaces.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

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 securities exchange, and in particular, the requirements of section

6 and the Rules and regulations thereunder.

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 Secrertary, 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 5th Street NW., Washington, DC. 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 September 17, 1987.

It is therefore ordered, pursuant to section 19(b)(3) of the Act, that the proposed rule change referenced above be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: August 20, 1987.

[FR Doc. 87-19712 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; American Assurance Underwriters Group, Inc.

August 24, 1987.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of American Assurance Underwriters Group, Inc., ("American Assurance") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, American Assurance's financial condition, securities transactions, and other matters, and the Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of American Assurance.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of American Assurance over-the-counter or otherwise, is suspended for the period from 10:00 a.m., August 24, 1987, through 10:00 a.m. (EDT) on September 3, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19713 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 500-1]

Order of Suspension of Trading; International Communications, Inc.

August 24, 1987.

It appears to the Securities and Exchange Commission that there is a lack of adequate current information concerning the securities of International Communications, Inc. ("ICOM") and that questions have been raised about the adequacy and accuracy of publicly disseminated information concerning, among other things, ICOM's financial condition, assets, business operations, securities transactions, and other matters, and the Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of ICOM.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in ICOM over-the-counter or otherwise, is suspended for the period from 10:00 a.m., August 24, 1987, through 10:00 a.m. (EDT) on September 3, 1987.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19714 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15947; File No. 812-6671]

Application for Exemption; Travelers Insurance Co.

August 21, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: The Travelers Insurance Company ("Travelers"), The Travelers Fund U for Variable Annuities ("Account U"), The Travelers Growth Stock Account for Variable Annuities ("Account GS"), The Travelers Money Market Account for Variable Annuities ("Account MM"), The Aggressive Stock Trust, the High Yield Bond Trust, The Travelers Timed Growth Stock Account for Variable Annuities ("Account TGS"), The Travelers Timed Money Market Account for Variable Annuities ("Account TMM"), The Travelers Timed Aggressive Stock Account for Variable Annuities ("Account TAS"), The Travelers Timed Bond Account for Variable Annuities ("Account TB"), and the Fiduciary Investment Company, Inc. (collectively, "Applicants").

Relevant 1940 Act Sections and Rule: Exemption requested *under* section 17(b) *from* section 17(a), and *under* section 6(c) *from* sections 26(a)(2) and 27(a)(2), and approval requested *under* section 17(d) and Rule 17d-1.

Summary of Application: Applicants seek an order to permit Account GS and Account MM (the "original Managed Accounts") to transfer a pro rata portion of their portfolio assets representing the interests of the holders of the Annuity who are participants in certain market timing programs ("Timed Annuity Holders") to Account TGS and Account TMM in return for the cancellation of the accumulation units of the Timed Annuity Holders in the Original Managed Accounts concurrently with the crediting of accumulation units in Account TGS and Account TMM to the Timed Annuity Holders, and to permit certain sub accounts of Account U (the "UIT Sub-Accounts") to surrender a portion of their shares in the Aggressive Stock Trust and the High Yield Bond Trust ("Underlying Funds") and to transfer the funds received to Account TAS and Account TB in return for the cancellation of the accumulation units of the Timed Annuity Holders in the UIT Sub-Accounts concurrently with the sale of a pro rata portion of the portfolio assets of the Underlying Funds to Account TAS and Account TB, and the crediting of accumulation units in Account TAS and Account TB to the Timed Annuity Holders; and for exemptions to permit the deduction of a mortality and expense risk charge from the assets of Accounts TGS, TMM, TAS, and TB (collectively, the "New Managed Accounts").

Filing Date: The application was filed on March 31, 1987 and amended on July 28, 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 September 15, 1987. Request a hearing in writing, giving the nature of your interest, the reason for 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, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, The Travelers Insurance Company, One Tower Square, Hartford, Connecticut 06183.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272–3027 or Lewis B. Reich, Special Counsel, at (202) 272–2061 (Office of Insurance Products and Legal Compliance).

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 (800) 231–3282 (in Maryland (301) 253–4300).

Applicants' Representations

1. The Travelers is a stock insurance company chartered in 1864 in Connecticut and licensed to do a life insurance business in all states of the United States. The Travelers is a wholly-owned subsidiary of The Travelers Corporation, the publicly-held parent of The Travelers group of companies.

2. Account GS (formerly The Travelers Fund A for Variable Annuities) and Account MM (formerly The Travelers Fund MM for Variable Annuities) (together "Original Managed Accounts") were established on September 22, 1967 and December 29, 1981, respectively, under the provisions of the Connecticut General Statutes. These Original Managed Accounts are registered as open-end diversified management investment companies with the Commission.

3. Account U was established on September 2, 1982 under the provisions of the Connecticut General statutes as a unit investment trust under the 1940 Act. Account U is a separate investment account to which assets are allocated to support benefits payable under variable annuity contracts. Annuity purchase payments allocated to Account U are invested in certain mutual funds, including the Aggressive Stock Trust and the High Yield Bond Trust which are registered as open-end diversified management investment companies. The Fiduciary Investment Company, Inc. is the principal underwirter for the underlying funds.

4. Each Original Managed Account receives investment advice from The Travelers Investment Management Company ("TIMCO") pursuant to an investment advisory agreement among the Account, TIMCO and The Travelers. TIMCO is an affiliate of The Travelers, whose parent company, The Travelers Corporation, owns all of the outstanding voting stock of TIMCO. TIMCO supervises the day-to-day investment operations of each Account and the composition of its portfolio, and furnishes advice and recommendations with respect to investments, investment strategies and the purchase and sale of securities. TIMCO receives compensation for its services to the Accounts at a rate of .3233% on an annual basis of the current value of the assets of each of the Accounts. Accounts TGS and TMM will receive investment management and advisory services from TIMCO nearly identical to those currently received by the Original Managed Accounts under an identical fee structure.

5. Keystone Custodian Funds, Inc. ("Keystone") furnishes investment management and advisory services to the Aggressive Stock Trust and the High Yield Bond Trust. Keystone is a whollyowned subsidiary of The Travelers Corporation. For its services to the Aggressive Stock Trust, Keystone receives variable fees beginning at an effective annual rate of .70% of the Trust's average daily net assets and declining as assets increase. For its services to the High Yield Bond Trust, Keystone receives variable fees beginning at an effective annual rate of .50% of the Trust's average daily net assets and declining as assets increase. In addition, Keystone receives 2% of the gross dividend and interest income of the High Yield Bond Trust. Accounts TAS and TB will receive investment management and advisory services from Keystone identical to those currently received by the Original Underlying Funds under an identical fee structure.

6. The Travelers will deduct a semi-annual administrative charge of $15. In addition to the semi-annual assessments, a prorated charge will be assessed upon the maturity date, the death of the annuitant, or upon surrender of the contract. The administrative charge will be made to compensate The Travelers for the administrative services provided to the annuity holders. A contingent deferred sales charge of 5% will be assessed if an amount is surrendered within five years of its payment date. The Travelers deducts from the daily net asset value of each of the managed accounts an amount, computed daily, which is equal to an annual rate of 1.25% to compensate The Travelers for its assumption of certain risks. This charge is allocable approximately 0.50% to mortality risks, 0.15% to administrative expense risks, and 0.60% to distribution expense risks.

7. Travelers Equity Sales, Inc. ("TESI") and H.C. Copeland Financial Services, Inc. ("Copeland") (together "Timers") both registered investment advisers affiliated with The Travelers, provide market timing services to investors in the Original Manage Accounts and Account U (the "Timed Annuity Holders"). These services are rendered pursuant to individual investment advisory agreements between the Timers and the Timed Annuity Holders authorizing the Timers to transfer the Timed Annuity Holder's accumulation units from one investment alternative to another in accordance with timing strategies described in the advisory contracts. In return for this service, the Timed Annuity Holders pay the Timers a fee, calculated as a percentage of the assets that are timed. The effective annual rate for TESI is variable and declines as assets increase. The TESI rate is 2.0% on amounts of $1 million or less, 1.5% on amounts of $1 to $5 million, and 1.0% on amounts of more than $5 million. Copeland charges a $30 application fee and 1.25% of the average daily net assets that it times. It is anticipated that Copeland's fee will be increased to 1.67% in the future. One-fourth of the annual market timing fee is due each quarter. The fee for the market timing service is not an asset charge imposed against trust (separate account) assets, nor is it a contract charge taken out of trust (separate account) assets; owners electing this service can discontinue it at any time. The fee is paid only by those contract owners who elect the market timing service, who pay the Timers directly by check or by credit card. Alternatively, as a convenience offered to contract owners electing the timing service, the contract owner can pay the fee by arranging for quarterly partial surrenders of contract value, and The Travelers will remit the fee to the market timing service. Such partial surrenders are treated like all other partial surrenders: they are reported to the Internal Revenue Service, they may be taxable as income to the policy owner, and they may be subject to the 10% tax penalty for early withdrawal.

8. "Timed Annuity Holders," refers to those annuity holders who receive market timing services from TESI and Copeland. There may be other annuity holders who utilize a market timing

strategy, and these annuity holders would remain in the Original Managed Accounts and the Underlying Funds at the time of the transaction. In the future, The Travelers may direct other annuity holders who utilize market timing strategy to the New Managed Accounts.

9. Travelers proposes to separate the assets allocable to the Timed Annuity Holders from the assets allocable to the other investors in the Original Managed Accounts and Account U ("Non-Timed Annuity Holders") in order to avoid any possibility that switches by the Timers adversely effect the interests of Non-Timed Annuity Holders. Travelers proposes to create the four New Manged Accounts, which will be substantially identical to the accounts and funds to which the Timed Annuity Holders currently allocate their cash value, and to require those Annuity Holders who wish to utilize the timing programs offered by TESI and Copeland to allocate their cash values to these new accounts.

10. At least 30 days before the proposed transactions will be consummated, The Travelers will notify all Annuity Holders in writing of the Company's intention to effect the proposed transactions. Timed Annuity Holders will be informed that at any time prior to a specified date, they may notify The Travelers that they do not wish to have their cash value in the Original Managed Accounts or the UIT Sub-Accounts transferred to the New Managed Accounts. The Timed Annuity Holders will be informed that any such notification will serve to terminate their timing agreement with either TESI or Copeland. If no such notification is received by the specified date, their cash value in the Original Managed Accounts or the UIT Sub-Accounts will be transferred to the New Managed Accounts. All transfers will be made at net asset value. The letter of notification to the Annuity Holders will be accompanied by new prospectuses describing the New Managed Accounts in addition to the investment alternatives currently available to Annuity Holders.

11. The contract owners will be permitted to transfer back and forth between the Original and Timed Accounts. They may do so by submitting a transfer form or by telephone transfer. There are no contract charges for these transfers; however, if a contract owner transfers from a market timed account to an untimed account this terminates the market timing agreement, and he would have to execute another market timing agreement to become market timed again. There is no deferred sales load on transfers.

12. The Travelers (or affiliates) will assume all costs to be incurred in effecting these transactions, including the expenses of establishing the New Managed Accounts. The transactions will not have any adverse economic impact on the interests of Annuity Holders (either Timed Annuity Holders or Non-Timed Annuity Holders) in the Annuity. The transactions will have no immediate effect on the total amount of fees and charges assessed, directly or indirectly, under either timed or non-timed annuity contracts. However, for certain accounts there could be an adverse impact on the amount of advisory fees actually paid, as a result of the breakpoints in certain of the advisory fee structures. Accounts GS and MM do not have breakpoints in their advisory fees. The Aggressive Stock Trust ("AST") and High-Yield Bond Trust ("HYBT") do have breakpoints in their advisory fee structure, but their asset levels have not yet reached the first breakpoint. Accordingly, separating the assets will have no immediate effect on the actual amount of the advisory fees. Applicants submit that the potential delay in the decrease in what the advisory fee would be without separating the timers and non-timers is outweighed by the immediate benefit to both the current Timed and Non-Timed Annuity Holders and all future Timed and Non-Timed Annuity Holders by enabling The Travelers to continue to make available the timing services offered by TESI and Copeland while avoiding any possibility that switches by the Timers would have an adverse or prejudicial impact on the interests of the Non-Timed Annuity Holders.

13. Each Applicant may be deemed to be an affiliated person of each other or an affiliated person of an affiliated person under section 2(a)(3) of the Act, and the proposed transactions may be deemed to entail one or more purchases or sales of securities or property between and among certain Applicants. Therefore, the proposed transactions may require an exemption from section 17(a) of the 1940 Act pursuant to section 17(b) of the Act.

14. Applicants submit that the terms of the proposed transactions, including the consideration to be paid and received, are reasonable and fair, do not involve overreaching, are consistent with the investment policies of each separate account and of each of the underlying funds, and are consistent with the general purposes of the 1940 Act.

15. The transactions will be effected in conformity with section 22(c) of the 1940 Act and rule 22c-1 thereunder, so there will be no dilution of value for any of the accounts, funds, or contract holders.

16. The proposed transactions will benefit both the current Timed and Non-Timed Annuity Holders and all future Timed and Non-Timed Annuity Holders by enabling The Travelers to continue to make available the timing services offered by TESI and Copeland while avoiding any possibility that switches by the Timers would have any adverse or prejudicial impact on the interests of the Non-Timed Annuity Holders. This benefit is created at no cost to existing interests under the Annuity because The Travelers (or affiliates) will assume all costs relating to the proposed transactions.

17. The proposed transactions will result in Annuity Holder interests which, in economic terms, are identical to such interests immediately prior to the proposed transactions. The proposed transactions will not generate any extraordinary cots such as brokerage commissions because no assets will be sold in the open market. The Travelers believes, based on its review of existing federal income tax laws and regulations, that the transactions will not have adverse tax consequences.

18. The investment objectives of the New Managed Accounts will be nearly identical to those of the Original Managed Accounts and the Underlying Funds. Furthermore, Annuity Holders will be fully informed of the terms of the proposed transactions through the letter notifying them of the transactions and thorugh the prospectus that will accompany that letter.

19. The proposed transaction may also be deemed to be a transaction that is prohibited under section 17(d). The proposed transactions would involve simultaneous purchase and sale transactions by a number of registered companies, and each such purchase and sale transaction is dependent on the others. Thus, each purchase and sale transaction is an essential aspect of a more comprehensive plan, and in this sense such transaction may be deemed to be in connection with a joint participation within the meaning of section 17(d) and Rule 17d–1. Accordingly, Applicants request an order pursuant to Rule 17d–1 to eliminate any question of compliance with section 17(d) and Rule 17d–1.

20. Applicants believe that the participation of the Original Managed Accounts, the Underlying Funds, the New Managed Accounts, and Account U

will be on an equal basis and will not result in advantages to any one of these investment companies to the detriment of any other of these investment companies. As noted above, the proposed transactions will not involve the liquidation of the assets of the Original Managed Accounts or of the Underlying Funds since a pro rata portion of the assets of the Original Managed Accounts and the Underlying Funds representing the interests of the Timed Annuity Holders will be transferred to the New Managed Accounts. Thus, none of the investment companies involved in the proposed transactions will incur any extraordinary costs, such as brokrage commissions, in effecting the transfer of assets. Further, none of the investment companies will bear any of the costs of the proposed transactions. Therefore, there are no disparate results created by these transactions.

21. The sale of portfolio securities from the Underlying Funds to Accounts TAS and TB will be at price equal to the aggregate net asset value of the shares of the underlying Funds representing the interests of the Timed Annuity Holders that are cancelled (or redeemed) and to the aggregate net asset value of the accumulation units issued by Accounts TAS and TB. Similarly, the aggregate net asset value of the accumulation units of the Original Managed Accounts that are cancelled (or redeemed) will equal the value of the assets transferred to Accounts TGS and TMM and the aggregate net asset value of the accumulation units issued by Accounts TGS and TMM. Thus, there will be no dilution of value for any of the investment companies involved in the proposed transactions.

22. Applicants believed that the proposed transactions will result in benefits to the investment companies involved, and that no benefits will inure to The Travelers to the detriment of the investment companies. The proposed transactions will permit The Travelers to continue to make available the timing services offered by TESI and Copeland while avoiding any possibility that switches by the Timers would have any adverse or prejudicial impact on the interests of the Non-Timed Annuity Holders. Thus, the Timed Annuity Holders will be able to continue to take advantage of the timing services, and the Non-Timed Annuity Holders will not be exposed to any adverse or prejudicial impact as a result of switches by the Timers. Moreover, the interests of Annuity Holders will not be adversely affected because there should be no tax liabilities stemming from the proposed transactions and because The Travelers will assume all costs relating to the proposed transactions. Accordingly, no benefits will inure to any party to the detriment of any other, and no party will participate in the transactions on a basis different from or less advantageous than that of any other party.

23. Therefore, Applicants submit that the terms of the proposed transactions meet all of the requirements of section 17(d) of the 1940 Act and Rule 17d–1 thereunder and that an Order should be granted permitting the proposed transactions pursuant to those provisions.

24. Applicants seek an order pursuant to section 6(c) of the 1940 Act granting exemptions from sections 26(a)(2) and 27(c)(2) of the 1940 Act to permit the deduction of a mortality and expense risk charge from the assets of Accounts TGS, TMM, TAS, and TB (collectively, the "New Managed Accounts").

25. Applicants submit that The Travelers is entitled to reasonable compensation for its assumption of mortality and expense risks. Applicants represent that the charge of 1.25% under the contracts made for mortality and expense risks is consistent with the protection of investors because it is a reasonable and proper insurance charge. In return for this amount The Travelers guarantees certain risks in the contracts. The mortality and expense risk charge is a resonable charge to compensate The Travelers for the risk that annuitants under the contracts will live longer as a group than has been anticipated in setting the annuity rates guaranteed in the contracts, for the risk that administrative expenses will be greater than amounts derived from the administrative charge, and for the risk that the amounts realized from the contingent deferred sales charge will be insufficient to cover actual distribution expenses.

26. The Travelers represents that the charge of 1.25% for mortality and expense risks assumed by The Travelers is within the range of industry practice with respect to comparable annuity products. This representation is based upon The Travelers analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. The Travelers will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products of, its comparative survey.

27. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Notwithstanding the foregoing, The Travelers has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the New Managed Accounts and the Timed Annuity Holders. The basis for that conclusion is set forth in a memorandum which will be maintained by The Travelers at its administrative offices and will be available to the Commission. The Travelers represents that each of the New Managed Accounts will have a board of directors, a majority of whom are not interested persons of the separate account, approve any plan under Rule 12b–1 to finance distribution expenses.

28. Applicants request exemptions from sections 26(a)(2) and 27(c)(2) to the extent necessary to permit the daily deduction from the assets of the New Managed Accounts of the 1.25% charge described herein. For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–19715 File 8–26–87; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–6037]

Issuer Delisting; Application to Withdraw From Listing and Registration; Guardian Industries Corp.

August 21, 1987.

Guardian Industries Corp. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw its 11¾% Notes due March 1, 1993, from listing and registration on the New York Stock Exchange, Inc. ("NYSE").

The reasons alleged in the application for withdrawing this security from

listing and registration include the following:

As of January 1, 1987, $50 million principal amount of the Notes were beneficially owned by approximately 30 persons. In a letter dated June 2, 1987, the Company made an offer to the holders of the Notes to purchase the Notes. In response to this offer, $34.39 million of the $50 million principal amount of Notes originally outstanding were purchased by the Company and are no longer outstanding. After completion of the purchases made by the Company pursuant to the offer to purchase, 12 persons beneficially owned and continued to own the $15.61 million principal amount of Notes that remain outstanding. Trading in the Notes has been virtually nonexistent, based on no reports of trading activity in the Notes over the New York Stock Exchange since the issuance of the Notes in 1983 and apparently no inter-dealer trades since at least the end of 1986.

The current Noteholders did not respond to the offer to purchase their Notes, and more than 99% of the principal amount of the outstanding Notes are held by four institutions. The heavy concentration of the Notes in the hands of these four institutions makes it highly unlikely that an active market in the Notes could develop. Because of the small number of holders of the Notes, the lack of any recorded trading activity in the Notes in the past several years, the high concentration of Note holdings in the hands of four institutions, the relatively small principal amount of the Notes outstanding and the assumed disinclination of the current holders of the Notes to trade, the Company believes that it is extremely unlikely that any significant trading in the Notes will occur in the future.

The Company has been advised by Shearson Lehman Brothers that they are prepared to continue to make a market in the Notes regardless of any delisting of the Notes to the extent that a holder intends to dispose of the Notes. Thus the delisting of the Notes should not result in holders of the Notes being "locked into" their investment.

Any interested person may, on or before September 14, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-19662 Filed 8-26-87; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on September 17 and 18, 1987 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on Setpember 17, recess and reconvene at 8:00 a.m. on September 18, 1987. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The September 17 session and a portion of the September 18 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering, at (202) 456-7740, prior to 3:00 p.m. on September 16, 1987. Mrs. Diering is also available to provide specific information regarding time, place and agenda for the open session.

Jonathan F. Thompson,

Executive Assistant, Office of Science and Technology Policy.

August 13, 1987.

[FR Doc. 87-19611 Filed 8-26-87; 8:45 am]

BILLING CODE 3170-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 87-059]

Meeting of the Coast Guard Academy Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Open meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Coast Guard Academy Advisory Committee to be held in Hamilton Hall at the U.S. Coast Guard Academy, New London, CT, on Monday and Tuesday, October 5 and 6, 1987. The open sessions on Monday will be held from 10:30 a.m. to 11:45 a.m. and 1:45 p.m. to 3:15 p.m. Open sessions will be held on Tuesday from 9:00 a.m. to 10:30 a.m. and 3:30 p.m. to 4:30 p.m. The agenda for this meeting will include:

1. Faculty
2. Curricula

The Coast Guard Academy Advisory Committee was established in 1937 by Pub. L. 75-38 to advise on the course of instruction at the Academy and to make recommendations as necessary.

Attendance is open to the interested public. With advance notice, members of the public may present oral statements at the meeting.

Persons wishing to attend or present oral statements at the meeting should notify the U.S. Coast Guard Academy not later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: CAPT David A. Sandell, USCG, Dean of Academics/Executive Secretary of the Academy Advisory Committee, U.S. Coast Guard Academy, New London, CT 06320, phone (203) 444-8275.

Issued in Washington, DC on August 24, 1987.

T.T. Matteson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Personnel.

[FR Doc. 87-19669 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-14-M

[CGD87-061]

Meeting; Eighth Coast Guard District Industry Day

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: On 14 October 1987, the Commander, Eighth Coast Guard District will sponsor an Industry Day program to provide for an exchange of ideas, opinions and information concerning developments affecting the Coast Guard and the maritime community as well as related industries. The Industry Day program will be held at the Holiday Inn Crowne Plaza in Houston, Texas.

The format for the day will be as follows:

7:15 am Registration begins.
8:00 am General session; greeting, opening remarks.
8:45 am Group discussions; four separate, small group discussions focusing on the Deep Sea Industry, Offshore Oil/Support Industry, Towing Industry and Shore Side Facilities.
11:15 am No host cocktails.
12:00 pm No host lunch (cost $15.00).
2:00 pm Resume small group discussions.
3:00 pm General session; closing remarks, adjournment.

Tentative topics of discussion for the small groups are:

a. Status of Berwick Bay High Water regulations
b. Port Security Card program
c. Coast Guard reorganization Marine Safety Office New Orleans/Marine Safety Office Morgan City
d. Port Readiness Committees
e. Tank Barge Navigation Lights, use of portable cable
f. MARPOL Annex II
g. Port Access Route Study, Freeport, TX
h. Vessel Traffic Service New Orleans Surveillance Expansion Project
i. Certificates of Alternative Compliance
j. Special Purpose Vessels (i.e., liftboats, dive boats, etc.)

Persons desiring to attend the program are encouraged to provide additional topics for consideration. Preregistration for the program is required. Contact the below named officer to submit topics for discussion and to obtain registration forms. Topic suggestions and lunch reservations must be received by 1 October 1987.

DATE: 14 October 1987, 8:00 am to 5:00 pm.

FOR FURTHER INFORMATION CONTACT: LCDR Dean W. Kutz, USCG, c/o Commander (mvs), Eighth Coast Guard District, Hale Boggs Federal Building, Room 1341, 500 Camp Street, New Orleans, LA 70130-3396; telephone number (504) 589-6271.

Dated: August 20, 1987.

J.D. Sipes,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard District, Acting.

[FR Doc. 87-19670 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Environmental Impact Statement; Tippecanoe County, IN

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 has been prepared for the proposed relocation of US 231 in and around the cities of Lafayette and West Lafayette, Tippecanoe County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Threlkeld, District Engineer, Federal Highway Administration, Federal Office Building, 575 North Pennsylvania Street, Room 254, Indianapolis, Indiana 46204. Telephone: 317/269-7494.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Indiana Department of Highways, has prepared an environmental impact statement (EIS) on a proposal to relocate US 231 and construct a new bridge over the Wabash River. The new roadway will be a major arterial with two 12-foot lanes and 10 foot paved shoulders. Certain segments of the roadway will have a 26 foot median. The typical right-of-way will be 300 feet. The proposed bridge across the Wabash River will be approximately 2000 feet long and approximately 100 feet wide.

The proposed action has a total of 5 "build" alternatives under consideration. Three of the five alternatives compose the southern portion of the overall project. These are A, B and C while the other two (Line 1 and 2) consist of the northern portion.

Line A—5.5 miles
Line B—3.4 miles
Line C—3.5 miles
Line 1—4.7 miles
Line 2—4.2 miles

All of the southern three alternates begin at either CR 350S or CR 550S and end at the South River Road. The two alternatives north of the river begin at South River Road and terminate at US 52 and Cumberland Avenue.

The project has been coordinated with the following: U.S. Department of Interior, Indiana Department of Natural Resources, U.S. Fish and Wildlife Service, U.S. Soil Conservation Service, Indiana Aeronautics Commission, Indiana Geological Survey, Department of Environmental Management, Glenn A. Black Laboratory of Archaeology, Department of Anthropology of Ball State University, city of West Lafayette, city of Lafayette, Tippecanoe County Area Plan Commission, Division of Aeronautics. Public information meetings were held on March 24, 25 & 26, 1987. In addition, the opportunity for a public hearing will be advertised. Public notice will be given of the time and place of the public hearing. The draft EIS is available for public and agency review and comment. At this point in the planning process, it is not expected that a formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and that all significant issues are identified, comments and suggestions are invited from all interested parties. Agencies, organizations, and individuals interested in submitting comments and/or questions should direct them to FHWA at the address provided above.

(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: August 18, 1987.

James E. Threlkeld,

District Engineer.

[FR Doc. 87-19707 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Petitions for Exemptions From the Vehicle Theft Prevention Standard; General Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition to modify an exemption.

SUMMARY: This notice grants the petition by General Motors (GM) to modify an existing exemption from the marking requirements of the vehicle theft prevention standard for the Cadillac

Allante car line. The agency has determined that the antitheft device that was the subject of this petition is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements of the standard.

DATE: The modification granted by this notice becomes effective August 27, 1987. This means that GM may install the antitheft devices that were the subject of this modification petition in its 1988 model year Allantes.

SUPPLEMENTARY INFORMATION: On November 5, 1985, General Motors (GM) petitioned the agency for an exemption from the parts marking requirements of the vehicle theft prevention standard (49 CFR Part 541), under section 605 of the Motor Vehicle Information and Cost Savings Act. On January 7, 1986, (51 FR 706), NHTSA published an interim final rule establishing procedures for manufacturers petitioning to exempt their high-theft carlines from the parts-marking standard, and to modify existing exemptions. On February 7, 1986, in response to the interim rule, GM submitted supplemental information in connection with its petition. On June 16, 1986, NHTSA published a notice granting GM's exemption petition; 51 FR 21823.

On October 3, 1986, GM requested a modification of the exemption grant with respect to the Allante car line. The company supplemented its modification petition through a letter dated January 19, 1987. NHTSA reviewed GM's submissions and determined that the petition contained all the information required under § 543.9, and met the form required under § 543.5(b) of the antitheft exemption regulations.

The Modification Petition

The Allante is a convertible two-seater with a removable hardtop. GM currently installs an optional antitheft system on certain Buick, Cadillac, and Oldsmobile models. The company installed the same system as standard equipment on the 1981 through 1985 Chevrolet Corvette, and the 1984 through 1985 Cadillac Eldorado convertible. The company calls that system the Theft Deterrent System (or TDS). For the Allante carline, GM requests NHTSA's approval to substitute TDS for the Forced Entry/VATS system that was the subject of the June, 1986 exemption grant.

According to GM's modification petition, a driver arms TDS by removing the ignition key, locking either door with the power lock switch, and closing the doors. Locking the door by using the key or the mechanical door lock does *not* arm the system. TDS also has a flashing light on the instrument panel to remind a driver to begin the arming sequence. The TDS light burns steadily between the time the driver starts to arm the system until "shortly after" the last door is closed. A driver may disarm TDS by unlocking either of Allante's doors from the outside with the proper key.

If a person attempts to enter a TDS-equipped vehicle without the proper key, the horn sounds "intermittently and (the vehicle's) exterior lights flash." After two-to-four minutes, the audible and visual warning sequence stops automatically. If someone disturbs the door or door lock assembly again before the system is properly disarmed, the warning sequence begins again. Even if a person were to make an unauthorized entry into the TDS-equipped Allante, the starter circuit remains inoperative until the system is properly disarmed.

The system for which the Allante has previously been granted an exemption consisted of this TDS system and a starter-interrupt feature. This starter-interrupt feature was activated by a coded pellet in the ignition key. This starter-interrupt could only be overridden if a key with a properly coded pellet was inserted in the ignition.

NCIC/NATB Theft Data

The 1985 Corvette has the same theft deterrent system that GM plans to install on the Allante carline under this modification petition. The National Crime Information Center (NCIC) is the data base from which NHTSA draws motor vehicle theft data for the purpose of determining theft rates. For thefts of the model year 1985 Corvette in calendar year 1985, NCIC data show a theft rate of 14.7%, compared with a theft rate for the 1984 Corvette of 12.7%. Based on this data, there appears to be an increase in the Corvette theft rate from 1984 to 1985 of 14%. The National Automobile Theft Bureau (NATB) data also show an increase in that carline's theft rate from 8.3% for model year 1984 Corvettes to 9.1% for model year 1985, an increase of 9.6%.

GM states that in assessing continuing theft rates, both NCIC and NATB used a calculation method Congress set out for making an initial determination whether a carline is a high-theft line. That method requires the agency to combine theft data for 1983/84, and to use model year thefts occurring in the calendar year that is equivalent to the model year. GM argues that this is not the best method for comparing theft rates after NHTSA has made the initial high-theft determination. The company states that a better method is to calculate theft rates from a period beginning with the day on which a manufacturer introduces the high-theft carline through December 31 of the calendar year corresponding to the model year. GM argues that if NHTSA were to accept that period from which to draw its data, the data would show that the theft rate for model year 1985 Corvettes decreased 4% from 1984.

First, if NHTSA were to adopt GM's method for calculating a line's continuing susceptibility to theft, consistency would necessitate using that method for calculating all theft rates related to the exemption proceedings. Second, the statutory method for calculating theft rates for the purpose of determining whether vehicles are high theft provides the agency and the industry with a defined period for which data respecting theft rates will be collected. This definition makes the process of assessing theft rates a predictable and an administratively efficient one for the industry, NHTSA, and the various entities that examine theft data. Therefore, NHTSA declines GM's suggestion to assess theft data based on the date a manufacturer introduces a given model.

The agency notes that in its review of GM's initial exemption petition for the Allante and Corvette, NHTSA reviewed a study of the antitheft system which is the subject of this modification petition. NHTSA's evaluation of that study and of other available theft data showed effectiveness varying from 7.8% to 54.4% for this system when it was installed in Buick, Cadillac, and Oldsmobile models. On the other hand, the theft rate rose when the system was installed in the Corvette. Such data reasonably suggest that, at least between the first and second model years of the current Corvette, factors other than the theft deterrence and reduction properties of this system played a larger role in determining the theft rate for the Corvette.

The parts-marking/ATS program is new, and because of limited experience with antitheft systems, NHTSA continues to assert that proper assessment of the theft deterrence and reduction properties of a system depends on the accumulation of several years of data on the vehicle theft standard and antitheft devices.

Agency Determinations

Based on substantial evidence, the agency has determined that installing GM's device in this new car line is likely to be as effective in reducing and deterring vehicle theft as are the Part 541 marking requirements. This determination is based on the information GM submitted with its

modification petition and on other available information. The agency believes that the modified device will provide the types of performance listed in § 543.6(a)(2), i.e., promote activation, attract attention to unauthorized entries, prevent defeating or circumventing of the device by unauthorized persons, prevent operation of the vehicle by unauthorized entrants, and ensure the reliability and durability of the device.

As required by §§ 543.6 and 543.9(b), the agency also finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided on its device. The agency notes also that methods of encouraging use and preventing defeat of the GM antitheft device are similar to the methods employed in the 1984 Nissan 300 ZX device. NCIC data which the agency reviewed in connection with the interim final rule and discussed in the preamble to that document revealed that the theft rate for the 1984 300 ZX was 50% less than that of the 1983 280 ZX models which had no such device.

While the agency can make no prediction that the GM antitheft system will reduce and deter theft to the same extent as the Nissan device, NHTSA believes that TDS will be effective in accomplishing these goals. GM stated in its modification petition that it believes its antitheft device will reduce and deter theft at least to the same extent as complying with Part 541 would.

The agency reiterates that the limited data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly requires such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(c) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(b)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(b)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend that Part 543 require the submission of a modification petition for any and every change in the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if GM contemplates making any changes the effects of which might be characterized as *de minimis*, then the company should consult the agency before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: August 24, 1987.

Diane K. Steed,

Administrator.

[FR Doc. 87-19693 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP 87-04; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Michelin Tire Corp.

This notice grants the petition by Michelin Tire Corporation, of Woodbury, New York, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.109, *New Pneumatic Tires*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Paragraph S4.3(f) of Standard No. 109, requires the words "tubeless" or "tube type" as applicable to be permanently molded into or onto both sidewalls of tires. During the period June 27, 1986, to January 9, 1987, Michelin Tire Corporation manufactured and shipped 145,627 P185/70R13 MXL tubeless tires that either lacked the word "tubeless" on both sidewalls or had the word "tubeless" molded on only one sidewall. The P185/7013 MXL is manufactured only as a tubeless tire; therefore, Michelin believes these tires will be sold and used as tubeless tires.

No comments were received on the petition.

NHTSA concurs with Michelin's view that when the tires are purchased as replacements they will in all likelihood be used as tubeless tires. Furthermore, were a tube inserted, the tire will perform satisfactorily providing proper rim sizes are used. Improper combinations may result in premature wear to the inner tube, but the result would be a slow-leak deflation.

Accordingly, it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102. Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued: August 21, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-19617 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. IP 87-1; Notice 2]

Grant of Petition for Determination of Inconsequential Noncompliance; Nissan Motor Corp.

This notice grants the petition by Nissan Motor Corporation of Carson, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act. (15 U.S.C. 1381 *et seq.*) for any apparent noncompliance with 49 CFR 571.120. *Tire Selection and Rims for Motor Vehicle other than Passenger Cars*. The basis of the grant is that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on March 12, 1987 and an opportunity afforded for comment (52 FR 7738).

Paragraphs S5.3.2 through S5.3.5 of Standard No. 120 give the label information requirements for vehicles other than passenger cars. Each vehicle shall show the following:

S5.3.3. "The size designation of tires (not necessarily those on the vehicle) appropriate (as specified in S5.1.2) for the GAWR."

S5.3.4. "The size designation and, if applicable, the type designation of rims (not necessarily those on the vehicle) appropriate for those tires."

S5.3.5. "Cold inflation pressure for those tires."

Pursuant to S5.3.2, this information shall appear either—

(a) After each GAWR listed on the certification required by 49 CFR 567.4, *Requirements for Manufacturers of Motor Vehicles* or 49 CFR 567.5, *Requirements for Manufacturers of Vehicles Manufactured in two or More Stages* or, at the option of the manufacturer,

(b) On a tire information label affixed to the vehicle in the manner, location and form described in 49 CFR 567.4, (b) through (f).

Nissan Motor Corporation reported that 8,123 Nissan Stanza 4-wheel drive wagons manufactured from March 1985 through July 1986 do not comply with Standard No. 120. Specifically, the information lacking from the certification label is the size designation of tires, the size designation of rims, and the cold inflation pressure of the tires. These vehicles have tire information labels located inside the glove boxes, however.

Nissan argued that these specific noncompliances will have no effect on motor vehicle safety and supported its petition with the following:

1. Tire size designation and cold pressure inflation are listed on the tire placard located in the glove box.

2. The rim size designation is stamped on the original equipment rims.

3. The owner's manual contains the correct tire size designation, and rim size designation.

No comments were received on the petition.

The two Federal motor vehicle safety standards applicable to tires each require the manufacturer to install a placard providing certain information. On passenger cars, the label must be placed on the glove compartment door or an equally accessible location. On vehicles other than passenger cars the information is required to be either part of the certification label or placed on the driver's side door. Nissan has omitted three items of information from the certification label, but two of these appear on a tire information placard. That placard is in a location approved for passenger cars even though it is not specified for multipurpose passenger vehicles such as the Stanza wagon. The third item of information (rim size designation) appears on the rims, and in the Operator's Manual. Under these facts the noncompliances appear technical in nature.

Accordingly it is hereby found that petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 21, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87-19618 Filed 8-26-87; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 23-87]

Treasury Notes of August 31, 1989, Series AC-1989

Washington, August 20, 1987.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,750,000,000 of United States securities, designated Treasury Notes of August 31, 1989, Series AC-1989 (CUSIP No. 912827 VF 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated August 31, 1987, and will accrue interest from that date, payable on a semiannual basis on February 29, 1988, and each subsequent 6 months on August 31 and February 28 through the date that the principal becomes payable. They will mature August 31, 1989, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving Time, Wednesday, August 26, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 25, 1987, and received no later than Monday, August 31, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from

commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a 1/8 of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Monday, August 31, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 27, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Monday, August 31, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURY DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of their circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-19777 Filed 8-25-87; 3:31 pm]

BILLING CODE 4810-40-M

[Department Circular—Public Debt Series—No. 24-87]

Treasury Notes of November 15, 1992, Series L-1992

Washington, August 20, 1987.

1. Invitation for Tenders

1.1. The secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $7,750,000,000 of United States securities, designated Treasury Notes of November 15, 1992, Series L-1992 (CUSIP No. 912827 VG 4), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 3, 1987, and will accrue

interest from that date, payable on a semiannual basis on May 15, 1988, and each subsequent 6 months on November 15 and May 15 through the date that the principal becomes payable. They will mature November 15, 1992, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next business day.

2.2. The Notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by any State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. they will not be acceptable in payment of Federal taxes.

2.4. The Notes will be issued only in book-entry form in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000, and in multiples of those amounts. They will not be issued in registered definitive or in bearer form.

2.5. The Department of the Treasury's general regulations governing United States securities, i.e., Department of the Treasury Circular No. 300, current revision (31 CFR Part 306), as to the extent applicable to marketable securities issued in book-entry form, and the regulations governing book-entry Treasury Bonds, Notes, and Bills, as adopted and published as a final rule to govern securities held in the TREASURY DIRECT Book-Entry Securities System in 51 FR 18260, *et seq.* (May 16, 1986), apply to the Notes offered in this circular.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, DC 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Thursday, August 27, 1987. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Wednesday, August 26, 1987, and received no later than Thursday, September 3, 1987.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $1,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own accounts will be received without deposits from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commercial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 5, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 98.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitve tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in section 3.5. must be made or completed on or before Thursday, September 3, 1987. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash: in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than

Tuesday, September 1, 1987. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Thursday, September 3, 1987. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted and to be held in TREASURY DIRECT are not required to be assigned if the inscription on the registered definitive security is identical to the registration of the note being purchased. In any such case, the tender form used to place the Notes allotted in TREASURY DIRECT must be completed to show all the information required thereon, or the TREASURE DIRECT account number previously obtained.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, and to issue, maintain, services, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Government is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 87-19778 Filed 8-25-87; 3:31 pm]

BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Meeting of the Veterans' Advisory Committee on Environmental Hazards

The Veterans Administration gives notice under Pub. L. 92-463, section 10(a)(2), that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held at the Lafayette Building, 811 Vermont Avenue NW., Washington, DC 20420 on October 15 and 16, 1987. The purposes of the Committee are to review the scientific and medical literature relating to the possible health effects resulting from exposure to dioxin and ionizing radiation and to assist in the development of Agency policy with respect to veterans' claims for compensation based upon exposure.

The meeting will convene at 9:00 a.m. both days in the Office of Facilities Conference Room 442. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Administration Central Office (phone 202/233-2115) prior to October 7, 1987.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Administration Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: August 19, 1987.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-19603 Filed 8-26-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 166
Thursday, August 27, 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).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 4, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19752 Filed 8–25–87; 10:41 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 11, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19753 Filed 8–25–87; 10:41 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 18, 1987.

PLACE: 2033 K Street, NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19754 Filed 8–25–87; 10:41 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., September 25, 1987.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Market Surveillance Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 87–19755 Filed 8–25–87; 10:41 am]

BILLING CODE 6351-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, September 2, 1987.

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. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: August 25, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–19805 Filed 4–25–87; 4:03 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 24, 31, September 7, and 14, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 24

No Commission Meetings

Week of August 31—Tentative

Wednesday, September 2

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Revision to the General Statement of Policy and Procedures for Enforcement Action (Tentative)
b. Shoreham—Intervenor Motion to Admit New Contention on Medical Services for Contaminated Injured Individuals (Tentative)

Thursday, September 3

2:00 p.m.
Briefing on Status of Decommissioning Activities (Public Meeting)

Week of September 7—Tentative

Wednesday, September 9

2:00 p.m.
Briefing on Performance of Sandia Containment Tests (Public Meeting)

Thursday, September 10

2:00 p.m.
Discussion of Integration of AEOD Reports into the Regulatory Process (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of September 14—Tentative

Monday, September 14

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on the Status of Peach Bottom (Public Meeting)

Thursday, September 17

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert B. McOsker,

Office of the Secretary.

August 20, 1987.

[FR Doc. 87–19709 Filed 8–24–87; 4:25 pm]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 52, No. 166
Thursday, August 27, 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.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Meeting

Correction

In Sunshine notice document 87-19466 appearing on page 31844 in the issue of Monday, August 24, 1987, make the following correction:

On page 31844, in the first column, in the file line at the end of the document, the file time should read "4:03 pm".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0078]

Denial of Hearing and Withdrawal of Approval of New Drug Applications and New Animal Drug Applications for Sterile Injectable Products; Final Order; J.D. Copanos and Sons, Inc. and Kanasco Ltd.

Correction

In notice document 87-17828 beginning on page 29274 in the issue of Thursday, August 6, 1987, make the following corrections:

1. On page 29286, in the first column, in paragraph 16, in the seventh line, insert "and falsified" after "records)".

2. On page 29296, in the second column, in paragraph h., in the third line, insert "containers of components were identified both as" after "same".

3. On page 29299, in the second column, in the second complete paragraph, in the last line, "211.66(b)(3)" should read "211.67(b)(3)".

4. On page 29301, in the first column, in the first complete paragraph, in the 18th line, insert "would be, failed to use the actual cold spot to calculate the performance of that autoclave," after "autoclave,".

BILLING CODE 1505-01-D

federal register

Thursday
August 27, 1987

Part II

Department of Health and Human Services

Public Health Service

42 CFR Part 84

National Institute for Occupational Safety and Health; Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 84

National Institute for Occupational Safety and Health (NIOSH) Revision of Tests and Requirements for Certification of Permissibility of Respiratory Protective Devices Used in Mines and Mining

AGENCIES: National Institute for Occupational Safety and Health, Centers for Disease Control (CDC), Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice proposes regulations at Part 84 of Title 42 of the Code of Federal Regulations (42 CFR Part 84) for certifying respirators. Upon promulgation, 42 CFR Part 84 will replace Part 11 of Title 30 of the Code of Federal Regulations (30 CFR Part 11). 30 CFR Part 11 is the existing regulation under which the Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) test and certify respirators for use in mines and mining. Elsewhere in this issue of the Federal Register, MSHA is proposing to revoke 30 CFR Part 11. NIOSH is proposing extensive changes in the requirements and tests for certifying respirators which were originally promulgated in 1972 and periodically amended since that date. The revisions are in accordance with the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 842(h), 844 and 957).

Requirements and tests are included for new types of respirators used in mines and mining; new and revised requirements and tests are incorporated which more completely address mine and mining conditions and their effects on respirators; and administrative changes are included which will generally improve the respirator testing and certification program.

Interested parties are invited to participate in this proposed rulemaking by submitting such written views or arguments as they may desire. All communications received before the specific closing date will be considered before taking action on the proposed rule. All comments received will be available for examination in the Office of the Director, Division of Safety Research, NIOSH. The proposal contained in this notice may be changed in light of the comments received.

DATE: Comments must be received on or before October 26, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Director, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

FOR FURTHER INFORMATION CONTACT: John Moran, Director, Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephone (304) 291–4595.

SUPPLEMENTARY INFORMATION: Following promulgation of 30 CFR Part 11 in 1972, NIOSH began conducting research in several areas of respiratory protection. Concurrently, NIOSH began to receive public input concerning the respirator certification program.

In December 1977, NIOSH conducted a public meeting to obtain comments on changes needed in 30 CFR Part 11. In 1979, a group of outside consultants conducted a thorough review of the program. The report received from those consultants was published by NIOSH for further consideration by other interested persons, and a public meeting was held in July 1980, to obtain their comments on the program. In December 1981, the American National Standards Institute Z88 Committee on Respiratory Protection commented on 30 CFR Part 11. In January 1982, the Mine Health Research Advisory Committee transmitted its recommendations to NIOSH for further changes in the program. Since 1982, NIOSH has solicited and investigated reports of problems with NIOSH/MSHA-certified respirators, with the purpose of obtaining direct public input into the certification program.

Investigations, research, comments, and analyses were considered by NIOSH in preparation of this proposed revision that was transmitted to MSHA in September 1983. After meeting with MSHA and considering MSHA comments, the present revision was prepared and is published as a Notice of Proposed Rulemaking. In accordance with the Mine Safety and Health Amendments Act of 1977 (30 U.S.C. 842(h), 844 and 957) which has been enacted for the purpose, in part, of developing and promulgating improved mandatory health or safety standards to protect the health and safety of the Nation's coal or other miners, the issuance of certificates of approval for respirators is limited to only those respirators used in coal or other mines.

This revision includes new requirements and tests and changes in existing requirements and tests which NIOSH has determined will provide greater safety and reliability for respirators used in mines and mining.

The most significant of the new requirements in the proposed 42 CFR Part 84 is the proposed requirement for workplace or simulated workplace tests (§ 84.32) to be performed before certification of a respirator. These tests, which would be performed in real or simulated use environments, are designed and intended to resolve a major problem which exists under the present requirements of 30 CFR Part 11. NIOSH has repeatedly observed and been advised by mining personnel and others, of hazardous problems existing in the design and/or performance of respirators that have been certified for approval by MSHA and NIOSH, but have not been used under field conditions. These problems, which the performance requirements of the present 30 CFR Part 11 often cannot identify, may become apparent only after the certified respirator is put into actual use in strenuous mine and other operations. NIOSH believes that earlier recognition and correction of such problems are necessary, and NIOSH has included a requirement that the manufacturer perform a workplace or simulated workplace trial test, as specified in this revision, prior to issuance of a certificate of approval by NIOSH.

Workplace or simulated workplace test requirements are included to provide for certification of respirators to either a minimum performance level or to a higher performance level.

NIOSH has detailed protocols for the conduct of laboratory tests. These protocols have been made available to all certification applicants and, indeed, serve as the basis for correlation between such tests conducted by the manufacturer/applicant and the NIOSH certification tests. The NIOSH laboratory serves not only as the testing authority but as the test procedure reference laboratory. Under the proposed revisions, NIOSH will similarly provide detailed model laboratory test protocols to applicants upon request and will continue to serve as the reference laboratory for quality assurance and laboratory correlation purposes.

In these proposed regulations, NIOSH requires the conduct of workplace or simulated workplace testing. NIOSH and others have conducted such "field" studies to determine the performance of respirators in the workplace setting. NIOSH has experience in and is expanding workplace testing of respirators and has begun to develop model protocols for performing such tests in a proven and reliable manner. These field test protocols establish the criteria for the conduct of such tests to

meet the minimum protection factor (PF) criteria proposed in these regulations. These field test protocols would be too voluminous to include in the **Federal Register** Notice; however, it is the intent of NIOSH to make them available upon request at the time of final rulemaking. As NIOSH's and other field studies continue, any improvements to this protocol will, as in the past laboratory test protocols, be made available to applicants/manufacturers. NIOSH is, similarly, planning to conduct simulated workplace testing. Detailed model protocols will be developed for such testing when correlation has been established with the workplace testing and will, at that time, be made available to applicants/manufacturers. NIOSH solicits comments on this approach which is intended to assure reliability and reproducibility of workplace and simulated workplace test results. NIOSH also solicits comments and suggestions regarding alternative approaches such as the need for a requirement in the final rule for prior approval by NIOSH of workplace or simulated workplace test protocols based upon minimum protocol criteria established by NIOSH. For example, such minimum protocol criteria might include such matters as the requirement for the calibration of test equipment according to established standards.

Protocols for the conduct of workplace or simulated workplace testing for certification of protection factors exceeding the minimum requirements will similarly be developed and made available. These protocols will differ, generally, from the minimum protection factor tests with regard to the number of tests required in order to establish a higher degree of confidence in the protection factor achieved.

The following new non-testing requirements are included in this revision to assure flexibility in the certification process and greater safety and reliability of certified respirators.

Section 84.20. The requirement for applicants to submit quality assurance documentation has been deleted and the requirement that the applicant perform certain basic quality assurance functions has replaced it. These requirements include inspecting and testing critical characteristics of the respirator, calibrating instruments used for inspections, and controlling drawings and inspections.

In addition, the manufacturer shall allow NIOSH to select, at no cost, a reasonable number of certified respirators from a site mutually agreed upon by the manufacturer and NIOSH. At present, NIOSH must purchase those respirators on the open market.

Sections 84.21–84.25 are new requirements and are included to assure that the manufacturer can rapidly and effectively disseminate reports of respirator failure to users and to assure that manufacturers inform NIOSH of corrective measures.

Section 84.21. Any manufacturer who discovers that his certified respirator fails to meet the applicable requirements of this part, shall promptly notify NIOSH, and if so directed by NIOSH, its dealers, distributors, and purchasers.

Section 84.22. The notification to NIOSH from the manufacturer required in § 84.21 shall include, inter alia, the identification and number of respirators involved, a description of the defect and hazards reasonably related thereto, and the measures to be taken by the manufacturer to correct the defect or bring the respirator into compliance.

Section 84.23. The notification by the manufacturer to affected persons shall include, inter alia, a clear evaluation in non-technical terms of the hazards reasonably related to the defect and instructions with respect to the use of the respirator pending correction of the defect.

Section 84.24. The manufacturer shall furnish to NIOSH a copy of any communication sent to dealers, distributors or purchasers regarding any defect in or failure of its respirator to comply with applicable standards.

Section 84.25. If NIOSH discovers, through its own research or testing that a certified respirator does not comply with requirements in this Part, NIOSH shall, within 24 hours, so notify the manufacturer of the respirator, and the manufacturer shall notify the persons specified in § 84.21(c).

Section 84.30. The manufacturer shall conduct all tests and meet all requirements of the revised 42 CFR Part 84, and shall provide NIOSH with a written report. This report may be used as the basis for issuance of a certificate of approval, or, NIOSH may conduct any test or tests it deems necessary, following receipt of the report, in its own laboratories before issuing the certificate of approval. Presently, NIOSH tests all respirators submitted for certification. After successful completion of laboratory testing, the applicant will be given interim certification for the conduct of workplace or simulated workplace testing.

Section 84.40. The certification label shall indicate the effective date of the revision to or amendment of 42 CFR Part 84 under which the certification was issued, and shall bear a notice advising users who wish to complain about a problem with the performance of the respirator to advise both the manufacturer and NIOSH of the problem. These requirements are added to the present requirements for the certification label and are included to assure that NIOSH is advised of all problems involving use of NIOSH-certified respirators.

Section 84.60. Only major modifications of respirators, made following issuance of a certificate of approval for that respirator, shall be submitted to NIOSH for approval before the respirator as modified may be sold or distributed as certified. At present, any change in a certified respirator must be submitted to NIOSH for approval before the respirator as modified may be sold or distributed as certified.

Section 84.70. Full and complete stipulation of causes for and procedures for withdrawal of certification for cause, by NIOSH, are prescribed. This is a new requirement included at the request of respirator manufacturers.

Section 84.80. Procedures for manufacturers to appeal decision by NIOSH not to issue certifications, are prescribed. This is a new requirement.

The following new performance test requirements are included in this revision of 42 CFR Part 84, to cover criteria not considered in the present requirements or to make the present requirements more severe and comprehensive, as necessary:

Section 84.223(c). A test requirement for melting of self-contained breathing apparatus harnesses has been added to assure the safety of such apparatus.

Section 84.229. A procedure is included for sequential statistical analysis of performance test results, to assure logical and repeatable analysis of test data.

Subpart R. A procedure for sizing respirator facepieces and for determining the fit of variable-sized respirators, is included to assure the availability of respirators in sizes to fit all wearers.

Subpart S. New test requirements are included for positive-pressure closed circuit self-contained breathing apparatus to provide for approval of these new devices.

Subpart T. The requirements and tests for air supply lines which appear in table 8 of the present 30 CFR Part 11 appear in the text of this part as §§ 84.251 through 84.251–8.

Section 84.248–12. New shock and vibration test requirements are designed to simulate the rough conditions that

self-contained breathing apparatus are exposed to in mining use.

Section 84.248–17. Flammability tests are included to simulate the exposure of self-contained breathing apparatus to heat and flames during mine use.

Section 84.248–18. A regulator over-pressurization test is included to simulate use of self-contained breathing apparatus in mines and mining.

Subpart U. New requirements are included for certification of powered air-purifying respirators, updating and revising the present requirements where necessary.

Subpart V. To provide a more severe test of respirator efficiency, the tests against various particulate matter, such as silica and lead, are replaced with a test against sodium chloride aerosol. Aerosol experts have assured NIOSH that the sodium chloride test, which provides efficiency data throughout the test as well as providing an aerosol more difficult to filter out, is superior to the present silica and lead aerosol tests.

Subpart W. Changes in the humidity and air flow of canister and cartridge tests are included to provide test conditions more nearly like those encountered in mines and mining.

NIOSH invites public comment on the appropriateness of continuing the use of carbon tetrachloride as a challenge vapor for evaluating and certifying organic vapor canister/chemical cartridge respirators. If appropriate, commenters should recommend a replacement or replacement vapor(s) and provide any available data to support their recommendation.

The classifications of air-purifying respirators which may be certified are changed to make their selection by wearers more realistic and easier. For example, instead of classifying dust respirators according to the toxicity of the materials they are designed to protect against, they are classified in this revision according to their relative efficiencies against any particulate matter.

To reflect MSHA's experience with issues of miner safety and health, the proposed rule provides for the two Agencies to consult on approval applications for respirators designed for mine rescue or other mine emergencies. MSHA would review these applications to determine the suitability of the respirators for the mining environment. Under the proposal, any use limitation related to miner safety or health would be included as a condition for approval of the respirators. The proposal would not affect MSHA's testing of electrical components of respirators in potentially explosive atmospheres (intrinsic safety) under the existing requirements of 30 CFR Part 18.

In implementing the proposed revisions, NIOSH and MSHA plan to develop a new Memorandum of Understanding which would, among other things, define the consultative role for MSHA in respirator approvals.

Both MSHA and NIOSH intend that the proposed certification program improve the quality and reliability of respirator performance in the workplace. These improvements will lead to better protective equipment against exposures from toxic substances and other airborne health hazards.

Regulatory Impact Analysis

The Secretary has determined, in accordance with Executive Order 12291, that this rule will not constitute a "major" rule, in that it is not likely to: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U. S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule will not have significant impact on small businesses; therefore, preparation of a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Sections of this proposed rule contain information collections which are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980. We have submitted a copy of this proposed rule to OMB for its review of these information collections. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency official designated for this purpose whose name appear in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, ATTN: Desk Officer for HHS/PHS/CDC/NIOSH.

List of Subjects in 42 CFR Part 84

Mine safety and health, Occupational safety and health respirators, Miners, Personal protective equipment.

For the reasons set out in the preamble, Part 84 of Chapter 1 of Title 42 of the Code of Federal Regulations is proposed to be added as set forth below.

Dated: July 10, 1987.

Robert E. Windom,

Assistant Secretary for Health.

Approved: July 29, 1987.

Otis R. Brown,

Secretary.

Subchapter G—Occupational Safety and Health Research and Related Activities

PART 84—RESPIRATORY PROTECTIVE DEVICES; TESTS FOR PERMISSIBILITY

Subpart A—General Provisions

Sec.

Subpart B—Application Procedure

Subpart C—Quality Assurance

Subpart D—Respirator Testing by Applicant

Subpart E—NIOSH Certification Label

Subpart F—Maintenance, Informational and Instructional Materials

Subpart G—Modification of Certified Respirators

Authority: 30 U.S.C. 842(h), 844 and 957, [Pub. L. 91–173 as amended by Pub. L. 95–164].

Subpart A—General Provisions

§ 84.1 Purpose.

The purpose of this part is to prescribe procedures and requirements for the certification of respirators for use in mines and mining.

§ 84.2 Certified respirators.

(a) A respirator is certified if the respirator meets the requirements set forth in this part. NIOSH will determine if a respirator meets these requirements by reviewing the test reports described in §§ 84.30, 84.32, and 84.33.

(b) *Expiration of manufacturers' certificates and recertification.* (1) Manufacturers' certificates granted prior to the effective date of this part by NIOSH, MSHA and the Bureau of Mines for respirators certified as meeting previous performance requirements shall expire five years from the effective date of these regulations unless certification is withdrawn prior to that time pursuant to the provisions of Subpart H of this part.

(2) A manufacturer may obtain certification of a respirator with an expired manufacturers' certificate by submission of a new application for certification as specified in § 84.10.

(3) A respirator submitted to NIOSH for an original certification or a

respirator with an expired manufacturers' certificate which is submitted to NIOSH for recertification shall meet all relevant performance requirements in effect on the date of application.

(4) A certification granted by NIOSH after the effective date of these regulations shall remain in effect for the time period specified in the subsequent revision of the performance requirement applicable to that type or class of respirator unless certification is withdrawn prior to that time pursuant to the provisions of Subpart H of this part.

§ 84.3 Definitions.

"Applicant" means an individual, partnership, company, corporation, association or other organization which manufactures, assembles, or controls the assembly of a complete respirator and who applies to NIOSH for certification of such respirator or for certification of a modification of a certified respirator.

"Major Modification" is a modification or set of modifications not listed or otherwise provided for in the certified respirator specifications that (1) might appreciably affect the weight, balance, structural strength, performance, or other qualities affecting respirator use, or (2) is not done according to accepted practices or cannot be done by elementary operations.

"Manufacturer" means an individual, partnership, company, corporation, association or other organization which manufactures, assembles, or controls the assembly of a complete respirator and has been granted a NIOSH certification for such respirator.

"Minor Modification" is other than a major modification.

"MSHA" means the Mine Safety and Health Administration, U.S. Department of Labor.

"NIOSH" means the National Institute for Occupational Safety and Health, Centers for Disease Control, Public Health Service, U.S. Department of Health and Human Services.

"NIOSH certification label" is a label described in Subpart E of this part.

"Respirator" means any device worn by an individual engaged in mining and designed to provide the wearer with respiratory protection against inhalation of a hazardous atmosphere.

"Simulated workplace" means a simulated environment that is a reasonable representation of mines or mining work sites with regard to contaminant exposures for which a respirator is intended to protect.

"Workplace" means any mine or mining work site with regard to contaminant exposures for which a respirator is intended to provide protection.

Subpart B—Application Procedure

§ 84.10 Submission of an application.

(a) An application to NIOSH for certification of a respirator or certification of a major modification of a certified respirator shall be submitted in writing to: Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505.

(b) An application to MSHA for certification of an electrical component of a respirator that is required to be permissible, shall be tested in accordance with Part 18 of this chapter and shall be submitted in writing to: Approval and Certification Center, Box 251, Industrial Park Road, Triadelphia, West Virginia 26059.

§ 84.11 Required contents of an application to NIOSH for certification.

An application to NIOSH for certification of a respirator or certification of a major modification of a certified respirator shall be written in English and shall contain:

(a) A letter of transmittal from the applicant to NIOSH requesting certification of a respirator or certification of a major modification of a certified respirator;

(b) A test report as described in § 84.30;

(c) Written assurance that the applicant will, prior to commencement of production, implement, and thereafter maintain, a program to assure the continued quality of certified respirators which will meet both the minimum requirements and the objectives set forth in § 84.20;

(d) A minimum of two respirators which are made on regular production tooling with no operation included which was not included on the respirators tested by the applicant or his agent and which will not be incorporated in regular production processing;

(e) A copy of the applicant's proposed user maintenance, informational and instructional materials and a sample of the packaging materials;

(f) Engineering drawings of the respirator for which certification is sought;

(g) A complete parts list, including all components or parts which may be replaced during the useful life of the respirator;

(h) Marking of all documents submitted under paragraphs (f) and (g) of this section indicating their confidential or trade secret nature;

(i) A required fee of $200 to cover the cost of NIOSH documentation review, plus any additional costs to cover verification testing, determined in accordance with the provisions in Subpart J;

(j) Written assurance that the applicant will, during any testing required by these regulations which involves human subjects, comply with the requirements in 45 CFR Part 46, Subpart A-Basic HHS Policy for Protection of Human Research Subjects.

§ 84.12 Withdrawal of an application for certification.

(a) An applicant may, by written notification to NIOSH, withdraw its application for certification of a respirator.

(b) Upon request, NIOSH will return to the applicant the respirators submitted for certification. The return of the respirator shall be at the applicant's expense.

(c) Any balance of the paid fee will be refunded to the applicant.

§ 84.13 Evaluation of an application for certification.

If NIOSH determines that the applicant has failed to satisfy the requirements set forth in § 84.11 of this part, NIOSH will so inform the applicant and describe the basis for the NIOSH determination. No additional application fee will be charged.

Subpart C—Quality Assurance

§ 84.20 Quality assurance.

Applicants granted a certification under this part shall—

(a) Inspect or test, or both, the critical characteristics identified in the appropriate subpart of this part;

(b) Calibrate instruments used for the inspection and testing of critical characteristics at least as frequently as, and according to, the instrument manufacturer's specifications, using calibration standards traceable to those set by the National Bureau of Standards, U.S. Department of Commerce or other nationally recognized standards;

(c) Control drawings and specifications so that the product is manufactured as certified;

(d) Report to NIOSH any knowledge of a product distributed with critical characteristics not in accordance with the certification specifications;

(e) Permit a representative(s) of NIOSH to conduct an in-plant audit of the inspection and tests, instrument calibration, and drawing and specification control, if NIOSH has reason to believe a certified respirator is

in nonconformance with the requirements of the part;

(f) Make certified products available for audit, upon request by NIOSH but not more than once a year except for cause, at no cost and at a mutually agreeable site and time.

§ 84.21 Discovery of defect or failure of compliance by manufacturer; notice requirements.

Any manufacturer who discovers that any respirator produced or assembled by him fails to comply with an applicable requirement contained in this part shall:

(a) In accordance with § 84.22, notify NIOSH within one work day of discovery of the failure to comply, if such failure poses an immediate and significant threat of serious injury or death, or

(b) If such failure to comply does not pose an immediate and significant threat of serious injury or death, notify NIOSH within a reasonable time after discovery in accordance with § 84.22, and

(c) Furnish notification if so directed by NIOSH, in accordance with § 84.23, to the following persons:

(1) The dealers or distributors to whom such respirator was delivered by the manufacturer; and

(2) The purchaser of such respirator and any subsequent transferee of such respirator (where known to the manufacturer or where the manufacturer upon inquiry to dealers, distributors, or purchasers can identify the present user).

§ 84.22 Notification by the manufacturer to NIOSH.

The notification to NIOSH required by § 84.21 shall be by telephone or telegram which shall be confirmed in writing by letter, and shall include the following information:

(a) Identification of the respirator or respirators involved;

(b) The total number of such respirators so produced, and the approximate number of such respirators which have left the place of manufacture;

(c) The expected usage for the respirator if known to the manufacturer;

(d) A description of the defect in the respirator or the manner in which the respirator fails to comply with any applicable requirement contained in this part;

(e) An evaluation of the hazards reasonably related to the defect or the failure to comply with the applicable requirement;

(f) The date and circumstances under which the defect or noncompliance was discovered; and

(g) The identification of any trade secret information which the manufacturer desires kept confidential; and

(h) Any other relevant information which NIOSH may require.

§ 84.23 Notification by the manufacturer to affected persons.

