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Tuesday
November 3, 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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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

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

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

WASHINGTON, DC

WHEN: November 20, at 9 a.m.
WHERE: National Archives and Records Administration, Room 410, 8th and Pennsylvania Avenue NW., Washington, DC.
RESERVATIONS: Robert D. Fox, 202-523-5239.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 88–01 of October 5, 1987

Determination of FY 1988 Refugee Admissions Numbers and Authorization of In-Country Refugee Status Pursuant to Sections 207 and 101(a)(42), Respectively, of the Immigration and Nationality Act

Memorandum for the United States Coordinator for Refugee Affairs

In accordance with Section 207 of the Immigration and Nationality Act ("the Act"), and after appropriate consultation with the Congress, I have made the following determinations:

a. The admission of up to 72,500 refugees to the United States during FY 1988 is justified by humanitarian concerns or is otherwise in the national interest.

b. Four thousand of these admissions numbers shall be set aside for private sector admissions initiatives. The admission of refugees using these 4,000 numbers shall be contingent upon the availability of private sector funding sufficient to cover the essential and reasonable costs of such admissions.

c. The 68,500 refugee admissions covered under Federal programs shall be allocated among refugees of special humanitarian concern to the United States as described in the documentation presented to the Congress during the consultations that preceded this Determination and in accordance with the following regional allocations:

Africa	3,000
East Asia, First Asylum	29,500
East Asia, Orderly Departure Program	8,500
Eastern Europe/Soviet Union	15,000
Latin America/Caribbean	3,500
Near East/South Asia	9,000

Unused admissions numbers allocated to a particular region may be transferred to one or more other regions if there is an overriding need for greater numbers for the region or regions to which the numbers are being transferred. The Coordinator will consult with the Congress prior to any such reallocation.

d. The 4,000 privately funded admissions may be used for refugees of special humanitarian concern to the United States in any region of the world at any time during the fiscal year. The Congress shall be notified in advance of the intended use of these numbers.

e. An additional 5,000 refugee admissions numbers shall be made available for the adjustment to permanent resident status under Section 209(b) of the Act of aliens who have been granted asylum in the United States under Section 208 of the Act, as this is justified by humanitarian concerns or is otherwise in the national interest.

In accordance with Section 101(a)(42) of the Act, and after appropriate consultation with the Congress, I have specified that the following persons may, if otherwise qualified, be considered refugees for the purposes of admission to the United States while still within their countries of nationality or habitual residence:

a. Persons in Vietnam and Laos with past or present ties to the United States; persons who have been or currently are in reeducation camps in Vietnam or seminar camps in Laos; Amerasians in Vietnam; and the accompanying family members of such persons.

b. Present and former political prisoners and persons in imminent danger of loss of life in countries of Latin America and the Caribbean, and their accompanying family members.

You are hereby authorized and directed to report this Determination to the Congress immediately and to publish it in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, October 5, 1987.

[FR Doc. 87-25520
Filed 10-30-87; 12:54 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Parts 1468 and 1472

Payment Program for Mohair and Shorn Wool and Unshorn Lambs (Pulled Wool), 1986 Through 1990

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to adopt, as a final rule, an interim rule which was published in the Federal Register on February 11, 1987 (52 FR 4275) and to make this final rule retroactively effective to August 23, 1985 (wool) and November 14, 1985 (mohair). The interim rule amended the mohair and wool price support regulations with respect to a producer's eligibility for price support payments for mohair and wool, respectively, and made certain other minor changes.

EFFECTIVE DATES: August 23, 1985 for the wool price support regulations (7 CFR Part 1472); November 14, 1985 for mohair price support regulations (7 CFR Part 1468).

FOR FURTHER INFORMATION CONTACT: Harry D. Millner, Agriculture Program Specialist, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013. Telephone (202) 475-3005.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance programs to which this rule applies are: Title—Commodity loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

These programs/activities are not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Background

On February 11, 1987, the Commodity Credit Corporation, U.S. Department of Agriculture (CCC/USDA) published an interim rule in the Federal Register (52 FR 4275) which amended the mohair and wool price support regulations with respect to producers eligibility for price support payments on sales of mohair and wool.

There were two principle changes. First, the interim rule deleted the requirement that in order to be eligible for price support payment, a sale must be made to a person or business engaged in the business of buying and selling mohair or wool on a grease basis. In its stead, the regulations were amended to require only that the wool or mohair must be sold to a person or business which normally purchases wool or mohair on a grease basis. Second, the interim rule established a procedure whereby a limit is placed on the amount of the sales price of the wool or mohair received by a producer on which the price support payment would be made.

The changes in the interim rule were necessary to correct certain unintended effects resulting from the changes to the mohair and wool price support regulations made on November 14, 1985 (50 FR 47033) and August 23, 1985 (50 FR 34082) (hereafter the "1985 amendments"), respectively. The 1985 amendments were made to correct certain abuses by producers which were discovered during a review of the 1983 wool price support program conducted by CCC/USDA.

The review disclosed that, in many instances, price support payments were made to producers who sold wool to persons not engaged in the business of buying and selling wool, such as a family member, or to a business in which the producer had an interest. These fictitious or fraudulent transactions often resulted in reports of sales of wool which were not bona fide sales and which were often at substantially higher prices than the prices generally received by producers who marketed their wool through normal or traditional channels. Thus, because of these higher prices these producers received higher price support payments. The review also revealed attempts to submit to CCC/USDA documents representing sales, transfers, or other arrangements with respect to wool which were fictitious or not legally binding.

Accordingly, the mohair and wool price support regulations were amended in 1985 to address these concerns. The 1985 amendments set forth the requirements of a bona fide marketing of wool and mohair which would be eligible for a price support payment. Among the requirements were that the mohair and wool had to be sold to a person or business engaged in the business of buying and selling wool and mohair on a grease basis and that the mohair or wool had to be purchased in the course of that business. The sale also had to be based on the fair market value for mohair and a reasonable appraised price for wool.

However, in early 1986, it was determined by CCC/USDA, after thorough consideration of the impact of the 1985 amendments on certain mohair and wool producers, that the 1985 amendments had the unintended effect

of disqualifying producers who sold mohair and wool to purchasers, such as hobby crafters, handspinners and other similar individuals who were only buying mohair or wool for their handspinning and crafting activities. Accordingly, CCC/USDA determined that price support payments should be made available on sales made by producers to hobby crafters, handspinners and similar individuals who only purchased wool or mohair but did not sell wool or mohair. However, since these sales were made at prices substantially higher than prices generally received by producers who marketed their mohair and wool through normal or traditional channels, it was determined that the price support payments should not be made on the entire sales price per pound but only on the appraised price of wool or mohair which, for the 1985 marketing year, was determined to be that portion of the sales price per pound which was four times the national average market price for wool or mohair received by all producers for that year. Accordingly, on May 21, 1986, CCC/USDA, through the Agricultural Stabilization and Conservation Service (ASCS), issued a directive (Notice LD–276) to all ASCS State and county offices advising them to make price support payments in accordance with such determinations and, in cases where price support payments had been made prior to the issuance of the notice, to review the producer's files and to recover any portion of the price support payments not made in accordance with the notice.

Many producers have written to the CCC/USDA concerning the action taken by CCC/USDA pursuant to Notice LD–276. CCC/USDA has made clear in all its responses that under the wool and mohair price support regulations in existence at the time price support payments were due for the 1985 marketings of wool and mohair, producers who made sales to hobby crafters, handspinners, and other similar individuals were not eligible for any price support payments on such sales because such sales were not made to purchasers who were in the business of buying and selling wool and mohair. The producers were advised that the action taken by the CCC/USDA in Notice LD–276 provided a reasonable, fair and equitable treatment of those producers who were otherwise not eligible for price support payments.

The interim rule, therefore, was issued to amend mohair and wool price support regulations to reflect the determinations made by CCC/USDA with respect to the eligibility of sales made by producers to purchasers such as hobby crafters and handspinners.

On April 1, 1987, the Comptroller General of the United States, after reviewing the action taken by the CCC/USDA in the issuance of Notice LD–276 and the subsequent promulgation of the interim rule on February 11, 1987, issued an opinion which stated that the action taken by the CCC/USDA through the notice in authorizing price support payments to producers who were not eligible under the mohair and wool price support regulations was not consistent with the regulations. The Comptroller General, however, stated that the interim regulations were legally sound and that the CCC/USDA had the authority to limit price support payments based on the sales price of mohair and wool.

The interim rule amends the mohair and wool price support regulations at 7 CFR 1468.107(c) and 1472.1507(c), respectively, to delete the requirements that to constitute a bona fide marketing of mohair or wool, (i) the person or business buying mohair or wool must be engaged in the business of buying and selling grease basis mohair or wool and buys the mohair or wool in the course of the business and (ii) the sale must be based on the fair market value for mohair and a reasonably appraised price for wool.

The interim rule also amended 7 CFR 1468.116 and 1472.1545 of the mohair and wool price support regulations, respectively, to provide that price support payments shall not be made with respect to that portion of the sales proceeds received by a producer for eligible mohair or wool which is based on sales prices in excess of the maximum sales price per pound as determined by the Deputy Administrator State and County Operations (DASCO), ASCS. DASCO will determine such maximum sales price per pound for mohair and wool marketed in each marketing year on the basis of the national average market price of mohair or wool computed for each marketing year. Such maximum sales price shall be an amount which DASCO determines will encourage the continued domestic production of mohair and wool at prices fair to both producers and consumers in a manner which would assure a viable domestic mohair and wool industry. Such maximum sales price shall be publicly announced by USDA at the end of each marketing year for mohair or wool.

Discussion of Comments

A total of 106 comments were received concerning the interim rule. Of these, 72 came from producers, 20 from producers/spinners, 12 from wool grower groups/associations, 1 from a State Department of Agriculture, and 1 from a Congressman.

The comments focused generally on the area of limiting the amount of price support payments based on a maximum sales price per pound as determined by DASCO. There was little comment on the part of the rule which deleted the requirement that sales of mohair or wool had to be made to a purchaser who was in the business of buying and selling mohair or wool and which provided in lieu thereof the requirement that the mohair or wool had to be sold to a person or business which normally purchased mohair or wool on a grease basis.

A. Favorable Comments

Six commentors supported the portion of the interim rule which limited the amount of price support payment based on the sales price of the mohair or wool. These commentors stated that producers who sold wool or mohair to hobby crafters and handspinners should not be entitled to receive price support payments on the full sales price of the mohair or wool because they were selling wool in a specialized market that permitted them to receive prices far in excess of the prices that a majority of producers received by selling their mohair and wool in the usual or normal market trade channels. A seventh commentor was in favor of §§ 1472.1503 and 1472.1507 of the interim rule but objected to § 1472.1545 without giving any reason.

B. Objections

Most commentors opposed the portion of the interim rule which limited the amount of the price support payments based on the sales price of the mohair or wool. Forty six individuals and three associations objected to the interim rule without giving any reason for their objection.

These commentors stated that there should not be a limit on the amount of the sales price on which price support payments would be made because of the marketing techniques of producers and that the price support payments should be made on the full sales price of the mohair or wool which really was a free market price. They claimed that the mohair or wool they sold commanded premium prices because of the high quality wool they produced through special care and efforts, good management, and selective breeding. They believed that they are being penalized for producing a superior wool comparable to high quality wool from

New Zealand and that the CCC/USDA had changed the mohair and wool price support programs after the producers had made significant investments in the production of high quality wool. They also claim that while there may have been some cases of fraud, most of their sales were made to bona fide purchasers and, therefore, they were entitled to price support payments based on the full sales price. They claim that the mohair and wool price support programs had been established to encourage people to stay in the sheep producing business and that any limitation of price support payments was inconsistent with this objective. They further claimed that since the price support funds came from tariffs on imports and not from money collected from taxpayers, there was no cost to the government and, therefore, there should be no limit to the price support payments. They claim that price support payments are an incentive to (1) produce more mohair and wool, (2) produce a better quality wool and mohair, and (3) receive as high a price for mohair and wool as possible, and that, the higher the price of the mohair and wool, the closer the average mohair and wool price will be to the support price and the lower the price support payment and the lower overall cost to the Government.

The CCC/USDA has reviewed all these comments and has determined that they do not provide an adequate basis to change the interim rule for reasons discussed hereafter.

a. *Small Producers:* The producers who are primarily affected by the interim rule are those that sell their mohair and wool production to hobby crafters, handspinners, and other similar individuals. They constitute a relatively small number of all the mohair and wool producers in the United States. However, the CCC/USDA does recognize that these small mohair and wool producers are an important segment of the mohair and wool industry. CCC/USDA commends these small producers who are producing a superior premium mohair or wool comparable to the high quality wool from New Zealand through special care and effort and marketing techniques. The rule, of course, is intended to apply not only to small producers of mohair or wool but to all producers regardless of whether they market mohair or wool to handspinners and hobby crafters or to the industry as a whole.

b. *Abuses in the Wool Price Support Program:* It appears that some commentors misunderstood the discussion in the preamble to the interim rule concerning the producer abuses discovered in the review of the 1983 wool price support program. There was no intent to correlate the relatively high sales prices of mohair or wool through nontraditional channels with fictitious or otherwise improper sales. The review uncovered many types of abuses which led to the 1985 amendments to prevent such abuses. As previously explained in the preamble, the 1985 amendments had unintended effects in that they disqualified all sales of mohair and wool made by producers to hobby crafters, handspinners, and other similar individuals. Accordingly, the interim rule corrects the unintended effects of the 1985 amendments by permitting price support payments on sales made by producers to persons who normally purchase wool such as hobby crafters, etc.

c. *Limit on Price Support Payments:* As indicated previously, CCC/USDA is aware that the relatively high prices received by these producers were not due to fictitious sales but due to the high quality mohair or wool produced by them. CCC/USDA also understands that these sales which are made through nontraditional channels reflect changes in the mohair and wool industry and that the sales made by these producers at substantially higher prices are due to supply/demand pressures for high quality mohair and wool. CCC/USDA also is aware of the special efforts in management, stock breeding, and marketing techniques used by these producers to develop high quality mohair and wool. All these efforts to develop high quality mohair and wool and to sell them at a premium price is to be commended. However, CCC/USDA is limiting the amount of price support payments based on the sales price of mohair and wool because it is in accord with the purpose of the National Wool Act of 1954 (Wool Act), and because it utilizes the U.S. taxpayers money for the mohair and wool price support programs in the most effective way.

The legislative history of the Wool Act indicates that the main purpose of the Wool Act is to enable the producers to compete successfully with producers from cheaper production areas of the world and to encourage the rebuilding of sheep herds so that the United States produces a larger proportion of its own mohair and wool requirements.

CCC/USDA believes that price support payments authorized under the Wool Act are intended to encourage the domestic production of mohair and wool at prices fair to both producers and consumers in a manner which assures a viable domestic mohair and wool industry.

Section 704 of the Wool Act provides, in part, that "[i]f payments are utilized as the means of price support, the payments shall be such as the Secretary of Agriculture determines to be sufficient, when added to the national average price received by producers, to give producers a national average return for the commodity equal to the support level." In 1985, the wool price support level was $1.65 per pound and the national average market price for wool was 63.3 cents per pound. The price support payment rate based on the difference between these two figures was 165 per centum. This percentage was applied to the sales proceeds of all 1985 marketings except, pursuant to Notice LD-276, it was not applied to the portion of any sales proceeds to the extent that the sales price per pound exceeded four times the national average market price.

The premium price received by producers on their sale to hobby crafters, handspinners, etc. were substantially higher than the 1985 wool price support level of $1.65 per pound and far in excess of the national average market price of 63.3 cents per pound. In addition, these producers received price support payments on that portion of the sales proceeds which did not exceed four times the national average market price for wool or $2.53 per pound (4 times 63.3).

Under these circumstances it would appear to be difficult for these producers to claim that they were unfairly treated or that such limitation was not in accordance with the purpose of the Wool Act or that it was not a reasonable limitation of the expenditures of taxpayers money.

d. *Tariff Act of 1930, as amended:* There is a general misunderstanding that price support payments made under the Wool Act are financed by duties on wool and not from the U.S. Treasury because sections 704 and 705 of the Wool Act refer to duties collected under the Tariff Act of 1930, as amended. However, the reference to such duties in sections 704 and 705 merely places a limit on the total amount of price support payments which can be made to 70 percent of the duties collected. These duties are collected and deposited in the U.S. Treasury and used for general governmental purposes. Price support payments for mohair and wool are paid from Commodity Credit Corporation (CCC) funds and section 705 of the Wool Act provides for reimbursement to CCC from the U.S. Treasury not to exceed 70 per centum of the gross receipts from duties collected.

e. *Maximum Sales Price Per Pound:* There were a number of comments with respect to the changes in the mohair and wool price support regulations to limit the amount of price support payments based on the sales price per pound for mohair and wool. A number of commentors objected to the deletion of the provision in § 1472.1507 which provided that a bona fide marketing was a "sale based on a reasonably appraised price for wool." Their comments suggest that the price support payments for their speciality wool be based on the full free market value of such speciality wool or the appraised price of such wool in the speciality market for such wool.

The phrase "reasonable appraised price of wool" in § 1472.1507 and a comparable phrase "fair market value for mohair" in § 1468.107(c) were deleted because they were inconsistent provisions and also because they were intended to prevent price support payments to be made where the sales price of the mohair or wool was substantially higher than the reasonable appraised price of wool or the fair market value for mohair in the traditional wool or mohair markets, respectively. In such case the entire sales price would have been ineligible for price support payments. However, these provisions were deleted because CCC/USDA did not wish to make the entire sales proceeds of wool and mohair sold to hobby crafters, hand-spinners, and similar individuals ineligible for price support payments.

Another comment urged that since the premium prices received by the producers on sales of high quality wool to hobby crafters and handspinners have been used to calculate the national average price for wool, the same premium price should be used to calculate the wool price support payment. The premium prices for high quality wool are included in the determination of the national average market price which is determined by taking the average weighted market price of all wool sold by producers. Section 704 of the Wool Act provides that the price support payments shall be such as the Secretary of Agriculture determines to be sufficient when added to the national average price to equal the price support level for wool. This amount expressed in percentage is applied against the producer sales price to determine the price support payment due the producer. This percentage is applicable to all sales of wool. However, the interim rule would apply the percentage to each sales price up to the maximum sales price determined by DASCO for each marketing year.

There were also comments to the effect that sales by hobby crafters and handspinners should be considered sales through "normal channels" for high quality wool. We believe this is a matter of semantics. While the point of the comment is true, since only a small fraction of all the wool marketed is sold to hobby crafters and handspinners, the term "normal channels" was intended to mean the traditional sales of wool made to large commercial wool buyers.

There were also comments criticizing the limitation of the amount of the sales proceeds which would be eligible for price support payments to four times the national average price ("four times rule") as being unfair. The four times rule was effective for the 1985 and 1986 marketings of mohair and wool. Under the interim rule, the maximum sales price for which price support payments would be made is determined by DASCO at the end of each marketing year based on the national average market price and is an amount which DASCO determines will encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner which would assure a viable domestic mohair and wool industry.

As indicated earlier, the Comptroller General of the United States reviewed the interim rule and concluded that CCC/USDA had authority to limit the amount of the sales price per pound on which price support payments would be made. The Comptroller General stated that since under the Wool Act the Secretary can set the amounts, terms, and conditions of price support operations, he had the authority to establish price support payment limitations to prevent abuses, based on the reasonably appraised prices for wool.

The final rule provides that the effective date will be retroactive to the dates the 1985 amendments were made to the mohair and wool price support regulations; November 14, 1985 and August 23, 1985, respectively. It is necessary that the interim rule be made effective retroactively in order to nullify the unintended effects of the 1985 amendments with respect to the eligibility of certain producers to receive price support payments who would otherwise not be eligible for price support payments. The retroactive application will not affect other producers who were otherwise eligible for price support payments.

List of Subjects

7 CFR Part 1468

Commodity Credit Corporation, Price Support Program—Mohair, Reporting and recordkeeping requirements.

7 CFR Part 1472

Commodity Credit Corporation, Price Support Program—Wool, Reporting and recordkeeping requirements.

Final Rule

Accordingly, the interim rule published at 52 FR 4275 (February 11, 1987), which amended 7 CFR Parts 1468 and 1472, is hereby adopted as a final rule without change.

Authority: Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714b, 714c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC, on October 27, 1987.

Vern Neppl,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–25382 Filed 11–2–87; 8:45 am]

BILLING CODE 3410–05–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

Evaluation of the Adequacy of Off-Site Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline To Participate in Off-Site Emergency Planning

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its rules to provide criteria for the evaluation at the operating license review stage of utility-prepared emergency plans in situations in which state and/or local governments decline to participate further in emergency planning. The rule is consistent with the approach adopted by Congress in section 109 of the NRC Authorization Act of 1980, Pub. L. 96–295, described in the Conference Report on that statute (H.96–1070, June 4, 1980), twice re-enacted by the Congress (in Pub. L. 97–415, Jan. 4, 1983, and Pub. L. 98–553, Oct. 30, 1984), and followed in a prior adjudicatory decision of the Commission, *Long Island Lighting Co.*, (Shoreham Nuclear Power Station, Unit 1), CLI–86–13, 24 NRC 22 (1986). The rule

recognizes that though state and local participation in emergency planning is highly desirable, and indeed is essential for maximum effectiveness of emergency planning and preparedness, Congress did not intend that the absence of such participation should preclude licensing of substantially completed nuclear power plants where there is a utility-prepared emergency plan that provides reasonable assurance of adequate protection to the public.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT:

Peter G. Crane, Office of the General Counsel, USNRC, Washington, DC 20555, 202–634–1465

Michael T. Jamgochian, Office of Nuclear Regulatory Research, USNRC, Washington, DC 20555, 301–443–7657.

David B. Matthews, Office of Nuclear Reactor Regulation, USNRC, Washington, DC 20555, 301–492–9647.

SUPPLEMENTARY INFORMATION:

Discussion

On March 6, 1987, the NRC published its notice of proposed rulemaking in the **Federal Register**, at 52 FR 6980. The period for public comment (60 days, subsequently extended for an additional 30 days) expired on June 4, 1987.

The proposed rule drew an unprecedentedly large number of comments. Some 11,500, individual letters were sent to NRC, as well as 27,000 individually signed form letters sent to Congress or the White House and forwarded to NRC. Approximately 16,300 persons signed petitions to the NRC. Every comment was read, including form letters, which were examined one by one so that any indivdual messages added by the signatories could be taken into account. NRC attempted to send cards of acknowledgment to each commenter.

The sheer volume of the comments received makes it clearly impracticable to discuss them individually. As a result, the following discussion will focus on the principal issues raised in the comments.

Issue #1. Is the proposed rule legal? Specifically, is it in accord with the language and legislative history of the emergency planning provisions enacted by the Congress in 1980?

Answer: Yes. The intent of the proposed rule, as clarified in Commission testimony and in other responses to the Congress, is to give effect to the Congress's 1980 compromise approach to emergency planning, not go beyond it. To explain this requires a somewhat detailed discussion of the background of the actions taken in 1980 by Congress and by the Commission with regard to emergency planning.

The backdrop for the actions taken by the Congress and the Commission in 1980 was, of course, the 1979 accident at Three Mile Island. The accident changed the NRC's regulatory approach to radiological emergency planning. Before the accident, emergency planning received relatively little attention from nuclear regulators. The prevailing assumption was that engineered safety features in nuclear power plants, coupled with sound operation and management, made it unlikely that emergency planning would ever be needed. At that time, only a limited evaluation of offsite emergency planning issues took place in the pre-construction review of applications to build nuclear power plants. The Three Mile Island accident led to the widespread recognition that, while there is no substitute for a well built, well run, and well regulated nuclear power plant, a substantial upgrading of the role of emergency planning was necessary if the public health and safety were to be adequately protected.

The Commission issued an advance notice of proposed rulemaking in July 1979, and in September and December of the same year it issued proposed emergency planning rules. 44 FR 54308 (September 19, 1979); 44 FR 75167 (December 19, 1979). Before the Commission took final action on the rules, however, the Congress took action, writing emergency planning provisions into the NRC Authorization Act for fiscal year 1980, Pub. L. No. 96–295. It is extremely important to focus on what the Congress did in that Act, because Congress' actions were the starting point for all the NRC did subsequently in the emergency planning area, as the written record makes clear.

Section 109 of the NRC Authorization Act directed the Commission to establish regulations making the existence of an adequate emergency plan a prerequisite for issuance of an operating license to a nuclear facility. The NRC was further directed to promulgate standards for state radiological response plans.