(a) The notification by the manufacturer to the persons specified in § 84.21 (c) shall be made within 14 days from the receipt of such directive from NIOSH and shall include the following:

(1) In clear and nontechnical terms, the information prescribed in § 84.22, paragraphs (a), (d), (e), and (h) and instructions with respect to use of the respirator pending the correction of the defect; and;

(2) The following statement:

The manufacturer will remedy the defect or bring the respirator into compliance with each applicable requirement contained in respirator certification regulations in accordance with a plan to be approved by NIOSH, the details of which will be included in a subsequent communication to you.

Provided, That if at the time the notification is sent, NIOSH has approved a plan for the repair, replacement or refund of the respirator, the notification may include the details of the approved plan in lieu of the above statement.

(b) The notification shall be sent—

(1) By certified mail to purchasers of the respirator and to subsequent transferees; and

(2) By certified mail or other more expeditious means to dealers and distributors.

§ 84.24 Copies of communications sent to purchasers, dealers, or distributors.

(a) Every manufacturer of respirators shall furnish to NIOSH a copy of all notices, bulletins, or other communications sent to the dealers or distributors of such manufacturers or to purchasers (or subsequent transferees) of respirators of such manufacturer regarding any defect in such respirator or any failure of such respirator to comply with an applicable requirement contained in this part; and

(b) In the event NIOSH deems the content of such notices to be insufficient to protect the public health and safety, NIOSH may require additional notice to such recipients, or may elect to make or cause to be made such notification by whatever means it deems appropriate.

§ 84.25 Determination by NIOSH that a respirator fails to comply or has a defect.

(a) If NIOSH, through testing, inspection, research, or examination of reports or other data, determines that any respirator does not comply with an applicable requirement contained in this part, NIOSH shall within one work day notify the manufacturer of the respirator in writing specifying:

(1) The respirator or respirators involved;

(2) The defect in the respirator or the manner in which the respirator fails to comply with the applicable requirements contained in this part;

(3) NIOSH's findings, with reference to the tests, inspections, studies, or reports upon which such findings are based; and

(4) A reasonable period of time during which the manufacturer may present his views and evidence to establish that there is no failure of compliance or that the alleged defect does not exist or does not relate to health or safety of the user of the respirator.

(b) Every manufacturer who receives a notice under paragraph (a) of this section shall reply to NIOSH in writing in accordance with § 84.22 of this part, paragraphs (b), (c), (e), and (g). If such failure appears to pose an immediate and significant threat of serious injury or death, reply shall be made within 24 hours. If such failure to comply does not pose an immediate and significant threat of serious injury or death, the reply shall be made to NIOSH within a reasonable time.

(c) If, after the expiration of the period of time contained in the notice, from NIOSH specified in paragraph (a) of this section, NIOSH determines that the respirator does not comply with an applicable requirement contained in this part, NIOSH shall direct the manufacturer to furnish the notification to the persons specified in § 84.21(b) in the manner specified in § 84.23. The manufacturer shall furnish the required notification within 14 days from the date of receipt of such directive.

Subpart D—Respirator Testing by Applicant

§ 84.30 Laboratory testing by applicant and interim certification.

(a) The applicant shall conduct the laboratory tests necessary to determine if the applicant's respirator meets the relevant performance standards set forth in Subparts 0 through Z of this part. In addition, the applicant shall test the respirator to determine if the respirator performs as expected and is free from characteristics or defects which may make it unsafe for its anticipated use.

(b) The applicant shall submit a written laboratory test report to NIOSH which shall include:

(1) The results of the tests described in paragraph (a) of this section;

(2) A detailed description of the test procedures employed in producing the test results;

(3) A detailed description of the data and method of data analysis used in obtaining the test results.

(c) NIOSH may, at its discretion, undertake its own testing and/or evaluation of applicant's respirator for the purpose of verifying the test results or conclusions included in applicant's test report.

(d) In addition to the requirements of this part, NIOSH may require, as a further condition of certification, additional tests reasonably necessary to evaluate the quality, effectiveness, or safety of the respirator submitted to NIOSH for certification. NIOSH will notify the applicant in writing of these additional requirements, stating generally the reasons for such requirements.

(e) NIOSH will review the applicant's laboratory test report to determine if the report provides substantial evidence that the applicant's respirator:

(1) Meets the relevant performance requirements set forth in Subparts O through Z of this part;

(2) Performs as expected;

(3) Is free from defects or characteristics that may make it unsafe for its anticipated use.

(f) Within 90 days of the acceptance by NIOSH of the applicant's laboratory test report, NIOSH will issue a notification letter to the applicant indicating whether the laboratory test report provides substantial evidence that the applicant's respirator complies with the requirements of paragraph (e) of this section.

(1) If NIOSH concludes that the applicant's report does provide sufficient evidence of such compliance, the notification letter will constitute an interim certification of the respirator pending a decision by NIOSH on final certification which is contingent upon satisfactory results from workplace or simulated workplace testing.

(2) If NIOSH concludes that the applicant's report does not provide sufficient evidence of such compliance, NIOSH will inform the applicant in writing of its intention to deny interim certification. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions in Subpart I.

§ 84.31 Guidelines for workplace or simulated workplace testing.

In conducting workplace or simulated workplace testing the applicant shall conform to the following general guidelines:

(a) The applicant shall utilize a methodology and research design which can be expected to adequately determine if the respirator will perform as required by this part and is free from defects or characteristics which may make it unsafe for its anticipated use;

(b) The applicant shall provide for testing of the applicant's respirator in actual and/or simulated workplace conditions that are reasonably representative of those in which the applicant anticipates the respirator will be used;

(c) The applicant shall provide for testing of applicant's respirator by experts qualified by training and experience to evaluate the effectiveness and safety of the respirator.

§ 84.32 Workplace or simulated workplace testing by applicant; Certification of minimum performance level.

(a) *Workplace or simulated workplace test report.* The applicant shall provide NIOSH with a test report that provides substantial evidence that the applicant's respirator will provide a workplace or simulated workplace protection factor at least equal to that assigned to that category of respirators in paragraph (b) of this section. In addition, the applicant's test report shall provide:

(1) Substantial evidence that the applicant's respirator performs as is expected and is free from defects or characteristics which may make it unsafe for its anticipated use; and

(2) An explanation of the method of observation and recording results, including the variables measured, quantitative assessment of subject response and steps to be taken to minimize bias on the part of the subject and the observer.

(b) Workplace or simulated workplace evaluation of respirator performance shall be conducted so as to determine the distribution of workplace protection factors or simulated workplace protection factors that are measured in workplaces or in simulated workplaces and in work conditions that are reasonably representative of the places and conditions in which it is anticipated the respirator will be used.

(1) The workplace protection factor, WPF, or simulated workplace protection factor, SPF, is a measure of the effectiveness of a respirator that is being properly worn and used during normal work activities by a person who has been properly fitted. The WPF or SPF as appropriate can be determined by: WPF or $SPF = C_o/C_i$ where C_o is the time-weighted average (TWA) contaminant concentration outside the facepiece which would be inhaled if the respirator were not used, and C_i is TWA contaminant concentration inside the respirator facepiece which is inhaled by the respirator wearer.

(2) The assigned protection factor is that above which 95 percent of the workplace protection factors would be expected to exceed at a confidence level of 95 percent. The assigned protection factor, PF_a, can be calculated by the following general formula as explained by Natrella[2] for one-sided tolerance limits: $PF_a = PF_a(\lambda, P)$, where $\lambda = 0.95$ and $P = 0.95$. For example, a class of respirators with a $PF_a = 50$ would be expected to provide workplace protection factors or simulated workplace protection factors in excess of 50 for at least 95 percent of users.

Minimum Assigned Protection Factors

Respirator Class	Minimum PFa
Air Purifying	
negative pressure	
full facepiece	50
half or quarter facepiece	10
with low efficiency filter	5
powered	
tight fitting facepiece	50
loose fitting helmet	25
Atmosphere Supplying	
self-contained (SCBA)	
negative pressure	50
positive pressure	10,000
air-line	
negative pressure	
full facepiece	50
half facepiece	10
positive pressure	
full facepiece	2,000
half facepiece	1,000
continuous flow	
half facepiece	50
full facepiece	50
hood or helmet	25
combination positive pressure SCBA with air-line	
half facepiece	1,000
full facepiece	10,000

(c) At the conclusion of the workplace or simulated workplace tests, the applicant shall report the workplace or simulated workplace test results to NIOSH.

(1) If, after completing its review, NIOSH is satisfied that the respirator meets the minimum assigned protection factor requirements of this section and is free from defects or characteristics which may make it unsafe for its anticipated use, NIOSH will issue the applicant a certificate indicating NIOSH certification of the respirator.

(2) If applicant's workplace or simulated workplace test results do not provide substantial evidence that the respirator meets the aforementioned requirements, NIOSH will inform the applicant in writing of its intention to deny certification. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions in Subpart I.

(d) NIOSH will issue a certificate to the applicant or send a notification of denial to the applicant within 90 days of acceptance by NIOSH of the applicant's workplace or simulated workplace test results.

§ 84.33 Workplace or simulated workplace testing by applicant; Certification of higher performance level.

In lieu of conformance to the requirements of § 84.32 of this part, the applicant may perform workplace or simulated workplace testing, designed to demonstrate a higher level of performance, i.e. protection factor, than those specified in § 84.32.

(a) Where an applicant intends to submit for certification at a higher level of performance than those specified in § 84.32, the applicant shall advise NIOSH of that intent, prior to initiation of the workplace or simulated workplace testing. NIOSH reserves the right to review the statistical protocol for the study and to observe the conduct of the workplace or simulated workplace tests.

(b) Workplace or simulated workplace evaluation of respirator performance shall be conducted so as to determine the distribution of workplace protection factors or simulated workplace protection factors that are measured in workplaces or in simulated workplaces and in work conditions that are reasonably representative of the places and conditions in which it is anticipated the respirator will be used.

(c) The workplace protection factor, WPF, or simulated workplace protection factor, SPF, is a measure of the effectiveness of a respirator that is being properly worn and used during normal work activities by a person who has been properly fitted. The WPF or SPF as appropriate can be determined by: WPF or $SPF = C_o/C_i$ where C_o is the time-weighted average (TWA) contaminant concentration outside the facepiece which would be inhaled if the respirator were not used, and C_i is TWA

contaminant concentration inside the respirator facepiece which is inhaled by the respirator wearer.

(d) The applicant shall provide NIOSH with a test report that provides substantial evidence that the applicant's respirator will provide an assigned protection factor greater than that assigned to that category of respirators in paragraph (c) of § 84.32. The applicant's test report shall provide:

(1) Data that statistically demonstrates that 95 percent of the workplace protection factors would be expected to exceed the higher protection factor at a confidence level of 95 percent. The higher assigned protection factor, PF_a, can be calculated by the following general formula as explained by Natrella[2]: $PF_a = PF_a(\lambda, P)$, where $\lambda = 0.95$ and $P = 0.95$;

(2) Evidence that the respirator is free from defects or characteristics which may make it unsafe for its anticipated use; and

(3) An explanation of the method of observation and recording results, including the variables measured, quantitative assessment of subject response and steps to be taken to minimize bias on the part of the subject and the observer.

(e) If NIOSH finds that the data support the assignment of a higher protection factor than the minimum level of protection factor specified in § 84.32(c), NIOSH will certify the higher protection factor as part of the respirator certification. If NIOSH determines that the data do not support the higher protection factor, NIOSH may require further testing and/or may choose to conduct validation testing of the applicant's respirator or may deny the application. NIOSH will inform the applicant in writing of its intention to deny certification. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions in Subpart I.

§ 84.34 Availability of respirator test results and protocols.

NIOSH will make available, for public review, all laboratory and workplace or simulated workplace test results and test protocols utilized in tests conducted under the provisions of this part.

Subpart E.—NIOSH Certification Label

§ 84.40 Required contents of a certification label.

(a) A NIOSH certification label shall contain:

(1) The name and address of the manufacturer;

(2) The name and letters or numbers by which the respirator or respirator component is designated for trade purposes;

(3) The lot number or other appropriate designation of date of manufacture;

(4) The NIOSH logo and the words, "Certified by the U.S. Government";

(5) The certification number assigned by NIOSH;

(6) The effective date of the NIOSH performance standard against which the respirator was tested and certified;

(7) Any conditions or limitations specified by NIOSH; and

(8) The following statement:

Complaints concerning the performance of this respirator should be forwarded to the manufacturer and a copy should be sent to Division of Safety Research, NIOSH, 944 Chestnut Ridge Road, Morgantown, WV 26505

(9) Manufacturers shall have the completely assembled and fully charged weight and completely assembled and fully discharged weight permanently and legibly marked on all self-contained breathing apparatus.

(b) In addition to the requirements set forth in paragraph (a) of this section, the certification labels for mine rescue and emergency respirators as defined in Subpart K shall contain the MSHA logo and any conditions or limitations specified by MSHA.

§ 84.41 General label and marking requirements.

(a) Legible reproductions or abbreviated forms of the certification label acceptable to NIOSH for use on each respirator or respirator component shall be attached to or printed on the following locations:

Respirator Type	Label Type	Location
Self-contained breathing apparatus	Entire	Harness assembly and canister (where applicable).
Gas and vapor air purifying canister respirator	Entire	Respirator container and canister.
Air-line respirator	Entire	Respirator container or instruction card.
Particulate air purifying respirator	Entire	Respirator container and filter container.
	Abbreviated	Filters.
Gas and vapor air purifying cartridge respirator	Entire	Respirator container, cartridge container, and filter containers (where applicable).
	Abbreviated	Cartridges and filters

(b) Each respirator, major respirator component, and respirator container shall be labeled distinctly to show the name of the manufacturer, the name and letters or numbers by which the respirator or respirator component is designated for trade purposes, and the lot number, serial number, or date of manufacture.

(c) Pursuant to a request from the manufacturer of a certified respirator, NIOSH will provide prior review of the contents of a proposed certification label.

Subpart F—Maintenance, Informational and Instructional Materials

§ 84.50 Operation and maintenance manuals.

(a) Operation and maintenance manuals shall be provided with each respirator and shall contain the following as minimum requirements:

(1) Operation manuals shall include principles of operation, procedures for fitting to the wearer, a description of parts, operation and use, limitations of use, operation testing, trouble-shooting guidance, and hazards.

(2) Maintenance manuals shall include preventive maintenance procedures, routine repair procedures, test procedures, suggested spare parts, parts lists, and storage recommendations.

(b) The applicant's operation and maintenance manuals shall be written so as to be easily comprehensible to the user.

Subpart G—Modification of Certified Respirators

§ 84.60 Major modification of certified respirators.

(a) Manufacturers of respirators certified by NIOSH who wish to make major modifications to such respirators shall submit applications for certification of such major modifications to NIOSH as set forth in Subpart B of this part.

(b) If an applicant submits to NIOSH a proposed major modification of a respirator which holds a current NIOSH/MSHA certification, the proposed major modification shall meet the performance standards in effect on the date of the original certification of the respirator. NIOSH, at its discretion, may test or evaluate the respirator and verify the applicant's data.

(c) If the respirator as modified fails to meet the relevant NIOSH performance standards in effect on the date of the original certification, NIOSH will inform the applicant in writing of its intention to deny certification of the modified respirator. The letter shall inform the applicant of the basis for the denial and of the applicant's right to appeal the denial in accordance with the provisions of Subpart I.

§ 84.61 Minor modification of certified respirators.

(a) Manufacturers of respirators certified by NIOSH who make minor modifications to such respirators, shall maintain a record of such minor modifications for the duration of the certification.

(b) The record of such minor modifications shall be made available to NIOSH, upon request, within 1 week. The record of such minor modifications shall be made available for inspection by NIOSH personnel during the in-plant audit prescribed in § 84.20(e).

Subpart H—Withdrawal of Certification

§ 84.70 Withdrawal of certification for cause.

NIOSH may withdraw its certification of a respirator for cause. Cause includes, but is not limited to:

(a) Failure of a manufacturer to consistently and effectively implement a quality assurance program which meets the objectives and requirements set forth in § 84.20;

(b) Failure of a manufacturer to promptly allow NIOSH to contact or enter its facility for the purpose of verifying the manufacturer's quality assurance program as provided for in § 84.20(e);

(c) Failure of a manufacturer to provide the notifications required in §§ 84.21 through 84.25;

(d) Placement by a manufacturer on a certified respirator of a NIOSH label not as prescribed in § 84.40;

(e) Failure of a manufacturer to maintain the records required in § 84.61 and/or to provide them to NIOSH in a timely fashion upon request;

(f) The subjection by a manufacturer of a respirator certified by NIOSH to major modification and the selling or advertising for sale of such modified respirator as NIOSH certified without having obtained NIOSH certification of the modification;

(g) Failure of a manufacturer to consistently produce a respirator that is reliable and free from defects or characteristics which may make it unsafe for its anticipated use;

(h) A determination by NIOSH that a test upon which certification depends does not provide reasonable protection to the user of a respirator which has been certified based entirely or in part upon satisfactory performance during such test;

(i) A determination by NIOSH that a certified respirator is so defective as to be dangerous to the health or safety of the user; and

(j) Failure of a manufacturer to permit NIOSH to select a reasonable number of respirators for audit testing as provided for in § 84.20(f).

§ 84.71 Procedure for withdrawal of certification for cause and manufacturer's right to appeal.

(a) If NIOSH determines that cause exists to warrant withdrawal of NIOSH certification of a respirator, NIOSH will notify the manufacturer of the NIOSH intent to withdraw certification, and inform the manufacturer of the reasons for the proposed withdrawal of certification and of the manufacturer's right to appeal the proposed withdrawal of certification.

(b) The manufacturer shall have 30 working days from the date of receipt from NIOSH of the notice of proposed withdrawal of certification to file a written notice of appeal with the Director of NIOSH.

(c) If, within 30 working days, the manufacturer fails to notify the Director of NIOSH of the manufacturer's intent to appeal the proposed withdrawal or certification, the Director of NIOSH shall notify the manufacturer that certification is withdrawn.

(d) If, within 30 working days, the manufacturer notifies the Director of NIOSH of the manufacturer's intent to appeal the proposed withdrawal of certification, the manufacturer will be granted a hearing as provided for in Subpart I of this part.

Subpart I—Appeals

§ 84.80 Appeal procedure.

Appeals by an applicant or manufacturer shall be to the Director of NIOSH. Upon receipt of a notice of appeal, the Director of NIOSH will refer the matter to an Administrative Law Judge who shall hear the appeal. The Administrative Law Judge will make a recommendation to the Director of NIOSH based upon relevant material and reliable evidence of record. Within 30 days of the rendering of the recommendation by the Administrative Law Judge, the Director of NIOSH will revise, reverse or affirm the original NIOSH determination.

Subpart J—Fee Determination

§ 84.90 Fees.

(a) In addition to the application fee prescribed in § 84.11(i), NIOSH will charge fees for services it provides in testing and evaluating products for which certification or related action is requested.

(b) NIOSH will compute fees on the basis of cost to the government to provide these services using the following methodology. For each service provided for a group of related products, NIOSH will determine a flat fee to cover the direct and indirect costs. Products are grouped based on function, construction or technology in accordance with certification requirements applicable to the product. Direct costs are based on current compensation costs for technical and support personnel, allocated according to the staff time spent in the previous fiscal year for each service for a product group. Indirect costs include a proportionate share of management personnel compensation costs, other administrative support costs and facility costs for the previous fiscal year, and depreciation of buildings and equipment. For product groups with insufficient data upon which to calculate a fee, NIOSH will charge an hourly rate based on the actual technical and support staff time spent on the action plus an appropriate share of indirect costs. Costs related to travel and transportation for certification of products tested or evaluated at the manufacturing or installation site are in addition to these flat or hourly fees and will be charged on an actual cost basis.

(c) NIOSH will publish a notice in the Federal Register announcing the availability of the current fee schedule by January of each year.

Subpart K—Mine Rescue and Emergency Respirators

§ 84.100 MSHA Review.

NIOSH will consult with the Mine Safety and Health Administration (MSHA) when an application for approval is submitted for a respirator designed for mine rescue or other mine emergencies. MSHA will review the application to determine the suitability of the respirator for the mining environment. Any use limitation related to mine safety or health shall be included as a condition for respirator approval. No respirator intended for emergency use in mines shall be approved without concurrence by MSHA.

Subparts L-N [Reserved]

Subpart O—Technical Definitions

§ 84.200 Definitions as used in this part.

"Adequate Oxygen" means an atmosphere which contains at least an oxygen partial pressure of 148 millimeters of mercury (19.5 percent oxygen by volume at sea level).

"Air-Purifying Respirator" means a respirator which protects the wearer by removing contaminants from the ambient air.

"Atmosphere Supplying Respirator" means a respirator which provides the wearer with air or oxygen from a source independent of the ambient atmosphere.

"Breathing Tube" means a tube at or near ambient pressure through which respirable air is intended to be supplied to the wearer's breathing zone.

"Canister" or "Cartridge" means the active element of a gas and vapor air-purifying respirator which contains the sorbent and/or catalyst which removes specific contaminants from the air drawn through it.

"Compressed Breathing Gas" means oxygen or air stored in a compressed state and supplied to the wearer in gaseous form.

"Contaminant" means a harmful material in the normal respirable atmosphere.

"dBA" means sound pressure levels in decibels, as measured with the A-weighted network of a standard sound level meter using slow response.

"End-of-Service-Life Indicator" means an indicator or warning device on a respirator which warns the wearer that the end of the service life of the device is approaching.

"Exhalation Valve" means a one-way valve that allows exhaled air to exhaust from the respirator and prevents outside air from entering.

"Eyepiece" means a gas-tight, transparent window in a facepiece through which the wearer may see.

"Facepiece" means a respirator component that serves to interface the respirator and the wearer and includes tight fitting facepieces, loose fitting facepieces, and mouthpieces.

"Face Seal Leakage" means the inward leakage that occurs at the interface of the wearer and the respirator plus all other sources of inward leakage except leakage due to air purifying element penetration. When there is no air purifying element penetration, face seal leakage is given by C_i/C_o where C_i is the inhaled concentration and where C_o is the concentration of challenge aerosol outside the facepiece. It may also be expressed as a percentage, if so indicated.

"Filter" means a media component used in respirators to remove solid and/or liquid particles from the inspired air.

"Filter Efficiency" means $1-(C_p/C_c)$, where C_c is the concentration of challenge aerosol and where C_p is the concentration of aerosol penetrating the filter. It may also be expressed as a percentage, if so indicated.

"Filter Penetration" means C_p/C_c, where C_c is the concentration of challenge aerosol and where C_p is the concentration of aerosol penetrating the filter. It may also be expressed as a percentage, if so indicated.

"Gas" means an aeriform fluid which is in a gaseous state at standard temperature and pressure.

"Gas and Vapor Respirator" means an air-purifying respirator which provides air to the wearer by removing specific gases and vapors from the ambient air.

"Head Harness" means a device for holding the facepiece securely in place on the wearer's face.

A "Hood" or "Helmet" is a respirator component which covers the wearer's head, and possibly also the neck and shoulders, and is supplied with incoming respirable air for the wearer to breathe. It may include a head harness and connection for a breathing tube.

"Immediately Dangerous to Life or Health" (IDLH): Respiratory exposures which:

(1) Pose an immediate threat of loss of life or of irreversible or delayed effects on health or;

(2) Eye exposures which would prevent an escape from such an atmosphere.

"Liquefied Breathing Gas" means oxygen or air stored in liquid form and supplied to the wearer in a gaseous form.

"Loose Fitting Facepiece" means a facepiece which is not designed to provide a gas-tight seal with the wearer's face, but which prevents the inward contamination of the breathing zone by an outward flow of air.

"Mouthpiece" is that portion of a respirator that is designed to provide a gas tight seal with the wearer's lips when the mouthpiece is inserted into the mouth.

"Negative Pressure Respirator" means any respirator which relies on negative pressure in the facepiece due to wearer's inspiration to provide respirable air.

"Non-Powered Air-Purifying Respirator" means an air-purifying respirator which relies on negative pressure in the facepiece due to the wearer's inspiration to draw air through the air-purifying element.

"Noseclamp" is a device which provides a gas-tight seal of the nostrils.

"Oxygen Deficient Atmosphere" means an atmosphere which contains an oxygen partial pressure of less than 148 millimeters of mercury (19.5 percent by volume at sea level).

"Particulate Respirator" means an air-purifying respirator which removes solid and liquid particulates from the ambient air.

"Positive Pressure Respirator" means any atmosphere supplying respirator which maintains a positive facepiece pressure at work rates less than or equal to those specified in this part.

"Powered Air-Purifying Respirator" means an air-purifying respirator which uses a blower to deliver air through the air purifying element to the wearer's breathing zone at the flow rates specified in this part.

"Resistance" means opposition to the flow of gas, as through a cartridge, canister, filter, orifice or valve.

"Self-Contained Breathing Apparatus" means an atmosphere supplying respirator in which the source of air or oxygen is contained within the respirator independent of any other source.

"Service Time (Service Life)" is the period of time that a respirator provides protection to the wearer, such as the period of time that an air-purifying device is effective for removing a harmful substance from inhaled air.

"Tight Fitting Facepiece" means a facepiece which is designed to provide a gas tight seal with the wearer's face.

"Vapor" means the gaseous state of a substance that is solid or liquid at ordinary temperature and pressure.

Subpart P—Classification

§ 84.210 Classification of certified respirators.

Respirators certified under the provisions of this part are first classified as either air-purifying respirators or atmosphere supplying respirators.

(a) Air-purifying respirators are further classified as either gas and vapor respirators or particulate respirators.

(1) Gas and vapor respirators are further classified as cartridge respirators or canister respirators.

(i) Cartridge respirators are further classified as either non-powered cartridge respirators or powered cartridge respirators. Both are further classified according to the specific gas or vapor or class of gas and vapor for which the respirator is certified.

(ii) Canister respirators are further classified as either low capacity non-powered canister or low capacity powered canister respirators or high capacity non-powered canister or high capacity powered canister respirators depending on the capacity of the sorbent or catalyst.

(2) Particulate respirators are classified as either non-powered particulate respirators or powered particulate respirators. Particulate respirators are further classified in terms of the efficiency of their filter elements as either high efficiency, medium efficiency or low efficiency.

(b) Atmosphere supplying respirators are classified as either self-contained breathing apparatus or air-line respirators.

(1) Self-contained breathing apparatus are classified as either open-circuit self-contained breathing apparatus or closed-circuit self-contained breathing apparatus.

(i) Open-circuit self-contained breathing apparatus are further classified as either positive pressure open-circuit self-contained breathing apparatus (P) or negative pressure open-circuit self-contained breathing apparatus (N).

(ii) Closed-circuit self-contained breathing apparatus are further classified as either positive pressure closed-circuit self-contained breathing

apparatus (P) or negative pressure closed-circuit self-contained breathing apparatus (N).

(iii) All classifications of self-contained breathing apparatus are further classified as "escape only" (Es) or "entry and escape" (En).

(iv) All classifications of self-contained breathing apparatus are further classified in terms of service life as either 3 minutes, 5 minutes, 10 minutes, 15 minutes, 30 minutes, 45 minutes, 1 hour, 2 hours, 3 hours, 4 hours, or other service times as may be prescribed by NIOSH.

(2) Air-line respirators are further classified in terms of the regulator type as either positive pressure air-line respirators, negative pressure air-line respirators, or continuous flow air-line respirators.

(c) The classification described above in this section is indicated schematically as follows:

Air-Purifying Respirators

Gas and Vapor Respirators

Cartridge Respirator
- Powered Cartridge
- Non-Powered Cartridge

Canister Respirators
- Non-Powered Low Capacity Canister
- Powered Low Capacity Canister
- Non-Powered High Capacity Canister
- Powered High Capacity Canister

Particulate Respirators

Non-Powered Particulate
- Low Efficiency
- Medium Efficiency
- High Efficiency

Powered Particulate
- Medium Efficiency
- High Efficiency

Atmosphere Supplying Respirators

Self-Contained Breathing Apparatus
- Open Circuit SCBA (P or N) (Es or En)
- Closed Circuit SCBA (P or N) (Es or En)

Air-line Respirators
- Positive Pressure Air-line
- Negative Pressure Air-line
- Continuous Flow Air-line

§ 84.211 Combination respirators.

Respirators which are combinations of any two or more of the basic classifications described in § 84.210 may be certified under the provisions of this part. Unless specifically indicated otherwise in this part, such combination respirators shall comply with the requirements of each basic respirator classification of which it is composed. For example, a combination particulate respirator and cartridge respirator shall meet the requirements for a particulate respirator and the requirements for a cartridge respirator.

Subpart Q—General Construction and Performance Requirements

§ 84.220 General construction requirements.

(a) Respirators shall be designed and constructed to ensure against creation of any hazard to the wearer.

(b) Respirators shall be constructed of materials which are durable and cannot be damaged by normal handling.

(c) Respirators and components thereof, except those not intended to be reused, shall be constructed of materials which will withstand repeated cleaning and disinfection as recommended by the manufacturer as part of the instructions for use and maintenance.

(d) Respirators shall be designed, constructed, and assembled to permit easy access for inspection, cleaning, and repair or replacement of functional parts without adversely affecting the performance of the respirator.

(e) All respirators incorporating an eyepiece(s) or window(s), such as a full facepiece respirator or a helmeted powered air-purifying respirator, shall provide impact and penetration resistance equal to or greater than that specified in paragraphs 5.2.8.1 and 5.2.8.2 of the ANSI Z87.1–1979 standard.

(f) All respirators shall permit the wearer adequate vision and be designed to permit the wearing of safety glasses meeting the requirements of the ANSI Z87.1–1979 standard without adversely affecting the performance of the respirator. Temple bars of such safety glasses may be removed for use in full facepieces.

(g) Respirators with mouthpieces shall be equipped with noseclips which are securely attached to the mouthpiece or respirator and provide an airtight seal at the nostrils.

(h) Facepieces, hoods, and helmets shall be designed and constructed to minimize integral eyepiece, spectacle, and window(s) fogging.

(i) Respirators shall be resistant to corrosion and deterioration from chemical and physical agents to which they are likely to be exposed in the workplace.

(j) Respirator components which come into contact with the wearer's skin shall be made of materials which are non-irritating to skin of normal sensitivity.

(k) The components of each respirator for use in mines where permissibility is required shall meet the requirements for permissibility and intrinsic safety set forth in Title 30, Code of Federal Regulations, Part 18, Schedule 2G.

§ 84.221 Test requirements; General.

Where a combination respirator is assembled from two or more types of respirators, as described in § 84.211, each of the individual respirator types which have been combined shall, as applicable, meet the minimum requirements for such respirators set forth in this part.

§ 84.222 Breathing tubes.

Breathing tubes used in conjunction with respirators shall be designed and constructed to prevent:

(a) Restriction of free head movement;

(b) Disturbance of the fit of facepieces, mouthpieces/noseclamps, hoods, or helmets;

(c) Interference with the wearer's activities; and

(d) Shutoff of airflow due to kinking, or from body, chin or arm pressure.

§ 84.223 Body harnesses.

(a) If a respirator is equipped with a body harness such harness shall be designed and constructed to hold the components of the respirator in position against the wearer's body.

(b) Body harnesses shall be designed and constructed to permit easy donning and removal of the respirator, to hold the respirator securely in place during use, to permit easy removal and replacement of respirator parts, and, where applicable, to provide for holding a full facepiece in the ready position when not in use.

(c) Body harnesses for self-contained breathing apparatus shall not melt when exposed to temperatures of 400 °F for 30 minutes.

§ 84.224 Respirator containers.

(a) Respirators shall be packaged for shipment and sale in a durable container bearing markings which show the manufacturer's name, the type and commercial designation of the respirator it contains, and all appropriate labels.

(b) Containers may provide for storage of more than one respirator; however, such containers shall prevent contamination of respirators which are not removed, and prevent damage to respirators during transit.

(c) Containers for gas and vapor air-purifying canister respirators and self-contained breathing apparatus shall permit rapid removal of the respirator.

(d) Containers supplied by the applicant for carrying or storing self-contained breathing apparatus will be inspected, examined, and tested as components of the respirator for which certification is sought.

§ 84.225 Head harnesses.

(a) Tight fitting facepieces shall be equipped with head harnesses designed and constructed to provide adequate tension during use and an even

distribution of pressure over the entire area in contact with the face.

(b) Mouthpiece/noseclamps shall be equipped, where applicable, with adjustable and replaceable harnesses designed and constructed to hold the mouthpiece in place.

(c) Facepiece head harnesses shall be adjustable and, where applicable, replaceable.

§ 84.226 Inhalation and exhalation valves.

(a) Inhalation and exhalation valves shall be protected against distortion.

(b) If air-purifying respirators are equipped with inhalation valves, such valves shall prevent exhaled air from entering and adversely affecting cartridges, canisters, and filters.

(c) If a respirator is equipped with an exhalation valve, such valve shall be:

(1) Protected against damage and external influence; and

(2) Designed and constructed to prevent inward leakage of contaminated air.

§ 84.227 Exhalation valve leakage test.

(a) Dry exhalation valves and valve seats shall be subjected to a suction of 25 mm water-column height while in a normal operating position.

(b) Leakage between the valve and valve seat shall not exceed 30 ml per minute.

§ 84.228 Air velocity and noise levels; Hoods and helmets.

Noise levels generated by the respirator, except as indicated below, shall be measured inside the hood or helmet at maximum obtainable airflow and within pressure and hose length requirements and shall not exceed 80 dBA when worn in accordance with the manufacturer's instructions. Where the respirator is an escape self-contained breathing apparatus with a hood or helmet, and the rated service time does not exceed 10 minutes, the noise level shall not exceed 100 dBA when the apparatus is worn in accordance with the manufacturer's instructions.

§ 84.229 Procedure for sequential analysis of performance test results using one-sided tolerance limits.

(a) Unless otherwise specified in this part, all performance tests which produce quantitative results shall at a minimum be analyzed for compliance with the relevant performance specification using one-sided normal tolerance limits at the 95 percent confidence level for 95 percent of the target population represented by the tested samples.

(b) For a performance specification that represents an upper acceptable limit for some measured performance characteristic, a one-sided upper tolerance limit (UTL) will be calculated, which must equal or lie below the performance specification for the samples to demonstrate acceptable performance.

(c) For a performance specification that represents a lower acceptable limit for some measured performance characteristic, a one-sided lower tolerance limit (LTL) will be calculated, which must equal or exceed the performance specification for the samples to demonstrate acceptable performance.

(d) The performance of three (3) samples shall first be measured by procedures of the relevant performance test. Calculate either a UTL or LTL using: $UTL=(m+Ks)$ and $LTL=(m-Ks)$, where (m) is the sample arithmetic mean, (s) is the sample standard deviation (with an $(n-1)$ divisor), and (K) is the tolerance limit factor 6.158. If the three (3) samples demonstrate acceptable performance at the 95 percent confidence level, the performance test may be terminated.

(e) If the initial sample of three (3) fails to demonstrate performance at the required level of confidence, three (3) additional samples shall be tested and m, s, and UTL or LTL shall be recalculated for the total sample of six (6) using a K of 3.006. If the six (6) samples fail to demonstrate acceptable performance at the 95 percent confidence level, the respirator under evaluation shall be considered unacceptable.

Subpart R—Face Seal Leakage

§ 84.230 Applicability.

All respirators shall be tested and evaluated for face seal leakage in accordance with the provisions of this subpart. The term "face seal leakage" refers to the inward leakage that occurs at the interface between the wearer and the respirator even though for some respirators the sealing may not actually occur on the wearer's face.

§ 84.231 General.

(a) In this subpart it is assumed that the only two sources of inward leakage of contaminant into the respirator wearer's breathing zone are face seal leakage and, where applicable, filter penetration. That is, it is assumed that for a well designed respirator all other sources of leakage (such as hose couplings, exhalation valves, lens seals, etc.) are negligible. If these other sources are not negligible, the tests of this subpart are intended to include them as if they were face seal leakage. Subtracting the effect of these additional sources shall not be permitted in the analysis of data.

(b) Face seal leakage and filter penetration are measured separately and limitations are placed on each separately in this part. Face seal leakage is addressed in this subpart while filter penetration is addressed in other subparts. Accordingly, this subpart defines face seal leakage to include all sources of leakage except filter penetration. Therefore, when air-purifying respirators are tested for face seal leakage, the highest efficiency particulate filters compatible with the respirator shall be fitted. If the use of the highest efficiency filter available does not reduce the effects of filter penetration to negligible levels, the effect of filter penetration on the face fit test may be eliminated analytically in the analysis of data.

(c) Gas and vapor respirators shall be evaluated for face seal leakage with high efficiency particulate filters in place.

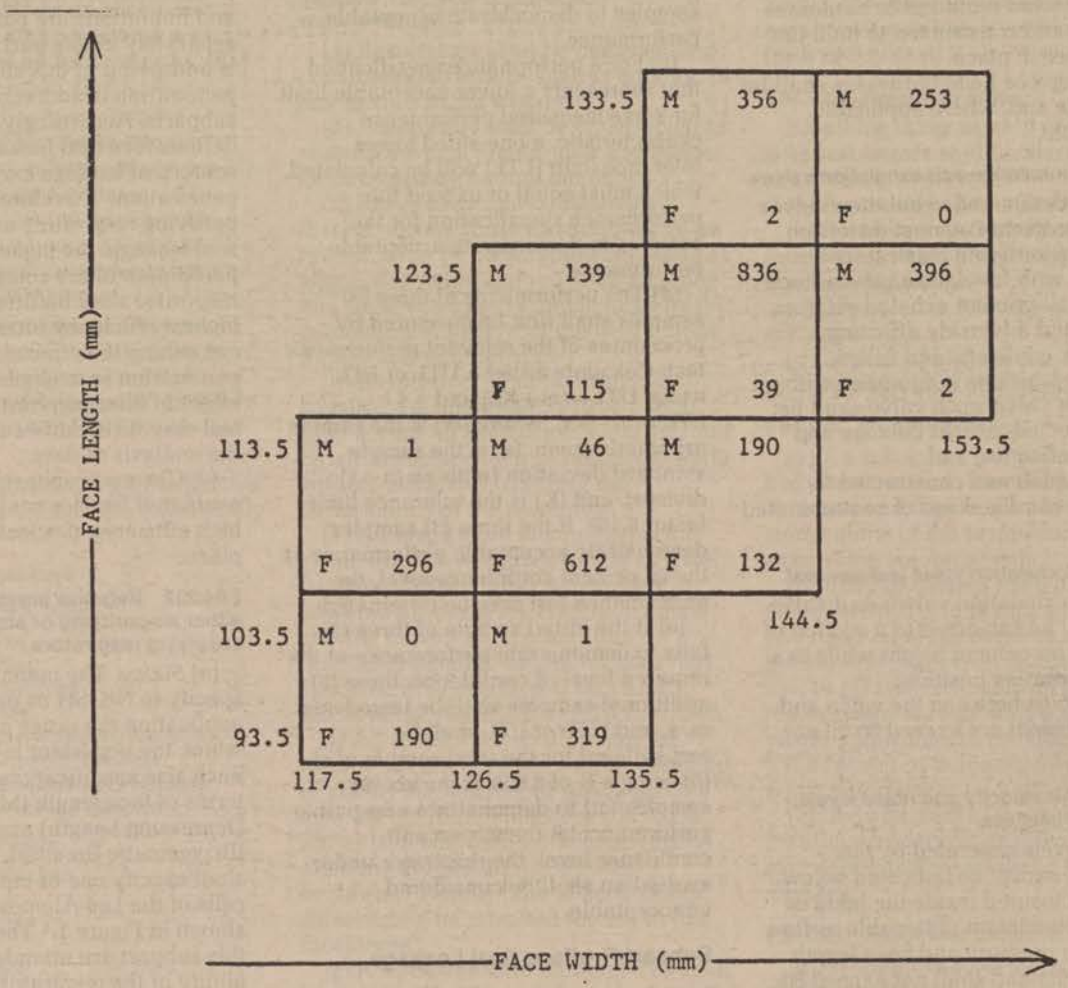
§ 84.232 Negative pressure respirators, either air-purifying or atmosphere supplying respirators.

(a) *Sizing.* The manufacturer shall specify to NIOSH as part of its application the range of facial sizes which the respirator is intended to fit. Such size specifications shall be in terms of face length (Menton-Nasal Root Depression Length) and face width (Bizygomatic Breadth). The applicant shall specify one or more contiguous cells of the Los Alamos panel structure shown in Figure 1.[1] The tests outlined in this subpart are intended to verify the ability of the respirator to accommodate the variety of facial shapes within the specified size range by panel testing.

(b) *Panel Selection.* Each facepiece shall be tested on a panel of 25 adult individuals having facial dimensions within the range of dimensions specified by the applicant. The distribution of facial sizes within a panel so constructed shall approximate the distribution of facial sizes of the general adult population having facial dimensions within the specified range. To achieve this end, the number of individuals in each panel cell shall be in approximate proportion to the distribution of the Los Alamos panel. Individuals having unshaven facial hair, deep scars, unusually deep wrinkles, or unusual facial deformity that would be positioned between the facepiece and the wearer's face, shall not be included in the panel.

[1] Hack, A., et al., Selection of Respirator Test Panel Representative of U.S. Adult Facial Sizes. Los Alamos Report No. LA-5488, issued March, 1974.

Figure 1



(c) *Pretest Fitting.* Each test subject shall be asked to follow the written donning and fitting instructions recommended by the applicant and included as part of the application. The test supervisor shall monitor the fitting activities to ensure—

(1) that the instructions are adequate and clear, and

(2) that the test subject follows the written instructions of the applicant.

If, in the judgment of the test supervisor, the fitting procedures have not been followed, the test supervisor shall intervene and assist in fitting the respirator in accordance with the applicant's written instructions. The test subject shall then wear the respirator for at least 15 minutes prior to beginning face seal leakage tests. During that waiting period the test subject may readjust the respirator to improve comfort or stability if the readjustments are provided for by the applicant's written instructions. The waiting period may be reduced or eliminated for short duration respirators.

(d) *Spectacles.* To ensure that respirators are compatible with the use of industrial safety spectacles, all half- and quarter-facepiece respirators shall be evaluated with the test subject properly fitted with safety spectacles that comply with requirements of ANSI Z87.1–1979 standard.

(e) *Test Hardware.* Facepieces shall be leak tested on each panel member using an appropriate aerosol of low toxicity such as crystalline sodium chloride or oil mist. The aerosol shall have a mass median aerodynamic diameter of 0.6±0.2 micrometers with a geometric standard deviation less than 2.2. The challenge aerosol concentration should not vary more than ±5 percent as a function of spatial position in the vicinity of the respirator being tested. The challenge aerosol concentration should not vary as a function of time more than ±10 percent. The aerosol detector shall be linear within 10 percent throughout its range of operation. All facepieces shall be probed or modified to obtain aerosol samples which can be used to determine the inhaled aerosol concentration.

(f) *Exercise Regimen.* During the quantitative leak testing, the test subject shall perform each of the following exercises for a minimum period of one minute in the following sequence:

(1) Normal breathing,

(2) Deep breathing,

(3) Turning head from side to side,

(4) Nodding head up and down,

(5) Repeatedly raising arms upward and simultaneously looking upward,
(6) Bending forward at waist and simultaneously extending arms downward toward toes,
(7) Talking, reading from prepared text,
(8) Grimacing or frowning, and
(9) Normal breathing.

(g) *Data.* The time averaged face seal leakage for each exercise shall be recorded. The average face seal leakage for the nine exercises, L, will be computed. In addition, a strip chart recording that shows the instantaneous leakage as a function of time for the entire test shall be retained for reference purposes.

(h) *Analysis.* Once the face seal leakage rate, L, has been determined for each test subject, the following analysis shall be used to determine if the facepiece under evaluation has a high probability of providing the required level of protection to that portion of the user population designated by the facial size range specified by the applicant.

(1) The analysis begins by tabulating the average face seal leakage, L, for each test subject.

(2) The inward leakage ratio $R=(1/L)-1$ is calculated for each value of L and tabulated. The leakage ratio, R, can be shown to correspond to the ratio between the volumetric flow rate through the face seal leak and the flow rate through the respirator filter.

(3) Assume that the values of log R are normally distributed and compute the mean and standard deviation.

(4) Compute the one sided tolerance limit, $X_L=X-ks$, the value above which there is 95 percent confidence that 95 percent of the values of log R will lie,[2] where X and s are the mean and standard deviation computed above and $k=1.838$.

(5) Compute the upper leakage limit, L_u, the value of L corresponding to X_L.

$L_u=1/(1+10^{X}L)$

As a result of this analysis it can be inferred with 95 percent confidence that 95 percent of the population represented by the test panel can achieve leakage values that are less than the upper leakage limit, L_u.

(i) *Marking.* Each facepiece shall be marked to indicate the range of facial sizes for which it is intended. The marking scheme shall be based on the panel structure of § 84.232(a).

(j) *Performance Criteria.* If the upper leakage limit, L_u, is less than the maximum face seal leakage allowed for the particular type of respirator under evaluation, the performance of the facepiece is considered acceptable. If it is greater than the maximum allowed leakage the performance of the facepiece is unacceptable. The maximum allowed face seal leakage for all full-facepiece respirators is 0.01 (or 1 percent, if expressed as a percentage). The maximum allowed face seal leakage for half- and quarter-facepieces on an air-purifying respirator is determined by which of the three filter classes is incorporated in the respirator. Filter elements are classified as low efficiency, medium efficiency and high efficiency filters, that is, having efficiencies of 95 percent, 99 percent and 99.97 percent, respectively. Half- and quarter-facepiece respirators employing low efficiency filters will have a maximum allowed face seal leakage of 0.05. Half- and quarter-facepieces having medium or high efficiency filters will have a maximum allowed face seal leakage of 0.02. The maximum allowed face seal leakage for half- and quarter-facepieces incorporated into atmosphere supplying respirators and gas and vapor respirators is 0.02. These performance criteria are summarized below:

Facepiece Type	Maximum Allowed Face Seal Leakage for Particulate Respirators		
	Low Efficiency	Medium Efficiency	High[a] Efficiency
Quarter	0.05	0.02	0.02
Half	0.05	0.02	0.02
Full/ Mouthpiece	0.01	0.01	0.01

[a] Applies also to atmosphere supplying and gas and vapor respirators.

§ 84.233 Positive pressure atmosphere supplying respirators.

(a) Facepieces used in positive pressure atmosphere supplying respirators shall be tested in both a negative pressure mode and a positive pressure mode. The negative pressure test may be eliminated if the facepiece is also incorporated into a negative pressure respirator which has been successfully tested under the provisions of this Subpart and found to have an upper leakage limit less than 0.01 for full-facepieces or less than 0.02 for half- and quarter-facepieces. The negative pressure test shall not be eliminated when the facepiece weight or balance has been significantly changed in the conversion from a negative pressure to a positive pressure respirator.

(b) If testing in the negative mode is necessary, such testing shall be conducted on the full panel of test subjects in accordance with the provision of § 84.232. The maximum allowable leakage will be 0.01 for full

[2] Natrella, M.G., Experimental Statistics, National Bureau of Standards Handbook 91, Issued August 1, 1963.

facepieces and 0.02 for half- and quarter-facepieces.

(c) Testing in the positive pressure mode shall be conducted for the purpose of evaluating total respirator performance. Three complete respirators shall each be evaluated. Each shall be tested in accordance with the provisions of § 84.232 (c) through (g) to evaluate applicants donning and use instruction and to determine that there is no unacceptable inward leakage. Inward leakage greater than 0.0001 in any of the three respirators is unacceptable. The statistical analysis prescribed in § 84.229 shall not apply.

§ 84.234 Continuous flow atmosphere supplying respirators.

Continuous flow atmosphere supplying respirators shall be tested in their normal operating mode (at the lowest specified flow rate) by the full 25 member panel in accordance with the procedures of § 84.232 (a) through (h). The maximum allowable face seal leakage shall be 0.0003.

§ 84.235 Powered air-purifying respirators.

Powered air-purifying respirators shall be tested in their normal operating mode by the full 25 member panel in accordance with the procedures outlined in § 84.232 (a) through (h). The maximum allowable face seal leakage shall be 0.0003 for powered particulate respirators equipped with high efficiency filters and powered gas and vapor respirators. The maximum allowable face seal leakage shall be 0.01 for powered particulate respirators equipped with either medium or low efficiency filters.

§ 84.236 Mouthpiece respirators.

Respirators having a mouthpiece/noseclamp shall be tested as appropriate for the particular respirator under evaluation, to demonstrate that the total inboard leakage is either not significantly above that permitted for filter penetration, where applicable.

§ 84.237 Reduced panel size.

For respirators designed to fit only the extreme facial sizes, it may be quite difficult to construct the full 25 member panel. In those cases, it may be judged that a reduced panel size is appropriate. The number of panel members may be reduced to as low as 10 provided the method of data analysis is adjusted accordingly. For example, if the panel is reduced to 10 members, the value of k used in § 84.232(h)(4) must be adjusted to $k=2.355$.

§ 84.238 Regulator preconditioning.

All open circuit self-contained breathing apparatus shall be preconditioned with the regulator overpressurization procedure of § 84.248–18 prior to conducting the face fit testing of this subpart.

Subpart S—Self-Contained Breathing Apparatus

§ 84.240 Self-contained breathing apparatus; Description.

(a) Self-contained breathing apparatus, as used herein, are distinguished by a supply of breathing air, oxygen, or oxygen generating material, that is contained in the apparatus for providing breathing air or oxygen, depending on design. This apparatus may be configured as either an open or closed-circuit system that will provide either positive or negative facepiece pressure relative to the ambient environment. Self-contained breathing apparatus may be configured and so designated as follows:

(1) *Closed circuit apparatus.* A recirculation breathing apparatus in which exhaled carbon dioxide has been removed from the exhalation and the oxygen content within the system has been replenished from sources composed of:

(i) Compressed oxygen;

(ii) Chemical oxygen; or

(iii) Liquid oxygen.

(2) *Open-circuit apparatus.* A breathing apparatus in which the exhalation is exhausted to the atmosphere without recirculation and the oxygen content within the system has been replenished from sources composed of:

(i) Compressed air; or

(ii) Liquid air.

(3) *Positive pressure or negative pressure apparatus.* A self-contained breathing apparatus may be designed such that open-circuit or closed-circuit apparatus may operate with positive or negative pressure within the facepiece relative to the ambient environment. Self-contained breathing apparatus may be certified for use in the following categories:

(i) Closed-circuit, negative pressure;

(ii) Closed-circuit, positive pressure;

(iii) Open-circuit, negative pressure; or

(iv) Open-circuit, positive pressure.

§ 84.241 Reserved.

§ 84.242 Interchangeability of oxygen and air prohibited; use of 100 percent oxygen in open flames and high heat.

(a) Certifications shall not be issued for any respirator which permits the interchangeable use of oxygen and air.

(b) Certifications may be issued for use of self-contained breathing apparatus using oxygen as described in Informational Appendix A paragraph (j) of this part. Use of such apparatus near open flames or high heat is not recommended.

§ 84.243 Compressed breathing gas and liquefied breathing gas containers.

(a) Compressed breathing gas and liquefied breathing gas containers shall meet the minimum requirements of the Department of Transportation for Interstate shipment of such containers when fully charged as specified in Title 49, Code of Federal Regulations, Parts 100 through 178.

(b) Such containers shall be permanently and legibly marked to identify their contents; e.g., compressed breathing air, compressed breathing oxygen, liquefied breathing air, or liquefied breathing oxygen.

(c) Containers normally removed from apparatus for refilling shall be equipped with an indicating gauge which shows the pressure in the container.

(d) Compressed breathing gas container valves or a separate charging system or adapter provided with each apparatus shall be equipped with outlet threads specified for the service by the American National Standard for Compressed Gas Cylinder Valve Outlet and Inlet Connections, ANSI B57.1–1965 standard, obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.244 Pressure indicators.

(a) Gas pressure gauges employed on compressed breathing gas containers shall be marked in force per unit area.

(b) Liquid-level gauges shall be marked in fractions of total container capacity, or in units of liquid volume.

(c) Gas pressure gauges other than those specified in paragraphs (a) and (b) of this section shall be marked in:

(1) Force per unit area,

(2) Fractions of total container capacity, or

(3) Both in force per unit area and fractions of total container capacity.

(d) (1) Dial-indicating gauges shall be reliable to within ±5 percent of full scale when tested both up and down the scale at each of 5 equal intervals.

(2) The full scale graduation of dial-indicating gauges shall not exceed 150 percent of the maximum rated cylinder pressures specified for the container in applicable Department of Transportation specifications or permits or 150 percent of the maximum pressure specified by the manufacturer's instructions, whichever is less.

(e) (1) Stem-type gauges shall be readable by sight and by touch and shall have a stem travel distance of not less

than one-fourth inch between each graduation.

(2) A minimum of five graduations shall be engraved on the stem of each gauge and these graduations shall include readings for empty, one-quarter, one-half, three-quarters, and full.

(3) Stem gauge readings shall not vary from true readings by more than one-sixteenth inch per inch of stem travel.

(f) Where the apparatus is equipped with a manual shut-off valve between the high pressure outlet and the pressure gauge, the loss of breathing gas through the broken gauge or severed gauge connection shall not exceed 70 liters per minute when the cylinder pressure is 6,900 kN/m^2 (1,000 pounds per square inch) gauge or when the liquid level is at one-half.

(g) Where the apparatus is of open-circuit design and is not equipped with a manual or automatic shut-off valve, the volume of breathing gas escaping through the broken gauge or severed gauge connection shall not exceed 5 percent of the full rated breathing gas volume, when measured at 25 percent of the service pressure to the end of the rated service time of the apparatus. Where the apparatus is of closed-circuit design and is not equipped with a manual or automatic shut-off valve, the total volume of breathing gas (Z) permitted to escape through the broken gauge or severed gauge connection shall not exceed the following, where X equals the total volume of breathing gas, in liters, in the cylinder at full pressure and Y equals the duration of the apparatus in minutes:

$$Z = X - 1.75Y$$

Z shall be measured at 20 percent of the service pressure to the end of the rated service time of the apparatus.

(h) Oxygen pressure gauges shall have the words, "Oxygen" and "Use No Oil," marked prominently on the gauge.

(i) (1) Apparatus using compressed breathing gas, except apparatus classified for escape only, shall be equipped with gauges visible to the wearer which indicate the amount of gas content remaining in the container.

(2) Apparatus using liquefied breathing gas, except apparatus classified for escape only, shall be equipped with gauges visible to the wearer which indicate the remaining liquid content in the container; however, where the liquid content cannot be rapidly vented, and the service time of the device begins immediately after filling, a timer shall be provided in place of a visible gauge.

§ 84.245 Timers; Elapsed time indicators; Remaining service life indicators.

(a) Elapsed time indicators shall be provided for apparatus with a chemical oxygen source, except:

(1) Apparatus classified for escape only; or,

(2) Liquefied breathing gas apparatus equipped with gauges visible to the wearer which indicate the remaining liquid content in the container.

(b) The timer or other indicator shall be accurately calibrated to indicate remaining service life.

(c) Timers shall be readable by sight and by touch during use by the wearer.

(d) Timers shall be equipped with automatically preset alarms which will warn the wearer for a period of 7 seconds or more after the preset time has elapsed.

(e) Remaining service-life indicators or warning devices shall be provided in addition to a pressure gauge on compressed gas self-contained breathing apparatus, except apparatus used for escape only, and shall operate automatically without preadjustment by the wearer.

(f) Each remaining service life indicator or warning device shall give an alarm before the remaining service life or cylinder pressure of the apparatus is reduced to between 20–30 percent of the rated service time or full cylinder pressure. There shall be no degrading of performance at 20–30 percent of full cylinder pressure.

(g) If a manual shutoff is not used for a remote gage, then the alarm should activate at 20–30 percent of rated service pressure or time.

(h) Remaining service life indicators shall be clearly and distinctly detectable by a wearer having normal hearing in the presence of a noise background of 100 dBA of "pink noise," a noise spectrum which is composed of equal sound pressure levels for all octave bands.

(i) Remaining service life indicators or warning devices must warn the wearer for a period of seven seconds or more after the alarm is initiated.

§ 84.246 Hand-operated valves.

(a) Hand-operated valves shall be designed and constructed to prevent removal of the stem from the valve body during normal usage to ensure against a sudden release of the full pressure of the container when the valve is opened.

(b) Valves shall be designed or positioned to prevent accidental opening and closing and damage from external forces.

(c) Valves operated during use of the apparatus shall be installed in locations where they can be readily adjusted by the wearer.

(d) Main-line valves, designed and constructed to conserve gas in the event of a regulator or demand valve failure, shall be provided in addition to gas container valves, except when such failure will not affect performance.

(e) Hand-operated bypass systems designed and constructed to permit the wearer to breathe and to conserve his gas supply in the event of a regulator or demand valve failure, shall be provided where necessary.

(f) Valves installed on apparatus shall be clearly distinguishable from one another by sight and touch.

(g) The manually operated bypass system valve control shall be colored red. For closed circuit apparatus, the bypass valve shall be designed to close automatically if not being held open by the wearer.

(h) A main-line or bypass valve or system will not be required on apparatus for escape only.

(i) Safety relief valves or systems, designed and constructed to release excess pressure in the breathing circuit, shall be provided on closed-circuit apparatus, and shall meet the following requirements:

(1) The relief valve or system shall operate automatically when the pressure in the facepiece or mouthpiece reaches 13 mm ± 5 mm (one-half inch water-column height) of pressure above the minimum pressure required to fill the breathing bag, within the breathing resistance requirements for the apparatus. With the mask or mouthpiece attached in a normal manner to the breathing machine, and operated as described in § 84.248–3, the mask or mouthpiece pressure shall not exceed 540 mm (21 inches water-column height) when tested in each of the following modes:

Mode 1—With the regulator in a "failed open" mode; i.e., with the pneumatic system subjected to the pressure of a fully charged bottle;

Mode 2—With the bypass valve in a locked open position; and

Mode 3—With the demand valve, if any, in a locked open position.

(2) The relief valve or system shall be designed to prevent external atmospheres from entering the breathing circuit.

(3) The relief valve or system shall be designed to permit overriding for test purposes and in the event of a failure in the valve or system, except for escape only.

§ 84.247 Breathing bags.

(a) Breathing bags shall have sufficient volume to prevent gas waste during exhalation and to provide an adequate reserve for inhalation.

(b) Breathing bags shall be constructed of materials which are flexible and resistant to gasoline vapors.

(c) Breathing bags shall be installed in a location which will protect them from damage or collapse by external forces, except on apparatus classified for escape only.

§ 84.248 Self-contained breathing apparatus; Performance requirements; General.

Self-contained breathing apparatus and the individual components of each such device shall as applicable meet the requirements specified in §§ 84.248–1 through 84.248–18.

§ 84.248–1 Component parts exposed to oxygen pressures.

Each applicant shall certify that the materials employed in the construction of component parts exposed to oxygen pressures above atmospheric pressure are safe and compatible for their intended use.

§ 84.248–2 Compressed gas filters.

All self-contained breathing apparatus using compressed gas shall have a filter downstream of the gas source to effectively remove particles from the gas stream.

§ 84.248–3 Breathing bag test.

(a) Breathing bags shall be tested in an air atmosphere saturated with gasoline vapor at room temperature (24–30 °C) for a continuous period of twice the rated time of the apparatus (except for apparatus for escape only where the test period shall be the rated time of the apparatus).

(b) The bag shall be operated during this test by a breathing machine with 24 respirations per minute and a minute-volume of 40 liters.

(c) A breathing machine cam with a work rate of 100 watts (622 kp-m/min)[1] shall be used.

(d) The air within the bag(s) shall not contain more than 100 parts per million of gasoline vapor at the end of the test.

§ 84.248–4 Weight markings.

All self-contained breathing apparatus shall have the completely assembled and fully charged weight and the completely assembled and fully discharged weight permanently and legibly marked on the apparatus.

§ 84.248–5 Breathing resistance test.

(a) *Inhalation resistance.* (1) Resistance to inhalation airflow shall be measured in the facepiece or mouthpiece while the apparatus is operated by a breathing machine at a work rate of 100 watts (622 kp-m/min).[3]

(2) The face mask pressure of positive pressure closed circuit equipment shall remain positive during the entire inhalation cycle, while the breathing apparatus is operated in the breathing machine as described in § 84.248–3.

(3) Inhalation resistance for open or closed circuit apparatus with positive or negative pressure shall comply with the requirements as specified in the chart in § 84.248–5(c).

(b) *Exhalation resistance.* (1) For open-circuit apparatus, resistance to exhalation airflow shall be measured in the facepiece or mouthpiece with air flowing at a continuous rate of 85 liters per minute.

(2) For closed-circuit apparatus, resistance to exhalation air flow shall be measured in the facepiece or mouthpiece with a breathing machine at a work rate of 100 watts (622 kp-m/min).

(3) Exhalation resistance for open or closed circuit apparatus with positive or negative pressure shall comply with the requirement as specified in the chart in § 84.248–5(c).

(c) Breathing resistance performance requirement chart.

[3] Silverman, L., G. Lee, T. Plotkin, L. Amory, and A.R. Yancey, Fundamental Factors in Design of Protective Equipment, O.S.R.D. Report No. 5732, issued Apr. 1, 1945. The dimensions of the breathing machine cam are available from MSHA upon request.

Apparatus is:	Maximum Allowable Breathing Resistance: Inhalation (mm of water column height)	Exhalation (mm of water column height)
Open circuit		
Negative pressure	32	25
Positive pressure (above static)	≥0	51
Positive pressure (including static pressure)	>0	89[b]
Static pressure (no flow)	NA	38
Closed circuit		
Negative pressure	100 - MER[a]	64[b]
Positive pressure	≥0	89[b]

[a] MER - Measured exhalation resistance in mm of water column height.
[b] Including the pressure required to fully open the relief valve, if applicable.

§ 84.248–6 Gas flow test.

(a) *Open-circuit apparatus.* (1) A static-flow test shall be performed on all open-circuit apparatus.

(2) The flow from the apparatus shall be greater than 300 liters per minute when the pressure in the facepiece of negative pressure apparatus is lowered by 51 mm (2 inches) water column height when full container pressure is applied.

(3) Where positive pressure apparatus are tested, the flow shall be measured at zero gauge pressure in the facepiece and shall be greater than 300 liters per minute.

(4) Where apparatus with compressed breathing gas containers are tested, the flow test shall also be made with 25 percent of full container pressure.

(b) *Closed-circuit apparatus.* Oxygen concentrations measured in the facepiece during machine or human subjects testing shall be maintained above 19.5 percent. This may be accomplished by various methods. Where a strictly mechanical flow method is used, the following requirements must be achieved:

(1) For constant flow devices, the rate of flow shall be at least three liters per minute for the entire rated service time of the apparatus.

(2) All negative pressure devices shall provide at least 60 liters of breathing gas per minute when the regulator (admission valve) is in the fully open position at 4 inches of water column height.

(3) All positive pressure devices shall provide at least 30 liters of breathing gas per minute when the regulator (admission valve) is in the fully open position and shall maintain equal to or greater than ambient pressure.

(4) When constant flow is used in conjunction with negative pressure flow, the constant flow shall be greater than 1.5 liters per minute for the entire rated service time. For positive pressure apparatus, the constant flow shall be greater than 1 liter per minute for the entire rated service time.

§ 84.248–7 Bypass gas flow test.

(a) *Open-circuit apparatus.* (1) The bypass gas flow test shall be performed on two samples of each open-circuit apparatus equipped with a bypass valve as prescribed in § 84.246 of this part.

(2) The apparatus breathing gas container shall be fully pressurized to the service pressure, the facepiece of the apparatus shall be attached to an anthropometric head form, and the bypass valve shall be fully opened.

(3) The breathing gas container valve shall be fully opened and the airflow shall be measured at 500 psig decreasing increments until 25 percent of the service pressure remains.

(4) Except as prescribed in paragraph (e) of this section, at any pressure, an adjustable bypass valve shall provide a minimum flowrate of 85 Lpm and a maximum flowrate not greater than 130 Lpm.

(5) Any bypass valve on a self-contained breathing apparatus for escape only shall provide a minimum flowrate of 85 Lpm.

(6) Any constant flow bypass valve shall provide a minimum flow rate of 85 Lpm and a maximum flow rate of 130 Lpm.

(b) *Closed-circuit apparatus.* (1) The bypass gas flow test shall be performed on two samples of each closed-circuit apparatus equipped with a bypass valve as prescribed in § 84.246 of this part.

(2) The apparatus breathing gas container shall be fully pressurized to the service pressure, the facepiece of the apparatus shall be attached to an anthropometric head form, the bypass valve shall be fully opened, and the pressure relief valve shall be overridden as prescribed by the manufacturer.

(3) The breathing gas container valve shall be fully opened and the oxygen flow shall be measured at 500 psig decreasing increments until 25 percent of the service pressure remains.

(4) At any pressure, the bypass valve shall provide a minimum airflow of 30 Lpm.

§ 84.248–8 Service time test; Open-circuit apparatus.

(a) Service time shall be measured with a breathing machine operated as described in § 84.248–3.

(b) The open-circuit apparatus shall be classified according to the length of time it supplies air or oxygen to the breathing machine.

(c) The service time obtained on this test shall be used to classify the open-circuit apparatus in accordance with the provisions of Subpart P.

§ 84.248–9 Service time test; Closed-circuit apparatus.

(a) The closed-circuit apparatus shall be classified according to the length of time it supplies adequate breathing gas to the wearer during use test No. 4 described in Table 4 in § 84.248–14.

(b) The service time obtained on use test No. 4 shall be used to classify the closed-circuit apparatus in accordance with the provisions of Subpart P.

§ 84.248–10 Test for carbon dioxide in inspired gas; Open- and closed-circuit apparatus; Maximum allowable limits.

(a) The concentration of carbon dioxide in inspired gas in open-circuit apparatus shall be measured at the mouth while the apparatus mounted on a dummy head is operated by a breathing machine.[4]

(1) The breathing rate shall be 14.5 respirations per minute with a minute-volume of 10.5 liters.

(2) A sedentary breathing machine cam shall be used.

(3) The apparatus shall be tested at a temperature of 27±2° C.

(4) A concentration of 5 percent carbon dioxide in air shall be exhaled into the facepiece.

(b) The concentration of carbon dioxide in inspired gas in closed-circuit apparatus shall be measured at the mouth while the parts of the apparatus contributing to dead-air space are mounted on a dummy head and operated by the breathing machine as described in paragraphs (a) (1) through (4) of this section.

(c) During the testing required by paragraphs (a) and (b) of this section, the concentration of carbon dioxide in inspired gas at the mouth shall be continuously recorded, and the maximum average concentration during the inhalation portion of the breathing cycle shall not exceed the following limits:

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[4] Kloos, E.J., and J. Lamonica. A Machine-Test Method for Measuring Carbon Dioxide in the Inspired Air of Self-Contained Breathing Apparatus. Bureau of Mines Report of Investigations 6865, 1966, 11 pp.

Where the service time is	Maximum allowable average concentration of carbon dioxide in inspired air percent by volume
Not more than 30 minutes	2.5
1 hour	2.0
2 hours	1.5
3 hours	1.0
4 hours	1.0

(d) In addition to the test requirements for closed-circuit apparatus set forth in paragraph (b) of this section, gas samples shall be taken during the course of the use tests described in Tables 1, 2, 3, and 4 in § 84.248–14. These gas samples shall be taken from the closed-circuit apparatus at a point downstream of the carbon dioxide sorbent, and they shall not contain more than 0.5 percent carbon dioxide at any time, except on apparatus for escape only, using a mouthpiece only, the sample shall not contain more than 1.5 percent carbon dioxide at any time.

§ 84.248–11 Tests during low temperature operation.

(a) The manufacturer shall specify the minimum temperature for safe operation and two persons shall perform the tests described in paragraphs (c) and (d) of this section, wearing the apparatus according to applicant's directions. At the specified temperature, the apparatus shall meet all the requirements described in paragraph (e) of this section.

(b) The apparatus shall be cold soaked at the applicant's specified minimum temperature for 16 hours.

(c) The apparatus shall be worn in the low temperature chamber for 30 minutes, or for the service time of the apparatus, whichever is less.

(d) During the test period, alternate 1-minute periods of exercise and rest shall be required with the exercise periods consisting of stepping onto and off a box of 21.5 cm (8½ inches) high at a rate of 30 cycles per minute.

(e) *Requirements.* (1) The apparatus shall function satisfactorily at the specified minimum temperature on duplicate tests.

(2) The wearer shall have sufficient unobscured vision to perform the work.

(3) The wearer shall not experience undue discomfort because of airflow restriction or other physical or chemical changes in the operation of the apparatus.

(4) For evaluating the escape apparatus portion of air-line supplied respirators, the air-line shall be briefly connected to determine proper functioning, then disconnected.

(f) Auxiliary low-temperature parts which are commercially available to the user may be used on the apparatus to meet the requirements described in paragraph (e) of this section.

§ 84.248–12 Shock and vibration tests.

Shock and vibration tests shall be conducted prior to the use tests described in §§ 84.248–13 through 84.248–16.

(a) A vibration test shall be conducted in accordance with the Military Standard MIL–STD 810C test for equipment installed on rubber tire vehicles. The device shall be machine tested at 60 liters/minute and must maintain a positive facepiece pressure. The low air-supply warning device shall function within 10 percent of the normal range. Apparatus shall be secured to the vibration table or confined in an insecure fashion consistent with manufacturers' recommendations to users for storage. The apparatus shall be independently monitored for vibration during the test to ensure the test equipment was functioning properly.

(b) A shock test shall also be performed on the apparatus subjected to vibration testing. The shock shall consist of a 1-meter free drop to a concrete floor on each axis.

(c) For apparatus sealed against moisture, the leak test recommended by the manufacturer shall be performed following the vibration and shock tests.

(d) These tests shall be performed on four apparatus. One apparatus shall be disassembled and inspected for significant damage which is likely to cause the apparatus to fail to provide the required protection to the user. The other apparatus shall be tested on human subjects according to the use tests described in §§ 84.248–13 through 84.248–16, if no serious damage was noted upon disassembly.

§ 84.248–13 Use tests; Purpose and requirements; General.

(a) The use tests described in Tables 1, 2, 3, and 4 in § 84.248–14 are designed to represent the workload performed in the mining, mineral, or allied industries by a person wearing the apparatus tested.

(b) The apparatus tested shall be worn by personnel trained in the use of self-contained breathing apparatus.

(c) Breathing resistance shall be measured within the facepiece or mouthpiece and the wearer's pulse and respiration rate shall be recorded during each 2-minute sample period prescribed in tests 1, 2, 3, and 4.

(d) Use tests 1, 2, 3, 4, and 5 shall be conducted on each of three respirators.

Each respirator shall be worn by a different subject.

§ 84.248–14 Use tests 1, 2, 3, 4, and 5; Purpose.

(a) *Use tests 1, 2, 3, and 4; Purpose.* Use tests 1, 2, 3, and 4, set forth in Tables 1, 2, 3, and 4, respectively, prescribe the duration and sequence of specific activities. These tests shall be conducted to:

(1) Familiarize the wearer with the apparatus during use;

(2) Provide for a gradual increase in activity;

(3) Evaluate the apparatus under different types of work and physical orientation; and

(4) Provide information on the operating and breathing characteristics of the apparatus during actual use.

(b) *Use test 5; Purpose and description.* (1) Use test 5 shall be conducted with respect to liquefied breathing gas apparatus only.

(2) This test shall be conducted to evaluate operation of the apparatus in other than vertical positions.

(3) The wearer shall lie face downward for one-fourth the service life of the apparatus with a full charge of liquefied breathing gas, and then a one-quarter full charge of liquefied breathing gas.

(4) The test shall be repeated with the wearer lying on each side and on his back.

(5) The oxygen content of the gas supplied to the wearer by the apparatus shall be continuously measured.

§ 84.248–15 Use transfer test.

(a) Three test subjects shall perform the use transfer test five times each, using not less than two combination respirators.

(b) Each test subject shall don the complete combination respirator after reading the manufacturer's instructions for use of the combination respirator, and shall operate the combination respirator in the supplied-air mode from the external air supply.

(c) The external air supply shall be turned off by an observer, without warning to the test subject, and the test subject shall operate the combination respirator until reduction or loss of external air supply alerts the test subject that the external air supply has been terminated.

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TABLE 1--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 1, IN MINUTES

(42 CFR Part 84, Subpart S, 84.248-14, et. seq.)

Activity	Service Time in Minutes[a]						
	3	5	10	15	30	45	60
Sampling and readings				2	2	2	2
Walks at 4.8 km. (3 miles) per hour	3	5	3	4	8	12	18
Sampling and readings			2	2	2	2	2
Walks at 4.8 km. (3 miles) per hour			3	5	8	12	18
Sampling and readings			2	2	2	2	2
Walks at 4.8 km. (3 miles) per hour					6	13	16
Sampling and readings					2	2	2

[a] Repeat 1 hour test for 2, 3, and 4 hour service times.

TABLE 2--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 2, IN MINUTES

(42 CFR Part 84, Subpart S, 84.148-14, et. seq.)

Activity	Service time in Minutes							
	3	5	10 minutes	15 minutes	30 minutes	45 minutes	60 minutes	2, 3, and 4 hours[a]
Sampling and readings				2	2	2	2	2
Walks at 4.8 km. (3 miles) per hour			1	1	3	4	6	10
Carries 23 kg. (50 pound) mass over overcast			1 time in 2 minutes	1 time in 2 minutes	2 times in 4 minutes	3 times in 6 minutes	4 times in 8 minutes	5 times in 10 minutes
Walks at 4.8 km. (3 miles) per hour				1	3	3	3	5
Climbs vertical treadmill [b] or equivalent)	1	1	1	1	1	1	1	1
Walks at 4.8 (3 miles) km. per hour	1		1			2	3	5
Climbs vertical treadmill (or equivalent)	1					1	1	1
Sampling and readings					2	2	2	2
Walks at 4.8 km. (3 miles) per hour				2	2	3	5	11
Climbs vertical treadmill (or equivalent)				1	1	1	1	1
Carries 23 kg. (50 pound) mass over overcast				1 time in 2 minutes	3 times in 6 minutes	4 times in 8 minutes	5 times in 10 minutes	5 times in 10 minutes
Sampling and readings			2			2	2	2
Walks at 4.8 km. (3 miles) per hour				1	3	3	3	
Climbs vertical treadmill (or equivalent)			1		1	1	1	Then repeat above activities once
Walks at 4.8 (3 miles) km per hour			2			2	3	
Climbs vertical treadmill (or equivalent)						1	1	
Carries 20 kg. (45 pound) mass and walks at 4.8 (3 miles) km. per hour	1						2	
Walks at 4.8 (3 miles) km. per hour	1	2				1	4	
Sampling and readings				2	2	2	2	

[a] Total test time for Test 2 for 2-hour, 3-hour, and 4-hour apparatus is 2 hours.
[b] Treadmill shall be inclined 15° from vertical and operated at a speed of 1 foot per second.

TABLE 3--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 3, IN MINUTES

(42 CFR Part 84, Subpart S, 84.248-14, et. seq.)

Activity	Service time--							
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2, 3, and 4 hours
Sampling and readings				2	2	2	2	(a)
Walks at 4.8 km. (3 miles) per hour			1	1	2	2	3	
Runs at 9.7 km. (6 miles) per hour	1	1	1	1	1	1	1	
Pulls 20 kg. (45 pounds) mass to 5 feet		15 times in 1 minute		30 times in 2 minutes	30 times in 2 minutes	30 times in 2 minutes	60 times in 6 minutes	
Lies on side	1/2	1	1	2	3	4	5	
Lies on back	1/2	1	1	2	2	3	3	
Crawls on hands and knees	1	1	1	2	2	2	2	
Sampling and readings			2		2	2	2	
Runs at 9.7 km. (6 miles) per hour				1	1	1	1	
Walks at 4.8 km. (3 miles) per hour					2	8	10	
Pulls 20 kg. (45 pounds) mass to 5 feet			30 times in 2 minutes		60 times in 6 minutes	60 times in 6 minutes	60 times in 6 minutes	
Sampling and readings				2		2	2	
Walks at 4.8 km. (3 miles) per hour			1		3	4	10	
Lies on side						2	4	
Lies on back						2	1	
Sampling and readings					2	2	2	

[a] For two-hour, 3-hour, and 4-hour apparatus, perform test No. 3 for 1-hour apparatus, then test No. 1 for 1-hour apparatus (total test time is 2 hours).

TABLE 4--DURATION AND SEQUENCE OF SPECIFIC ACTIVITIES FOR TEST 4, IN MINUTES

(42 CFR Part 84, Subpart S, 84.148-14, et. seq.)

Activity	Service time--									
	3 minutes	5 minutes	10 minutes	15 minutes	30 minutes	45 minutes	1 hour	2 hours	3 hours	4 hours
Sampling and readings				2	2	2	2	(b)	(c)	(d)
Walks at 4.8 km. (3 miles) per hour				1	2	2	2			
Climbs vertical treadmill[a] or equivalent	1	1	1	1	1	1	1			
Walks at 4.8 km. (3 miles) per hour		1	1	1	2	2	2			
Pulls 20 kg. (45 pound) mass to 5 feet		30 times in 2 minutes	30 times in 2 minutes	30 times in 2 minutes	60 times in 5 minutes	60 times in 5 minutes	60 times in 5 minutes			
Walks at 4.8 km. (3 miles) per hour			1	1	1	2	3			
Carries 23 kg. (50 pound) mass over overcast				1 time in 1 minute	1 time in 1 minute	2 times in 3 minutes	4 times in 8 minutes			
Sampling and readings			2		2	2	2			
Walks at 4.8 km. (3 miles) per hour				1	3	3	4			
Runs at 9.7 km. (6 miles) per hour		1	1	1	1	1	1			
Carries 23 kg. (50 pound) mass over overcast			1 time in 1 minute	1 time in 1 minute	2 times in 3 minutes	4 times in 6 minutes	6 times in 9 minutes			
Pulls 20 kg. mass to 5 feet	5 times in 1 minute			15 times in 1 minute	60 times in 5 minutes	30 times in 2 minutes	36 times in 3 minutes			
Sampling and readings				2	2	2	2			
Walks at 4.8 km. (3 miles) per hour	1		1			2	6			
Pulls 20 kg. (45 pound) mass to 5 feet						60 times in 5 minutes	60 times in 5 minutes			
Carries 20 kg. (45 pound) mass and walks at 4.8 km. (3 miles) per hour.						3	3			
Sampling and readings						2	2			

[a]Treadmill shall be inclined 15' from vertical and operated at a speed of 30 cm. (1 foot) per second.
[b]Perform Test No. 1 for 30-minute apparatus; then perform Test No. 4 for 1-hour apparatus; then perform Test No. 1 for 30-minute apparatus.
[c]Perform Test No. 1 for 1-hour apparatus; then perform Test No. 4 for 1-hour apparatus; then perform Test No. 1 for 1-hour apparatus.
[d]Perform Test No. 1 for 1-hour apparatus; then perform Test No. 4 for 1-hour apparatus; then perform Test No. 1 for 1-hour apparatus twice (i.e., two one-hour tests).

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(d) When the test subject becomes aware that the external air supply is terminated, the test subject shall so advise the observer and the observer shall start a timer.

(e) The test subject shall then proceed to transfer to the self-contained air supply, using whatever procedure is specified by the manufacturer, and shall disconnect the respirator from the external air supply.

(f) Transfer shall be effected when air is supplied to the combination respirator from the self-contained air supply and the respirator is disconnected from the external air supply. The observer shall stop the timer when transfer is effected.

(g) Transfer shall be effected in not more than 15 seconds.

§ 84.248-16 Use tests; Requirements.

(a) The apparatus shall satisfy the respiratory requirements of the wearer for the classified service time.

(b) Fogging of the eyepiece shall not obscure the wearer's vision, and the wearer shall not experience undue discomfort because of fit or other characteristics of the apparatus.

(c) When the ambient temperature during testing is 24±6 °C, the maximum temperature of inspired air recorded during use tests shall not exceed the following, after correction for deviation from 24 °C:

Where service life of apparatus is --	Where percent relative humidity of inspired air is --	Maximum permissible temperature of inspired air shall not exceed	
		°F	°C
1/4 hour or less	0 - 100	135	57
1/2 hour to 3/4 hour	0 - 50	125	52
	50 - 100	110[a]	43[a]
1 to 2 hours	0 - 50	115	46
	50 - 100	105[a]	41[a]
3 hours	0 - 50	110	43
	50 - 100	100[a]	38[a]
4 hours	0 - 50	105	41
	50 - 100	95[a]	35[a]

[a] Where percent relative humidity is 50 - 100 and apparatus is designed for escape only, these maximum permissible temperatures will be increased by 5 °C.

§ 84.248-17 Flammability.

(a) Three facepieces shall be tested for flammability for a short period with a test rig as shown on Figure 2, and Details 1 and 2. This test rig consists mainly of a propane storage tank with control device and fine pressure gauge, flash back arresters, 6 propane burners being adjustable in height, and a metal dummy head which pivots vertically and horizontally.

(b) The test rig shall be adjusted as follows: The distance between facepiece and burner tips shall be 250 mm. The pressure reducer shall be adjusted to a flow of 60 liters/min using air at 1.25×10^{1} Newtons/cm² (1.81×10^{1} pounds per square inch) gauge.

(c) On the propane burners, the control device for the propane gas supply shall be fully opened, while the control device for the air shall be adjusted to the optimum. The temperature of the flame shall be 950±50 °C.

(d) For the test, the facepiece shall be put on the dummy head. After it has undergone the test for tightness, the facepiece shall be exposed to the flames for a period of 5 seconds. When components like valve(s), speech diaphragm(s) etc. are arranged on other parts of the face blank, the test is repeated with other samples in the appropriate position.

(e) For comparing the tightness of the full mask before and after the flammability test the same dummy head shall be used and a pressure of -1.0×10^{-1} N/cm² (-1.45×10^{-1} pounds per square inch) gauge shall be created in the cavity of the mask.

(f) The test results are positive if no portion of the mask continues to burn with its own flame after the 5 second exposure period ends, and if the rise in pressure from -1.0×10^{-1} N/cm² (-1.45×10^{-1} pounds per square inch) gauge initial pressure within the cavity of the mask does not exceed 1.0×10^{-2} N/cm² (1.45×10^{-2} pounds per square inch) gauge per 60 seconds.

§ 84.248-18 Regulator overpressurization.

(a) Open-circuit self-contained breathing apparatus regulators shall be tested and evaluated in such a way as to simulate overpressurization of the regulator by the user prior to evaluating

the respirator in the face fit test of Subpart R.

(b) The regulator shall be preconditioned to simulate intentional overpressurization by the user. The regulator shall be subjected to a 1 to 2 second simulated attempt to block the regulator flow with the regulator bypass valve set at maximum flow. Such simulation shall be either manual or mechanical as appropriate to the respirator being evaluated. Each regulator shall be subjected to 20 simulated blocking attempts. Following the simulation blocking cycles, the regulator diaphragm shall be inspected and must be found free of damage.

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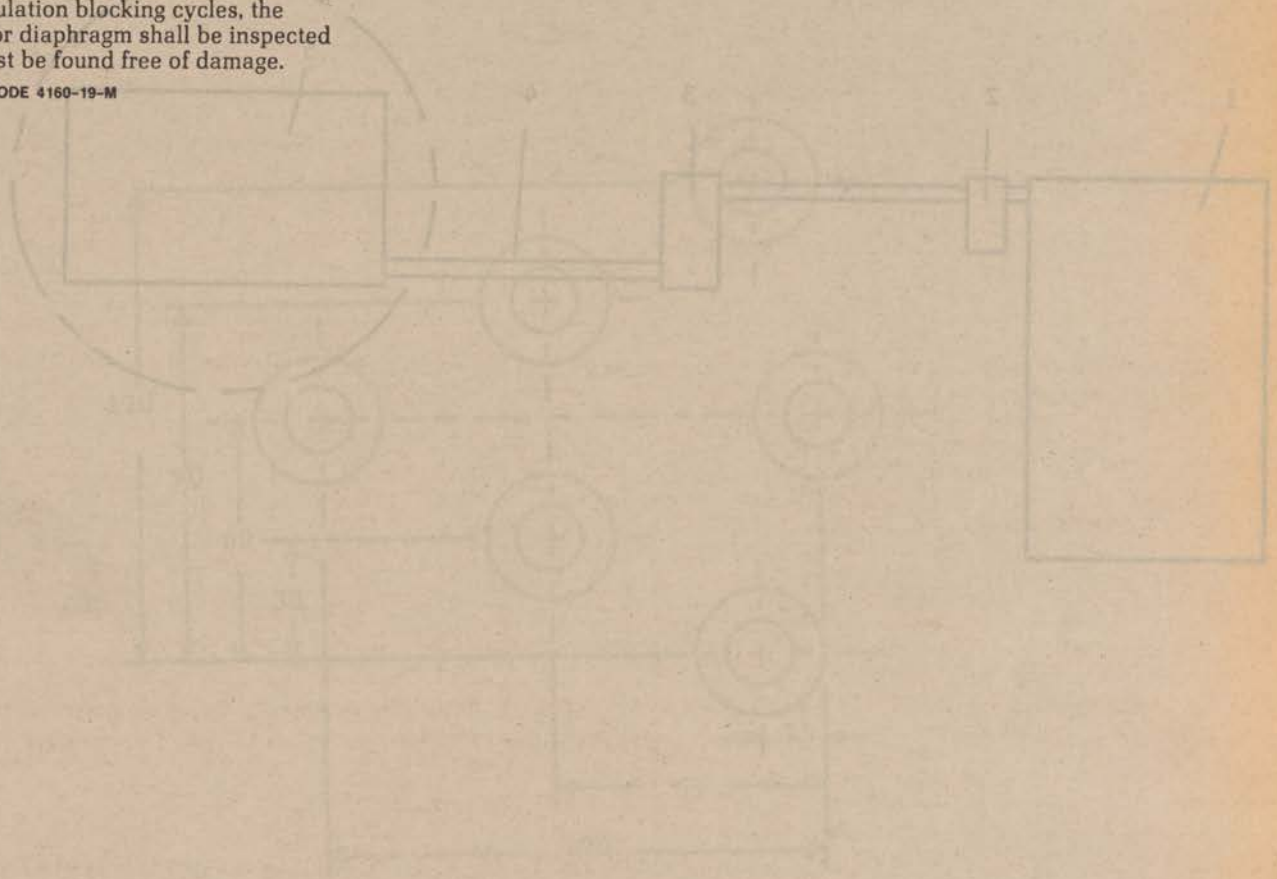
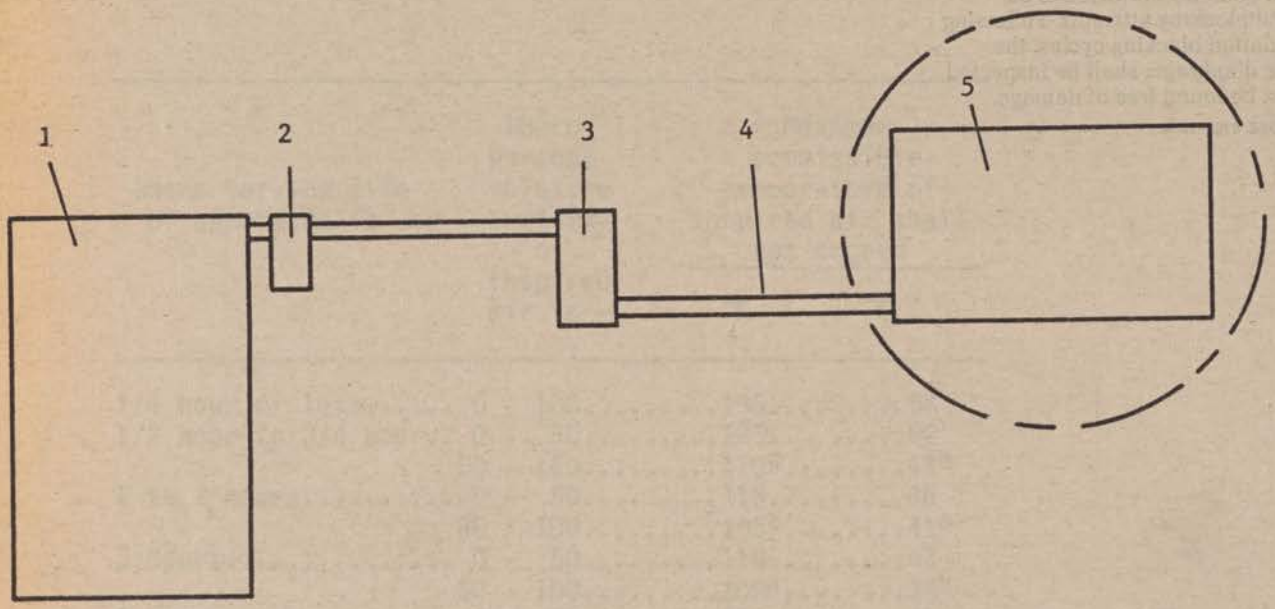


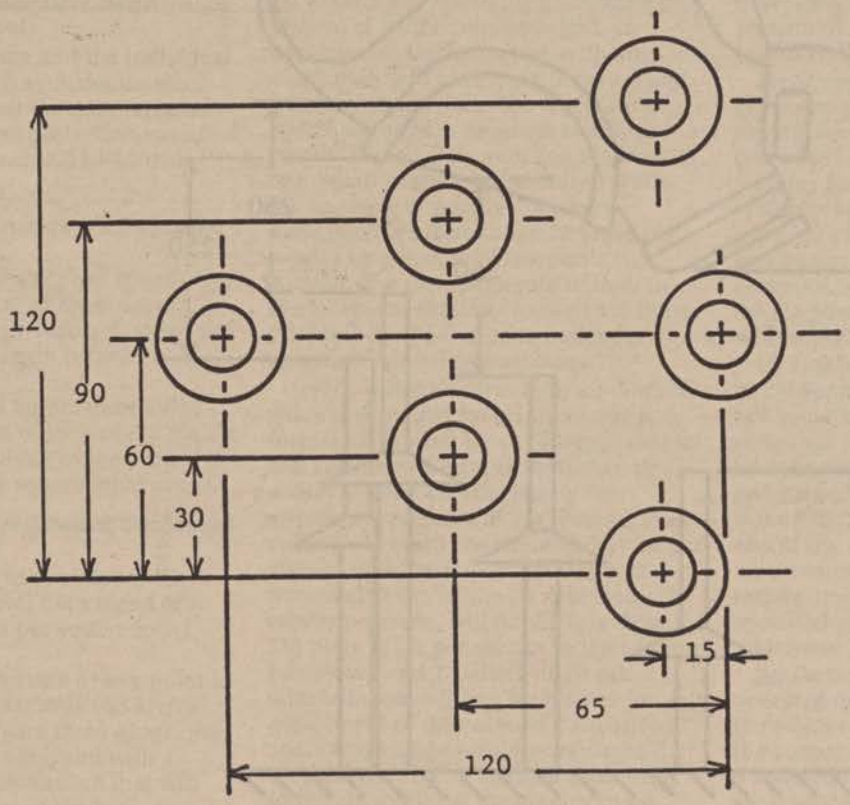
Figure 2. SCHEME OF THE TEST RIG FOR FLAMMABILITY OF A FULL FACE MASK



1. Propane storage tank
2. Fine pressure gauge and control device
3. Flash back arrester
4. Connecting hoses (of same length) leading to the 6 propane burners.
5. Propane burner.

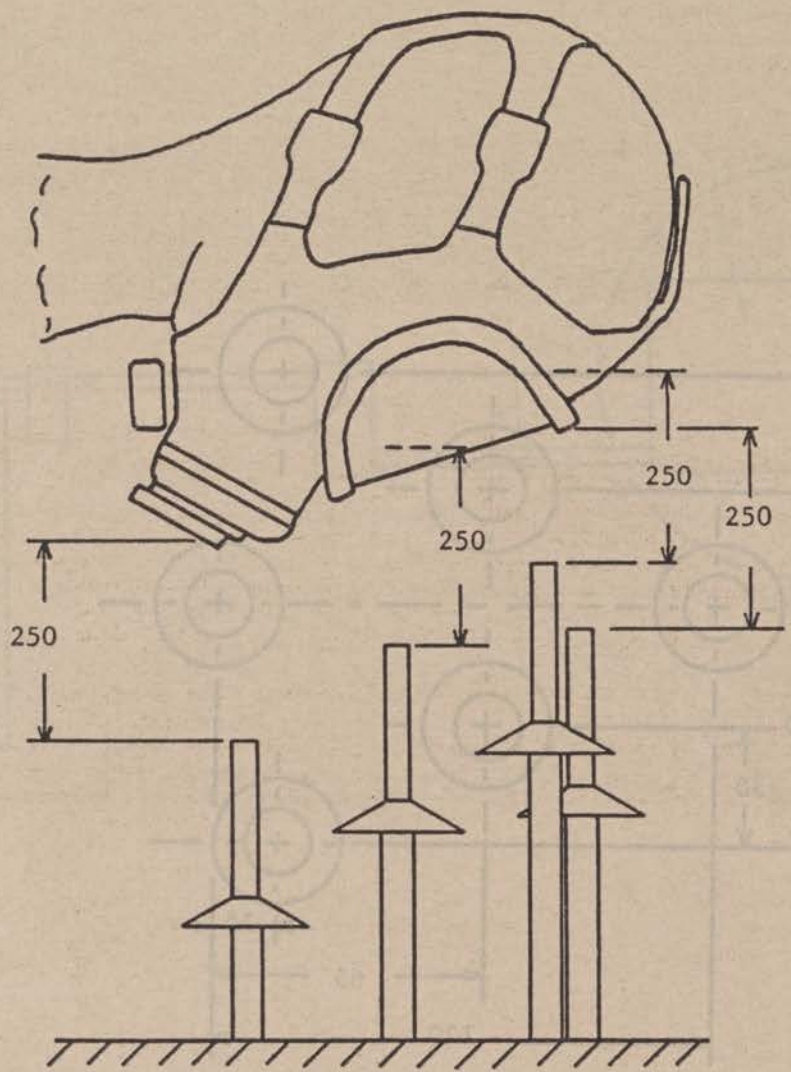
Detail 1:

Top view of arrangement of the six propane burners (dimensions in mm).



Detail 2:

Lateral view of arrangement of the six propane burners (dimensions in mm).



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Subpart T—Air-Line Respirators

§ 84.250 Air-line respirators; Description.

Air-line respirators are atmosphere supplying respirators that use a stationary source of compressed air delivered through a high pressure hose. Air-line respirators are available as negative and positive pressure, regulated, and continuous flow configurations. "Regulator" type air-line respirators operate with a single stage regulator and a maximum airline pressure of 863 kN/m² (125 pounds per square inch) gauge. "Continuous flow" respirators operate with an air flow control valve or orifice and maintain air flow at all times.

§ 84.251 Air-line respirators; Performance requirements; General.

Air-line respirators and the individual components of each such device shall, as appropriate, meet the requirements for performance and protection specified in the tests described in §§ 84.251–1 through 84.251–8.

§ 84.251–1 Air-line respirators; Regulated flow.

(a) The manufacturer shall specify the range of air pressure at the point of attachment of the air supply system, and the range of hose length for the respirator.

(b) The specified air pressure at the point of attachment of the hose to the air supply system shall not exceed 863 kN/m² (125 pounds per souare inch) gauge.

§ 84.251–2 Air-line respirators; Continuous flow.

(a) The pressure at the inlet of the hose connection shall not exceed 863 kN/m² (125 pounds per square inch) gauge.

(b) Where the pressure at any point in the supply system exceeds 863 kN/m² (125 pounds per square inch) gauge, the respirator shall be equipped with a pressure-release mechanism that will prevent the pressure at the hose connection from exceeding 863 kN/m² (125 pounds per square inch) gauge under any conditions.

§ 84.251–3 Air-supply line tests.

Air-supply lines employed on air-line respirators shall meet the following minimum test requirements.

(a) *Length of hose.* A maximum of 91 m. (300 feet) in multiples of 7.6 m. (25 feet) will be supplied. It will be permissible for the applicant to supply hose of the certified type of shorter length than 7.6 m. (25 feet) provided it meets the requirements of this part.

(b) *Air flow.* (1) The air-supply hose with air-regulating valve or orifice shall permit a flow of not less than 115 liters per minute to tightfitting facepieces and 170 liters per minute to loose-fitting facepieces through the maximum length of hose for which approval is granted and at the minimum specified air-supply pressure. The maximum flow shall not exceed 425 liters (15 cubic feet) per minute at the maximum specified air-supply pressure with the minimum length of hose specified by the applicant.

(2) The air-supply hose, detachable coupling, and the negative pressure or positive pressure demand valves for air-line respirators shall be capable of delivering respirable air at a rate of not less than 115 liters per minute to the facepiece and at an inhalation resistance not exceeding 5 millimeters (2 inches) of water-column height, as measured in the facepiece, with any combination of air-supply pressure and length of hose within the applicant's specified range of pressure and hose length. The air-flow rate and resistance to inhalation shall be measured while the negative or positive pressure demand valve is actuated 20 times per minute by a source of intermittent suction. The maximum rate of flow to the facepiece shall not exceed 425 liters (15 cubic feet) per minute under the specified operating conditions.

(c) *Air-control valve.* If an air-control valve is provided for a continuous flow respirator, it shall be so designed that it will remain at a specific adjustment, which will not be affected by the ordinary movement of the wearer. The valve must be so constructed that the air supply, with the maximum length of hose and at the minimum specified air-supply pressure, will not be less than 115 liters of air per minute to tight-fitting facepieces and 170 liters of air per minute to loose-fitting facepieces for any adjustment of the valve. If a negative or positive pressure regulator replaces the air-control valve, it shall be connected to the air-supply at the maximum air pressure specified by the applicant by means of the minimum length of air-supply hose specified by the applicant. The outlet of the negative or positive pressure regulator shall be connected to a source of intermittent suction so that the negative or positive pressure regulator is actuated approximately 20 times per minute for a total of 100,000 inhalations. To expedite this test, the rate of actuation may be increased if mutually agreeable to the applicant and to NIOSH. During this test, the valve shall function without failure and without excessive wear of the moving parts. The negative or positive pressure regulator shall not be damaged in any way when subjected at the outlet to a pressure or suction of 25 cm. (10 inches) of water column height for 2 minutes.

(d) *Non-kinkability.* A 7.6 m. (25 foot) section of the hose shall be placed on a horizontal-plane surface and shaped into a one-loop coil with one end of the hose connected to an airflow meter and the other end of the hose supplied with air at the minimum specified supply pressure. The connection shall be in the plane of the loop. The other end of the hose shall be pulled tangentially to the loop and in the plane of the loop until the hose straightens. To meet the requirements of this test the loop shall maintain a uniform near-circular shape and ultimately unfold as a spiral, without any localized deformation that decreases the flow of air to less than 90 percent of the flow when the hose is tested while remaining in a straight line.

(e) *Strength of hose and couplings.* Hose and couplings shall not exhibit any separation or failure when tested with a pull of 445 newtons (100 pounds) for 5 minutes and when tested by subjection, with blocked outlet, to an internal air pressure of 2 times the maximum respiratory-supply pressure that is specified by the applicant or at 173 kN/m² (25 pounds per square inch) gauge, whichever is higher.

(f) Tightness. Leakage of air exceeding 50 cc. per minute at each coupling shall not be permitted when the hose and couplings are joined, immersed in water, and the respirator is under an air pressure of 173 kN/m² (25 pounds per square inch) gauge applied to the inlet end of the air-supply hose, or under an air pressure of twice the maximum respirator-supply pressure that is specified by the manufacturer, whichever is higher.

(g) *Detachable coupling.* A hand-operated detachable coupling by which the wearer can readily attach or detach the connecting hose shall be provided at a convenient location. This coupling shall be durable, remain connected under all conditions of normal respirator use, and meet the prescribed tests for strength and tightness of hose and couplings.

§ 84.251–4 Harness test.

(a) Belts, rings, and attachments for life lines must withstand a pull of 1334 newtons (300 pounds) for 30 minutes without failure.

(b) The arrangement and suitability of all harness accessories and fittings shall be considered.

(c) The harness shall be easily adjustable to various sizes.

(d) The hose shall be attached to the harness in a manner that will withstand a pull of 445 newtons (100 pounds) for 30

minutes without separating or showing signs of failure.

(e) The design of the harness and attachment of the line shall permit dragging the maximum length of hose considered for certification over a concrete floor without disarranging the harness or exerting a pull on the facepiece.

(f) The harness employed on air-line respirators shall not be uncomfortable, disturbing, or interfere with the movements of the wearer. The harness shall consist of a simple arrangement for attaching the hose to a part of the wearer's clothing in a practical manner that prevents a pull being exerted upon the respiratory-inlet covering equivalent to dragging the maximum length of hose over a concrete floor.

(g) Where air-line respirators have a rigid or partly rigid head covering, a suitable harness shall be required to assist in holding this covering in place.

§ 84.251-5 Breathing tube test.

(a) The breathing tubes employed on air-line respirators shall permit free head movement, ensure against closing off by kinking or by chin or arm pressure, and shall not create a pull that will loosen the facepiece or disturb the wearer.

(b) Air-line respirators of the continuous flow class shall employ one or two flexible breathing tubes of the non-kinking type which extend from the facepiece to a connecting hose coupling attached to the belt or harness; however, an extension of the connecting hose may be employed in lieu of the breathing tubes required.

(c) Air-line respirators of the positive and negative pressure classes shall employ a flexible, non-kinking type breathing tube which extends from the facepiece to the positive or negative pressure regulator, except where the regulator is attached directly to the facepiece.

§ 84.251-6 Airflow resistance test; Air-line respirator, continuous flow class.

The resistance to air flowing from the respirator shall not exceed 25 mm. (1 inch) of water-column height when the air flow into the facepiece is 115 liters per minute.

§ 84.251-7 Airflow resistance test; Air-line respirator, negative pressure class.

(a) Inhalation resistance shall not exceed 50 mm (2 inches) of water column height at an air flow of 115 liters per minute.

(b) The exhalation resistance to a flow of air at a rate of 85 liters per minute shall not exceed 25 mm (1 inch) of water column height.

§ 84.251-8 Airflow resistance test; Air-line respirator, positive pressure class.

(a) The static pressure in the facepiece shall not exceed 38 mm. (1.5 inches) of water-column height.

(b) The pressure in the facepiece shall not fall below atmospheric at inhalation airflows less than 115 liters per minute.

(c) The exhalation resistance to a flow of air at a rate of 85 liters per minute shall not exceed the static pressure in the facepiece by more than 51 mm. (2 inches) of water-column height.

Subpart U—Air-Purifying Respirators; General Requirements

§ 84.260 Air-purifying respirators; Description.

Air-purifying respirators are respirators with air-purifying elements such as cartridges, canisters, or filters, which protect wearers by removing contaminants from the ambient air.

§ 84.261 Cartridges, canisters and filters in parallel; Resistance requirements.

Where two or more cartridges, canisters or filters are used in parallel, their resistance to air flow shall be essentially equal.

§ 84.262 Filters used with canisters and cartridges; Location; Replacement.

(a) Particulate filters used in conjunction with a gas and vapor canister or cartridge shall be located on the inlet side of the canister or cartridge.

(b) Filters shall be incorporated into or firmly attached to the canister or cartridge, and each filter assembly shall, where applicable, be designed to permit its easy removal from and replacement on the canister or cartridge.

§ 84.263 Powered air-purifying respirator flow requirements.

Powered air-purifying respirators shall be classified as tight fitting powered air-purifying respirators or loose fitting powered air-purifying respirators depending on their design. The minimum air flow for each is as follows:

(a) Tight fitting air-purifying respirators shall maintain an air flow rate of at least 115 liters per minute for a period of at least 4 hours unless otherwise specified.

(b) Loose fitting air-purifying respirators shall maintain an air flow rate of at least 170 liters per minute for a period of at least 4 hours unless otherwise specified.

(c) Powered air-purifying respirators shall be provided with an acceptable mechanism and appropriate instructions whereby the user can routinely and simply determine that the minimum air flow is maintained.

Subpart V—Particulate Air-Purifying Respirators

§ 84.270 Particulate air-purifying respirators; Description.

(a) Particulate air-purifying respirators, are respirators which employ filters to remove solid and liquid particulates from the ambient air. They are designed for use as respiratory protection from particulate environments (dusts, fume, mists) which are non-IDLH and which contain adequate oxygen to support life.

(b) Particulate air-purifying respirators are classified as Non-powered and Powered, according to their design.

(c) Non-powered particulate air-purifying respirators are classified according to the efficiency of the filter element(s). Low efficiency filters have a minimum efficiency of 95 percent; medium efficiency filters have a minimum efficiency of 99 percent; high efficiency filters have a minimum efficiency of 99.97 percent; as tested according to the requirements of this part.

(d) Particulate powered air-purifying respirators are classified according to the efficiency of the filter element(s). Medium efficiency filters have a minimum efficiency of 99 percent; High efficiency filters have a minimum efficiency of 99.97 percent; as tested according to the requirements of this part.

§ 84.271 Particulate air-purifying respirators; Performance requirements; General.

(a) Each particulate air-purifying respirator shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for particulate air-purifying respirators in Subpart U and the requirements for performance and protection specified in the tests described in § 84.273.

(b) The manufacturer, as part of the application for certification, shall specify the filter efficiency classification (≥95, ≥99, or ≥99.97 percent efficiency) for which certification is being sought.

§ 84.272 Airflow resistance tests.

(a) Resistance to airflow shall be measured in the facepiece, mouthpiece, hood, or helmet of a particulate respirator (complete respirator) mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, before each test conducted in accordance with § 84.273.

(b) The maximum allowable resistance requirements for particulate

respirators in mm water-column height are as follows:

Initial Inhalation	30
Exhalation	20

§ 84.273 Particulate instantaneous penetration filter test.

Filters of particulate respirators shall be tested for instantaneous penetration filter efficiency against both solid and oil liquid particles in the following manner:

(a) Air-purifying elements of the respirators along with the element's holders and gaskets; where separable, shall be tested for instantaneous filter efficiency as mounted on a test fixture which incorporates the connector in the manner as used on the respirator.

(b) Prior to testing, all air-purifying elements of particulate filter respirators shall be taken out of their packaging and placed in an environment of 85 percent relative humidity at 38±2.5 °C for 24 hours. All tests shall be performed immediately after conditioning.

(c) Where the elements are not separable, the exhalation valves shall be blocked so as to ensure that leakage, if present, is not included in the efficiency evaluation.

(d) Filters shall be tested, each at a continuous airflow rate of 32 and 85 liters per minute for air-purifying respirators with a single filter (where filters are to be used in pairs the flow rate shall be 16 and 42.5 liters per minute, respectively through each filter).

(e) Powered particulate air-purifying respirators shall be tested while operating in their normal operational mode (with fully charged batteries if they possess battery packs). The air flow shall be as follows:

(1) Airflow shall be cycled through the respirator by a breathing machine at the rate of 24 respirations per minute with a minute volume of 40 liters; a breathing machine cam with a work rate of 100 watts (622 Kp-m/min) shall be used.

(2) Air inhaled through the respirator shall be sampled and analyzed for penetration.

(f) *Challenge aerosol.* (1) When testing for penetration of solid particulates, each respirator filter unit shall be challenged with an appropriate neutralized solid aerosol at 25±5 °C and at a relative humidity of less than 30 percent which contains no more than 200 mg/m³ until at least 100±5 mg of the aerosol has contacted the filter unit.

(2) When testing for penetration of oil liquid particulates, each respirator filter unit shall be challenged with an appropriate oil liquid aerosol at 25±5 °C which contains no more than 200 mg/m³ until at least 100±5 mg of the aerosol has contacted the filter unit.

(g) The particle size distribution of the test aerosol shall have an aerodynamic mean diameter of 0.2–0.3 micrometer and the standard geometric deviation shall not exceed 1.6 at the specified flowrate.

(h) The instantaneous penetration shall be monitored and recorded throughout the test period by a suitable light scattering photometer or equivalent instrumentation. If filter penetration is increasing when the 100±5 mg challenge point is reached, the test shall be continued until there is no further increase in penetration.

(i) Throughout the entire test the instantaneous penetration shall never exceed the level specified by the applicant.

Subpart W—Gas and Vapor Air-Purifying Cartridge Respirators

§ 84.280 Gas and vapor air-purifying cartridge respirators; Description.

(a) Gas and vapor air-purifying cartridge respirators (previously called chemical-cartridge respirators) are respirators with cartridge(s) designed to remove a single gas or vapor, a single class of gases or vapors, or a combination of two or more classes of gases or vapors as specified below from air. These respirators are designed for use as respiratory protection during entry into or escape from atmospheres not immediately dangerous to life and health and which contain adequate oxygen to support life. They are described according to the specific gases and vapors against which they are designed to provide respiratory protection, as follows:

Type of gas and vapor cartridge respirator	Maximum use concentration ppm
Ammonia	300
Chlorine	10
Hydrogen chloride	50
Methyl amine	75
Sulfur dioxide	50

(b) Gas and vapor air-purifying cartridge respirators are further classified as Powered, or Non-powered, according to their design.

(c) Gas and vapor air-purifying cartridge respirators are not intended for use against any gases or vapors with poor warning properties unless MSHA approves administrative controls, or the respirator is equipped with an effective, reliable end-of-service-life indicator. Also, they are not for use against gases or vapors which generate high heats of reaction with sorbent material in the cartridges.

(d) Gas and vapor air-purifying cartridge respirators for respiratory protection against gases or vapors which are not specifically listed with their maximum use concentration may be certified according to the requirements set forth in Subpart Z.

§ 84.281 Cartridges; Color and marking requirements.

The color and markings of all cartridges or labels shall conform to the requirements of the American National Standard for Identification of Gas Mask Canisters, ANSI K13.1–1973 standard obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.282 Gas and vapor air-purifying cartridge respirators; General performance requirements.

Gas and vapor cartridge respirators and the individual components of each such device shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for air-purifying respirators in Subpart U, and the minimum requirements for performance and protection specified in the tests described in §§ 84.283 and 84.284.

§ 84.283 Breathing resistance test.

(a) Resistance to airflow shall be measured in the facepiece of a gas and vapor air-purifying cartridge respirator mounted on a test fixture with air flowing at a continuous rate of 85 liters per minute, both before and after each test conducted in accordance with § 84.284.

(b) The maximum allowable resistance requirements for gas and vapor air-purifying cartridge respirators are as follows:

MAXIMUM RESISTANCE

(mm water column height)

Type of vapor and gas cartridge respirator	Inhalation		Exhalation
	Initial	Final[a]	
For gases, vapors, or gases and vapors	40	45	20
For gases, vapors, or gases and vapors, and particulates	50	70	20

[a] Measured at end of service life specified in Table 5.

(c) Combination gas and vapor and particulate air-purifying cartridge respirators shall meet the provisions of § 84.211 except that the maximum allowable resistance of such respirators shall not exceed the maximum allowable limits set forth in this § (84.283).

§ 84.284 Gas and vapor cartridge service life test.

(a) The service life of all gas and vapor cartridges shall be determined by continually passing a test atmosphere of known concentration and flow rate through the cartridge while monitoring the downstream concentration.

(b) Cartridges or pairs of cartridges shall be tested as follows:

(1) Units shall be tested at 50±3 percent relative humidity. (2) Units conditioned at 25±2.5° C by passing 25±3 percent relative humidity air through them for 6 hours at the following flow rates—

Type of cartridge	Airflow rate lpm
Air-purifying	25
Powered air-purifying with tight-fitting facepiece	115
Powered air-purifying with loose-fitting hood or helmet	170

--shall be tested at 25 ± 3 percent relative humidity.

(3) Units conditioned at 25±2.5° C by passing 85±3 percent relative humidity air through them for 6 hours at the flow rates stated in paragraph (b)(2) of this section shall be tested at 85±3 percent relative humidity.

(c) The test atmosphere shall be maintained at 25±2.5° C.

(d) The flow rate through the cartridge(s) being tested are as follows:

(1) Non-powered single gas or vapor cartridge air-purifying respirators with exhalation valves shall be tested each at a continuous air flow rate of 64 liters per minute. Where cartridges are to be used in pairs, the flow rate shall be 32 liters per minute through each filter.

(2) Non-powered air-purifying respirators without exhalation valves shall be tested by the same regimen as in § 84.284(b) except that a breathing machine operating according to § 84.273(e) (1), (2), and (3) will be employed instead of continuous flow.

(3) Powered air-purifying respirators with tight-fitting facepieces will each be tested at a flow rate of not less than 115 liters per minute.

(4) Powered air-purifying respirators with loose-fitting facepieces will each be tested at a flow rate of not less than 170 liters per minute.

(e) All conditioned cartridges shall be resealed, kept in an upright position at room temperature, and tested within 8 hours.

(f) Cartridges shall be tested and shall meet the minimum service life requirements set forth in Table 5.

TABLE 5--CARTRIDGE SERVICE LIFE TESTS AND REQUIREMENTS
(42 CFR Part 84, Subpart W, 84.294)

Cartridge	Test atmosphere		Penetration[a] (ppm)	Minimum life[b] (min.)
	Gas or Vapor	Concentration (ppm)		
Ammonia	NH_3	1,000	50	50
Chlorine	Cl_2	500	5	35
Hydrogen chloride	HCl	500	5	50
Methylamine	CH_3NH_2	1,000	10	25
Sulfur dioxide	SO_2	500	5	30

[a] Minimum life shall be determined at the indicated penetration.
[b] Where a respirator is designed for respiratory protection against more than one type of gas or vapor, as for use in ammonia and in chlorine or hydrogen chloride and organic vapors (84.308(b)), the minimum life shall be one-half that shown for each type of gas or vapor. Where a respirator is designed for respiratory protection against more than one gas of a type, as for use in chlorine and sulfur dioxide, the stated minimal life shall apply.

Subpart X—Gas and Vapor Air-Purifying Canister Respirators

§ 84.290 Description and classification.

(a) Gas and vapor air-purifying canister respirators (previously called gas masks) are respirators with canister(s) designed to remove a single gas or vapor, a single class of gases or vapors, or a combination of two or more classes of gases or vapors as specified below from air. Such respirators which contain a full facepiece are designed for use as respiratory protection in atmospheres which contain adequate oxygen to support life as follows: Entry into and escape from non-IDLH atmospheres, and escape from IDLH atmospheres. However, such respirators which do not contain full facepieces but

contain a half facepiece or mouthpiece/noseclamps may only be used for escape.

(b) Gas and vapor air-purifying canister respirators are classified according to their sorbent capacity as follows:

(1) *High capacity.* A gas and vapor air-purifying canister respirator which consists of a full facepiece, canister(s) (previously front or back mounted), and associated harness and connections.

(2) *Low capacity.* A gas and vapor air-purifying canister respirator which consists of a facepiece, canister(s) (previously chin-style or escape), and associated harness and connections.

(c) Gas and vapor air-purifying canister respirators shall be further classified according to the types of gases or vapors against which they are designed to provide respiratory protection, as follows:

Ammonia
Carbon Monoxide
Chlorine
Sulfur Dioxide

Combination of two or more of the above.

(d) Gas and vapor air-purifying canister respirators are not intended for use against any gases or vapors with poor warning properties unless MSHA approves such use or the respirator is equipped with an effective, reliable end-of-service-life indicator. Also, they are not for use against gases or vapors which generate high heats of reaction with sorbent materials in the canisters.

§ 84.291 Canisters; Color and marking requirements.

The color and markings of all canisters or labels shall conform with the requirements of the American National Standard for Identification of Air-Purifying Respirator Canisters and Cartridges, ANSI K13.1–1973 standard, obtainable from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.292 Performance requirements; General.

Gas and vapor air-purifying canister respirators shall meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for air-purifying respirators in Subpart U, and the requirements for performance and protection specified in the tests described in §§ 84.293 through 84.295.

§ 84.293 Breathing resistance test.

(a) Resistance to airflow shall be measured in the facepiece of a gas and vapor air-purifying canister respirator mounted on a head form both before and after each test conducted in accordance with § 84.295 with air flowing at a continuous rate of 85 liters per minute.

(b) The maximum allowable resistance requirements for gas and vapor air-purifying canister respirators are as follows:

MAXIMUM RESISTANCE
(mm water column height)

Type of gas mask	Inhalation		Exhalation
	Initial	Final[a]	
High capacity			
(w/o particulate filter)	60	75	20
(w/certified particulate filter)	70	85	20
Low capacity			
(without particulate filter)	50	65	20
(w/certified particulate filter)	65	80	20

[a]Measured at end of the service life specified in Tables 6, and 7 in section 84.295.

§ 84.294 Particulate tests; Canisters containing filters.

Gas and vapor air-purifying canister respirators in combination with particulate filter media shall meet the requirements set forth in § 84.211 except that the maximum allowable resistance of complete particulate, and gas, vapor, or gas and vapor canister respirators shall not exceed the maximum allowable limits set forth in § 84.293.

§ 84.295 Canister service life test.

(a) The service life of all gas and vapor canisters, except for carbon monoxide tests, shall be determined by continually passing a test atmosphere of 25±2.5 °C, and known concentration and flow rate through the canisters while monitoring the downstream concentration (see Tables 6 and 7).

(b) Canisters or pairs of canisters, except for carbon monoxide tests, shall be tested as follows:

(1) Units shall be tested at 50±3

(2) Units conditioned at 25±2.5 °C by passing 25±3 percent relative humidity air through them for 6 hours at 64 at the following flow rates:

Type of Respirator	Airflow rate Lpm
Air-purifying	64
Powered air-purifying with tight-fitting facepiece	115
Powered air-purifying with loose-fitting hood or helmet	170

--shall be tested at 25 ± 3 percent relative humidity.

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TABLE 6--CANISTER SERVICE LIFE TESTS AND REQUIREMENTS FOR HIGH CAPACITY GAS AND VAPOR AIR-PURIFYING CANISTERS
(42 CFR Part 84, Subpart X, 84.295)

Canister Type	Test atmosphere: Gas or Vapor	Test atmosphere: Concentration (ppm)	Test atmosphere: Flowrate (Lpm) Nonpowered	Test atmosphere: Flowrate (Lpm) Powered Tight	Test atmosphere: Flowrate (Lpm) Powered Loose	Maximum allowable penetration (ppm)	Minimum service life (min.)
Chlorine. . . .	Cl_2	20,000	64	115	170	5	12
Sulfur Dioxide.	SO_2	20,000	64	115	170	5	12
Ammonia	NH_3	30,000	64	115	170	50	12
Carbon monoxide	CO	20,000	64[b]			(c)	60[d]
	CO	5,000	32[d]			(c)	60
	CO	3,000	32[b]			(c)	60
Combination of 2 or 3 of above types[e]							
Combination of all of above types plus organic vapor (84.308(a)[f]							

[a]Minimum life shall be determined at the indicated penetration.

[b]Relative humidity of test atmosphere shall be 95 ± 3 percent; temperature of test atmosphere shall be 25 ± 2.5 °C.

[c]Maximum allowable CO penetration shall be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.

[d]Relative humidity of test atmosphere will be 95 ± 3 percent; temperature of test atmosphere entering the test fixture shall be between 0 °C and +2.5 °C.

[e]Test conditions and requirements shall be applicable as shown above.

[f]Test conditions and requirements shall be applicable as shown above, except the minimum service lives for Cl_2, SO_2, organic vapor, and ammonia shall be 6 min. instead of 12 min.

TABLE 7--CANISTER SERVICE LIFE TESTS AND REQUIREMENTS FOR LOW CAPACITY GAS AND VAPOR AIR-PURIFYING CANISTERS
(42 CFR Part 84, Subpart X, 84.295)

Canister Type	Test atmosphere: Gas or Vapor	Test atmosphere: Concentration (ppm)	Test atmosphere: Flowrate (Lpm) Nonpowered	Test atmosphere: Flowrate (Lpm) Powered Tight	Test atmosphere: Flowrate (Lpm) Powered Loose	Maximum allowable penetration (ppm)	Minimum service life (min.)
Chlorine	Cl_2	5,000	64	115	170	5	12
Sulfur Dioxide	SO_2	5,000	64	115	170	5	12
Ammonia	NH_3	5,000	64	115	170	50	12
Carbon monoxide	CO	20,000[h]	64[b]			(c)	60
	CO	10,000[i]	64[b]			(c)	60[g]
	CO	5,000	32[d]			(c)	60
	CO	3,000	32[b]			(c)	60
Combination of 2 or 3 of above types[e]							
Combination of all of above types plus organic vapor (84.308 (a)[f]							

[a]Minimum life will be determined at the indicated penetration.

[b]Relative humidity of test atmosphere shall be 95 ± 3 percent temperature of test atmosphere shall be 25 ± 2.5 °C.

[c]Maximum allowable CO penetration shall be 385 cm^3 during the minimum life. The penetration shall not exceed 500 p/m during this time.

[d]Relative humidity of test atmosphere shall be 95 ± 3 percent; temperature of test atmosphere entering the test fixture shall be between 0 °C and +2.5 °C.

[e]Test conditions and requirements shall be applicable as shown above.

[f]Test conditions and requirements shall be applicable as shown above, except the minimum service lives for Cl_2, SO_2, organic vapor, and ammonia shall be 6 min. instead of 12 min.

[g]If effluent temperature exceeds 100 °C during this test for a gas mask for escape only, it shall be equipped with an effective heat exchanger.

[h]Low capacity full facepiece devices for entry into and escape from appropriate non-IDLH atmospheres.

[i]Low capacity mouthpiece/noseclamp devices for escape only from appropriate non-IDLH atmospheres.

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(3) Units conditioned at 25±2.5 °C by passing 85±3 percent relative humidity air through them for 6 hours at the flowrates stated in (b)(2) of this section shall be tested at 85±3 percent relative humidity.

(c) The conditioned canisters shall be resealed, kept in an upright position at room temperature, and tested within 8 hours.

(d) High capacity gas and vapor canisters shall be tested according to and shall meet the minimum requirements set forth in Table 6.

(e) Low capacity gas and vapor canisters will be tested according to and shall meet the minimum requirements set forth in Table 7.

(f) (1) Since carbon monoxide does not have adequate warning properties, all gas and vapor canisters, except those with mouthpieces/noseclamps, designated as providing respiratory protection against carbon monoxide shall have a window or other indicator to warn the wearer at 80±10 percent of the total service life.

(2) Other canisters may also be equipped with a window or other indicator to warn of imminent leakage of other gases or vapors.

(3) The window indicator canisters shall be tested as regular canisters, but shall show a satisfactory indicator change or other warning at 80±10 percent of the total service life.

Subpart Y—Organic Gas and Vapor Air-Purifying Cartridge and Canister Respirators

§ 84.300 Description and limitations.

(a) Organic gas and vapor air-purifying respirators are respirators which have cartridges or canisters which are designed to remove gases and vapors from air. They are for use only in environments which contain adequate oxygen to support life and are not intended for use against any organic gases or vapors with poor warning properties unless MSHA approves such use controls, or where the respirator is equipped with an effective, reliable end-of-service-life indicator. Also, they are not for use against gases or vapors which generate high heats of reaction with sorbent material.

(b) Organic gas and vapor air-purifying respirators for protection against organic gases or vapors which do not have adequate warning properties may be certified according to the requirements as set forth in Subpart Z.

§ 84.301 Organic gas and vapor air-purifying cartridge respirators.

(a) Organic gas and vapor air-purifying cartridge respirators (previously called chemical-cartridge respirators) are designed for use as respiratory protection during entry into and escape from non-IDLH atmospheres. They may be used in a concentration of organic gas and vapor which is non-IDLH, or up to a maximum concentration of 1,000 ppm of the organic vapor or gas, whichever concentration is lower.

(b) Organic gas and vapor air-purifying cartridge respirators are further classified as Powered or Non-powered according to their design.

§ 84.302 Organic gas and vapor air-purifying canister respirators.

(a) Organic gas and vapor air-purifying canister respirators (previously called gas masks) which contain a full facepiece are designed for use as respiratory protection in atmospheres which contain adequate oxygen to support life as follows:

(1) Entry into and escape from non-IDLH atmospheres, and

(2) Escape from IDLH atmospheres. However, those respirators which do not contain full facepieces but contain a half facepiece or mouthpiece/noseclamps may only be used for escape.

(b) Organic gas and vapor air-purifying canister respirators are classified according to their sorbent capacity as follows:

(1) *High capacity.* A gas and vapor air-purifying canister respirator which consists of a full facepiece, canister(s) (previously front or back mounted), and associated harness and connections.

(2) *Low capacity.* A gas and vapor air-purifying canister respirator which consists of a facepiece, canister(s) (previously chin-style or escape), and associated harness and connections.

§ 84.303 Labeling requirements.

(a) The manufacturer shall provide as part of the labeling a list of organic vapor(s) and gas(es) which have adequate warning properties and against which their respirators provide adequate protection for the wearer.

(b) A warning shall be placed on the labeling or instructions of each organic gas and vapor air purifying cartridge and canister respirator, and on the label of each canister and cartridge respirator, alerting the wearer that they do not provide protection against all organic vapor and gas air contaminants and that they are not intended to be used against substances with inadequate warning properties, except as indicated in § 84.300.

§ 84.304 Color and marking requirements.

The color and markings of all canisters and cartridges or labels shall conform with the requirements of the American National Standard for Identification of Air-Purifying Respirator Canisters and Cartridges, ANSI, K13.1–1973 standard, obtainable from the American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018.

§ 84.305 Performance requirements; General.

Organic gas and vapor air-purifying canister and cartridge respirators, and the individual components of each device shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the face seal leakage tests and requirements in Subpart R, the general requirements for air-purifying respirators in Subpart U, and the requirements for performance and protection specified in the tests described in §§ 84.306 through 84.308.

§ 84.306 Breathing resistance test.

(a) Organic gas and vapor air-purifying cartridge respirators shall meet the breathing resistances set forth in § 84.283 except that the resistance shall be measured at the end of service life specified in § 84.308(b).

(b) Organic gas and vapor air purifying canister respirators shall meet the breathing resistances set forth in § 84.293 except that the resistance shall be measured at the end of service life specified in § 84.308(a).

§ 84.307 Particulate tests; Canisters and cartridges containing filters.

Organic gas and vapor air-purifying respirators in combination with particulate filter media shall meet the requirements set forth in § 84.211 except that the maximum allowable resistance of complete particulate and gas, vapor, or gas and vapor respirators shall not exceed the maximum allowable limits required under § 84.306.

§ 84.308 Service life test.

(a) The service life of all organic gas and vapor canisters shall be determined by continually passing a $CC1_4$ test atmosphere of 25±2.5° C, known concentration and flow rate through the canister while monitoring the downstream concentration. The canisters will be tested as described in Subpart X § 84.295 except that the service life test shall be as follows:

Canister Type	Test atmosphere: Gas or Vapor	Concentration (ppm)	Flowrate (Lpm): Nonpowered	Powered: Tight	Powered: Loose	Maximum allowable penetration (ppm)	Minimum service life (min.)
High capacity.....	CCl_4	20,000	64	115	170	5	12
Low capacity.....	CCl_4	5,000	64	115	170	5	12

(b) The service life of all organic gas and vapor cartridges shall be determined by continually passing a CCl_4 test atmosphere at 25±2.5° C, known concentration, and flow rate through the cartridge while monitoring the downstream concentration. The cartridge shall be tested as described in Subpart W § 84.284 except that the service life test shall be as follows:

Cartridge	Test atmosphere: Gas or Vapor	Concentration (ppm)	Penetration (ppm)	Minimum life (min.)
OV cartridge	CCl_4	1000	5	50

Where a respirator is designed for respiratory protection against more than just organic vapor(s) and gas(es) (also ammonia, chlorine, hydrogen chloride, methylamine, or sulfur dioxide), the minimum service life shall be one-half that for each type as listed above or in § 84.284 Table 5.

Subpart Z—Gas and Vapor Air-Purifying Respirators for Unlisted Contaminants

§ 84.310 Description.

Some gas and vapor air-purifying respirators are designed for respiratory protection against a specific vapor or gas contaminant which was not addressed in Subpart W, Subpart X, or Subpart Y of this part. Such respirators are designed for protection from atmospheres containing the specific contaminant and containing adequate oxygen to support life. They are described according to their construction as follows:

(a) High capacity gas and vapor air-purifying canister respirators;

(b) Low capacity gas and vapor air-purifying canister respirators;

(c) Gas and vapor air-purifying cartridge respirators;

(d) Powered gas and vapor air-purifying respirators; and

(e) Other devices, including combination respirators.

§ 84.311 Application for certification.

Each such respirator may be certified if the applicant submits a request for such certification to NIOSH. NIOSH shall consider each such application and accept or reject the application after a review of the application's scientific merit and supporting data, and/or appropriate testing, and/or a review of the effects on the wearer's health and safety, and in light of any field experience in use of gas and vapor air-purifying respirators as protection against such hazards.

§ 84.312 General test requirements.

(a) All applications for certification of such respirators designed as respiratory protection against substances not specifically set forth in Part 84 shall contain but not be limited to the following information and supporting data:

(1) Data on desorption of gases and vapors from the sorbent including a flow-temperature study at low and high temperatures and humidities: Data shall be sufficient to demonstrate that the desorbed level of gases and vapors will not be harmful to the wearer.

(2) Data on desorption of impregnating agents used in the cartridge/canister including a flow-temperature study at low and high temperatures and humidities: Data shall be sufficient to demonstrate safe levels of desorbed agents.

(3) A list of catalytic products produced in the reaction of the sorbent with the contaminant gases and vapors, their concentrations and their toxicities.

(4) Data on the toxicity of the impregnating agent(s) sufficient to ensure that there is no creation of hazard to the wearer.

(5) A family of breakthrough time curves at low and high temperatures, humidities and concentrations.

(6) Data on the effects of the commonly found interferences which could impair the ability of the respirator to protect the wearer (i.e., decreased service life). Studies and/or data demonstrating that the unlisted substance has "adequate warning properties" for those respirators that are not equipped with end-of-service-life indicators.

(b) NIOSH reserves the right to require additional pertinent data needed in order to determine the intrinsic safety of the respirator.

§ 84.313 Performance requirements.