In the same section of the 1980 Act, Congress specified the conditions under which the Commission could issue operating licenses, and in doing so, it made clear its preferences with regard to state and local participation. Its first preference, reflected in section 109(b)(1)(B)(i)(I), is for a "State or local radiological emergency response plan which provides for responding to any radiological emergency at the facility concerned and which complies with the Commission's standards for such plans." In section 109(b)(1)(B)(i)(II), however, the Congress set out a second option: "In the absence of a plan which satisfies the requirements of subclause (I), there exists a State, local, *or utility* plan which provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned." (Emphasis added.) In addition, section 109 provided that the Commission's determination under the first but not the second of the two options could be made "only in consultation with the Director of the Federal Emergency Management Agency and other appropriate agencies." Section 109(b)(1)(B)(ii). The statute further directed the Commission to "establish by rule * * * a mechanism to encourage and assist States to comply as expeditiously as practicable" with the NRC's standards for State radiological emergency response plans. Section 109(b)(1)(C).

The Conference Report on the legislation, H. 96–1070 (June 4, 1980) explained in clear terms, at p. 27, the rationale for the two-tiered approach: "The conferees sought to avoid penalizing an applicant for an operating license if a State or locality does not submit an emergency response plan to the NRC for review or if the submitted plan does not satisfy all the guidelines or rules. In the absence of a State or local plan that complies with the guidelines or rules, the compromise permits NRC to issue an operating license if it determines that a State, local *or utility* plan, such as the emergency preparedness plan submitted by the applicant, provides reasonable assurance that the public health and safety is not endangered by operation of the facility." (Emphasis added.)

The statute, which was enacted on June 30, 1980, and the Conference Report make abundantly clear that in Congress' view, the ideal situation was one in which there is a state or local plan that meets all NRC standards. It is generally clear that in Congress' view, there could be emergency planning under a utility plan that to some degree fell short of the ideal but was nevertheless adequate to protect the health and safety of the public.

That Congressional judgment was before the Commission when it considered final emergency planning rules only a few weeks later, and the Commission took pains to make clear on the record that it was following the Congress' approach. As the Commission stated in its notice of final rulemaking, published on August 19, 1980, at 45 FR 55402:

Finally, on July 23, 1980, at the final Commission consideration of these rules, the Commission was briefed by the General Counsel on the substance of conversations with Congressional staff members who were involved with the passage of the NRC Authorization Act for fiscal year 1980, Pub. L. No. 96–295. The General Counsel advised the Commission that the NRC final rules were consistent with that Act. The Commission has relied on all of the above information in its consideration of these final rules. In addition, the Commission directs that the transcripts of these meetings shall be part of the administrative record in this rulemaking.

In addition, in a key portion of the rule, dealing with the question of whether NRC should automatically shut down nuclear plants in the absence of an NRC-approved state or local emergency plan, or should instead evaluate all the relevant circumstances before deciding on remedial action, the NRC again explicitly followed the Congress' lead. In determining what action to take, the Commission said, it would look at the significance of deficiencies in emergency planning, the availability of compensating measures, and any compelling reasons arguing in favor of continued operation. 10 CFR 50.47(c). The Commission explained: "This interpretation is consistent with the provisions of the NRC Authorization Act for fiscal year 1980, Pub. L. 96–295." 45 FR 55403. Thus in deciding that the lack of an approved state or local plan should not be grounds for automatic shutdown of a nuclear power plant, the Commission expressly declared itself to be following the statutory approach.

This background sheds considerable light on a passage from the **Federal Register** notice which some commenters saw as indication that the Commission consciously decided in 1980 that states and localities should have the power to exercise a veto over nuclear power plant operation. The Commission said:

> The Commission recognizes that there is a possibility that the operation of some reactors may be affected by this rule through inaction of State and local governments or an inability to comply with these rules. The Commission believes that the potential restriction of plant operation by State and local officials is not significantly different in kind and effect from the means already available to prohibit reactor operation. . . . Relative to applying this rule in actual practice, however, the Commission need not shut down a facility until all factors have been thoroughly examined.

45 FR 55404. (Emphasis added.)

It has been argued that the language just quoted indicates that the Commission made a conscious decision in 1980 to allow states and localities to exercise a veto power over completed nuclear power plants. Seen in context, however, it is apparent that the Commission did no such thing. Rather, the Commission was acknowledging the fact that under the approach it was taking, the action (or inaction) of a state or locality had the potential to affect the operation of nuclear power plants, since state and local non-participation would clearly make it more difficult for an applicant to demonstrate the adequacy of emergency planning. It is worth emphasizing the word "potential" in the quoted passage. It indicates that the Commission believed that in some cases, state and local action or inaction might have the effect of restricting plant operation, while in other cases it would not. In other words, the Commission foresaw a case-by-case evaluation, with the result not foreordained either in the direction of plant operation or of shutdown. Clearly, neither the Commission nor the Congress envisioned that state or local non-participation should automatically bar plant operation without further inquiry.

The mechanism adopted by the Commission for implementing the two-tiered approach was set forth in 10 CFR 50.47 of the Commission's regulations. For the first tier, sixteen planning standards for a state or local emergency plan were spelled out in 10 CFR 50.47(b)(1–16) of the Commission's regulations. The second tier, by contrast, was dealt with in a brief and unspecific provision, 10 CFR 50.47(c)(1):

> Failure to meet the [16] applicable standards set forth in paragraph (b) of this section may result in the Commission declining to issue an operating license; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operation.

In a 1986 decision, the Commission declared that in a situation in which state and local authorities decline to participate in emergency planning, the NRC has the authority and the legal obligation to consider a utility plan and render a judgment on the adequacy of emergency planning and preparedness. *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–86–13, 24 NRC 22. The Commission observed in *LILCO* that the emergency planning standards of 10 CFR 50.47(b)—the regulation which establishes the 16 planning standards by which a state and local plan is to be measured—"are premised on a high level of coordination between the utility and State and local governments," so that "[i]t should come as no surprise that without governmental cooperation [the utility] has encountered great difficulty complying with all of these detailed planning standards." 22 NRC 22, 29. The Commission noted, however, that its emergency planning rules were intended to be "flexible," and that a utility plan will pass muster under 10 CFR 50.47(c) "notwithstanding noncompliance with the NRC's detailed planning standards * * * (1) if the defects are 'not significant'; (2) if there are 'adequate interim compensating actions'; or (3) if there are 'other compelling reasons.' " The Commission added: "The decisions below focus on (1) and (2) and we do likewise."

The Commission then explained that the "measure of significance under (1) and adequacy under (2) is the fundamental emergency planning standard of § 50.47(a) that 'no operating license * * * will be issued unless a finding is made by NRC that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency.' " The "root question," the Commission said, was whether a utility plan "can provide for 'adequate protective measures * * * in the event of a radiological emergency.' " To answer that question, the Commission continued, requires recognition of the fact that emergency planning requirements do not have fixed criteria, such as prescribed evacuation times or radiation dose savings, but rather aim at "reasonable and feasible dose reduction under the circumstances." 24 NRC 22, 30.

Thus the Commission is already on record as believing itself legally obligated to consider the adequacy of a utility plan in a situation of state and/or local non-participation in emergency planning. Likewise, it is on record as believing that the evaluation of a utility plan takes place in the context of the overriding obligation that no license can be issued unless the emergency plan is found to provide reasonable assurance of adequate protective measures in an emergency. The Commission believes that the planning standards of 10 CFR 50.47(b), which are used to evaluate a state or local plan, also provide an appropriate framework to evaluate a utility plan. Therefore, the new rule provides for the first time that where a utility plan is submitted, in a situation of state and/or local non-participation in emergency planning, it will be evaluated for adequacy against the same standards used to evaluate a state or local plan. However, due allowance will be made both for the non-participation of the state and/or local governmental authorities and for the compensatory

measures proposed by the utility in reaching a determination whether there is "reasonable assurance that adequate protective measures can and will be taken."

To sum up, therefore, the rule is in accord with legal requirements for emergency planning at nuclear power plants because:

—The rule is consistent with section 109 of the NRC Authorization Act of 1980, a measure which has twice reenacted by the Congress, though it has since expired. In addition, the House of Representatives recently rejected an amendment designed to bar implementation of the rule for two specific plants.

—The rule is consistent with existing NRC regulations, and is well within NRC's rulemaking authority.

—Since the rule provides for no diminution of public protection from what was provided under existing regulations, it cannot be in contravention of any statutory requirements governing the level of NRC safety standards.

Issue #2: Is this a generic rule, or is this proposal really aimed at the Shoreham and Seabrook plants?

The rule is generic in the sense that it is of general applicability and future effect, covering future plants as well as existing plants. At present, however, there are only two plants with pending operating license applications for which state and/or local non-participation is an issue. Those plants are Shoreham and Seabrook. The NRC's 1980 rules, perhaps because of optimism that states and localities would always choose to be partners in emergency planning, included only a general provision, 10 CFR 50.47(c), dealing with cases in which utilities are unable to satisfy the standards for state and local emergency plans, and had no specific discussion of the evaluation of a utility plan in cases of state or local non-participation. This does not mean that the NRC was compelled to adopt new regulations in order to act on the Shoreham and Seabrook license applications. On the contrary, the NRC has always had the option of proceeding by case-by-case adjudication under its 1980 regulations.

Issue #3: Will this rule assure licenses to the Shoreham and Seabrook plants?

It will not assure a license to any particular plant or plants. It will establish a framework in which a utility seeking an operating license can, in a case of state and/or local non-participation, attempt to demonstrate to the NRC that emergency planning is adequate. Whether a utility could succeed in making that showing would depend on the record developed in a specific adjudication, the results of which would be subject to multiple levels of review within the Commission as well as to review in the courts.

Issue #4: Is state or local participation essential for the NRC to determine that there will be adequate protection of the public health and safety?

We do not have a basis at this time for determining generically whether state and local participation in emergency planning is essential for NRC to determine that there will be adequate protection of the public health and safety. There has yet to be a final adjudicatory determination in any proceeding on the adequacy of a utility plan where state and local governmental authorities decline to participate in emergency planning. Clearly, it will be more difficult for a utility to satisfy the NRC of the adequacy of its plan in the absence of state and local participation, but whether it would be impossible remains to be seen. The fact that Congress provided for evaluation of a utility plan in section 109 of the NRC Authorization Act of 1980 (and in two subsequent Authorization Acts) indicates that Congress believed that it was at least possible in some cases for a utility plan to be found to provide "reasonable assurance that public health and safety is not endangered by operation of the facility concerned," in the words of the "second tier" provided in section 109.

Issue #5: Is emergency planning as important to safety as proper plant design and operation?

First of all, this issue does not have to be addressed in the context of the final rule announced in this notice, since the present rule involves no redrawing by NRC of the balance between emergency planning and other provisions for the protection of health and safety. Having said that, we turn to the question of the place of emergency planning in the overall regulatory scheme for the protection of public health and safety.

Though the Commission in its 1980 rulemaking explicitly described emergency planning as "essential," it is less clear what importance the Commission assigned to emergency planning, as compared to the importance accorded to other means of protecting public health and safety, notably sound siting, design, and operation. In the Supplementary Information explaining the 1980 rulemaking, the Commission stated that "adequate emergency preparedness is an *essential* aspect in the protection of the public health and safety," 55 FR 55404, and commented that "onsite and offsite emergency preparedness as well as proper siting and engineered design features are *needed* to protect the health and safety of the public." (Emphasis added.) 45 FR 55403. The Commission also explained that in light of the Three Mile Island accident it had become "clear that the protection provided by siting and engineered design features must be bolstered by the ability to take protective measures during the course of an accident." *Id.* Though the word "bolstered" suggests that the Commission of 1980 viewed emergency planning as a backstop for other means of public protection rather than as of equal importance to them, the issue cannot be resolved definitively by microscopic analysis of the particular words chosen in 1980.

More relevant to the task of ascertaining the intent of the 1980 rulemaking is the regulatory structure established under the 1980 rules. In 10 CFR 50.54(s)(2)(ii), the Commission provided that if it "finds that the state of emergency preparedness does not provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency * * * and if the deficiencies * * * are not corrected within four months of that finding, the Commission will determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate." In other words, a plant ordinarily may operate for at least four months with deficiencies in emergency planning before the NRC is required even to decide whether remedial action should be taken. This approach, the Commission said in the Supplementary Information to the 1980 rule, was consistent with section 109 of the NRC Authorization Act of 1980. 45 FR 55407. At the time that the Commission created the so-called "120-day clock" for deficiencies in emergency planning, it was settled Commission law (and remains so today) that the NRC must issue an order directing a licensee to show cause why its license should not be modified, revoked or suspended whenever it concludes that "substantial health or safety issues ha[ve] been raised" about the activities authorized by the license. *Consolidated Edison Company of New York* (Indian Point, Units No. 1, 2 and 3), CLI–75–8, 2 NRC 173, 176. That standard was endorsed by the Court of Appeals for the District of Columbia Circuit in *Porter County Chapter of the Izaak Walton League* v. *NRC*, 606 F.2d 1363 (1978). In the context of that standard, the 120-day clock provision for emergency planning deficiencies amounts to a Commission

finding that, at least for the first 120 days, even a major deficiency in emergency planning does not automatically raise a "substantial health or safety issue" with regard to plant operation. By contrast, a major safety deficiency relating to emergency conditions—for example, the availability of the emergency core cooling system—would warrant immediate shutdown.

In sum, despite language indicating that emergency planning was "essential," the Commission in 1980 created a regulatory structure in which emergency planning was treated somewhat differently, in terms of the corrective actions to be taken when deficiencies are identified, from the engineered safety features ("hardware") that would be relied on in an emergency.

Issue #6: Assuming that NRC should consider a utility plan, what criteria should apply? In particular:

(a) Should the utility plan provide just as much protection as a state or local plan, or may less protection be adequate?

(b) If less protection may be adequate, must NRC still find reasonable assurance that under the utility plan, adequate protective measures can and will be taken? Or is it sufficient for NRC to find that the totality of the risk, including all relevant factors, including the likelihood of an accident, assures that there is adequate protection of public health and safety?

Under the rule adopted in this notice, a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in an emergency. The rule recognizes—as did Congress when it enacted and re-enacted the provisions of Section 109 of the NRC Authorization Act of 1980—that no utility plan is likely to be able to provide the same degree of public protection that would obtain under ideal conditions, i.e. a state or local plan with full state and local participation, but that it *may* nevertheless be adequate. The rule starts from the premise that accidents can happen, and that at every plant, adequate emergency planning measures are needed to protect the public in the event an accident occurs. Whether in fact a particular utility plan will be found adequate would be a matter for adjudication in individual licensing proceedings.

Issue #7: May NRC assume that a state or local government which refuses to cooperate in emergency planning will still respond to the best of its ability in an actual emergency? If so:

(a) May NRC assume that the state or local response will be in accord with the utility plan?

(b) May NRC assume that the state or local response will be adequate?

(c) If the NRC rule calls for reliance on FEMA, and FEMA says that it can't judge emergency planning except when there is state and local participation in an exercise, how can the NRC ever make a judgment on emergency planning in a situation in which state and local authorities do not participate?

In this rule, the Commission adheres to the "realism doctrine," enunciated in its 1986 decision in *Long Island Lighting Co.* (Shoreham Nuclear Power Station, Unit 1), CLI–86–13, 24 NRC 22, which holds that in an actual emergency, state and local governmental authorities will act to protect their citizenry, and that it is appropriate for the NRC to take account of that self-evident fact in evaluating the adequacy of a utility's emergency plan. The NRC's realism doctrine is grounded squarely in common sense. As the Commission stated in *LILCO,* even where state and local officials "deny they ever would or could cooperate with [a utility] either before or even during an accident," the NRC "simply cannot accept these statements at face value." 24 NRC 22, 29 fn. 9. It would be irrational for anyone to suppose that in a real radiological emergency, state and local public officials would refuse to do what they have always done in the event of emergencies of all kinds: do their best to help protect the affected public.

The *Long Island Lighting Co.* decision included the observation that in an accident, the "best effort" of state and county officials would include utilizing the utility's plan as "the best source for emergency planning information and options." 24 NRC 22, 31. This rule leaves it to the Licensing Board to judge what form the "best efforts" of state and local officials would take. However, the rulemaking record strongly supports the proposition that state and local governments believe that a planned response is preferable to an ad hoc one. Therefore it is only reasonable to suppose that in the event of a radiological emergency, state and local officials, in the absence of a state or local radiological emergency plan approved by state and local governments, will either look to the utility and its plan for guidance or will follow some other plan that exists. Thus the presiding Licensing Board may presume that state and local governmental authorities will look to the utility for guidance and generally follow its plan in an actual emergency; however, this presumption may be rebutted by, for example, a good faith and a timely proffer of an adequate and feasible state or local radiological response plan which would in fact be relied upon in an emergency. The presiding Licensing Board should not hesitate to reject any claim that state and local officials will refuse to act to safeguard the health and safety of the public in the event of an actual emergency. In actual emergencies, state, local, and federal officials have invariably done their utmost to protect the citizenry, as two hundred years of American history amply demonstrates.

At the present time, the Commission does not have a basis in its adjudicatory experience to judge either that a utility plan would be adequate in every case or that it would be inadequate in every case. Implementation of this rule may ultimately provide that informational basis.

The problem of how the NRC can decide the adequacy of emergency planning in the face of FEMA's declared reluctance to make judgments on emergency planning in cases of state and local non-participation does not appear insoluble. Though FEMA has expressed its reluctance to make judgments in such circumstances, because of the degree of conjecture that would in FEMA's view be called for, we do not interpret its position as one of refusal to apply its expertise to the evaluation of a utility plan. For FEMA to engage in the evaluation of a utility plan would necessitate no retreat from its stated view that it is highly desirable to have, for each nuclear power plant, a state or local plan with full state and local participation in emergency planning, including emergency exercises. (The Commission shares that view.) FEMA's advice would undoubtedly include identification of areas in which judgments are necessarily conjectural, and NRC's overall judgment on whether a utility's plan is adequate would in turn have to take account of the uncertainties included in FEMA's judgment. Beyond a certain point, uncertainty as to underlying facts would plainly make a positive finding on "reasonable assurance" increasingly difficult. These are issues, however, which can be addressed in the case-by-case adjudications on individual fact-specific situations. It should be noted that while the rule makes clear that ultimate decisional authority resides with NRC, it does envision a role for FEMA in the evaluation of utility plans, although section 109 of the NRC Authorization Act of 1980 did not specify any role for

FEMA in the evaluation of utility plans (as opposed to state and local plans).

Issue #8: If this is a national policy question, why doesn't the Commission leave the issue to the Congress to resolve?

Congress did address, in 1980, the issue of what should be done in the event there is no acceptable state or local emergency plan: it directed the NRC to evaluate a state, local, or utility plan to determine whether it provided "reasonable assurance that public health and safety is not endangered by operation of the facility concerned." Perhaps because it was overly optimistic that there would be an acceptable state or local plan in every case, the Commission did not, except in general terms (at 10 CFR 50.47(c)), provide in its regulations for the evaluation of a utility plan. The present rule is an effort to make up for that omission by incorporating provisions implementing the Congress's 1980 policy decision into the NRC's rules. As noted elsewhere, the 1980 statute, twice re-enacted, has expired, but the NRC does not need the specific authority of that statute to adopt this rule, which is promulgated pursuant to the NRC's general authority, under section 161(b) and other provisions of the Atomic Energy Act, to regulate the use of nuclear energy.

The House of Representatives, as has been described above, voted 261–160 on August 5, 1987 to reject an amendment which would have barred the application of this rule to two specific plants. The Congress is thus well aware of the Commission's emergency planning rulemaking.

For the Commission to terminate its rulemaking and ask the Congress to address the policy issues involved thus seems unwarranted at this time. The Commission is still well within the framework of the guidiance which the Congress gave it in 1980 (and in the two re-renactments of the statute) and also well within its rulemaking authority. It has yet to carry through that guidance to the point of making an adjudicatory decision on the adequacy of a utility plan. If and when the Commission determines, through adjudications in individual cases, that there is a continuing problem which only Congressional action can solve, it can so notify the Congress, but that point has not yet been reached.

Issue #9: Doesn't the proposed rule still leave open the possibility that state or local action or inaction can have the effect of blocking operation of a plant? If so, how can the proposed rule be said to effectuate the Congressional intent that licensees not be penalized for the inaction or inadequate action of state and local authorities?

Yes, the proposed rule does leave open the possibility that state or local non-participation can indirectly block the operation of a nuclear plant. This is so because under the particular facts of an individual case it may be impossible for the NRC to conclude that a utility plan is adequate, as defined in this rule. That does not mean, however, that the Congress's intent, as expressed in the 1980 statute and its re-enactments, is thereby frustrated. The Congress was concerned that utilities not be "penalized," but not to the extent that it was willing to countenance operation of a nuclear power plant in a situation where the public was not adequately protected. Congress intended to give a utility the opportunity to demonstrate that its plan provided "reasonable assurance," but it also provided that the NRC could not permit a plant to operate unless it found that the utility had met that burden.

Issue #10: Will the proposed rule discourage cooperation between licensees and state and local governments in emergency planning?

There is no reason to believe that the rule would discourage cooperation between licensees and state and local governments in emergency planning. Realistically, the only way in which the rule could discourage such cooperation would be if utilities were to decide that because of the new rule, they had less of an incentive to be accommodating to the needs and desires of state and local authorities. That might be a possible result if it appeared that the new rule make it easy and fast for a utility to obtain approval for its plan in cases of state and local non-participation.

In reality, it is likely to be much more difficult and time-consuming for a utility to obtain approval of its plan in the face of state and local opposition. The problems highlighted by this rulemaking are likely, if anything, to impress utilities anew with the desirability of doing everything necessary to obtain and retain full state and local participation in emergency planning.

Issue #11: Is the proposed rule based on an NRC consideration of economic costs?

The NRC rule is an effort to bring the NRC's regulations more clearly into line with a policy decision made by the Congress in 1980. The NRC's rule is thus based on economic considerations only to the extent that the Congress's policy decision of 1980 was based on economic considerations. In the Conference Report on the NRC Authorization Act of 1980 (H.96–1070, June 4, 1980), the conferees stated that they did not wish utilities to be "penalized" in situations in which there was no acceptable state or local plan. That could be taken as a reference to economic costs or simply to considerations of fairness, in that the issue was whether a utility was to be barred from operating a plant by the actions of third parties over which it had no control.

The NRC's motivation in promulgating this rule is not economics. Its motivation is to assure that the NRC is in a position to make the decisions that Congress intended that it make, and that the Commission has declared that it would make.

Issue #12: Is the proposed rule intended to read states and localities out of the emergency planning process?

Emphatically not. The rule leaves the existing regulatory structure unchanged for cases in which state and local authorities elect to participate in emergency planning. The NRC, in common with the Congress and FEMA, regards full state and local participation in emergency planning to be necessary for optimal emergency planning. The rule change is directed to the question of what the NRC's regulatory approach should be in which states and localities decide to take *themselves* out of the emergency planning process. Ideally, in the NRC's view, the new rule would never have to be used, because states and localities would never refuse to participate in emergency planning.

Issue #13: Does the proposed rule alter the place of emergency planning in the overall safety finding that the Commission must make?

It does not. As described above, the Commission must make both a finding of "adequate protective measures * * * in an emergency" and an overall safety finding of "reasonable assurance that the health and safety of the public will not be endangered" (10 CFR 50.35(c), implementing section 182 of the Atomic Energy Act, 42 U.S.C. 2232). The rule does nothing to alter either the requirement that emergency planning must be found adequate or the place of emergency planning in the overall safety finding.

Issue #14: What effect if any does the proposed rule have on nuclear plants that are already in operation?

The rule does not specifically apply to plants that already have operating licenses. As described above, 10 CFR 50.54(s)(2)(ii) of the Commission's regulations already provides a mechanism (the "120-day clock") for addressing situations in which deficiencies are identified in emergency planning at operating plants. To the extent that this rule provides criteria by

which a utility plan would be judged by state and local withdrawal from participation in emergency planning, those criteria would presumably be of assistance to decisionmakers in determining, under 10 CFR 50.54(s)(2)(ii), whether remedial action should be taken, and if so, what kind, where deficiencies in emergency planning remain uncorrected after 120 days.

Issue #15: Does the Commission's rule mean that the NRC does not have to find that a utility plan would offer protection equivalent to what a plan with full state and local participation would provide?

As stated previously, under the rule adopted in this notice, a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in emergency. The rule recognizes—as did Congress when it enacted and re-enacted the provisions of Section 109 of the NRC Authorization Act of 1980—that no utility plan is likely to be able to provide the same degree of public protection that would obtain under ideal conditions, i.e. a state or local plan with full state and local participation, but that it may nevertheless be adequate.