Such respirators and the individual components of each device shall, as appropriate, meet the minimum construction requirements set forth in Subpart Q, the quantitative leakage tests and requirements set forth in Subpart R, the general requirements for air-purifying respirators set forth in Subpart U, and the minimum requirements for performance as established by NIOSH on a case by case basis considering factors such as the contaminant's PEL, normal environmental concentration ranges, the contaminant's inherent toxicity, work exposure time requirements, normal environmental use conditions, and effects on the wearer's health and safety.

§ 84.314 Requirements for end-of-service-life indicators.

(a) Each canister or cartridge respirator submitted for testing and certification in accordance with this subpart shall be equipped with an end-of-service-life indicator (ESLI) (except for those respirators intended for use against substances having adequate warning properties) which shows a satisfactory indicator change or other obvious warning before the NIOSH established limit is reached. The

indicator shall show such change or afford such warning less than or equal to 90 percent of the total service life.

(b) The applicant shall provide the following data:

(1) Data demonstrating that the ESLI is a reliable indicator of sorbent depletion (less than or equal to 90 percent of service life). These data shall include the results of a flow-temperature study at low and high temperatures, humidities, and contaminant concentrations which are reasonably representative of actual workplace conditions where it is anticipated that a given respirator will be used. A minimum of 2 contaminant levels must be utilized for each study, including the limit level (threshold limit value, etc.) and the limit level times the assigned protection factor for the respirator type.

(2) Data on desorption of any impregnating agents used in the indicator. These data shall include the results of a flow-temperature study at low and high temperatures and humidities which are reasonably representative of actual workplace conditions where it is anticipated that a given respirator will be used. Data shall be sufficient to demonstrate safe levels of desorbed agents.

(3) Data on the effects of interferences which are commonly found in the kinds of workplaces where it is anticipated that a given respirator will be used. Data should be sufficient to show which interferences could impair the effectiveness of the indicator and the degree of impairment and to show which substances will not affect the indicator.

(4) Data on any reaction products produced in the reaction between the sorbent and the contaminant gases and vapors against which it is designed to protect, including the concentrations and toxicities of such products.

(5) Data which predicts the storage life of the indicator. Simulated aging tests will be acceptable.

(c) All passive ESLI shall be visible to the wearer and shall be detectable to people with physical impairments such as color blindness.

(d) If color change is utilized, reference colors for the initial color of the indicator and final color of the indicator shall be placed adjacent to the indicator.

(e) For all active and passive indicators:

(1) The ESLI shall not interfere with the effectiveness of the face seal.

(2) The ESLI shall not change the weight distribution of the respirator to the detriment of the facepiece fit.

(3) The ESLI shall not interfere with required lines of sight.

(4) Any ESLI that is permanently installed in the respirator facepiece shall be capable of withstanding cleaning and a drop from a 6-foot height. Replaceable ESLI must be capable of being easily removed and shall also be capable of withstanding a drop from a 6-foot height.

(5) A respirator with an ESLI shall still meet all other applicable requirements set forth in 42 CFR Part 84.

(6) Any electrical components utilized in an ESLI shall conform to the provisions of the National Electrical Code and be "intrinsically safe." Where permissibility is required, the respirator shall meet the requirements for permissibility and intrinsic safety set forth in 30 CFR Part 18, Subpart D, § 18.82, Permit to use experimental electric face equipment in a gassy mine or tunnel. Also, the electrical system shall include an automatic warning mechanism that indicates a loss of power.

(7) Effects of interferences for substances which are commonly found in workplaces where it is anticipated that a given respirator will be used must be determined and those substances which hinder ESLI performance shall be identified. Substances which are commonly found where the respirator is to be used must be investigated. Data sufficient to indicate whether the performance is affected must be submitted to NIOSH. Manufacturers of respirators equipped with ESLI shall label the respirator in such a manner to make the user aware of use conditions that could cause false positive and negative ESLI responses.

(8) The ESLI shall not create any hazard to the wearer's health or safety.

(9) Consideration shall be given to the potential impact of common human physical impairments on the effectiveness of the ESLI.

(f) A cartridge or canister respirator without an ESLI may be certified for use but usage will be strictly limited to the environmental conditions and use situations which shall be prominently displayed on the label.

Appendix A.—Assumed Conditions of Use

The use of respirators referenced to in this part are governed by MSHA. However, for the purpose of certifying respirators under the provisions of this part, the following general assumptions are made about the conditions in which respirators are to be used:

(a) Cartridge respirators, canister respirators, particulate respirators, and air-line respirators will only be used in atmospheres which are not immediately dangerous to life and health (IDLH) except that canister respirators may be used to escape from, but not entry into, IDLH atmospheres which have adequate oxygen.

(b) Positive pressure self-contained breathing apparatus will be used in all hazardous atmospheres including IDLH atmospheres, provided appropriate use practices are followed. Negative pressure long duration (over 1 hour), closed-circuit devices may be used where IDLH and flammable or explosive atmospheres are present, such as for mine rescue, where the applicable regulatory agency so approves.

(c) Respirators incorporating a mouthpiece will be used only for emergency escape and will not be used for entry into any hazardous atmosphere.

(d) Gas and vapor respirators without end-of-service-life indicators will not be used for protection against gases and vapors that do not have adequate warning properties unless MSHA approves such use.

(e) Gas and vapor respirators will be used only when adequate warning properties of the contaminant exist to warn the wearer of sorbent breakthrough; such warning properties shall not be compromised by the presence of additional substances or situations which interfere with the odor or irritation threshold of the wearer. Adequate warning properties means that a gas or vapor has a reliable and persistent odor or irritation threshold which is less than three times its threshold limit value level and, if a ceiling limit is established, less than one-third its ceiling level.

(f) Gas and vapor cartridge respirators will be used in concentrations in excess of the maximum use concentrations specified in this part.

(g) Atmosphere supplying respirators will only be used when supplied with breathing gas that meets the following standards, as applicable:

(1) Compressed, gaseous breathing air shall meet the applicable minimum requirements for Type I, Grade D of ANSI Z86.1–1973 standard.

(2) Compressed, liquefied breathing air shall meet the applicable minimum requirements of Type II, Grade D of ANSI Z86.1–1973 standard.

(3) Oxygen, including liquid oxygen, shall meet the minimum requirements for medical or breathing oxygen set forth in the U.S. Pharmacopoeia, 20th revision, 15th edition of the National Formulary (USP20NF15) dated July 1, 1980, and chemically generated oxygen shall meet the requirements of Military Specification MIL–O–83252, dated 1972, or Military Specification MIL–O–15633, dated 1964, whichever is applicable.

(h) Airline respirators are used only in non-IDLH atmospheres.

(i) Respirators certified under the provisions of this part will only be used as part of a complete respirator program which encompasses all aspects of respirator use including: hazard definition, selection, fitting, training, maintenance, storage, monitoring, use supervision, and administration.

(j) The breathing gas contained in self-contained breathing apparatus shall meet the following requirements as applicable:

(1) Oxygen, including liquid oxygen, shall meet the minimum requirements for medical or breathing oxygen set forth in the U.S. Pharmacopoeia, 20th revision, 15th edition of

the National Formulary (USP20NF15) dated July 1, 1980, and chemically generated oxygen shall meet the requirements of Military Specification MIL–O–83252, dated 1972, or Military Specification MIL–O–15633, dated 1964, whichever is applicable.

(2) Except as prescribed in paragraph (c) of this section, compressed gaseous breathing air shall meet the requirements for Type I, Grade D of ANSI Z86.1–1973 standard.

(3) Where necessary to assure a concentration of 19.5 percent oxygen in the wearer's breathing zone with a closed- or open-circuit self-contained breathing apparatus, the concentration of oxygen may exceed the 23 percent maximum concentration prescribed in ANSI Z86.1–1973 standard for Type I, Grade D in mixed compressed gaseous breathing air, but shall not exceed 30 percent maximum concentration.

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Part III

Environmental Protection Agency

40 CFR Parts 124, 144, 146, and 148
Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to All Class I Wells; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 144, 146 and 148

[FRL-3220-3]

Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to All Class I Wells

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is today proposing its approach to implementing the Congressionally mandated prohibitions on the underground injection of hazardous waste. This proposed action is being taken in response to amendments to the Resource Conservation And Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA). In addition, the Agency is proposing amendments to the existing Underground Injection Control (UIC) Regulations as they pertain to hazardous waste injection.

Proposed 40 CFR Part 148 would codify, for those hazardous wastes that are disposed in Class I hazardous waste injection wells, the directly applicable sections of Part 268, the Agency's regulatory framework for implementing the land disposal restrictions (51 FR 40572 et seq. November 7, 1986).

Part 148, would also specify the effective date of the restrictions on injection of specific hazardous wastes. Today's proposal includes proposed effective dates for the restrictions on injection of solvent wastes and of dioxin containing wastes. Further proposals will specify effective dates for "California List" wastes (as defined by section 3004(d) of RCRA) and for the wastes prohibited under section 3004(g) of RCRA. Finally, Part 148 would define the two circumstances under which a waste otherwise prohibited from injection may be injected: (1) When the waste has been treated in accordance with the requirements of Part 268 pursuant to Part 3004(m) of RCRA; or (2) when an applicant has demonstrated to the satisfaction of the Administrator that there will be no migration of hazardous constituents from the injection zone for as long as the wastes remain hazardous. Under this proposal, an applicant would submit a petition to the Administrator containing the demonstration. A showing of no-migration would be made based on either an absence of fluid movement out of the injection zone or an active process of waste reduction, transformation, or immobilization within the injection zone. Upon a sucessful showing the applicant would be granted an exemption from the prohibition.

Today's proposal also contains changes to 40 CFR Part 146, the Class I injection well regulations. These proposed amendments to Part 146 apply to owners and operators of all Class I hazardous waste wells, including: Those injecting wastes not yet subject to a prohibition, those injecting wastes which meet the treatment standards promulgated pursuant to section 3004(m) of RCRA, and those whose wastes have been banned and who have received an exemption under Part 148. The changes being proposed today in §§ 124.10 and 146.13 pertain to all owners and operators of Class I wells.

DATES: Comments must be received on or before October 26, 1987; the public hearing will be held on September 21, 1987, from 9:30 a.m. to 4:30 p.m. EDT; requests to present oral testimony must be received on or before September 7, 1987.

ADDRESSES: Comments (in duplicate), requests to testify, and inquiries concerning the Public Docket should be addressed to Eric J. Callisto, EPA, Office of Drinking Water (WH-550), 401 M St. SW., Washington, DC 20460. The hearing will be held in the Auditorium of the EPA Training Center, Waterside Mall, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Atcheson, Office of Drinking Water, EPA, (202) 382-5508.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Background

A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial

new responsibilities on those who handle hazardous waste.

The amendments prohibit the continued land disposal of untreated hazardous waste beyond specified dates, unless the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA sections 3004 (d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in section 3004(f) for making determinations regarding the disposal of dioxins and solvents and the list of wastes specified in 3004(d)(2), termed the California list, in injection wells.

Wastes treated in accordance with treatment standards set by EPA under section 3004(m) of RCRA are not subject to the prohibition and may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon promulgation unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h) (1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable effective date. In addition, two 1-year case-by-case extensions of the effective date may be granted under certain circumstances (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the legislation specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The legislation also sets forth a series of deadlines for Agency action. For a full explanation of the statutory framework the reader is referred to the preamble for the regulations that EPA has already proposed or promulgated under the statute particularly 51 FR 1602 *et seq.*, January 14, 1986; 51 FR 19300 *et seq.*, May 28, 1986; 51 FR 40572 *et seq.*, November 7, 1986; 51 FR 44714, *et seq.*, December 11, 1986; 52 FR 22356 *et seq.*, June 11, 1987; 52 FR 21010 *et seq.*, June 4, 1987; and 52 FR 25760 *et seq.*, July 8, 1987. The following discussion describes more specifically the statutory framework for injection wells.

1. Section 3004(f)

Section 3004(f) addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous . . .". If EPA does not determine those instances where disposal would meet this standard, the injection of these wastes is prohibited under section 3004(f)(3).

2. Section 3004(g)

Section 3004(g) of RCRA is the same for all methods of land disposal. It requires the Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in section 3004 (d) and (e). EPA submitted this schedule to Congress on May 28, 1986 (51 FR 19300 *et seq.*).

Section 3004(g)(5) provides that the regulation promulgated by the Administrator must prohibit methods of land disposal except for methods "which the Administrator determines will be protective of human health and the environment for as long as the waste remain hazardous."

Further, the section provides that, except for wastes which have been treated to the standards expressed in section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous"

RCRA section 3004(g)(6) provides that if EPA fails to take action under 3004(g)(5) by the statutory deadlines for any hazardous waste according to the schedule, such hazardous waste may be disposed of in landfills or surface impoundments only if such facilities are in compliance with the minimum technological requirements set forth in RCRA section 3004(o). In this situation, placement of such wastes in other types of land disposal units (e.g., deep injection wells) would not be precluded by section 3004(g)(6). See 130, Cong. Rec. S9192 (daily ed., July 25, 1984). If EPA fails to set treatment standards, grant a petition or grant a variance under section 3004(h) for any of the scheduled listed wastes by May 8, 1990, then the particular wastes involved will be prohibited from land disposal.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or identified waste.

3. Proposed Standard for Demonstrating Protection of Human Health and the Environment

Even though section 3004 (f) and (g) do not use the same language, they both require a demonstration that injection is protective of human health and the environment. Under (g) it is clear that such a demonstration must include a showing of no-migration from the injection zone. EPA believes that the no migration standard of section 3004(g) helps define what is protective of human health and the environment under section 3004(f). Section 3004(g), by its terms, restricts the injection of certain hazardous wastes into injection wells. Since the wastes covered under section 3004(f) are just as hazardous to human health and the environment as those under section 3004(g), EPA believes that injection of either set of wastes should be subject to the same standard. Thus, the Agency believes that the demonstration should be similar for all injection wells regardless of the type of injected waste and that the no-migration standard should apply to all.

For this reason, the Agency is proposing to use a petition process and standard that is the same for all banned hazardous wastes that are injected whether they fall under section (f) or (g). The Agency is specifically seeking comment on this approach.

B. The Regulatory Negotiation Process

The Agency developed much of this proposal via a process called regulatory negotiation. This is a process where, under the aegis of a formally chartered Federal Advisory Committee, a balance and mix of individuals and groups

directly affected by a proposed rulemaking, including EPA, work together openly and collaboratively in an attempt to develop a consensus which EPA can use as the basis of the proposed rulemaking.

Representatives from industry, environmental and public interest groups, and State underground injection control agencies joined with EPA in an attempt to reach consensus on a proposed Underground Injection Rule. For over six months they worked on reaching agreement on a broad range of technical and procedural requirements relating to 40 CFR Part 146 and Part 148.

Despite substantial agreement on a number of issues and approaches, the group was unsuccessful in generating a draft rule which they all could agree should be used as the basis of the proposal.

Notwithstanding this lack of full consensus, as EPA felt they represented the soundest approach, many of the provisions of this proposal reflect the thinking of the negotiating Committee; and today's proposal is substantially similar to the Committee's last draft in many regards.

C. Effect on State Primacy

The requirements being proposed today could affect the status of States with primary enforcement authority for the UIC program. Specifically, a State would have 270 days from the date new regulations at Parts 124, 144 and 146 become final to amend its program to conform with the new regulations (section 1422(b)(1) of the SDWA). Of course, a State which now prohibits Class I wells in general or injection of hazardous waste would not be required to make such a demonstration, since such a program would be more stringent than either existing or new UIC requirements.

The Agency notes that the proposed requirements would remove the existing "shield" for hazardous waste well permits. That is, under the current regulations, permits may not be modified, revoked or reissued to require compliance with new regulations unless the permittee requests or agrees. Under the proposed amendment to Part 144, new regulations would be grounds for initiating permit modification. The Agency expects that part of a State's demonstration that its program conforms with the amended regulations would be an amendment to the Memorandum of Agreement where the state would agree on a schedule to modify existing permits as necessary to incorporate the new regulations.

States need not seek authorization to administer Part 148 to maintain UIC primacy. However, the Agency also expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant exemptions from land disposal restrictions. However, before such authorization can be granted the State would have to demonstrate that it has authorization to implement section 3004 (f) and (g) of RCRA. A thorough discussion of the conditions under which such authorization can take place can be found in 50 FR 28728 *et seq.*, July 15, 1985. In addition, where jurisdiction for UIC and RCRA do not reside in the same State Agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

II. Summary of Today's Proposal—New Part 148

A. General Approach

The Agency has promulgated in 40 CFR Part 268 the regulatory framework for implementing the land disposal restrictions. (51 FR 40572 *et seq.*, Nov. 7, 1986). Proposed Part 148 would codify the sections of Part 268 that are directly applicable to injection wells. In addition, the proposal specifies effective dates for restrictions on certain injected hazardous wastes. Proposed Part 148 would also provide the standard and procedures by which petitions to dispose of an otherwise restricted waste by injection would be reviewed and exemptions pursuant to these petitions would be granted or denied.

Part 148 is similar in approach to Part 268. The Agency believes, however, that it is useful to the regulated community and to the State regulators to have requirements regarding injection wells located in the same portion of the Code of Federal Regulations as are other requirements pertaining to these wells. Hazardous waste injection wells are regulated under the authority of both the Safe Drinking Water Act (SDWA) and RCRA. These regulations have been codified along with other regulations under SDWA in Parts 144, 145, 146 and 147 of the Code of Federal Regulations.

We expect that eventually the Part 148 standards will be implemented by the same State agencies that currently have primacy for the UIC program.

The framework under which the Agency is implementing the land disposal restrictions is as follows: For each waste that the Agency prohibits from land disposal, the Agency intends to promulgate treatment standards under Part 268, Subpart D that meet the requirements of section 3004(m) of RCRA. After the standards are effective, wastes may be disposed of in a RCRA Subtitle C facility (e.g. a UIC Class I hazardous waste well) if they meet the treatment standard.

Upon the effective dates of the prohibitions, wastes that do not comply with the applicable treatment standards or are not subject to a national capacity variance, or are not placed in a facility satisfying the requirements of section 3004(o), or that do not have a case-by-case variance under § 268.5 are prohibited from placement in land disposal units unless an exemption has been granted by the Administrator under § 268.6 pursuant to a petition demonstrating that such disposal units will not allow migration of hazardous constituents for as long as the wastes remain hazardous.

For injection wells, EPA is proposing that the same treatment standards that have been promulgated in Part 268 Subpart D be applied to injected wastes as provided in Part 148 Subpart B. In some cases, however, the statutory effective dates for the prohibitions may be different for the following reasons. First, the statute provides separate statutory deadlines for underground injection of solvents and dioxins and the California list wastes in section 3004(f). Effective dates may also differ if EPA fails to promulgate prohibitions for the first two deadlines for scheduled wastes under section 3004(g). The statutory ban that would go into effect in these circumstances would prohibit only disposal in landfills and unlined surface impoundments, not injection wells. Finally, even for the final deadline for scheduled wastes, which applies to all types of land disposal units, including underground injection, EPA may grant different capacity extensions for different types of units. After the effective date of a prohibition in Part 148 Subpart B, untreated wastes can only be injected if an exemption has been granted by the Administrator pursuant to a petition under Part 148 Subpart C. The Agency notes, however, that such a petition need not be submitted on a well-by-well basis or even on a facility basis. As provided in the legislative history: "This demonstration could be made either by an individual applicant for a particular facility, or alternatively, it could be made for a class of facilities with like containment mechanisms and natural hydrogeological conditions. Such a demonstration could be made by a State with an approved underground injection control program for injection wells under such program which meet the test of new section 3004(b)(2)" (See Senate Report 98–284, S 757, p.15). The

Agency believes that such broad petitions may be feasible in the context of injection wells. For example, the Agency is aware that both in Texas and in the Great Lakes area many wells inject into one formation, and that in some cases injected wastes would behave similarly. The Agency is soliciting comments on whether such petitions are being contemplated by the regulated community, whether any State is intending to submit a petition, and whether today's proposed regulations do (as the Agency believes) contain enough flexibility to make such a petition a viable option.

B. Applicability

1. Scope of the Hazardous Waste Injection Restrictions

Proposed Part 148 would codify the land disposal restrictions for those hazardous wastes that are disposed in Class I hazardous waste injection wells. Injection wells include by current regulatory definition any "bored, drilled or driven shaft, or a dug hole, whose depth is larger than the largest surface dimension" that is used for the subsurface emplacement of fluids. Class I wells are wells used to dispose of wastes that are fluids, in geologic formations that are located beneath all underground sources of drinking water.

2. Relationship of these Rules to Restrictions in section 3004(b)(1)

The regulations in Parts 124, 144, 146, and 148 would apply regardless of the type of formation into which injection was taking place. Even though the current inventory of Class I hazardous waste injection wells indicates that all currently active Class I hazardous waste wells use elastic or carbonate sedimentary strata as injection zones, other types of geologic formations, such as evaporites, may also be suitable for injection.

These regulations, however, do not in and of themselves address the prohibition on emplacement of noncontainerized or bulk liquid hazardous waste in any salt dome formation, salt bed formation, underground mine or cave imposed by section 3004(b)(1) of RCRA. This section prohibits the placement of such wastes in such formations until: (1) The Administrator has determined after notice of opportunity for hearings on the record in the affected areas, that such placement is protective of human health and the environment (section 3004(b)(1)(A)); (2) the Administrator has promulgated performance and permitting standards for such facility under Subtitle C (section 3004(b)(1)(B); and (3) a permit has been issued under section 3005(c).

The Agency is proposing that the regulations promulgated for disposal of hazardous fluids into wells in Part 146, as they would be amended in this proposal, constitute performance and permitting standards for such facilities as required by section 3004(b)(1)(B). In addition, EPA believes a UIC permit which qualifies as a RCRA permit-by-rule under 40 CFR 270.60 would satisfy the permit requirement of section 3004(b)(1)(C). Finally a hearing on the record as required by section 3004(b)(1)(A) could be held jointly with a hearing on a petition under this subpart. The Agency is asking for comment on this approach.

The Agency believes that even with the proposed amendments, the UIC regulations retain sufficient flexibility to handle the somewhat different requirements (particularly with regard to monitoring and closure/post closure care) that would be imposed on injection of fluids in salt domes, salt beds or underground mines or caves. The regulations as they now stand have been used to issue permits for storage of hydrocarbons in salt domes, sand backfill operations in mines, and for one facility which proposes to emplace non-liquid hazardous waste in a salt dome. The Agency also believes that the proposed requirements for demonstrating no-migration would be appropriate for wastes emplaced in such formations.

In the Final Rule on Land Disposal Restrictions published November 7, 1986, the Agency made some determinations regarding the scope of the land disposal restrictions which are applicable to injection. These are simply repeated in this proposal for the convenience of injection well owners and operators and of the regulators of these practices.

The Agency has determined that the restrictions limit the injection of wastes after the restriction deadlines, but do not apply to wastes injected prior to the applicable dates. Thus, wastes injected prior to the statutory deadlines for restriction need not be withdrawn from the injection zone for treatment. The restrictions do not apply to wastes produced by conditionally exempt small quantity generators as defined under 40 CFR 261.5, but they do apply to wastes produced by small generators of 100 to 1000 kilograms of hazardous wastes in a calendar month, or to generators of more than 1 kilogram per month of acute hazardous waste.

The restrictions apply both to wells authorized by rule and to permitted wells. All permitted wells are subject to the restrictions regardless of existing permit conditions, because the provisions of RCRA require compliance by all facilities even though the requirements are not specifically referenced in the permit conditions.

3. CERCLA Response Action and RCRA Corrective Action Wastes

Under section 3004(e)(3), Congress provided an exemption from the land disposal restriction provisions for disposal of contaminated soil and debris from CERCLA 104 and 106 response actions and RCRA corrective actions until November 1988. CERCLA and RCRA soil and debris wastes include, but are not limited to soils, dirt and rock as well as materials such as contaminated wood, stumps, clothing, equipment, building materials, storage containers and liners. In many cases soils and debris will be mixed with liquids or sludges. The Agency will determine on a case-by-case basis whether all or portions of such mixtures should be considered soil or debris. It is, therefore, possible that some of these wastes could be candidates for injection and today's proposal repeats the statutory exemption. All other CERCLA response action wastes and RCRA corrective action wastes are subject to the land disposal rule codified in Part 268 and proposed today in Part 148.

C. General Requirements

1. Definitions

New Part 148, as proposed, uses two terms which have not previously been defined in the UIC program. The first, "injection interval", is used to distinguish that part of the injection zone into which fluids are actively emplaced, from the remaining portions of the injection zone which are authorized to receive fluids. The second, "transmissive fault" (or transmissive fracture), refers to a fault or fracture which has sufficient permeability to allow fluids to move between formations.

2. Dilution Prohibition

The proposed rule adopts the prohibition on dilution by reference to § 268.3. This section prohibits dilution of restricted wastes as a substitute for treatment to achieve compliance with either a treatment standard or in the case of the California List to bring the waste below the statutory restriction level. In addition, § 268.3 also prohibits dilution of wastes to circumvent the effective date of a prohibition. Section 268.3 is intended to prohibit dilution as a means of circumventing the

requirements imposed by the land disposal prohibitions. The Agency does not intend to prohibit dilution which is necessary to facilitate proper treatment (51 FR 40592).

3. Case-by-Case Extensions

The proposed rule adopts the framework for granting case-by-case extensions to the effective date of a prohibition by reference to § 268.5. Briefly, this section provides that the Agency will consider granting up to a one-year extension (renewable once) if the applicant demonstrates that a binding contract has been entered into to construct or otherwise provide alternative capacity that cannot reasonably be made available by the applicable effective date due to circumstances beyond that applicant's control. It is important to note that the Administrator of EPA will be solely responsible for granting these variances, because these determinations must be made on a national basis. In addition, it is clear that section 3004(h)(3) of RCRA intends for the Administrator to grant case-by-case extensions after consulting the affected States on the basis of national concerns which only the Administrator can evaluate. Therefore, States cannot be authorized for this aspect of the program (51 FR 40618).

4. Waste Analysis and Records

The proposed rule adopts the waste analysis and record-keeping requirements of Part 268, by reference to § 268.7. This section is intended to provide the information necessary to determine whether a waste is subject to the provisions of this Part and whether it meets the treatment requirements and to follow prohibited wastes from point of generation or point of common aggregation through treatment to disposal. For further explanation the reader is referred to 51 FR 40619 *et seq.*

D. Waste Specific Prohibitions—F001 through F005 Solvent Wastes

As provided for in section 3004(m) of RCRA, the Agency identified on November 7, 1986, rule treatment standards applicable to spent solvent wastes (including solvent mixtures) F001, F002, F003, F004 and F005 based on what levels of treatment could be achieved by Best Demonstrated Available Technologies (BDAT) for those solvents. We are proposing that the treatment standards be the same for solvent wastes that are currently injected and are requesting comment from the regulated community on this approach. Particularly, we are interested in any data that would indicate whether some waste streams are currently handled solely by injection and whether some waste streams could not be treated to the specified levels. Today's rule proposes effective dates for these spent solvent wastes based on the availability of alternative capacity to treat the volumes that are currently injected.

Today's proposal does not propose effective dates for the commercial chemical products, manufacturing chemical intermediates, and off-specification commercial chemical products (P and U wastes) listed at § 261.33 that would otherwise be listed as F001–F005 spent solvent wastes. These wastes will be addressed simultaneously for all forms of land disposal according to the schedule promulgated on May 28, 1986 (51 FR 19300). This proposal also does not cover the four newly listed solvents in the F001–F005 listing which were added after the date of enactment of the 1984 amendments to RCRA: benzene, 2-ethoxyethanol, 2-nitropropane, and 1,1,2-trichloroethane (51 FR 6538). The Agency is currently gathering data to characterize and evaluate these wastes. Decisions on these additional solvents will be included with the first group of scheduled wastes.

Treatment standards were promulgated in the November 7, 1986 rule for the following F001–F005 constituents:

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols (and cresylic acid)
Cyclohexanone
1,2-Dichlorobenzene
Ethyl Acetate
Ethylbenzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1,1,1-Trichloroethane
1,1,2-Trichloro-1,1,2-trifluoroethane
Trichloroethylene
Trichlorofluoromethane
Xylene.

In the November 7, 1986 rule, the Agency estimated that a total quantity of 2,481 million gallons of low concentration (less than one percent) solvent wastes which were not injected at that time would require some form of wastewater treatment. The Agency also estimated that only 2,102 million gallons wastewater treatment capacity was available and, therefore, granted a two-year national variance for spent solvent wastewaters. Data available to the Agency indicates that approximately 909 million gallons of spent F001–F005 solvents were injected in 1986. Of these, approximately 885 million gallons contain solvents in excess of the concentrations in § 268.41 and would require wastewater treatment to meet the standard.

The Agency expects that wastes from corrective action activities mandated by section 3004(u) will place substantially increased demands on available treatment capacity, although it is difficult to quantify these demands. Nevertheless, the Agency currently anticipates final rules under section 3004(u) to be published in the later half of 1988, and expects the additional quantity of wastes resulting from this to overwhelm existing capacity, even considering any increased treatment capacity that might become available as facilities meet the minimum technology requirements of 3004(o). Based on these data, EPA is proposing a two-year national variance for injected spent solvent wastes, as initially generated, containing less than one percent total F001–F005 solvent constituents which are disposed of by injection in Class I wells. The Agency is currently in the process of reviewing data on available capacity and this two-year variance is subject to revision based on updated capacity determinations. In this proposal, EPA is also requesting comment on its estimate of currently injected volumes.

At this time, EPA has no information indicating that other types of solvent-containing wastes are injected. Therefore, restricting these wastes from injection should not have a significant effect on the need for treatment capacity, and the Agency is proposing that the restrictions become effective for all other wastes containing F001–F005 constituents on August 8, 1988. The Agency is soliciting information from the regulated community on whether such wastes are, in fact, injected and, if so, in what volumes. If available data warrants, EPA will revise the effective date accordingly.

E. Waste Specific Prohibitions—Dioxin-Containing Wastes

The Agency identified in the November 7, 1986 rule treatment standards applicable to wastes identified by the hazardous waste codes F020, F021, F022, F023, F026, F027, and F028. The Agency has granted a two-

year variance to the effective date of the restrictions for these wastes based on lack of capacity. Current data available to the Agency show that no dioxin-containing wastes are currently being injected. Restricting the injection of these wastes would have a negligible effect on availability of treatment capacity. Therefore, EPA is not proposing to grant a national variance to the effective date of the ban for injection of these wastes. The effective date of the restrictions is proposed to be August 8, 1988. We are soliciting comment from the regulated community on whether such wastes are in fact injected.

F. Other Wastes With an August 8, 1988, Statutory Deadline

Solvents and dioxins are not the only wastes for which the statute establishes an August 8, 1988, deadline. RCRA section 3004(f) also addresses injection of wastes known as "California List" wastes. The Agency proposed an approach for handling restrictions of these wastes on December 11, 1986 (51 FR 44714 *et seq.*). A Notice of Data Availability and Request for Comment was published on June 11, 1987 (52 FR 22356 *et seq.*). This notice announced some changes to the proposal and requested comment on the issue of whether the liquid hazardous wastes prohibited under section 3004(d) of RCRA are determined to be liquids or nonliquids at the point of disposal or at the point of generation or common aggregation. The notice also indicated that the Agency did not believe that national 2-year variances would be necessary for Halogenated Organic Compounds (HOCs) because the Agency's estimates are that these wastes are generated in low volumes and most of these wastes are believed to contain less than the statutory HOC prohibition level.

The Agency also believes that there is some commercial capacity available to treat these wastes (51 FR 40614). These assumptions are based on the volume of HOC wastewaters currently handled in surface facilities. However, data available to the Agency indicated that approximately 85 million gallons of HOC-containing wastes are injected yearly. The Agency is soliciting comments on these data in order to make a determination of availability of alternative capacity for injected wastes. Similarly the notice indicated that the Agency does not believe that it is necessary to grant a national capacity variance for the California List, metal, cyanide, and corrosive wastes, given the relative ease with which treatment can be conducted and tank capacity can be installed. The notice did indicate concern that certain large volume flows might pose a capacity problem. Data available to the Agency indicates that approximately 3 billion gallons of these wastes are injected yearly at concentrations above the statutory level. The Agency solicits comments on these data and on availability of alternative capacity. A final regulation restricting these wastes from disposal in facilities other than injection wells was promulgated on July 8, 1987 (52 FR 25760 *et seq.*). This final regulation affects the way in which restrictions on injection of these wastes are handled and we are hereby requesting comment on its appropriateness for deep wells. The Agency is also planning to publish a Notice of Data Availability regarding the California List metals in August 1987, which discusses BDAT for these metals. The Agency will develop a proposal for dealing with injection of California List wastes based on these forthcoming documents and comments on this proposal, and will propose treatment levels and effective dates for California List wastes as expeditiously as possible. In addition, decisions on the first third of wastes listed pursuant to section 3004(g) must also be made by August 8, 1988. The Agency is currently working on determining BDAT for these wastes and examining availability of alternative capacity. A proposal, including determinations for injection wells should be published by the end of this year.

G. Petition Standard and Procedures

The statute provides that after each prohibition deadline, untreated hazardous waste can be injected only if such injection has been determined to be protective of human health and the environment. Under section 3004(g), the statute further specifies that such a determination can only be made upon a demonstration that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous.

1. Implementation of the No-Migration Standard

This proposal considers how this standard should be applied in the narrow context of injection wells where both the technology and the setting are radically different from other forms of land disposal. It also takes into consideration the fact that injection wells are also governed by the Safe Drinking Water Act (SDWA). Regulations under SDWA prohibit the migration not only of the injected wastes, but also of naturally-occurring fluids, such as brines, into underground sources of drinking water.

(a) *Background.* Deep-well injection uses geologic formations as both repositories and containment systems for injected wastes. The containment system must protect ground water and surface water resources. Neither lateral

movement within the intended repository nor downward movement is a concern to the UIC program.

The legislative history of the 1984 HSWA amendments states that "[i]n determining appropriate confinement from which migration shall not be allowed to occur the terms disposal unit or injection zone should be construed . . . in terms of the overall environmental integrity of the disposal practice, keeping in mind, in particular, the potential for contamination of ground water or surface water resource" (S. Rept. 284 98th Cong. 1st Sess. at 15). The legislative history further indicates that Congress intended the statutory term "injection zone" to match the regulatory definition in 40 CFR 146.3. That regulatory definition is very broad: "a geological formation, group of formations or part of a formation receiving fluids through a well." The current UIC regulations place very few limits on the specific portion of the subsurface that can be included in the injection zone. Hazardous waste injection can only take place below the lowermost formation containing within one-quarter mile of the well bore an underground source of drinking water (USDW) (40 CFR 144.3). The regulations also implicitly require a confining zone, defined as "a geological formation, group of formations or part of a formation that is capable of limiting fluid movement above an injection zone." Under the UIC regulations this confining zone could include only the formation directly below the USDWs and all formations below that could be considered part of the injection zone. The term formation, itself, may refer to large portions of the subsurface. Thus, the permit writer has considerable latitude in designating an injection zone. As explained below, this flexibility arises from the nature of geologic formations.

Geologic formations, such as the ones encountered in the Gulf Coast Basin are often several hundred feet thick (Refs. 1, 2, 3). Over such thicknesses, variations in the properties of the formation usually occur, particularly variations in lithology such as the interfingering of sands and shales. Accompanying the lithological changes are variations in permeability, porosity and hydraulic conductivities (Refs. 4, 5, 6).

The UIC permits usually identify one or more discrete intervals within these formations into which the well can be completed, *i.e.*, intervals or strata into which the fluids will exit from the well through screens or casing perforations. These intervals usually are the ones exhibiting the greatest hydraulic conductivity and will allow fluids to move easily out of the well. However, by also identifying entire geologic formations as the injection zone (rather than the smaller injection intervals), many permits include within their designation of injection zone sufficient material above the highly permeable injection interval to more than contain the fluid flow from upward movement due to the gradient created by the pressures of injection.

During the regulatory negotiation process, environmental groups were concerned that a permit writer could include the entire subsurface within the current regulatory definition of confining zone. As discussed below under "Proposed Additional Siting Requirements," these proposed regulations address these concerns through a provision which says that for every foot of upward movement allowed within the injection zone itself, there would be four feet of additional confining material above the injection zone and ten feet of distance from the top of the injection zone to the base of any USDW. Thus, a permit writer, in addition to using his best professional judgment of the geologic features, would be constrained from defining areas of the subsurface as injection zone unless they were sufficiently deep. The rationale for this approach and the specifics are outlined below. Under today's proposal, the injection zone itself must be comprised of materials that will be appropriate to contain the injected wastes.

Flow and transport mechanisms. In determining the potential for movement of injected fluids, one must consider what will happen during and after injection. During and immediately after injection, injection pressures create a gradient in the injection zone which will tend to move the waste upward. The magnitude of this movement is influenced by the amount of pressure build-up which in turn is dependent principally on the permeability, thickness and porosity of the injection zone, particularly of the injection interval. In order for the waste to move upward the pressure build-up must overcome the forces that would tend to keep the fluids down, principally the hydrostatic pressure of the overlying formations and the resistance to flow of the confining zone which is a function of its permeability and thickness. In other words, given two injection formations with equal pressure build-ups but different confining zones, the magnitude of movement within the injection zone above the injection interval will be greater where the confining zone is thinner or more permeable. The Agency estimates that in appropriate hydrogeologic settings the magnitude of this pressure induced movement should be in the order of tens of feet at the well bore, where pressure is the greatest, and becomes insignificant within a few hundred feet from the well bore.

Another avenue for upward movement during the pressurized phase would be through vertical conduits linking the injection zone with overlying formations. This movement through conduits is one of EPA's major concerns with regard to possible migration from injection zones. Accordingly, EPA is proposing strengthened area of review and corrective action requirements for improperly plugged or completed wells at §§ 146.63 and 146.64 as conditions for an exemption from the land disposal restrictions.

After injection is terminated, natural conditions are reestablished in a matter of a few years. Once the pressure drive is removed, the injected fluids will behave in the same manner as the in-place fluids. This naturally-occurring fluid flow in deep reservoirs is usually extremely slow, and can only be measured in geologic time-frames. This slow movement of fluids is evidenced by the composition of the fluids contained in these formations (Ref. 7, 8, 9). The upward movement is practically non-existent. Lateral movement within the injection zone itself is also very slow and should be of no concern. Any near-well point of discharge from the injection zone such as a large displacement fault or an outcrop of the injection zone should be readily identifiable by analysis of regional geology. The Agency believes that in most cases deep wells will be able to contain the wastes from points of discharge for geologic times. For example, the United States Geological Survey (USGS) estimated potential travel time of wastes injected near Pensacola, Florida (Ref. 10). In that study, USGS modeled travel time, assuming indefinite injection, of displaced saline water and injection fluids to three points of "hydrogeologic interest": a major fault, a point where water in the injection zone becomes brackish, and a point where the injection zone underlies a major water supply, but is separated from it by a clay confining zone.

The report's findings are grossly over-estimated since they assume indefinite injection. They show, however, that even under such unlikely circumstances it would take between 1,800 and 5,800 years for the displaced injection fluids, preceding the waste front to reach these

potential points of discharge. If a more realistic assumption of a 30 to 60 years injection period had been used, travel time would have exceeded 10,000 years. If this were not the case, these facilities could not make a demonstration of no fluid movement. In most cases, however, the Agency believes that there is no point of discharge for these deep formations. This can be demonstrated by such evidence as pressure gradients in the formations, presence of oil traps along major faults, and the age or composition of injected fluids.

Another transport mechanism, molecular diffusion, is not pressure related and will occur regardless of the pressure gradient. During the pressure-driven phase of fluid movement molecular diffusion is negligible. However, after injection pressure dissipates under the almost static conditions that prevail in deep formations, molecular diffusion becomes the dominant force for transport of molecules. The Agency believes, however, that the amount of transport caused by molecular diffusion would be negligible in most cases. First, there would be a concurrent diminution in concentrations. Second, the types of strata that need to be present in the injection zone in order to stop pressure driven movement have very low molecular diffusion coefficients and would considerably slow down molecular diffusion giving time for other degradation phenomena to take place. Consequently EPA believes that injection zones which properly contain wastes from pressurized fluid movement will also not allow hazardous levels of wastes to migrate beyond the injection zone due to molecular diffusion. Accordingly, in the petition demonstrations proposed below an applicant would not need to address molecular diffusion. EPA is thus proposing a regulatory determination that migration of hazardous levels of constituents would not leave an injection zone due to molecular diffusion. The Agency solicits comment on this approach.

Waste transformation mechanisms. The Agency has reviewed the literature and found good evidence that wastes get transformed in the injection zones (Ref. 11, 12). This evidence includes some field data from wells where injected fluids were back-flushed or reached monitoring wells.

For example, in a case of injection of organic nitrile compounds and nitrate, chemical analyses from backflow of the injection wells and from a nearby monitor well indicated that organic carbon compounds were converted to carbon dioxide, and the nitrate was reduced to elemental nitrogen. These microbiological transformations were virtually complete within a short distance from the injection wells and took place in a matter of a few months to a few years. In another case of relatively shallow injection, waste-aquifer interactions were determined by using observation wells located 1,500 and 2,000 feet from the injection wells. These showed that organic acids in the waste precipitated out of solution by complexing with iron and manganese oxides present in the host formation. In addition, the aquifer mineral constituents sorbed most organic compounds. The study also showed that biochemical waste transformation occurred.

The Agency has reviewed and analyzed the literature on the subject. There is evidence of chemical transformation by hydrolysis which shows that the half-life of many organics is in the order of days to tens or hundreds of years (Ref. 13, 14). There is also evidence of anaerobic bacterial degradation of many organics (Ref. 15, 16, 17, 18, 19). Metals and some organics will be adsorbed to clays (Ref. 20, 21, 22) and others will form insoluble salts (Ref. 23, 24,) and be immobilized in the injection zone. The Agency is conducting several studies to better characterize the extent of waste transformation in typical injection settings. The results of these studies should be available for the Agency's consideration before promulgation of these regulations. At this time, although the rates and pathways for these waste transformations are not well established, the Agency believes that sufficient evidence exists that wastes will be immobilized or transformed within periods of days to hundreds of years to give confidence that a 10,000 year residence time in the injection zone would be sufficient to render the waste non-hazardous.

(b) *Proposed petition standard.* EPA considers the appropriate petition standard to require that, to a reasonable degree of certainty, an applicant demonstrate that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the waste remains hazardous (RCRA section 3004 (d), (e), and (g)). The Agency is proposing that a no migration petition for injection wells can satisfy the statutory and regulatory requirements in either of two ways.

(1) The applicant could demonstrate that waste constituents would not migrate from the injection zone in hazardous concentrations. In taking this position, the Agency is equating the statutory reference to waste remaining hazardous in RCRA section 3004 (d), (e) and (g) with the levels and nature of constituents migrating from the unit. The alternative construction of the statutory language is that EPA must not allow any molecule of hazardous constituents to migrate from the unit while the waste within the unit remains hazardous. Under this interpretation, when the waste constituents within the unit diminish in concentration to levels below what EPA considers hazardous, all of the waste may migrate beyond the unit boundary. EPA believes the first interpretation is the most logical reading of the statute, given that the environmental concern is whether hazardous levels of constituents leave the unit and not whether hazardous levels remain in the unit.

Ordinarily the term "hazardous constituents" has no regulatory effect unless concentrations are also considered. Thus, the use of the term "hazardous constituents" under EPA's interpretation of RCRA sections 3004 (d), (e), and (g) is consistent with EPA's rules and policies for listing and delisting hazardous wastes as well as cleanup standards. The listing procedures, for example, make clear that solid waste containing any of the hazardous constituents listed in 40 CFR 261 Appendix VIII might be termed hazardous considering, among other factors, the concentration of the constituent in the waste (40 CFR 261.11) (See also the delisting rules at 40 CFR 260.22; the Clean Closure rule (52 FR 8704, March 19, 1987); and the groundwater cleanup rules at 40 CFR 264.94(a) (2) and (3)).

EPA is today proposing that applicants must show that before any injected fluids leave the injection zone the wastes would not be considered hazardous and would not contain hazardous constituents which would result in a threat to human health or the environment. Accordingly, attenuation due to fate and transport outside the injection zone could not be part of a demonstration. The Agency is proposing to grant an exemption only if the petitioner showed that any hazardous constituents would not leave the injection zone in concentrations higher than Agency-recommended health-based limits which have undergone peer review by the Agency and are used in delisting decisions and for clean closure demonstrations (52 FR 8704, March 19, 1987). At the present time these include Maximum Contaminant Levels (promulgated pursuant to the Safe Drinking Water Act), water quality

standards and criteria (Ambient Water Quality Criteria 45 FR 79318, November 28, 1980; 49 FR 5831, February 15, 1984; 50 FR 30784, July 29, 1985), health-based limits based on verified reference doses (RfDs) developed by the Agency's Risk Assessment Forum (Verified Reference Doses of USEPA, ECAO–CIN–475, January 1986) and Carcinogenic Potency Factors (CPF) developed by the Agency's Carcinogenic Assessment Group to be used to determine exposure at a given risk (Table 9–11, Health Assessment Document for Tetrachloroethylene (Perchlorethylene) USEPA, OHEA/600/8–82/005F, July 1985) or site-specific Agency-approved public health advisories issued by the Agency for the Toxic Substance and Disease Registry of the Center for Disease Control, Department of Health and Human Services.

The Agency is currently compiling toxicity information on many of the hazardous constituents contained in Appendix VIII to Part 261. An applicant would be required to check with the Office of Solid Waste, Characterization and Assessment Division, Technical Assessment Branch (202) 382–4761 for the latest toxicity information. However, for some hazardous constituents, formally recommended exposure limits do not yet exist. If no Agency recommended exposure limits exists for a hazardous constituent, EPA is proposing that an applicant show that the concentration of that constituent would be reduced to at least three orders of magnitude below detection levels at the edge of the injection zone.

The Agency recognizes that three orders of magnitude below detection is a very conservative cutoff for determining when a constituent that lacks a formal exposure limit is no longer hazardous. The Agency chose such a conservative cutoff in recognition of the difficulties associated with effectively monitoring for releases from injection wells, instituting corrective action to control releases should they occur, and modeling the exact behavior of contaminants in injection zones. These difficulties in predicting, detecting, and responding to releases from injection wells, particularly when compared to surface disposal facilities, justify the use of conservative safeguards. Accordingly, the Agency is adopting a highly conservative approach for ensuring protectiveness at underground injection facilities.

Consistent with EPA's March 19, 1987, rule for clean closure (52 FR 8704), an applicant would also need to demonstrate that wastes deemed hazardous due to the characteristic of extraction procedure (EP) toxicity would not migrate beyond the injection zone at concentrations above Agency recommended limits. In addition to the above demonstrations an applicant would also be required to show that waste deemed hazardous due to the characteristics of ignitability under 40 CFR 261.21, corrosivity under 40 CFR 261.22, or reactivity under 40 CFR 261.23 would not display these characteristics beyond the injection zone. For example, acid wastes may be neutralized by the formation with which they come in contact or buffered by the native brines. Such neutralization occurring at well sites have been reported in the literature (Refs. 25, 26, 27, 28, 29, 30).

All of the above demonstrations could, under this proposal, be accomplished by demonstrating that the constituents would be transformed to non-hazardous by-products, or that concentrations would be reduced by retardation, partition or other physical mechanism within the injection zone itself. For the purposes of making the demonstration an applicant need not account for constituents which were present in the formation fluid prior to injection.

(2) Alternatively, the applicant could attempt to demonstrate, using flow and transport models, that the site conditions are such that injected fluids would not migrate vertically upward out of the injection zone or migrate within the injection zone to a point of discharge over a time span of 10,000 years.

The Agency is proposing this approach because of its belief that demonstrations based on fluid-flow can be more readily prepared and reviewed since fluid-flow in deep formations is fairly well understood, and can be reasonably estimated using models which have been developed for the petroleum industry or the Department of Energy nuclear waste isolation programs. On the other hand demonstrations of waste transformation would, in most cases, be more difficult to make and review because the state of knowledge in that area is not as advanced.

However, in determining the absence of fluid movement, EPA believes that it is necessary to set some limits for running the analyses. As stated above, naturally-occurring fluid flow in deep reservoirs is extremely slow if not negligible, and is measured in geologic timeframes (*i.e.*, millions of years), but it does occur. In most cases, the only significant movement will be that due to the pressure gradient caused by the facility. Post-closure, injected fluids will move at the same rate as the native brines, that is at barely perceptible velocities. The Agency considered limiting the demonstration to a showing of no movement out of the injection zone due to the injection-induced pressure, based on the fact that fluid movement out of these deep formations is negligible and that whatever natural movement is taking place is not endangering human health regardless of the quality of the native brines. However, because of those few cases where a natural vertical gradient may exist, the Agency believes that it is more prudent to require that the demonstration include some analysis of post-injection movement. There is a need, however, to limit this analysis in time, since modeling for geologic times would not provide additional protection, given the limitations outlined below.

The Agency is proposing to use a 10,000 year time frame for these analyses for two reasons. First, EPA believes that, with a reasonable degree of certainty, formations which contain injected fluids for such a time period will, in fact, provide containment over the very long term (Ref. 31). Using data available to the Agency and an analytical model described in the support document entitled "Modeling of Representative Injection Sites," EPA has examined sites currently used for injection of hazardous wastes (Ref. 32). This analysis has shown, using reasonable worst case assumptions where data were not available, that it is not atypical for the injected fluids to move only a few tens of feet above the injection stratum during the pressurized phase of fluid flow. Post-closure upward movement would be dominated by molecular diffusion as long as the vertical pressure gradient was smaller than 0.1 psi/ft.

In promulgating the high-level radioactive waste disposal regulations under the Nuclear Waste Policy Act, the Agency stated its belief that "a 10,000 year period is long enough to encourage use of disposal sites with natural characteristics that enhance long-term isolation" (50 FR 38073) and that "a disposal system capable of meeting the proposed containment requirements for 10,000 years would continue to protect people and the environment well beyond 10,000 years." (50 FR 38076.) Similarly, EPA believes that injection zones that contain fluids for 10,000 years are likely to contain them for much longer. In developing the high-level radioactive waste regulations the Agency took comment on the 10,000-year period and had a special panel of the Science Advisory Board (SAB) review the proposed time frame (Ref.

33). The SAB endorsed EPA's choice stating that "Modeling for the time periods involved . . . required extension of such . . . techniques well beyond usual extrapolation, however, the extension for 10,000 years can be made with reasonable confidence. Also, the period 10,000 years is likely to be free of major geologic changes such as volcanism or renewed glaciation." The degree of confidence in modeling much longer time periods becomes much less and modeling the subsurface environment without regard to probable major surface changes becomes pointless.

In addition, as stated under the discussion of work transformation mechanisms, EPA has evidence that the long residence time of the waste in the injection zone will give a reasonable degree of certainty that the waste is no longer hazardous. Therefore, EPA believes that a demonstration that wastes will be contained for 10,000 years in the injection zone constitutes a demonstration of no-migration under the HSWA standard. The Agency is requesting comment on this alternative for demonstrating no-migration particularly on the appropriateness of the 10,000 year time frame for hazardous waste.

The Agency anticipates that most applicants will first try to make the demonstration under the 10,000 year containment provision. They would first determine the area over which the waste front would travel over 10,000 years using the velocities from the pressure of injection and the natural velocity of the formation fluid. Over this area, the applicant would analyze the geology to demonstrate that the waste would not leave the injection zone through a point of discharge. Conduits which penetrate the injection zone would only be considered transmissive if there was a sufficient pressure differential to drive injected fluid from the injection zone. Thus, the applicant would need to consider factors relevant to characterizing regional geology, including an analysis of sedimentary basins and a detailed structural analysis of the area.

For wells unable to meet the 10,000 year containment standard, it may be possible by a conservative analysis of waste transformation, immobilization or other physical process, to show that no Appendix VIII constituents would leave the injection zone in hazardous levels. As discussed above, the burden would be on the applicant to show the reasonableness of assumptions or modeling used in such a demonstration.

Proposed additional safeguards. When dealing with surface disposal units, certain mechanisms such as leachate collection systems, or monitoring can give reasonably good indication of whether migration is occurring and give the necessary assurances that the containment system is working properly. While it is reasonable to expect that under certain conditions wastes will remain within the injection zone for as long as they are hazardous, and while sufficient site-specific data can be collected to demonstrate that these conditions exist, the actual monitoring to ascertain that migration is not occurring would be problematic.

The nature of injection is such that the demonstrations will have to rely on modeling to a great extent and direct verification of the absence of migration would be very difficult. The wastes are emplaced at intervals ranging from 1,500 to over 5,000 feet below the ground surface which makes direct monitoring impractical. Even a poorly performing injection zone would be very unlikely to allow any measurable releases into overlying aquifers for several hundreds of years or more. Therefore, surrogates have to be used, such as reservoir analysis through pressure build-up as indications that the site is behaving as predicted and that migration is not occurring. For this reason, EPA is proposing to be very conservative and to require redundant protective features in order to compensate for the lack of direct confirmation that no-migration is occurring.

Additionally, as noted above, during the regulatory negotiation process environmental groups were concerned that a permit writer could include the entire subsurface within the current regulatory definition of injection zone. Thus, there is a need to limit the permit writers' discretion by requiring injection zones to have vertical limitations related to their distance to underground sources of drinking water. Similarly, confining zones would also be proportionately larger where upward movement within the injection zone could be significant. To address these concerns EPA is proposing two requirements. First, the thickness of the confining zone above the injection zone would have to be at least four times greater than the total estimated amount of upward vertical movement within the injection zone. This assures that the confining zone is adequately thick. It should be noted that under this approach, the confining zone may be composed of one or more relatively impermeable strata. The existing definition of confining zone in § 146.03 refers to ". . . a geologic formation, group of formations or part of a formation that is capable of limiting fluid movement above an injection zone." Thus, the confining material could be composed of a single relatively impermeable layer or part of a layer, or several smaller layers bounded by more permeable layers. The Agency's key concern is that the cumulative vertical thickness of the layer or layers be at least four times the estimated vertical distance which a fluid is predicted to move in the injection zone. In cases where the confining zone is composed of smaller layers, the intervening permeable zones would provide additional protection by serving as alternative pathways if fluid were to migrate out of the injection zone.

Second, the injection zone would have to be separated from the base of the lowermost USDW by a distance at least ten times that of the total estimated amount of upward vertical movement within the injection zone. This would assure that a petitioner would not attempt to use the entire stratigraphic column to meet the requirement of having a confining zone four times thicker than the distance which waste might permeate through the injection zone. Taken together, these requirements would result in sites with thick confining zones, and very deep injection zones. Both factors would add additional protection against movement through faults or fractures. The likelihood that a fault or fracture would remain open diminishes with depth since the lithostatic pressures tend to close such structural features at greater depths. Similarly, a fault or fracture will be less likely to cross a thick formation, particularly if bedding planes and other discontinuities in structure or sedimentation are present.

(c) *Alternative procedural approaches for determination(s) under section 3004(f).* One of the major concerns during the regulatory negotiation was the ability of EPA to process no migration petitions and determine which wells meet the statutory standards prior to the first restriction deadline of August 8, 1988, for wastes under section 3004(f). EPA encourages applicants to begin the petition process at this time since most of the fundamental information, listed in this proposal at § 148.21, is likely to be necessary under any reasonable option for the no migration standard. This demonstration process is likely to be an iterative one so early coordination with the Agency will be useful.

EPA also has reason to believe that the several billions of gallons of section 3004(f) wastes injected annually may warrant national variances for all or some of the wastes due to lack of alternative treatment capacity. As

discussed above, we are proposing a two year extension of the restriction deadline for solvent wastes containing less than one percent F001–F005 wastes. The Agency will be addressing the issue of treatment capacity for injected California list wastes in an upcoming notice when EPA will have better estimates of treatment capacity and demand.

The regulatory negotiation committee also explored several alternative procedural approaches for the determination(s) under subsection 3004(f). The Agency would like to outline these approaches and solicit comment on whether they are appropriate. One approach is that the Administrator make a broad determination about underground injection as a technology for the purposes of section 3004(f). Under this scheme, the Administrator would examine the practice with regard to particular wastes and particular technologies. Based on his analysis, he could make one of three findings. First, the Administrator could find that the practice as whole or some subset of the practice—determined, perhaps, by the waste or general geologic setting—meets the standards of section 3004(f). Second, he could establish a regulatory standard and any other additional regulations necessary to meet that standard. Owners and operators would be required to comply with the standard and the regulations. Finally, he could find that the practice of hazardous waste injection could not be protective as defined in section 3004(f). Under either of the first two determinations injection could continue beyond the section 3004(f) restriction deadline and operators would be required to comply with any more stringent requirements promulgated as part of the determination.

Under this approach EPA's administrative record would need to provide support for two basic regulatory findings. First, EPA would determine that, to a reasonable degree of certainty injection wells properly deliver hazardous fluid to an injection zone. Second, EPA would find to a reasonable degree of certainty, that an injection zone, reasonably defined and limited by a permit writer and EPA regulations, would not allow migration under the statutory standard by either molecular diffusion, pressure-driven penetration through the confining material, or fluid flow through transecting conduits. Under this approach, the Agency would need to show that existing wells are not located near points of discharge and that regulations would preclude siting new wells near points of discharge in the future. The effectiveness of the regulation requiring that the operator locate and address abandoned wells in the area of review would be an important consideration in the Administrator's finding. The Agency solicits both comments on and record support for this approach.

The key difference between this approach and the approach outlined earlier is that there need not be a petition. However, EPA regulations could require a proof from well owners or operators that their facilities meet any requirements specified as part of the Administrator's determination.

As outlined in section II A, several negotiators also suggested that under section 3004(f) the Agency could accept generic petitions, to the extent that the sites shared similar geologies and injected wastes which behaved similarly. Under this scenario, operators injecting the same waste into a single formation could submit one petition seeking an exemption from the ban. Others suggested that a single state could petition for a waiver from the ban for injection facilities within that State, perhaps describing the range of geologic settings found in areas where injection is occuring, and characterizing existing state technical requirements and demonstrating that requirements and geologic settings meet the standards being proposed today. The Agency specifically requests comments on these alternative approaches.

2. Application of Certain New Part 146 Requirements in the Context of the Petition

Today's proposal contains amendments to the existing permit requirements governing injection of hazardous waste. The Agency believes that most of these requirements are a necessary first step in order to assure that wastes will reach the injection zone from which the no-migration demonstration required by the statute can be applied, and remain in this zone. It is the Agency's intent that these new requirements will be incorporated in revised permits and enforced as permit requirements by the UIC program Directors. However, these requirements may not be effective in Primacy States by the time the first petitions are granted. It is also possible that the permit modification process will not be concurrent with the petition. For these reasons, we are proposing to require as part of the petition process, a certification by the owner-operator that the well will be in compliance upon granting of the exemption, with two of the requirements of Part 146 as amended by this proposal which we believe are essential to ensure that the no-migration standard is met. These requirements are those concerning the well's mechanical integrity, since in the absence of mechanical integrity there can be no assurance that the wastes will reach the injection zone and the expanded area of review, and since a no-migration demonstration could be negated in the presence of unplugged or improperly plugged wells in the area of review. This certification will only be necessary if the operator has not received either a new or modified permit pursuant to revised Part 146.

3. Information Requirements

The Agency is proposing in § 148.21 the standards for the type and quality of information to be submitted in support of petitions. The Agency intends to issue more specific guidance addressing these issues as soon as possible.

Models are the only tools available to predict waste and fluid behavior over the time-frames discussed in the proposal. However, the Agency is concerned that models could be misused, principally through bad choice or improper use of computer codes and lack of site-specific data, leading to poor assumptions. Therefore, if possible, EPA intends to issue guidance on this subject prior to promulgation of the final regulations. Similarly, EPA is currently finishing a series of Quality Control/Quality Assurance documents for the UIC program, which should be available in time for development of petitions. Procedures outlined in these documents should be followed by petitioners in order to expedite petition review.

4. Procedural Requirements

In order that the fullest opportunity be given to local interests to participate in the decision process, we believe that the petition review should be the responsibility of the EPA Regional Offices or authorized States. However, as explained in Section I.C., above, delegation of authority to States to grant exemptions may be a complex process. It is unlikely that all necessary steps will have been taken before the first petitions have to be reviewed. During that interim period, however, EPA and States may enter into agreements making States responsible for such activities as reviewing the petitions, and assisting with the public participation process, while the decision authority would remain with EPA.

5. Review and Termination of Exemptions

Finally, EPA is proposing to include specific requirements for review and, where appropriate, termination of exemptions. The Agency is proposing that approved exemptions should be reviewed at least once every ten years concurrently with permit reissuance to investigate whether any new information would render the original information invalid. In addition, EPA believes that it is appropriate for the Director to review an exemption whenever information indicates that the basis for approval of the petition may no longer be valid. The exemption granted by the petition would remain in effect during this review process.

Where circumstances indicate that the basis for granting the exemption is no longer valid, or there is evidence of migration in violation of § 148.20, the Director may proceed to terminate the exemption using the procedures for termination of permits specified in § 124.5. We are also proposing that the Director be authorized to terminate the exemption where a petitioner has willfully withheld relevant information.

III. Summary of Today's Proposal—Amendments to Part 146, Subpart G

A. Basis of Proposed Amendments

The Agency is proposing to amend technical requirements found in 40 CFR Part 146 which are applicable to owners or operators of hazardous waste injection wells. These proposed amendments are part of an ongoing Agency effort to revise the UIC program where experience warrants such revisions.

Today's proposals are based on several considerations. First, since the regulations were last amended, the Agency has gained expertise and collected additional operating data. Second, section 701 of the Hazardous and Solid Waste Amendments of 1984 required the Agency to conduct a survey of Class I hazardous waste injection wells. As a result of the survey, the Agency identified requirements that could be improved and others that could be added (Ref. 1). Third, section 1426(e) of the Safe Drinking Water Act as amended on June 19, 1986, requires the Administrator to evaluate monitoring technologies which might be appropriate to use in conjunction with Class I injection wells and to promulgate a list of such alternatives.

Finally, as outlined in Section I, B of this preamble, the Agency attempted to develop this rule through regulatory negotiation. Although the Advisory Committee was unable to reach a consensus, there were substantial areas of agreement and the Agency learned a great deal from the various participants. Many of the amendments are a result of the additional information, concerns, or interests raised during the course of the negotiations.

Based on these considerations, the Agency is proposing to amend requirements pertaining to Class I hazardous waste wells by:

(a) Increasing the frequency of mechanical integrity tests, and requiring the use of radioactive tracer surveys in addition to the tests specified in § 146.8;

(b) Adding specificity to existing compatibility requirements;

(c) Applying more specific siting requirements;

(d) Expanding the area of review;

(e) Applying operational controls, including:

(i) Automatic shutoff or alarm devices;

(ii) Controls on wells injecting fluid which could generate gas in the subsurface;

(iii) Limitations on the use of fluid seals;

(iv) A requirement that annulus pressures exceed injection pressures in most instances; and

(f) Listing methods for monitoring Class I injection activities.

B. Scope and Structure of the Amendments

These proposed amendments would apply to owners and operators of all Class I hazardous waste wells; those injecting wastes which are not yet prohibited, those injecting waste which meet treatment standards promulgated pursuant to section 3004(m) of RCRA, those whose waste has been banned and who have obtained an exemption under Part 148. With the exception of the monitoring amendments, they do not apply to Class I wells which do not handle hazardous waste as defined by RCRA. The monitoring amendments are being promulgated pursuant to section 1426 of the SDWA and will apply to all Class I wells. These rules are being proposed in both § 146.13 and § 146.68.

In order to provide a discrete section applicable to hazardous waste injectors, the Agency is creating a new Subpart G. Within Subpart G the Agency is consolidating certain requirements that are currently contained in various areas of 40 CFR Parts 144 and 146. In the discussions which follow, we have tried to note when the language merely consolidates existing requirements and when it represents a new proposal. It should be noted that the *general* requirements in current 40 CFR Parts 124 and 144 still apply to owners and operators of hazardous waste injection wells. The Agency is specifically soliciting comments on those portions of Parts 124, 144, and 146 which are being amended. To the extent that proposed Subpart G merely reiterates or restates existing requirements in 40 CFR Part 144 or 146, however, EPA is not seeking comment.

C. Additional Definitions

In the proposed amendments, EPA is defining new terms and clarifying the definitions of several existing terms. The definitions being added are "transmissive fault" and "cone of influence." A "transmissive fault" refers to a fracture which allows a measurable amount of fluid to flow through it. "Cone of influence" is used in the amended area of review requirements, and its effect will be discussed in that section. The EPA is proposing to revise the definitions of "new" and "existing" wells to address specifically the unique regulatory framework applicable to Class I hazardous waste injection wells. Under existing regulations, a "new well" is defined as "one which begins injection after a UIC program is approved (or in the case of federally-implemented programs, promulgated)." An "existing well" is defined as "a well which is not a new well." During the negotiations several members were concerned that such a definition was imprecise, and—to the extent that existing wells are not subject to certain construction and other requirements—represented a potential loophole.

In addition, the current definitions are not restricted with respect to well class, making the status of wells converted from one class to another unclear. For example, a Class II salt water disposal well which holds a valid UIC permit could presumably be considered an existing well for purposes of Class I injection (although § 144.39(a)(1) gives the Director the authority to modify or revoke a permit when "material or substantial alterations or additions" occur after the permit is issued).