The Commission's rule, as modified and clarified, would establish a process by which a utility plan can be evaluated against the same standards that are used to evaluate a state or local plan (with allowances made both for those areas in which compliance is infeasible because of governmental non-participation and for the compensatory measures proposed by the utility). It must be recognized that emergency planning rules are necessarily flexible. Other than "adequacy," there is no uniform "passing grade" for emergency plans, whether they are prepared by a state, a locality, or a utility. Rather, there is a case-by-case evaluation of whether the plan meets the standard of "adequate protective measures . . . in the event of an emergency." Likewise, the acceptability of a plan for one plant is not measured against plans for other nuclear plants. The Commission, in its 1986 *LILCO* decision, stressed the need for flexibilty in the evaluation of emergency plans. In that decision, the Commission observed that it "might look favorably" on a utility plan "if there was reasonable assurance that it was capable of achieving dose reductions in the event of an accident that are generally comparable to what might be accomplished with government cooperation." 24 NRC 22, 30. We do not read that decision as requiring a finding of the precise dose reductions that would be accomplished either by the utility's plan or by a hypothetical plan that had full state and local participation: such findings are never a requirement in the evaluation of emergency plans. The final rule makes clear that every emergency plan is to be evaluated for adequacy on its own merits, without reference to the specific dose reductions which might be accomplished under the plan or to the capabilities of any other plan. It further makes clear that a finding of adequacy for any plan is to be considered generally comparable to a finding of adequacy for any other plan.

The rule change is designed to establish procedures and criteria governing the case-by-case adjudicatory evaluation, at the operating license review stage, of the adequacy of emergency planning in situations in which state and/or local authorities decline to participate further in emergency planning. It is not intended to assure the licensing of any particular plant or plants. The rule is intended to remedy the omission of specific procedures for the evaluation of a utility plan from the NRC's existing rules, adopted in 1980. In providing for the evaluation of a utility plan, however, the rule represents no departure from the approach envisioned in 1980 by the Congress and by the Commission. In 1980, the supplementary information to NRC's final rule stated that the rule was consistent with the approach taken by Congress in Section 109 of the NRC Authorization Act of 1980 (which, in a compromise between House and Senate versions, provided for the NRC to evaluate a utility's emergency plan in situations where a state or local plan was either nonexistent or inadequate), though the rule itself included no explicit provisions governing the NRC's evaluation of a utility plan in such circumstances. It should be emphasized that the rule is not intended to diminish public protection from the levels previously established by the Congress or the Commission's rules, since the Commission's rules and the Congress have since 1980 provided for a two-tier approach to emergency planning. The rule takes as its starting point the Congressional policy decision reflected in section 109 of the NRC Authorization Act of 1980. That statute adopted a two-tier approach to emergency planning. The preferred approach was for operating licenses to be issued upon a finding that there is a "State or local radiological emergency response plan * * * which complies with the Commission's standards for such plans," but failing that, it also permitted licensing on a showing that there is a "State, local, or utility plan which provides reasonable assurance that the public health and safety is not endangered by operation of the facility concerned."

Under the Commission's 1980 rules, the regulatory provision that implemented the second of the two tiers of Section 109 was general and unspecific. The relevant regulation, 10 CFR 50.47(c), allowed a nuclear power plant to be licensed to operate, notwithstanding its failure to comply with the planning standard of 10 CFR 50.47(b), on a showing that "deficiencies in the plans are not significant for the plant in question, that adequate interim compensating measures have been or will be taken promptly, or that there are other compelling reasons to permit plant operation," without defining those terms further. The Commission currently believes that the planning standards of 10 CFR 50.47(b), which are used to evaluate a state or local plan, also provide an appropriate framework to evaluate a utility plan. Therefore, the new rule provides for the first time that where a utility plan is submitted, in a situation of state and/or local non-participation in emergency planning, it will be evaluated for adequacy against the same standards used to evaluate a state or local plan. However, due allowance will be made both for the non-participation of the state and/or local governmental authorities and for the compensatory measures proposed by the utility in reaching a determination whether there is "reasonable assurance that adequate protective measures" can and will be taken.

The approach reflected in this rule amplifies and clarifies the guidance provided in the Commission's decision in *Long Island Lighting Co.*, (Shoreham Nuclear Power Station, Unit 1), CLI–86–13, 24 NRC 22 (1986). The rule incorporates the "realism doctrine," set forth in that decision, which holds that in an actual emergency, state and local governmental authorities will act to protect the public, and that it is appropriate therefore for the NRC, in evaluating the adequacy of a utility's emergency plan, to take into account the probable response of state and local authorities, to be determined on a case-by-case basis.

That decision also included language which could be interpreted as envisioning that the NRC must estimate the radiological dose reductions which a utility plan would achieve, compare them with the radiological dose reductions which would be achieved if there were a state or local plan with full

state and local participation in emergency planning, and permit licensing only if the dose reductions are "generally comparable." Such an interpretation would be contrary to NRC practice, under which emergency plans are evaluated for adequacy without reference to numerical dose reductions which might be accomplished, and without comparing them to other emergency plans, real or hypothetical. The final rule makes clear that every emergency plan is to be evaluated for adequacy on its own merits, without reference to the specific dose reductions which might be accomplished under the plan or to the capabilities of any other plan. It further makes clear that a finding of adequacy for any plan is to be considered generally comparable to a finding of adequacy for any other plan.

The *Long Island Lighting Co.* decision included the observation that in an accident, the "best effort" of state and county officials would include utilizing the utility's plan as "the best source for emergency planning information and options." 24 NRC 22, 31. This rule leaves it to the Licensing Board to judge what form the "best efforts" of state and local officials would take, but that judgment would be made in accordance with certain guidelines set forth in the rule and explained further below. The rulemaking record strongly supports the proposition that state and local governments believe that a planned response is preferable to an ad hoc one. Therefore it is only reasonable to suppose that in the event of a radiological emergency, state and local officials, in the absence of a state or local radiological emergency plan approved by state and local governments, will either look to the utility and its plan for guidance or will follow some other plan that exists. Thus, the presiding Licensing Board may presume that state and local govermental authorities will look to the utility for guidance and generally follow its plan in an actual emergency; however, this presumption may be rebutted by, for example, a good faith and timely proffer or an adequate and feasible state or local radiological response plan which would in fact be relied upon in an emergency. The presiding Licensing Board should not hesitate to reject any claim that state and local officials will refuse to act to safeguard the health and safety of the public in the event of an actual emergency. In actual emergencies, state, local, and federal officials have invariably done their utmost to protect the citizenry, as two hundred years of American history amply demonstrates.

The rule thus establishes the framework by which the adequacy of emergency planning, in cases of state and/or local non-participation, can be evaluated on a case-by-case basis in operating license proceedings. The rule does not presuppose, nor does it dictate, what the outcome of that case-by-case evaluation will be. As with other issues adjudicated in NRC proceedings, the outcome of case-by-case evaluations of the adequacy of emergency planning using a utility's plan will be subject to multiple layers of administrative review within the Commission and to judicial review in the courts.

Backfit Analysis

This amendment does not impose any new requirements on production or utilization facilities; it only provides an alternative method to meet the Commission's emergency planning regulations. The amendment therefore is not a backfit under 10 CFR 50.109 and a backfit analysis is not required.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. The proposed rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the small business size standards set forth in Small Business Administration regulations in 13 CFR Part 121.

Paperwork Reduction Act

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget, approval No. 3150–0011.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and Recordkeeping requirements.

Environmental Assessment and Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. The Commission has prepared, in support of this finding, an environmental assessment which is available for inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street NW., Washignton, DC.

Regulatory Analysis

The Commission has prepared a regulatory analysis for this regulation. This analysis further examines the costs and benefits of the proposed action and the alternatives considered by the Commission. The analysis is available for inspection and copying, for a fee, at the NRC Public Document Room, 1717 H Street, NW., Washington, DC.

For the reasons set out in the preamble, and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the Commission is adopting the following amendments to 10 CFR Part 50:

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68, Stat. 936, 937, 148, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.57(d), 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2071, 2073 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100–50.102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), secs. 50.10(a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); secs. 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and secs. 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

§ 50.47 [Amended]

2. In 10 CFR Part 50, paragraph (c)(1) of § 50.47 is revised to read as follows:

* * * * *

(c)(1) Failure to meet the applicable standards set forth in paragraph (b) of this section may result in the

Commission declining to issue an operating license; however, the applicant will have an opportunity to demonstrate to the satisfaction of the Commission that deficiencies in the plans are not significant for the plant in question, that adequate interim compensating actions have been or will be taken promptly, or that there are other compelling reasons to permit plant operations. Where an applicant for an operating license asserts that its inability to demonstrate compliance with the requirements of paragraph (b) of this section results wholly or substantially from the decision of state and/or local governments not to participate further in emergency planning, an operating license may be issued if the applicant demonstrates to the Commission's satisfaction that:

(i) The applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or substantially the result of the non-participation of state and/or local governments.

(ii) The applicant has made a sustained, good faith effort to secure and retain the participation of the pertinent state and/or local governmental authorities, including the furnishing of copies of its emergency plan.

(iii) The applicant's emergency plan provides reasonable assurance that public health and safety is not endangered by operation of the facility concerned. To make that finding, the applicant must demonstrate that, as outlined below, adequate protective measures can and will be taken in the event of an emergency. A utility plan will be evaluated against the same planning standards applicable to a state or local plan, as listed in paragraph (b) of this section, with due allowance made both for—

(A) Those elements for which state and/or local non-participation makes compliance infeasible and

(B) The utility's measures designed to compensate for any deficiencies resulting from state and/or local non-participation.

In making its determination on the adequacy of a utility plan, the NRC will recognize the reality that in an actual emergency, state and local government officials will exercise their best efforts to protect the health and safety of the public. The NRC will determine the adequacy of that expected response, in combination with the utility's compensating measures, on a case-by-case basis, subject to the following guidance. In addressing the circumstance where applicant's inability to comply with the requirements of paragraph (b) of this section is wholly or substantially the result of non-participation of state and/or local governments, it may be presumed that in the event of an actual radiological emergency state and local officials would generally follow the utility plan. However, this presumption may be rebutted by, for example, a good faith and timely proffer of an adequate and feasible state and/or local radiological emergency plan that would in fact be relied upon in a radiological emergency.

Appendix E—[Amended]

3. In 10 CFR Part 50, Appendix E, a new paragraph 6 is added to section IV.F to read as follows:

6. The participation of state and local governments in an emergency exercise is not required to the extent that the applicant has identified those governments as refusing to participate further in emergency planning activities, pursuant to 10 CFR 50.47(c)(1). In such cases, an exercise shall be held with the applicant or licensee and such governmental entities as elect to participate in the emergency planning process.

Dated at Washington, DC, this 29th day of October, 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[**Editorial note:** The following regulatory analysis and environmental assessment will not appear in the Code of Federal Regulations]

Regulatory Analysis—Evaluation of the Adequacy of Offsite Emergency Planning for Nuclear Power Plants at the Operating License Review Stage Where State and/or Local Governments Decline to Participate in Offsite Emergency Planning

Statement of the Problem

In 1980, Congress enacted provisions dealing with emergency planning for nuclear power plants in the NRC Authorization Act for fiscal year 1980. Section 109 of that Act provided for the NRC to review a utility's emergency plan in situations in which a state or local emergency plan either did not exist or was inadequate. The NRC published regulations later than year that were designed to be consistent with the Congressionally mandated approach, but they did not include specific mention of utility plans. The absence of such a provision has led to uncertainty about the NRC's authority to consider a utility plan and the criteria by which such a plan would be judged. The present rulemaking is designed to clarify both the NRC's obligation to consider a utility plan at the operating license stage in cases of state and/or local non-participation in emergency planning and the standards against which such a plan would be evaluated.

Objective

The objective of the proposed amendments are to implement the policy underlying the 1980 Authorizaiton Act and to resolve, for future licensing, what offsite emergency planning criteria should apply where state or local governments decide not to participate in offsite emergency planning or preparedness.

Alternatives

Five alternatives were considered, including leaving the existing rules unchanged. The pros and cons of these alternatives are discussed in the rule preamble published in the **Federal Register**.

Consequences

NRC

The amendments will probably not impact on NRC resources currently being used in licensing cases because current NRC policy, developed in the adjudicatory case law, is to evaluate utility plans as possible interim compensating actions under 10 CFR 50.47(c)(1). Thus, while there could be extensive litigation and review regarding whether the rule's criteria are met, this would likely be similar to the review and litigation under current practice.

Other Government Agencies

No impact on other agency resources should result with the possible exception that FEMA will need to devote resources to develop criteria for review of utility plans and/or to review the plans on a case-by-case basis.

Industy

Impacts on the industry are speculative because there is no way to predict, in advance of their actual application, whether any partcular utility plan will satisfy the rule. However, industry should generally benefit from knowing that rules are in place so that plans for compliance can be formulated.

Public

Under the rule being adopted a utility plan, to pass muster, is required to provide reasonable assurance that adequate protective measures can and will be taken in an emergency. The rule recognizes—as did Congress when it enacted and re-enacted the provisions of Section 109 of the NRC Authorization Act of 1980—that while no utility plan is likely to be able to provide precisely the same degree of public protection that would obtain under ideal conditions, i.e. a state or local plan with full state and local participation, such a plan may nevertheless be adquate. The rule starts from the premise that accidents can happen, and that at every plant, adequate emergency planning measures are needed to protect the public in the event an accident occurs. Whether in fact a particular utility plan will be found adequate would be a matter for adjudication in individual licensing proceedings.

Impact on Other Requirements

The proposed amendments would not affect other NRC requirements.

Constraints

No constraints have been identified that affect implementation of the proposed amendments.

Decision Rationale

The decision rationale is set forth in detail in the preamble to the rule change published in the **Federal Register.**

Implementation

The rule should become effective 30 days after publication in the **Federal Register.** Implementation will involve cooperation with FEMA and the development of FEMA/NRC criteria for review of utility plans may be required before the rule is applied to specific cases.

Environmental Assessment for Amendments to Emergency Planning Regulations Dealing With Evaluation of Offsite Emergency Planning for Nuclear Power Plants at the Operating license Review Stage Where State and/or Local Governments Decline to Participate in Offsite Emergency Planning

Identification of the Action

The Commission is amending its regulations to provide criteria for the evaluation at the operating license stage of offsite emergency planning where, because of the non-participation of state and/or local governmental authorities, a utility has proposed its own emergency plan.

The Need for the Action

As described in the **Federal Register** notice accompanying the final rule, the Commission's emergency planning regulations, promulgated in 1980, did not explicitly discuss the evaluation of a utility emergency plan, although Congress expressly provided that in the absence of a state or local emergency plan, or in cases where a state or local plan was inadequate, the NRC should consider a utility plan. That omission has led to uncertainty as to whether the NRC is empowered to consider a utility plan in cases of state and/or local non-participation, as well as about what the standards for the evaluation of such a plan would be.

Alternatives Considered

The Commission published a proposed rule change on March 6, 1987, at 52 FR 6980. In deciding on a final rule, the Commission considered four options in addition to the one reflected in the final rule. These were: issuance of the rule as originally proposed and described; issuance of a rule making clear that in cases of state and/or local non-participation, licenses could be issued on the basis of the utility's best efforts; issuance of a rule barring the issuance of licenses in cases of state and/or local non-participation; and termination of the rulemaking without the issuance of any rule change.

Environmental Impacts of the Action

The rule does not alter in any way the requirement that for an operating license to be issued, emergency planning for the plant in question must be adequate. The rule is designed to effectuate the second track of the two-track approach adopted by the Congress in the NRC Authorization Act of 1980 and two successive authorization acts, as described in detail in the **Federal Register** notice. The rule does not affect the place of emergency planning in the overall safety finding which the Commission must make prior to the licensing of any plant. Accordingly, the rule change does not diminish public protection and has no environmental impact.

Agencies and Persons Consulted

A summary of the very numerous comments appears as part of the **Federal Register** notice. Shortly before presenting an options paper to the Commission, NRC representatives briefed representatives of the Federal Emergency Management Agency on the contents of the options paper.

Finding of No Significant Impact

Based on the above, the Commission has decided not to prepare an environmental impact statement for the rule changes.

[FR Doc. 87-25439 Filed 11-2-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R-0615]

Agricultural Loan Loss Amortization

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule with request for comments.

SUMMARY: This regulation implements Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA") which permits state member agricultural banks to amortize losses on qualified agricultural loans. The regulation describes the procedures and standards applicable to state member banks desiring to amortize losses under that statute. It also describes the manner in which such amortizations are to be done. Title VIII of CEBA requires regulations implementing Title VIII to be issued not less than 90 days after enactment, that is, by November 9, 1987. Therefore, the Board is publishing the rule as a final rule effective November 9, 1987, for the Call Report for December 31, 1987, but is allowing interested parties to comment through December 3, 1987. Should changes be indicated by the comments, the Board will endeavor to adopt them shortly after the close of the comment period but before the Call Report for December 31, 1987, is filed. Banks wishing to amortize losses may file an application any time after publication of the rule.

DATES: The rule will be effective November 9, 1987, and the first Call Report affected will be the Call Report for December 31, 1987. Comments must be received on or before December 3, 1987.

ADDRESSES: All comments should refer to Docket No. R-0615 and should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, or delivered to Room B-2223, 20th Street and Constitution Avenue NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Rhoger H. Pugh, Manager (202) 728-5883, Stanley B. Rediger, Senior Financial Analyst (202) 452-2629, Division of Banking Supervision and Regulation (202) 728-5883; Helen Lewis (202) 452-3490, Economist, Financial Reports Section, Division of Research and Statistics; or John Harry Jorgenson, Senior Attorney (202) 452-3778, Legal Division; Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired ONLY, Telecommunications Device for the Deaf, Earnestine Hill or Dorothea Thompson, (202) 452-3544.

SUPPLEMENTARY INFORMATION: Title VIII of the Competitive Equality Banking Act of 1987 ("CEBA") permits agricultural banks to amortize: (1) Losses on qualified agricultural loans shown on its annual financial statement for any year between December 31, 1983 and January 1, 1992; and (2) losses suffered as the result of an appraisal of other assets (related to a qualified agricultural loan) that it owned on January 1, 1983, or acquires prior to January 1, 1992. Title VIII of CEBA also requires that the federal banking agencies issue implementing regulations no later than 90 days after the effective date of the Act (that is, no later than November 9, 1987). This regulation is intended to comply with this requirement. The other federal banking agencies (the Office of the Comptroller of the Currency and the Federal Deposit Insurance Corporation ("FDIC")) are proposing substantially identical regulations containing only technical variations necessary to accommodate their own regulatory and organizational systems. The standards to be applied are unchanged.

Statutory Requirements for Loan Loss Amortization

Title VIII of CEBA includes the following elements: (1) To be eligible to amortize losses, a bank must meet the following requirements:

(a) Its deposits must be insured by the FDIC;

(b) It must be located in an area the economy of which is dependent upon agriculture;

(c) It must have assets of $100 million or less;

(d) It must have 25 per cent or more of its total loans in "qualified agricultural loans" (or, if such loans are less than 25 per cent, it must be recommended by its federal or state regulator to the FDIC as eligible);

(e) It must be in need of capital restoration, and it must have a plan to restore capital no later than the close of the amortization period;

(f) There must be no evidence that fraud or criminal abuse on the part of the bank led to the agricultural loan losses; and

(g) To remain eligible, the bank must agree to maintain in its loan portfolio a percentage of agricultural loans no lower than the percentage in its portfolio on January 1, 1986;

(h) The condition of the bank must not deteriorate to the point where it is no longer viable and fundamentally sound.

(2) A bank that is accepted as eligible may amortize, over a period of up to seven years, any loss on a qualified agricultural loan that would otherwise be reflected on the bank's annual financial statements for any year between and including 1984 and 1991. Amortization over a period of up to seven years is also permitted for losses on reappraisal or sale of real or personal property that was acquired in connection with a qualified agricultural loan and that the bank owned on January 1, 1983, or subsequently acquires prior to January 1, 1992.

(3) Amortization under the program will terminate on December 31, 1998, when all loans accepted for amortization through the January 1, 1992 closing date established by the statute will be fully amortized.

Definitions

The regulation will adopt a definition of "agricultural bank" which is essentially the same as the language of Title VIII of CEBA. The definition will be used to determine whether a bank making agricultural loans should be regarded as eligible to amortize losses on those loans. Included in the definition of an agricultural bank in Title VIII of CEBA is a bank which does not meet the agricultural loan volume test (that agricultural loans must be 25 per cent or more of total loans) but which the bank's federal or state regulator recommends to the FDIC for eligibility. Losses to be deferred may be included in determining whether a bank meets the agricultural loan volume test. Because of the regulation's flexibility in defining agricultural loans (see discussion below), it is anticipated that such recommendations rarely will be necessary.

The definition of "qualified agricultural loan" incorporates the definitions of "loans to finance agricultural production and other loans to farmers" and "loans secured by farm land" contained in the Schedule RC–C of the Federal Financial Institutions Examination Council's consolidated Reports of Condition and Income ("Call Report"). The Call Report definitions are virtually identical to those contained in Title VIII of CEBA but are more comprehensive and permit the agencies to use the Call Reports as the predominant monitoring device for the amortization program. Additionally, as suggested by Title VIII of CEBA, the Board has retained discretion to deem other types of loans and leases to be "qualified" and to recommend them to the FDIC as eligible if the requesting bank demonstrates those assets to be sufficiently related to agriculture.

While Title VIII of CEBA uses the phrase "area the economy of which is dependent on agriculture," the agencies have not attempted to describe such an agricultural area because the normal means of identifying such areas—income levels, revenue flows, acreage in production—are abnormally depressed due to the current state of the agricultural economy. Adopting a list of acceptable counties or geographic regions might leave the erroneous impression that a bank located outside such an arbitrary area could not qualify even though it might otherwise qualify as an "agricultural bank." Each application should include a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in an agricultural area.

Loss Amortization

The purpose of Title VIII of CEBA is best accomplished by permitting eligible banks to amortize losses on qualifying agricultural loans and other related assets that they would otherwise be required to charge off by reporting the amount of such deferred losses in new items in the asset and equity capital sections of the balance sheet of their Call Report. This approach will provide for the disclosure of the deferred losses, will not distort reported income, and will facilitate the monitoring of the bank's compliance with the loss deferral program through regular, quarterly Call Reports. Moreover, the full unamortized balance of the deferred losses will be included in primary capital for all federal regulatory and supervisory purposes by the three Federal banking agencies.

The provisions on loss amortization and reappraisal address two issues: (1) Which losses are subject to amortization, and (2) how they may be amortized. On the first issue, the regulation reflects Congress' clear intent that losses resulting from fraud or criminal abuse on the part of the bank, its officers, directors, or principal shareholders not be eligible for amortization. Accordingly, where a bank has been found eligible to participate in the loss amortization program, fraudulent losses will not be eligible for amortization. Additionally, it should be noted that Title VIII of CEBA requires there be "no evidence of" fraud or criminal abuse. Accordingly, under the regulation, it is not necessary that such fraud or criminal abuse be conclusively established to disqualify a loan or, as discussed below, a bank.

To be eligible for amortization under the regulation, a loss on a qualified agricultural loan must otherwise have been required to be reflected in the bank's financial statements for the years 1984 through 1991. Similarly, charge-offs that result from a reappraisal or sale of real or personal property may be amortized if the property is owned by the bank on or after November 9, 1987; was acquired in connection with a qualified agricultural loan; and was owned on or after January 1, 1983, or subsequently acquired before January 1, 1992.

With respect to the second issue, *i.e.*, the manner of amortization, Title VIII of CEBA provides that the loss shall be amortized over a period not to exceed seven years as provided in regulations issued by the federal banking agencies. The regulation provides that amortization shall occur on a quarterly straight-line basis.

The regulation permits qualified losses to be amortized over a period not to exceed seven years so as to be fully amortized by December 31, 1998. Losses sustained in years prior to the effective date of the regulation would be treated as if amortized over seven years beginning on the date of the loss. Thus, a bank could take only the amortizations which remain for such a loss after it enters the program. For example, if a bank began to participate in the program in the last quarter of 1987 and had a loss sustained in the fourth quarter of 1985, that loss would be amortized over a seven year period beginning in 1985. Therefore, 5/7ths of the 1985 loss would remain to be amortized as of December 31, 1987.

Accounting for Amortization

The regulation directs that in accounting for loss amortization, a bank should restate its capital and other relevant accounts in accordance with the FFIEC instructions for the Consolidated Reports of Condition and Income. Those instructions will continue to require the reporting of actual loan losses and recoveries through the Allowance for Loan and Lease Losses but will then permit losses eligible for deferral to be reinstated in new items in the asset and equity sections of the balance sheet on the Report of Condition. Additionally, the regulation provides that any resulting increase in the capital account shall be treated as primary capital for purposes of determining the bank's compliance with the various federal regulatory requirements, guidelines, and standards affecting or related to capital.

Eligibility

Under the regulation, any bank desiring to participate in the program will be required to submit to the appropriate federal banking agency a proposal establishing both its eligibility and the eligibility of the losses it proposes to amortize. In order to be eligible, the proposing bank must be an "agricultural bank" as defined in the regulation.

Further, the proposing bank's current capital must be in need of restoration, but the bank also must be an economically viable, fundamentally sound institution. Therefore, a bank with capital below levels established by the Board's Regulation Y (12 CFR Part 225), or which is subject to an enforcement action related to capital levels can be eligible. Acceptance of a bank for loss amortization with an adequate capital plan will normally relieve the bank of any inconsistent provisions dealing with capital in any extant Board order, agreement, or directive.

The legislative history of Title VIII of CEBA indicates that the Congress intended that only banks with capital in need of restoration be permitted to amortize losses. Banks which have experienced capital declines but which retain an acceptable amount of capital have no need to amortize or defer their recognition of losses. Congress clearly was aware of this fact in that it required as an essential condition of eligibility the submission of a plan to restore capital to a level acceptable to the banking agency.

In order to be approved, the capital plan must be based upon realistic projections as to earnings and other material factors which accurately reflect conditions in the bank's market area. Further, it should address dividend levels, compensation to directors, executive officers and individuals who have a controlling interest and their related interests; and payments for services or products furnished by affiliated companies.

Viability is not defined in the regulation. It is a judgment based on many variables. One measure of viability would be whether a bank's traditional funding sources and demand for loans of acceptable quality within its market area are sufficient to permit the bank to earn a reasonable profit in a normal environment while achieving and maintaining a capital level that enables the bank to operate throughout the normal downturns in economic cycles without suffering severe financial problems. Usually, a bank will be considered viable if it has a reasonable prospect of remaining a going concern throughout the program and at the end of the amortization period.

Congress intended that only banks with reasonable prospects for survival should be permitted to amortize losses; the legislative history indicates that Title VIII of CEBA was intended to permit "fundamentally sound banks to weather this storm." Cong. Rec. (Daily ed.) S3941 (March 26, 1987). To permit non-viable institutions to amortize losses would merely increase the loss exposure of the FDIC with no countervailing public benefit.

The regulation does not prescribe any absolute level of capital to be achieved. The Board's capital adequacy guidelines (referenced at 12 CFR 208.13 as Appendix A to the Board's Regulation Y, 12 CFR Part 225; Fed. Res. Reg. Serv., ¶ 3–1506) already establish minimum capital standards for well run banks in satisfactory financial condition. Each bank's individual circumstances will be evaluated during the review of the requisite capital plan. This approach parallels the current practice under the Board's existing capital forbearance programs.

An additional criterion for eligibility is that there be no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans. Literally read, Title VIII of CEBA would seem to disqualify any bank in which there was evidence that losses resulted from fraud or criminal abuse no matter how small in amount the losses were. Certainly, where insider fraud results in significant agricultural loan losses, the bank should be disqualified. Congress intended Title VIII to "provide assistance for agricultural banks, who through no fault of their own, are being squeezed by the ongoing agricultural crisis * * *" *Id.* However, a reasonable interpretation of Title VIII, adopted in the regulation, would disqualify only banks where significant fraud losses occurred.

Conditions on Acceptance

The regulation specifies that any acceptance of a bank's proposal will be subject to certain conditions. These conditions are designed to ensure that a bank continues to meet the eligibility requirements and is properly amortizing losses under the program. First, the bank will be required to fully adhere to the approved capital plan or to obtain the prior approval of any modifications to the plan. Second, the bank will be required to maintain accounting records adequate to document the amount and timing of deferrals, repayments, and amortizations for each loss subject to deferral under the program. Third, the bank must remain a viable, fundamentally sound institution. Fourth, the bank must agree to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its portfolio a percentage of agricultural loans which is not lower than the percentage of such loans in its loan portfolio on January 1, 1986. Fifth, participating banks will be required to provide the Board or the Reserve Bank in whose District the bank is located, upon request, any information necessary to monitor the bank's amortization or its compliance with conditions, or its continued eligibility under the program. The failure of a bank to comply with any condition is grounds for revocation of an acceptance and termination of eligibility to participate in the loss deferral program. Finally, a violation of a condition may result in an administrative action against the bank under 12 U.S.C. 1818(b) because such conditions are imposed in connection with the granting of a request.

Submission of Proposals

Finally, the regulation lists the content of proposals to be submitted by banks desiring to participate in loss amortization. In addition to the items previously discussed, the proposal shall include a copy of a resolution by the bank's Board of Directors authorizing submission of the proposal. This is to ensure that the Board of Directors has been fully informed. Proposals may be submitted to the Federal Reserve Bank for the Federal Reserve District in which the bank is located on or after November 9, 1987.

Notice and Public Comment

The Board finds good cause for asking for public comment concurrently with the adoption of the rule, for not seeking public comment prior to the adoption of the rule, and for having the rule effective less than thirty days after publication. First, Title VIII of CEBA requires that regulations implementing the Title be implemented no later than 90 days after the effective date of that Title (that is, by November 9, 1987). Therefore, this regulation must be effective on November 9, 1987, which is less than thirty days of the publication date. Second, the Call Report for December 31, 1987, is the first accounting report that could be affected by this regulation, and it will not be due until after the close of the comment period. Thus, any eligible bank receiving approval to amortize loans on the basis of the regulation in its current form will have ample time prior to filing its Call Report for December 31, 1987, to make any adjustments necessary because of amendments to this rule resulting from any comments received. Accordingly, the Board believes that notice and public participation beyond that provided for is impracticable, unnecessary and contrary to the public interest.

Information Collection

The information to be included in an application and all information needs under the loan loss deferral program are contained in a new information collection, the "Report by Banks Proposing to Amortize Losses on Qualified Agricultural Loans" (form FR 4020; OMB No. 7100–0226). This report was approved by the Board under delegated authority from the Office of Management and Budget ("OMB") at the same time the Board approved this final rule. Notice of the implementation of this information collection is provided in a separate **Federal Register** notice published contemporaneously with this final rule.

In addition to the information required to establish eligibility under the program, certain continuing information will be required for monitoring. For this purpose, the Board and the other agencies intend to rely mainly on the Reports of Condition and Income (FFIEC 031–034; OMB No. 7100–0036). A proposal requesting approval to make the necessary changes to these reports for the December 31, 1987, report date is being submitted shortly to OMB. A separate **Federal Register** notice regarding those changes will be published at the time the proposal is submitted to OMB.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments would not have any effect on many depository institutions, and any adverse impact on small depositories affected (which only occurs if an institution chooses to take advantage of this regulation) would likely be outweighed by the benefits bestowed by the regulation on these small depository institutions.

List of Subjects in 12 CFR Part 208

Banks, Banking, State member banks, Applications, Recordkeeping, Flood insurance, Capital.

Pursuant to the Board's authority under Title VIII of the Competitive Equality Banking Act of 1987 (Pub. L. No. 100–86), and section 9 of the Federal Reserve Act, 12 U.S.C. 321 *et seq.*, the Board is amending 12 CFR Part 208 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for 12 CFR Part 208 is revised to read as follows:

Authority: Sections 9, 11, and 21 of the Federal Reserve Act (12 U.S.C. 321–338, 248, and 466); sections 4 and 13(j) of the Federal Deposit Insurance Act (12 U.S.C. 1814 and 1823(j)); and sections 907 and 908 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906 and 3907).

2. A new § 208.15 is added as follows:

§ 208.15 Agricultural loan loss amortization.

(a) *Definitions.* For purposes of this section:

(1) "Agricultural Bank" means a bank:

(i) The deposits of which are insured by the Federal Deposit Insurance Corporation;

(ii) Which is located in an area of the country the economy of which is dependent on agriculture;

(iii) Which has total assets of $100,000,000 or less as of the most recent Report of Condition; and

(iv) Which has:

(A) At least 25 percent of its total loans in qualified agricultural loans; or

(B) Less than 25 percent of its total loans in qualified agricultural loans, but which bank the Board or the Reserve Bank in whose District the bank is located or its primary state regulator has recommended to the Federal Deposit Insurance Corporation for eligibility under this part.

(2) "Qualified Agricultural Loan" means:

(i) Loans qualifying as "loans to finance agricultural production and other loans to farmers" or as "loans secured by farm land" for purposes of Schedule RC–C of the FFIEC Consolidated Report of Condition;

(ii) Other loans or leases that a bank proves to be sufficiently related to agriculture for classification as an agricultural loan by the Board or the Reserve Bank in whose District the bank is located; and

(iii) the remaining unpaid balance of any loans, as described in paragraph (a)(2)(i) and (ii) of this section, that have been charged off since January 1, 1984, and that qualify for deferral under this regulation.

(3) "Accepting Official" means:

(i) The Reserve Bank in whose District the bank is located; or

(ii) The Director of the Division of Banking Supervision and Regulation in cases in which the Reserve Bank cannot determine that the bank qualifies under the regulation.

(b) *Loss amortization and reappraisal.* (1) Provided that there is no evidence that the loss resulted from fraud or criminal abuse on the part of the bank, its officers, directors, or principal shareholders, a bank that has been accepted under this section may, in the manner described below, amortize in its Reports of Condition and Income:

(i) Any loss on any qualified agricultural loan that the bank reflected in its annual financial statements for any year between and including 1984 and 1991; and

(ii) Any loss reflected in its financial statements resulting from a reappraisal or sale of currently owned property, real or personal, that it acquired in connection with a qualified agricultural loan and that it owned on January 1, 1983, and any such additional property that it acquires on or before December 31, 1991.

(2) Amortization under this section shall be computed over a period not to exceed seven years on a quarterly straight-line basis commencing in the first quarter after the loan was or is charged off so as to be fully amortized not later than December 31, 1998.

(c) *Accounting for amortization.* Any bank which is permitted to amortize losses in accordance with paragraph (b), of this section, may restate its capital and other relevant accounts and account for future authorized deferrals and amortizations in accordance with the instructions to the FFIEC Consolidated Reports of Condition and Income. Any resulting increase in the capital account

shall be included in primary capital as per section 208.13 of this Part.

(d) *Eligibility.* A proposal submitted in accord with paragraph (f) shall be accepted, subject to the conditions described in paragraph (e), if the Accepting Official finds:

(1) The proposing bank is an agricultural bank;

(2) The proposing bank's current capital is in need of restoration, but the bank remains an economically viable, fundamentally sound institution;

(3) There is no evidence that fraud or criminal abuse by the bank or its officers, directors or principal shareholders led to significant losses on qualified agricultural loans and related assets; and

(4) The proposing bank has submitted a capital plan approved by the Accepting Official that will restore its capital to an acceptable level.

(e) *Conditions on acceptance.* All acceptances of proposals shall be subject to the following conditions:

(1) The bank shall fully adhere to the approved capital plan and shall obtain the prior approval of the Accepting Official for any modifications to the plan;

(2) With respect to each asset subject to loss deferral under the program, the bank shall maintain accounting records adequate to document the amount and timing of the deferrals, repayments and amortizations;

(3) The financial condition of the bank shall not deteriorate to the point where it is no longer a vaible, fundamentally sound institution;

(4) The bank agrees to make a reasonable effort, consistent with safe and sound banking practices, to maintain in its loan portfolio a percentage of agricultural loans not lower than the percentage of such loans in its loan portfolio on January 1, 1986; and

(5) The bank shall agree to provide the Accepting Official, upon request, with such information as the Accepting Official deems necessary to monitor the bank's amortization, its compliance with conditions, and its continued eligibility.

(f) *Submission of proposals.* (1) A bank wishing to amortize losses on qualified agricultural loans or other related assets shall submit a proposal to the appropriate Accepting Official.

(2) The proposal shall contain the following information:

(i) Name and address of the bank;

(ii) Information establishing that the bank is located in an area the economy of which is dependent on agriculture; the information could consist of a description of the bank's location, dominant lines of commerce in its service area, and any other information the bank believes will support the contention that it is located in such an area.

(iii) A copy of the bank's most recent Report of Condition and Income;

(iv) If the Report of Condition and Income fails to show that at least 25 percent of the bank's total loans are qualified agricultural loans, the basis upon which the bank believes that it should be declared eligible to amortize losses;

(v) A capital plan demonstrating that the bank will achieve an acceptable capital level not later than the end of the bank's amortization period. The plan should provide for a realistic improvement in the bank's capital, over the course of the amortization period, from earnings retention, capital injections, or other sources; and include specific information regarding dividend levels, compensation to directors, executive officers and individuals who have a controlling interest and in turn to their related interests, and payments for services or products furnished by affiliated companies.

(vi) A list of the loans and reappraised property upon which the bank proposes to defer loss including for each such loan or property, the following information:

(A) The name of the borrower, the amount of the loan that resulted in the loss, and the amount of the loss;

(B) The date on which the loss was declared;

(C) The basis upon which the loss resulted from a qualified agricultural loan;

(vii) A certification by the bank's chief executive officer that there is no evidence that the losses resulted from fraud or criminal abuse by the bank, its officers, directors, or principal shareholders;

(viii) A copy of a resolution by the bank's Board of Directors authorizing submission of the proposal; and

(ix) Such other information as the Accepting Official may require.

(g) *Revocation of eligibility.* The failure to comply with any condition in an acceptance or with the capital restoration plan is grounds for revocation of acceptance for loss amortization and for an administrative action against the bank under 12 U.S.C. 1818(b). Additionally, acceptance of a bank for loss amortization will not foreclose any administrative action against the bank that the Board may deem appropriate.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 28, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87-25359 Filed 11-2-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563b

[No. 87-1103]

Acquisition of Securities of Converting and Converted Insured Institutions

Date: October 23, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), is amending its regulations pertaining to the processing of applications involving offers to acquire or acquisitions of securities of converting and converted institutions whose accounts are insured by the FSLIC ("insured institutions"). The Board is amending its regulations to authorize the General Counsel, or his designee, to grant approval of any application to offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of a recently converted insured institution, submitted under § 563b.3(i)(3) of the Regulations of the Federal Savings and Loan Insurance Corporation ("Insurance Regulations"), which does not raise a significant issue of law or policy. The Board is also amending is regulations to specify where such applications are to be filed. The Board is not soliciting comment on the amendments because they involve matters of agency procedure that do not impose any new or additional compliance obligations on potential acquirers of the equity securities of insured institutions.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Steven J. Gray, Attorney (202) 377-7506; V. Gerard Comizio, Director (202) 377-6411, Corporate and Securities Division; or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure (202) 377-6459; Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Section 563b.3(i)(3) of the Insurance Regulations (the "Rule") provides that, without the prior written approval of the Corporation, no person shall directly or indirectly offer to acquire or acquire the beneficial ownership of more than ten percent of any class of equity security of an insured institution for a period of three years following the institution's conversion from mutual to stock form pursuant to Part 563b of the Insurance Regulations. 12 CFR 563b.3(i)(3) (1987). The restriction on acquisitions was originally adopted by the Board in Resolution No. 76–848, dated November 10, 1976, in recognition of the unique considerations presented by acquisition and changes in control of recently converted institutions. In Resolution No. 84–90, dated February 23, 1984, the Board extended the restriction, from a one year period to a three year period following a conversion, to facilitate the deployment of the conversion stock sale proceeds and protect the integrity of the conversion process. The Rule was adopted as a final rule essentially in its current form in Resolution No. 84–800, dated August 2, 1984.

The Board has gained considerable experience in the processing of applications submitted under the Rule in the past several years. Based on this experience and in the interest of more efficiently processing such applications, the Board has determined that it is appropriate and desirable to delegate authority to the General Counsel, or his designee, to grant approval of any application submitted under the Rule that does not raise a significant issue of law or policy. Any applications under the Rule that raise significant issues of law or policy or that the Office of General Counsel determines to recommend denial would continue to require consideration and action by the Board. The Board notes that the General Counsel has previously been delegated authority to act on applications for conversion under Subpart A of Part 563b, subject to certain enumerated exceptions. To implement this additional delegation of authority, the Board is revising § 563b.8(w)(2) to modify the exception to the general delegation of authority relating to applications under the Rule.

The Board is also revising § 563b.3(i)(3) to specify that (1) the original and one copy of all applications under the Rule should be filed with the Corporate and Securities Division of the Board's Office of General Counsel and (2) one copy of all such applications should be filed with the appropriate Supervisory Agent.

The Board had determined that the amendments will enhance the processing efficiency of applications under the Rule within the Board and will not impose any new or additional compliance obligations on potential acquirors of the equity securities of recently converted insured institutions. The Board therefore finds that observance of the public notice and comment period, pursuant to 5 U.S.C. 552(b) and 12 CFR 508.11, is unnecessary.

List of Subjects in 12 CFR Part 563b

Reporting and recordkeeping requirements, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 563b, Subchapter D, Chapter V, Title 12, *Code of Federal Regulations*, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563b—CONVERSIONS FROM MUTUAL TO STOCK FORM

Subpart A— Standard Conversions

1. The authority citation for Part 563b continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a) sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); secs. 2, 5, 48 Stat. 128, 132, as amended (12 U.S.C. 1462, 1464); secs. 401–403, 405–407, 48 Stat. 1255–1257, 1259–1260, as amended (12 U.S.C. 1724–1726, 1728–1730); sec. 480, 82 Stat. 5, as amended (12 U.S.C. 1730a); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c, 1–n, w); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563b.3 by revising paragraph (i)(3) to read as follows:

§ 563b.3 General principles of conversions.

* * * * *

(i) *Acquisition of the securities of converting and converted institutions*— (1) * * *

(3) *Prohibition on offers to acquire and acquisitions of stock for three years following conversion.* For a period of three years following the date of the completion of the conversion, no person shall directly or indirectly, offer to acquire or acquire the beneficial ownership of more than ten percent of any class of an equity security of an insured institution converted in accordance with the provisions of this Part 563b, without the prior written approval of the Corporation. Where any person, directly or indirectly, acquires beneficial ownership of more than ten percent of any class of any equity security of an insured institution converted in accordance with Part 563b, without the prior written approval of the Corporation as required by this section, the securities beneficially owned by such person in excess of ten percent shall not be counted as shares entitled to vote and shall not be voted by any person or counted as voting shares in connection with any matter submitted to the stockholders for a vote. For the purposes of this section, a person shall be deemed to have acquired beneficial ownership of more than ten percent (10%) of a class of equity security of an insured institution where the person holds any combination of stock or revocable or irrevocable proxies of the institution under circumstances that give rise to a conclusive control determination or rebuttable control determination under § 574.4 (a) and (b) of this chapter. The original and one copy of all applications for approval of the Corporation under this paragraph should be filed with the Corporate and Securities Division of the Board's Office of General Counsel and one copy of all such applications should be filed with the appropriate Supervisory Agent.

* * * * *

3. Amend § 563b.8 by revising paragraph (w)(2) to read as follows:

§ 563.8 Procedural requirements.

* * * * *

(w) *Delegation of authority—(1)* * * *

(2) *Approval of applications for conversion.* The Corporation delegates to the General Counsel or his designee the authority to approve but not to deny applications for conversion pursuant to the standards and restrictions set forth in this Subpart A, and to exercise any other authority to the Corporation under this Subpart A, excepting (i) the authority to waive any material provision of this Subpart A pursuant to § 563b.1(a); (ii) the authority to approve other equitable provisions in the plan of conversion under § 563b.3(d)(13); (iii) the authority to approve any application for conversion in regard to which an objection has been filed pursuant to § 563b.4(b)(1); and (iv) the authority to approve an application for approval to offer to acquire or to acquire more than 10 percent of the stock of a converted insured institution under § 563b.3(i)(3) that raises a significant issue of law or policy or to deny an application submitted under that paragraph. The Board also delegates to the General Counsel or his designees, in connection with the approval of an application for conversion under this Subpart A, the authority to approve but not to deny applications for approval of security

forms, charter amendments, and bylaw amendments under § 563.1 of this Subchapter, and §§ 544.1, 544.5, and 555.2 of this chapter. In connection with the approval of an application for conversion under this Subpart A, the Board also delegates to the General Counsel the authority to permit the converted insured association which previously had a greater number of directors than allowed under § 552.3 to retain that number of directors in accordance with the acceptable plan for complying with § 552.3 within three years after its next annual meeting.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-25450 Filed 11-2-87; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Section 4(g) of Small Business Innovation Research (SBIR) Policy Directive No. 65 01 2, published in the **Federal Register** on January 8, 1985, 50 FR 917, 919, provides that the time at which the size of a concern is determined for either Phase I of Phase II SBIR awards is the date of award. This rule amends § 121.5(a) of SBA's regulations to make time of size for Phase I and Phase II SBIR awards consistent with the SBIR Policy Directive.

EFFECTIVE DATE: November 3, 1987.

FOR FURTHER INFORMATION CONTACT: Richard J. Shane, Assistant Administrator for Innovation, Research & Technology, Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

SUPPLEMENTARY INFORMATION: On August 10, 1987, 52 FR 29533, SBA published a proposal to amend § 121.5(a) of Title 13, Code of Federal Regulations, to require that for purposes of the SBIR program, the date at which firm size is determined would be the date of award. This is consistent with long standing program policy. The reasons for the proposal are discussed in the preamble to the proposed rule.

SBA provided for a 30-day public comment period following the August 10, 1987 **Federal Register** publication. During that period, SBA received one comment which addressed the difficulties of firms which have exceeded the SBA size standards for their industires. Since the comment addressed a statutory, and not a regulatory decision, SBA made no changes to the proposed rule as a result of that comment.

Accordingly, SBA hereby amends its size regulations to adopt the time of size policy developed for the SBIR program and articulated in the proposed rule (52 FR 29533): namely, that the time of a size determination for the SBIR program is the date of award of the funding agreement.

This final rule is effective upon publication so that SBIR awards made during fiscal year 1988 and thereafter will be subject to the same size requirements. Since this change is consistent with the SBIR Policy Directive (65 01 2) used by most contracting officers, SBA believes that making the rule effective immediately will pose little, if any, hardship to the SBIR Program participants.

SBA certifies that this final rule does not constitute a major rule for the purpose of Executive Order 12291. It should have no economic effect and should not result in an increase in costs or prices since businesses and Federal agencies participating in the SBIR Program have been utilizing the time of size policy set forth in the SBIR Policy Directive since the Program's inception. This rule merely conforms SBA's size regulations to this policy.

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* As previously stated, this rule will merely conform SBA's size regulations to take into account the SBIR time of size policy for Phase I and Phase II SBIR awards which has been followed since the Program's inception. Small entities seeking to participate in the SBIR Program will follow the same procedures which were being followed before the effective date of this rule. This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 13 CFR Part 121

Small business, Small business size standards.

Accordingly, Part 121 of 13 CFR is amended as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 continues to read as follows:

Authority: Secs. 3(a) and 5(b)(6) of the Small Business Act, 15 U.S.C. 632(a) and 634(b)(6).

2. Section 121.5 is amended by revising paragraph (a) to read as follows:

§ 121.5 Small business for Government procurement.

(a) A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is not dominant in the field of operation in which it is bidding on Government contracts and can further quality under the criteria set forth in this section. Except for Phase I and Phase II awards under SBA's Small Business Innovation Research (SBIR) Program, the size status of a concern (including its affiliates) is determined as of the date of its written self-certification as a small business as part of the concern's submission of a bid or offer. For proposes of Phase I and Phase II awards under SBA's SBIR Program, the size status of a concern is determined as of the date of the award. An opinion rendered by SBA to a contracting officer on the basis of published or commonly known information and without the benefit of an SBA inquiry is not considered an SBA size determination.

* * * * *

Date: October 15, 1987.

Donald A. Clarey,

Deputy Administrator.

[FR Doc. 87-25409 Filed 11-2-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 23

[Docket No. 040CE, Special Conditions No. 23-ACE-34]

Special Conditions; DeVore Model 100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the DeVore Model 100 Series Airplanes. The airplane will have novel and unusual design features when compared to the state of technology envisaged in the airworthiness standards of 14 CFR Part 23 of the Federal Aviation Regulations (FAR). These novel and unusual design features include the aerodynamic configuration of the airplane, the location of the engine and propeller, and the use of composite materials for primary flight structure, for which the regulations do not contain adequate or appropriate

airworthiness standards. These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of Part 23.

EFFECTIVE DATE: November 3, 1987.

FOR FURTHER INFORMATION CONTACT: Bobby W. Sexton, Aerospace Engineer, Standards Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Administration, Room 1656, 601 East 12th Street, Federal Office Building, Kansas City, Missouri 64106; telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 1985, DeVore Aviation Corporation, 6104 B Kircher Boulevard, NE, Albuquerque, New Mexico, 87109, made application to the FAA for a type certificate for the DeVore Model 100 Airplane. The DeVore Model 100 will be a two-place, single-engine airplane with a pusher propeller, tricycle landing gear, a gross weight of 1050 pounds, and constructed using composite material in the primary structure.