In order to clarify the relationship between new, existing, and converted wells, EPA is proposing to change the definitions as follows. An "existing well", under Subpart G, would be any Class I well which is authorized to receive industrial waste under an approved UIC program at the time these regulations become effective. A "new well" would be any other well. Under this scheme, only a pre-existing Class I well could be considered an existing well for the purpose of Subpart G. All other wells would be considered new and would, therefore, be required to apply for a permit and demonstrate

compliance with Subpart G requirements.

The Agency considered restricting the definition of "existing wells" as applied to Class I to wells which inject hazardous waste at the time these rules are promulgated, but decided against it. Construction requirements for Class I wells are the same regardless of whether the industrial waste injected is hazardous or non-hazardous, and the definition of hazardous waste is likely to change, possibly triggering requirements which an existing well could not meet. Because owners or operators of existing Class I wells may be able to demonstrate that their facility has and will continue to operate safely using empirical information, the Agency believes the question of whether or not a well should be required to meet new standards in such a case is site-specific.

In order to provide this discretion, EPA is proposing to amend § 144.39(b). This section specifies the basis for modifying or revoking and reissuing a permit. The proposed amendment would allow the Director to revoke or modify the permit if the waste injected became hazardous either because the waste stream changed, or because the definitions in RCRA or Part 261 changed.

D. Siting Requirements

In the current regulations, the siting requirements are contained in several sections and in many instances are only generally stated. The most explicit statement is in § 146.12 which states that the well must inject beneath any formation which contains an underground source of drinking water within one-quarter mile. Elsewhere, in §§ 146.12 and 146.14, the regulations require the Director to consider certain information in the course of evaluating permit applications, including such factors as confining bed thickness, permeability, and mineralogy; regional and local hydrogeology; faulting and fractures in the area; location of the lowermost USDW; and relevant characteristics of the injection zone. The proposed amendments retain these requirements. However, EPA believes that it is both appropriate and necessary to propose more explicit standards against which these more generally stated factors could be weighed.

1. Options Assessed

Establishing appropriate siting standards was one of the most difficult negotiation topics the committee faced with respect to amending Part 146. Some members believed that broadly stated performance objectives were necessary. They argued that the range of appropriate sites was defined by a complex matrix of variables which could not meaningfully be represented by a set of numerical limits. Others were concerned that without specific limits the standards would not be clearly articulated. The result, they contended, would be that the Director would be required to conduct or confirm extremely sophisticated analyses merely to determine whether an application met the regulatory standard. These members noted that such expertise was not always available on many State and federal staffs. The committee evaluated a number of options in attempting to develop appropriate siting requirements and resolve the issue. The goal of these options was to balance the need for flexibility with the desire to define clearly the regulatory standard.

One option considered was to establish numerical standards with regard to the permeability, porosity, thickness, areal extent and tectonic or seismic characteristics of both the injection and confining zones. These specific requirements would have been used to define the general performance standard. Some members believed such an approach could work, but only if coupled with a provision which afforded the Director the flexibility to approve sites not meeting all of these specific standards if the owner or operator could demonstrate that the overall standard was met.

Another option considered was to establish a performance standard based on a showing that the characteristics of the confining zone were adequate to prevent the waste from migrating out of the injection zone for some period of time ranging between 500 and 10,000 years. In addition, the injection zone would have had to prevent the waste from reaching a point of discharge within that time frame. This standard would have been framed by some minimum values for key parameters applicable to both the injection and confining zone. These limits would have been used to articulate an appropriate range within which sites could have been deemed suitable.

In attempting to establish limiting site characteristics, the Agency modeled a minimally acceptable injection scenario (*i.e.*, a thin injection zone with a low permeability, associated with high injection pressures and volumes) against various assumed confining zone characteristics. Under these circumstances, injection pressures would necessarily be very high. It was hoped that the results of these somewhat informal sensitivity analyses could be used to identify appropriate end points of an algorithm which would describe the matrix of acceptable site characteristics (Ref. 2).

After extensive consideration, the Agency rejected both of these options because it believed, in nearly all cases, that considerations of a more qualitative nature would have to be incorporated into siting decisions.

Factors other than flow and chemistry may restrict the adequacy of a given site. For example, seismic and structural concerns would not be accounted for in either of the above options. The likelihood that a fracture or fault, if present, would transmit fluid depends on the depth of the confining zone, the plasticity of the rock, the thickness of the confining zone, its pore pressure, and the volume, pressure, and density of the fluid injected. These factors could not be evaluated in the strict confines of a numerical standard or a matrix of numerical values. Thus, the Agency concluded that while there are minimally acceptable values in siting considerations, they are site-specific and do not translate meaningfully to general regulations. A key issue in all the options discussed was the need to consider the uncertainties often inherent in characterizing geologic systems at depth, particularly with regard to faults, fractures, and possible man-made conduits in the confining zone.

2. Proposed Siting Requirements

Today, EPA is proposing more explicit performance standards which still retain flexibility, assure that the consequences of any uncertainties are addressed, and delineate some of the more qualitative factors which the Director must assess when reviewing an application. A brief description follows.

The proposed performance standard for the injection zone, § 146.62(c)(1), would require owners and operators of Class I hazardous waste wells to inject into a formation which has a permeability, porosity, thickness and areal extent sufficient to prevent migration of fluids into a USDW. Similarly, § 146.62(c)(2), would not allow an owner or operator to inject unless the confining zone were free of transecting, transmissive faults or fractures, and sufficiently thick, impermeable, and laterally continuous to contain the waste.

As noted, a goal in establishing siting standards was to minimize the potential problems which might arise from uncertainties inherent in characterizing geologic conditions in the subsurface. The Agency is proposing three additional safeguards designed to either eliminate uncertainty or prevent the movement of fluids into a USDW even

when the review of siting has not discovered a transmissive fault, fracture or other breach. The demonstrations required to meet these safeguards are outlined below.

Section 146.62(d) would require the owner or operator to demonstrate one of three siting alternatives to the Director's satisfaction. Under § 146.62(d)(1) the owner or operator could demonstrate that there is at least one additional sequence of permeable and confining strata between the confining zone and the USDW. Such siting would assure that there would be two confining zones between the injection zone and the USDW and, more importantly, at least one porous zone. Modeling has demonstrated that, where such conditions exist, any fluid which "leaks" vertically through a theoretical undiscovered breach in the confining zone will tend to move horizontally when it reaches the porous saline zone thereby dissipating the effects of such a leak (Ref. 2, 3, 4).

Alternatively, under § 146.62(d)(2) the owner or operator could show that the piezometric surface of the injection zone is below the piezometric surface of the lowermost USDW (assuming corrections for fluid density and operating pressures). Under such conditions a conduit in the confining zone would cause fluid from the USDW to move down into the injection zone rather than allowing formation or injected fluid to move into the USDW, since the pressure and hydrostatic head in the USDW would exert a downward force.

Finally, § 146.62(d)(3) would allow the Director to disregard the uncertainties associated with potentially undetected breaches in the confining zone when a well is located in an an area where no USDW is present.

One issue the Committee discussed extensively centered on whether the Director should have broad authority to approve sites not conforming to these requirements but which could otherwise be proven to be safe. Some argued, for example, that existing wells with extensive operating experience and data might be able to provide the same degree of certainty associated with accurately describing geologic conditions that new or relatively new sites might without providing the specific data required of new sites. Others contended that monitoring or other data could provide a degree of certainty comparable to the protection afforded by § 146.62(d) (1), (2) and (3). Finally, some objected to not providing flexibility arguing that neither EPA nor the States could identify, up front in regulation, all circumstances which describe a safe site.

In § 146.62(d)(4), the Agency is proposing specific regulatory language granting the Director the discretion to approve sites which may not meet one or more of the requirements in § 146.62(d), but which can be shown to provide a level of certainty comparable to those that could. The Agency is soliciting comment on this approach.

The Agency is investigating whether or not injection activities may cause seismic disturbances in some areas. Available literature suggests that, while such events have occurred, they have been the result of water flood or other high pressure, high volume operations in formations that are less permeable than those typically used for waste injection (Ref. 5). Nevertheless, EPA specifically solicits comment on whether seismicity monitoring should be required.

The Agency also considered how the draft ground-water classification guidelines should influence siting decisions. The Agency believes that the requirement that injection must take place below all USDWs, and must not result in any fluid movement into USDWs precludes injection taking place in any aquifer other than a Class III B. This is in perfect accord with the ground-water protection strategy. The Agency also considered whether special consideration should be given to Class I aquifers. The Agency believes, however, that in the case of injection wells the distinction between Class I and Class II aquifers blurs. The Class I definition includes the concept of vulnerability which is related to surface activities. By going through an aquifer, an injection well would pose exactly the same risk whether or not that aquifer was considered vulnerable. EPA concludes, therefore, that in the context of injection, Class I and II aquifers should be afforded the same high degree of protection which these proposed amendments are designed to achieve.

E. Area of Review

As used in the current regulations, the "area of review" (AOR) pertains to the area within which the owner or operator must identify all wells penetrating the confining zone and the injection zone and determine whether they have been properly completed or plugged and abandoned. It is defined either by a fixed radius of ¼ mile from the well bore or by a calculated "zone of endangering influence." As a result of the information gathered during the section 701 survey of hazardous waste injection wells, concerns raised by the regulatory negotiation committee, and information developed from recent research on well failures (Ref. 3, 4), EPA is proposing to amend the area of review requirements for hazardous waste injection wells by extending the area to be examined for abandoned or improperly completed wells to an area with a radius of two and one-half miles.

When the Agency initially proposed the UIC regulations (41 FR 36734, August 31, 1976), we specified a two-mile area of review for waste disposal wells, and a ¼-mile area of review for other types of injection wells. As amended, the Agency elected to reduce the fixed radius to ¼-mile for all wells. The decision was based in part ". . . because available formulae were not applicable in certain hydrogeologic conditions" (44 FR 23744, April 20, 1979). The discussion went on to note that in those circumstances where formulae were available, ¼-mile was usually a sufficient distance. Our ability to characterize the area of review has advanced. In virtually all cases where existing formulae could not describe the area of review, it exceeds ¼-mile. More importantly, recent studies on the consequences of "well failures" suggest that the single most significant potential source of contamination from injection wells is an unplugged borehole within the area of review (Ref. 3,4). As a result, the Agency intends to amend the area of review requirements as outlined below.

The Agency is proposing today to expand the fixed area of review to an area with a radius of two and one-half (2½) miles. In proposing this, EPA notes that the State of Texas, which currently specifies a two ½-mile AOR and the State of Louisiana, which specifies a two mile AOR, currently regulate over 60% of the wells injecting hazardous waste. Thus, EPA can significantly expand its area of review requirement without concurrently increasing the burden on the majority of operators. Even where there is an increase in burden the Agency believes the special characteristics of hazardous waste warrant a more stringent level of regulation.

For the calculated area of review, the proposed amendments replace "zone of endangering influence" with a new term, "cone of influence." The basic difference between the two terms is that the former—which is calculated using the Theis or equivalent equation—includes the pressure of the formation, while the latter defines the area of review as the area described by the incremental increase in pressure caused by the injection well. The Agency believes the pressure of concern should be the increment over static conditions since that is the pressure resulting from the regulated activity.

F. Corrective Action for Improperly Completed or Abandoned Wells

The current regulations contain requirements covering corrective action in several different sections. EPA is proposing both to add substantively to the corrective action requirements and to reorganize them. Current §§ 144.55, 146.07 and 146.12 address different components of corrective action. The Agency is proposing to include § 146.64 in Subpart G, to consolidate most of these requirements. The Agency believes that this will make existing requirements more easily understood. Under the new organization, the relevant requirements can be found in §§ 146.64 and 146.70. In general, § 146.64 states the requirements, and § 146.70 outlines the information required to demonstrate compliance with them.

Under the current regulations the owner operator need not submit a protocol for identifying wells within the area of review, but must submit a plan covering steps taken to address improperly completed or abandoned wells after they have been identified. The Agency is proposing to require that the owner or operator submit a protocol to the Director outlining how he intends to identify all wells within the area of review, and how he intends to determine whether wells have been adequately completed or plugged. The Director would be required to review the plan and determine whether it is adequate and either approve the plan, modify it, or deny the application.

The Agency is also proposing to expand any records search beyond "information of public record" as the current wording in § 146.14(a)(2) requires. The Agency is taking this action in response to information gained from research being conducted to reach decisions for implementing section 3004 (f) and (g). Modeling and field data have shown that one of the most critical factors governing containment is the presence of unplugged or improperly plugged or completed bore holes in the area of review (Refs. 2, 3, 4). Accordingly, we believe the methods used to identify and locate wells and the determination of whether or not such wells are properly plugged or completed warrants the same close scrutiny as the plan for properly closing them. In addition, the Agency has reviewed recent data and believes that methods beyond a records search are available and appropriate (Ref. 5).

G. Construction Requirements

The amendments being proposed today to the construction requirements generally reflect the Agency's attempt to achieve an appropriate balance between specific design standards and more general performance standards. The current regulations basically lay out a very broadly structured performance standard and list specific factors which the Director must consider when evaluating the construction of a well. Two factors have persuaded the Agency to revise this approach for hazardous waste injection wells.

First, the Agency stated the standards broadly in its original promulgation partly because of uncertainties in our ability to monitor flow and the interactions of fluids with construction materials (45 FR 42477 and 42478, June 20, 1980). We have since resolved these uncertainties. Further, section 1421 of the SDWA requires EPA to consider historical practices within a State. Thus, it seemed appropriate to frame construction requirements broadly, allowing consideration of specific factors in individual State programs. The section 701 report to Congress on hazardous waste injection, however, suggests that while there is some variety in the design and construction of hazardous waste wells, there is far less than with other classes of wells. Thus, the need to consider historical practices within a given State could be accommodated within a more specific regulatory framework. Accordingly, at least some of the original reasons for developing general standards for Class I injection wells are no longer germane.

Second, during the negotiations, several members expressed a strong preference for a set of standards which, while not inflexible, were nevertheless specific. They contended that requiring the Director to merely *consider* factors did not provide him with sufficient guidance. As a result of these considerations, the Agency is increasing the specificity of the construction requirements and adding some new requirements which go beyond merely stating requirements more precisely.

The changes being proposed today include additional criteria in the overall performance standards, more explicit compatibility requirements, and certain requirements for owners and operators injecting through a well equipped with a fluid seal.

1. General Performance Standards

The general standard for construction applicable to both new and existing wells specified in the current regulations is designed to "prevent the movement of fluids into or between underground sources of drinking water." Today's proposal would add two more. First, the well would have to be constructed in a manner that allows the use of appropriate testing and logging tools. Second, it would have to permit the use of continuous monitoring devices as required in § 146.67(f).

2. Compatibility

The issue of compatibility covers two areas: Compatibility of the well material with injected fluids and formation fluids; and compatibility of the injected fluid with formation minerals and fluids. The existing regulations handle compatibility concerns by listing relevant factors which the Director must consider such as corrosivity of the waste, design life of the well, characteristics of the formation fluid, and the characteristics of materials used to construct the well (§§ 146.12(c)(2), 146.12(e), and 146.14(b)(6)).

The proposed requirement would set a precise standard which would define compatibility for construction materials. New § 146.65(b) defines compatibility in terms of established and recognized standards such as those published by the American Petroleum Institute and the American Society for Testing Methods. In cases where an operator chooses to use an exotic material for which no published or recognized standards exist, comparable standards acceptable to the Director would have to be developed. Any such standard, whether published or approved by the Director, would then be a part of the permit. Under the proposal any time the materials in the well no longer meet or exceed the standard the operator would be in violation of a permit condition.

Proposed § 146.68(c), requires the Director to require corrosion monitoring and require the owner/operator to demonstrate the compatibility of the waste with construction materials prior to injecting. The owner or operator would have to submit to the Director a description of how the determination was made. Such a determination could be based on well known or established data on rates of corrosion exhibited by a given material exposed to a particular waste or formation fluid. This information could be used to establish a schedule of maintenance and replacement that would assure continued compatibility. Alternatively, the demonstration could be based on monitoring with corrosion loops, coupons, or similar systems. It should be noted that both the standard established in § 146.65, and the demonstration required in § 146.68, pertain to the waste, the formation fluids, and any reaction products.

3. Casing and Cementing Requirements for New Wells

This proposal would change the existing casing and cementing requirements for new wells by making them more explicit. For example, the current regulations require the Director to merely consider the location of USDWs when setting casing depths. Today's proposal would require the surface casing to be set below the base of the lowermost USDW. Similarly, the proposal would require the owner or operator to use a minimum of 120% of the calculated annular volume of cement and to recirculate to the surface, whenever possible, whereas the current regulations require only that a sufficient quantity of cement be used. Operators should have considerably more than 120% of the volume on hand when cementing. In fact, it has been suggested that up to 100% excess cement should be recirculated. The Agency is requesting comment on whether 20% recirculation is adequate or whether more should be required.

The proposal requires casing to have sufficient strength to withstand the maximum burst and collapse pressures and the maximum tensile stresses expected to occur during the design life of the well; the current requirements state that the Director must consider the injection pressure, the internal and external pressure, and axial loading. The Agency does not view these changes as major departures from its current regulations; rather, they represent a more specific statement of the existing requirements.

4. Tubing and Packer

The current regulations allow the use of an approved fluid seal. During the course of the section 701 Survey, EPA noted several instances in which operators of wells equipped with a fluid seal failed to detect operational problems. Based on that, the Agency began to consider whether the use of fluid seals should be either restricted or prohibited. Perhaps in response to EPA's research, several committee members advocated restricting or prohibiting their use. Others noted that with certain types of waste such seals may actually provide protection superior to packers. The Agency continues to believe that the simplicity of mechanical packers makes them preferrable in most cases. After careful analysis the Agency has determined, however, that the problems exhibited by fluid seals are primarily a function of inadequately trained operators and of the complexity of operating fluid seals effectively. After listening to extensive debate, the Agency decided that the most appropriate means of regulating such wells is to ensure that the operator is well trained, that the well can be accurately monitored on a continuous basis, that the permit contains appropriate pressure and volume limitations, and that the owner or operator demonstrate that the facility will provide a level of protection equal to or exceeding that which a packer-equipped well would provide. The proposed § 146.65(d)(3) contains such provisions. The Agency requests comment on this approach and particularly requests comments on the accuracy and sensitivity of fluid seal monitoring.

H. Logging, Testing and Sampling

Section 146.66, being proposed today takes requirements pertaining to logging and testing from existing §§ 146.12(d) and 146.14(b) and places them in a single section. In addition, the Agency is proposing to change the requirements in several important ways. The Agency would like to note that these requirements apply only to *new* hazardous waste wells.

Basically, the first change introduces in the regulations a description of what the goals of this section should be. A new use of the data would be the establishment of baseline data prior to injecting against which future logging and testing can be measured. The Agency believes this to be an important concept: the future utility of many logs is dependent on having a base log against which to compare. Thus, the operator's ability to demonstrate compliance at some point in the future may depend on what logs he ran when the well was first constructed. From this perspective, EPA believes that detailed logging prior to injecting can be of benefit to both the regulator and the permittee.

Another change being proposed today involves the tests required both before the casing is set and after it is in place. The wording in the existing regulations does not clearly indicate whether the tests outlined in § 146.12(d)(2) are mandatory or whether only some subset need to be run. The proposed language makes it clear that all the listed tests must be run. Some committee members were concerned that this could prevent the Director from requiring a better test or could "freeze" technology. They noted that the technologies used to test wells were evolving rapidly and urged that we allow the Director to approve an equivalent alternative. The proposed regulation reflects this concern and allows the Director to approve an alternative or additional test when he deems it appropriate.

The Agency is proposing to substantially change the mechanical integrity requirements in § 146.68(d). The initial demonstration of mechanical integrity for new wells, contained in § 146.66(a)(3) reflects this change. A detailed discussion outlining the Agency's rationale for this revision can be found in the section of the preamble addressing § 146.68, Testing and Monitoring Requirements.

Current § 146.12(a)(15), requires the Director to evaluate the operator's coring program prior to granting a permit. Some members of the committee, concerned that this provision did not place a burden on the Director to require coring, or on the operator to conduct it, urged the Agency to state the requirement more affirmatively. They also wanted to be sure the Director had authority to require coring of formations other than the injection and confining zones. Others believed that coring might not be necessary when information from a nearby source is available. After consideration, the Agency believes that the relatively inexpensive task of coring is justifiable in view of the information provided. Accordingly, the revisions being proposed today state the requirement more prescriptively and afford the Director broad authority to require cores from other formations. The Agency would like to note, however, that the situations in which the Director would want to require coring of formations other than the injection or confining zones should be few.

The Agency is also proposing to require the owner or operator to conduct pump or injectivity tests to identify the hydrogeologic properties of the injection zone through an empirical method. Such tests also have the advantage of yielding an aggregate figure which represents an entire strata or section of a strata. Again, the requirement for such a test is implicitly stated in the current regulations which require the Director to "consider" the owner or operator's formation testing program. Thus, the Agency does not see this as a substantive new requirement.

Finally, in § 146.66(f), the Agency is proposing language which would assure that the Director has the opportunity to witness logging or testing procedures by requiring the permittee to submit a schedule of testing activities at least 30 days prior to conducting the specified tests.

I. Operating Requirements

In new § 146.67, the Agency is proposing to add several operating requirements to those which are specified in § 146.13. These include:

requirements for maintaining an annulus pressure which exceeds injection pressures; controls for wells injecting waste which could generate gases; requirements for wells handling waste from a variety of sources; use of automatic shutoff or alarm devices; and additional notification requirements when operating problems occur.

1. Annulus Pressure

New § 146.67(c) would require the owner or operator to maintain an annulus pressure which exceeds the injection pressure, unless it would damage the well. Under such operating conditions, a leak in the tubing would always result in annulus fluid moving into the tubing, not in waste moving into the annulus. Some members pointed out that with very deep wells constructed out of certain materials pressures could be sufficiently high to collapse the tubing. The committee agreed that under these circumstances it was reasonable to afford the Director some discretion in imposing the requirement. Where the Director does relax this requirement because the well is too deep, the most critical section of the well—the part adjacent to a USDW—would still be operated with a favorable pressure relationship.

2. Controls for Gas Generation

In the past, several wells injecting acidic waste into formations either composed of carbonates or having substantial carbonate cementing have suffered operational problems. Although in no such case has a USDW been affected, EPA has determined that some additional controls are appropriate. Accordingly, § 146.67(e), as proposed, would dictate that the permit limit the temperature, pH, or acidity of the waste and contain procedures for preventing pressure loss during shutdown operations—the most critical period for gas generation. Such requirements would typically prohibit the operator from shutting in the well until a buffer had been injected to remove any acid from the vicinity of the well bore. If an emergency shut-in were necessary, the operator could shift to a neutral injection stream prior to shutting in the well. Controls on the temperature, pH, or acidity of the waste would limit the rate of gas generation or prevent it from being generated near the well bore.

One option before the committee was to ban such injection altogether. Some noted that the problems, while real, had not caused contamination of USDWs and, more importantly, could have the beneficial effect of neutralizing the acid. On reflection, the Agency elected to adopt the approach outlined above.

A further concern with acid waste injection expressed by some centered on the effect the acid might have on the confining zone and the injection zone. Specifically, they were concerned that the waste might destroy the capacity of the confining zone to confine, and change the hydrologic properties of the injection zone to the extent that the modeling done to identify the area of review and to assure proper siting would no longer be valid.

The Agency has investigated the geochemical effects of acid waste injection thoroughly, and will continue to do so. At this time, there is no evidence that acid wastes can influence formations to such an extent. Indeed, available information suggests that the total amount of dissolution resulting from injection of acid wastes will not affect the structural integrity of the system (Ref. 7, 8).

3. Automatic Alarms and Shutoff Devices

In the course of administering the UIC program in States without primacy, EPA noted that several operators used automatic alarms or automatic shutoff systems. Such systems are designed to either set off an alarm or shut in the well whenever certain operating parameters go beyond a prescribed range. The Agency is proposing to require such systems for all wells injecting hazardous waste.

The Agency is also proposing in § 146.67 (g), (h), and (i) a series of measured responses to instances when monitoring is triggered. The proposal would require the operator to identify the cause of the incident, shut off the well if necessary, determine whether a leak has occurred, and notify the Director within 24 hours if one has. In cases where the well has lost mechanical integrity, the operator would have to restore and demonstrate well integrity prior to resuming injection. In cases where there has been a release into a USDW, the operator would have to develop a cleanup plan and submit it to the Director for approval. In cases where the USDW served as a source of drinking water, the operator would also be required to publish a notice in a newspaper of general circulation. The operator would also be required to notify the Director prior to conducting any well workover.

The cleanup plan developed pursuant to proposed § 146.67(i) would not relieve the operator from meeting any concurrent requirements imposed under section 3004(u) of HSWA. The Agency's intent in imposing this requirement is to assure that cleanup occurs as rapidly as possible. As a practical matter, the Director should coordinate any cleanup activities with the appropriate institution implementing the section 3004(u) requirements. Any cleanup action being considered under this proposed section should use the criteria being developed by the Agency under section 3004(u) for deciding whether cleanup is necessary, what cleanup levels are appropriate, and what financial responsibility requirements apply.

Similarly, these requirements are meant to supplement, not replace the requirements for twenty-four hour reporting in § 144.51(l)(6). These amendments are being added merely to clarify how the operator is expected to respond to an alarm or shut down triggered by the monitoring required by proposed § 146.67(f). Members of the committee pointed out that for an alarm or shutoff device to be effective, the range of values which would trigger them must be such that some false warnings would occur. For example, a temperature change in the fluid injected could reduce pressures in the annulus sufficiently to set off one of these systems. The Agency is not interested in receiving a report any time such an event occurs; nor would it want the operator to shut in the well under these circumstances. It became clear during the negotiations, that EPA would have to articulate how we would want an operator to respond when an alarm is triggered. This section outlines these expectations.

J. Testing and Monitoring Requirements

As with several of today's amendments, this section both restates existing requirements more explicitly, changes some more substantively and adds new requirements. This section would add a requirement for a waste analysis plan, establish more precise standards for hydrogeologic compatibility determinations, specify requirements for compatibility monitoring, revise mechanical integrity testing, and establish more specific ambient monitoring requirements.

1. Waste Analysis Plan

The current regulations require analysis of the injected fluid "with sufficient frequency to yield representative data of their characteristics" § 146.13(b). In the Agency's implementation of the program, numerous questions have been raised concerning how to determine a sufficient frequency and how to interpret representative data.

Members of the committee suggested that the Agency adopt the approach

specified in § 264.13(b) of the RCRA regulations. This section requires the owner or operator to develop a written plan describing how the waste will be analyzed and sampled and how the analysis will assure that the samples will be representative. The Agency believes this to be a sensible approach. Most hazardous waste injection well operators will have surface units subject to RCRA and will have developed such a plan already. The approach retains flexibility, but eliminates the ambiguity in the current regulations. Accordingly, EPA is proposing § 146.68(a), which closely parallels the RCRA requirement.

2. Hydrogeologic Compatibility

A similar approach is being proposed in § 146.68(b) to address hydrogeologic compatibility. Under the proposed approach, the operator would submit a plan which identifies anticipated reaction products and demonstrates to the Director's satisfaction that neither the waste nor the reaction products would adversely affect the injection or confining zone; *i.e.*, both the injection and confining zones must continue to satisfy siting standards in § 146.62.

The current regulations state these requirements in § 146.12 and § 146.14. As in other areas, this amendment clarifies and adds some specificity to them, but does not substantially alter them.

3. Compatibility of Well Materials

The proposed approach to assuring that the materials in the well are compatible with injected fluid is discussed in detail in Section G.2 of this preamble which outlines the proposed construction requirements. That section would mandate corrosion monitoring for corrosive wastes, and would give the Director discretion in requiring it in other cases. Essentially, corrosion monitoring devices expose the construction materials to the waste under operating conditions. The operator can then remove this material and monitor for loss of mass, cracking, or pitting. Traditionally, such monitoring has been accomplished by means of loops (actual components placed in a manifold or some other accessible area) or coupons (pieces of material placed in the waste stream).

The committee explored several other options for addressing questions regarding compatibility. Some members wanted to require corrosion monitoring in all cases. Others noted that in many cases the rates of corrosion can be accurately predicted, particularly in wells with a long operating history and in wells which inject a waste stream that remains constant in content. After extensive analysis, the Agency decided that it would be most appropriate to afford the Director some latitude in requiring monitoring. In the case of corrosive wastes, however, the Agency believes that corrosion monitoring should be mandatory and a requirement to this effect has been incorporated. The Agency requests comment on this requirement.

4. Mechanical Integrity Testing

Current mechanical integrity tests (MITs) require the operator to check for fluid movement behind the casing (including movement of formation fluids through cement channels) and for leaks in the tubing, casing or packer. The tests are to be run at least once every five years. During the initial proposal and promulgation of the UIC regulations, the question of how frequently the tests should be run was a controversial one (see 45 FR 42500 *et seq.*, June 24, 1980). For this reason, in part, EPA included § 146.15 when it promulgated the current regulations. This section was to be used to gather data to assess certain of the requirements to be sure they were adequate. Chief among these were the mechanic integrity testing requirements. After analyzing annual and quarterly reports and reviewing the results of the section 701 report, the Agency believes that the frequency of certain of the tests is inadequate. In addition, EPA believes that certain tests not currently specified in the regulations should be added. In several instances, problems developed and evolved within a five-year time period. While these problems were detected by routine monitoring, it clearly suggests that the testing frequency needs to be increased.

In view of these concerns, EPA is proposing to require annual pressure tests. The Agency is also proposing to require the operator to conduct radioactive tracer surveys (RTS) annually. This test is required in many State programs and has been approved by EPA for use in some federally-implemented programs. RTS tests are extremely effective for locating leaks in the bottom hole cement.

In addition, we are proposing to require the use of a tool to evaluate the casing prior to operating the well and at least once and every five years thereafter. This tool, which uses electro-magnetic flux to measure the thickness of the casing, has the advantage of being predictive. That is, it not only indicates whether a leak is present in the well, but can also show developing weaknesses. In addition, the test can be used to ascertain the condition of the cement behind the casing. The proposed rule affords the Director some discretion in requiring this log since it is not effective with some casing materials.

Several members of the committee suggested that tests which require the tubing to be pulled should not be required at any specific intervals, but should be run whenever the well is worked over. The Agency disagrees. The tests in question, the temperature, noise or cement bond logs, are currently required to be run at least once every five-years by existing regulations. The casing tool, which also must be run with the tubing pulled is proposed to be run at least once every five years also. Moreover, a demonstration of mechanical integrity is already required after every workover. The proposed regulations make clear that the Director may schedule the tests to coincide with workovers whenever possible

5. Ambient Monitoring

Section 1426 of the Safe Drinking Water Act requires the Administrator to identify and list by regulation methods for monitoring all Class I well sites. Thus, the proposal being made today for monitoring has a broader scope than the other amendments. The requirements in § 146.68(e) are also being proposed at § 146.13 and would apply to owners and operators of all Class I wells, not just those who inject hazardous waste.

The debate surrounding monitoring for Class I injection wells has been a protracted one. The Agency has been investigating methods which might be useful for some time and will continue to do so. While some analysis is still being performed, one fact has become clear: with one exception, there is no single technique which could provide meaningful data at all sites. The question of what might prove effective at a given site depends on the hydrogeologic setting and characteristics of the operation.

The exception involves monitoring the pressure decay in the injection zone when the well is not injecting and assessing whether the decay curve tracks predictions. Such predictions are made for siting and area of review calculations and are based on hydrogeologic data and operating parameters such as injection pressure, fluid density and volume injected. If the geology has been accurately characterized, then the pressure decay should closely track the predictions. On the other hand, if an unexpected fault or fracture is transmitting fluid it will decline at a faster rate. Conversely, if a boundary condition such as an impermeable fault is present, the decay curve will be slower than anticipated. Accordingly, the Agency is proposing to

require pressure decay monitoring of the injection zone annually.

Testing the pressure in the first porous formation above the injection zone can also be an effective method of monitoring, although its utility is not as universal as monitoring pressure decay in the injection zone itself. Pressure is distributed relatively uniformly around the well bore. If the confining zone did leak, the resulting pressure increase in the zone above would also be distributed uniformly. Thus, unlike water quality monitoring (which relies on the well or wells being placed in the path of a plume in order to detect a release), pressure monitoring is capable of detecting a leak wherever the pressure is raised sufficiently. However, modeling has shown that pressure monitoring is most useful when the overlying porous zone is relatively thin and injection pressures and volumes are high. In many cases, background perturbations in formation pressures caused by such phenomena as earth tides limit our ability to identify pressure increases attributable to the well. Nevertheless, the Agency believes that, in appropriate circumstances, pressure monitoring can be an effective tool. Because its use is not as universally applicable as monitoring of pressure decay, the EPA is allowing the Director discretion in applying it.

When a monitoring well is required in the overlying porous formation, however, the owner or operator would be required to monitor the groundwater quality in the aquifer. While the utility of using a single well or even a set of wells to monitor water quality at great depths may be questionable, once a well is installed to detect pressure changes, it adds little additional expense to sample it for water quality changes. While the absence of any change is certainly not dispositive, the presence of a change might be.

The proposal also lists several other alternatives which the Director may use when prescribing a monitoring plan. These include: geophysical techniques, water quality monitoring in the overlying aquifer, periodic water quality monitoring in the lowermost USDW, and any other monitoring which the Director believes necessary to assure the protection of USDWs or to calibrate models.

K. Reporting Requirements

The Agency is proposing to add several new reporting requirements. These include reports on changes in the relationship between injection pressure and flow rate or volume which go beyond a range specified in the permit, a description of any event which triggers an automatic alarm and the operator's response, the total volume of fluid injected, and the volume of annular fluid lost. Members of the negotiating committee unanimously criticized the reporting requirements as stated in § 146.13 of the current regulations. Some found the requirement to report monthly average and maximum injection rates or volumes and pressures to be burdensome. Others pointed out that such data does not provide the specifc information necessary to assess the operation. The Agency agrees and is amending the requirements accordingly. The reporting being proposed should give the Director the specific information he needs to review the facility, and reduce the overall burden to the operator.

L. Information to Be Evaluated by the Director

This section essentially restates the information required in § 146.14 of the existing regulations. One option the Committee considered was proposing language to establish clearly the limits and responsibilities of the Director in analysing the information submitted by the Director and the obligations of the operator. The Agency is not proposing such rules today since this, in fact, mirrors the way the program has been implemented, and is at least implicitly stated in several sections of the regulations (§§ 124.3 and 144.12).

M. Closure

This section reorganizes and consolidates requirements found in the current regulations at §§ 144.28(c), 144.51(o), 144.52(a), 146.10, and 146.14. In additon, the Agency is proposing to add three new requirements. These are detailed below.

Proposed § 146.71(d)(1) would require the operator to observe and record the pressure decay for a time specified by the Director. The Director would use this data in conjunction with the results of transient pressure monitoring conducted pursuant to § 146.68 to determine whether the operation has conformed with predicted performance. The Agency believes this information could be useful in determining whether any specific post closure care requirements would be appropriate.

We are also proposing to require the owner or operator to demonstrate mechanical integrity prior to plugging the well. As with many of the amendments today, the Agency requires this in permits in all cases, and is merely specifying existing practice in the regulations. In addition, we are clarifying that both the owner or operator, and the person performing the closure, if different, must certify that the facility was closed in accordance with the plan (§ 146.71(c)).

N. Post Closure Care and Financial Responsibility

The Agency is proposing to apply post closure care requirements to injection wells. In the original promulgation of the UIC program, no provision was made for post closure care or any associated financial responsibility demonstrations. At that time, EPA did not believe such requirements were necessary. Once a well was properly plugged and once the pressures dropped to near background, physics suggested the waste would remain in the injection zone. In support of this contention, the Agency could point to petroleum reserves which had remained in traps for tens, even hundreds of millions of years. In addition, ground water isotope data suggested that many brines remained trapped for even longer time periods.

During the negotiations, several members expressed concerns about the potential for future activities to disturb the waste. They argued that even though a properly chosen site should contain the waste indefinitely under natural conditions, it might not do so in the face of other injection activities, oil and gas related drilling activities, or other man induced forces. They also noted that pressures do not decline immediately. Indeed, in some instances, pressures may remain significantly elevated for years.

Upon consideration the Agency agrees and is proposing post closure care and associated financial responsibility requirements for owners of hazardous waste injection wells. The Agency believes the special problems associated with hazardous waste warrant such action.

The requirements being proposed track those promulgated for RCRA in 40 CFR Parts 264 and 265. These were promulgated at 47 FR 32350 *et seq.* July 26, 1982, which contains a complete discussion of the requirements. Briefly, § 146.72 would require the owner or operator to submit a survey plat indicating a permanent benchmark to the appropriate zoning authority and to the EPA Regional Office in which the activity occurred; place a notation on the deed describing the activity; notify any State and Federal agencies which regulate drilling activities; and continue any monitoring required by the Director. The July 26, 1982 **Federal Register** cited above provides a more thorough explanation of these requirements and the Agency's rationale in developing them.

The Director would predict the amount of post closure financial responsibility to be required at the permit stage by requiring the owners or operators of Class I hazardous waste injection wells to submit site-specific pressure modeling results when applying for a permit. This modeling would predict the length of time pressure would remain elevated after all injection activities have ceased. In addition, the modeling would be used to determine what monitoring, if any, would be required in the permit. Thus, prior to granting any permit, the Director would have evidence showing both what types of post closure monitoring may be necessary and how long the monitoring would need to go on. This information would aid in determining the total amount of post closure financial responsibility needed. The demonstration would be subject to the procedural and fiscal requirements outlined in 40 CFR Part 144, Subpart F. The Agency intends to modify these instruments as appropriate for Post Closure care. We specifically invite comment on what changes are appropriate.

The only significant difference between the requirements proposed under RCRA and these being proposed today is the term for which the owner must monitor the well. This proposal would require him to do so until the pressure in the injection zone reaches background.

IV. Summary of Today's Proposal—Amendments to Parts 144, 124, and § 146.13

A. Part 124

EPA is amending Part 124 to require that state agencies which regulate oil and gas activities or mineral exploration be notified of permit activities for all Class I wells. Several State regulators participating in the regulatory negotiation process indicated that this was the practice in their states and suggested that the notice could help agencies coordinate their programs and apply specific requirements when appropriate.

B. Part 144

The Agency is proposing to amend § 144.31 to clarify that a permit is needed during the entire life of the facility which includes the post-closure care period. An issue which came up in the course of revising these regulations is the extent to which EPA has authority over an operator who is no longer injecting waste and whose permit may have expired. This was perceived as a particular problem with regard to assuring that plugging and abandonment, closure and post closure requirements are met. The Agency agrees that the current regulatory structure could be subject to abuse. Accordingly, we are proposing to amend § 144.31 by adding a new section (h) which would enable the Director to require the owner or operator of a currently authorized Class I hazardous waste well to obtain a post closure permit.

Moreover, existing requirements at § 144.12 apply to all phases of injection operations, including plugging and abandonment, closure, and post closure activities. This provision does not depend upon a permit; rather it applies directly to the owner or operator. Thus, whenever an injection activity endangers a USDW or the health of persons, the Agency has authority to enforce. In addition, the Director must assure, prior to granting a permit, that the owner or operator has demonstrated financial responsibility adequate to carry out closure and post closure care.

In addition, the Agency is proposing to amend § 144.39 to broaden the reasons for which permits may be modified or revoked and reissued. Specifically, the proposal would require permit modification either when regulations change, or when the waste is changed or reclassified. The preamble to 40 CFR Part 146 outlines the basis for amending § 144.39(b). The intent of this change, briefly, is to give the Director the discretion to revise or reissue a permit when the waste becomes or is determined to be hazardous as defined in section 261.

C. Section 146.13

Proposed § 146.13 would satisfy the mandate of section 1426 of the Safe Drinking Water Act by requiring the owners or operators of *all* Class I wells to develop an ambient monitoring program. This proposed amendment differs from the other proposals made today in that it is not restricted solely to Class I hazardous waste wells, but rather is applicable to all Class I wells.

At a minimum, the Director shall require a monitoring of the pressure buildup in the injection zone. This would require an annual shut down of the well for a period of time sufficient to conduct a valid observation of the pressure fall-off curve.

At the Director's discretion, one or more of the following site-specific monitoring techniques may also be required in order to prevent the contamination of USDWs:

1. Continuous monitoring for pressure changes in the first aquifer overlying the confining zone;

2. The use of indirect, geophysical techniques to determine pertinent characteristics of the formation and injected fluids;

3. Periodic monitoring of the ground water quality in the lowermost USDW; or

4. Any other technique which the Director deems necessary to protect USDWs.

Further detail concerning these proposed ambient monitoring amendments can be found in section (III)(J)(5) of today's proposal

V. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of $100 million or more; or

2. A major increase in costs or prices for consumers or individual industries; or

3. Significant adverse effects on competition, employment, investment, innovation or international trade.

The Agency has performed an analysis of the proposed regulation to assess the economic effect of associated compliance costs. Total annualized compliance costs of the proposed regulation are estimated to total $63 million. Total capital costs are estimated to total $15 million and one-time petition costs are estimated to be $3 million. These costs indicate that the proposal does not constitute a major rule under Executive Order 12291 and EPA has not prepared a formal regulatory impact analysis of today's proposal. The Agency has, however, prepared an assessment of the cost and potential economic effects of the proposed rule.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Analysis Act, 5 U.S.C. 601 *et seq.*, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small

organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be affected by this rule. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 0370) and a copy may be obtained from Eric Strassler, Information Policy Branch; EPA; 401 M St., SW. (PM-223); Washington, DC 20460 or by calling (202) 382-2738. Submit comments on these requirements to EPA and: Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, DC 20503 marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

VI. References

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B. Reference List for Part 146

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List of Subjects in 40 CFR Parts 124, 144, 146 and 148

Administrative practice and procedure, Hazardous materials, Reporting and recordkeeping requirements, Confidential business information, Waste treatment and disposal, Water supply, Water pollution control, Intergovernmental relations.

Dated: August 14, 1987.

Lee M. Thomas,

Administrator.

Therefore it is proposed that Chapter I of Title 40 be amended as follows:

PART 124—PROCEDURES FOR DECISIONMAKING

1. The authority citation for Part 124 continues to read as follows:

Authority: Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.;* Safe Drinking Water Act, 42 U.S.C. 300f *et seq.;* and Clean Air Act, 42 U.S.C. 1857 *et seq.*

2. Section 124.10 is amended by redesignating paragraphs (c)(1) (viii) and (ix) as paragraphs (c)(1) (ix) and (x) and by adding a new paragraph (c)(1)(viii) to read as follows:

§ 124.10 Public notice of permit actions and public comment period.

* * * * *

(c) * * *

(1) * * *

(viii) For Class I injection well UIC permits only, state and local oil and gas regulatory agencies and state agencies regulating mineral exploration and recovery;

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PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for Part 144 continues to read as follows:

Authority: Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*

2. Section 144.31 is amended by adding a new paragraph (h) to read as follows:

§ 144.31 Authorization for a permit; authorization by permit.

* * * * *

(h) *Scope of UIC permit requirement.* The UIC program requires a permit for the injection of fluids. Owners or operators of hazardous waste injection wells must have permits during the active life of the injection well (including the closure and post closure care periods specified in §§ 146.71 and 146.72).

3. Section 144.39 is amended by revising paragraph (a)(3) introductory text, and by adding a new paragraph (b)(3) to read as follows:

§ 144.39 Modification or revocation and reissuance of permits.

* * * * *

(a) * * *

(3) *New regulations.* The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits other than for Class I hazardous waste injection wells, Class II, or Class III wells may be modified during their terms for this cause only as follows:

* * * * *

(b) * * *

(3) A determination that the waste being injected is a hazardous waste as defined in § 261.3 either because the definition has been revised, or because a previous determination has been changed.

* * * * *

PART 146—UNDERGROUND INJECTION CONTROL PROGRAM: CRITERIA AND STANDARDS

1. The authority citation for Part 146 continues to read as follows:

Authority: Secs. 1421, 1422, 1423, 1431, 1445, 1447, and 1450 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*

2. Section 146.13 is amended by adding paragraph (d) to read as follows:

§ 146.13 Operating, monitoring and reporting requirements.

* * * * *

(d) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid migration from the well or injection zone that may be harmful to human health or the environment and on the potential value of monitor wells to detect such migration, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water quality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; or

(v) Any additional monitoring necessary to protect USDWs.

3. A new Subpart G is added to read as follows:

Subpart G—Criteria and Standards Applicable to Class I Hazardous Waste Injection Wells

Sec.

SUBPART G—CRITERIA AND STANDARDS APPLICABLE TO CLASS I HAZARDOUS WASTE INJECTION WELLS

§ 146.61 Applicability.

(a) This subpart establishes criteria and standards for underground injection control programs to regulate Class I hazardous waste injection wells. Unless otherwise noted this Subpart supplements the requirements of Subpart A and applies instead of Subpart B to Class I hazardous waste injection wells.

(b) *Definitions.*

Cone of influence means that area around the well within which increased injection zone pressures caused by the hazardous waste injection well would be sufficient to drive fluids into an underground source of drinking water (USDW).

Existing well means a Class I well which was authorized prior to [FR insert effective date of these regulations] by an approved State program, or an EPA-administered program.

New well means any injection well which is not an existing well.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 146.62 Minimum criteria for siting.

(a) All Class I hazardous waste wells shall be sited in such a fashion that they inject into a formation that is beneath the lowermost formation containing within one quarter mile of the well bore an underground source of drinking water.

(b) The siting of Class I hazardous waste wells shall be limited to areas that are geologically suitable. The Director shall determine geologic suitability based upon:

(1) An analysis of the structural and stratigraphic geology, the hydrogeology, and the seismicity of the region;

(2) An analysis of the local geology and hydrogeology of the well site, including, at a minimum, detailed information regarding stratigraphy, structure and rock properties, aquifer hydrodynamics and mineral resources; and

(3) A determination that the geology of the area can be described confidently and that waste fate and transport can be accurately modeled.

(c) Class I hazardous waste injection wells shall be sited in such a manner that:

(1) The injection zone has sufficient permeability, porosity, thickness and areal extent to prevent migration of fluids into USDWs.

(2) The confining zone:

(i) Is laterally continuous and free of transecting transmissive faults or fractures over an area sufficient to prevent the movement of fluids into a USDW; and

(ii) Contains at least one formation of sufficient thickness and with lithologic and stress characteristics capable of preventing vertical propagation of fractures.

(d) The owner or operator shall demonstrate to the satisfaction of the Director that:

(1) The confining zone is separated from the base of the lowermost USDW by at least one sequence of permeable and less permeable strata that will provide an added layer of protection for the USDW in the event of fluid movement in an unlocated borehole or transmissive fault; or

(2) Within the area of review, the piezometric surface of the fluid in the injection zone is less than the piezometric surface of the lowermost USDW, considering density effects, injection pressures and any significant pumping in the overlying USDW; or

(3) There is no USDW present.

(4) The Director may approve a site which does not meet the requirements in paragraph (d) (1), (2), or (3) section if the owner or operator can demonstrate to the Director that because of the geology, nature of the waste, or other considerations, abandoned boreholes or other conduits would not cause endangerment of USDWs.

§ 146.63 Area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of § 146.6. The area of review for Class I hazardous waste injection wells shall be either:

(a) A 2½ mile radius around the well bore; or

(b) The calculated cone of influence of the well, whichever is greater.

§ 146.64 Corrective action for wells in the area of review.

For the purposes of Class I hazardous waste wells, this section shall apply to the exclusion of §§ 144.55 and 146.07.

(a) The owner or operator of a Class I hazardous waste well shall as part of the permit application submit a plan to the Director outlining the protocol used to:

(1) Identify all wells penetrating the confining zone or injection zone within the area of review; and

(2) Determine whether wells are adequately completed or plugged.

(b) The owner or operator of a Class I hazardous waste well shall identify the location of all wells within the area of review that penetrate the injection zone or the confining zone and shall submit as required in § 146.70(b)(3):

(1) A tabulation of all wells within the area of review that penetrate the injection zone or the confining zone; and

(2) A description of each well or type of well and any records of its plugging or completion.

(c) For wells that are improperly plugged, completed, or abandoned, or for which plugging or completion information is unavailable, the applicant shall also submit a plan consisting of such steps or modifications as are necessary to prevent movement of fluid from the injection zone into USDWs. Where the plan is adequate, the Director shall incorporate it into the permit as a condition. Where the Director's review of an application indicates that the permittee's plan is inadequate (based at a minimum on the factors in paragraph (e) of this section), the Director shall:

(1) Require the applicant to revise the plan;

(2) Prescribe a plan for corrective action as a condition of the permit; or

(3) Deny the application.

(d) Requirements:

(1) Existing injection wells. Any permit issued for an existing Class I hazardous waste injection well requiring corrective action other than pressure limitations shall include a compliance schedule requiring any corrective action accepted or prescribed under paragraph (c) of this section. Any such compliance schedule shall provide for compliance no later than two years following issuance of the permit and shall require observance of appropriate pressure limitations under paragraph (d)(3) of this section until all other corrective action measures have been implemented.

(2) New injection wells. No owner or operator of a new Class I hazardous waste injection well may begin injection until all corrective actions required under this section have been taken.

(3) The Director may require pressure limitations in lieu of plugging. If pressure limitations are used in lieu of plugging, the Director shall require as a permit condition that injection pressure be so limited that pressure in the injection zone at the site of any improperly completed or abandoned well within the area of review would not be sufficient to drive fluids from the injection stratum into the lowermost USDW. This pressure limitation shall satisfy the corrective action requirement. Alternatively, such injection pressure limitation can be made part of a

compliance schedule and can be required to be maintained until all other required corrective actions have been implemented.

(e) In determining the adequacy of corrective action proposed by the applicant under paragraph (c) of this section and in determining the additional steps needed to prevent fluid movement into USDWs, the following criteria and factors shall be considered by the Director:

(1) Nature and volume of injected fluid;

(2) Nature of native fluids or byproducts of injection;

(3) Geology;

(4) Hydrology;

(5) History of the injection operation;

(6) Completion and plugging records;

(7) Closure procedures in effect at the time the well was closed;

(8) Hydraulic connections with USDWs;

(9) Reliability of the procedures used to identify abandoned wells; and

(10) Any other factors which might affect the migration of injected waste or formation fluids into USDWs.

§ 146.65 Construction requirements.

(a) *General.* All existing and new Class I hazardous waste wells shall be constructed and completed to:

(1) Prevent the movement of fluids into or between USDWs or into any unauthorized zones;

(2) Permit the use of appropriate testing devices and workover tools; and

(3) Permit continuous monitoring of injection tube and long string casing as reguired pursuant to § 146.67(f).

(b) *Compatibility.* All well materials must be compatible with fluids with which the materials may be expected to come into contact. A well shall be deemed to have compatibility as long as the materials used in the construction of the well meet or exceed standards developed for such materials by the American Petroleum Institute, The American Society for Testing Materials, or comparable standards acceptable to the Director.

(c) *Casing and Cementing of new wells.* (1) Casing and cement used in the construction of each newly drilled well shall be designed for the life expectancy of the well, including the post-closure care period. The casing and cementing program shall be designed to isolate the injection zone from overlying aquifers, to prevent movement of fluids along the borehole and to protect USDWs from potential leaks of fluids from the well. In determining and specifying casing and cementing requirements, the following information as required by § 146.70 shall be considered:

(i) Depth to the injection zone;

(ii) Injection pressure, external pressure, internal pressure and axial loading;

(iii) Hole size;

(iv) Size and grade of all casing strings (wall thickness, diameter, nominal weight, length, joint specification and construction material);

(v) Corrosiveness of injected fluid, formation fluids and temperature;

(vi) Lithology of injection and confining zones;

(vii) Type or grade of cement; and

(viii) Quantity and chemical composition of the injected fluid.

(2) One surface casing string shall, at a minimum, extend into the confining bed below the lowest formation that contains a USDW and be cemented by circulating cement from the base of the casing to the surface, using a minimum of 120% of the calculated annular volume.

(3) At least one long string casing, using a sufficient number of centralizers, shall extend to the injection zone and shall be cemented by circulating cement to the surface in one or more stages:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; and

(ii) In a quantity no less than 120% of the calculated volume necessary to fill the annular space.

(4) Circulation of cement may be accomplished by staging. The Director may approve an alternative method of cementing in cases where the cement cannot be recirculated to the surface, provided the owner or operator can demonstrate using logs that the cement is continuous and does not allow fluid movement behind the well bore.

(5) Casings, including any casing connections, must be rated to have sufficient structural strength to withstand, for the design life of the well:

(i) The maximum burst and collapse pressures which may be experienced during the construction, operation and closure of, the well; and

(ii) The maximum tensile stress which may be experienced at any point along the length of the casing during the construction, operation, and closure of the well.

(6) At a minimum, cement and cement additives must be of sufficient quality and quantity to maintain integrity over the design life of the well.

(d) *Tubing and packer.* (1) All Class I hazardous waste injection wells shall inject fluids through tubing with a packer set above the injection zone.

(2) In determining and specifying requirements for tubing and packer, the following factors shall be considered:

(i) Depth of setting;

(ii) Characteristics of injection fluid (chemical content, corrosiveness, temperature and density);

(iii) Injection pressure;

(iv) Annular pressure;

(v) Rate (intermittent or continuous), temperature and volume of injected fluid;

(vi) Size of casing; and

(vii) Tubing tensile, burst, and collapse strengths.

(3) The Director may approve the use of a fluid seal if he determines that the following conditions are met:

(i) The operator demonstrates that the seal will provide a level of protection comparable to a packer;

(ii) The operator has demonstrated that the staff is, and will remain, adequately trained to operate and maintain the well and to identify and interpret variations in parameters of concern;

(iii) The permit contains specific limitations on variations in annular pressure and loss of annular fluid;

(iv) The design and construction of the well will allow continuous monitoring of the annular pressure and mass balance of annular fluid; and

(v) A secondary system shall be used to monitor the interface between the annulus fluid and the injection fluid and the permit shall contain requirements for testing the system every three months and recording the results.

§ 146.66 Logging, sampling, and testing prior to new well operation.

(a) During the drilling and construction of new Class I hazardous waste injection wells, appropriate logs and tests must be run to determine or verify the depth, thickness, porosity, permeability, and rock type of, and the salinity of any entrained fluids in, all relevant geologic units to assure conformance with performance standards in § 146.65, and to establish accurate baseline data against which future measurements may be compared. A descriptive report interpreting results of such logs and tests shall be prepared by a knowledgeable log analyst and submitted to the Director.

At a minimum, such logs and tests shall include: (1) Deviation checks on all holes constructed by drilling a pilot hole which are enlarged by reaming or another method. Such checks shall be at sufficiently frequent intervals to determine the location of the borehole and to assure that vertical avenues for fluid migration in the form of diverging holes are not created during drilling.

(2) Such other logs and tests as may be needed after taking into account the availability of similar data in the area of

the drilling site, the construction plan, and the need for additional information, that may arise from time to time as the construction of the well progresses. At a minimum, the following logs shall be required in the following situations:

(i) Upon installation of the surface casing:

(A) Resistivity, spontaneous potential, and caliper logs before the casing is installed; and

(B) A cement bond, temperature, density log after the casing is set and cemented.

(ii) Upon installation of the long string casing:

(A) Resistivity, spontaneous potential, porosity, caliper and gamma ray logs before the casing is installed;

(B) Fracture finder logs; and

(C) A cement bond, temperature, density log after the casing is set and cemented.

(iii) The Director may allow the use of an alternative to the above logs when an alternative will provide equivalent or better information.

(3) A mechanical integrity test consisting of:

(i) A pressure test with liquid or gas;

(ii) A radioactive tracer survey;

(iii) A temperature or noise log;

(iv) A casing inspection log, if required by the Director; and

(v) Any other test required by the Director.

(b) Whole cores or sidewall cores of the confining and injection zones and formation fluid samples from the injection zone shall be taken. The Director may require the owner or operator to core other formations in the borehole.

(c) The fluid temperature, pH, conductivity, pressure and the static fluid level of the injection zone must be recorded.

(d) At a minimum, the following information concerning the injection and confining zones shall be determined or calculated for Class I hazardous waste wells:

(1) Fracture pressure;

(2) Other physical and chemical characteristics of the injection and confining zones; and

(3) Physical and chemical characteristics of the formation fluids in the injection zone.

(e) Upon completion, but prior to operation, the owner or operator shall conduct the following tests to verify hydrogeologic characteristics of the injection zone:

(1) A pump test; or

(2) Injectivity tests.

(f) The Director shall have the opportunity to witness all logging and testing required by this Subpart. The owner or operator shall submit a schedule of such activities to the Director 30 days prior to conducting the first test.

§ 146.67 Operating requirements.

(a) Except during stimulation, the owner or operator shall assure that injection pressure at the wellhead does not exceed a maximum which shall be calculated so as to assure that the pressure in the injection zone during injection does not initiate new fractures or propagate existing fractures in the injection zone. Then owner or operator shall assure that the injection pressure does not initiate fractures or propagate existing fractures in the confining zone, nor cause the movement of injection or formation fluids into a USDW.

(b) Injection between the outermost casing protecting USDWs and the well bore is prohibited.

(c) The owner or operator shall maintain an annulus pressure that exceeds the operating injection pressure, unless such a requirement might harm the integrity of the well. The fluid in the annulus shall be noncorrosive, or shall contain a corrosion inhibitor.

(d) The owner or operator shall maintain mechanical integrity in the injection well at all times.

(e) Permit requirements for owners or operators of hazardous waste wells which inject wastes which have the potential to react with the injection formation to generate gases shall include:

(1) Conditions limiting the temperature, pH or acidity of the injected waste; and

(2) Procedures necessary to assure that pressure imbalances which might cause a backflow or blowout do not occur.

(f) The owner or operator shall install and use continuous recording devices to monitor the injection pressure; the flow rate, volume, and temperature of injected fluids; and the pressure on the annulus between the tubing and the long string casing, and shall install and use:

(1) Automatic alarm and automatic shut-off systems, designed to sound and shut-in the well when pressures and flow rates exceed a range and/or gradient specified in the permit; or

(2) Automatic alarms, designed to sound when the pressures and flow rates exceed a rate and/or gradient specified in the permit, in cases where the owner or operator certifies that a trained operator will be on-site at all times when the well is operating.

(g) If an automatic alarm or shutdown is triggered, the owner or operator shall immediately investigate and identify as expeditiously as possible the cause of the alarm or shutoff. If, upon such investigation, the well appears to be lacking mechanical integrity, or if monitoring required under paragraph (f) of this section otherwise indicates that the well may be lacking mechanical integrity, the owner or operator shall:

(1) Cease injection of waste fluids unless authorized by the Director to continue or resume injection;

(2) Take all necessary steps to determine the presence or absence of a leak; and

(3) Notify the Director within 24 hours after the alarm or shutdown.

(h) If a loss of mechanical integrity is discovered pursuant to paragraph (g) of this section or during periodic mechanical integrity testing, the owner or operator shall:

(1) Immediately cease injection of waste fluids;

(2) Take all steps reasonably necessary to determine whether there may have been a release of hazardous wastes or hazardous waste constituents into any unauthorized zone;

(3) Notify the Director within 24 hours after loss of mechanical integrity is discovered;

(4) Notify the Director when injection can be expected to resume; and

(5) Restore and demonstrate mechanical integrity to the satisfaction of the Director prior to resuming injection of waste fluids.

(i) Whenever the owner or operator obtains evidence that there may have been a release of injected wastes into an unauthorized zone:

(1) The owner or operator shall immediately cease injection of waste fluids, and:

(i) Notify the Director within 24 hours of obtaining such evidence;

(ii) Take all necessary steps to identify and characterize the extent of any release;

(iii) Develop any necessary cleanup plan for approval by the Director;

(iv) Implement any cleanup plan approved by the Director; and

(v) Where such release is into a USDW currently serving as a water supply, place a notice in a newspaper of general circulation.

(2) The Director may allow the operator to resume injection prior to completing cleanup action if the owner or operator demonstrates that the injection operation will not endanger USDWs.

(j) The owner or operator shall notify the Director and obtain his approval prior to conducting any well workover.

§ 146.68 Testing and monitoring requirements.

Testing and monitoring requirements shall at a minimum include:

(a) Monitoring of the injected wastes. (1) The owner or operator must develop and follow an approved written waste analysis plan that describes the procedures to be carried out to obtain a detailed chemical and physical analysis of a representative sample of the waste, including the quality assurance procedures used. At a minimum, the plan must specify:

(i) The parameters for which the waste will be analyzed and the rationale for the selection of these parameters;

(ii) The test methods that will be used to test for these parameters; and

(iii) The sampling method that will be used to obtain a representative sample of the waste to be analyzed.

(2) The owner or operator shall repeat the analysis of the injected wastes as described in the waste analysis plan at frequencies specified in the waste analysis plan and when process or operating changes occur that may significantly alter the characteristics of the waste stream.

(3) The owner or operator shall conduct continuous or periodic monitoring of selected parameters as required by the Director.

(4) The owner or operator shall assure that the plan remains accurate and the analyses remain representative.

(b) Hydrogeologic compatibility determination. The owner or operator shall submit information demonstrating to the satisfaction of the Director that the waste stream and its anticipated reaction products will not alter the permeability, thickness or other relevant characteristics of the confining or injection zones such that they would no longer meet the requirements specified in § 146.62.

(c) Compatibility of well materials. (1) The owner or operator shall demonstrate that the waste stream will be compatible with the well materials with which the waste is expected to come into contact, and submit to the Director a description of the methodology used to make that determination. Compatibility for purposes of this requirement is established if contact with injected fluids will not cause the well materials to fail to satisfy any design requirement imposed under § 146.65(b).

(2) The Director shall require continuous corrosion monitoring of the construction materials used in the well for wells injecting corrosive waste, and may require such monitoring for other waste, by:

(i) Placing coupons of the well construction materials in contact with the waste stream; or

(ii) Routing the waste stream through a loop constructed with the material used in the well; or

(iii) Using an alternative method approved by the Director.

(3) If a corrosion monitoring program is required:

(i) The test shall use materials identical to those used in the construction of the well, and such materials must be continuously exposed to the operating pressures and temperatures (measured at the well head) and flow rates of the injection operation; and

(ii) The owner or operator shall monitor the materials for loss of mass, thickness, cracking, pitting and other signs of corrosion on a quarterly basis to ensure that the well components meet the minimum standards for material strength and performance set forth in § 146.65(b).

(d) Periodic mechanical integrity testing. In fullfilling the requirements of § 146.8, the owner or operator of a Class I hazardous waste injection well shall conduct the mechanical integrity testing as follows:

(1) The long string casing, injection tube, and annular seal must be tested by means of an approved pressure test with a liquid or gas annually and whenever there has been a well workover.

(2) The bottom-hole cement must be tested by means of an approved radioactive tracer survey annually.

(3) An approved temperature, noise, or other approved log shall be run at least once every five years to test for movement of fluid along the borehole. The Director may require such tests whenever the well is worked over.

(4) Casing inspection logs shall be run at least once every five years when the Director requires it.

(5) Any other test approved by the Director in accordance with the procedures in § 146.8(d) may also be used.

(e) *Ambient monitoring.* (1) Based on a site-specific assessment of the potential for fluid migration from the well or injection zone that may be harmful to human health or the environment and on the potential value of monitor wells to detect such migration, the Director shall require the owner or operator to develop a monitoring program. At a minimum, the Director shall require monitoring of the pressure buildup in the injection zone annually, including at a minimum, a shut down of the well for a time sufficient to conduct a valid observation of the pressure fall-off curve.

(2) When prescribing a monitoring system the Director may also require:

(i) Continuous monitoring for pressure changes in the first aquifer overlying the confining zone. When such a well is installed, the owner or operator shall, on a quarterly basis, sample the aquifer and analyze for constituents specified by the Director;

(ii) The use of indirect, geophysical techniques to determine the position of the waste front, the water guality in a formation designated by the Director, or to provide other site specific data;

(iii) Periodic monitoring of the ground water quality in the first aquifer overlying the injection zone;

(iv) Periodic monitoring of the ground water quality in the lowermost USDW; or

(v) Any additional monitoring necessary to protect USDWs.

§ 146.69 Reporting requirements.

Reporting requirements shall, at a minimum, include:

(a) Quarterly reports to the Director containing:

(1) The maximum injection pressure;

(2) Changes in the ratio between injection pressure and flow rate or volume that go beyond a range specified in the permit pursuant to § 146.67(f);

(3) A description of any event which triggers an alarm or shutdown device required pursuant to § 146.67(f) and the response taken;

(4) The total volume of fluid injected;

(5) The volume of annular fluid lost, if any;

(6) The physical, chemical and other relevant characteristics of injected fluids; and

(7) The results of monitoring prescribed under § 146.68.

(b) Reporting, within 30 days or with the next quarterly report whichever comes later, the results of:

(1) Periodic tests of mechanical integrity;

(2) Any other test of the injection well conducted by the permittee if required by the Director; and

(3) Any well workover.

§ 146.70 Information to be evaluated by the Director.