Special conditions are issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions, as appropriate, are issued in accordance with § 11.49, after public notice as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and will become part of the type certification basis, as provided by § 21.17(a)(2).

The proposed type design of the DeVore Model 100 Airplane contains a number of novel or unusual design features not envisaged by the applicable Part 23 airworthiness standards. Special conditions are considered necessary because the airworthiness standards of Part 23 do not contain adequate or appropriate safety standards for the novel or unusual design features of the DeVore Model 100 Airplane.

The DeVore Model 100 has been designed using new National Aeronautics and Space Administration (NASA) wing design technology which is novel and unusual relative to the wing designs envisaged when the requirements of § 23.221 were promulgated.

The current provisions of § 23.221 requires spin testing for single-engine airplanes and satisfactory recovery characteristics for either a one-turn spin, a six-turn spin, or the airplane must be shown characteristically incapable of spinning. After significant research, NASA, in cooperation with the General Aviation Manufacturers Association (GAMA), has developed new wing design technology which provides airplane control characteristics at minimum flight speeds which they believe are far superior to current airplane designs. NASA and GAMA believe this new wing design, commonly described as a "partial-span, drooped leading edge with a sharp discontinuity", provides considerably improved protection against inadvertent loss of control at slow speeds than does the present § 23.221 requirement to demonstrate recovery from a one-turn spin.

Since the earliest of civil certification standards, the phenomena of loss of control at minimum speed has been recognized and criteria has been established to avoid the hazardous conditions that result from that phenomena. The basic tenet was that airplanes would stall, and if stalled, they could spin. Therefore, spin recovery qualifications were established for both pilot and airplane. Subsequent history and accident records proved that just providing spin recovery capabilities did not prevent airplanes from inadvertently spinning. If a spin occurs near the ground, recovery is highly improbable.

After several iterations, the standards of present § 23.221 were set forth in Civil Air Regulations (CAR) Part 03-0 in 1945 and further clarified in Amendment 3-7 of CAR 3 in May 1962. The preamble to these standards in CAR 3 clearly indicates that the objective was "spin prevention" rather than "spin recovery" for normal category airplanes. The one-turn spin tests were intended to be investigations of the ability to regain control of the airplane after delaying recovery or abusing the controls during stalls rather than true spin tests. Concurrent with changes to the airplane spin certification requirements, the pilot licensing rules, CAR Part 20, was changed in 1949 to eliminate spin proficiency demonstrations stating that emphasis on the recognition of, and recovery from, stalls would contribute more effectively to safety.

By strengthening stall criteria in airplane and airman certification and by relaxing spin requirements for both airplane and airman certification, the stated intent was to provide an incentive for manufacturers to build, and operators of schools to use, spin-resistant or spin-proof airplanes. The technology to meet those objectives has been slow in coming. In the extensive NASA research program conducted to develop suitable technology, NASA has coordinated closely with FAA in establishing criteria that would provide equal or better potential for avoiding loss of control at the stall or minimum flight speed. It is emphasized that the intent was not to design an airplane that is absolutely spin-proof, but rather one that would be virtually impossible to accidently spin so that normal use of flight controls would recover or regain straight flight. The emphasis is on "normal" use of flight controls such that no special training or unique flight control movements are necessary to regain control. American Institute of Aeronautics and Astronautics (AIAA) Paper No. 86-9812 presented by NASA personnel to the AIAA serves as a good reference for the technical background for the NASA/GAMA proposed spin-resistance criteria as well as the historical aspect of the spin problem in airplanes.

The current requirements of § 23.221 may not be adequate or appropriate for the unique wing design of the DeVore Model 100 Airplane. Therefore, in accordance with § 21.16, a special condition is necessary to establish adequate safety criteria relative to spin requirements.

The DeVore Model 100 airframe is made of advanced composite material and are assembled by the extensive use of bonding. This material and its assembly is completely different from the typical semi-monicoque aluminum airframes that have been predominant since the early 1940's. Composite materials of the type used on the DeVore Model 100 Airplane are generally not susceptible to initiation of fatigue cracks by the application of repetitive loads, but are susceptible to damage in the form of cracks, breaks, and delaminations from intrinsic and discrete sources growing under application of repetitive loads. Because of this and other factors, the FAA has determined that the wing fatigue requirements of § 23.572 are inadequate to assure that composite material structure can withstand the repeated loads of variable magnitude expected in service.

The use of composite materials and extensive bonding of these materials in primary flight structure is a novel and unusual design feature with respect to the type of airplane construction envisaged by the existing airworthiness standards of Part 23. Because the requirements of Part 23 do not require the level of substantiation necessary for composite material structure, special conditions are necessary to include the necessary airworthiness standards as a part of the type certification basis for

the DeVore Model 100 Airplane. This special condition is necessary to assure that a level of safety exists for airplanes made from bonded, composite materials equivalent to those existing for aluminum airplanes.

This special condition will require the wings and other composite structural components critical to safe flight be evaluated by damage tolerance criteria. The damage tolerance consideration includes principal structural elements such as the wing, wing carry-through, wing attaching structure, fuselage, and the vertical and horizontal stabilizers and their carry-through structures, since failure of these structures could have catastrophic results. When damage tolerance is shown to be impractical, the special condition is worded to permit approval, based on safe-life testing. Metal details may continue to be evaluated to the fatigue requirements of § 23.572.

Damage tolerance criteria for composite structure, in combination with the existing material requirements of Part 23, such as §§ 23.603 and 23.613, will provide a level of safety for the composite material airframe structure used in the DeVore Model 100 Airplane equivalent to that required by the airworthiness standards of Part 23.

In addition to those components requiring fatigue/damage tolerance evaluations, other components that are critical to flight safety, such as moveable control surfaces and wing flaps, must also be protected against loss of strength or stiffness. Protection conventionally is provided through design and inspection. Since composite material strength is susceptible to manufacturing defects and damage from discrete sources, including lightning strikes, process controls and inspectibility are limited; therefore, structures design must provide for these limits with adequate protection allowances.

The lack of adequate service experience with composite material structures in airplanes type certificated to the airworthiness standards of Part 23, the unusual mechanical properties characteristics, and the experience with composite material structural bonding, to date, necessitates special conditions to assure an appropriate level of safety for the DeVore Model 100 airframe structure. These special conditions will require: (1) Accounting for environmental effects; i.e., temperature and humidity on material mechanical properties in all structural substantiation analysis and test, (2) limit load residual strength with impact damage from discrete sources; (3) ability to carry ultimate load with realistic intrinsic and discrete impact damage at the threshold of detectability, and (4) design features to prevent disbonds greater than the disbonds for which limit load capability has been shown. Proof-testing of each production component to limit load and reliance on manufacturing quality control procedures between limit and ultimate load may be used in lieu of "design features," provided each bonded joint is subjected to its critical design limit load during the proof testing. Acceptable non-destructive testing techniques do not yet exist in state-of-the-art composite technology to reliably identify weak bonds. However, proof-testing of each production article may be discontinued if such tests are developed and accepted by the FAA.

Because the composite material and bonding may require preventative maintenance and inspection procedures different from those commonly utilized for aluminum airframes, this special condition requires that instructions for continued airworthiness be established in addition to those required by § 23.1529.

Since the aft-location of the propeller on the DeVore Model 100 Airplane is an unconventional design feature, passenger and ground personnel may be less aware of the proximity of the propeller blades. A special condition is necessary to require the necessary visibility of the propeller disc corresponding to similar requirements of Parts 27 and 29 concerning the conspicuity of the tail rotor.

Type Certification Basis

The type certification basis for the DeVore Model 100 Airplane is as follows: Part 23, effective February 1, 1965, as amended by amendments 23–1 through 23–31 and §§ 23.2 and 23.785 (g) and (h) as amended by amendment 23–32, effective December 12, 1985; Part 36, effective December 1, 1969, as amended by amendments 36–1 through the amendment effective on the date of type certification; exemptions, if any; and the special conditions that may result from this proposal.

Discussion of Comments

Notice of Proposed Special Conditions was published in the **Federal Register** on Monday, July 20, 1977, Notice No. 23–ACE–34, (52 FR 27219) and the comment period closed on August 19, 1987. There was one set of comments received by the FAA in response to the notice and that commenter supported the special conditions as presented in the notice.

Conclusion

This action affects only one model series of airplane. It is not a rule of general applicability and applies only to the series and model of airplane identified in these final special conditions.

List of Subjects in 14 CFR Parts 21 and 23

Aviation safety, Aircraft, Air transportation, Safety, Tires.

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.49.

Adoption of the Special Conditions

In consideration of the foregoing, the following special conditions are issued for type certification of the Devore Model 100 Series Airplanes.

1. Spin Resistant Requirement

DeVore must either comply with § 23.221 or the airplane must be shown to have spin-resistant safety features by complying with the following:

(a) During the stall maneuvers contained in § 23.201, the pitch control must be pulled back and held against the stop. Then, using ailerons and rudders in the proper sense of direction, it must be possible to maintain wings-level flight within 15 degrees of bank and to roll the airplane from a 30-degree bank in one direction to a 30-degree bank in the other direction.

(b) Reduce the airplane speed using pitch control at a rate of approximately one knot per second until the pitch control reaches the stop. With the pitch control pulled back and held against the stop, full rudder control must be applied in a manner to promote spin entry, for a period of seven (7) seconds or through a 360-degree heading change, whichever occurs first. If the 360-degree heading change is reached first, it must have taken no less than four (4) seconds. This maneuver must be performed with the ailerons in neutral position, and with the ailerons deflected opposite the direction of turn or in the most adverse manner. Power or thrust and airplane configuration must be set in accordance with § 23.201(f) without change during the maneuver. At the end of seven (7) seconds or a 360-degree heading change, as appropriate, the airplane must respond immediately and normally to primary flight controls applied to regain coordinated, unstalled flight without reversal of control effect and without exceeding the temporary control forces specified by § 23.143(c).

(c) Compliance with §§ 23.201 and 23.203 must be demonstrated with the airplane in uncoordinated flight, corresponding to one-ball-width displacement on a slip-skid indicator, unless one-ball-width displacement cannot be obtained with full rudder, in which case, the demonstration must be with full rudder applied.

2. Evaluation of Composite Structure

In lieu of complying with § 23.572, and in addition to the requirements of §§ 23.603 and 23.613, airframe structure, the failure of which would result in catastrophic loss of the airplane, in each wing, wing carry-through, wing attaching structure, fuselage, vertical and horizontal stabilizers and their carry-through structures, wing flap, and moveable control surface must be evaluated to damage tolerance criteria prescribed in paragraphs (a) through (j) Of this special condition, unless shown to be impractical. In cases shown to be impractical, the aforementioned structure must be evaluated in accordance with the criteria of paragraphs (a) and (j) of this special condition. Where bonded joints are used, the structure must also be evaluated in accordance with the residual strength criteria in paragraph (g) of this special condition.

(a) It must be demonstrated by tests, or by analysis supported by tests, that the structure is capable of carrying ultimate load with impact damage. The level of impact damage considered need not be more than the established threshold of detectability considering the inspection procedures employed.

(b) The growth rate of damage that may occur from fatigue, corrosion, intrinsic defects, manufacturing defects; e.g., bond defects, or damage from discrete sources under repeated loads expected in service; i.e., between the time at which damage becomes initially detectable and the time at which the extent of damage reaches the value selected by the applicant for residual strength demonstration, must be established by tests or by analysis supported by tests.

(c) The damage growth, between initial detectability and the value selected for residual strength demonstrations, factored to obtain inspection intervals, must permit development of an inspection program suitable for application by operation and maintenance personnel.

(d) Instructions for continued airworthiness for the airframe must be established consistent with the results of the damage tolerance evaluations. Inspection intervals must be set so that after the damage initially becomes detectable by the inspection method specified, the damage will be detected before it exceeds the extent of damage for which residual strength is demonstrated.

(e) Loads spectra, load truncation, and the locations and types of damage considered in the damage tolerance evaluations must be documented in test proposals.

(f) Each wing, wing carry-through, wing attaching structure, wing flap, movable control surface, and wing-mounted vertical stabilizer structure must be shown by residual strength tests, or analysis supported by residual strength tests, to be able to withstand critical limit flight loads, considered as ultimate loads, with the extent of damage consistent with the results of the damage tolerance evaluations.

(g) In lieu of a non-destructive inspection technique which assures ultimate strength of each bonded joint, the limit load capacity of each bonded joint critical to safe flight must be substantiated by either of the following methods used singly or in combination:

(1) The maximum disbonds of each bonded joint consistent with the capability to withstand the loads in paragraphs (f) and (g) of this special condition must be determined by analysis, tests, or both. Disbonds of each bonded joint greater than this must be prevented by design features.

(2) Proof testing must be conducted on each production article which will apply the critical limit design load to each critical bonded joint.

(h) The effects of material variability and environmental conditions; e.g., exposure to temperature, humidity, erosion, ultraviolet radiation, and/or chemicals, on the strength and durability properties of the composite materials must be accounted for in the damage tolerance evaluations and in the residual strength tests.

(i) The airplane must be shown by analysis to be free from the flutter to V_D with the extent of damage for which residual strength is demonstrated.

(j) For those structures where the damage tolerance method is shown to be impractical, the strength of such structures must be demonstrated by tests, or analysis supported by tests, to be able to withstand the repeated loads of variable magnitude expected in service. Impact damage in composite material components which may occur must be considered in the demonstration. The impact damage level considered must be consistent with detectability by the inspection procedures employed.

3. Propeller Marking

In the absence of specific regulations, the propeller must be marked so that the disc is conspicuous under normal daylight ground conditions.

Issued in Kansas City, Missouri, on October 14, 1987.

Jerold M. Chavkin,

Acting Director, Central Region.

[FR Doc. 87-25350 Filed 11-2-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 81

[Docket No. 76N-0366]

Provisional Listing of FD&C Red No. 3 in Cosmetics and Externally Applied Drugs and of Its Lakes in Food and Ingested Drugs; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of FD&C Red No. 3 for use in coloring cosmetics and externally applied drugs and of the lakes of this color additive for use in coloring food and ingested drugs. The new closing date for the provisional listing of this color additive will be May 2, 1988. This postponement will provide additional time for FDA to complete its evaluation of the toxicological data relating to FD&C Red No. 3. FDA is also correcting an inadvertent error that appeared in the table entry as "D&C Red No. 3" to read "FD&C Red No. 3" (50 FR 35783 at 35789; September 4, 1985).

EFFECTIVE DATE: Effective November 3, 1987, the new closing date for FD&C Red No. 3 and its lakes will be May 2, 1988.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF-330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of November 3, 1987, by a rule published in the Federal Register of November 3, 1986 (51 FR 39856). FDA issued the postponement to provide time for the scientific review panel (the panel), assembled to consider data pertaining to suggested secondary mechanism of action for the carcinogenicity of FD&C Red No. 3, to complete its report. The

panel has completed its review and submitted its report (availability announced in the **Federal Register** of August 11, 1987; 52 FR 29728) to the agency for use in determining the regulatory status of FD&C Red No. 3. In addition to its inquiry into the mechanism of action of FD&C Red No. 3 the panel was directed to determine whether the potential risk to humans from use of the color could be determined. FDA is also correcting an inadvertent error in the table, appearing in the introductory text of 21 CFR 81.27(d). The entry for "D&C Red No. 3" is revised to read "FD&C Red No. 3."

Because of the complexity of the issues involved in the evaluation of the data for FD&C Red No. 3, the agency concludes that the closing date for the provisional listing of FD&C Red No. 3 should be extended until May 2, 1988. (For further discussion of the issues concerning FD&C Red No. 3 see 50 FR 26377 at 26379; June 26, 1985, and 50 FR 35783 at 35786; September 4, 1985.) Additional time is needed for the agency to complete its review of the panel's report. In addition, the extension of time will be used to consider what effect, if any, the recent decision in *Public Citizen* v. *Young* (D.C. Cir. No. 86–1548, October 23, 1987), has on this proceeding. The extension will also permit time for the development and issuance of an appropriate **Federal Register** document.

The agency has considered what, if any, effect this extension would have on the public health. FDA has concluded that there is no basis to believe that a 6-month extension would present a hazard to public health. This extension is thus consistent with *McIlwain* v. *Hayes* (690 F.2d 1041, D.C. Cir. 1982).

Because of the shortness of time until the November 3, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of November 3, 1987. This regulation will permit the uninterrupted use of this color additive until further action is taken. In accordance with 5 U.S.C. 553 (b) and (d) (1) and (3), this postponement is issued as a final regulation, effective November 3, 1987.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. Section 81.1 *Provisional lists of color additives* is amended in paragraph (a) by revising the closing date for the uses of "FD&C Red No. 3" to read May 2, 1988.

§ 81.27 [Amended]

3. Section 81.27 *Conditions of provisional listing* is amended in the table, appearing in the introductory text in paragraph (d), by revising the entry for "D&C Red No. 3" to read "FD&C Red No. 3," and by revising the closing date for "FD&C Red No. 3" to read May 2, 1988.

Dated: October 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–25270 Filed 11–2–87; 8:45 am]

BILLING CODE 4160–01–M

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21 CFR Part 81

[Docket No. 76N–0366]

Provisional Listing of D&C Red No. 33 and D&C Red No. 36; Postponement of Closing Date

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is postponing the closing date for the provisional listing of D&C Red No. 33 and D&C Red No. 36 for use as color additives in drugs and cosmetics. The new closing date will be January 4, 1988. FDA has decided that this brief postponement is necessary to provide time for the preparation of documents that will explain the bases for the agency's decisions concerning the conditions under which these color additives may be safely used.

EFFECTIVE DATE: Effective November 3, 1987, the new closing date for D&C Red No. 33 and D&C Red No. 36 will be January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Gerad L. McCowin, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5676.

SUPPLEMENTARY INFORMATION: FDA established the current closing date of November 3, 1987, for the provisional listing of D&C Red No. 33 and D&C Red No. 36 by regulation published in the **Federal Register** of September 4, 1987 (52 FR 33573). FDA extended the closing date for these color additives until November 3, 1987, to provide time for completion of the agency's review and evaluation of the data concerning the drug and cosmetic uses of these color additives, and for publication of a regulation in the **Federal Register** regarding the agency's final decision on the petitions for the permanent listing of these color additives. The regulation set forth below will postpone the November 3, 1987, closing date for the provisional listing of these color additives until January 4, 1988.

FDA has nearly completed its review and evaluation of available information relevant to the use of these color additives in drugs and cosmetics. The agency has concluded that drug and cosmetic uses of D&C Red No. 33 and D&C Red No. 36 are safe. Thus, the agency has decided to permanently list the color additives for these uses. New certification specifications are also being developed for these color additives.

The agency has not yet completed documents fully describing the bases for each of these decisions and setting forth detailed conditions for use. Therefore, FDA believes that it is reasonable to postpone the closing date for these color additives until January 4, 1988, to provide time for the preparation and publication of appropriate **Federal Register** documents. The agency intends to publish these documents as soon as possible. FDA concludes that this short extension is consistent with the public health and the standards set forth for continuation of provisional listing in *McIlwain* v. *Hayes*, 690 F.2d 1041 (D.C. Cir. 1982).

The extension of time will also be used to consider what effect, if any, the recent decision in *Public Citizen* v. *Young* (D.C. Cir. No. 86–1548, October 23, 1987), has on this proceeding.

Because of the shortness of time until the November 3, 1987, closing date, FDA concludes that notice and public procedure on this regulation are impracticable and that good cause exists for issuing the postponement as a final rule and for an effective date of November 3, 1987. This regulation will permit the uninterrupted use of these color additives until further action is taken. In accordance with 5 U.S.C. 553

(b) and (d) (1) and (3), this postponement is issued as a final regulation, effective on November 3, 1987.

List of Subjects in 21 CFR Part 81

Color additives, Cosmetics, Drugs.

Therefore, under the Transitional Provisions of the Color Additive Amendments of 1960 to the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 81 is amended as follows:

PART 81—GENERAL SPECIFICATIONS AND GENERAL RESTRICTIONS FOR PROVISIONAL COLOR ADDITIVES FOR USE IN FOODS, DRUGS, AND COSMETICS

1. The authority citation for 21 CFR Part 81 is revised to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055–1056 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371, 376); Title II, Pub. L. 86–618; sec. 203, 74 Stat. 404–407 (21 U.S.C. 376, note); 21 CFR 5.10.

§ 81.1 [Amended]

2. In § 81.1 *Provisional lists of color additives* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" appearing in the table in paragraph (b) to read "January 4, 1988."

§ 81.27 [Amended]

3. In § 81.27 *Conditions of provisional listing* by revising the closing dates for "D&C Red No. 33" and "D&C Red No. 36" in the table, appearing in the introductory text in paragraph (d), to read January 4, 1988."

Dated: October 27, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–25271 Filed 11–2–87; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8162]

Low-Income Housing Credit for Federally-Assisted Buildings and OMB Control Numbers Under the Paperwork Reduction Act

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations concerning the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986, as enacted by the Tax Reform Act of 1986. These regulations provide guidance concerning the low-income housing credit allowable for certain Federally-assisted buildings acquired during a 10-year period. In addition, the text of the temporary regulations set forth in this document serves as the comment document for the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: The regulations are effective for buildings placed in service by a taxpayer after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Robert Beatson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T LR–61–87) (202–566–3829, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to the low-income housing credit allowable under section 42(d)(6) of the Internal Revenue Code of 1986 for certain Federally-assisted buildings described in section 42(d)(2)(B)(ii), as enacted by section 252 of the Tax Reform Act of 1986 (Pub. L. 99–514). New § 1.42–2T is added by this document to Part 1 of Title 26 of the Code of Federal Regulations. The temporary regulations provided by this document will remain in effect until superseded by final regulation on this subject.

Explanation of Provisions

Section 252 of the Tax Reform Act of 1986 enacted a new low-income housing credit equal to the applicable percentage of the qualified basis of each qualified low-income building. The temporary regulations provide guidance with respect to the credit allowable for certain Federally-assisted buildings acquired during a 10-year period. The low-income housing credit is available to the acquirer of a qualified low-income building for which a special waiver is granted by the Internal Revenue Service in order to avert an assignment of the mortgage secured by the building to the Department of Housing and Urban Development or the Farmers' Home Administration, or to avert a claim against a Federal mortgage insurance fund with respect to a mortgage which is so secured.

Special Analyses

The Commissioner of Internal Revenue has determined that these temporary regulations are not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

No general notice of proposed rulemaking is required by 5 U.S.C. 553 (b) because these are temporary regulations, and there is a need to provide the public with immediate guidance. Accordingly, the Regulatory Flexibility Act does not apply and no Regulatory Flexibility Analysis is required for this rule.

Paperwork Reduction Act

The collection of information requirements contained in these regulations have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (Control no. 1545–1005).

Drafting Information

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

List of Subjects

26 CFR 1.0–1—1.58–8

Income taxes, Tax liability, Tax rates, Credits.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

The amendments to 26 CFR Parts 1 and 602 are as follows:

PART 1—INCOME TAX REGULATIONS

Paragraph 1. The authority for Part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805. * * * Section 1.42–2T also issued under 26 U.S.C. 42 (m).

Par. 2. A new § 1.42–2T is added immediately following § 1.42–1T to read as follows:

§ 1.42-2T Waiver of requirement that an existing building eligible for the low-income housing credit has been held for 10 years prior to acquisition by the taxpayer (temporary).

(a) *Low-income housing credit for existing building.* Section 42 provides that, for purposes of section 38, new and existing qualified low-income buildings are eligible for a low-income housing credit. The eligibility rules for new and existing buildings differ. Under section 42(d)(2), the acquisition cost (to the extent properly included in basis) of an existing building may be eligible for the low-income housing credit if—

(1) The taxpayer acquires the building by purchase (as defined in section 179(d)(2), as applicable under section 42(d)(2)(D)(iii)(I)),

(2) There is a period of at least 10 years between the date of the building's acquisition by the taxpayer and the later of—

(i) The date the building was last placed in service, or

(ii) The date of the most recent nonqualified substantial improvement of the building, and

(3) The building was not previously placed in service by the taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to the taxpayer as of the time the building was last previously placed in service.

(b) *Waiver of 10-year holding period requirement.* Section 42(d)(6) provides that a taxpayer may apply for a waiver of the 10-year holding period requirement specified in paragraph (a)(2) of this section. The Internal Revenue Service will grant a waiver only if—

(1) The existing building satisfies all of the requirements in paragraph (c) of this section, and

(2) The taxpayer makes an application in conformity with the requirements in paragraph (d) of this section.

(c) *Waiver requirements*—(1) *Federally-assisted building.* To satisfy the requirement of this paragraph (c)(1), a building must be a Federally-assisted building. The term "Federally-assisted building" means any building which is substantially assisted, financed, or operated under section 8 of the United States Housing Act of 1937, section 221(d)(3) or 236 of the National Housing Act of 1934, or section 515 of the Housing Act of 1949, as such acts were in effect on October 22, 1986.

(2) *Federal mortgage funds at risk.* To satisfy the requirement of this paragraph (c)(2), Federal mortgage funds must be at risk with respect to a mortgage that is secured by the building or a project of which the building is a part. For purposes of this paragraph (c)(2), Federal mortgage funds are at risk if, in the event of a default by the mortgagor on the mortgage secured by the building or the project of which the building is a part—

(i) The mortgage could be assigned to the Department of Housing and Urban Development or the Farmers' Home Administration, or

(ii) There could arise a claim against a Federal mortgage insurance fund (or such Department or Administration).

(3) *Action by the Department of Housing and Urban Development or the Farmers' Home Administration.* To satisfy the requirement of this paragraph (c)(3), specified Federal action must have been taken by either the Department of Housing and Urban Development or the Farmers' Home Administration ("the Federal agency") with respect to the building or the project of which the building is a part that demonstrates that a waiver of the 10-year holding period requirement is necessary to avert Federal mortgage funds being at risk within the meaning of paragraph (c)(2) of this section. The following specified Federal actions shall be the only means of satisfying the requirement of this paragraph (c)(3):

(i) The federal agency intends to accept an assignment of a mortgage secured by the building or the project of which the building is a part, and such assignment requires payments by the agency or a mortgage insurance fund maintained by the agency to the prior mortgagee;

(ii) The Federal agency or a mortgage insurance fund maintained by the agency intends to accept, as a consequence of foreclosure proceedings or otherwise, conveyance of the building or the project of which the building is a part;

(iii) The Federal agency or a mortgage insurance fund maintained by the agency intends, as a consequence of default, to take possession of, hold title to, or otherwise assume ownership of the building or the project of which the building is a part; or

(iv) The Federal agency has designated the building or the project of which the building is a part as a troubled building or project. A designation of a troubled building or project must satisfy the following requirements:

(A) Designation of troubled status must be based on a review by the Federal agency of the financial condition of the building or project and on a determination by the agency of a history of financial distress and mortgage defaults;

(B) Designation of troubled status must be made or received and approved by the national office of the Federal agency; and

(C) Federal agency regulations or procedures must provide that, in the event of transfer of the ownership of a designated troubled building or project, the building or project may be subject to review by the Federal agency.

Each Federal agency may prescribe its own standards and procedures for designating a troubled building or project so long as such standards are consistent with the requirements of this paragraph (c)(3)(iv).

(4) *No prior credit allowed.* The requirement of this paragraph (c)(4) is satisfied only if no prior owner was allowed a low-income housing credit under section 42 for the building.

(d) *Application for Waiver*—(1) *Time and manner.* In order to receive a waiver of the 10-year holding period requirement specified in paragraph (a)(2) of this section, a taxpayer must file an application that complies with the requirement of this paragraph (d) and applicable procedural rules set forth in paragraph (e) of § 601.201 (Statement of Procedural Rules). The application must be filed by a taxpayer who has acquired the building by purchase or who has a binding contract to purchase the building. Such binding contract may be conditioned upon the granting of a waiver under this section. The application may be filed at any time after a binding contract has been entered into, but no later than 12 months after the taxpayer's acquisition of the building. An application for a waiver of the 10-year holding period requirement must not contain a request for a ruling on any other issue arising under section 42 or other sections of the Internal Revenue Code. An application for a waiver of the 10-year holding period requirement must be mailed or delivered to the Internal Revenue Service, Associate Chief Counsel (Technical and International), Attention CC:IND:D:C, Room 6545, 1111 Constitution Avenue, NW., Washington, DC 20224.

(2) *Information required.* An application for a waiver of the 10-year holding period requirement must contain the following information:

(i) The taxpayer's name, address and taxpayer identification number;

(ii) The name (if any) and address of the acquired building and the project (if any) of which it is a part;

(iii) The date of acquisition or of the binding contract for acquisition of the building by the taxpayer, the amount of consideration paid or to be paid for the acquisition (including the value of any

liabilities assumed by the taxpayer), and the taxpayer's certification that such acquisition is by purchase (as defined in section 179(d)(2), as applicable under section 42(d)(2)(D)(iii)(I));

(iv) The identity of the person from whom the building is acquired, and whether such person is a Federal agency, a mortgagee holding title to the building, or the mortgagor or prior owner;

(v) The date the building was last placed in service and the date of the most recent (if any) nonqualified substantial improvement of the building (as defined in section 42(d)(2)(D)(i));

(vi) The taxpayer's certification that the building was not previously placed in service by the taxpayer, or by a person who was a related person (as defined in section 42(d)(2)(D)(iii)(II)) with respect to the taxpayer as of the time the building was last placed in service;

(vii) The source of Federal assistance received by the building (for purposes of paragraph (c)(1) of this section);

(viii) The taxpayer's certification that, as of the earlier of the time of acquisition of the building or the time of application for the waiver, the building is a Federally-assisted building (as defined in paragraph (c)(1) of this section);

(ix) The amount and disposition (*e.g.*, discharge, assignment, assumption, or refinance) of any outstanding mortgage, if any, at the time of acquisition and the identities of the mortgagee and mortgagor;

(x) The taxpayer's certification that, as of the earlier of the time of acquisition of the building or the time of application for the waiver, Federal mortgage funds are at risk within the meaning of paragraph (c)(2) of this section;

(xi) Documentation of specified Federal agency action within the meaning of paragraph (c)(3) of this section; and

(xii) The taxpayer's certification that no prior owner was allowed a low-income housing credit under section 42 of the building.

(3) *Other rules.* (i) In the event that an acquired building will be owned by more than one taxpayer, a single application for waiver may be filed by one taxpayer on behalf of the co-owners, if the application contains the names, addresses and taxpayer identification numbers of the other owners. A general partner or a designated limited partner may file an application for waiver on behalf of a partnership.

(ii) With respect to the requirement in paragraph (d)(2)(xi) of this section for documentation of specified Federal agency action, in the case of Federal agency designation of a troubled building or project (as described in paragraph (c)(3)(iv) of this section), a letter or other written statement is required from an appropriate official in the national office of the Federal agency verifying designation of troubled status and compliance with the requirements in paragraph (c)(3)(iv) of this section.

(iii) With respect to the certifications required in paragraphs (d)(2) (x) and (xii) of this section, the taxpayer may make the certifications to the best of its knowledge, and no documentation from other persons need be submitted with the application.

(4) *Effective date of waiver.* A waiver will be effective when granted but in no event later than 60 days after a taxpayer files a substantially complete application for waiver under this paragraph (d). If a taxpayer has filed a substantially complete application but the Internal Revenue Service requires additional information or materials, any waiver granted will be effective no later than 60 days after the initial application was filed.

(5) *Attachment to return.* A waiver letter granted by the Internal Revenue Service shall be filed with the taxpayer's Federal income tax return for the first taxable year the low-income housing credit is claimed by the taxpayer.

(e) *Effective date of regulations.* The provisions of § 1.42-2T are effective for buildings placed in service by the taxpayer after December 31, 1986.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 3. The authority citation for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table "§ 1.42-2T * * * 1545-1005".

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approved: October 19, 1987.

Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 87-25444 Filed 10-30-87; 9:56 am]

BILLING CODE 4830-01-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 5 and 19

[T.D. ATF-260; Ref: Notice No. 606]

Principal Place of Business Address on Distilled Spirits Products Labels

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is amending regulations in 27 CFR Parts 5 and 19 to allow the use of a principal place of business address on distilled spirits products labels. A proprietor using its principal place of business address on distilled spirits products, if different from the address where the operation occurred, will indicate on the label or on the bottle by printing, coding, or other markings, the address where the operation occurred. This amendment would benefit multiplant distilled spirits proprietors by allowing them to use a "universal" label at all of their distilled spirits plants or at distilled spirits plants under contract to affix their label.

DATE: This final rule is effective December 3, 1987.

FOR FURTHER INFORMATION CONTACT: James A. Hunt, Coordinator, FAA, Wine and Beer Branch, (202) 566-7626, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 12th and Pennsylvania Avenue NW., Washington, DC.

SUPPLEMENTARY INFORMATION:

Background

Heublein Spirits, Hartford, Connecticut, submitted a petition to allow the principal place of business address to be shown on domestic distilled spirits labels and wine labels when the labels have a code indicating the address where the operation occurred. The petitioner stated that the name and address of the bottler's principal place of business is allowed for imported bottled distilled spirits and wine. Also, a code is allowed for beer labels to indicate the place of production when there are two or more breweries of the same ownership and the principal place of business is shown.

The manufacturer or bottler or importer is required to be shown on labels and advertisements of distilled spirits products under 27 U.S.C. 205 (e) and (f). The purpose of this requirement is to "* * * provide the consumer with adequate information as to the identity and quality of the products, * * *" The

manufacturer or bottler or importer is required to be shown on labels of distilled spirits products under the authority conferred by 26 U.S.C. 5301(a). This section reads, in part, "Whenever in his judgment such action is necessary to protect the revenue, the Secretary is authorized, by the regulations prescribed by him * * * to regulate the kind, size, branding, marking, * * * of containers (of a capacity of not more than 5 wine gallons) designed or intended for use for the sale of distilled spirits * * *". The current regulations, 27 CFR 5.36 (implementing 27 U.S.C. 205(e)), and 27 CFR 19.645 (implementing 26 U.S.C. 5301(a)), require that the name and address of the proprietor where the specified operation occurred appear on the label. We believe the consumer will be sufficiently informed as to who is responsible for the distilled spirits product if proprietors were allowed to use their principal business address on the label. Proprietors with more than one distilled spirits plant or who use contract bottlers would have a reduced cost in maintaining separate label inventories because of different addresses printed on labels. Since most proprietors use some form of identification code imprinted at the time of bottling, the location of the premises where the product was bottled can easily be included in the code. Proprietors who use an identification code on their products are able to trace back specific information concerning the product should the need occur.

Comments

A copy of the petition and the five comments received, all favoring the proposal, are available for inspection during normal business hours at the ATF Reading Room, Room 4406, Office of Public Affairs and Disclosure, 1200 Pennsylvania Avenue NW., Washington, DC.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entitles. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have a significant secondary or incidental effect on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule will not have a significant economic impact on a substantial number of small entities.

Compliance With Executive Order 12291

In compliance with Executive Order 12291, 46 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) 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.

Paperwork Reduction Act

The requirement to collect information proposed in Notice No. 606 was submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35. The Office of Management and Budget has assigned control number 1512–0461 to the collection of information in this document.

Drafting Information

The principal author of this document is James A. Hunt, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 5

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers.

27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic fund transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouse, Wine.

Authority and Issuance

27 CFR Part 5—Labeling and Advertising of Distilled Spirits is amended as follows:

PART 5—(AMENDED)

Paragraph 1. The authority citation for Part 5 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 5.36 is amended by adding a new paragraph (a)(6) to read as follows:

§ 5.36 Name and Address.

(a) * * *

* * * * *

(6) The label may state the address of the proprietor's principal place of business in lieu of the place where the bottling, distilling or rectification operation occurred, if the address where the operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle.

* * * * *

27 CFR Part 19—Distilled Spirits Plants is amended as follows:

PART 19—(AMENDED)

Par. 3. The authority citation for Part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5041, 5061, 5062, 5066, 5101, 5111–5113, 5171–5173, 5175, 5176, 5178–5181, 5201–5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271–5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 4. Section 19.645 is amended by removing from paragraph (c) following the semicolon the word "and", by removing from paragraph (d) the "period" at the end of the paragraph and inserting in its place "; and", and by adding a new paragraph (e) to read as follows:

§ 19.645 Name and address of bottler.

* * * * *

(e) The label may state the address of the proprietor's principal place of business in lieu of the place where the bottling, distilling or processing operation occurred, if the address where the operation occurred is indicated by printing, coding, or other markings, on the label or on the bottle. The coding system employed will permit an ATF officer to determine where the operation stated on the label occurred. Prior to using a coding system, the distilled spirits plant proprietor shall send a notice explaining the coding system to the regional director (compliance) of each region where a label code is used.

Signed: October 23, 1987.
Stephen E. Higgins,
Director.
Approved: October 27, 1987.
Francis A. Keating II,
Assistant Secretary (Enforcement).
[FR Doc. 87-25311 Filed 11-2-87; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS BIDDLE

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS BIDDLE (CG-34) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BIDDLE (CG-34) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without intefering with its special functions as a naval cruiser. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS BIDDLE	CG-34						x	x	27

Approved:
H. Lawrence Garrett III,
Undersecretary of the Navy.
Date: October 15, 1987.
[FR Doc. 87-25417 Filed 11-2-87; 8:45 am]
BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS MISSISSIPPI

AGENCY: Department of the Navy, DOD.
ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certification and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS MISSISSIPPI (CGN-40) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS MISSISSIPPI (CGN-40) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the vessel, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy vessel. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance

with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
USS MISSISSIPPI	CGN-40	—	—	—	—	—	X	X	13

Approved:

H. Lawrence Garrett III,

Undersecretary of the Navy.

Date: October 15, 1987.

[FR Doc. 87-25418 Filed 11-2-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; USS TENNESSEE

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS TENNESSEE (SSBN-734) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 15, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS TENNESSEE (SSBN-734) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS TENNESSEE (SSBN-734) is a member of the SSBN-726 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS TENNESSEE (SSBN-734).

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
USS TENNESSEE	SSBN-734	3.70

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(k), Annex I	Anchor lights relationship of aft light to forward light in meters; § 2(k), Annex I
USS TENNESSEE	SSBN-734			209°	5.3	9.0	3.8	4.0 below.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

Date: October 15, 1987.

[FR Doc. 87-25416 Filed 11-2-87; 8:45 am]

BILLING CODE 3810-AE-M

VETERANS ADMINISTRATION

38 CFR Part 1

Standards for Collection, Compromise, Suspension, or Termination to Collection Efforts and Referral of Civil Claims for Money or Property; Regional Office Committees on Waivers and Compromises

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: In order to comply with recent legislative changes and revisions to General Accounting Office (GAO)/ Department of Justice claims collection standards, the Veterans Administration (VA) has amended current regulations on claims collection standards and compromise standards and updated authority for the consideration of a request for waiver of erroneous payments of travel, transportation and relocation expenses and allowances by the Committees on Waivers and Compromises.

EFFECTIVE DATE: December 3, 1987.

FOR FURTHER INFORMATION CONTACT: Peter Mulhern, Office of Budget and Finance (Controller), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-3405.

SUPPLEMENTARY INFORMATION: On pages 21700 through 21709 of the **Federal Register** of June 9, 1987, the VA published proposed regulations to establish policy and procedures for the collection of debts and the operations of the Committees on Waivers and Compromises. No comments were received.

Public Law 97-365, the Debt Collection Act of 1982, amended the Federal Claims Collection Act. To comply with this legislation, GAO and the Department of Justice completely revised title 4 of the Code of Federal Regulations pertaining to the Federal Claims Collection Standards. The Debt Collection Act of 1982 enhanced the capability of Federal agencies to collect money or property owed to the Federal government by giving new and broader authority to collect such debts. Some of this new authority, such as the charging of interest and administrative costs, referral of debtor information to consumer reporting agencies, and standards for administrative offset, had already been granted to the VA by Pub. L. 96-466, the Veterans Rehabilitation and Education Amendment of 1980. The VA published regulations to implement this authority (52 FR 21700). However, many of the revisions to title 4 of the Code of Federal Regulations deal with technical changes for termination and suspension of collection action, referral of cases to GAO/Department of Justice, and new compromise standards. In addition, the revisions to Title 4 also contain new regulations required by the Debt Collection Act of 1982 for offset of Civil Service Retirement and standards for the use of IRS taxpayer mailing addresses, for which this Agency currently does not have any regulations. As a result of these revisions to title 4, we believe that it is necessary for this Agency's regulations on claims collection and compromise standards to be updated.

Public Law 99-224 (Dec. 28, 1985) amended the statutes (5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716) granting the Comptroller General and agency heads the authority to waive collection of erroneous payments made to civilian employees and members of the Armed Services. Prior to enactment of Pub. L. 99-224, waiver consideration was limited to erroneous payments of pay and allowances. With the enactment of this legislation, waiver authority has been expanded to include authority to waive erroneous payments of travel, transportation, and relocation expenses and allowances. This expanded authority applies only to overpayments made on or after December 28, 1985.

We have made only one technical change to the proposed version of the regulations in preparation for the final publication. This change is found in § 1.919(f)(2)(ii). In the proposed version, the section referred incorrectly to two waiver statutes, 5 U.S.C. 5584 and 38 U.S.C. 3102. The proper reference should have been made only to 38 U.S.C. 3102.

The Administrator hereby certifies that these final rules 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. Pursuant to 5 U.S.C. 605(b), these final rules are therefore exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. The reason for this certification is that these final rules primarily affect only individuals indebted to the United States Government as a result of either participation in programs administered by the VA or the erroneous payment of pay or allowances.

These final rules have also been reviewed under E.O. 12291, Federal Regulation, and have been determined to be nonmajor because they will not have a $100 million annual effect on the economy and will not have any adverse economic impact on or increase costs to consumers, individual industries, Federal, State, and local government agencies or geographic regions.

There is no Catalog of Federal Domestic Assistance Program number.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Claims, Veterans.

Approved: September 16, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 1, *General,* is amended as follows:

PART 1—[AMENDED]

1. In § 1.900 the first sentence is revised to read as follows:

§ 1.900 Prescription of standards.

The instructions contained in §§ 1.900 through 1.954 are issued pursuant to the Federal Claims Collection Act (Pub. L. 89-508 and 97-365) and the joint regulations thereunder of the Comptroller General of the United States and the Attorney General of the United States, Title 4, Chapter II, Code of Federal Regulations. * * *

2. Section 1.901 is revised to read as follows:

§ 1.901 Omissions not a defense.

The standards set forth in §§ 1.900 through 1.954 shall apply to VA handling of civil claims for money and property but the failure of the agency to comply with any provision of the standards shall not be available as a defense for any debtor.

3. Section 1.902 is revised to read as follows:

§ 1.902 Fraud, antitrust and tax claims excluded.

(a) The standards set forth in §§ 1.900 through 1.954 do not apply to the handling of any claim as to which there is an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim, or to any claim based in whole or in part on violation of the antitrust laws. Only the Department of Justice has authority to compromise, suspend, or terminate collection action on such claims.

(b) Upon identification of a claim of any of the types described in paragraph (a) of this section (an indication of fraud, the presentation of a false claim, or misrepresentation on the part of the debtor or any other party having an interest in the claim), the VA shall refer the matter promptly to the Department of Justice. At its discretion, the Department of Justice may determine that no action is warranted and return the claim to the VA for further handling in accordance with §§ 1.900 through 1.954.

(c) The VA has no authority to consider or compromise Federal tax claims, as to which differing exemptions, administrative considerations, enforcement considerations, and statutes apply.

(d) Sections 1.900 through 1.954 do not apply to claims between Federal agencies. The VA shall attempt to resolve interagency claims by negotiation. Any unresolved claims shall be referred to the General Accounting Office (GAO) for final resolution.

(Authority: 37 U.S.C. 3711)

4. In § 1.903, the first two sentences are revised to read as follows:

§ 1.903 Settlement, waiver, or compromise under other statutory or regulatory authority.

Nothing in §§ 1.900 through 1.954 is intended to preclude VA settlement, waiver, or compromise of claims under statutes other than the Federal Claims Collection Act. See, e.g. 38 U.S.C. 1820(a) (4) and (5) and 3102(a) and 42 U.S.C. 2651–2653. * * *

5. Section 1.905 is revised to read as follows:

§ 1.905 Subdivision of claims not authorized.

Claims shall not be subdivided in order to avoid the monetary ceiling established by 31 U.S.C. 3711(a)(2). A debtor's liability arising from a particular transaction or contract shall be considered as a single claim in determining whether the claim is one of less than $20,000, exclusive of interest and administrative costs, either for purposes of suspension or termination of collection action (§§ 1.940 through 1.943) or for determining the applicability of the $20,000 limit with respect to compromise (§§ 1.930 through 1.938).

(Authority: 31 U.S.C. 3711)

6. Section 1.907 is added to read as follows:

§ 1.907 Definitions.

(a) For the purpose of §§ 1.900 through 1.954, the terms "claims" and "debt" are synonymous and interchangeable. They refer to any amount of money or property which has been determined by an appropriate official of the VA to be owed to the United States by any person, organization or entity, except another Federal agency.

(b) A debt is considered delinquent if it has not been paid by the date specified in the initial written notice of indebtedness or applicable contractual agreement, unless other satisfactory payment arrangements have been previously made. A debt is also considered delinquent if the debtor fails to satisfy obligations under a repayment agreement with the VA.

(c) As used in §§ 1.900 through 1.954, "referral for litigation" means referral to the Department of Justice for appropriate legal actions, except in those specified instances where a case is referred to the VA District Counsel for legal action.

(Authority: 31 U.S.C. 3701, 3711)

§ 1.911 [Removed]

7. Section 1.911 is removed.

§ 1.911a [Redesignated as § 1.911]

8. Section 1.911a is redesignated § 1.911.

§ 1.911 [Amended]

9. In § 1.911(a) remove the words "Chapter II" and add in their place the words "Part 102".

10. Section 1.912 is revised to read as follows:

§ 1.912 Collection by offset.

(a) *Authority and scope.* In accordance with Part 102 of Title 4 of the Code of Federal Regulations, the VA shall collect debts by administrative offset from any payments made by the VA to an individual indebted to the VA. This section does not pertain to offset from either current salary or from benefit payments, but does apply to offset from all other VA payments, including an employee's final salary check and lump-sum leave payment. Procedures for offset from benefit payments and current salary are found in § 1.912a and §§ 1.980 through 1.994. NOTE: The VA cannot offset or refer for the purpose of offset, either under the authority of this section or under any other authority found in §§ 1.900 through 1.954 and §§ 1.980 through 1.984, any debt described in 38 U.S.C. 1826 unless the requirements set forth in that section have been met.

(b) *Notification.* Prior to initiation of administrative offset, if not provided in the initial notice of indebtedness, the VA is required to provide the debtor with written notice of:

(1) The nature and amount of the debt;

(2) The VA's intention to pursue collection by offset procedures from the specified VA payment, the date of commencement of offset, and the exact amount to be offset;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest either the existence or amount of the debt or the proposed offset schedule, or if applicable, to request a waiver of collection of the debt, or to request a hearing on any of these matters;

(5) That commencement of offset will begin, unless the debtor makes a written request for the administrative relief discussed in paragraph (b)(4) of this section within 30 days of the date of this notice; and

(6) The oppportunity to enter into a written agreement with the VA to repay the debt in lieu of offset.

(c) *Deferral of offset.* (1) If the debtor, within 30 days of the date of the notification required by paragraph (b) of this section, disputes in writing the existence or amount of the debt or the amount of the scheduled offset, offset shall not commence until the dispute is reviewed and a decision is rendered by the VA adverse to the debtor.

(2) If the debtor, within 30 days of the date of the required notification by the VA, requests in writing the waiver of collection of the debt in accordance with § 1.963 or § 1.964, offset shall not commence until the VA has made an

initial decision to deny the waiver request.

(3) If the debtor, within 30 days of the required notification by the VA, requests in writing a hearing on the issues found in paragraphs (c) (1) and (2) of this section, offset shall not commence until a decision is rendered by the VA on the issue which is the basis of the hearing.

(d) *Exceptions.* (1) Offset may commence prior to either resolution of a dispute or decision on a waiver request as discussed in paragraph (c) of this section, if collection of the debt would be jeopardized by deferral of offset. In such a case, notification pursuant to paragraph (b) of this section shall be made at the time offset begins or as soon thereafter as possible.

(2) If the United States has obtained a judgment against the debtor, offset may commence without the notification required by paragraph (b) of this section. However, a waiver request filed in accordance with the time limits and other requirements of § 1.963 or § 1.964 will be considered, even if filed after a judgment has been obtained against the debtor. If waiver is granted, in whole or in part, refund of amounts already collected will be made in accordance with § 1.967.

(e) *Hearing.* (1) After a debtor requests a hearing, the VA shall notify the debtor of the form of the hearing to be provided; i.e., whether the hearing will either be oral or paper. If an oral hearing is determined to be proper by the hearing official, the notice shall set forth the date, time, and location of the hearing. If the hearing is to be a paper review, the debtor shall be notified that he or she should submit his or her position and arguments in writing to the hearing official by a specified date, after which the record shall be closed. This date shall give the debtor reasonable time to submit this information.