This section sets forth the information which must be evaluated by the Director in authorizing Class I hazardous waste wells. For a new Class I hazardous waste well, the owner or operator shall submit all the information listed below as part of the permit application. For an existing or converted Class I hazardous waste well, the owner or operator shall submit all information listed below as part of the permit application except for

those items of information which are current, accurate, available in the existing permit file. For both existing and new Class I hazardous waste wells, certain maps, cross-sections, tabulations of wells within the area of review and other data may be included in the application by reference provided they are current, readily available to the Director (for example, in the permitting agency's files) and sufficiently identifiable to be retrieved. In cases where EPA issues the permit all the information in this section must be submitted to the Administrator or his designee.

(a) Prior to the issuance of a permit for an existing Class I hazardous waste injection well to operate or the construction or conversion of a new Class I hazardous waste injection well, the Director shall review the following to assure that the requirements of this section, Parts 144 and 146 are met.

(1) Information required in § 144.31;

(2) A map showing the injection well for which a permit is sought and the applicable area of review. Within the area of review, the map must show the number or name and location of all producing wells, injection wells, abandoned wells, dry holes, surface bodies of water, springs, mines (surface and subsurface), quarries, water wells and other pertinent surface features, including residences and roads. The map should also show faults, if known or suspected;

(3) A tabulation of all wells within the area of review which penetrate the proposed injection zone or confining zone. Such data shall include a description of each well's type, construction, date drilled, location, depth, record of plugging and/or completion and any additional information the Director may require;

(4) The protocol followed to identify, locate and ascertain the condition of abandoned wells within the area of review which penetrate the injection or the confining zones;

(5) Maps and cross-sections indicating the general vertical and lateral limits of all underground sources of drinking water within the area of review, their position relative to the injection formation and the direction of water movement, where known, in each underground source of drinking water which may be affected by the proposed injection;

(6) Maps and cross-sections detailing the geologic structure of the local area;

(7) Maps and cross-sections illustrating the regional geologic setting;

(8) Proposed operating data:

(i) Average and maximum daily rate and volume of the fluid to be injected; and

(ii) Average and maximum injection pressure.

(9) Proposed formation testing program to obtain an analysis of the chemical, physical and radiological characteristics of and other information on the injection formation and the confining zone;

(10) Proposed stimulation program;

(11) Proposed injection procedure;

(12) Schematic or other appropriate drawings of the surface and subsurface construction details of the well;

(13) Contingency plans to cope with all shut-ins or well failures so as to prevent migration of fluids into any USDW;

(14) Plans (including maps) for meeting monitoring requirements of § 146.68;

(15) For wells within the area of review which penetrate the injection zone or the confining zone but are not properly completed or plugged, the corrective action to be taken under § 146.64;

(16) Construction procedures including a cementing and casing program, well materials specifications and their life expectancy, logging procedures, deviation checks, and a drilling, testing and coring program; and

(17) A certificate that the applicant has assured, through a performance bond or other appropriate means, the resources necessary to close, plug or abandon the well and for post-closure care as required by § 144.63.

(b) Prior to granting approval for the operation of a Class I hazardous waste well the owner or operator shall submit and the Director shall review the following information, which shall be included in the completion report:

(1) All available logging and testing program data on the well;

(2) A demonstration of mechanical integrity pursuant to § 146.68;

(3) The anticipated maximum pressure and flow rate at which the permittee will operate;

(4) The results of the injection zone and confining zone testing program as required in § 146.70(a)(9);

(5) The actual injection procedure;

(6) The compatibility of injected waste with fluids in the injection zone and minerals in both the injection zone and the confining zone and with the materials used to construct the well;

(7) The calculated area of review based on data obtained during logging and testing of the well and the formation, and where necessary revisions to § 146.70(a) (2) and (3);

(8) The status of corrective action on wells identified in § 146.70(a)(15).

(c) Prior to granting approval for the plugging and abandonment of a Class I hazardous waste well the Director shall review the information required in § 146.71(a)(3).

(d) Any permit issued for a Class I hazardous waste injection well for disposal on the premises where the waste is generated shall contain a certification by the owner or operator that:

(1) The generator of the hazardous waste has a program to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and

(2) Injection of the waste is that practicable method of disposal currently available to the generator which minimizes the present and future threat to human health and the environment.

§ 146.71 Closure.

(a) Closure plan. The owner or operator of a Class I hazardous waste injection well shall prepare, maintain, and comply with a plan for closure of the well that meets the requirements of paragraph (d) of this section and is acceptable to the Director.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the method of closure reflected in the plan for approval by the Director no later than the date on which notice of closure is required to be submitted to the Director under paragraph (b) of this section.

(3) The plan shall include the following information:

(i) The type and number of plugs to be used;

(ii) The placement of each plug including the elevation of the top and bottom of each plug;

(iii) The type and grade and quantity of material to be used in plugging;

(iv) The method of placement of the plugs;

(v) Any proposed test or measure to be made;

(vi) The amount, size, and location (by depth) of casing and any other materials to be left in the well;

(vii) The method and location where casing is to be parted, if applicable;

(viii) The procedure to be used to meet the requirements of paragraph (d)(5) of this section;

(ix) The estimated cost of closure; and

(x) Any proposed test or measure to be made.

(4) An owner or operator of a Class I hazardous waste injection well who intends to cease injection temporarily, may keep the well open provided he:

(i) Receives authorization from the Director; and

(ii) Describes actions or procedures, satisfactory to the Director, that the owner or operator will take to ensure that the well will not endanger USDWs during the period of temporary disuse.

These actions and procedures shall include compliance with the technical requirements applicable to active injection wells unless waived by the Director.

(5) The owner or operator of any well that has ceased operations for more than two years shall notify the Director prior to resuming operation of the well.

(b) *Notice of intent to close.* The owner or operator shall notify the Director at least 60 days before closure of a well. At the discretion of the Director, a shorter notice period may be allowed.

(c) *Closure report.* Within 60 days after closure or at the time of the next quarterly report (whichever is less) the owner or operator shall submit a closure report to the Director. If the quarterly report is due less than 15 days after completion of closure, then the report shall be submitted within 60 days after closure.

The report shall be certified as accurate by the owner or operator and by the person who performed the closure operation (if other than the owner or operator). Such report shall consist of either:

(1) A statement by the owner or operator that the well was closed in accordance with the closure plan previously submitted and approved by the Director; or

(2) Where actual closure differed from the plan previously submitted, a written statement specifying the differences between the previous plan and the actual closure.

(d) *Standards for well closure.* (1) Prior to closing the well, the owner or operator shall observe and record the pressure decay for a time specified by the Director. The Director shall analyze the pressure decay and the transient pressure observations conducted pursuant to § 146.68(e)(1)(i) and determine whether the injection activity has conformed with predicted values.

(2) Prior to well closure, appropriate mechanical integrity testing shall be conducted to ensure the integrity of that portion of the long string casing and cement that will be left in the ground after closure.

Testing methods may include:

(i) Pressure tests with liquid or gas;

(ii) Radioactive tracer surveys; and

(iii) Noise, temperature, pipe evaluation, or cement bond logs; and

(iv) Any other test required by the Director.

(3) Prior to well closure, the well shall be flushed with a buffer fluid.

(4) Upon closure, a Class I hazardous waste well shall be plugged with cement in a manner that will not allow the movement of fluids into or between USDWs.

(5) Placement of the cement plugs shall be accomplished by one of the following:

(i) The Balance Method;

(ii) The Dump Bailer Method;

(iii) The Two-Plug Method; or

(iv) An alternate method, approved by the Director, that will reliably provide a comparable level of protection.

(6) Each plug used shall be appropriately tagged and tested for seal and stability before closure is completed.

(7) The well to be closed shall be in a state of static equilibrium with the mud weight equalized top to bottom, either by circulating the mud in the well at least once or by a comparable method prescribed by the Director, prior to the placement of the cement plug(s).

§ 146.72 Post-closure care.

(a) The owner or operator of a Class I hazardous waste well shall prepare, maintain, and comply with a plan for post-closure care that meets the requirements of paragraph (b) of this section and is acceptable to the Director.

(1) The owner or operator shall submit the plan as a part of the permit application and, upon approval by the Director, such plan shall be a condition of any permit issued.

(2) The owner or operator shall submit any proposed significant revision to the plan as appropriate over the life of the well, but no later than the date of the closure report required under § 146.71(c).

(3) The plan shall include the following information:

(i) The pressure in the injection zone before injection began;

(ii) The anticipated pressure in the injection zone at the time of closure;

(iii) The predicted time until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW;

(iv) Predicted position of the waste front at closure;

(v) The status of any cleanups required under § 146.64; and

(vi) The estimated cost of proposed post-closure care.

(b) The owner or operator shall:

(1) Continue and complete any cleanup action required under § 146.64, if applicable;

(2) Continue to conduct any groundwater monitoring required under the permit until pressure in the injection zone decays to the point that the well's cone of influence no longer intersects the base of the lowermost USDW. The Director may extend the period of post-closure monitoring if he determines that the well may endanger a USDW.

(3) Submit a survey plat to the local zoning authority designated by the Director. The plat shall indicate the location of the well relative to permanently surveyed benchmarks. A copy of the plat shall be submitted to the Regional Administrator of the appropriate EPA Regional Office.

(4) Provide appropriate notification and information to such State and local authorities as have cognizance over drilling activities to enable such State and local authorities to impose appropriate conditions on subsequent drilling activities that may penetrate the well's confining or injection zone.

(5) Retain, for a period of three years following well closure, records reflecting the nature, composition and volume of all injected fluids. The Director shall require the owner or operator to deliver the records to the Director at the conclusion of the retention period, and the records shall thereafter be retained at a location designated by the Director for that purpose.

(c) Each owner of the surface or subsurface property on or in which a hazardous waste well is located must record a notation on the deed to the facility property or on some other instrument which is normally examined during title search that will in perpetuity provide any potential purchaser of the property the following information:

(1) The fact that land has been used to manage hazardous waste;

(2) The name of the State agency or local authority with which the plat was filed, as well as the address of the Regional Environmental Protection Agency Office to which it was submitted;

(3) The type and volume of waste injected, the injection interval or intervals into which it was injected, and the period over which injection occurred.

§ 146.73 Financial responsibility for post-closure care.

The owner or operator shall demonstrate and maintain financial

responsibility for post-closure by using a trust fund, surety bond, letter of credit, financial test, insurance or corporate guarantee that meets the specifications for the mechanisms and instruments revised as appropriate in 40 CFR Part 144, Subpart F. The amount of the funds available shall be no less than the amount identified in § 146.72(a)(3)(vi).

Part 148 is added to read as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

Subpart A—General

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.

Subpart A—General

§ 148.1 Purpose, scope and applicability.

(a) This part identifies hazardous wastes that are restricted from disposal into Class I hazardous waste injection wells and defines those circumstances under which a waste, otherwise prohibited from injection, may be injected.

(b) The requirements of this part apply to owners or operators of Class I hazardous waste injection wells used to inject hazardous waste.

(c) Wastes otherwise prohibited from injection may continue to be injected if:

(1) An extension from the effective date of a prohibition has been granted pursuant to § 148.3 with respect to such wastes; or

(2) An exemption from a prohibition has been granted in response to a petition filed under § 148.20 to allow injection of restricted wastes with respect to those wastes and wells covered by the exemption; or

(3) The waste is generated by a conditionally exempt small quantity generator, as defined in § 261.5; or

(4) Until November 8, 1988, the waste has been determined to be contaminated soil or debris resulting from a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or a corrective action required under the Resource Conservation and Recovery Act.

§ 148.2 Definitions.

Injection interval means that part of the injection zone in which the well is screened, or in which the waste is otherwise directly emplaced.

Transmissive fault or fracture is a fault or fracture that has sufficient permeability and vertical extent to allow fluids to move between formations.

§ 148.3 Dilution prohibited as a substitute for treatment.

The prohibition of § 268.3 shall apply to owners or operators of Class I hazardous waste injection wells.

§ 148.4 Procedures for case-by-case extensions to an effective date.

The owner or operator of a hazardous waste injection well may submit an application to the Administrator for an extension of the effective date of any applicable prohibition established under Subpart B of this Part according to the procedures of § 268.5.

§ 148.5 Waste analysis.

Generators of hazardous wastes that are disposed of into injection wells must comply with the applicable requirements of § 268.7 (a) and (b). Owners or operators of Class I hazardous waste injection wells must comply with the applicable requirements of § 268.7(c).

Subpart B—Prohibitions on Injection

§ 148.10 Waste specific prohibitions—solvent wastes.

(a) Effective August 8, 1988, the spent solvent wastes specified in § 261.31 as EPA Hazardous Waste Nos. F001, F002, F003, F004, and F005 are prohibited from underground injection unless the solvent waste is a solvent-water mixture or solvent-containing sludge containing less than 1 percent total F001–F005 solvent constituents listed in Table A of this part.

(b) Effective August 8, 1990, the F001–F005 solvent wastes listed in Table A of this part are prohibited from injection.

(c) The requirements of paragraphs (a) and (b) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date that has been granted under § 148.3 of this Part.

Table A

Acetone
n-Butyl alcohol
Carbon disulfide
Carbon tetrachloride
Chlorobenzene
Cresols and cresylic acid
Cyclohexanone
1,2-dichlorobenzene
Ethyl acetate
Ethyl benzene
Ethyl ether
Isobutanol
Methanol
Methylene chloride
Methyl ethyl ketone
Methyl isobutyl ketone
Nitrobenzene
Pyridine
Tetrachloroethylene
Toluene
1,1,1-Trichloroethane
1,2,2-Trichloro-1,2,2 trifluoroethane
Trichloroethylene
Trichlofluoromethane
Xylene

§ 148.11 Waste specific prohibitions—dioxin-containing wastes.

(a) Effective August 8, 1988, the dioxin-containing wastes specified in § 261.31 as EPA Hazardous Waste Nos. F020, F021, F023, F026, F027, and F028, are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

(1) If the wastes meet or are treated to meet the standards of § 268.41; or

(2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or

(3) During the period of extension of the applicable effective date that has been granted under § 148.3 of this Part.

Subpart C—Petition Standards and Procedures

§ 148.20 Petitions to allow injection of a waste prohibited under Subpart B.

(a) Any person seeking an exemption from a prohibition under Subpart B of this part for the injection of a restricted hazardous waste into an injection well or wells must submit a petition to the Director demonstrating that, to a reasonable degree of certainty, there will be no migration of hazardous constituents from the injection zone for

as long as the waste remains hazardous. This demonstration requires a showing that:

(1) The hydrogeological and geochemical conditions at the sites and the physiochemical nature of the waste stream(s) are such that reliable predictions can be made that:

(i) Fluid movement conditions are such that the injected fluids will not migrate within 10,000 years:

(A) Vertically upward out of the injection zone; or

(B) Laterally within the injection zone to a point of discharge or interface with a USDW; or

(ii) Before the injected fluids migrate out of the injection zone or to a point of discharge or interface with an USDW, the wastes will no longer be hazardous because the hazardous constituents will have been attenuated or immobilized within the injection zone by hydrolysis, chemical interactions or other means; and

(2) For wells authorized prior to [FR, insert the effective date of these regulations], the owner/operator shall for each well, as part of the demonstration prior to the approval of the petition:

(i) Redetermine the injection well's area of review in accordance with the requirements of § 146.63;

(ii) Locate, identify, and ascertain the condition of all wells within the injection well's redetermined area of review that penetrate the injection zone or the confining zone by use of a protocol acceptable to the Director in accordance with the requirements of § 146.64;

(iii) Submit a corrective action plan that meets the requirements of § 146.64, the implementation of which shall become a condition of petition approval; and

(iv) Submit the results of pressure and radioactive tracer tests performed within six months prior to submission of the petition demonstrating the mechanical integrity of the well's long string casing, injection tube, annular seal, and bottom hole cement.

(b) A demonstration under § 148.20(a)(1)(i) shall identify the strata within the injection zone which will arrest fluid movement above the injection interval and include a showing that the injection zone is:

(1) Overlain by a confining zone, with a thickness equal to or greater than four times that of the portion of the injection zone above the injection interval within which fluid movement will be contained; and

(2) Is separated from the base of the lowermost USDW by a total thickness equal to or greater than ten times that of the portion of the injection zone above the injection interval within which fluid movement will be contained.

(c) A demonstration under § 148.20(a)(1)(ii) shall identify the strata within the injection zone where waste transformation will be accomplished and include a showing that the injection zone is:

(1) Overlain by a confining zone, with a thickness equal to or greater than four times that of the portion of the injection zone above the injection interval within which the wastes will be transformed; and

(2) Is separated from the base of the lowermost USDW by a total thickness equal to or greater than ten times that of the portion of the injection zone above the injection interval within which the wastes will be transformed.

(d) A demonstration may include a showing that:

(1) Treatment methods, the implementation of which shall become a condition of petition approval, will be utilized that reduce the toxicity or mobility of the wastes, or

(2) A monitoring plan, the implementation of which shall become a condition of petition approval, will be utilized to enhance confidence in one or more aspects of the demonstration.

(e) Any person who has been granted an exemption pursuant to this section may submit a petition for reissuance of the exemption to include an additional waste or wastes or to modify any conditions placed on the exemption by the Director. The exemption shall be reissued if the petitioner complies with the requirements of paragraph (a) of this section.

(f) A petition to modify an exemption from a prohibition granted pursuant to paragraph (a) of this section to include an additional hazardous waste or wastes may be granted if the Director determines, to a reasonable degree of certainty, that the additional waste or wastes will behave hydraulically and chemically in a manner similar to previously included wastes and that it will not interfere with the containment capability of the injection zone.

§ 148.21 Information to be submitted in support of petitions.

(a) Information submitted in support of § 148.20 must meet the following criteria:

(1) All waste and environmental sampling, test and analysis data shall be accurate and reproducible and performed in accordance with quality assurance standards;

(2) Estimation techniques shall be appropriate, and EPA-certified tests protocols shall be used where available and appropriate;

(3) Predictive models shall have been verified and validated, shall be appropriate for the specific site, waste streams, and injection conditions of the operation, and shall be calibrated for existing sites where sufficient data are available;

(4) An approved quality assurance and quality control plan shall address all aspects of the demonstration;

(5) Reasonably conservative values shall be used whenever values taken from the literature or estimated on the basis of known information are used instead of site-specific measurements; and

(6) An analysis shall be performed to identify and assess aspects of the demonstration that contribute significantly to uncertainty. This analysis shall include an evaluation of the extent to which predictable events could have an impact on the demonstration.

(b) Any petitioner under § 148.20(a)(1)(i) shall provide sufficient site-specific information to support the demonstration, such as:

(1) Thickness, porosity, and permeability of the various strata in the injection zone;

(2) Thickness, permeability, extent, and continuity of the confining zone;

(3) Hydraulic gradient in the injection zone;

(4) Hydrostatic pressure in the injection zone; and

(5) Geochemical conditions of the site.

(c) In addition to the information in § 148.21(b), any petitioner under § 148.20(a)(1)(ii) shall provide sufficient waste-specific information to ensure reasonably reliable predictions about the waste transformation. The petitioner must provide the information necessary to support the demonstration, such as:

(1) Description of the chemical processes or other means that will lead to waste transformation; and

(2) Results of laboratory experiments verifying the waste transformation.

§ 148.22 Procedures for petition submission, review and approval or denial.

(a) Any petition submitted to the Director pursuant to § 148.20(a) must include the following components:

(1) An identification of the specific waste or wastes and the specific injection well or wells for which the demonstration will be made;

(2) A waste analysis to describe fully the chemical and physical characteristics of the subject wastes;

(3) Such additional information as is required under §§ 148.20 and 148.21 to support the petition; and

(4) This statement signed by the petitioner or an authorized representative:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this petition and all attached documents, and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(b) The Director shall provide public notice in accordance with the procedures in § 124.10 of the intent to approve or deny a petition and provide an opportunity for public comments. The final decision on a petition will be published in the **Federal Register**.

(c) If an exemption is granted it will apply to the underground injection of the specific restricted waste or wastes identified in the petition into a Class I hazardous waste injection well or wells identified in the petition and will not apply to the disposal of any other restricted wastes into the identified injection well or wells (unless the exemption is modified or reissued pursuant to § 148.20 (d) or (e)) or to the injection of the identified specific restricted waste or wastes into any other injection well.

(d) Upon request by any petitioner who obtains an exemption for a well under this Subpart, the Director shall initiate and reasonably expedite the necessary procedures to issue or reissue a permit or permits for the hazardous waste well or wells covered by the exemption for a term not to exceed ten years.

§ 148.23 Review of exemptions granted pursuant to a petition.

(a) When considering whether to reissue a permit for the operation of a Class I hazardous waste injection well, the Director shall review any petition filed pursuant to § 148.20 and require a new demonstration if information shows that the basis for granting the exemption may no longer be valid.

(b) Whenever the Director determines that the basis for approval of a petition may no longer be valid, the Director shall require a new demonstration in accordance with § 148.20.

§ 148.24 Termination of approved petition.

(a) The Director may terminate an exemption granted in response to a petition filed under § 148.20(a) for the following causes:

(1) Noncompliance by the petitioner with any condition of the exemption;

(2) The petitioner's failure in the petition or during the review and approval to disclose fully all relevant facts, or the petitioner's misrepresentation of any relevant facts at any time; or

(3) A determination that new information shows that the basis for approval of the petition is no longer valid.

(b) The Director shall terminate an exemption granted in response to a petition filed under § 148.20(a) for the following causes:

(1) The petitioner's willful withholding during the review and approval of the petition of facts directly and materially relevant to the Director's decision on the petition;

(2) A determination that there has been migration from the injection zone or the well in violation of 40 CFR 148.20(a) (1) or (2) except that the Director may in his discretion decide not to terminate where:

(i) The migration resulted from a mechanical failure of the well that can be corrected promptly through a repair to the injection well itself or from an undetected well or conduit that can be plugged promptly; and

(ii) The requirements of § 146.67(i) are satisfied.

(c) The Director shall follow the procedures in § 124.5 in terminating any exemption under this section.

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federal register

Thursday
August 27, 1987

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Discipline and Special Housing Units; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Discipline and Special Housing Units

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing amendments to its rule on Inmate Discipline and Special Housing Units. These amendments are primarily intended to replace the existing three-member "Institution Discipline Committee", with a single person "Discipline Hearing Officer" (DHO).

DATE: Comments must be received on or before October 13, 1987.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: Pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(q), notice is given that the Bureau of Prisons intends to publish in the **Federal Register** proposed amendments to its final rule on Inmate Discipline and Special Housing Units. In addition, the Bureau of Prisons is publishing a new general section entitled "Definitions" which provides a variety of terms commonly used throughout the Inmate Discipline and Special Housing Unit rule.

The Bureau published a final rule on Inmate Discipline and Special Housing Units in the **Federal Register** June 2, 1987 (at 52 FR 20678–20693). The present amendments are intended to replace the existing three-member "Institution Discipline Committee" with a single-person "Discipline Hearing Officer" (DHO). A pilot program, using this concept, was announced in the **Federal Register** December 5, 1986 (at 51 FR 44010 et seq.). A further notice was published in the **Federal Register** April 23, 1987 (at 51 FR 13546). Based on the results of the pilot project, the Bureau has decided to implement the DHO concept in each of its institutions. Because this change will require numerous procedural modifications to the rule, the Bureau of Prisons has decided to publish the entire rule for ease of reading. Public comment, however, will be specifically considered and addressed in the **Federal Register** only on the DHO concept, and on the proposed amendments specifically described below. Members of the public also may submit comments concerning the remaining provisions of the policy, including those sections where, while the wording has been changed, the rule's intent is unchanged. These comments, while considered, will receive no formal response in the **Federal Register**.

In § 541.2, the Bureau is introducing a new Subpart A to Part 541, entitled "Definitions". In this section, the Bureau defines specific terms commonly used throughout the Inmate Discipline and Special Housing rule. The Bureau's intent in this section is to more clearly define, at the onset of its rule, the types of hearings and the responsibilities of key persons participating in the disciplinary process.

In § 541.11, Table 1, and throughout the rule, except as otherwise noted in this preamble, the terms "Discipline Hearing Officer" or "DHO" are substituted for "Institution Discipline Committee" or "IDC", since the major discipline process is proposed to be handled by a single-person Discipline Hearing Officer. Also, in Table 1, in § 541.14(a), and in § 541.15(e), the reference to Lieutenants or the UDC informally resolving Incident Reports in the High Severity Category is deleted. This action is taken because of the seriousness of the prohibited acts within this category. In Table 2, Item 4, the term "Discipline Hearing Officer (DHO)" is substituted for "Institution Discipline Committee hearing". This change is necessary because the existing reference to an Institution Discipline "Committee" (a three-member decision-making body) is no longer appropriate.

In §§ 541.13(a), 541.13(e), and 541.13, Table 5, the terms "appropriate committee" and "discipline committee" are replaced by "Unit Discipline Committee" or "Discipline Hearing Officer", as the reference to "committee" is no longer appropriate in all instances. In § 541.13(c), the sentence, "The DHO now has that authority for suspensions earlier imposed by the IDC", is added to allow the DHO the authority to act on prior IDC actions in this area.

In § 541.13, Table 3, Code 102, the phrase "and administrative institutions" is added to clarify the scope of the phrase "escape from a secure institution". Administrative institutions, including Metropolitan Correctional Centers, are classified by the Bureau as "secure institutions". In Code 223, the phrase "or take part in other alcohol abuse testing" is replaced with "or take part in other testing for use of alcohol". The intent of the section is unchanged. Also in Table 3, the Bureau has added a new prohibited act, Code 224, "Assaulting any person (charged with this act only when a less serious physical injury or contact has been attempted or carried out by an inmate, e.g., pushing an officer may be properly classified Code 224). This act is added to recognize that not all assaultive-type acts should be classified to the higher Code 101, assaulting any person (when more serious physical injury is attempted or carried out). In Table 4, Sanctions of the Discipline Hearing Officer, in paragraph B and again in paragraph F, the authority to restore forfeited or withheld statutory good time is changed from the Institution Discipline Committee to the Warden (cannot be delegated lower than the Associate Warden level). In paragraph F, the phrase "near the beginning of the month or at the 30-day review" is deleted from the section that directs that the DHO review an inmate who is subject to consecutive withholding actions for recurring refusal to program. This section now states, "During the running of such a withholding order, the DHO shall review the offense with the inmate on a monthly basis". Also, in paragraph G, the wording is changed to reflect that "in some cases" the loss of leisure privileges for misconduct unrelated to the abuse of that privilege may be appropiate. While the wording has changed, the intent remains the same.

In § 541.13, Table 6, the "Note" paragraph is changed to direct that when the Warden or his delegated representative denies good time restoration, the unit team (replaces the IDC) is responsible to notify the inmate of the reasons for denial and shall establish a new eligibility date.

In § 541.14, the sentence which directs that "the investigating officer should be an employee of supervisory level . . ." is moved from § 541.14(b) to § 541.2(a).

In § 541.15, the sentence which directs that the Warden shall authorize the UDC to impose minor sanctions (G through P) for violations of prohibited act(s) is moved to § 541.2(b). Section 541.15(b) and § 541.11, Table 2, are changed to reflect that an inmate so charged (with a prohibited act) is entitled to an initial hearing before the UDC, ordinarily within three work days from the time staff become aware of the inmate's involvement in the incident. This change from two to three work days provides a more realistic time period for investigation of the incident and for the parties to prepare for the hearing.

The title to existing § 541.16 is changed to delete the reference to the establishment of the Institution Discipline Committee and will now read, "Functioning of the Discipline Hearing Officer". Section 541.16(a) now describes the role of the Discipline Hearing Officer. Also included in this section is a provision which states that if an institution's DHO is not able to conduct hearings, the Warden shall arrange for another trained and certified DHO to conduct the hearings. In § 541.16(b), all references to the Institution Discipline Committee and its composition are deleted. Remaining in this section, however, is the provision which directs that, in order to insure impartiality, the DHO may not be the reporting officer, investigating officer, or UDC member, or a witness to the incident or play any significant part in having the charge(s) referred for a hearing. In § 541.16(c), the sentence that directs the IDC to conduct reviews of inmates placed in disciplinary segregation in accordance with the requirements of § 541.20 is deleted. In its place, the Bureau is adding new § 541.16(d), authorizing the Warden to designate a "Segregation Review Official" (SRO) to conduct these required reviews. The terms "Discipline Hearing Officer" and "Segregation Review Official" are defined in § 541.2 (c) and (d).

The title to existing § 541.17 is changed to delete reference to the IDC, and now reads "Procedures Before the Disciplinary Hearing Officer". Section 541.17(d) recognizes that the DHO can act on sanctions imposed by the IDC when an inmate had escaped or was otherwise absent from custody. In § 541.17(f), the reference to "committee report" is changed to "the hearing report", as this is a more appropriate term. This proposed paragraph also recognizes that the UDC chairman may be provided confidential informant information and may need to document the reliability of the information in a separate report. Section 541.18 is now entitled "Dispositions of the Discipline Hearing Officer".

In § 541.19, now entitled "Appeals from Unit Discipline Committee or Discipline Hearing Officer Actions", the Bureau is deleting its reference to filing appeals "within 15 calendar days . . ." under Administrative Remedy Procedures because there is a difference in the number of days that an inmate must file an initial appeal for decisions rendered by the UDC (to the Warden within 15 calendar days) as opposed to those rendered by the DHO (to the Regional Director within 20 calendar days). The Bureau also plans to revise its rule on the Administrative Remedy Procedure (Part 542) to state that an inmate may appeal a decision of the DHO directly to the Regional Director within 20 calendar days. While this reference is deleted from the discipline rule language, the Bureau's implementing instructions to staff specifically address the appropriate time frames for filing an appeal to UDC or DHO decisions. Section 541.19(c) is amended to read "according to the severity level of the prohibited act, and other relevant circumstances".

In § 541.20, paragraphs (c) and (d) are changed to reflect that the "Segregation Review Official" shall conduct (at appropriate intervals) a hearing and formally review the status of inmates in disciplinary segregation, and may, upon finding that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status, release an inmate earlier than the sanction initially imposed. The SRO will also conduct the review on inmates in administrative detention and notify the inmate of the reasons he is transferred to administrative detention from post-disciplinary detention (§ 541.22).

In § 541.22(c)(2), the standard for cell occupancy has been changed to reflect, with current levels of prison population, the need for higher occupancy of special housing cells other than in just temporary, emergency situations. Proposed paragraph (c)(6) now allows either the Captain or the DHO to recommend that the Warden withhold the exercise periods of an inmate in disciplinary segregation status.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

List of Subjects in 28 CFR Part 541

Prisoners.

In consideration of the foregoing, it is proposed to amend Subchapter C, Part 541, by adding a new Subpart A, and by revising Subpart B as follows:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

* * * * *

Subpart A—General

Sec.
541.2 Definitions.
* * * * *

Subpart B—Inmate Discipline and Special Housing Units

Sec.
541.10 Purpose and scope.
541.11 Notice to inmate of Bureau of Prisons rules.
541.12 Inmate rights and responsibilities.
541.13 Prohibited acts and disciplinary severity scale.
541.14 Incident report and investigation.
541.15 Initial hearing.
541.16 Functioning of the Discipline Hearing Officer.
541.17 Procedures before the Discipline Hearing Officer.
541.18 Dispositions of the Discipline Hearing Officer.
541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer actions.
541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.
541.21 Conditions of disciplinary segregation.
541.22 Administrative detention.
541.23 Protection cases.
* * * * *

Subpart A—General

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 541.2 Definitions.

(a) *Investigating Officer.* The term Investigating Officer refers to an employee of supervisory level who conducts the investigation concerning alleged charge(s) of inmate misconduct. The Investigating Officer may not be the employee reporting the incident, or one who was directly involved in the incident in question.

(b) *Unit Discipline Committee (UDC).* The term Unit Disciplinary Committee (UDC) refers to one or more institution staff members delegated by the Warden the authority and duty to hold an initial

hearing upon completion of the investigation concerning alleged charge(s) of inmate misconduct. In institutions with unit management, these staff members will ordinarily be members of the Unit Team. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s).

(c) *Discipline Hearing Officer (DHO).* This term refers to one-person, independent hearing officer who is responsible for conducting Institution Discipline Hearings, and for imposing appropriate sanctions for incidents of inmate misconduct referred for disposition following the hearing required by § 541.15 before the UDC.

(d) *Segregation Review Official (SRO).* The term Segregation Review Official refers to the individual at each Bureau of Prisons institution who is assigned to review the status of each inmate housed in disciplinary segregation and administrative detention, as required in §§ 541.20 and 541.22 of this rule.

Subpart B—Inmate Discipline and Special Housing Units

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

* * * * *

§ 541.10 Purpose and Scope.

(a) So that inmates may live in a safe and orderly environment, it is necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with Bureau of Prisons rules. The provisions of this rule apply to all persons committed to the care, custody, and control (direct or constructive) of the Bureau of Prisons.

(b) The following general principles apply in every disciplinary action taken:

(1) Only institution staff may take disciplinary action.

(2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within Bureau rules and institution guidelines and to promote a safe and orderly institution environment.

(3) Staff shall control inmate behavior in a completely impartial and consistent manner.

(4) Disciplinary action may not be capricious or retaliatory.

(5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or is incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct.

(i) A person is not responsible for his conduct if, at the time of the conduct, the person, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. When a person is determined not responsible for his conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was found not to be mentally responsible for his conduct.

(ii) A person is incompetent if that person lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings. When a person is determined incompetent, the disciplinary proceedings shall be postponed until such time as the inmate is able to understand the nature of the disciplinary proceedings and to assist in his defense at those proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his or her defense at the disciplinary proceedings.

§ 541.11 Notice to inmate of Bureau of Prisons rules.

Staff shall advise each inmate in writing promptly after arrival at an institution of:

(a) The types of disciplinary action which may be taken by institution staff;

(b) The disciplinary system within the institution and the time limits thereof (see Tables 1 and 2);

(c) The inmate's rights and responsibilities (see § 541.12);

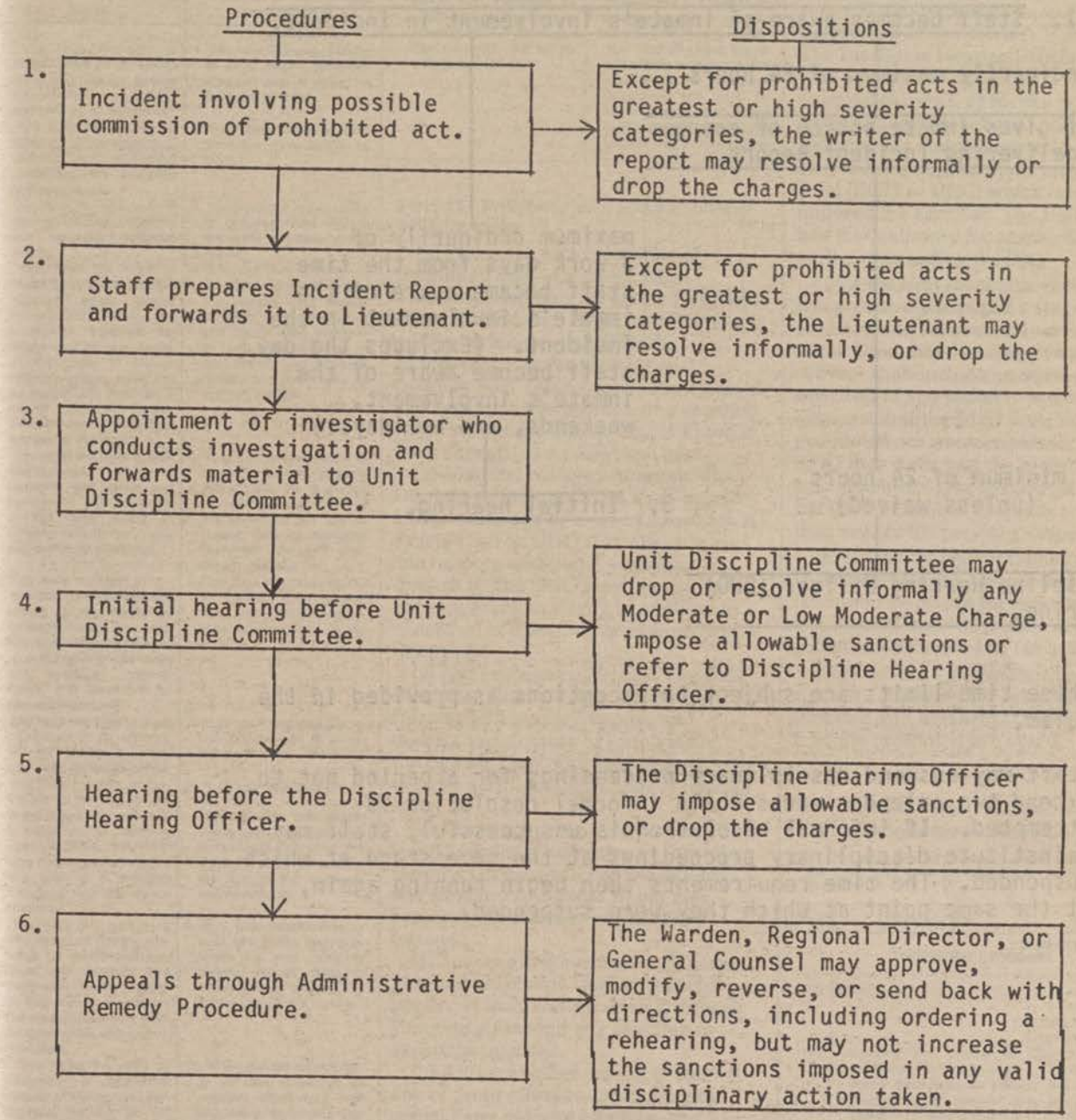
(d) Prohibited acts and disciplinary severity scale (see § 541.13, Tables 3, 4, and 5); and

(e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time (see Table 6).

BILLING CODE 4410-05-M

SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1



TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2

1. Staff becomes aware of inmate's involvement in incident.

ordinarily maximum of 24 hours

2. Staff gives inmate notice of charges by delivering Incident Report.

minimum of 24 hours (unless waived)

4. Discipline Hearing Officer (DHO) Hearing.

maximum ordinarily of 3 work days from the time staff became aware of the inmate's involvement in the incident. (Excludes the day staff become aware of the inmate's involvement, weekends, and holidays.)

3. Initial hearing.

NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two calendar weeks while informal resolution is attempted. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

BILLING CODE 4410-05-C

§ 541.12 Inmate rights and responsibilities.

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or Bureau rules or institution guidelines through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading materials for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.
11. You have the right to use your funds for commissary and other purchases, consistent with institution security and good order, for opening bank and/or savings accounts, and for assisting your family.	11. You have the responsibility to meet your financial and legal obligations, including, but not limited to, court-imposed assessments, fines, and restitution. You also have the responsibility to make use of your funds in a manner consistent with your release plans, your family needs, and for other obligations that you may have.

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate (see Table 3 for identification of the prohibited acts within each category). Specific sanctions are authorized for each category (see Table 4 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act.

(1) *Greatest category offenses.* The Discipline Hearing Office shall impose and execute one or more of sanctions A through E. The DHO may also suspend one or more additional sanctions A through F. The DHO may impose and execute sanction F only in addition to execution of one or more of sanctions A through E.

(2) *High category offenses.* The Unit Discipline Committee or Discipline Hearing Officer shall impose and execute one or more of sanctions A through M. They may also suspend one or more additional sanctions A through M.

(3) *Moderate category offenses.* The Unit Discipline Committee or Discipline Hearing Officer shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed.

(4) *Low moderate category offenses.* The Unit Discipline Committee shall impose at least one sanction E through P, but may suspend any sanction or sanctions imposed.

(b) *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, *and making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A.

(c) Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction requires that the inmate first is found to have committed any subsequent prohibited act. Only the Discipline Hearing Officer (DHO) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Discipline Hearing Officer (DHO) or Unit Discipline Committee (UDC) may execute, suspend, or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (DHO or UDC) which originally imposed the sanction. The DHO now has that authority for suspensions earlier imposed by the IDC.

(d) If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Discipline Hearing Officer, the referral shall include an advisement to the DHO of any intent to revoke that suspension if the DHO finds that the prohibited act was committed. If the DHO then finds that the prohibited act was committed, the DHO shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

(e) A Unit Discipline Committee or Discipline Hearing Officer may impose increased sanctions for repeated, frequent offenses according to the guidelines presented in Table 5.

(f) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time are presented in Table 6.

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
	GREATEST CATEGORY	
100	Killing	A. Recommend parole date rescission or retardation.
101	Assaulting any person (includes sexual assault) or an armed assault on the institution's secure perimeter (a charge for assaulting any person is to be used only when serious physical injury has been attempted or carried out by an inmate).	B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary Transfer (recommend).
102	Escape from escort; escape from a secure institution (Security Level 2 through 6 and administrative institutions); or escape from a Security level 1 institution *with* violence.	D. Disciplinary segregation (up to 60 days). E. Make monetary restitution. F. Withhold statutory good time (Note—can be in addition to A through E—cannot be the only sanction executed).

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—CONTINUED

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).	
104	Possession, manufacture, or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition.	
105	Rioting	
106	Encouraging others to riot	
107	Taking hostage(s)	
108	Possession, manufacture, or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade).	
109	Possession, introduction, or use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff.	Sanctions A–F.
110	Refusing to provide a urine sample or to take part in other drug-abuse testing.	
198	Interfering with a staff member in the performance of duties. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable.	
199	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Greatest Severity nature.*) This charge is to be used only when another charge of greatest severity is not applicable	
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions—*without* violence.	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 30 days).
201	Fighting with another person	
202	(Not to be used.)	
203	Threatening another with bodily harm or any other offense.	
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.	E. Make monetary restitution. F. Withhold statutory good time G. Loss of privileges: commissary, movies, recreation, etc. H. Change housing (quarters).
205	Engaging in sexual acts	
206	Making sexual proposals or threats to another	
207	Wearing a disguise or a mask	I. Remove from program and/or group activity. J. Loss of job K. Impound inmate's personal property L. Confiscate contraband M. Restrict to quarters.
208	Possession of any unauthorized locking device, or lock pick, or tampering with or blocking any lock device (includes keys).	
209	Adulteration of any food or drink	
210	(Not to be used.)	
211	Possessing any officer's or staff clothing.	
212	Engaging in, or encouraging a group demonstration.	Sanctions A–M.
213	Encouraging others to refuse to work, or to participate in a work stoppage.	
214	(Not to be used.)	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value.	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes.	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00 or destroying, altering, or damaging life-safety devices (e.g., fire alarm) regardless of financial value.	
219	Stealing (theft; this includes data obtained through the unauthorized use of a communications facility, or through the unauthorized access to disks, tapes, or computer printouts or other automated equipment on which data is stored.).	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill.	
221	Being in an unauthorized area with a person of the opposite sex without staff permission.	Sanctions A–M.
222	Making, possessing, or using intoxicants	
223	Refusing to breathe into a breathalyzer or take part in other testing for use of alcohol.	
224	Assaulting any person (charged with this act only when a less serious physical injury or contact has been attempted or carried out by an inmate, e.g., pushing an officer may be properly classified Code 224).	
298	Interfering with a staff member in the performance of duties. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable..	
299	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the High Severity nature.*) This charge is to be used only when another charge of high severity is not applicable.	
300	Indecent exposure	A. Recommend parole date rescission or retardation.
301	(Not to be used)	B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary transfer (recommend) segregation (up to 15 days). D. Disciplinary.
302	Misuse of authorized medication	
303	Possession of money or currency, unless specifically authorized, or in excess of the amount authorized.	
304	Loaning of property or anything of value for profit or increased return.	
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.	E. Make monetary restitution F. Withhold statutory good time.
306	Refusing to work, or to accept a program assignment.	G. Loss of privileges: commissary, movies, recreation, etc.
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Rioting; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged as Code 110).	H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job K. Impound inmate's personal property. L. Confiscate contraband M. Restrict to quarters.
308	Violating a condition of a furlough N. Extra duty	
309	Violating a condition of a community program	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—CONTINUED

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
310	Unexcused absence from work or any assignment	
311	Failing to perform work as instructed by the supervisor.	Sanctions A-N.
312	Insolence towards a staff member	
313	Lying or providing a false statement to a staff member.	
314	Counterfeiting, forging or unathorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200).	
315	Participating in an unauthorized meeting or gathering.	
316	Being in an unauthorized area	
317	Failure to follow safety or sanitation regulations	
318	Using any equipment or machinery which is not specifically authorized.	
319	Using any equipment or machinery contrary to instructions or posted safety standards.	
320	Failing to stand county	
321	Interfering with the taking of count	
322	(Not to be used.)	
323	(Not to be used.)	
324	Gambling	
325	Preparing or conducting a gambling pool.	Sanctions A-N.
326	Possession of gambling paraphernalia.	
327	Unauthorized contacts with the public.	
328	Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization.	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less.	
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards.	
331	Possession, manufacture, or introduction of a non-hazardous tool or other non-hazardous contraband (Tool not likely to be used in an escape or escape attempt, or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety; Other non-hazardous contraband includes such items as food or cosmetics).	
398	Interfering with a staff member in the performance of duties. (*Conduct must be of the Moderate Severity nature.*) This charge is to be used only when another charge of moderate severity is not applicable.	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE—CONTINUED

[The UDC shall refer all Greatest Severity Prohibited Acts to the DHO with recommendations as to an appropriate disposition.]

Code	Prohibited acts	Sanctions
399	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Moderate Severity nature.*) This charge is to be used only when another charge of moderate severity is not applicable.	
400	Possession of property belonging to another person.	E. Make monetary restitution F. Withhold statutory good time.
401	Possessing unauthorized amount of otherwise authorized clothing.	G. Loss of privileges; commissary, movies, recreation, etc
402	Malingering, feigning illness	H. Change housing (quarters)
403	Smoking where prohibited	I. Remove from program and/or group activity. J. Loss of job.
404	Using abusive or obscene language	
405	Tattooing or self-mutilation	
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G) (May be categorized and charged in terms of greater severity, according to the nature of the unauthorized use; e.g., the telephone is used for planning, facilitating, committing an armed assault on the institution's secure perimeter, would be charged as Code 101, Assault).	K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters. N. Extra duty. O. Reprimand. P. Warning.
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G).	
408	Conducting a business	
409	Unauthorized physical contact (e.g., kissing, embaracing).	
498	Interfering with a staff member in the performance of duties. (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable.	Sanctions, E-P.
499	Conduct which disrupts or interferes with the security or orderly running of the institution or the Bureau of Prisons. (*Conduct must be of the Low Moderate Severity nature.*) This charge is to be used only when another charge of low moderate severity is not applicable.	

Table 4.—Sanctions

1. *Sanctions of the Discipline Hearing Officer:* (upon finding the inmate committed the prohibited act)

(a) *Recommend parole date rescission or retardation.* The DHO may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

(b) *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 U.S.C. 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Authority to restore forfeited statutory good time is delegated to the Warden. This decision may not be delegated lower than the Associate Warden Level. Limitation on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

(c) *Recommend disciplinary transfer.* The DHO may recommend that an inmate be transferred to another institution for disciplinary reasons. Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the receiving Regional Director the transfer of an inmate prior to either a UDC or DHO Hearing. Transfers for disciplinary reasons prior to a hearing before the UDC or DHO may be used only in emergency situations and only with approval of the receiving Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving institution's Discipline Hearing Officer. The inmate shall receive a hearing at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to UDC or DHO hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

(d) *Disciplinary segregation.* The DHO may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions can

be imposed and executed for inmates charged with and found to have committed offenses that are part of different acts only. Specific limits on time in disciplinary segregation are based on the severity scale. (See Table 6)

(e) *Make monetary restitution.* The DHO may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual is determined to have caused or contributed to.

(f) *Withholding statutory good time.* The DHO may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the total amount of good time creditable for the single month during which the violation occurs.

Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the DHO, consecutive withholding actions. When this is the intent, the DHO shall specify at the time of the initial DHO hearing that good time may be withheld until the inmate elects to returns to work. During the running of such a withholding order, the DHO shall review the offense with the inmate on a monthly basis. For an ongoing offense, staff need not prepare a new Incident Report or conduct another investigation or initial hearing (UDC). The DHO shall provide the inmate an opportuntiy to appear in person and to present a statement orally or in writting. The DHO shall document his action on, or by an attachment to, the initial Institution Discipline report. If further withholding is ordered, the DHO shall advise the inmate of the inmate's right to appeal through the Administrative Remedy Procedure (Part 542). Only the Warden may restore withheld statutory good time. This decision may not be delegated lower than the Associate Warden level. Restoration eligibility is based on the severity scale. (See Table 6)

2. *Sanctions of the Discipline Hearing Officer/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)

(g) *Loss of privileges: Commissary, movies, recreation, etc.* The DHO or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege; e.g., loss of telephone privileges for a specified period of time for an abuse of the telephone privilege. However, loss of leisure privileges, such as movies, television, and recreation, may also be appropriate sanctions in some cases for misconduct which is not related to the privilege.

(h) *Change housing (quarters).* The DHO or UDC may direct that an inmate be removed from current housing and placed in other housing.

(i) *Remove from program and/or group activity.* The DHO or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

(j) *Loss of job.* The DHO or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

(k) *Impound inmate's personal property.* The DHO or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

(l) *Confiscate contraband.* The DHO or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

(m) *Restrict quarters.* The DHO or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

(n) *Extra duty.* The DHO or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

(o) *Reprimand.* The DHO or UDC may reprimand an inmate either verbally or in writing.

(p) *Warning.* The DHO or UDC may verbally warn an inmate regarding committing prohibited act(s).

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

When the Unit Discipline Committee or DHO finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), additional sanctions are authorized according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)

Category	Prior offense (same code) within time period	Frequency of repeated offense	Sanction permitted
Low moderate (400 series)	6 months	2d offense	Low Moderate Sanctions, plus 1. Disciplinary segregation, up to 7 days. 2. Forfeit earned SGT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and Low Moderate (400) series.
Moderate (300 series)	12 months	2d offense	Moderate Sanctions (A,C,E-N), plus 1. Disciplinary segregation, up to 21 days. 2. Forfeit earned SGT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and High (200) series.
High (200 series)	18 months	2d offense	High Sanctions (A,C,E-M), plus 1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in High (200) and Greatest (100) series.

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. SGT	Max. amt. W/hd SGT	Elig. restoration forf. SGT	Elig. restoration W/hd/SGT	Max. dis seg
Greatest	A-F	100%	Good time creditable for single month during which violation occurs. Applies to all categories.	24 mos	18 mos	60 days.
High	A-M	50% or 60 days, whichever is less.		18 mos	12 mos	30 days.
Moderate	A-N	25% or 30 days, whichever is less.		12 mos	6 mos	15 days.
Low Moderate.	E-P	N/A		N/A (1st offense) 6 mos. (2nd or 3rd offense in same category within six months).	3 mos	N/A (1st offense). 7 days (2nd offense). 15 days (3rd offense).

NOTE.—Restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the Warden or his delegated representative denies restoration of forfeited or withheld statutory good time, the unit team shall notify the inmate of the reasons for denial. The unit team shall establish a new eligibility date, not to exceed six months from the date of denial.

An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who also has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

§ 541.14 Incident report and investigation.

(a) *Incident report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of Bureau regulations. However, when staff witnesses or has a reasonable belief that a violation of Bureau regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the appropriate Lieutenant. Except for prohibited acts in the Greatest or High Severity Category, the Lieutenant may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with this section. The Lieutenant shall expunge the inmate's file of the Incident Report if informal resolution is accomplished. Only the DHO may make a final disposition on a prohibited act in the Greatest Severity Category.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene.

(1) When it appears likely that the incident may be the subject of criminal prosecution, the investigating officer shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur.

(2) The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution or a medical condition which argues against delivery. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for the inmate's statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate of the right to remain silent at all stages of the disciplinary process but that the inmate's silence may be used to draw an adverse inference against the inmate at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that the inmate's silence alone may not be used to support a finding that the inmate has committed a prohibited act. The investigator shall then thoroughly investigate the incident. The investigator shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Discipline Hearing Officer, the DHO shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.15 Initial hearing.

The Warden shall delegate to one or more institution staff members the authority and duty to hold an initial hearing upon completion of the investigation. In order to ensure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Discipline Committee (UDC) may not be the reporting or investigating officer or a witness to the incident, or play any significant part in having the charges referred to the UDC. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the Discipline Hearing Officer

for further hearing. The UDC must refer all greatest category charges to the DHO. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating a Bureau rule a written copy of the charge(s) against the inmate, ordinarily within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, ordinarily held within three work days from the time staff became aware of the inmate's involvement in the incident. This three work day period excludes the day staff become aware of the inmate's involvement in the incident, weekends, and holidays.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision marker(s) or when institutional security would be jeopardized by the inmate's presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing, provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refusal to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf.

(e) The Unit Discipline Committee may informally resolve any Moderate or Low Moderate charge. The UDC shall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The UDC shall take one of the following actions:

(1) Find that the inmate committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report;

(2) Find that the inmate did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report; or

(3) Refer the case to the DHO for further hearing.

The UDC shall give the inmate a written copy of the decision and disposition by the close of business the next work day. Any action taken as a minor disposition is reviewable under the Administrative Remedy Procedure (see Part 542 of this Chapter).

(g) The UDC shall prepare a record of its proceedings which need not be verbatim. A record of the hearing and supporting documents are kept in the inmate's file.

(h) When the alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) without indication of findings as to commission of the alleged violation to the Discipline Hearing Officer (DHO) for hearing and disposition. The UDC shall forward copies of all relevant documents to the DHO with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the DHO finds the inmate has committed the act charged and/or a similar prohibited act. The inmate whose charge is being referred to the Discipline Hearing Officer may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the DHO.

(i) When charges are to be referred to the Discipline Hearing Officer, the UDC shall advise the inmate of the rights afforded at a hearing before the DHO. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide. The UDC shall advise the inmate that the inmate may waive the right to be present at the Institution Discipline hearing, but still elect to have witnesses and/or a staff representative appear in the inmate's behalf at this hearing.

(j) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Discipline Hearing Officer all incidents involving prohibited acts of Greatest Severity.

(k) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.16 Functioning of the Discipline Hearing Officer.

(a) Each Bureau of Prison institution shall have an independent hearing officer (DHO) assigned to conduct administrative fact-finding hearings covering alleged acts of misconduct and violations of prohibited acts, including those acts which could result in criminal charges. In the event of a serious disturbance of other emergency, or if an inmate commits an offense in the presence of the DHO, an alternative Discipline Hearing Officer will be appointed to conduct hearings with approval of the appropriate Regional Director. If the institution's DHO is not able to conduct hearings, the Warden shall arrange for another DHO to conduct the hearings. This person must be trained and certified as a DHO, and meet the other requirements for DHO.

(b) In order to insure impartiality, the DHO may not be the reporting officer, investigating officer, or UDC member, or a witness to the incident or play any significant part in having the charge(s) referred to the DHO.

(c) The Discipline Hearing Officer shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate misconduct referred to him for disposition following the hearing required by § 541.15 before the UDC. The DHO may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Discipline Hearing Officer shall have the authority to impose or suspend sanctions A through F.

(d) The Warden at each institution shall designate a staff member, hereinafter called the Segregation Review Officer (SRO), to conduct reviews of inmates placed in disciplinary segregation or administrative detention in accordance with the requirements of § 541.20 or § 541.22.

§ 541.17 Procedures before the Discipline Hearing Officer.

The Discipline Hearing Officer shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before the inmate's appearance before the Discipline Hearing Officer unless the inmate is to be released from custody within that time. An inmate may also waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff member to represent the inmate at the hearing before the Discipline Hearing Officer should the inmate so desire. The

Warden, the DHO or alternate DHO, the reporting officer, investigating officer, a witness to the incident, and UDC members involved in the case may not act as staff representative. The Warden may exclude other staff from acting as staff representative in a particular case when there is a potential conflict in roles. The staff representatives shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the DHO on the merits of the charge(s) or in extenuation of mitigation of the charge(s). The DHO shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall promptly appoint a staff representative to assist the inmate. The DHO shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the Discipline Hearing Officer. When it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate), the Warden shall appoint a staff representative for that inmate, even if one is not requested.

(c) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The DHO shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of an outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The DHO need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the DHO. The DHO shall request submission of written statements from unavailable witnesses who have information directly relevant to the charge(s). The DHO shall document reasons for declining to call requested witnesses in the DHO report, or, if the reasons are confidential, in a separate report, not available to the inmate. The inmate's staff representative, or when the inmate waives staff representation, the DHO, shall question witnesses requested by the inmate who are called before the DHO. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the DHO. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the DHO Hearing except during a period of deliberation or when institutional security would be jeopardized. The DHO must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the DHO. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The DHO may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Discipline Hearing Officer shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate returns to custody following absence during which sanctions were imposed by the DHO (or the predecessor IDC), the Warden shall have the charges reheard before the Discipline Hearing Officer ordinarily within 60 days after the inmate's arrival at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance before the Discipline Hearing Officer, including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised before the Discipline Hearing Officer. All the applicable procedural requirements for hearings before the Discipline Hearing Officer apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The DHO upon rehearing may affirm the earlier action taken, may dismiss the charge(s), may modify the finding of the original DHO as to the offense which was committed, or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The DHO may refer the case back to the UDC for further information or disposition. The DHO may postpone or, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed. A postponement or continuance must be for good cause (determined by the DHO) shown by the inmate or staff and should be documented in the record of the hearing.

(f) The DHO shall consider all evidence presented at the hearing. The decision of the DHO shall be based on at least some facts, and if there is conflicting evidence, it must be based on the greater weight of the evidence. The DHO shall find that the inmate either:

(1) Committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report; or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

When a disciplinary committee decision is based on confidential informant information, the UDC or DHO shall document, ordinarily in the hearing report, its finding as to the reliability of each confidential informant relied on *and the factual basis for that finding.* When it appears that this documentation in the report would reveal the confidential informant's identity, the finding as to the reliability of each confidential informant relied on and the factual basis for that finding shall be made part of the hearing record in a separate report, prepared by the UDC chairman or the DHO, not available to the inmate.

(g) The Discipline Hearing Officer shall prepare a record of the proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the DHO's findings, the DHO's decision and the specific evidence relied on by the DHO, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The DHO shall give the inmate a written copy of the decision and disposition,

ordinarily within 10 days of the DHO's decision.

(h) A record of the hearing and supporting documents are to be kept in the inmate central file.

(i) The Discipline Hearing Officer shall expunge an inmate's file of the Incident Report and related documents following a DHO finding that the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's institution file. However, institution staff may not use or allow the use of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single Incident Report, and if the DHO finds the inmate has not committed every prohibited act charged, or if the DHO finds that the inmate has committed a prohibited act(s) other than the act(s) charged, then the DHO shall record those findings clearly and shall change the Incident Report to show only the incident and code references to charges which were proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.18 Dispositions of the Discipline Hearing Officer.

The Discipline Hearing Officer has available a broad range of sanctions and dispositions following completion of the hearing. The Discipline Hearing Officer may do any of the following:

(a) Dismiss any charge(s) upon a finding that the inmate did not commit the prohibited act(s). The DHO shall order the record of charge(s) expunged upon such finding.

(b) Impose any of sanctions A through P as provided in § 541.13.

(c) Suspend the execution of a sanction it imposes as provided in § 541.13.

§ 541.19 Appeals from Unit Discipline Committee or Discipline Hearing Officer actions.

At the time the Unit Discipline Committee or Discipline Hearing Officer gives an inmate written notice of its decision, the UDC or DHO shall also advise the inmate that the inmate may appeal the decision under Administrative Remedy Procedures (see Part 542 of this Chapter). On appeals, the appropriate reviewing official (the Warden, Regional Director, or General Counsel) may approve, modify, reverse, or send back with directions, including ordering a rehearing, any disciplinary action of the Unit Discipline Committee or Discipline Hearing Officer but may not increase any valid sanction imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

(a) Whether the Unit Discipline Committee or the Discipline Hearing Officer substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Discipline Hearing Officer based its decision on some facts, and if there was conflicting evidence, whether the decision was based on the greater weight of the evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the prohibited act, and other relevant circumstances.

§ 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only by order of the Discipline Hearing Officer following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category, or a repeated offense in the Low Moderate Category. The DHO may order placement in disciplinary segregation only when other available dispositions are inadequate to achieve the purpose of punishment and deterrence necessary to regulate an inmate's behavior within acceptable limits.

(b) The Warden may temporarily (not exceeding five days) move an inmate to a more secure cell (which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the DHO can be held) who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Segregation Review Official (SRO) (see § 541.16(d)) shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the SRO at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extend period.

(d) The Segregation Review Official may release an inmate from disciplinary segregation earlier than the sanction initially imposed upon finding that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status. The SRO may not increase any previously imposed sanction.

§ 541.21 Conditions of disciplinary segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates, separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated.

Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating the Warden's review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation conditions.* The quarters used for segregation must be well-ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell occupancy.* The number of inmates confined to each cell or room in Segregation should not exceed the number for which the space was designated. The Warden may approve excess occupancy if the Warden finds there is a pressing need for this action, and that other basic living standards of this subsection can still be maintained.

(3) *Clothing and bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons. Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. Any exception, and the reasons for this, must be recorded in the unit log.

(4) *Food.* Staff shall give a segregated inmate nutritionally adequate meals, ordinarily from the menu of the day for the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissue, wash basin, tooth brush, eye glasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating the Warden's review and approval. Inmates in special housing will be provided, where practicable, barbering and hair care services. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee.

(6) *Exercise.* Staff shall permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons. Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, upon recommendation of the Discipline Hearing Officer or the Captain. This recommendation may be made only following a hearing before the DHO, the hearing to be held in accordance with the provisions of § 541.17, following those provisions which are appropriate to these circumstances, and only upon a finding by the DHO that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal property.* Institution staff shall ordinarily impound personal property.

(8) *Reading material.* Staff shall provide a reasonable amount of nonlegal reading material, not to exceed five books per inmate at any one time, on a circulating basis. Staff shall provide the inmate opportunity to possess religious scriptures of the inmate's faith. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical department and one or more responsible officers designated by the Warden (ordinarily a Lieutenant) shall see each segregated inmate daily, including weekends and holidays. Members of the program staff, including unit staff, shall arrange to visit inmates in special housing within a reasonable time after receiving the inmate's request.

(10) *Correspondence and visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, staff may place the burden of this notification to visitors on the inmate. As to general visiting and telephone privileges, see Part 540, Subpart D and Subpart I. In respect to legal, religious, and privileged out-going mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this Chapter).

§ 541.22 Administrative detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by self or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in administrative detention.* The Warden may delegate authority to place an inmate in administrative detention to Lieutenants. Prior to the inmate's placement in administrative detention, the Lieutenant is to review the available information and determine whether the inmate's placement in administrative detention is warranted. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

(1) Is pending a hearing for a violation of Bureau regulations;

(2) Is pending an investigation of a violation of Bureau regulations;

(3) Is pending investigation or trial for a criminal act;

(4) Is pending transfer;

(5) Requests admission to administrative detention for the inmate's own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (see § 541.23); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent. The Segregation Review Official is to advise the inmate of this determination and the reasons for such action.

(i) In Security Level 1 through 5 and in Administrative type institutions, staff ordinarily within 90 days of an inmate's placement in post-disciplinary detention, shall, except for pretrial inmates, either return the inmate to the general inmate population or request

regional level assistance to effect a transfer to a more suitable institution.

(ii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (i) of this section.

(iii) In Security Level 6 institutions, staff will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate in a Security Level 6 institution not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

(b) *Memorandum detailing reasons for placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of the inmate's placement in administrative detention, unless this delivery is precluded by exceptional circumstances. A memorandum is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

(c) *Review of inmates housed in administrative detention.* (1) Except as otherwise provided in paragraphs (c)(2) and (c)(3) of this section, the Segregation Review Official will review the status of inmates housed in administrative detention. The SRO shall conduct a record review within three work days of the inmate's placement in administrative detention and shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the SRO at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it shall be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing.

Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the SRO in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.23), or where there are exceptional circumstances, ordinarily tied to security or complex investigative concerns. An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the SRO. Provided institutional security is not compromised, the inmate shall receive at each formal review a written copy of SRO's decision and the basis for this finding. The SRO shall release an inmate from administrative detention when reasons for placement cease to exist.

(2) The Warden shall designate appropriate staff to meet weekly with an inmate in administrative detention when this placement is a direct result of the inmates's holdover status. Staff shall also review this type of case on the record each week.

(3) When an inmate is placed in administrative detention for protection, but not at that inmate's request, the Warden or designee is to review the inmate's status within two work days of this placement to determine if continued protective custody is necessary. A formal hearing is to be held within seven days of the inmate's placement (see § 541.23, Protection Cases).

(d) *Conditions of administrative detention.* The basic level of conditions as described in § 541.21(c) for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, social services, counseling, religious guidance and recreation. Unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. An inmate in administrative detention shall be permitted to have a radio, provided that the radio is equipped with ear plugs. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting, telephone, and correspondence privileges in accordance with Part 540 of this Chapter.

The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in administrative detention.

§ 541.23 Protection cases.