(2) Unless otherwise required by law, an oral hearing under this paragraph is not required to be a formal evidentiary type of hearing.

(3) A debtor who requests a hearing shall be provided an oral hearing if the VA determines that the matter cannot be resolved by review of documentary evidence. Whenever an issue of credibility or veracity is involved, an oral hearing will always be provided the debtor. For example, the credibility or veracity of a debtor is always an issue whenever the debtor requests a waiver of collection of the debt. Thus, a hearing held in conjunction with a waiver request will always be an oral hearing. If a determination is made to provide an oral hearing, the hearing official may offer the debtor the opportunity for a hearing by telephone conference call. If this offer is rejected or if the hearing official declines to offer a telephone conference call, the debtor shall be provided an oral hearing permitting the personal appearance of the debtor, his or her personal representative, and witnesses. Witnesses shall testify under oath or affirmation.

(4) In all other cases where a debtor requests a hearing, a paper hearing shall be provided. The debtor shall be provided an opportunity to submit material for the record. A paper hearing shall consist of a review of the written evidence of record by the designated hearing official.

(f) When collecting multiple debts by administrative offset, the VA will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitation. In accordance with 4 CFR 102.3(b)(3), the VA may not initiate offset to collect a debt more than 10 years after the VA's right to collect the debt first accrued (with certain exceptions as explained in § 102.3(b)(3)).

(Authority: 31 U.S.C. 3716)

11. In § 1.912a, the heading and paragraph (a) are revised to read as follows:

§ 1.912a Collection by offset—from VA benefit payments.

(a) *Authority and scope.* The VA shall collect debts governed by 38 U.S.C. 3101(c) and § 1.911 by offset against any current or future VA benefit payments to the debtor. Unless paragraph (c) or (d) of this section apply, offset shall commence promptly after notification to the debtor as provided in paragraph (b) of this section. The collection by offset of all other debts is governed by Part 102, Chapter II, of Title 4, Code of Federal Regulations, and § 1.912.

* * * * *

12. Section 1.916 is revised to read as follows:

§ 1.916 Liquidation of collateral.

The VA will exercise its rights to liquidate security or collateral and apply the proceeds to debts due it through use of a power of sale in the security instrument or a non-judicial foreclosure if the debtor fails to pay his or her debt, within a reasonable time after demand, unless the cost of disposing of the collateral will be disproportionate to its value or the particular circumstances require judicial foreclosure. The VA must provide the debtor with reasonable notice of the sale, and an accounting of any surplus proceeds, as well as notice of any other procedures required by law or contract. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance company unless such action is expressly required by statute or contract.

(Authority: 31 U.S.C. 3711)

13. Section 1.917 is revised to read as follows:

§ 1.917 Collection in installments.

(a) Whenever feasible, and except as otherwise provided by law, debts owed to the VA together with any interest and administrative costs assessed under § 1.919, shall be collected in full in one lump sum. Collection in one lump sum is applicable whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, payments may be accepted in regular installments when the debtor is financially unable to pay the debt in one lump sum.

(b) In agreeing to accept regular installment payments to liquidate an outstanding indebtedness, the VA shall obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the agreement and which contains a provision accelerating the debt in the event that the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the debt in not more than three years. Installment payments of less than $50 per month shall be accepted only if justified on the grounds of financial hardship or for some other reasonable cause.

(c) If the VA is holding an unsecured claim for administrative collection, it shall attempt to obtain from a debtor an executed confess-judgment note in States and jurisdictions where permitted, using Department of Justice Form 1, or another appropriate Department of Justice form, whenever the total amount of the deferred installments will exceed $750. Such notes may also be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, the VA shall provide debtors with a written explanation of the consequences of signing the note, and shall maintain sufficient documentation to demonstrate that the debtor signed the note

knowingly and voluntarily. Security for deferred payments, other than a confess-judgment note, may be accepted in appropriate cases. The VA may accept installment payments even if the debtor refuses to execute a confess-judgment note or to give other security.

(d) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among these debts, that designation must be followed by the VA. If the debtor does not designate the application of the payment, the VA shall apply payments to the various debts in accordance with the best interests of the Government as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

(Authority: 31 U.S.C. 3711)

14. Section 1.918 is revised to read as follows:

§ 1.918 Exploration of compromise.

The VA will attempt to effect compromises, preferably during the course of personal interviews, in accordance with the standards set forth in §§ 1.930 through 1.938 in all cases in which it is ascertained that the debtor is financially unable to pay the full amount or in which the litigative risks or the costs of litigation dictate such action.

15. In § 1.919, paragraphs (a), (c), (e), and (f) are revised to read as follows:

§ 1.919 Interest.

(a) Except as otherwise provided by statute, contract, or other regulation to the contrary, the VA shall assess:

(1) Interest on all indebtedness to the United States arising as a result of participation in VA benefit programs which are being paid in installments,

(2) Interest and administrative costs of collection on debts where repayment has become delinquent, and

(3) Interest, penalties, and administrative costs on all nonbenefit debts in accordance with 4 CFR 102.13.

* * * * *

(c) The rate of interest charged by the VA shall be based on the rate paid by the United States for its borrowing as published in the Treasury's Cash Management Regulations (ITFM 6–8000). The rate of interest shall be adjusted annually on the first day of the calendar year to reflect the average rate being charged in accordance with the Treasury's Cash Management Regulations. Once the rate of interest has been determined for a particular debt, the rate shall remain unchanged throughout the duration of repayment of that debt.

* * * * *

(e) Interest under this section shall not be charged if the debt is paid in full within 30 days of mailing of the initial notice described in paragraph (b) of this section. Once interest begins to accrue, and after expiration of the time period for payment of the debt in full to avoid assessment of interest and administrative costs, any amount received toward the payment of such debt shall be first applied to payment of outstanding administrative cost charges and then to accrued interest or costs, and then to principal, unless a different rule is prescribed by statute, contract, or other regulation.

(f) All or any part of the interest and administrative costs assessed under this section are subject to consideration for waiver under section 3102 of Title 38, United States Code, and appropriate administrative procedures.

(1) In general, interest and administrative costs may be waived only when the principal of the debt on which they are assessed is waived by a Committee on Waivers and Compromises. However, the VA may forbear collection of interest and administrative costs, exclusive of collection of the principal of the debt on which they are assessed, as well as terminate further assessment of interest and administrative costs when the collection of such interest and costs are determined to be not in the government's best interest. Collection of interest and administrative costs shall not be considered to be in the best interest of the government when the amount of assessed interest and administrative cost is so large that there is a reasonable certainty that the original debt will never be repaid. The determination to forbear collection of interest and administrative cost, exclusive of collection of the principal of the debt, shall be made by the Chief of the Fiscal activity at the station responsible for the collection of the debt. Such a determination is not within the jurisdiction of a Committee on Waivers and Compromises.

(2) When a debtor requests a waiver of collection of the indebtedness, interest and administrative costs shall not be assessed until either

(i) A Committee on Waivers and Compromises has considered the request and rendered an initial decision, or

(ii) The applicable time limit for requesting waiver, as stated in 38 U.S.C. 3102, has expired and the debtor, after notice in accordance with § 1.911, has not made such a request. This subsection does not apply to debts resulting from participation in the loan program administered under Chapter 37 of title 38 of the United States Code.

(Authority: 38 U.S.C. 3102, 3115)

* * * * *

16. In § 1.922, paragraphs (a)(1), (c), and (d)(2)(i) are revised to read as follows:

§ 1.922 Disclosure of debt information to consumer reporting agencies (CRAs).

(a) * * *

(1) obtaining the location of an individual indebted to the United States as a result of participation in any benefits program administered by the VA or indebted in any other manner to the VA;

* * * * *

(c) Subject to the conditions set forth in paragraph (d) of this section, information concerning individuals may be disclosed to consumer reporting agencies for inclusion in consumer reports pertaining to the individual, or for the purpose of locating the individual. Disclosure of the fact of indebtedness will be made if the individual fails to respond in accordance with written demands for repayment, or refuses to repay a debt to the United States. In making any disclosure under this section, the VA will provide consumer reporting agencies with sufficient information to identify the individual, including the individual's name, address, if known, date of birth, VA file number, and Social Security number.

* * * * *

(d) * * *

(2)(i) The VA will notify each individual of the right to dispute the existence or amount of any debt in accordance with §§ 3.101(e) and 19.109, and to request a waiver of the debt in accordance with §§ 1.955 through 1.970 if applicable.

* * * * *

17. Sections 1.923, 1.924, 1.925, 1.926, 1.927, and 1.928 are added to read as follows:

§ 1.923 Contracting for collection services.

(a) The VA has authority to contract for collection services to recover delinquent debts, provided that:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection and refer the matter for litigation shall be retained by the VA;

(2) The contractor shall be subject to 38 U.S.C. 3301, and to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and

regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692 et seq.

(3) The contractor shall be required to strictly account for all amounts collected;

(4) Upon returning an account to the VA for subsequent referral to the Department of Justice for litigation, the contractor must agree to provide any data contained in its files relating to § 1.951.

(b) Funding of collection service contracts:

(1) The VA may fund a collection service contract on a fixed-fee basis (i.e., payment of a fixed fee determined without regard to the amount actually collected under the contract). Payment of the fee under this type of contract must be charged to available appropriations;

(2) The VA may also fund a collection service contract on a contingent-fee basis (i.e., by including a provision in the contract permitting the contractor to deduct its fee from amounts collected under the contract). The fee should be based upon a percentage of the amount collected, consistent with prevailing commercial practice;

(3) The VA may enter into a contract under paragraph (b)(1) of this section only if and to the extent that funding for the contract is provided for in advance by an appropriation act or other legislation, except that this requirement does not apply to the use of a revolving fund authorized by statute;

(4) Except as authorized under paragraphs (b)(2) and (b)(5) of this section, or unless otherwise specifically provided by law, the VA shall deposit all amounts recovered under collection service contracts for Loan Guaranty debts into the Loan Guaranty Revolving Fund, and for all other debts in the Treasury as miscellaneous receipts pursuant to 31 U.S.C. 3302.

(5) For benefit overpayments recovered under collection service contract, the VA, pursuant to 31 U.S.C. 3302, shall deposit:

(i) Amounts equal to the original overpayments in the appropriations account from which the overpayments were made, and

(ii) Amount of interest or administrative costs in the Treasury as miscellaneous receipts.

(Authority: 31 U.S.C. 3718)

§ 1.924 Use and disclosure of mailing addresses.

(a) When attempting to locate a debtor in order to collect or compromise a debt in accordance with §§ 1.900 through 1.954, the VA may send a request to the Secretary of the Treasury, or his/her designee, in order to obtain the debtor's most current mailing address from the records of the Internal Revenue Service.

(b) The VA may disclose a mailing address obtained under paragraph (a) of this section to other agents, including collection service contractors hired by the VA, in order to facilitate the collection or compromise of debts. A mailing address obtained under paragraph (a) of this section may be disclosed to a consumer reporting agency under authority of § 1.922 only for the limited purpose of obtaining a commercial credit report on the particular taxpayer.

(c) The VA will insure that procedures established under this section comply with the Privacy Act (5 U.S.C. 552a) and the provisions of 26 U.S.C. 6103(p)(4) and applicable regulations of the Internal Revenue Service.

(Authority: 31 U.S.C. 3711)

§ 1.925 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund, Federal Employees Retirement System (FERS), final salary check, and lump sum leave payments.

(a) Unless otherwise prohibited by law or regulation, the VA may request that money which is due and payable to a debtor from either the Civil Service Retirement and Disability Fund or the Federal Employees Retirement System (FERS) be administratively offset in reasonable amounts in order to collect, in one full payment or a minimal number of payments, debts that are owed to the VA by the debtor. Such requests shall be made to the appropriate officials at the Office of Personnel Management in accordance with such regulations prescribed by the Director of that Office. See 5 CFR Part 831, Subpart R (§§ 831.1801 through 831.1808) and Part 845, Subpart O (§§ 845.401 through 845.408). In addition, the VA may also offset against a Federal employee's final salary check and lump sum leave payment, unless they represent continuation of an offset against current salary initiated in accordance with §§ 1.980 through 1.994. See § 1.912 for procedures for offset against a final salary check and lump sum leave payment.

(b) When making a request to the Office of Personnel Management for administrative offset under paragraph (a) of this section, the VA shall include a written certification that:

(1) The debtor owes the VA a debt, including the amount of the debt;

(2) The VA has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The VA has complied with §§ 1.911, 1.912, 1.912a, or 4 CFR 102.3 including any required hearing or review.

(c) Once the VA decides to request administrative offset from the Civil Service Retirement and Disability Fund or Federal Employees Retirement System (FERS) under paragraph (a) of this section, it shall make the request as soon as possible after completion of the applicable procedures in order that the Office of Personnel Management may identify the debtor's account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund or FERS. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statutes of limitations. At such time as the debtor makes a claim for payments from the Fund or FERS, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that such offset will create financial hardship.

(d) If the VA collects all or part of the debt by other means before deductions are made or completed in accordance with paragraph (a) of this section, the VA shall promptly act to modify or terminate its request for offset under paragraph (a) of this section.

(e) The Office of Personnel Management is neither required nor authorized by this section to review the merits of the VA's determination with respect to the amount and validity of the debt' waiver under 5 U.S.C. 5584 or 38 U.S.C. 3102, or providing or not providing an oral hearing.

(Authority: 5 U.S.C. 8461; 31 U.S.C. 3711, 3716)

§ 1.926 Referral of VA debts.

(a) When authorized, the VA may refer an uncollectible debt to another Federal or State agency for the purpose of offsetting the debt from any payment, except salary, (see paragraph (e) of this section), made by such agency to the person indebted to the VA.

(b) The VA must certify in writing that the individual owes the debt, the amount and basis of the debt, the date on which payment became due, and the date the VA's right to collect the debt first accrued.

(c) This certification will also state that the VA provided the debtor with written notice of:

(1) The nature and amount of the debt;

(2) The VA's intention to pursue collection by offset procedures;

(3) The opportunity to inspect and copy VA records pertaining to the debt;

(4) The right to contest both the existence and amount of the debt and to request a waiver of collection of the debt (if applicable), as well as the right to a hearing on both matters;

(5) The opportunity to enter into a written agreement with the VA for the repayment of the debt; and

(6) Other applicable notices required by §§ 1.911, 1.912, and 1.912a.

(d) The written certification required by paragraphs (b) and (c) of this section will also contain (for all debts) a listing of all actions taken by both the VA and the debtor subsequent to the notice, as well as the dates of such actions.

(e) The referral by the VA of a VA debt to another agency for the purposes of salary offset shall be done in accordance with 5 CFR 550.1106.

(Authority: 31 U.S.C. 3711)

§ 1.927 Analysis of costs and prevention of debts.

(a) VA collection procedures should provide for periodic comparison of costs incurred and amounts collected. Data on costs and corresponding recovery rates for debts of different types and various dollar ranges should be used to compare the cost effectiveness of alternative collection procedures, establish guidelines with respect to points at which costs of further collection efforts are likely to exceed recoveries, assist in evaluating compromise offers, and establish minimum debt amounts below which collection efforts need not be taken. Costs and recovery data should also be useful in justifying adequate resources for an effective collection program, evaluating the feasibility and cost effectiveness of contracting for consumer reporting agencies' services (§ 1.922), collection services (§ 1.923), and for determining appropriate charges for administrative costs (§ 1.919).

(b) The VA shall insure that adequate procedures are established which both identify the causes of overpayments, delinquencies, and defaults and also describe the actions necessary to correct such problems.

(Authority: 31 U.S.C. 3711 through 3719)

§ 1.928 Exemptions.

(a) Sections 1.900 through 1.954 do not apply to debts arising under, or to payments made under, the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*), the Social Security Act (42 U.S.C. 301 *et seq.*), or tariff laws of the United States. However, the remedies and procedures described in §§ 1.900 through 1.954 are still authorized with respect to debts which are exempt from the purview of the Debt Collection Act of 1982, to the extent that they are authorized under some other statute or common law.

(b) This section shall not be construed as prohibiting the use of §§ 1.900 through 1.954 when the VA attempts to collect debts owed to this agency by persons employed by the agencies administering the laws cited in paragraph (a) of this section.

(Authority: 31 U.S.C. 3711)

18. Section 1.930 is revised to read as follows:

§ 1.930 Scope and application.

(a) The standards set forth in §§ 1.930 through 1.938 apply to the compromise of claims in accordance with 31 U.S.C. 3711. The VA may exercise such compromise authority where the claim owed to the VA does not exceed $20,000, exclusive of interest or administrative costs. This $20,000 limit does not apply to debts which arise out of participation in the loan program under Chapter 37 of Title 38 of the United States Code. The Comptroller General or his/her designee may exercise compromise authority with respect to claims referred to the General Accounting Office (GAO). Only the Comptroller General or his/her designee may compromise a claim that arises out of an exception made by the GAO in the account of an accountable officer, including a claim against the payer, prior to its referral by the GAO to the Department of Justice for litigation.

(b) When the claim exceeds $20,000, exclusive of interest and administrative costs, the authority to accept a compromise offer rests solely with the Department of Justice. However, approval by the Department of Justice is not required if the VA wishes to reject a compromise offer on a debt in excess of $20,000. If the VA believes that the compromise offer on a debt in excess of $20,000 should be accepted, it shall refer the matter to the Department of Justice by using the Claims Collection Litigation Report (§ 1.951). If the gross amount of the claim is in excess of $100,000, then the claim will be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. If the gross amount of the claim is $100,000 or less, such claims will be referred to the U.S. Attorney in whose judicial district the debtor can be found. The referral should contain a written memorandum by the local Committee on Waivers and Compromises specifying the exact reason why it is believed that the compromise offer should be accepted.

(Authority: 31 U.S.C. 3711)

19. Section 1.931 is revised to read as follows:

§ 1.931 Inability to pay.

(a) A claim may be compromised by the VA pursuant to §§ 1.930 through 1.938 if the VA cannot collect the full amount of the debt because of:

(1) The debtor's inability to pay the full amount of the debt within a reasonable amount of time; or

(2) The refusal of the debtor to pay the claim in full and the inability of the VA to collect the debt in full within a reasonable time by means of enforced collection.

(b) In determining the debtor's ability to pay, the following factors, among others, may be considered:

(1) Age and health of the debtor;

(2) Present and potential income;

(3) Inheritance prospects;

(4) The possibility that assets have been concealed or improperly transferred by the debtor; and

(5) The availability of assets or income which may be realized by means of enforced collection procedures.

(c) The VA will give consideration to the applicable exemptions available to the debtor under various State and Federal laws in determining the ability to enforce collection. Uncertainty as to the price which collateral or other property will bring at a forced sale may be properly considered in determining the ability to enforce collection. A compromise effected under §§ 1.930 through 1.938 should be for an amount which bears a reasonable relation to the amount which can be recovered by enforced collection procedures, having regard for the exemptions available to the debtor and the time in which collection will take place.

(d) The payment of a compromise in installments is to be discouraged. However, if payment of a compromise in installments is necessary, then a legally enforceble agreement shall be obtained from the debtor for the reinstatement of the original amount of the indebtedness, less any amounts paid there on by the debtor, and also an acceleration of the balance due upon default. Such an agreement, together with security as described in § 1.917, should be obtained in every case possible.

(e) If the VA files do not contain recent credit information as a basis for assessing a compromise proposal, such information shall be obtained from the debtor by obtaining a statement, executed under penalty of perjury, showing the debtor's assets and liabilities, income and expenses. Forms such as VA Form 4–5655 "Financial Status Report" or Department of Justice Forms OBD–500 or OBD–500B shall be used to obtain this information. Similar data may be obtained from corporate

debtors by using a form, such as Department of Justice Form OBD–500C or by resort to balance sheets and such additional data as may be required.

(Authority: 31 U.S.C. 3711)

20. Section 1.932 is revised to read as follows:

§ 1.932 Litigative possibilities.

The VA will attempt to compromise claims when there is a real doubt as to the Government's ability to prove its case in court for the full amount claimed either because of the legal issues involved or bona fide dispute as to the facts. The amount accepted in compromise will fairly reflect the probability of prevailing on the legal question involved, the probabilities with respect to full or partial recovery of a judgment having due regard to the availability of witnesses and other evidentiary support for the Government claim, and related pragmatic considerations. Proportionate weight will be given the court costs and attorney fees which may be assessed against the Government if it is unsuccessful in litigation, having regard for the litigative risks involved. (See 28 U.S.C. 2412.)

§§ 1.934 through 1.937 [Redesignated as §§ 1.935 through 1.938]

21. Section 1.934 is redesignated as § 1.935; § 1.935 is redesignated as § 1.936; § 1.936 is redesignated as § 1.937; and § 1.937 is redesignated as § 1.938. New § 1.934 is added to read as follows:

§ 1.934 Enforcement policy.

Statutory penalties, interest, and administrative costs which are established as an aid to enforcement and to compel compliance may be compromised pursuant to §§ 1.930 through 1.938. However, such additional costs on debts will be considered for compromise only in connection with compromise of the total amount of the debt (original amount of debt plus interest and costs). Interest, administrative costs, and other additional costs will never be considered for compromise separately or exclusively from the original amount of the debt.

(Authority: 31 U.S.C. 3711)

22. Section 1.935 is revised to read as follows:

§ 1.935 Joint and several liability.

When two or more debtors are jointly and severally liable, collection action will not be withheld against one such debtor until the other or others pay their proportionate shares. The VA shall not attempt to allocate the burden of paying such claims as between the debtors, but shall proceed to liquidate the indebtedness as quickly as possible. Proper measures shall be taken to insure that a compromise with one such debtor does not release the VA's claim against the remaining debtor. The amount of a compromise accepted from one debtor shall not be considered as a precedent or as morally binding in determining the amount which will be required from the other debtor held to be jointly and severally liable on the claim.

(Authority: 31 U.S.C. 3711)

23. Section 1.937 is revised to read as follows:

§ 1.937 Further review of compromise offers.

The VA may refer to the GAO or Department of Justice firm written offers, plus supporting data, from debtors when there is doubt whether the offers should be accepted.

24. Section 1.938 is revised to read as follows:

§ 1.938 Restrictions.

The VA will not accept either a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, consideration shall be given to requiring a waiver of the tax-loss-carry-forward and tax-loss-carry-back rights of the debtor.

25. Section 1.940 is revised to read as follows:

§ 1.940 Scope and application.

(a) The standards set forth in §§ 1.940 through 1.943 apply to the suspension or termination of collection action pursuant to 31 U.S.C. 3711(a)(3) on claims which do not exceed $20,000, exclusive of interest, penalties (if applicable), and administrative costs, after deducting the amount of partial payments or collections, if any. The VA may suspend or terminate collection action under §§ 1.940 through 1.943 with respect to claims for money or property arising out of this agency's activities prior to the referral of such claims to the GAO or to the Department of Justice for litigation. The Comptroller General may exercise such authority with respect to such claims referred to the GAO by the VA prior to their further referral to the Department of Justice for litigation.

(b) If after deducting the amount of any partial payments or collections, a claim exceeds $20,000, exclusive of interest and administrative costs, then the authority to suspend or terminate further collection action rests solely with the Department of Justice. If the VA determines that suspension or termination is appropriate for such a debt, after evaluation in accordance with the standard set forth in §§ 1.941 and 1.942, then the matter shall be referred to the Department of Justice, using the Claims Collection Litigation Report (see § 1.951). The referral shall contain a written recommendation, which specifies the reasons why suspension or termination is advantageous to the government. If the VA determines that its claim is plainly erroneous or clearly without legal merit, it may terminate collection action regardless of the amount involved, without the concurrence of the Department of Justice.

(Authority: 31 U.S.C. 3711)

26. Section 1.941 is revised to read as follows:

§ 1.941 Suspension of collection activity.

(a) Collection action may be suspended temporarily on a claim when the debtor cannot be located after diligent effort and there is reason to believe that future collection action may be sufficiently productive to justify periodic review and action on the claim. The following sources shall be used to locate missing debtors: Telephone directories, city directories, postmasters, drivers license records, automobile title and registration records, State and local government agencies, the Internal Revenue Service (§ 1.924), other Federal agencies, employers, relatives, credit agency locate reports, and credit bureaus. Suspension as to a particular debtor should not prohibit the early liquidation of any security held for the debt. Every reasonable effort should be made to locate missing debtors sufficiently in advance of the bar of any applicable statute of limitations, in order to permit the timely filing of a suit, if such action is warranted. If the missing debtor has signed a confess-judgment note and is in default, referral of the note for the entry of judgment should not be delayed because of his/her missing status.