(a) Staff may consider the following categories of inmates as protection cases:

(1) Victims of inmate assaults;

(2) Inmate informants;

(3) Inmates who have received inmate pressure to participate in sexual activity;

(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;

(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;

(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;

(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population; and

(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.17, as to advance written notice, staff

representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and advance advisement of inmate rights at the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this rule relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90-day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

Dated: August 24, 1987.

J. Michael Quinlan,

Director, Bureau of Prisons.

[FR Doc. 87-19687 Filed 8-26-87; 8:45 am]

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Part V

Environmental Protection Agency

Superfund Program; Interim Guidance on Compliance With Applicable or Relevant and Appropriate Requirements; Notice of Guidance

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3249-8]

Superfund Program; Interim Guidance on Compliance With Other Applicable or Relevant and Appropriate Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice of guidance.

SUMMARY: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*, provides that the President may undertake actions in response to releases or threats of releases of hazardous substances or pollutants or contaminants, as may be necessary to protect human health or the environment. Section 121 of CERCLA requires that, subject to specified exceptions, remedial actions be undertaken in compliance with applicable or relevent and appropriate environmental laws, both State and Federal. Tody, EPA is publishing interim guidance on the implementation of this requirement, and solicits public comment on the guidance. The guidance is intended to assist State and Federal decisionmakers in selecting response actions under CERCLA. The Agency wishes to emphasize that the guidance is not intended to be a regulation or rule. EPA intends in the near future to propose revisions to the National Contingency Plan (NCP), which will address the § 121 requirements, as well as other matters; comments on today's guidance will be considered prior to proposal of the revised NCP.

DATES: Coments on this notice may sent to the Agency no later than October 13, 1987.

ADDRESSES: Comments should be sent to Steve Smith at the headquarters of the United States Environmental Protection Agency, 401 M Street SW., Mail Stop WH–548D, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steve Smith or Arthur B. Weissman, Office of Emergency and Remedial Response, Policy and Analysis Staff, 401 M Street SW., Mail Stop WH–548D, Washington, DC 20460, (202) 382–2182.

SUPPLEMENTARY INFORMATION: Printed below in its entirety is the Interim Guidance on Compliance with Applicable or Relevant and Appropriate Requirements. This guidance is not a rule or regulation, but is intended to assist Federal and Sate decisionmakers in selecting response actions under CERCLA. The guidance describes how Federal and State requirements are generally to be indentified and applied, and in particular defines "promulgated" for the purpose of determining eligible State requirements. One of the most important features of the guidance is the direction it provides in determining the appropriate cleanup levels for surface or ground water that can be used for drinking. The Agency suggests that in most situations encountered in CERCLA actions the Agency's drinking water standards, known as Maximum Contaminant Levels (MCLs), are appropriate as cleanup levels, since there are the safe levels Americans experience everyday at the tap. In special circumstances, such as where either multiple contaminants or multiple pathways of exposure present extraordinary risks, the Agency will consider setting more stringent cleanup levels, and may consider Maximum Contaminant Level Goals (MCLGs), among other things, in setting such levels. MCLGs are used in determining MCLs but are not intended as drinking water standards. MCLs are set as close as feasible to their respective MCLGs, and in fact MCLs for many chemicals are set at the indentical level as their respective MCLGs.

Title: Interim Guidance on Compliance With Applicable or Relevant and Appropriate Requirements.

Executive Summary: The guidance addresses the requirement in CERCLA as amended by the Superfund Amendments and Reauthorization Act of 1986, that remedial actions comply with applicable or relevant and appropriate requirements (ARARs) of Federal laws and more stringent, promulgated State laws. The guidance describes how requirements are generally to be identified and applied, and discusses specifically compliance with State requirements and certain surface water and groundwater standards. "Applicable" and "relevant and appropriate" are defined, and the three types of ARARs (chemical-, location-, and action-specific) are described. Guidance is given on how and at what points ARARs are to be used in the remedial process. Eligible State requirements are defined, with particular reference to "promulgated," and direction is given on evaluating siting laws and on using the waiver regarding consistency of application. Finally, the guidance discusses the use of water standards specified in the law (MCLGs, FWQC, ACLs), and describes the use MCLs as cleanup standards for surface water or groundwater that is or may be used for drinking.

Purpose

This document provides interim guidance on compliance with other Federal and State environmental laws in conducting CERCLA remedial actions. The guidance is intended to help define the nature, scope, and use of applicable or relevant and approprate requirements. The guidance is not intended to be comprehensive or exhaustive. The Agency is currently developing a guidance manual that provides detailed information on potential ARARs in the major Federal environmental statutes.

Background

Section 121(d) of CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires that Fund-financed, enforcement, and Federal facility remedial actions comply with requirements or standards under Federal and State environmental laws. The requirements that must be complied with are those that are applicable or relevant and appropriate to the hazardous substances, pollutants, or contaminants at a site or to the circumstances of the release. Compliance is required at the completion of the remedial action for hazardous substances, pollutants, or contaminants that remain on-site. Any such requirements may be waived under six conditions provided that protection of human health and environment is still assured.

SARA essentially codified and expanded upon the Agency's Compliance Policy, which was included in the National Contingency Plan (revised November 20, 1985). The major difference between that policy and the new statutory requirement is that the latter includes more stringent, promulgated State environmental standards as potentially applicable or relevant and appropriate requirements, and Maximum Contaminant Level Goals and Federal Water Quality Criteria as potentially relevant and appropriate requirements.

General Guidance on Identifying and Using ARARs

This section defines what ARARs are, describes the different types of ARARs, and discusses how they are applied to the remedial process.

Definition of ARARs

A requirement under other environmental laws may be either "applicable" or "relevant and appropriate" to a remedial action, but not both. A two-tier test may be applied:

first, to determine whether a given requirement is applicable; then, if it is not applicable, to determine whether it is nevertheless relevant and appropriate.

"Applicable requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site.

"Applicability" implies that the remedial action or the circumstances at the site satisfy all of the jurisdictional prerequisites of a requirement. For example, the minimum technology requirement for landfills under RCRA would apply if a new hazardous waste landfill unit (or an expansion of an existing unit) were to be built on a CERCLA site.

"Relevant and appropriate requirements" means those cleanup standards, standards of control, and other substantive environmental protection requirements, criteria, or limitations promulgated under Federal or State law that, while not "applicable" to a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstance at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site.

The relevance and appropriateness of a requirement can be judged by comparing a number of factors, including the characteristics of the remedial action, the hazardous substances in question, or the physical circumstances of the site, with those addressed in the requirement. It is also helpful to look at the objective and origin of the requirement. For example, while RCRA regulations are not applicable to closing undisturbed hazardous waste in place, the RCRA regulation for closure by capping may be deemed relevant and appropriate.

A requirement that is judged to be relevant and appropriate must be complied with to the same degree as if it were applicable. However, there is more discretion in this determination: it is possible for only part of a requirement to be considered relevant and appropriate, the rest being dismissed if judged not to be relevant and appropriate in a given case.

Non-promulgated advisories or guidance documents issued by Federal or State governments do not have the status of potential ARARs. However, as described below, they may be considered in determined the necessary level of cleanup for protection of health or environment.

Types of ARARs

There are several different types of requirements that Superfund actions may have to comply with. The classification of ARARs below if offfered for illustrative purposes.

- Ambient or chemical-specific requirements set health or risk-based concentration limits or ranges in various environmental media for specific hazardous substances, pollutants, or contaminants. Examples: Maximum Contaminant Levels, National Ambient Air Quality Standards.

These requirements may set protective cleanup levels for the chemicals of concern in the designated media, or else indicate an acceptable level of discharge (e.g., air emission or wastewater discharge taking into account water quality standard) where one occurs in a remedial activity. If a chemical has more than one such requirement, the more stringent ARAR should be complied with.

There are at presents a limited number of actual ambient or chemical-specific requirements. In order to achieve remedies that are protective of health and environment, it may frequently be necessary to use chemical-specific advisory levels such as Carcinogenic Potency Factors or Reference Doses. While not actually ARARs, these chemical-specific advisory levels may factor significantly into the establishment of protective cleanup levels. Guidance for establishing such chemical-specific, health-based cleanup levels is given in the Superfund Public Health Evaluation Manual (EPA 540/1–86/060, Oct. 1986).

- Performance, design, or other action-specific requirements set controls or restrictions on particular kinds of activities related to management of hazardous substances, pollutants, or contaminants. Examples: RCRA regulations for closure of hazardous waste storage or disposal units; RCRA incineration standards; Clean Water Act pretreatment standards for discharges to POTWs.

These requirements are triggered not by the specific chemicals present at a site but rather by the particular remedial activities that are selected to accomplish a remedy. Since there are usually several alternative actions for any remedial site, very different requirements can come into play. These action-specific requirements may specify particular performance levels, actions, or technologies, as well as specific levels (or a methodology for setting specific levels) for discharged or residual chemicals.

- Locational requirements set restrictions on activities depending on the characteristics of a site or its immediate environs. Examples: Federal and State siting laws for hazardous waste facilities; sites on National Register of Historic Places.

These requirements function like action-specific requirements. Alternative remedial actions may be restricted or precluded depending on the location or characteristics of the site and the requirements that apply to it.

Using ARARs

This section explains how and where requirements may be applied in the remedial planning process.

First, actual ARARs can be identified only on a site-specific basis. They depend on the specific chemicals at a site, the particular actions proposed as a remedy, and the site characteristics. Guidance is being developed on the potential ARARs under the major Federal environmental statutes for various activities, locations, and chemicals.

Where there are no specific ARARs for a chemical or situation, or where such ARARs are not sufficient to be protective, one should identify pertinent health advisory levels (such as Reference Doses or Carcinogenic Potency Factors) as described above in order to ensure that a remedy is protective.

The different ARARs that may apply to a site and its remedial action should be identified and considered at multiple points in the remedial planning process, namely:

—During scoping of the RI/FS, chemical/specific and location-specific ARARs may be identified on a preliminary basis.

—During the site characterization phase of the Remedial Investigation, when the public health evaluation is conducted to assess risks at a site, the chemical-specific ARARs and advisories and location-specific ARARs are identified more comprehensively and used to help determine the cleanup goals.

—During development of remedial alternatives in the Feasibility Study, action-specific ARARs are identified for each of the proposed alternatives and considered along with other ARARs and advisories.

—During detailed analysis of alternatives all the ARARs and advisories for each alternative are examined as a package to determine

what is needed to comply with other laws and be protective.

—When an alternative is selected it must be able to attain all ARARs unless one of the six statutory waivers is invoked.

—During remedial design the technical specifications of construction must ensure attainment of ARARs.

Note that CERCLA § 121(e) exempts any on-site response action from having to obtain a Federal, State, or local permit.

In general, on-site actions need comply only with the substantive aspects of these requirements, not with the administrative aspects. That is, neither applications nor other administrative procedures such as permitting or administrative reviews are considered ARARs for actions conducted entirely on-site, and therefore should not be pursued during the remedial planning of the remedial action. However, the RI/FS, Record of Decision, and design documents should demonstrate full compliance with all substantive requirements that are ARARs. Also, other Federal and State program offices should be consulted as appropriate to ensure that remedies are substantively compliant with identified ARARs.

Guidance on Identifying State ARARs

This section describes the basic factors to be considered in identifying State requirements for Superfund remedial actions.

As mandated by CERCLA § 121(d)(2)(A), remedies must comply with "any promulgated standard, requirement, criteria, or limitation under a State environmental or facility siting law that is more stringent than any Federal standard, requirement, criteria, or limitation" if the former is applicable or relevant and appropriate to the hazardous substance or release in question.

States are required by CERCLA to identify State ARARs "in a timely manner," that is, in sufficient time to avoid inordinate delay or duplication of effort in the remedial process. Regions should expect to work closely with their States so that the appropriate ARARs are identified at critical stages in the process. At a minimum, chemical-specific and location-specific ARARs should be identified after site characterization, and action-specific ARARs should be identified after initial screening of alternatives (prior to detailed analysis) for alternatives that pass through the screening. To the extent possible, Regions and States should negotiate to try to resolve any differences of opinion about ARARs.

Eligible Requirements

The statute specifically limits the scope of potential requirements to those that are promulgated. "Promulgated" requirements are laws imposed by State legislative bodies and regulations developed by State agencies that are of general applicability and are legally enforceable.

State advisories, guidance, or other non-binding policies, as well as standards that are not of general application, cannot be treated as requirements under CERCLA. However, as with their Federal counterparts, State advisories may still be considered in determining an appropriate, protective remedy.

General State goals that are duly promulgated (such as a non-degradation law) have the same weight as explicit, numerical standards, although the former have to be interpreted in terms of a site and therefore may allow more flexibility in approach. Similarly, State laws or regulations that prescribe methods for deriving numerical standards for specific cases may also be potential requirements.

On-site actions need comply only with the substantive aspects of a State requirement, not with the administrative aspects. Where the requirement involves review by a State board based on explicit criteria, the best approach is to incorporate the substantive criteria into the RI/FS and remedy selection process and to maintain close consultation with appropriate State representatives.

Limitations on State Siting Laws

CERCLA § 121(d)(2)(C) puts special limitations on the applicability of State requirements or siting laws for hazardous waste facilities that could result in a State-wide prohibition of land disposal. Specifically, in order to be treated as potentially applicable or relevant and appropriate requirements, such laws must:

(1) Be of general applicability and be formally adopted

(2) Be based on technical (e.g., hydrogeologic) or other relevant considerations

(3) Not be intended to preclude land disposal for reasons other than protection of health or environment.

In addition, the State must arrange and pay for additional costs for out-of-State or other disposal necessitated by such a law.

The first criterion is similar to the criterion that a requirement be promulgated, as discussed above. The second criterion requires that such a law be based on sound scientific or technical considerations, such as groundwater flow, surficial geology, and engineering design. The third criterion requires some evidence that health or environmental protection motivates the prescribed restrictions; the introductory sections of a law, the nature of the technical consideration, or the legislative history can be used to make this determination.

Consistency of Application

CERCLA § 121(d)(4)(E) allows a State requirement to be waived if it has not been consistently applied by the State in similar circumstances at other remedial actions. The waiver cannot be used if the State has demonstrated the intention to consistently apply the requirement.

Consistency of application by a State may be determined by examining the following:

—Application of requirement at similar sites or in similar response circumstances (considering nature of contaminants or media affected, characteristics of waste and facility, degree of danger or risk, etc.)

—Proportion of cases (including enforcement actions) in which requirement was not applied out of total actions where it could have been applied

—Reason for non-application of requirement in past cases

—Intention to consistently apply requirement in future as shown by policy statements, legislative history, site remedial planning documents, or State responses to Federal-lead sites; newly promulgated requirements shall be presumed to embody this intention unless there is contrary evidence.

All previous actions by States since promulgation that relate to similar remedial actions may be considered in evaluating consistency.

Guidance on Applying Specified Water Standards

CERCLA § 121(d)(2)(A) and (B) explicitly mention three kinds of surface water or groundwater standards with which compliance is potentially required—Maximum Contaminant Level Goals (MCLGs), Federal Water Quality Criteria (FWQC), and alternate concentration limits (ACLs) where human exposure is to be limited. This section describes these requirements and how they may be applied to Superfund remedial actions. The guidance is based on Federal requirements and policies; more stringent, promulgated State requirements (such as a stricter classification scheme for groundwater) may result in application of even stricter standards than those specified here.

Background

These three standards or criteria each derive from separate statutes and have different purposes and uses.

MCLGs are developed under the Safe Drinking Water Act as chemical-specific health goals used in setting enforceable drinking water standards, known as Maximum Contaminant Levels (MCLs), for public water supply systems. MCLGs are based entirely on health considerations and do not take cost or feasibility into account. Moreover, as health goals MCLGs are set at levels where no known or anticipated health effects may occur, including an adequate margin of safety. MCLs are required to be set as close as feasible to the respective MCLs, taking into consideration the best technology, treatment techniques, and other factors (including cost). However, as the standard for public water supplies, MCLs are fully protective of human health and (for carcinogens) fall within the acceptable risk range of 10^{-4} to 10^{-7}. Furthermore, for non-carcinogens, which are the majority of contaminants, MCLs will nearly always be set at the same level as the respective MCLGs. Also, these standards assure that even sensitive populations will experience no adverse health effects. Thus, there will be no difference in the protectiveness of MCLGs and MCLs for most contaminants, and, as discussed above, MCLs provide a sufficient level of protectiveness even for carcinogens.

FWQC are developed under the Clean Water Act as guidelines from which States determine their water quality standards. Different FWQC are derived for protection of human health and protection of aquatic life.

ACLs are one of three possible Standards available under the Subpart F Groundwater Protection Standards of RCRA. For setting both a trigger and a cleanup level for remediating groundwater contamination, an ACL, the background concentration, or for a small group of chemicals the MCL can be selected for a given site.

Statutory Mandate

CERCLA § 121(d)(2) states that remedial actions shall attain applicable or relevant and appropriate requirements under the Safe Drinking Water Act, the Clean Water Act, and RCRA, and specifically shall attain MCLGs and FWQC where they are relevant and appropriate under the circumstances of the release or threatened release. It further states that for FWQC this determination will be based on the designated or potential use of the water, the media affected, the purposes of the criteria, and current information.

CERCLA § 121(d)(2)(B)(ii) limits the use of ACLs that are set above health-based levels based on projections that health-based levels will be achieved at a likely point of human exposure. Such a point of exposure may not be beyond the Superfund facility boundary unless the groundwater discharges into surface water and does not cause a statistically significant increase of contaminants in the surface water. To apply such an ACL outside the facility, moreover, the remedial action must include enforceable measures to prevent use of any contaminated groundwater.

Application

In determining the applicable or relevant and appropriate requirements for remedial actions involving contaminated surface water or groundwater, the most important factors to consider are the uses and potential uses of the water and the purposes for which the potential requirements are intended.

The actual or potential use of water, and the manner in which it is used, will determine what kinds of requirements may be applicable or relevant and appropriate. For Class III-type groundwater that is not suitable for drinking because of high salinity or widespread contamination and that does not affect drinkable groundwater, drinking water standards are neither applicable nor relevant and appropriate. For Class I- and Class II-type groundwater or surface water that is or may be used for drinking, drinking water standards are applicable or relevant and appropriate, and the surface water or groundwater must ultimately be cleaned up to such levels.

For water that is or may be used for drinking, the Maximum Contaminant Levels (MCLs) set under the Safe Drinking Water Act are generally the applicable or relevant and appropriate standard. MCLs are applicable at the tap where the water will be provided directly to 25 or more people or will be supplied to 15 or more service connections. Otherwise, where surface water or groundwater is or may be used for drinking, MCLs are generally relevant and appropriate as cleanup standards for the surface water or the groundwater.

A standard for drinking water for a contaminant for which there is an MCL may be more stringent than the MCL to ensure adequate protection in special circumstances, such as where either multiple contaminants in groundwater or multiple pathways of exposure present extraordinary risks. In setting a level more stringent than the MCL in such cases, a site-specific determination should be made by considering MCLGs, the Agency's policy on the use of appropriate risk ranges for carcinogens, levels of quantification, and other pertinent guidelines. Prior to consultation with Headquarters is encouraged in such cases.

When MCLs do not exist for contaminants identified at the site, cleanup levels should be set using chemical-specific advisory levels. Cleanup levels should be selected such that the total risk of all contaminants falls within the acceptable risk range of 10^{-4} to 10^{-7}. In cases where non-carcinogens are present, cleanup levels should be based on acceptable levels of exposure as determined by the Reference Dose, taking into account the effects of other contaminants at the site.

It should be noted that while MCLs are generally the cleanup standards, as described above, the treatment necessary to attain an MCL level for one chemical (or a protective level for a chemical without an MCL) may result in an actual level for another chemical that is below its respective MCL (or protective level).

A more stringent FWQC for aquatic life may be found relevant and appropriate when there are environmental factors that are being considered at a site, such as protection of aquatic organisms. The Agency is still formulating a position with respect to the use of FWQC for protection of human health.

Guidance on the use of ACLs based on limitations on exposure will be forthcoming.

Dated: August 6, 1987.

J.W. McGraw,

Acting Assistant Administrator.

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Thursday
August 27, 1987

Part VI

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Affiliated Service Groups, Employee Leasing, and Other Arrangements; Notice of Proposed Rulemaking

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-111-82]

Affiliated Service Groups, Employee Leasing, and Other Arrangements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document provides proposed regulations prescribing rules for determining: (1) When a management organization and the organization for which the management organization performs management services constitute an affiliated service group; (2) when leased employees are treated as employees of the lessee organization for purposes of certain employee benefit provisions; and (3) when arrangements involving separate organizations, employee leasing, or other arrangements will be ignored in order to prevent the avoidance of certain employee benefit requirements.

Changes to the applicable tax law were made by the Tax Equity and Fiscal Responsibility Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. The regulations provide the public with guidance needed to comply with those Acts and would affect employers that maintain, and participants in, qualified plans.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 26, 1987. The regulations provided by this document are proposed to be generally effective for tax years beginning after December 31, 1983.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-111-82), Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Michael Garvey of the Employee Plans and Exempt Organizations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, Attention: CC:LR:T, (202) 566-3903, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 414(m)(5), 414(n), and 414(o) of the Internal Revenue Code. These amendments are proposed to conform the regulations to sections 246 and 248 of the Tax Equity and Fiscal Responsibility Act of 1982 (26 U.S.C. 414(m)(5), 414(n)), section 526 of the Tax Reform Act of 1984 (26 USC 414(n)(2), 414(o)), and section 1146 of the Tax Reform Act of 1986 (26 U.S.C. 414(n), 414(o)). Other sections of the Tax Reform Act of 1986 that relate to section 414(n) are not reflected in this document.

Organizations Performing Management Functions

Section 414(m)(5) of the Code expands the definition of an affiliated service group that is to be treated as a single employer under section 414(m) for purposes of certain employee benefit requirements. Pursuant to section 414(m)(5), an affiliated service group includes a management organization and a recipient organization (i.e., the organization (and related organizations) for which the management organization performs management functions). An organization is a management organization if the principal business of the organization is the performing of, on a regular and continuing basis, management functions for a recipient organization.

Employee Leasing

Section 414(n) provides that, under certain circumstances, an individual ("leased employee") who performs services for a person ("recipient") through another person ("leasing organization") shall be treated as the employee of the recipient for purposes of certain employee benefit requirements. If the services being provided by an individual to a recipient are pursuant to an agreement between the recipient and the leasing organization, and the individual performs such services for the recipient on a substantially full-time basis for a period of at least one year, and the services are of a type historically performed by employees, then the individual is a leased employee and, therefore, shall be treated as an employee of the recipient.

Section 414(n)(5) provides, however, that if the leasing organization maintains a safe-harbor plan with respect to a leased employee, such individual will generally not be treated as an employee of the recipient. Section 414(n)(5), as originally enacted, required that a safe-harbor plan must be a qualified money purchase pension plan with provision for nonintegrated employer contributions of at least 7½ percent, immediate participation, and full and immediate vesting.

The Tax Reform Act of 1986 amended several provisions relating to sections 414(n) and 414(o). These amendments include the following:

(1) The definition of a safe-harbor plan under section 414(n)(5) has been amended to require a contribution rate of 10 percent and to require that the plan must cover all employees of the leasing organization (other than employees who perform substantially all of their services for the leasing organization (and not for recipients) and employees whose compensation from the leasing organization is less than $1,000 during the plan year and during each of the 3 prior plan years).

(2) Under section 414(n)(5), a leased employee will be treated as an employee of the recipient, regardless of the existence of a safe-harbor plan, if more than 20 percent of the recipient's nonhighly compensated workforce are leased employees (as specially defined for this purpose).

(3) A recordkeeping exception from the section 414(n) employee leasing provisions is provided under section 414(o) in the case of an employer that has no section 416(g) top-heavy plans and that uses the services of nonemployees only for an insignificant percentage of the employer's total workload.

(4) The scope of the section 414(n) employee leasing provisions has been expanded to include a number of non-pension employee benefit requirements (listed under section 414(n)(3)), including group-term life insurance, accident and health plans, qualified group legal services, cafeteria plans, etc. In addition, the employee leasing provisions will apply to these non-pension employee benefit requirements regardless of the existence of a safe-harbor plan.

Except for the amendments relating to the non-pension employee benefit requirements, the proposed regulations reflect the Tax Reform Act of 1986 amendments described above. Guidance relating to the non-pension employee benefit requirements, and other relevant amendments made by the Tax Reform Act of 1986, will be forthcoming.

Avoidance of Certain Employee Benefits Requirements

Section 414(o) provides that the Secretary shall prescribe such regulations as may be necessary to prevent the avoidance of any employee benefit requirement listed in sections 414(m)(4) or 414(n)(3) through the use of separate organizations, employee leasing, or other arrangements. Specifically, the Secretary has the authority to provide rules in addition to

the rules contained in sections 414(m) and 414(n).

Pursuant to section 414(o), the proposed regulations provide rules relating to several arrangements that may result in the avoidance of the listed employee benefit requirements. These arrangements include the leasing of certain owners, the leasing of certain managers, the creation of successive organizations in time, expense sharing arrangements, plans maintained by certain corporate directors, and plans covering certain five-percent owners.

Effective Dates

The amendments made to section 414 by the Tax Equity and Fiscal Responsibility Act of 1982 are effective for tax years of a recipient or of a member of an affiliated service group that begin after December 31, 1983.

The amendments made to section 414 by the Tax Reform Act of 1984 are effective as of July 18, 1984. The regulations promulgated under section 414(o), however, are variously effective for (1) plan years beginning more than six months after this document is published in the **Federal Register**, (2) plan years beginning more than sixty days after this document is published in the **Federal Register** as a Treasury decision, and (3) plan years beginning during or after the first tax year of a recipient beginning after December 31, 1983. (To the extent that the regulations under section 414(o) aggregate plans for purposes of section 415 that were not previously aggregated, the rules of § 1.415–10 apply.)

The amendments made to section 414 by the Tax Reform Act of 1986 are generally effective with respect to services performed after December 31, 1986. The recordkeeping exception from section 414(n), provided under section 414(o), and certain clarifying amendments under section 414(n) are effective as if originally enacted as part of the section 414 amendments made by the Tax Equity and Fiscal Responsibility Act of 1982. The section 414(n)(3) amendments relating to the non-pension employee benefit requirements are generally effective when section 89 applies to such non-pension employee benefits (see section 1151(k) of the Tax Reform Act of 1986).

Special Analysis

The Commissioner of Internal Revenue has determined this rule is not a major rule as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comment, the Internal Revenue Service has concluded that the regulations proposed are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553(b) do not apply. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these proposed regulations is Philip R. Bosco of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury participated in developing the regulations, both on matters of substance and style.

List of Subjects in 26 CFR 1.401–1–1.425–1

Employee benefit plans, Pensions.

Proposed Amendments to the Regulations

The Income Tax Regulations (26 CFR Part 1) are proposed to be amended as follows:

Paragraph 1. The authority citation for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.414(n)–1 also issued under 26 U.S.C. 414(n). Section 1.414(o)–1 also issued under 26 U.S.C. 414(o).

Par. 2. The following new sections are added immediately following § 1.414(m)–4 and read as follows:

§ 1.414(m)–5 Organizations performing management functions.

(a) *In general*—(1) *Affiliated service group.* Pursuant to section 414(m)(5), an affiliated service group includes a group consisting of a management organization (as defined in paragraph (a)(3) of this section) and a recipient organization (as defined in paragraph (a)(4) of this section).

(2) *Organization.* For purposes of this section, the term "organization" means a sole proprietorship, partnership, corporation, trust, association, company, estate, or any other type of entity, regardless of its ownership format.

(3) *Management organization.* For purposes of this section, the term "management organization" means—

(i) An organization, and

(ii) All organizations aggregated (as provided in paragraph (a)(5) of this section) with the organization identified in paragraph (a)(3)(i) of this section, the principal business of which is to perform on a regular and continuing basis management functions for a recipient organization.

(4) *Recipient organization.* For purposes of this section, the term "recipient organization" means—

(i) An organization for which management functions are performed,

(ii) All organizations aggregated (as provided in paragraph (a)(5) of this section) with the organization identified in paragraph (a)(4)(i) of this section, and

(iii) All organizations related (as provided in paragraph (a)(6) of this section) to any organization identified in paragraphs (a)(4)(i) or (a)(4)(ii) of this section.

(5) *Aggregated organizations.* For purposes of this section, organizations are aggregated pursuant to section 414 (b), (c), (m), and (o).

(6) *Related organizations.* For purposes of this section, an organization ("first organization") is related to an organization identified in paragraphs (a)(4)(i) or (a)(4)(ii) of this section ("second organization") if such first organization and second organization would be related persons pursuant to section 144(a)(3) and the management organization performs management functions for the first organization.

(7) The provisions of this paragraph may be illustrated by the following examples:

Example (1). Assume that Corporations A and B constitute a controlled group of corporations under section 414(b) and that Corporations C and D constitute an affiliated service group under section 414(m)(2). Assume that C or D (or both) perform management functions and other services for A or B (or both) that satisfy the requirements of paragraph (b) of this section. C and D are treated as a single management organization and A and B are treated as a single recipient organization for purposes of section 414(m)(5). A, B, C, and D constitute an affiliated service group under section 414(m)(5).

Example (2). Assume the same facts as in example (1). In addition, assume that Corporation E is related to A or B under paragraph (a)(6) of this section (but not aggregated with A or B under paragraph (a)(5) of this section). Assume further that C or D (or both perform management functions and other services for E that satisfy the

requirements of paragraph (b) of this section. E is included with A and B as a single recipient organization, A, B, C, D, and E constitute an affiliated service group under section 414(m)(5).

Example (3). Assume the same facts as in example (2). In addition, assume that Corporation F is related to C or D under section 114(a)(3) (but not aggregated with C or D under paragraph (a)(5) of this section). F is not part of the A–B–C–D–E affiliated service group solely by virtue of its relationship to C or D, even if it provided management functions to A, B, or E. If, however, F (regardless of whether F is related to C or D) satisfies the requirements of paragraph (b) of this section as a management organization with respect to the A–B–C–D–E affiliated service group, then, A, B, C, D, E, and F constitute an affiliated service group.

(b) *Determination of principal business on a regular and continuing basis*—(1) *Two-tax-year rolling percentage.* Except as provided in paragraph (b)(2) of this section, a management organization shall exist with respect to a particular recipient organization for a tax year of the management organization during which the performance of management functions and other services for the recipient organization constitutes more than 50 percent of the management organization's business activities during the two-tax-year period that includes such tax year and the prior tax year. If the management organization was not in existence prior to the current tax year, the more-than-50-percent test shall apply only to the current tax year. Once the more-than-50-percent test is met, the management organization will continue to be a management organization with respect to a particular recipient organization for each subsequent tax year during which the performance of management functions and other services for such recipient organization constitutes more than 40 percent of the management organization's business activities during the two-tax-year period that includes such subsequent tax year and the immediately preceding tax year, unless—

(i) The performance of management functions and other services for the recipient organization constitutes less than five percent of the management organization's business activities during such subsequent tax year,

(ii) There is an intervening tax year for which the management organization and the recipient organization do not satisfy the more-than-40-percent test, or

(iii) The management organization satisfies the more-than-50-percent test with respect to a different recipient organization for such subsequent tax year and the immediately preceding tax year.

If one or more of the three exceptions described in this paragraph (b)(1) applies to a management organization and a particular recipient organization for a tax year, whether such organization is a management organization for such tax year (with respect to either the same or a different recipient organization) or whether such organization becomes a management organization for a subsequent tax year (with respect to either the particular or a different recipient organization) will be determined by reapplication of the more-than-50-percent-test of this paragraph (b)(1) to such organization for the applicable tax year.

(2) *Insubstantial management functions.* Notwithstanding anything in this paragraph (b) to the contrary, a management organization shall not exist with respect to a particular recipient organization for a tax year of the management organization during which the performance of management functions for such recipient organization, in relation to all services performed for such recipient organization, is not substantial. The performance of management functions for a recipient organization is not substantial for a tax year only if during such tax year less than 50 percent of the compensation provided by the management organization, with respect to services performed for the recipient organization (including services performed as an employee of the management organization and in any other capacity), is provided to individuals who perform a significant amount of management functions for the recipient organization. An individual performs a significant amount of management functions for the recipient organization if, during the tax year, at least 15 percent of the individual's service (including service performed as an employee of the management organization and in any other capacity) for the recipient organization (based on time) is performing management functions for the recipient organization. For purposes of this paragraph (b)(2), the term "compensation" means (i) with respect to services performed as a common-law employee, compensation reportable on Form W–2, and (ii) with respect to services performed as a self-employed individual (as defined in section 401(c)(1)), earned income as defined in section 401(c)(2).

(3) *Use of gross receipts to determine principal business.* Except as provided in paragraph (b)(4) of this section, the principal business determination under paragraph (b)(1) of this section is made on the basis of the percentage of gross receipts derived from management functions and other services performed for a recipient organization, as compared to the gross receipts derived from all business activities. In determining the two-tax-year percentage for purposes of paragraph (b)(1) of this section, gross receipts for the combined two-tax-year period are compared. Thus, it is not permissible to average the percentages determined separately for each tax year. For purposes of this paragraph (b), gross receipts derived from all business activities do not include gross receipts from the sale of any asset.

(4) *Use of facts and circumstances to determine principal business.* The Commissioner may, at his discretion, determine that the use of gross receipts is not an appropriate method for determining principal business. In that event, the determination of principal business shall be made on the basis of all relevant facts and circumstances including, for example, the amount of time actually spent by individuals in performing management functions and other services for a recipient organization. The determination that the use of gross receipts is not an appropriate method for determining principal business may not be made by the taxpayer.

(5) *Aggregated organizations with different tax years.* If management organizations aggregated pursuant to paragraph (a)(3) of this section have different tax years, any 12-month period used at any time by such organization may be used for purposes of this paragraph (b) provided that the 12-month period selected is used consistently.

(c) *Management functions*—(1) *Definition.* For purposes of this section, the term "management functions" includes only those management activities and services historically performed by employees. Management activities and services include determining, implementing, or supervising (or providing advice or assistance in accomplishing any of the foregoing)—

(i) Daily business operations (such as production, sales, marketing, purchasing, advertising, etc.),

(ii) Personnel (such as staffing, training, supervising, hiring and firing, etc.),

(iii) Employee compensation and benefits (such as salaries and wages, paid vacations and holidays, life and health insurance, pensions, etc.),

(iv) Short- and long-range business planning (such as product development,

budgeting, financing, expansion of operations, capital investment, etc.),

(v) Organizational structure and ownership (such as corporate formation, stock issues, dividends, mergers and acquisitions, etc.), and

(vi) Any other management activity or service.

Management activities and services also include professional services (as defined in § 1.414(m)-1(c)) that relate to the activities and services described in this paragraph (c)(1). In addition, professional services of the same type as the professional services performed by the recipient organization for third parties are deemed to be management activities and services, and are deemed to be management functions regardless of whether such professional services are historically performed by employees.

(2) *Historically performed by employees*—(i) *In general.* Management activities and services are historically performed by employees in a particular business field (such as the health field) if it was not unusual for management activities and services of such type to be performed by employees of organizations in that particular business field, in the United States, on September 3, 1982. To the extent that a particular business field did not exist on September 3, 1982, whether a management activity or service will be considered historically performed by employees in that particular business field will be determined by analogy to similar business fields in existence on September 3, 1982. The Commissioner may provide additional guidance as to what constitutes a business field.

(ii) *Management activity or service actually performed by employees.* Notwithstanding a determination under paragraph (c)(2)(i) of this section that it was unusual for a particular management activity or service to be performed by employees of organizations in a particular business field, if such management activity or service was ever performed by any employee of a particular organization in such business field, such management activity or service is a management activity or service historically performed by employees for purposes of applying section 414(m)(5) to that particular organization (and to organizations aggregated with such organization under paragraph (a)(5) of this section and to organizations which would be related to any of the foregoing organizations under paragraph (a)(6) of this section if such management activity or service were considered a management function for purposes of such paragraph (a)(6)), for the period beginning on the date such management activity or service was first performed by an employee of that organization and ending on the date five years after such management activity or service is no longer performed by an employee of that organization.

(d) *Treatment of self-employed individuals.* For purposes of this section, the term "employee" includes a self-employed individual (as defined in section 401(c)(1)).

(e) *Services performed means services performed directly or indirectly.* For purposes of this section, services performed for a person other than as an employee of such person means services performed directly or indirectly for such person.

§ 1.414(m)-6 Application of section 414(o) to section 414(m).

Section 414(o) provides that the Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in section 414 (m) as may be necessary to prevent the avoidance of any employee benefit requirement listed in section 414(m)(4) through the use of separate organizations, employee leasing, or other arrangements. Accordingly, the regulations under section 414(m) are promulgated, in part, pursuant to the authority granted by section 414(o). For additional rules that may relate to section 414(m), see section 414(o) and the regulations thereunder.

§ 1.414(n)-1 Employee leasing.

(a) *In general.* Section 414 (n) provides that under certain circumstances, an individual who is a leased employee shall be treated as an employee of the recipient for purposes of the employee benefit requirements listed in § 1.414(n)-3 (a).

(b) *Definitions*—(1) *Leasing organization.* The term "leasing organization" means any aggregated group (as defined in paragraph (b)(6) of this section without regard to paragraph (b)(6)(ii) of this section) which provides services to a recipient through a leased employee. An aggregated group may be both the leasing organization and the leased employee, such as where a sole proprietor performs services for a recipient as an independent contractor.

(2) *Recipient.* The term "recipient" means any aggregated group (as defined in paragraph (b)(6) of this section) which utilizes the services of a leased employee.

(3) *Person.* The term "person" means any individual, sole proprietorship, trust, estate, partnership, association, company, or corporation. Whether persons are related is determined pursuant to the rules of section 144(a)(3).

(4) *Leased employee.* The term "leased employee" means any individual who provides services to a recipient, in a capacity other than as an employee of the recipient, in accordance with each of the following three requirements:

(i) The services are provided pursuant to one or more agreements between the recipient and one or more leasing organizations.

(ii) The individual has performed such services for the recipient on a substantially full-time basis for a period of at least one year.

(iii) Such services are of a type historically performed, in the business field of the recipient, by employees.

(For purposes of this paragraph (b)(4), the terms, "recipient" and "leasing organization" mean such person or persons that would constitute a "recipient" or "leasing organization" if the individual were a leased employee.) If the three requirements of this paragraph (b) (4) are satisfied, an individual generally becomes a leased employee with respect to a recipient as of the first day immediately following the end of the one-year period specified in paragraph (b) (4) (ii) of this section. However, an individual may become a leased employee with respect to a recipient as of the beginning of the one-year period specified in paragraph (b) (4) (ii) of this section if the recipient elects such treatment with respect to all individuals who satisfy paragraph (b) (4) (i) and (iii) of this section. An individual need not be an employee of the leasing organization to be a leased employee. For example, an individual may be an independent contractor or leased employee with respect to the leasing organization.

(5) *Agreement.* For purposes of paragraph (b) (4) (i) of this section, an agreement between the recipient and the leasing organization includes any mutual understanding between the parties that the leasing organization will provide an individual or individuals to perform services for the recipient. This agreement need not be in writing. An agreement will be deemed to exist with respect to an individual if the leasing organization receives or is entitled to payment from the recipient in exchange for providing the individual to perform services for the recipient.

(6) *Aggregation of related or aggregated recipients.* For purposes of section 414(n) and the regulations thereunder, the term "aggregated group" means—

(i) All persons aggregated pursuant to section 414 (b), (c), (m), or (o), and

(ii) All persons related, in accordance with section 414 (a)(3), to any person aggregated under paragraph (b)(6)(i) of this section.

(7) *Performance of services through multiple leasing organizations.* For purposes of paragraph (b)(4)(ii) of this section, if a individual performs services for a recipient pursuant to one or more agreements between the recipient and one or more leasing organizations, all such services are included.

(8) *Performance of services prior to the effective date of section 414(n) or while covered by a safe-harbor plan.* For purposes of paragraph (b)(4)(ii) of this section, services performed by an individual prior to the effective date of section 414(n) are included. For example, assume that an individual began performing services for a recipient on June 1, 1982. If by June 1, 1983, the individual has performed the requisite number of hours of service for the recipient, and the other requirements of section 414(n)(2) are met, such individual is a leased employee of the recipient as of the first date on which section 414(n) applies with respect to the recipient. For purposes of paragraph (b)(4)(ii) of this section, services performed by an individual while covered by a safe-harbor plan (as defined in paragraphs (f) and (g) of § 1.414(n)–2) are included.

(9) *Performance of services as an employee.* For purposes of paragraph (b)(4)(ii) of this section, services performed at any time by an individual as an employee of a recipient are included.

(10) *Substantially full-time basis for a period of at least one year*—(i) *General rule.* For purposes of paragraph (b)(4)(ii) of the section, an individual is considered to have performed services or a substantially full-time basis for a period of at least one year if by the end of the individual's initial 12-month period of performing services for the recipient, or by the end of any plan year of the recipient beginning either during or after the individual's initial 12-month period of performing services for the recipient, such individual is credited with either—

(A) At least 1500 hours of service for the recipient, or

(B) At least 501 hours of service for the recipient and a number of hours of service for the recipient equal to at least 75 percent of the median number of hours of service credited during the same period to individuals who during the entire period perform similar services for the recipient as employees of the recipient. Under certain circumstances, it may be appropriate to base the determination under paragraph (b)(10)(i)(B) of this section on similar services performed by individuals other than current employees of the recipient. For example, if no individuals currently perform similar services for the recipient as employees of the recipient, it may be appropriate to determine the median based on individuals who performed similar services for the recipient as employees of the recipient in a prior plan year. If the recipient has plans with more than one plan year, the recipient may use the plan year of any plan, provided such plan year is used on a consistent basis for all determinations of whether any individual has performed services on a substantially full-time basis for a period of at least one year.

(ii) *Exceptions to the general rule.* Notwithstanding paragraph (b)(10)(i) of this section—

(A) All individuals credited with at least 501 hours of service for the recipient during a period described in paragraph (b)(10)(i) of this section may, at the option of the recipient, be considered to have performed services on a substantially full-time basis for a period of at least one year, and

(B) All individuals credited with less than 1,000 hours of service for the recipient during a period described in paragraph (b)(10)(i) of this section may, at the option of the recipient, be considered to have not performed services during such period which would cause such individual to be considered to have performed services on a substantially full-time basis for a period of at least one year.

(C) With respect to a period described in paragraph (b)(10)(i) of this section, a recipient may apply paragraph (10)(ii)(A) or (B) of this section by substituting for 501 hours of service or 1,000 hours of service (as the case may be) any specified number of hours of service between 501 and 1,000.

(iii) *Hours of service.* For purposes of this paragraph (b)(10), the term "hours of service" has the same meaning as the term "hour of service" provided by 29 CFR § 2530.200b–2 under the general method of crediting service for an employee. Hours of service for the recipient include hours of service for the leasing organization during which no services for the recipient are performed to the extent that such hours of service are attributable to the recipient. For example, if an individual performs services for the recipient totaling 900 hours, performs services for another person total 100 hours, and receives paid sick leave from the leasing organization totaling 200 hours, hours of service for the recipient includes a proportional amount of the 200 hours of paid sick leave (i.e., 180 hours). If one of the equivalencies set forth in 29 CFR 2530.200b–3 is used with respect to an individual for crediting hours of service, the selected equivalency must be identified, in writing, pursuant to a nondiscriminatory agreement between the leasing organization and the recipient. If an equivalency is used, the hour requirements in this paragraph (b)(10) must be adjusted accordingly. For example, if the equivalency in 29 CFR 2530.200b–3 (d)(1) based on hours worked is used, the 1,000 hours reference in paragraph (b)(10)(ii)(B) of this section must be adjusted to 870. If an equivalency is used with respect to an individual, then for purposes of determining whether such individual, then for purposes of determining whether such individual has performed services on a substantially full-time basis for a period of at least one year, the same equivalency must be used for determining the hours of service of employees of the recipient under paragraph (b)(10)(i)(B) of this section.

(iv) *Alteration of plan year.* For purposes of this paragraph (b)(10), rules similar to those provided under 29 CFR 2530.230–2 (c)(1) shall apply in the case of an amendment to alter the plan year.

(v) *Other rules.* For purposes of this paragraph (b)(10), the Commissioner may provide additional methods for determining hours of service and the application of paragraph (b)(10)(iv) of this section.

(11) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). On July 1, 1986, Corporation X leases Individual A from Leasing Organization Y to perform secretarial services. Y does not maintain a qualified plan. The median number of hours of service credited to secretaries who are employed by X throughout the year is 35 hours per week or 1,820 hours per year. During the 12-month period ending on June 30, 1987, A is credited with 1,450 hours of service for X. A does not meet the first test of "substantially full-time" because A was not credited with at least 1,500 hours of service. However, A does meet the second test for "substantially full-time" because A is credited with a number of hours of service equal to at least 75 percent of the median number of hours of service credited to employees of X who perform secretarial services throughout the year (.75×1,820 hours=1,365 hours). Therefore, A is a leased employee of X as of July 1, 1987.

Example (2). Individual B was an employee of Corporation X, a calendar year taxpayer, on a full-time basis from January 1, 1980 until July 1, 1982. On May 1, 1984, B is hired by and becomes an employee of Leasing Organization Z. Z is not related to X. Z enters into a contract with X to provide services to

X. On May 2, 1984, B is leased to X. B is not an employee of X. B is considered to be a leased employee of X for purposes of section 414(n) as of May 2, 1984, because service performed by B for the recipient as an employee is taken into account for purposes of determining whether an individual has performed services on a substantially full-time basis for a period of at least one year.

(12) *Historically performed by employees*—(i) *In general.* For purposes of paragraph (b)(4)(iii) of this section, services are historically performed by employees in a particular business field (such as the health field) if it was not unusual for services of such type to be performed by employees of persons in that particular business field, in the United States, On September 3, 1982. To the extend that a particular business field did not exist on September 3, 1982, whether a service will be considered historically performed by employees in that particular business field will be determined by analogy to similar business fields in existence on Septemer 3, 1982. The Commissioner may provide additional guidance as to what constitutes a business field.

(ii) *Services actually performed by employees.* Notwithstanding a determination under paragraph (b)(12)(i) of this section that it was unusual for a particular service to be performed by employees of persons in a particular business field, if such service was ever performed by any employee of a particular person in such business field, such service is a service historically performed by employees for purposes of applying section 414(n) to the aggregated group of which that particular person is a part, for the period beginning on the date such service was first performed by any employee of that person and ending on the date five years after such service is no longer performed by any employee of that person.

(iii) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). On January 1, 1987, Law Firm X contracts with Construction Company Y to renovate an existing building that will become X's new law office. By December 31, 1987, each of five employees of Y who began performing services for X on January 1, 1987, has been credited with at least 1500 hours of service for X. X has never had an employee perform construction services. None of the five employees of Y is a leased employee of X as of January 1, 1988, because it was unusual for construction services to be performed by employees of a law firm, in the United States, on September 3, 1982.

Example (2). On September 15, 1986, Corporation X, a textile manufacturer, contracts with Corporation Y, a construction firm, to build a manufacturing plant for X. By September 14, 1987, each of 15 employees of Y who began performing services for X on September 15, 1986, is credited with at least 1500 hours of service for X. X has never had an employee perform construction services. None of the 15 employees of Y is a leased employee of X as of September 15, 1987, because it was unusual for construction services to be performed by employees of a textile manufacturer, in the United States, on September 3, 1982.

(13) *Effect on substantially full-time service*—(i) An individual who at one time satisfied the requirements of paragraph (b)(4)(ii) of this section may, at the recipient's election, cease to be considered to have satisfied the requirements of such paragraph as of the end of the first year in which the individual's number of consecutive nonqualifying years equals or exceeds the greater of either five years or the aggregate number of qualifying years.

(ii) For purposes of this paragraph (b)(13), the term "year" means the period described in paragraph (b)(10)(i) of this section for determining whether an individual has performed services on a substantially full-time basis for a period of at least one year, including periods prior to the effective date of section 414(n).

(iii) For purposes of this paragraph (b)(13), the term "nonqualifying year" means a year during which an individual has less than 501 hours of service for the recipient.

(iv) For purposes of this paragraph (b)(13), the term "qualifying year" means each year other than a nonqualifying year, starting with the first year in which the individual performed services on a substantially full-time basis within the meaning of paragraph (b)(10) of this section.

(v) For purposes of this paragraph (b)(13), the definitions and rules of paragraphs (b)(10)(iii) and (b)(10)(iv) of this section shall apply.

(14) *Simplified employee pensions.* For purposes of section 414(n) and the regulations thereunder, references to a "plan" or to a "qualified plan" of the recipient or the leasing organization shall, to the extent appropriate, include simplified employee pensions under section 408(k).

(15) *Treatment of self-employed individuals.* For purposes of section 414(n) and the regulations thereunder, the term "employee" includes a "self-employed individual" (as defined in section 401(c)(1)).

(16) *Highly compensated employees, etc.* For purposes of section 414(n) and the regulations thereunder, a leased employee of a recipient may be considered an employee of the recipient who is highly compensated, an officer, or a shareholder. See § 1.414(o)–1(m). See section 414(q) for the definition of "highly compensated employee" for years beginning after December 31, 1986 or later, depending on the applicable effective date for the particular employee benefit requirement.

(17) *Services performed means services performed directly or indirectly.* For purposes of section 414(n) and the regulations thereunder, services performed for a person other than as an employee of such person mean services performed directly or indirectly for such person.

(c) *Effect of section 414(n) on other sections.* Notwithstanding that, pursuant to section 414(n), a leased employee is treated as an employee of the recipient for purposes of the employee benefit requirements provided in section 414(n)(3) and § 1.414(n)–3 (a), a leased employee may still be an employee of the leasing organization. Therefore, if a leased employee is an employee of the leasing organization, rather than being self-employed or an independent contractor with respect to the leasing organization, the leased employee may be a participant in the plans of both the leasing organization and the recipient.

(d) *Effect of section 414(n) on employee rules*—(1) *In general.* Section 414(n) operates after the application of the common-law rules relating to the determination of the employer/employee relationship. Thus, for example, an individual who is an employee of a person will continue to be an employee of that person even though the person formally "leases" the individual from a leasing organization that maintains a safe-harbor plan described in section 414(n)(5). In addition, compensation received by such an individual that is attributable to services performed for the person as an employee of the person may not be considered for purposes of determining whether any plan maintained by the leasing organization is qualified pursuant to section 401.

(2) *Determination of employer.* The determination of who is the employer of an individual for purposes of sections 3121, 3306, and 3401 (relating to employment taxes and income tax withholding) is not determinative of who is the employer for purposes of subchapter D.

(e) *Exception for certain leased employees*—(1) *In general.* For purposes of section 414(n) and the regulations thereunder, an individual who is a leased employee of a recipient shall not be treated as an employee of the recipient for a tax year of the leased employee for which each of the following conditions is satisfied:

(i) The leased employee provides services for the recipient that require the use by the leased employee of substantial operating assets ("required operating assets"). Required operating assets are treated as substantial only if the "replacement cost" of such assets in the leased employee's taxable year of purchase of such assets equals or exceeds the "applicable amount" for the calendar year in which such taxable year of purchase begins.

(A) For purposes of this paragraph (e)(1)(i), the "applicable amount" for calendar years before 1988 is $60,000. The "applicable amount" for calendar years after 1987 shall be determined by the Commissioner by annually adjusting the applicable amount for the prior calendar year to take into account increases in the cost of living. Such increases shall be made in accordance with procedures used to adjust benefits under section 215(i)(2)(A) of the Social Security Act.

(B) The "replacement cost" of required operating assets that are new in the leased employee's year of purchase shall be the leased employee's actual cost of such assets (e.g., the amount paid in cash and other property), excluding any taxes paid with respect to such purchase.

(C) The "replacement cost" of required operating assets that are previously used as of the leased employee's year of purchase is the retail cost in such year of purchase of new required operating assets that are comparable to the previously used required operating assets actually purchased by the leased employee. Thus, for example, if a leased employee purchases a previously used required operating asset in 1987, such asset will be treated as substantial for purposes of this provision if the retail cost of a new operating asset that is comparable to the previously used required operating asset equals or exceeds the applicable amount for 1987. The comparability of a previously used asset to a new asset is to be determined by reference to all the facts and circumstances, including any standard and extra features included with the respective assets.

(D) At the election of the leased employee, the determination of whether required operating assets purchased by a leased employee prior to the leased employee's taxable year beginning in 1987 are substantial may be made as if such assets were previously used assets first purchased by the leased employee in such leased employee's taxable year beginning in 1987.

(E) The determination of whether required operating assets are substantial (i.e., whether the replacement cost of such assets equals or exceeds the applicable amount for the year of purchase) is made in the leased employee's taxable year in which the assets are acquired by the leased employee. The determination, once made, remains in effect with respect to such assets for as long as the leased employee owns the assets. Thus, if the leased employee's replacement cost of required operating assets equals or exceeds the applicable amount for the year of purchase, the required operating assets will be treated as substantial for the year of purchase and for all subsequent years that the leased employee continues to own the assets, even if the basis or value of the assets declines in subsequent years. Similarly, if required operating assets are not substantial in the year of purchase, such assets will not be treated as substantial for the year of purchase or for any subsequent year, even if the value of such assets increases.

(ii) The leased employee's actual cost of the required operating assets in the leased employee's taxable year of purchase (whether or not such assets are previously used or new) equals or exceeds the "minimum amount" for the calendar year in which such taxable year of purchase begins. For purposes of this paragraph (e)(1)(ii), the "minimum amount" for calendar years before 1988 is $10,000. The "minimum amount" for calendar years after 1987 shall be adjusted annually in accordance with paragraph (e)(1)(i)(A).

(iii) (A) The leased employee owns substantially all of the required operating assets used in the leased employee's performance of services for the recipient. For purposes of this determination, the ownership interest of a leased employee and his or her spouse shall be aggregated. However, the ownership interest of the leased employee (and the spouse of the leased employee) will not be aggregated with the ownership interest of any other person for purposes of this determination. A leased employee will be treated as owning substantially all of the required operating assets only if the leased employee (and the spouse of the leased employee) own 85 percent or more of such assets at all times during the tax year of the leased employee. A leased employee will be treated as owning the required operating assets only to the extent that such leased employee bears the full risk of loss with respect to such assets and the full responsibility for the operating expenses with respect to such assets. The leased employee will not be treated as bearing the full risk of loss with respect to such assets during a tax year if an asset acquisition loan from the recipient to the leased employee is outstanding or if the recipient is a guarantor or co-borrower of an asset acquisition loan made to the leased employee. For purposes of the preceding sentence, the recipient includes any organization aggregated with the recipient under section 414 (b), (c), (m) or (o). The leased employee will not be treated as failing to bear the full risk of loss with respect to substantial operating assets merely because the leased employee maintains insurance covering damage to, or loss of, substantial operating assets.

(B) For purpose of paragraph (e)(1)(iii)(A) of this section, an asset acquisition loan is a loan any portion of the proceeds of which is used at any time, directly or indirectly, to acquire any of the assets used by the leased employee in performing services. Whether any portion of the proceeds of a loan is used indirectly to acquire any assets used by the leased employee in performing services shall be determined from the facts and circumstances of each case.

(C) For purposes of paragraph (e)(1)(iii)(A) of this section, the leased employee will not be treated as bearing the full responsibility for payment of the operating expenses incurred in performing services for the recipient if the payment by the recipient to the leased employee is determined with reference to the amount of such operating expenses (e.g., a "cost plus" arrangement).

(iv) Less than 50 percent of the amount paid by the recipient to the leased employee is attributable to the personal services of the leased employee for the recipient. This determination will be made by comparing the amount paid by the recipient to the leased employee to the amount the recipient would pay an employee (that performs only personal services for the recipient) providing the same service to the recipient.

(v) The leased employee has no ownership interest in the recipient (or in any organization aggregated with the recipient under section 414 (b), (c), (m), or (o)) at any time during the two-tax-year period consisting of the current tax year and the preceding tax year of the leased employee. In determining the leased employee's ownership interest in the recipient (or in any organization aggregated with the recipient under section 414 (b), (c), (m) or (o)), the principles of section 318(a) shall apply.

(2) *Exception to general rule.* Notwithstanding paragraph (e)(1) of this section, the Commissioner may treat a leased employee described in that

paragraph as an employee of the recipient if the Commissioner considers such treatment to be appropriate under the facts and circumstances of the particular case.

§ 1.414(n)–2 Qualified plan coverage of leased employees.

(a) *Recipient's qualified plan*—(1) *Treatment of leased employees.*

(i) Section 414(n) requires that a leased employee be treated as an employee of the recipient. Therefore, a recipient's qualified plan must specifically provide how leased employees will be treated under the plan. If a recipient's plan does not specifically provide for the treatment of leased employees, such plan will fail to qualify under section 401(a).

(ii) If a recipient's qualified plan covers one or more leased employees, such plan must, as a condition of plan qualification, specifically provide how leased employees covered by a safe-harbor plan (as defined under paragraphs (f) and (g) of this section) will be treated under the recipient's plan.

(iii) The requirements of this paragraph (a)(1) must be satisfied whether or not the recipient utilizes the services of leased employees.

(2) *Participation.* Section 414(n) does not necessarily require that a leased employee benefit under the recipient's qualified plan. Therefore, although a leased employee must be taken into account for purposes of determining whether the recipient's plan is qualified (e.g., whether the plan meets the coverage test of section 410(b) and otherwise satisfies the requirements of section 401(a)), the leased employee is not required to benefit under the recipient's plan. For example, assume that for 1984, Company X has 500 employees who have completed one or more years of service. In addition, X maintains a qualified plan in which 400 of these employees participate. The plan requires an employee to complete one year of service before participation, but does not impose a minimum age requirement. Section 414(n) requires that, for 1984, Company X must treat 25 leased employees as its employees. Even if all of the 25 leased employees satisfy the service requirement, but none of the 25 leased employees is permitted to participate under X's plan for 1984, the plan will still benefit 76.2 percent (400/525) of X's employees and thus will satisfy section 410(b). Thus, X's plan is not required to benefit any of the 25 leased employees for 1984.

(b) *Contributions, benefits, etc., provided by a leasing organization*—(1) *General rule.* (i) For purposes of section 414(n) and the regulations thereunder, a leased employee's "interest in a leasing organization's qualified plan" (i.e., any contributions, forfeitures, or benefits of a leased employee under a qualified plan maintained by a leasing organization that are attributable to services performed for a recipient by the leased employee) is treated as provided under a qualified plan of the recipient for purposes of applying the employee benefit requirements listed in § 1.414(n)–3(a) (except for paragraph (a)(6) of that section) to any qualified plan of the recipient. In addition, the leased employee's "interest in the leasing organization" (i.e., the leased employee's interest in the factors relevant to contributions or benefits under any qualified plan of the recipient, such as, for example, compensation, service and accrued benefit, etc.) that is attributable to services performed for the recipient is treated as provided by the recipient. For purposes of this section, except as otherwise provided, the factors relevant to contributions or benefits under any qualified plan of the recipient are to be determined in a manner consistent with the definition of such factors under the recipient's plan (or plans) and with section 401(a) (4) and (5). For example, the term "compensation" means compensation determined in a manner consistent with the definition of compensation under the recipient's plan (or plans) and with section 401(a) (4) and (5). For purposes of this section, the term "compensation" includes earned income as defined in section 401(c)(2). See section 414(s) for the definition of "compensation" for years beginning after December 31, 1986. For purposes of this section, the term "maintained", when used in the context of a plan maintained by any person, means "maintained at any time".

(ii) The rules of this paragraph (b) do not apply in a converse manner to the leasing organization. For example, contributions or benefits of the leased employee under a qualified plan maintained by the recipient that are attributable to services performed for the recipient by the leased employee, are not treated as provided under a qualified plan of the leasing organization for purposes of applying the employee benefit requirements listed in § 1.414(n)–3(a) to any qualified plan maintained by the leasing organization.

(2) *Allocation of contributions, benefits, etc.* The allocation to the recipient of the leased employee's interest in the leasing organization's qualified plan (and the allocation of each item in the leased employee's interest in the leasing organization) is generally the ratable portion determined on the basis of the proportion of the leased employee's compensation received from the leasing organization attributable to services performed for the recipient to the leased employee's total compensation received from the leasing organization. However, with respect to certain items, such as service or contributions based on a factor other than compensation, an allocation based on other factors (such as hours of service with respect to service) may be appropriate, depending on the facts and circumstances.

(3) *Effect of allocation on recipient's qualified plans.* (i) Each leased employee's interest in a leasing organization's qualified plan that is treated as being provided under a recipient's qualified plan is treated as provided under a qualified plan of the recipient that is separate from any of the plans actually maintained by the recipient. Thus, for example, if a recipient has three leased employees (one each from three separate leasing organizations), the contributions, forfeitures and benefits provided to each of these leased employees under the qualified plans of their respective leasing organizations are treated as provided under three separate qualified plans of the recipient.

(ii) A separate qualified plan for a leased employee that is treated as maintained by the recipient is treated as a qualified plan to the extent that the qualified plan of the leasing organization covering the leased employee is a qualified plan. (However, see § 1.414(o)–1 (b), (c), and (g) in the case of certain leased owners, leased managers and inside corporate directors.)

(iii) If any qualified plan actually maintained by the recipient fails to satisfy any applicable employee benefit requirement (other than section 401(a)(26)), the qualified plan actually maintained by the recipient may be combined with one or more of the separate qualified plans for leased employees that are treated as maintained by the recipient for purposes of satisfying such requirements. Thus, for example, if a plan actually maintained by a recipient would satisfy section 410(b) if it covered one more employee, such plan and any separate qualified plan for a leased employee that is treated as maintained by the recipient may be treated as a single plan for purposes of applying section 410(b). The plans actually maintained by the recipient and the plans treated as maintained by the recipient must also be treated as a single plan for purposes of applying any other applicable employee

benefit requirement to a plan actually maintained by the recipient.

(iv) If a separate qualified plan is treated as maintained by the recipient with respect to a leased employee and such leased employee also participates in a qualified plan actually maintained by the recipient, or has or had accrued benefit in any plan actually maintained by the recipient, then the leased employee's interest in the leasing organization's qualified plan is to be treated as provided to the leased employee under the plan actually maintained by the recipient for purposes of determining whether a plan actually maintained by the recipient satisfies the applicable employee benefit requirements. See paragraph (b)(1)(i) of this section with respect to the term "interest in a leasing organization's qualified plan". For example, if, with respect to a leased employee, the total of the benefits provided under a leasing organization's qualified plan that are treated as provided under a separate qualified plan of the recipient and the benefits provided under a plan actually maintained by the recipient exceed the applicable section 415 limits, the plan actually maintained by the recipient will be treated as failing to satisfy section 415.

(4) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Individual A is an employee of Leasing Organization X. X leases A to Company Y under an agreement. A performs services for Y on a substantially full-time basis for a period of more than one year. X maintains a qualified defined contribution plan that is not a safe-harbor plan. Y maintains a qualified defined contribution plan and pursuant to section 414 (n), Y must treat A as its employee. Y determines that 95 percent of A's total compensation received from or on behalf of X is attributable to the performance of services for Y. Based on the amount of A's compensation attributable to A's performance of services for Y, A is not a highly compensated employee of Y. As a result of A not participating in Y's qualified plan, Y's qualified plan does not satisfy the coverage requirements of section 410(b). For purposes of determining the contributions of benefits that Y must provide under its plan on behalf of A in order for Y's plan to satisfy section 410(b) and 401(a)(4), Y may treat 95 percent of the contributions (including employee contributions) and forfeitures on behalf of A under X's plan, as being provided under a separate plan maintained by Y. If the contributions and forfeitures treated as provided to A under a separate plan maintained by Y are comparable to the contributions and forfeitures provided to Y's employees under Y's plan, then Y's plan may satisfy section 410(b) and 401(a)(4) even though A is provided with no additional contributions of forfeitures under Y's qualified plan.

(c) *Deductions.* Compensation (as defined for purposes of section 404) of a leased employee attributable to services performed for a recipient is considered compensation for purposes of determining the recipient's deduction under section 404. The deduction for contributions shall be available, however, only to the organization that actually made the contribution. Therefore, even though contributions by the leasing organization that are attributable to services performed for the recipient are treated as provided by the recipient, the recipient may not deduct the contributions made by the leasing organization. The leasing organization and the recipient, however, may independently determine their deductions under section 404 with respect to a leased employee even though this results in the same compensation being used by both the leasing organization and the recipient.

(d) *Years of service.* For purposes of both participation and vesting, with respect to a plan of the recipient, the entire period for which an employee or a leased employee has performed servces for the recipient must be taken into account in accordance with section 414(n)(4), including periods of service before the effective date of section 414(n), periods of service during which the individual is covered by a safe-harbor plan (as defined in paragraphs (f) and (g) of this section), periods of service during which the individual is an employee of the recipient, and periods of service during which the individual would be a leased employee but for the requirements of § 1.414(n)–1(b)(4)(ii). The service of an individual who is not an employee of the recipient shall be determined under the rules of the recipient's plan for computing years of service, including any plan rules relating to the break-in-service rules of sections 410(a)(5) and 411(a)(6). For example, if a leased employee began performing services for the recipient on January 1, 1981, the leased employee's service for participation and vesting purposes will be considered to have commenced on January 1, 1981. However, because the individual does not become a leased employee until January 1, 1984 (in the case of a recipient with respect to which section 414(n) applies on January 1, 1984), such leased employee need not in any case begin to participate in the plan until January 1, 1984. Therefore, section 414(n) does not require the recipient to provide retroactive benefits for the leased employee for years of service prior to the effective date of section 414(n).

(e) *Coverage precluded for part-time individuals*—(1) *General rule.* Any individual who is not a leased employee because such individual has not met the initial service requirement of § 1.414(n)–1(b)(4)(ii), may not be treated as a leased employee of the recipient. Further, even though an individual has satisfied the initial service requirement of such paragraph, such an individual may not be treated as a leased employee of the recipient in any nonqualifying year (as defined in § 1.414(n)–(b)(13)).

(2) *Inadvertent coverage.* In a case where a recipient's plan inadvertently covers an individual who would be a leased employee but for the fact that such individual has not met the service requirement of § 1.414(n)–1(b)(4)(ii), or who would be a leased employee at the time of coverage but for the fact that the coverage occurs during a nonqualifying year, the recipient's plan will not be denied qualification merely becaue it covered a nonemployee.

(f) *Special rules for services performed after December 31, 1986*—(1) *Safe-harbor plan.* Except as otherwise provided, the rules of section 414(n) shall apply to a leased employee with respect to service provided by the leased employee as an employee of the leasing organization if the requirements of this paragraph (f)(1) are met with respect to contributions and benefits provided by the leasing organization for such leased employee as an employee of the leasing organization. In order for the requirements of this paragraph (f)(1) to be met, the leased employee must be covered by a safe-harbor plan, i.e., a qualified money purchase pension plan maintained by the leasing organization that provides the following:

(i) Except as provided in paragraph (f)(2) of this section, each employee of the leasing organization must be a plan participant on the later of the date such employee first becomes an employee of the leasing organization, or the effective date of this paragraph (f), whether or not such employee is a leased employee on that date.

(ii) Contributions to the plan on behalf of all participants must have always been and must currently be at a rate not less than 10 percent of the employee's compensation (as defined in section 414(q)(7)), whether or not such compensation is attributable to the performance of services for a recipient, whether or not such employee is an employee of the leasing organization on any specified date during the year, and regardless of the number of hours of service performed by the employee for the leasing organization. The requirement of this paragraph (f)(1)(ii) is deemed satisfied with respect to periods prior to the effective date of this

paragraph (f) if, for such periods, the requirements of paragraph (g) are satisfied. The requirement of this paragraph (f)(1)(ii) is not satisfied if either the contribution rate is reduced due to integration or any other factor below 10 percent or contributions to the plan are not made within the period provided by section 412(c)(10). Contributions must be made for all compensation without regard to any age or service requirement.

(iii) An employee's rights to, or derived from, employer contributions under the plan must be immediately nonforeitable in accordance with section 411(a). In addition, an employee's rights to, or derived from, employer contributions must be disregarded for purposes of applying section 411(a) to other contributions or benefits. The requirement or this paragraph (f)(1)(iii) is not satisfied if righs are conditioned in any manner not permitted by section 411(a) (without regard to section 411(a)(3)) with regard to amounts required to be nonforfeitable under such section, including requirements relating to either completion of a year of service or employment on a speicific date.

(iv) A safe-harbor plan must be a qualified plan pursuant to section 401(a) and, therefore, must satisfy the coverage rules of section 410(b) and the nondiscrimation rules of section 401(a)(4), taking into account all employees of the leasing organization, including employees leased to recipients. A safe-harbor plan maintained by the leasing organization must take into consideration, for purposes of section 401(a), all of the leased employee's service for the leasing organization as an employee of the leasing organization (including periods during which the employee was leased by the leasing organization to a recipient) and all compensation with respect to such services of the leased employees.

(2) *Exceptions to coverage requirements.* All employees of a leasing organization must be participants in a safe-harbor plan maintained by the leasing organization other than (i) employees who during the plan year perform substantially all of their services for the leasing organization (and not for recipients), and (ii) employees whose compensation (as deafined in section 414(q)(7)) from the leasing organization is less than $1,000 during the plan year and during each of the three prior plan years. (Employees described in paragraphs (f)(2)(i) and (f)(2)(ii) of this section may be required to be participants in the safe-harbor plan or another plan of the leasing organization under another section of Subchapter D (such as section 410).) For purposes of this paragraph (f)(2), an employee is not considered to perform substantially all of his services for the leasing organization (and not for recipients) during a plan year if during such year more than 15 percent of such employee's total service (based on hours of service, as defined in 29 CFR § 2530.200b–2) with respect to the leasing organization is either performed on the premises of one or more recipients or is performed for one or more recipients. Services performed for a leasing organization that are necessary to support the work of other individuals for recipients are considered services performed for recipients. An example of services that are not performed for any recipient is services performed to develop advertising for the leasing organization.

(3) *Application of section 414(n) to a leased employee notwithstanding the existence of a safe-harbor plan.* (i) Notwithstanding anything in this paragraph (f) to the contrary, the rules of section 414(n) (other than subsection (n)(5) shall apply to a leased employee if such leased employee is covered under any qualified plan of the recipient or if any qualified plan of the recipient relies on the participation of the leased employee in a safe-harbor plan in order to satisfy the requirements of section 410(b).

(ii) Notwithstanding anything in this paragraph (f) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply, with respect to § 1.414(n)–3(a) (5) and (8), to a leased employee who has an accrued benefit under any qualified plan of the recipient.

(4) *Application of section 414(n) to a leased employee notwithstanding the existence of a safe-harbor plan where a significant percentage of recipient's workforce is comprised of leased individuals.* (i) Notwithstanding anything in this paragraph (f) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply to a leased employee if leased individuals constitute more than 20 percent of the recipient's nonhighly compensated workforce for the plan year of a plan maintained by the recipient.

(ii) *Nonhighly compensated workforce.* The term "nonhighly compensated workforce" means the total number of individuals (other than highly compensated employees) who are either (A) employees of the recipient or (B) leased individuals.

(iii) *Highly compensated employee.* The term "highly compensated employee" has the meaning given such term by section 414(q).

(iv) *Leased individual.* For purposes of this paragraph (f)(4), the term "leased individual" means an individual who (A) during the plan year of a plan maintained by a recipient performs any services for a recipient other than as an employee of the recipient and (B) for such plan year would (without regard to this paragraph (f)) be a leased employee with respect to the recipient if all services performed by such individual for the recipient during the plan year and all prior years were performed other than in the capacity of an employee of the recipient. The fact that an individual may also perform services as an employee of the recipient during the plan year or a prior year does not affect his status as a leased individual.

(v) *Employee of the recipient.* For purposes of paragraph (f)(4)(ii) of this section, the term "employee of the recipient" means any individual who (A) during the plan year of a plan maintained by a recipient performs services for the recipient only in the capacity of an employee of the recipient, and (B) would be a leased individual if any of such services were performed other than in the capacity of an employee.

(vi) *Recipient.* For purposes of this paragraph (f)(4), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "leased individuals" is substituted for "leased employee".

(vii) *Inapplicability of certain paragraphs of § 1.414 (o)–1 to this paragraph (f)(4).* The provisions of paragraph (f)(4) of this section are to be applied without regard to the provisions of paragraphs (b), (c), and (g) of § 1.414(o)–1. Therefore, for purposes of paragraphs (f)(4)(iv) and (f)(4)(v) of this section, and notwithstanding anything to the contrary in paragraphs (b), (c), and (g) of § 1.414(o)–1, services performed by an individual other than as an employee of a recipient are not considered services performed by an employee of a recipient.

(5) *Effective dates*—(i) In general, the safe-harbor plan provisions of this paragraph (f) apply to services performed after December 31, 1986.

(ii) If a leasing organization has a safe-harbor plan that satisfies paragraph (g) of this section for a plan year beginning prior to January 1, 1987, the following rules apply. The plan must satisfy paragraph (g) of this section for plan years beginning prior to January 1, 1987. The plan must be amended by the

end of the first plan year beginning after December 31, 1988, effective for all plan years beginning after December 31, 1986, to comply with the requirements of paragraph (f) of this section. Prior to any amendment to comply with paragraph (f) of this section, the plan must in operation comply with paragraph (f) of this section for all plan years beginning after December 31, 1986.

(iii) Paragraph (f)(5)(ii) of this section shall not apply with respect to a leasing organization with a safe-harbor plan (in accordance with paragraph (g) of this section) on [Insert date this document is filed with the Federal Register] if the leasing organization, after such date, changes the plan year of its safe-harbor plan or establishes another plan so that the period that it is subject to paragraph (g) of this section would be longer.

(iv) Notwithstanding paragraph (f)(5)(ii) of this section, paragraph (f)(4) of this section applies to a recipient for plan years beginning after December 31, 1986. If a recipient maintains plans with more than one plan year, paragraph (f)(4) applies to the recipient as of the plan year beginning closest to and after December 31, 1986.

(v) For safe-harbor plan provisions that apply to services performed before the effective date of this paragraph (f), see paragraph (g) of this section.

(g) *Special rules for services performed before January 1, 1987*—(1) *Safe-harbor plan.* Except as otherwise provided, the rules of section 414(n) shall not apply to a leased employee with respect to service provided by the leased employee to a recipient as an employee of the leasing organization if the requirements of this paragraph (g)(1) are met with respect to contributions and benefits provided by the leasing organization for such leased employee as an employee of the leasing organization. In order for the requirements of this paragraph (g)(1) to be met, the leased employee must be covered by a safe-habor plan, i.e., a qualified money purchase pension plan maintained by the leasing organization that provides the following:

(i) The leased employee must become a plan participant on and after the start of the first 12-month period used to determine if the employee is a leased employee under section 414(n) with respect to the recipient.

(ii) Contributions to the plan on behalf of the leased employee must have always been (on and after the effective date of this paragraph (g)) and must currently be at a rate not less than 7½ percent of the leased employee's compensation (as defined in § 1.415–2(d)), whether or not such compensation is attributable to the performance of services for a recipient, whether or not such employee is an employee of the leasing organization on any specified date during the year, and regardless of the number of hours of service performed by the employee for the leasing organization. The requirement of this paragraph (g)(1)(ii) is not satisfied if either the contribution rate is reduced due to integration or any other factor below 7½ percent or contributions to the plan are not made within the period provided by section 412(c)(10). Contributions must be made for all compensation without regard to any age or service requirement.

(iii) The leased employee's rights to, or derived from, employer contributions under the plan must be immediately nonforfeitable in accordance with section 411(a). In addition, the leased employee's rights to, or derived from, such employer contributions must be disregarded for purposes of applying section 411(a) to other contributions or benefits. The requirements of this paragraph (g)(1)(iii) is not satisfied if rights are conditioned in any manner not permitted by section 411(a) (without regard to section 411(a)(3)) with regard to amounts required to be vested under such section, including requirements relating to either completion of a year of service or employment on a specific date.

(iv) A safe-harbor plan must be a qualified plan pursuant to section 401(a) and, therefore, must satisfy the coverage rules of section 410(b) and the nondiscrimination rules of section 401(a)(4), taking into account all employees of the leasing organization, including employees leased to recipients. A safe-harbor plan maintained by the leasing organization must take into consideration, for purposes of section 401(a), all of the leased employee's service for the leasing organization as an employee of the leasing organization (including periods during which the employee was leased by the leasing organization to a recipient) and all compensation with respect to such services of the leased employee.

(2) *Coverage of leased employees.* A safe-harbor plan maintained by a leasing organization need not cover every employee of the leasing organization or every leased employee who is an employee of the leasing organization. (Any recipient who utilizes the services of a leased employee not covered by a safe-harbor plan, however, must treat such employee as the recipient's employee for purposes of the employee benefit requirements listed in § 1.414(n)–3(a).)

(3) *Application of section 414(n) to a leased employee notwithstanding the existence of a safe-harbor plan*—(i) Notwithstanding anything in this paragraph (g) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply to a leased employee if such leased employee is covered under any qualified plan of the recipient or if any qualified plan of the recipient relies on the participation of the leased employee in a safe-harbor plan in order to satisfy the requirements of section 410(b).

(ii) Notwithstanding anything in this paragraph (g) to the contrary, the rules of section 414(n) (other than subsection (n)(5)) shall apply, with respect to § 1.414(n)–3(a) (5) and (8), to a leased employee who has an accrued benefit under any qualified plan of the recipient.

(4) *Effective dates.* (i) In general, the safe-harbor plan provisions of this paragraph (g) apply to services performed after the effective date of section 414(n) (see paragraph (c) of § 1.414(n)–3). The safe harbor plan provisions of this paragraph (g) shall cease to apply as of the effective date of the safe-harbor plan provisions of paragraph (f) of this section.

(ii) In a case where a leasing organization adopts a safe-harbor plan (in accordance with this paragraph (g)) by the end of its first plan year beginning after December 31, 1983, that is effective as of the beginning of such plan year and such plan year begins before 1985, then, with respect to the leasing organization, section 414(n) will not apply to a recipient for any interim period between the beginning of the recipient's first plan year beginning in the recipient's first tax year beginning after December 31, 1983, and the beginning of such plan year of the leasing organization.

(iii) Paragraph (g)(4)(ii) of this section shall not apply to an individual if, during any interim period, the recipient covers such individual under a qualified plan and such individual would be a leased employee but for paragraph (g)(4)(ii) of this section.

(iv) Paragraph (g)(4)(ii) of this section shall not apply to an individual with respect to paragraphs (a)(5) or (a)(8) of § 1.414(n)–3 if such individual would be a leased employee but for paragraph (g)(4)(ii) of this section and such individual had, during or prior to any interim period, an accrued benefit under a qualified plan of the recipient.

§ 1.414(n)–3 Employee benefit requirements, recordkeeping, and effective dates.

(a) *In general.* Except as otherwise provided, a leased employee shall be treated as an employee of the recipient for purposes of the following employee benefit requirements:

(1) Section 401(a) (relating to the exclusive benefit rule);

(2) Sections 401(a)(3) and 410 (relating to minimum participation requirements);

(3) Section 401(a)(4) (requiring that contributions or benefits do not discriminate in favor of employees who are officers, shareholders, or highly compensated);

(4) Sections 401(a)(7) and 411 (relating to minimum vesting standards);

(5) Sections 401(a)(16) and 415 (relating to limitations on contributions and benefits);

(6) Section 404 (relating to deductions for contributions);

(7) Section 408(k) (relating to simplified employee pensions); and

(8) Section 416 (relating to top-heavy plans).

(b) *Recordkeeping requirements*—(1) *General rule.* Except as othewise provided in this paragraph (b), a recipient must maintain employment records of sufficient detail to determine whether, and to what extent, individuals who provide services to the recipient are leased employees.

(2) *Recordkeeping exception*—(i) *In general.* A recipient shall be excepted from the recordkeeping requirements described in paragraph (b)(1) of this section in a plan year if, for such plan year and each previous plan year commencing with the first plan year beginning on or after the date section 414(n) is effective with respect to the recipient, the requirements of this paragraph (b)(2) are satisfied. If a recipient maintains plans with more than one plan year, the first plan year beginning on or after the date section 414(n) is effective with respect to the recipient shall be the plan year commencing closest to the date section 414(n) is effective with respect to the recipient. Should the recipient subsequently amend such plan year or change to a different plan year for purposes of this paragraph (b)(2), rules similar to those provided under 29 CFR 2530.203–2(c)(1) shall apply.

(ii) *Exception requirements.* If the following three conditions are satisfied, a recipient will have satisfied the requirements of this paragraph (b)(2).

(A) All of the recipient's qualified plans specifically provide that leased employees are not eligible to participate in such plans.

(B) No qualified plan of the recipient is a top-heavy plan as defined in section 416 (g).

(C) The number of leased persons providing services to the recipient during the recipient's plan year is less than five percent of the number of employees (excluding leased persons and highly compensated employees within the meaning of section 414(q)) covered by a qualified plan of the recipient at any time during such plan year. An individual is a leased person for purposes of this paragraph (b)(2)(ii)(C) if—

(*1*) During the plan year the individual performs any services for a recipient other than as an employee of the recipient, with respect to which the requirements of § 1.414(n)–1 (b)(4)(i) and (b)(4)(iii) are satisfied,

(*2*) The individual is credited with at least 1500 hours of service for the recipient during the plan year, including service performed as an employee of the recipient and in any other capacity, and

(*3*) The individual either is not covered under a qualified plan of the recipient as an employee of the recipient at any time during such plan year or the individual performs at least 501 hours of service for the recipient during the plan year other than as an employee of the recipient.

For purposes of this paragraph (b)(2)(ii)(C), the term "hour of service" has the same meaning as the term "hour of service" provided by 29 CFR 2530.200b–2 under the general method of crediting service for an employee. If one of the equivalencies set forth in 29 CFR 2530.200b–3 is used with respect to an individual for crediting hours of service, such equivalency must be used on a reasonable and consistent basis and the 1500-hour and 500-hour requirements must be adjusted accordingly (as under § 1.414(n)–1(b)(10)(iii)). With respect to determining whether an individual satisfies the 1500-hour requirement, reasonable approximations may be made. For example, a recipient generally need not check whether an individual who worked less than 1500 hours at one division also worked at another geographically separate division, unless such checking would be reasonable under the circumstances (such as in the case where the recipient transfers the individual). Also, a recipient may, in determining whether an individual satisfies the 1500-hour requirement, rely on records maintained by the leasing organization or leasing organizations providing the services of such individual, except where the recipient has reason to believe that such records are not accurate. A recipient must add together all service performed for the recipient by the individual as an employee of the recipient and through all leasing organizations. In addition, if with respect to a recipient, the determination of the precise number of leased persons would be unreasonably burdensome due to the large numbers involved, the recipient may rely on a statistically valid sample performed by an independent third party to estimate the number of leased persons. The Commissioner may provide additional methods for determining the number of leased persons with respect to a recipient.

(3) *An individual's entitlement to treatment as a leased employee.* (i) At the option of the recipient, individuals will not be entitled to treatment as leased employees unless such individuals provide to the recipient satisfactory evidence of entitlement to such treatment.

(ii) This paragraph (b)(3) shall apply only with respect to an individual's period of service with a recipient prior to and during those plan years of the recipient for which the recipient qualified for the recordkeeping exception described in paragraph (b)(2) of this section.

(c) *Section 414(n) effective dates*—(1) *In general.* The provisions of section 414(n) are effective for tax years of recipients beginning after December 31, 1983. If persons included in a recipient have different tax years, the provisions of section 414(n) are effective with respect to the entire recipient for the tax year beginning closest to January 1, 1984. Therefore, the provisions of section 414(n) apply to plan years beginning during and after such first tax year of a recipient beginning after December 31, 1983. If a recipient maintains plans with more than one plan year, the provisions of section 414(n) apply to the recipient as of the plan year beginning closest to the first day of the first tax year of the recipient beginning after December 31, 1983.

(2) *Certain delayed effective dates.* Paragraphs (a)(1)(i) and (a)(1)(ii) of § 1.414(n)–2 (relating to language required in a recipient's plan regarding leased employees) and paragraph (b)(2)(ii)(A) of this section (relating to certain recordkeeping exception requirements), shall not apply until the first plan year of a recipient beginning after December 31, 1988. Paragraph (b)(2)(ii)(C) of this section shall not apply until the first plan year beginning after December 31, 1986. The first plan year of a recipient shall be determined in the same manner as under paragraph (c)(1) of this section.

(3) *Special safe-harbor plan effective dates.* For special effective dates relating to safe-harbor plans, see paragraphs (f)(5) and (g)(4) of § 1.414(n)–2.

§ 1.414(n)–4 Application of section 414(o) to section 414(n).

Section 414(o) provides that the Secretary shall prescribe such regulations (which may provide rules in addition to the rules contained in section 414(n)) as may be necessary to prevent the avoidance of any employee benefit requirement listed in section 414(n)(3) through the use of separate organizations, employee leasing, or other arrangements. Accordingly, the regulations under section 414(n) are promulgated, in part, pursuant to the authority granted by section 414(o). For additional rules that may relate to section 414(n), see section 414(o) and the regulations thereunder.

§ 1.414(o)–1 Avoidance of employee benefit requirements through the use of separate organizations, employee leasing, or other arrangements.

(a) *In general.* (1) Pursuant to section 414(o), this section provides rules, in addition to the rules contained in sections 414(m) and 414(n) and the regulations thereunder, to prevent the avoidance of any employee benefit requirement listed in either § 1.414(m)–3 or § 1.414(n)–3, through the use of separate organizations, employee leasing, or other arrangements.

(2) For the definition of the terms "person" and "leased employee", see § 1.414(n)–1(b). For the definition of the term "organization", see § 1.414(m)–5(a)(2). For the definition of the terms "management functions" and "management activities or services", see § 1.414(m)–5(c).

(3) For purposes of this section, the term "plan" means a stock bonus, pension, or profit-sharing plan qualified under section 401(a) or a simplified employee pension under section 408(k).

(4) For purposes of this section, the term "employee" includes a "self-employed individual" as defined in section 401(c)(1).

(5) For purposes of this section, the term "maintained", when used in the context of a plan maintained by any person, means "maintained at any time".

(6) For purposes of this section, services performed for a person other than as an employee of such person means services performed directly or indirectly for such person.

(b) *Services performed by leased owners*—(1) *In general.* (i) If an individual is a leased owner with respect to a recipient, then for purposes of determining whether any qualified plan actually maintained by the recipient and whether any qualified plan maintained by a leasing organization in which the leased owner is a participant (or in which the leased owner has or had an accrued benefit) satisfies the employee benefit requirements of section 1.414(n)–3(a) (except for paragraph (a)(6) of that section) for a plan year, the leased owner's interest in the leasing organization's qualified plan attributable to services performed by the leased owner for the recipient is to be treated as provided under a separate qualified plan maintained by the recipient covering only the leased owner and the leased owner is to be treated as an employee of the recipient. If a separate qualified plan is treated as maintained by the recipient with respect to a leased owner and such leased owner also participates in a qualified plan actually maintained by the recipient, the leased owner's interest in the leasing organization's qualified plan attributable to the leased owner's performance of services for the recipient that is treated as provided to the leased owner under a separate qualified plan of the recipient is to be treated as provided to the leased owner under the qualified plan actually maintained by the recipient for purposes of determining whether such qualified plan satisfies the applicable employee benefit requirements. If either the separate qualified plan for the leased owner that is treated as maintained by the recipient or any qualified plan that is actually maintained by the recipient fails to satisfy any of the applicable employee benefit requirements, then except as provided in paragraphs (b)(1)(ii) and (b)(1)(iii) of this section, the following qualified plans shall be treated as not satisfying such requirements: any qualified plan actually maintained by the recipient in which the leased owner is a participant (or has or had an accrued benefit) and any qualified plan that is actually maintained by a leasing organization in which the leased owner has an interest that is attributable to the leased owner's performance of services for the recipient.

(ii) The Commissioner will not apply paragraph (b)(1)(i) of this section so as to disqualify a plan actually maintained by a recipient unless the Commissioner determines that, taking into account all the facts and circumstances, the disqualification of a leasing organization's plan would be ineffective as a means of securing compliance with the applicable employee benefit requirements. For example, it may be appropriate to disqualify the recipient's plan where a leasing organization's plan was terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust.

(iii) If pursuant to paragraph (b)(1)(i) of this section, more than one leasing organization plan is subject to disqualification and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected plan sponsors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (b), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence of such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(2) *Leased owner* (i) For purposes of this paragraph (b), an individual is a "leased owner" with respect to a recipient if during the plan year of a plan maintained by a leasing organization the individual (A) performs any services for a recipient other than as an employee of the recipient and (B) is, at the time such services are performed, a five-percent owner of the recipient. The fact that an individual may also perform services as an employee of the recipient does not affect his status as a leased owner. If an individual becomes a leased owner with respect to a recipient, such individual is from that point on always to be considered a leased owner with respect to the recipient, notwithstanding anything in this paragraph (b) to the contrary, even if subsequently all services performed by the individual for the recipient are performed as an employee of the recipient.

(ii) Except as provided in paragraph (b)(2)(iii) of this section, and notwithstanding the first sentence of paragraph (b)(2)(i) of this section to the contrary, an individual is not a leased owner with respect to a recipient for purposes of a plan year of a plan maintained by a leasing organization if, during each calendar year containing at least one day of such plan year, less than 25 percent of his total hours actually worked for substantial compensation are for all recipients with respect to which he is a leased owner (but for the application of this paragraph (b)(2)(ii)) and less than 25 percent of his total compensation is derived from

performing services for all such recipients. For purposes of this paragraph (b)(2)(ii), performing services for the recipient includes services performed as an employee of the recipient and in any other capacity. For purposes of this paragraph (b)(2)(ii), the term "compensation" means (A) with respect to services performed as a common-law employee, compensation reportable on Form W–2, and (B) with respect to services performed other than as a common-law employee, earned income as defined in section 401(c)(2). See section 414(s) for the definition of "compensation" for years beginning after December 31, 1986.

(iii) Paragraph (b)(2)(ii) of this section does not apply to an individual who (A) is a leased owner with respect to a recipient pursuant to the application of the first sentence of paragraph (b)(2)(i) of this section, and (B) performs professional services (as defined in § 1.414(m)–1(c)) for the recipient, whether or not as an employee of the recipient, during the plan year of the plan maintained by the leasing organization, of the same type as the professional services performed by the recipient for third parties.

(3) *Recipient.* For purposes of this paragraph (b), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "leased owner" is substituted for "leased employee".

(4) *Leasing organization.* For purposes of this paragraph (b), the term "leasing organization" has the same meaning as in § 1.414(n)–1(b)(1), except that "leased owner" is substituted for "leased employee" and that "or provided" is added after "provides".

(5) *Five-percent owner.* For purposes of this paragraph (b), an individual is a five-percent owner of a recipient if such individual is a 5-percent owner (as defined in section 416(i)) of any person included in the recipient.

(6) *Contributions, benefit, etc., provided to a leased owner.* For purposes of this paragraph (b), a leased owner's interest in a leasing organization (as defined in § 1.414(n)–2(b)(1)(ii) and in a leasing organization's qualified plan (as defined in § 1.414(n)–2(b)(1)(i)), to the extent attributable to services for the recipient by the leased owner, is, for purposes of the applicable employee benefit requirements, treated as provided by the recipient or under a plan of the recipient. For rules relating to the application of this requirement, see paragraph (b)(2) of § 1.414(n)–2.

(7) *Effect on employee rules.* To the extent that a leased owner performs services for a recipient other than in the capacity of an employee, a leased owner is not an employee of the recipient and may not be actually covered by a plan of the recipient. Such leased owner may, however, qualify as a leased employee under section 414(n) and the regulations thereunder.

(c) *Management functions performed by leased managers*—(1) *In general.* (i) If in a calendar year more than 50 percent of the management functions of a recipient are performed by leased managers, then for purposes of determining whether any qualified plan actually maintained by the recipient and whether any qualified plan maintained by a leasing organization in which one or more leased managers is a participant (or in which one or more leased managers has or had an accrued benefit) satisfies the employee benefit requirements of section 1.414(n)–3(a) (except for paragraph (a)(6) of that section) for a plan year, the leased manager's interest in the leasing organization's qualified plan attributable to services performed by the leased manager for the recipient is to be treated as provided under a separate qualified plan maintained by the recipient covering only the leased manager and the leased manager is to be treated as an employee of the recipient. If a separate qualified plan is treated as maintained by the recipient with respect to a leased manager and the leased manager also participates in a qualified plan actually maintained by the recipient, the leased manager's interest in the leasing organization's qualified plan attributable to the leased manager's performance of services for the recipient that is treated as provided to the leased manager under a separate qualified plan of the recipient is to be treated as provided to the leased manager under the qualified plan actually maintained by the recipient for purposes of determining whether such qualified plan satisfies the applicable employee benefit requirements. If either the separage qualified plan for the leased manager that is treated as maintained by the recipient or any qualified plan that is actually maintained by the recipient fails to satisfy any of the applicable employee benefit requirements, then except as provided in paragraphs (c)(1)(ii) and (c)(a1)(iii) of this section, the following qualified plans shall be treated as not satisfying such requirements: any qualified plan actually maintained by the recipient in which the leased manager is a participant (or has or had an accrued benefit) and any qualified plan that is actually maintained by a leasing organization in which the leased manager has an interest that is attributable to the leased manager's performance of services for the recipient.

(ii) The Commissioner will not apply paragraph (c)(1)(i) of this section so as to disqualify a plan actually maintained by a recipient unless the Commissioner determines that, taking into account all the facts and circumstances, the disqualification of a leasing organization's plan would be ineffective as a means of securing compliance with the applicable employee benefit requirements. For example, it may be appropriate to disqualify the recipient's plan where a leasing organization's plan was terminated or substantial assets where removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust.

(iii) If pursuant to paragraph (c)(1)(i) of this section, more than one leasing organization plan is subject to disqualification, and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected plan sponsors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (c), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence of such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(2) *Leased manager.* For purposes of this paragraph (c), the term "leased manager" means an individual who during the calendar year

(i) Performs any services for a recipient other than as an employee of the recipient,

(ii) Performs a significant amount of management activities or services for the recipient, including management functions performed as an employee of the recipient and in any other capacity, and

(iii) Is credited with at least 1,000 hours of service for the recipient, including services performed as an employee of the recipient and in any other capacity.

For rules relating to hours of service, see § 1.414(n)–1(b)(10)(iii). The fact that an individual may also perform services as an employee of the recipient does not affect his status as a leased manager. The fact that the only management activities or services performed by an individual may be performed as an employee of the recipient does not affect

his status as a leased manager. An individual performs a significant amount of management activities or services for a recipient if, during the calendar year, at least 15 percent of the individual's hours of service for the recipient are attributable to the performance of management activities or services. If an individual becomes a leased manager with respect to a recipient, such individual is from that point on always to be considered a leased manager with respect to the recipient, notwithstanding anything in this paragraph (b) to the contrary, even if subsequently all services performed by the individual for the recipient are performed as an employee of the recipient.

(3) *Recipient.* For purposes of this paragraph (c), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "leased manager" is substituted for "leased employee."

(4) *Leasing organization.* For purposes of this paragraph (c), the term "leasing organization" has the same meaning as in § 1.414(n)–1(b)(1), except that "leased manager" is substituted for "leased employee" and that "or provided" is added after "provides".

(5) *Contributions, benefits, etc., provided to a leased manager.* For purposes of this paragraph (c), a leased manager's interest in a leasing organization (as defined in § 1.414(n)–2(b)(1)(i)) and in a leasing organization's qualified plan (as defined in § 1.414(n)–2(b)(1)(i)), to the extent attributable to services performed for the recipient by the leased manager, is, for purposes of the applicable employee benefit requirements, treated as provided by the recipient or under a plan of the recipient. For rules relating to the application of this requirement, see paragraph (b)(2) of § 1.414(n)–2.

(6) *Effect on employee rules.* To the extent that a leased manager performs services for a recipient other than in the capacity of an employee, a leased manager is not an employee of the recipient and may not be actually covered by a plan of the recipient. Such leased manager may, however, qualify as a leased employee under section 414(n) and the regulations thereunder.

(7) *More-than-50-percent test.* The more-than-50-percent test of this paragraph (c) is applied by comparing the compensation of employees of the recipient who perform management functions for the recipient to the compensation of the leased managers. For purposes of this paragraph (c)(7), the term "compensation" means:

(i) With respect to services performed as a common-law employee of the recipient or leasing organization, compensation reportable on Form W–2, and

(ii) With respect to services performed other than as a common-law employee of the recipient or leasing organization, earned income as defined in section 401(c)(2).

For purposes of this paragraph (c)(7), the term "compensation" includes only amounts attributable to services performed for the recipient. If a leased manager performs services for the recipient both as an employee of the recipient and other than as an employee of the recipient, an appropriate allocation of compensation is required for purposes of applying the more-than-50-percent test. For purposes of applying the more-than-50-percent test, an employee of the recipient shall be disregarded unless such employee satisfies the requirements of paragraphs (c)(2)(ii) and (c)(2)(iii) of this section.

(8) *Inapplicability of section 414(n) and other paragraphs of § 1.414(o)–1 to this paragraph (c).* The provisions of paragraph (c) of this section are to be applied without regard to the provisions of paragraphs (b) and (g) of this section and the provisions of section 414(n). Therefore, for purposes of paragraphs (c)(2), (c)(6), and (c)(7) of this section, and notwithstanding anything to the contrary in paragraphs (b) and (g) of this section or in section 414(n) and the regulations thereunder, services performed by an individual other than as an employee of a recipient are not considered services performed by an employee of a recipient.

(d) [Reserved]

(e) *Successive organizations in time.* If section 414 (b) or (c) would apply to two or more organizations but for the fact that such organizations exist at different times, rather than concurrently in time, section 414 (b) and (c) shall apply to such organizations as if they existed concurrently in time. Thus, for example, section 415 would apply by aggregating all plans of such organizations.

(f) *Services performed by shared employees*—(1) *In general.* If an individual is a shared employee with respect to certain persons (sharing persons), then for purposes of determining whether any plan maintained by such sharing persons satisfies the employee benefit requirements listed in § 1.414(n)–3(a) (except for paragraph (a)(6) of that section) for any plan year of such plans, the shared employee shall be treated as working exclusively for each sharing person by treating the combined services of the shared employee for all employing persons (as defined in paragraph (f)(2)(i) of this section) as services provided to each sharing person.

(2) *Shared employee.* For purposes of this paragraph (f), an individual is a shared employee with respect to a person if during the plan year of such person's plan—

(i) Such individual performs services as an employee for such person and for one or more other persons (collectively referred to as employing persons) at one or more shared business premises of such employing persons or one or more common locations; and

(ii) The total service performed at such shared premises or locations for the employing person by all individuals (excluding any individual who performs at least 1,000 hours of service for an employing person, performs no services for any other employing person at such shared premises or locations, and is covered by the employing person's plan) who perform services of the same type performed by the individual for the employing person equals or exceeds 1,000 hours of service (determined by adding together the services of all such individuals).

For rules relating to hours of service, see § 1.414(n)–1(b)(10) (iii) and (iv). For purposes of this paragraph (f)(2), the determination of whether services have been performed at a shared business premises or some other common location will generally depend on the facts and circumstances of the situation. Examples of a shared business premises may include common, interconnecting, or adjacent offices on the same or an adjacent floor of an office building.

(3) *Examples.* The provisions of this paragraph may be illustrated by the following examples.

Example (1). Each of five doctors leases an office suite which interconnects with a common reception area. Each doctor is a sole proprietor. The doctors collectively employ five nurses who perform only nursing duties and each of whom is considered to spend one fifth of her time working for each doctor. With respect to each doctor, the total service performed by the five nurses exceeds 1,000 hours of service during the calendar year (which is also the plan year for each doctor's plan). All five of the nurses are shared employees with respect to each of the five doctors.

Example (2). Assume the same facts as in example 1. In addition, assume that the five doctors employ one receptionist who is considered to spend one fifth of her time working for each of the five doctors. The receptionist has 1500 hours of service during the calendar year. No other receptionist is employed by any of the five doctors. Because no doctor received at least 1,000 hours of service from the receptionist during the calendar year, the requirement of paragraph (f)(2)(ii) of this section is not satisfied, and

the receptionist is not a shared employee with respect to any of the five doctors.

(4) *Determination of contributions and benefits.* (i) The amount of any contribution or benefit that is to be made or accrued for a shared employee by each sharing person shall be the lesser of the contribution or benefit determined under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section.

(ii) Multiply the contribution or benefit calculated under the plan as if the shared employee were employed exclusively by that person and received all compensation (i.e., all compensation paid to the shared employee by all of the employing persons) from that person by a fraction, the numerator of which is the amount of compensation paid the shared employee by that person and the denominator of which is the amount of compensation paid the shared employee by all of the sharing persons.

(iii) Multiply the contribution or benefit calculated under the plan as if the shared employee were employed exclusively by that person and received all compensation (i.e., all compensation paid to the shared employee by all of the sharing persons) from that person by a fraction, the numerator of which is the amount of compensation paid the shared employee by that person and the denominator of which is the amount of compensation paid the shared employee by all of the sharing persons. The contribution or benefit determined under the preceding sentence is increased by the contribution or benefit calculated under the plan as if the shared employee received additional compensation equal to the shared employee's proportionate share of noncovered compensation. Noncovered compensation is compensation paid by the sharing person for services at the shared premises or locations to all individuals not covered by the plan who perform services for the sharing person of the same type as those performed by the shared employee. The shared employee's proportionate share of noncovered compensation is determined by multiplying the noncovered compensation by a fraction, the numerator of which is the shared employee's compensation from all employing persons who are not sharing persons and the denominator of which is the compensation from all employing persons who are not sharing persons paid to all shared employees covered by the plan. The contribution or benefit calculated under the plan on the shared employee's proportionate share of noncovered compensation is determined for all purposes (including integration) as if such proportionate share were paid in addition to the compensation paid to the shared employee by all sharing persons.

(iv) For purposes of this paragraph (f), the term "compensation" means compensation determined in a manner consistent with the definition of compensation under the sharing person's plan and with section 401(a)(4). For purposes of this paragraph (f), compensation includes earned income as defined in section 401(c)(2).

(5) *Shared leased employees.* The requirements of this paragraph (f) also apply if two or more persons share the services of a leased employee. For purposes of determining whether an individual is a leased employee, all persons who would be employing persons if such individual performed his services as an employee of such persons are treated as a single recipient.

(g) *Inside corporate director*—(1) *In general.* (i) To the extent that contributions, forfeitures and benefits of an inside director under a qualified plan maintained by the inside director are attributable to services performed by the inside director for the recipient as a director, then for purposes of determining whether any qualified plan actually maintained by the recipient and whether any qualified plan maintained by the inside director in which the inside director is a participant (or in which the inside director has or had an accrued benefit) satisfies the employee benefit requirements of section 1.414(n)-3(a) (except for paragraph (a)(6) of that section) for a plan year, the inside director's interest in the inside director's qualified plan attributable to services performed by the inside director for the recipient is to be treated as provided under a separate qualified plan maintained by the recipient covering only the inside director and the inside director is to be treated as an employee of the recipient. If a separate qualified plan is treated as maintained by the recipient with respect to an inside director and the inside director also participates in a qualified plan actually maintained by the recipient, the inside director's interest in the inside director's qualified plan attributable to the inside director's performance of services for the recipient that is treated as provided to the inside director under a separate qualified plan of the recipient is to be treated as provided to the inside director under the qualified plan actually maintained by the recipient for purposes of determining whether such qualified plan satisfies the applicable employee benefit requirements. If either the separate qualified plan for the inside director that is treated as maintained by the recipient or any qualified plan that is actually maintained by the recipient fails to satisfy any of the applicable employee benefit requirements, then except as provided in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section, the following qualified plans shall be treated as not satisfying such requirements: any qualified plan actually maintained by the recipient in which the inside director is a participant (or has or had an accrued benefit) and any qualified plan that is actually maintained by the inside director in which the inside director has an interest that is attributable to the inside director's performance of services for the recipient.

(ii) The Commissioner will not apply paragraph (g)(1)(i) of this section so as to disqualify a plan actually maintained by a recipient unless the Commissioner determines that, taking into account all the facts and circumstances, the disqualification of an inside director's plan would be ineffective as a means of securing compliance with the applicable employee benefit requirements. For example, it may be appropriate to disqualify the recipient's plan where an inside director's plan was terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust.

(iii) If pursuant to this paragraph (g), more than one inside director plan is subject to disqualification, and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected inside directors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (g), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(2) *Inside director.* For purposes of this paragraph (g), the term "inside director" means any individual who is both an employee (determined after application of section 414(n) and paragraphs (b) and (c) of this section) of any person included in the recipient and a director of any corporation included in the recipient, regardless of whether such an individual is an employee (determined after application of section 414(n) and paragraphs (b) and (c) of this

section) and a director with respect to the same corporation. If an individual becomes an inside director with respect to the recipient, such individual is from that point on always to be considered an inside director, notwithstanding anything in this paragraph (g) to the contrary, even if such individual ceases to be an employee (determined after application of section 414(n) and paragraphs (b) and (c) of this section) or director of any person included in the recipient.

(3) *Recipient.* For purposes of this paragraph (g), the term "recipient" has the same meaning as in paragraphs (b)(2) and (b)(6) of § 1.414(n)–1, except that "inside director" is substituted for "leased employee".

(4) *Contributions, benefits, etc., provided to an inside director.* For purposes of this paragraph (g), an inside director's interest in the directorship (an interest in a directorship is defined like an interest in a leasing organization, which is defined in § 1.414(n)–2(n)(1)(i)) and in the inside director's qualified plan (as defined in § 1.414(n)–2(b)(1)(i)), to the extent attributable to services by the inside director for the recipient as a director, are, for purposes of the applicable employee benefit requirements, treated as provided by the recipient or under a plan of the recipient. For rules relating to the application of this requirement, see paragraph (b)(2) of § 1.414(n)–2.

(5) *Effect on employee rules.* To the extent that an inside director performs services for a recipient as a director, an inside director is not an employee of the recipient and may not be actually covered by a plan of the recipient. Such inside director may, however, qualify as a leased employee under section 414(n) and the regulations thereunder.

(h) *Certain five-percent owners of service organizations*—(1) *In general.* In the case of an employee who is (or was) a five-percent owner of an employer, all contributions, forfeitures, and benefits made or accrued with respect to such employee under any plan maintained by such employer shall, for purposes of section 415, be aggregated with all contributions, forfeitures, and benefits made or accrued with respect to such employee under any plan maintained by any other current (or former) employer with respect to which such employee is (or was) a five-percent owner. For purposes of this paragraph (h), the term "employer" includes only service organizations as defined in § 1.414(m)–2(f)(2). This paragraph shall be applied after the application of section 414(n) and paragraphs (b), (c), (e), (f), and (g) of this section for purposes of determining who is considered an employee of an employer and what plans are considered maintained by an employer.

(2) *Five-percent owner.* For purposes of this paragraph (h), the term "five-percent owner" has the same meaning as the term "5-percent owner" provided in section 416(i).

(3) *Determination of plan to be disqualified.* If pursuant to this paragraph (h), more than one plan is subject to disqualification, and at least one of the plans would not be disqualified if another plan or plans were disqualified first, all affected plan sponsors may, by agreement, elect the plan or plans subject to disqualification, provided that such election is not inconsistent with the purposes of this paragraph (h), such as where the plan or plans elected were terminated or substantial assets were removed therefrom in a year for which the statute of limitations has run with respect to the employer, employee, or trust. In the absence of such an election, the Commissioner, taking into account all the facts and circumstances, shall have the discretion to determine which plan or plans shall be disqualified.

(i) *Application of the section 416 top-heavy rules under section 414(o).* For purposes of paragraphs (b), (c), and (g) of this section (relating to leased owners, leased managers, and inside directors, respectively), the section 416 top-heavy rules relating to the definition of a key employee shall be applied as if—

(1) Leased owners and leased managers are employees for purposes of section 416(i), and

(2) Section 416(i)(1)(A) contains a section 416(i)(1)(A)(v) which provides "a director of any person included in the employer".

(j) *Highly compensated employees, etc.* If an individual treated as an employee of a recipient under either this section or section 414(n) and the regulations thereunder would be considered a highly compensated employee, officer, or shareholder, with respect to such recipient under Subchapter D if such individual were an employee of such recipient, such individual shall, for purposes of the nondiscrimination rules of Subchapter D, be considered an employee of the recipient who is highly compensated, an officer, or a shareholder. See section 414(q) for the definition of "highly compensated employee" for years beginning after December 31, 1986 or later, depending on the applicable effective date of the particular employee benefit requirement.

(k) *Effective dates.* (1) The provisions of paragraphs (f), (g) and (h) of this section are effective for plan years beginning after [Insert date sixty days after this document is published in the **Federal Register** as a Treasury Decision]. For purposes of applying paragraph (g) to plan years beginning after the effective date of such paragraph, contributions, forfeitures and benefits provided during the current plan year (i.e., the first plan year ending on or after [Insert date this document is published in the **Federal Register**]) and all subsequent plan years ending before the first plan year beginning after the effective date of paragraph (g), shall be taken into account if they would have been taken into account had paragraph (g) of this section been effective for such plan years.

(2) The provisions of paragraph (b) of this section are effective for tax years of recipients beginning after December 31, 1983. Therefore, the provisions of paragraph (b) apply to plan years beginning during and after the first tax year of a recipient beginning after December 31, 1983. For purposes of applying paragraph (b) of this section to plan years beginning during and after the first tax year of a recipient beginning after December 31, 1983, contributions, forfeitures and benefits provided during any plan year beginning prior to the first tax year of a recipient beginning after December 31, 1983, shall be taken into account if they would have been taken into account had paragraph (b) been effective for such prior plan year.

(3) The provisions of paragraphs (c) and (e) of this section are effective for plan years beginning after [Insert date six months after this document is published in the **Federal Register**]. For purposes of applying paragraph (c) to plan years beginning after the effective date of such paragraph, contributions, forfeitures and benefits provided during the current plan year (i.e., the first plan year ending on or after [Insert date this document is published in the **Federal Register**] and, if applicable the subsequent plan years ending before the first plan year beginning after the effective date of paragraph (c), shall be taken into account if they would have been taken into account had paragraph (c) been effective for such plan year(s).

(4) For purposes of applying the effective dates contained in this paragraph (k), rules similar to those provided in the second and fourth sentences of § 1.414(n)–3(c)(1) shall apply.

James I. Owens,

Acting Commissioner.

[FR Doc. 87–19579 Filed 8–26–87; 8:45 am]

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federal register

Thursday
August 27, 1987

Part VII

Office of Management and Budget

Office of Federal Procurement Policy

Proposed Circular on Value Engineering Programs; Invitation for Public Comment; Notice

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Circular on Value Engineering Programs; Invitation for Public Comment

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: The Office of Management and Budget (OMB) is requesting comments on a proposed new OMB circular. The proposed circular requires the heads of Executive agencies and departments to establish "value engineering programs."

SUMMARY: Value engineering is a technique used by some Federal contractors and Government activities to identify and propose changes to the product, service or process specifications used in Government contracts. The proposed changes are intended to lower the Government's cost for the goods and services being acquired and, at the same time, maintain required quality levels. Over the last several years, reports issued by the General Accounting Office (GAO) and Inspectors General (IG) have consistently concluded that wider use of value engineering would result in substantial savings. The purpose of the proposed OMB circular is to require agencies and departments to establish and use value engineering programs, where appropriate, to reduce nonessential costs and improve productivity. The circular requires agencies and departments to implement specific management and procurement practices in establishing value engineering programs.

DATE: Comments must be received on or before September 30, 1987.

ADDRESS: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9025, New Executive Office Building, 726 Jackson Place NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles W. Clark, Deputy Associate Administrator for Policy Development (202) 395–6803.

Robert P. Bedell,

Administrator.

Dated: August 19, 1987.

Circular No. A–12X

September 1, 1987.

To the Heads of Executive Departments and Establishments

Subject: Valve Engineering

1. *Purpose.* The purpose of this Circular is to emphasize value engineering as a methodology for identifying and reducing nonessential procurement and program cost. The Circular requires agency heads to establish value engineering programs.

2. *Background.* Value engineering is a technique used by some Federal contractors and Government activities to identify and propose changes to the product, service or process specifications used in Government contracts. The proposed changes are intended to lower the Government's cost for the goods and services being acquired and, at the same time, maintain required quality levels. Over the last several years, reports issued by the General Accounting Office (GAO) and Inspectors General (IG) have consistently concluded that wider use of value engineering would result in substantial savings. While some agencies have programs in-place, others have not utilized value engineering. Even for agencies with established programs, the GAO and IG reports conclude that much more can and should be done to realize the benefits of value engineering. The inhibitors frequently noted in the various reports that prevent a broader use of value engineering include:

—Failure of top management to allocate necessary resources, both in effort and in funds, to establish value engineering programs;

—Absence of criteria for selecting projects and programs for value engineering studies;

—Failure to properly perform value engineering studies;

—Inadequate attention to reviewing and implementing recommendations made in value engineering studies.

Many of the problems noted in the GAO and IG reports are, in part, attitudinal in nature. A common theme in the reports is that there are few incentives to use value engineering or other cost cutting techniques to save money on fully funded programs and projects. This situation cannot continue. Programs should be developed, reviewed and administered in the most cost effective manner possible. Value engineering and other management techniques must be properly used to ensure realistic project budgets and to identify and remove unnecessary capital and operating costs.

3. *Definitions.*

a. *Agency.* As used in this Circular, agency means any department or independent establishment of the Executive Branch of the Federal Government.

b. *Value Engineering.* An organized effort directed by a person trained in value engineering techniques to analyze the functions of systems, equipment, facilities, services, and supplies for the purpose of achieving the essential functions at the lowest life cycle cost consistent with required performance and reliability.

c. *Value Engineering Change Proposal (VECP).* A change proposal submitted by a contractor under a value engineering incentive clause included in a contract.

d. *Value Engineering Proposal.* A specific program or contract change developed by in-house value engineering personnel employed by the agency administering the contract or program.

4. *Policy.* Agencies shall establish and use value engineering, where appropriate, to reduce nonessential costs and improve productivity. Individual agency programs shall, as a minimum, provide for the following management and procurement practices.

a. *Management Practices.* Value engineering programs must be tailored to the mission and organizational structure of individual agencies. Cost and program/project size are general indicators of the potential for value engineering. In most agencies, a relatively few programs or projects comprise the majority of costs. Value engineering efforts should be concentrated on those selected programs. In establishing and implementing value engineering programs agencies shall:

(1) Emphasize, in training and through other programs, the potential of value engineering to reduce unnecessary cost.

(2) Establish a focal point within the agency to monitor, manage and maintain data on agency value engineering programs. This function may be performed either on a full time or collateral basis. Value engineering training shall be provided to the person responsible for the value engineering function. Specific value engineering studies shall, where cost effective, be performed by contract.

(3) Ensure that funds necessary for operating agency value engineering programs are included in annual budget requests.

(4) Establish criteria and guidelines for screening programs and projects for susceptibility to value engineering studies.

(5) Establish guidelines to evaluate value engineering proposals.

(6) Establish procedures for providing recognition and awards to individuals and organizational components that

achieve exceptional value engineering savings.

(7) Consider the number of value engineering change proposals and the manner in which the proposals were processed in evaluating the performance of project and program managers.

b. *Procurement Practices.* Present procurement policy on the use of value engineering is set forth in Part 48 of the Federal Acquisition Regulation (FAR). Part 48 provides two basic approaches for using value engineering. The first is an *incentive* approach in which contractor participation is voluntary and the contractor uses its resources to develop and submit VECPs. A contract clause provides that when a VECP is accepted any savings resulting therefrom are shared with the contractor on a preestablished—usually a percentage—basis set forth in the contract. In the second approach, the Government *requires* in the contract—and pays the contractor to conduct—a specific value engineering effort, i.e., an effort to identify and submit to the Government methods for performing more economically. This effort generally is directed at the major cost items of a system or project.

The FAR presently permits agency heads to exempt their agencies from using value engineering provisions in contracts. That exemption is hereby removed and the FAR will be modified to require that contracting activities include value engineering provisions in contracts except where exemptions are granted on a case-by-case basis or for specific classes of contracts. One time agency-wide exemptions will no longer be permitted. In addition, agency contracting activities will:

(1) Actively elicit VECPs from contractors.

(2) Promote value engineering through contractor seminars, meetings and the dissemination of promotional and informational literature regarding the value engineering provisions of contracts.

(3) Consider the number of value engineering change proposals and the manner in which the proposals were processed in evaluating the performance of contracting officers.

(4) Establish guidelines for processing value engineering change proposals and require that files be documented for all change proposals requiring more than 45 days to accept or reject.

(5) Document all contract files to explain the rationale for accepting or rejecting value engineering change proposals.

(6) Document all contract files to explain why value engineering studies were not performed or required for projects or programs meeting the criteria in paragraph 4a.(4) above.

(7) Use the value engineering program requirement clause (FAR 52.248–1 alternatives I or II) in all initial production contracts for major systems acquisition programs, except where the contracting officer determines and documents the file to reflect that such use is not appropriate (See Section 102(10)(b) of Public Law 98–577 for a definition of major systems).

5. *Sunset Review.* The policies contained in this Circular will be reviewed by the Office of Management and Budget three years from the date of issuance.

6. *Inquiries.* Further information about this Circular may be obtained by contacting the Office of Federal Procurement Policy, 726 Jackson Place NW., Washington, DC 20503, Telephone (202) 395–6803.

James C. Miller III,

Director.

[FR Doc. 87–19625 Filed 8–26–87; 8:45 am]

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Thursday
August 27, 1987

Part VIII

Department of Education

34 CFR Part 5

Implementation of the Freedom of Information Reform Act; Uniform Fee Schedule and Administrative Guidelines; Final Regulations With Invitation To Comment

DEPARTMENT OF EDUCATION

34 CFR Part 5

Implementation of the Freedom of Information Reform Act; Uniform Fee Schedule and Administrative Guidelines

AGENCY: Department of Education.

ACTION: Final Regulations With Invitation to Comment.

SUMMARY: The Secretary amends the Department of Education's regulations under the Freedom of Information Act (FOIA). These amendments are needed to implement the Freedom of Information Reform Act of 1986 (Reform Act), which requires agencies to establish a schedule of fees to be charged for the costs of processing requests for information under the FOIA and revises the standard for waiving or reducing a fee. The revised fee schedule is consistent with the Office of Management and Budget's (OMB) Uniform FOIA Fee Schedule and Guidelines. The regulations will provide more uniformity in assessing fees and will enable the Department to recover more of the actual costs incurred in processing requests for records for commercial use. Due to the immediate need for implementing the new fee schedule and waiver requirements, the Secretary publishes these rules as final regulations with an invitation to comment.

DATES: Comments must be received on or before October 13, 1987. Effective date: August 27, 1987.

ADDRESSES: All comments concerning these final regulations should be addressed to the U.S. Department of Education, Freedom of Information Officer, 400 Maryland Avenue, SW., Room 2089, FOB–6, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Thomas Lyon, Telephone Number: 732–4313.

SUPPLEMENTARY INFORMATION: The Reform Act established a new framework for assessing fees under the FOIA so that different categories of requesters are established, and the fees charged for processing FOIA requests vary by requester category. In accordance with the Reform Act, the amendments to the regulations revise Subpart E of the Department's current regulations on fees. The revised fee schedule sets forth the allowable direct costs for searching for and reviewing records, duplicating records, certifying or authenticating records, and other costs associated with responding to a FOIA request. Charges that are assessed vary, depending on the use to which the records will be put and the identity of the requester. Assurance of payment or payment in advance of the search for and review of records is required if the estimated fee will exceed $250.00. Advance payment is required if the requester has failed to pay the fee charged on a previous request. Interest is assessed for fees not paid within 30 days of billing. The standard for waiver or reduction of fees is revised to implement changes required under the Reform Act.

Waiver for Notice of Proposed Rulemaking

At this time the Secretary is issuing final regulations with an opportunity to comment but without prior notice, because issuing final regulations immediately is necessary in view of the statutory deadline for implementing these regulations, and delay could cause an unfair economic hardship on certain requesters. Under the existing fee schedule all requesters are subject to paying the direct costs of search and duplication of records. However, under the fee schedule revised to implement the 1986 amendments, certain noncommercial requesters are entitled to free search and the first 100 pages copied free. Failure to implement the revised fee schedule promptly could adversely affect these requesters who would be subject to fees at the current rate. The Department, as well as all other executive agencies, was required to conform the fee provisions with the 1986 statutory amendments and uniform guidelines issued by OMB. OMB's final fee guidelines were not published until March 27, 1987. Therefore, the Secretary was unable to issue these fee provisions early enough to enable him to consider comments before publishing these final regulations. Accordingly, the Secretary has determined that publication of the fee provisions as a proposed rule is impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

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.

Regulatory Flexibility Act Certification

The Secretary certifies that these final regulations would not have a significant economic impact on a substantial number of small entities. Small entities may be affected by these regulations because an entity may make a request for information under the FOIA. However, no regulatory burden is imposed on small entities; only those entities that request information may be charged fees, and only requests for records to be put to commercial use are charged the full allowable direct cost of processing the request. The fees charged are required by the Reform Act.

Paperwork Reduction Act of 1980

These regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these final regulations governing fees under the FOIA. To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

All comments submitted in response to these final regulations will be available for public inspection, during and after the comment period, in Room 2089, FOB–6, 400 Maryland Avenue SW., Washington, DC between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week, except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 5

Administrative practice and procedure, Freedom of Information.

Dated: August 7, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 5 of Title 34 of the Code of Federal Regulations as follows:

PART 5—AVAILABILITY OF INFORMATION TO THE PUBLIC PURSUANT TO PUB. L. 90–23

1. The authority citation for Part 5 is revised to read as follows:

Authority: 5 U.S.C. 552.

2. Subpart A is amended by adding a new § 5.6 to read as follows:

§ 5.6 Statutory definitions.

The definitions in the Act and the Office of Management and Budget's "Uniform FOIA Fee Schedule and Guidelines," 52 FR 10012 (March 27, 1987), apply to this part.

3. Subpart E is revised to read as follows:

Subpart E—Fees and Charges

Subpart E—Fees and Charges

§ 5.60 Schedule of fees.

(a) Fees and charges are charged under this part as follows:

(1) *Search for records.*

(i) *General.* Full search fees are charged for records requested by commercial use requesters. For records requested by representatives of the news media or educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, no search fee is charged if the records requested are not for commercial use. For other requesters, if the records requested are not for commercial use, the first two hours of search time are provided without charge, except as limited in paragraph (a)(1)(iii) of this section. Search fees are recorded and assessed to the nearest quarter hour.

(ii) *Manual search.* The charge for a manual search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the search plus 16 percent of that rate.

(iii) *Computer search.* The charge for a computer search is calculated by determining the search time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the computer operator plus 16% of that rate plus $287 per hour for computer operation. Two hours of search time on a computer search is deemed to have been spent if the cost of the search equals the equivalent of two hours of the computer operator's basic rate of pay per hour plus 16 percent of that rate.

(2) *Review of records.* Review fees are charged only for commercial use requests and only for the initial review. The review rate is calculated by determining the review time to the nearest quarter hour and multiplying that figure by the sum of the basic rate of pay per hour of the employee conducting the review plus 16% of that rate. If records requested under this part are stored elsewhere than the headquarters of the Department at Washington, DC., the mailing and handling costs of returning those records to the headquarters for review is added to the review costs.

(3) *Duplication of records.* No duplication fee is charged for the first 100 pages, except for commercial use requests. Duplication charges for paper copy reproduction of documents on photocopy machines is $0.10 per page.

(4) *Certification of records.* The charge for certifying records is $5 per record certified.

(5) *Other.* If no specific fee has been established for a service, or the request for a service does not fall under one of the categories in paragraphs (a)(1)–(4) of this section due to the amount or type of service, the Secretary is authorized to establish an appropriate fee, based on direct costs on a case-by-case basis as provided in the FOIA.

(b) If the Secretary awards a contract for a search or duplication of records for a FOI request, the fees charged are the actual costs under the contract.

(c) Fees are not charged if the total amount of the fee is less than $5. If the total amount of the fee is $5, or more, applicable search and review costs are charged even if no records are located or disclosed. The Secretary does not refund fees paid for services actually rendered.

(d) If the FOI Officer reasonably believes that a requester or group of requesters acting in concert is attempting to break down a request into multiple requests for the purpose of avoiding fee assessment, those requests and fees are aggregated and charged accordingly.

§ 5.61 Notification of estimated fees.

If the estimated fees under this section total more than $25, or more than the maximum amount specified in the request if that amount exceeds $25, the requester is—

(a) Notified promptly of the amount of the estimated fee or that portion of the fee as can readily be estimated; and

(b) Offered the opportunity to reformulate the request.

§ 5.62 Advance payment of fees.

(a) If the estimated fee for processing a request exceeds $250, the FOI Officer—

(1) Notifies the requester of the anticipated cost and obtains satisfactory assurance of full payment if the requester has a history of prompt payment of FOIA fees; or

(2) Requires an advance payment if the requester has no history of payment.

(b) If a requester has previously failed to pay a fee in a timely fashion, the FOI Officer does not process any subsequent request until the requester pays the arrears in full, including interest, and makes an advance payment of the estimated fee for the new request.

(c) Requests under this section are not deemed to have been received for purposes of § 5.51(d) until the Department receives the satisfactory assurance or advance payment.

§ 5.63 Payment of fees and interest.

(a) If a requester does not pay a fee under this subpart within 30 days after the date the billing was sent, interest is assessed at the rate prescribed under 31 U.S.C. 3717. The Secretary may use the procedures authorized under the Debt Collection Act of 1982 to collect fees due under this subpart, including disclosure to consumer reporting or collection agencies.

(b) Fee payments must be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Fee payments must be made payable to the U.S. Department of Education and mailed to the FOI Officer, Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. A receipt for fees paid is given upon request.

§ 5.64 Waiver or reduction of fees.

(a) The Secretary may, in accordance with the FOIA, waive or reduce all or part of any fee provided for in this section if the Secretary determines that it is—

(1) In the public interest because furnishing the information can be considered as primarily benefiting the general public and is likely to contribute significantly to public understanding of the operations or activities of the government; and

(2) Is not primarily in the commercial interest of the requester.

(b) In making the determination to waive or reduce a fee under paragraph

(a) of this section, the Secretary considers the following factors:

(1) Whether the subject of the requested records concerns the operations or activities of the government.

(2) Whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(3) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

[FR Doc. 87-19667 Filed 8-26-87; 8:45 am]

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federal register

Thursday
August 27, 1987

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Delay of Effective Date of Maintenance Program and Minimum Equipment List Requirements for Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

[Docket No. 24856; Amendment No. 129-15]

Delay of Effective Date of Maintenance Program and Minimum Equipment List Requirements for Foreign Air Carriers and Operators of Certain Large U.S.-Registered Airplanes

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Final rule; delay of effective date.

SUMMARY: This amendment delays the effective date for the new requirements that U.S.-registered aircraft leased by foreign persons be maintained in accordance with acceptable maintenance standards. This amendment is necessary to provide additional time for the FAA to develop and publish advisory material for the content of the maintenance programs and procedures for their approval. This amendment does not delay the effective date of other amendments published in 52 FR 20026 (May 28, 1987).

EFFECTIVE DATE: This amendment delays the effective date for § 129.14 from August 25, 1987, to February 25, 1988.

FOR FURTHER INFORMATION CONTACT: David L. Catey, Manager, Project Development Branch, AFS-240, Air Transportation Division, telephone (202) 267-3747 or Wayne N. Dixon, Aircraft Maintenance Division, AFS-300, telephone (202) 267-3781, Office of Flight Standards, Federal Aviation Administration, 800 Indendence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Background

The FAA stated in the "Analysis of Comments" section of the preamble of the final rule for Amendments 43-28, 91-201, 121-192, 125-9, 129-14, and 135-24 (52 FR 20026; May 28, 1987) that specific requirements and guidance as to what would constitute an approvable maintenance program would be provided by an advisory circular. The FAA now finds that developing and processing an advisory circular in time for the August 25, 1987, effective date of the amendment is not possible and that an effective date of February 25, 1988, for the new maintenance program and minimum equipment list requirements, § 129.14 of the Federal Aviation Regulations, is needed to complete development of this material. Not adopting this amendment would impose a burden both on the foreign air carriers and the FAA because of the difficulty and expenditure of time involved in attempting to develop a program and obtain its approval with inadequate guidance.

Reason for No Notice and Immediate Adoption

In view of the fact that Amendment 129-14 will become effective August 25, 1987, and immediate establishment of a later effective date for the maintenance program and minimum equipment list requirements is needed to allow for development of suitable guidance to effect those requirements, I find that notice and public procedure are impracticable and good cause exists for making this amendment effective in less than 30 days.

Conclusion

This amendment will provide the time necessary for development of guidance materials for compliance with new § 129.14 of the FAR by extending the effective date 6 months. Because it will not create any additional burden on those subject to the regulation, no costs are associated with this amendment. Therefore, the FAA has determined that this amendment is not major under Executive Order 12291 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified that under the criteria of the Regulatory Flexibility Act this amendment will not have a significant economic impact, positive or negative, or a substantial number of small entities because no costs are associated with the amendment. For these reasons, the FAA has determined that the expected economic impact is so minimal that a full regulatory evaluation is not warranted.

List of Subjects in 14 CFR Part 129

Aircraft, Air Carrier, Airworthiness.

The Amendment

Accordingly, the effective date for § 129.14 of the Federal Aviation Regulations (14 CFR 129.14) is delayed until February 25, 1988.

Authority

The authority citation for Part 129 continues to read as follows:

Authority: 49 U.S.C. 1346, 1354(a), 1356, 1357, 1421, 1502, and 1511; 49 U.S.C. 106(g) (Revised Pub. L. 97-499, January 12, 1983).

Issued in Washington, DC, on August 25, 1987.

T. Allan McArtor,

Administrator.

[FR Doc. 87-19816 Filed 8-25-87; 4:38 pm]

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