(b) Collection action may also be suspended temporarily on a claim when the debtor owns no substantial equity in real or personal property and is unable to make payments on the debt owed to the VA or effect a compromise at the time, but his/her future prospects justify retention of the claim for periodic review and action, and:

(1) The applicable statute of limitations has been tolled or started running again, or

(2) Future collection can be affected by offset, notwithstanding the statute of

limitations, with due regard to the 10 year limitation prescribed by 31 U.S.C. 3716(c)(1), or

(3) The debtor agrees to pay interest on the amount of the debt on which collection action has been suspended temporarily, and such temporary suspension is likely to enhance the debtor's ability to pay the debt in full, with interest, at a later time.

(c) Collection action may also be suspended, in accordance with §§ 1.911,1.912, and 1.912a, pending agency action on requests for administrative review or waiver.

(Authority: 31 U.S.C. 3711)

27. In § 1.942, paragraphs (a), (c) and (f) are revised to read as follows:

§ 1.942 Termination of collection activity.

* * * * *

(a) *Inability to collect any substantial amount.* Collection action may be terminated on a claim when it becomes clear that the VA cannot collect or enforce collection of any significant amount from the debtor, having due regard for the judicial remedies available to the agency, the debtor's future financial prospects, and the exemptions available to the debtor under State and Federal law. In determining the debtor's inability to pay, the following factors, among others, shall be considered: Age and health of the debtor, present and potential income, inheritance prospects, the possibility that assets have been concealed or improperly transferred by the debtor, the availability of assets or income which may be realized by means of enforced collection proceedings.

* * * * *

(c) *Death of debtor.* The debtor is determined to be deceased and the Government has no prospect of collection from his/her estate.

* * * * *

(f) *Claim cannot be substantiated by evidence.* The VA will terminate collection action on once asserted claims because of lack of evidence or unavailability of witnesses only in cases where efforts to induce voluntary payment are unsuccessful.

28. Section 1.943 is revised to read as follows:

§ 1.943 Transfer of claims.

When the VA has doubt as to whether collection action should be suspended or terminated on a claim, it may refer the claim to the GAO for advice. When a significant enforcement policy is involved in reducing a statutory penalty or forfeiture to judgment, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, such as the suspension or revocation of a license or the privilege of participating in a government sponsored program, the VA may refer such a claim for litigation even though termination of collection activity might otherwise be given consideration. Claims on which the VA holds a judgment by assignment or otherwise shall be referred to the Department of Justice for further actions if renewal of the judgment lien or enforced collection proceedings are justified, except where the VA has authority for handling its own litigation.

(Authority: 31 U.S.C. 3711)

29. The center heading between §§ 1.943 and 1.950 is revised to read as follows:

Referrals to GAO, Department of Justice, or IRS

30. Section 1.950 is revised to read as follows:

§ 1.950 Prompt referral.

(a) Except as provided in paragraphs (b) and (c) of this section, claims on which aggressive collection action has been taken and which cannot be compromised, or on which collection action cannot be suspended or terminated, shall be promptly referred to the Department of Justice for litigation. Claims for which the gross original amount is over $100,000 shall be referred to the Commercial Litigation Branch, Civil Division, Department of Justice, Washington, DC 20530. Claims for which the gross original amount is $100,000 or less shall be referred to the United States Attorney in whose judicial district the debtor can be found. Referrals should be made as early as possible, consistent with aggressive collection action and the observance of §§ 1.900 through 1.954, and well within the time period for bringing a suit against the debtor. Ordinarily, such referrals should be made within one year of the VA's final determination of the fact and amount of the debt.

(b) Claims arising from audit exceptions taken by the GAO to payments made by the VA must be referred to the GAO for review and approval, prior to referral to the Department of Justice, unless the VA has been granted an exception by the GAO.

(c) When the merits of the VA claim, the amount owed on the claim, or the propriety of acceptance of a proposed compromise, suspension, or termination are in doubt, the Veterans Administration shall refer the matter to the GAO for resolution and instructions prior to proceeding with collection action and/or referral to the Department of Justice for litigation.

(d) Once a claim has been referred to the GAO or the Department of Justice pursuant to this section, the VA shall refrain from having any contact with the debtor and shall direct the debtor to the GAO or the Department of Justice, as appropriate, when questions concerning the claim or a request for waiver of the claim are raised by the debtor. The GAO or the Department of Justice, as appropriate, shall be immediately notified by the VA of any payments or requests for administrative remedies, such as waiver, which are received by this agency from the debtor subsequent to referral of a claim under this section.

(e) In accordance with procedures set forth in 26 CFR Part 301, information pertaining to past-due, legally enforceable debts owed to the VA may be referred to the Internal Revenue Service by the VA for the purpose of collection of such debts by means of tax refund offset.

(Authority: 31 U.S.C. 3711)

31. Section 1.951 is revised to read as follows:

§ 1.951 Claims Collection Litigation Report.

(a) Unless an exception is granted by the Department of Justice, the Claims Collection Litigation Report (CCLR) shall be used with all referrals of administratively uncollectible claims made pursuant to § 1.950. As required by the CCLR, the following information shall be included:

(1) *Report of prior collection actions.* A checklist or brief summary of the actions taken to collect or compromise the claim will be forwarded with the claim upon its referral. If any of the administrative collection actions described in §§ 1.900 through 1.954 have been omitted, the reasons for their omission must be provided. The Department of Justice or GAO may return claims at their option when there is insufficient justification for the omission of one or more of the administrative collection actions.

(2) *Current address of the debtor.* The current address of the debtor, or the name and address of the agent for a corporation upon whom service may be made, shall be provided. Reasonable and appropriate steps will be taken to locate missing parties in all cases. Referrals to the Department of Justice, in which the current address of any party is unknown, shall be accompanied by a listing of the prior known addresses of such party and a statement of the steps taken to locate that party.

(3) *Credit data.* Current credit data, when applicable, indicating that there is a reasonable prospect of effecting enforced collection from the debtor, having due regard for the exemptions available to the debtor under State and Federal law and judicial remedies available to the government, shall be included:

(i) Such credit data may take the form of:

(A) A commercial credit report;

(B) An agency investigative report showing the debtor's assets, liabilities, income, and expenses;

(C) The individual debtor's own financial statement executed under penalty of perjury reflecting the debtor's assets, liabilities, income, and expenses; or

(D) An audited balance sheet of a corporate debtor.

(ii) Such credit data may be omitted if:

(A) A surety bond is available in an amount sufficient to satisfy the claim in full;

(B) The forced sale value of the security available for application to the VA claim is sufficient to satisfy the claim in full;

(C) The VA wishes to liquidate the loan collateral through judicial foreclosure but does not desire a deficiency judgment;

(D) The debtor is in bankruptcy or receivership;

(E) The debtor's liability to the VA is fully covered by insurance, in which case the VA will furnish such information as it can develop concerning the identity and address of the insurer and the type and amount of insurance coverage;

(F) The nature of the debtor is such that credit data is not normally available or cannot reasonably be obtained; or

(G) Where it is clearly irrelevant to the Government's case.

(b) The VA shall also use the Claims Collection Litigation Report (CCLR) when referring claims to the Department of Justice in order to obtain approval of that department with respect to compromise, suspension, or termination.

(Authority: 31 U.S.C. 3711)

32. Section 1.952 is revised to read as follows:

§ 1.952 Preservation of evidence.

Care shall be taken to preserve all files, records, and exhibits on claims referred to or to be referred to the Department of Justice for litigation. Under no circumstances should original documents be sent to the Department of Justice or to the U.S. Attorney without their specific prior approval to do so. Copies of relevant documents should be sent whenever necessary.

(Authority: 31 U.S.C. 3711)

33. Section 1.953 is revised to read as follows:

§ 1.953 Minimum amount of referrals to the Department of Justice.

The VA shall not refer claims of less than $600, exclusive of interest, penalties (if applicable), and administrative costs, for litigation unless:

(a) Referral is important to a significant enforcement policy, or

(b) The debtor not only has the clear ability to pay the claim but the government can effectively enforce payment, having due regard for the exemptions available to the debtor under State and Federal law and the judicial remedies available to the government.

(Authority: 31 U.S.C. 3711)

34. Section 1.954 is revised to read as follows:

§ 1.954 Preliminary referrals to GAO.

As required by § 1.950, preliminary referrals to the Government Accounting Office (GAO) will be in accordance with instructions, including monetary limitations, contained in the "General Accounting Office Policy and Procedures Manual for the Guidance of Federal Agencies".

§ 1.955 [Amended]

35. In 38 CFR 1.955(a)(1), remove the words "31 U.S.C. 951–953" and add, in their place, the words "31 U.S.C. 3711".

§ 1.957 [Amended]

36. In 38 CFR 1.957(a)(2)(ii), remove the words "31 U.S.C. 951–953" and add, in their place, the words "31 U.S.C. 3711".

37. In § 1.957, paragraphs (a)(2)(ii) (B), (b) introductory text, and (b)(1) are revised and paragraphs (a)(2)(ii) (C) and (D) are added to read as follows:

§ 1.957 Committee authority.

(a) * * *

(2) * * *

(ii) * * *

(B) Accept or reject a compromise offer on a debt of $1,000 or less, exclusive of interest, which is not disposed of by the Chief, Fiscal activity, pursuant to paragraph (b) of this section.

(C) Reject a compromise offer on a debt which exceeds $20,000, exclusive of interest or administrative costs.

(D) Recommend approval of a compromise offer on a debt which exceeds $20,000, exclusive of interest and administrative costs. The authority to accept a compromise offer on such a debt rests solely within the jurisdiction of the Department of Justice. The Committee should evaluate a compromise offer on a debt in excess of $20,000, using the factors set forth in §§ 1.930 through 1.938. If the Committee believes that the compromise is advantageous to the government, then the Committee members shall so state this conclusion in a written memorandum of recommendation of approval to the Chairperson. This recommendation, along with a Claims Collection Litigation Report (CCLR) completed in accordance with § 1.951, will be referred to the Department of Justice for final approval.

(Authority: 31 U.S.C. 3711)

* * * * *

(b) *Chief of Fiscal Activity.* The Chief of the Fiscal activity at both DVB and DM&S offices has authority as to debts arising within his/her jurisdiction, to:

(1) Suspend or terminate collection action on all debts which do not exceed $20,000, exclusive of interest and administrative costs, after deducting the amount of any payments or collections.

* * * * *

38. In § 1.962, paragraph (b) is revised to read as follows:

§ 1.962 Waiver of overpayment.

* * * * *

(b) In any case where there is an indication of fraud or misrepresentation of a material fact on the part of the debtor or any other party having an interest in the claim, action on a request for waiver will be deferred pending appropriate disposition of the matter. However, the existence of a prima facie case of fraud shall, nevertheless, entitle a claimant to an opportunity to make a rebuttal with countervailing evidence; similiarly, the misrepresentation must be more than non-willful or mere inadvertence. The Committee may act on a request for waiver concerning such debts, after the Inspector General or the District Counsel has determined that prosecution is not indicated, or the Department of Justice has notified the VA that the alleged fraud or misrepresentation does not warrant action by that department, or the Department of Justice or the appropriate United States Attorney, specifically authorized action on the request for waiver.

(Authority: 38 U.S.C. 210(c)(1))

39. In § 1.963a, the last sentence in paragraph (a) and the first sentence in paragraph (b) are revised to read as follows:

§ 1.963a Waiver—erroneous payment of pay and allowances.

(a) * * * It also includes expenses of travel and transportation or expenses of transportation of household goods.

(b) Allowances as they relate to an employee include, but are not limited to, payments for quarters, uniforms, and overseas cost of living expenses, as well as travel and transportation expenses and relocation allowances. * * *

* * * * * *

[FR Doc. 87-25312 Filed 11-2-87; 8:45 am]
BILLING CODE 8320-01-M

38 CFR Part 21

Payments to Dependents of Veterans in Training

AGENCY: Veterans Administration.

ACTION: Final regulatory amendments.

SUMMARY: The purpose of these amendments is to provide more detailed instructions regarding the beginning date of payments for veterans' dependents, particularly dependents the veteran acquires after he or she begins training under chapter 31. The beginning date of payment for dependents the veterans acquires after he or she begins training may not be made earlier than the date the dependent's existence is established. The amendment should eliminate any misinterpretation of this rule.

EFFECTIVE DATE: November 3, 1987.

FOR FURTHER INFORMATION CONTACT: Morris Triestman, Rehabilitation Consultant, Vocational Rehabilitation Policy and Development, Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC, (202) 233-5449.

SUPPLEMENTARY INFORMATION: At pages 19174 and 19175 of the **Federal Register** of May 21, 1987, the VA published a proposed regulatory amendment concerning the beginning date of payment for veterans' dependents under 38 CFR 21.322, particularly dependents the veteran acquires after he or she begins training under chapter 31. Interested persons were given 30 days in which to submit their comments, suggestions, or objections to the proposed regulatory amendment. We received one informal comment. The commentor pointed out an error which had not been identified in the editing process. This error has been corrected. Since no other comments, suggestions, or objections were received, the amendment is hereby adopted as final.

These amendments do not meet the criteria for major rules as contained in Executive Order 12291, Federal Regulation. The changes will not have a $100 million annual effect on the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse effects on the economy.

The Administrator certifies that these amendments 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. Pursuant to 5 U.S.C. 605(b), these rules are therefore exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. The reason for this certification is that the changes only concern the rights and responsibilities of individual VA beneficiaries under chapter 31. Thus, no regulatory burdens are imposed on small entities by these changes.

The Catalog of Federal Domestic Assistance Number is 64.116.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs, Loan programs, Reporting requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 21, 1987.

Thomas K. Turnage,

Administrator.

38 CFR Part 21, *Vocational Rehabilitation and Education*, is amended as follows:

PART 21—[AMENDED]

1. In § 21.260, paragraph (d) is added to read as follows:

§ 21.260 Subsistence allowance.

* * * * * *

(d) *Dependents.* The term "dependent" means a spouse, child or dependent parent who meets the definition of relationship specified in § § 3.50, 3.51, 3.57 or 3.59 of this chapter.

(Authority: 38 U.S.C. 1508(b))

2. In § 21.322, paragraph (c) is revised and a new cross-reference is added to read as follows:

§ 21.322 Commencing dates of subsistence allowance.

* * * * * *

(c) *Increases for dependents*—(1) *Dependency exists at the time of entrance or reentrance into a rehabilitation program.* A veteran may have one or more dependents on or before the date he or she enters or reenters a rehabilitation program. When this occurs, the following rules apply:

(i) The effective date of the increase will be the date of entrance or reentrance if:

(A) The VA receives the claim for the increase within one year of the date of entrance or reentrance; and

(B) The VA receives any necessary evidence within one year of its request.

(ii) The effective date of the increase will be the date the VA receives notice of the dependents existence if:

(A) The VA receives the claim for the increase more than one year after the date of entrance or reentrance; and

(B) The VA receives any necessary evidence within one year of its request.

(iii) The effective date of the increase will be the date the VA receives all necessary evidence if that evidence is received more than one year from the date the VA requested the evidence.

(2) *Dependency arises after entrance or reentrance into a rehabilitation program.* If the veteran acquires a dependent after he or she enters or reenters a rehabilitation program, the increase will be effective on the latest of the following dates:

(i) *Date of claim.* This term means the following listed in order of their applicability:

(A) Date of the veteran's marriage, or birth of his or her child, or his or her adoption of a child, if the evidence of the event is received within one year from the date of the event;

(B) Date notice is received of the dependent's existence if evidence is received within one year from the date of the VA request for this evidence;

(C) Date the VA receives evidence of the dependent's existence if this date is more than one year after the VA request for this evidence;

(ii) *Date dependency arises*—(3) *Increased award not permitted.* No increased award for dependency may be paid prior to the date the law permits benefits for dependents generally.

(Authority: 38 U.S.C. 1508(b))

* * * * * *

Cross-Reference. See § 21.260(c) for definition of dependents.

[FR Doc. 87-25430 Filed 11-2-87; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[FRL-3286-3]

Standards of Performance for New Stationary Sources; Delegation of Authority to Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority.

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

The State of Oregon Department of Environmental Quality (DEQ), on September 11, 1987, requested EPA to delegate to DEQ the authority to implement and enforce Subpart Db (Industrial-Commercial-Institutional Steam Generating Units) under NSPS. EPA granted the request on October 8, 1987. DEQ now has the authority to enforce Subpart Db as approved in their OAR 340-25-553.

EFFECTIVE DATE: October 8, 1987.

ADDRESSES: Material in support of this delegation may be examined during normal business hours at the following locations:

Air Programs Branch, (10A-87-16), Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101

Oregon Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204.

FOR FURTHER INFORMATION CONTACT: Mark Hooper, Air Programs Branch, AT-092, Environmental Protection Agendy, 1200 Sixth Avenue, Seattle, Washington 98101, Telephone: (206) 442-1949, FTS: 399-1949.

SUPPLEMENTARY INFORMATION: On November 11, 1975, the Regional Administrator for EPA Region 10 delegated to the State of Oregon the authority to implement and enforce New Source Performance Standards (NSPS) for 13 categories of stationary sources as promulgated by EPA prior to January 1, 1975. This delegation was published in the **Federal Register** on February 20, 1976 (41 FR 7749). Additional delegations were made on December 3, 1981 (46 FR 62066), September 3, 1982 (47 FR 38982), September 27, 1983 (48 FR 46535), October 12, 1984 (49 FR 40031) January 24, 1986 (51 FR 3172), and June 20, 1986 (51 FR 22520).

The State of Oregon Department of Environmental Quality (ODEQ), in a letter dated September 11, 1987, requested delegation of Subpart Db. After a review of that request, the Regional Administrator of Region 10 approved this additional delegation of authority to DEQ in the following letter:

Fred Hansen,
Department of Environmental Quality, 811 S.W. Sixth, Portland, Oregon 97204

Dear Mr. Hansen: On September 11, 1987 you requested that EPA extend the delegation of authority to enforce an additional New Source Performance Standard (NSPS) to the Department of Environmental Quality (DEQ). We have reviewed that request and hereby grant to DEQ the authority to enforce Subpart Db (Industrial Commercial Institutional Steam Generating Units).

This delegation is subject to the conditions outlined in the original letter of delegation dated November 10, 1975 and published in the **Federal Register** (40 FR 7749). A Notice announcing this delegation will be published in the **Federal Register** in the near future.

Effective immediately all reports required pursuant to the federal NSPS from sources located in the state which were previously sent to EPA will now be sent to the Director of DEQ. Additionally, DEQ agrees to submit, until further notice, copies of reports required pursuant to 40 CFR 60.7(c) relating to excess emissions to EPA Region 10, Attention: Chief, Air Operations Section. DEQ has the authority to enforce revisions to those previously delegated NSPS sources which have been updated through January 15, 1987.

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

An advance copy of the **Federal Register** is enclosed for your information.

Sincerely,
Robie G. Russell,
Regional Administrator.

Enclosure
cc: James Herlihy, 000

This Notice notifies the public that a delegation of Subpart Db (Industrial-Commercial-Industrial Steam Generating Units) under NSPS took place on October , 1987 to the State of Oregon Department of Environmental Quality. The public should also note that the State of Oregon Department of Environmental Quality is now adopting its NSPS rules by reference.

This Notice is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 7410(a) and 7502).

List of Subjects in 40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Cement industry, Coal, Copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc.

Dated: October 8, 1987.

Nora L. McGee,
Acting, Regional Administrator.

[FR Doc. 87-25390 Filed 11-2-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 61220-7033]

Groundfish of the Gulf of Alaska; Inseason Adjustment

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

ACTION: Notice of inseason adjustment.

SUMMARY: This action changes the prohibited species catch (PSC) limits for Pacific halibut applicable to United States vessels fishing for groundfish in the Gulf of Alaska. It decreases the halibut PSC limit for domestic annual processing (DAP), and increases the limit for joint venture processing (JVP) in the Gulf of Alaska. This section is necessary because additional amounts of groundfish have recently been apportioned to JVP, thereby increasing the likelihood of bycatch of Pacific halibut. It is necessary to promote a growing U.S. groundfish fishery for JVP while not causing biological harm to Pacific halibut stocks.

DATES: This notice is effective on November 2, 1987. Comments are invited until November 17, 1987.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg (Alaska Region, NMFS), 907-586-7229.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, AK 99802-1668.

SUPPLEMENTARY INFORMATION: Domestic and foreign groundfish fisheries in the exclusive economic zone (EEZ) of the Gulf of Alaska are managed under the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), which was developed by the North Pacific Fishery Management Council (Council) under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and implemented by regulations appearing at 50 CFR 611.92 and Part 672. Target

quotas (TQs) for groundfish species in the Gulf of Alaska are established by the FMP. The sum of the TQs for all species must fall within the established optimum yield (OY) range for these species of 116,000 to 800,000 metric tons (mt).

TQs are apportioned initially among domestic annual processing (DAP), joint venture processing (JVP), reserves, domestic annual harvest, and total allowable level of foreign fishing (TALFF) for each species and species category under §§ 611.92 and 672.20(a)(2). DAP amounts are intended for harvest and processing by the U.S. industry. JVP amounts are intended for joint ventures in which U.S. fishermen typically deliver their catches to foreign processors at sea.

Incidental catches of certain fish species important to other U.S. fishing industries occur at times while fishing for groundfish. One of these species is Pacific halibut for which there is a well established U.S. fishing industry which depends significantly upon this species for its economic well being. To protect Pacific halibut stocks and to reduce bycatch by U.S. groundfish fishermen, regulations implementing the FMP at § 672.20(f)(2)(i) impose PSC limits for Pacific halibut. Section 672.20(f)(2)(ii) requires that the limits be based on the following types of information: Historical halibut bycatches, expected changes in groundfish catch, expected changes in groundfish biomass, current estimates of Pacific halibut biomass and stock condition, potential impacts of expected fishing for groundfish on Pacific halibut stocks and the U.S. fisheries for them, and other biological and socioeconomic information. Halibut PSC limits for the 1987 fishing year were set at 2,849 mt for DAP fisheries and 183 mt for JVP fisheries on October 26 (52 FR 41560, October 29, 1987).

Under § 672.20(f)(1) of the regulations implementing the FMP, the Director, Alaska Region, NMFS (Regional Director) will publish a notice in the **Federal Register** prohibiting fishing with trawl gear other than pelagic trawl gear by U.S. vessels delivering their catch to foreign vessels (JVP vessels) or U.S. vessels catching and processing their catch or delivering their catch to U.S. processors (DAP vessels) for the rest of the year, if he determines that U.S. vessels will reach the applicable PSC limit for Pacific halibut. However, the Secretary of Commerce (Secretary) may, under § 672.20(f)(2)(iii), change the Pacific halibut PSC limits during the fishing year based on new information as set forth in § 672.20(f)(2)(ii).

The Regional Director has determined that new information exists that warrants increasing the Pacific halibut PSC limit applicable to JVP. Three types of information are available. First, under § 672.20(f)(2)(ii)(B), the Regional Director has determined that changes in groundfish catches are expected, because the JVP specification has been increased following reapportionments of pollock reserve and surplus pollock DAP to JVP, and surplus Pacific cod DAP to JVP. Second, under § 672.20(f)(2)(ii)(D), the Regional Director has determined that the status of Pacific halibut continues to be good, producing record harvest levels. The abundance of Pacific halibut has increased the likelihood that they will be caught incidentally in the JVP fisheries. Third, under § 672.20(f)(2)(ii)(E), the Regional Director has determined that, since the overall PSC catch of Pacific halibut is likely to be about the same after the PSC change as before the change, and the Pacific halibut resource is healthy, potential impacts of groundfish fishing on Pacific halibut stocks and the Pacific halibut fisheries will be negligible. NMFS projections of DAP for the remaining months of 1987, which resulted in reapportionments of surplus DAP to JVP, will reduce the amount of Pacific halibut PSC needed in DAP fisheries by 250 mt. Therefore, the Secretary is reapportioning 250 mt of Pacific halibut PSC to JVP, which increases it from 183 mt to 433 mt and reduces the Pacific halibut PSC allocated to DAP from 2,849 mt to 2,599 mt.

Classification

This action is taken under the authority of § 672.20 and complies with Executive Order 12291.

The Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide for prior notice and comment on this action. Immediate effectiveness of this notice is necessary to benefit U.S. fishermen delivering to foreign processors who otherwise would forego amounts of groundfish if prevented by the current Pacific halibut PSC limit from further bottom trawling. Interested persons are invited to submit comments in writing (see **ADDRESS**) for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 29, 1987.

Carmen J. Blondin,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-25426 Filed 11-2-87; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 212
Tuesday, November 3, 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.

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 501, 543, 544, 545, 546 and 551

[No. 87-1120]

Corporate Governance, Parts III and IV; Extension of Comment Period

Date: October 27, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Home Loan Bank Board ("Board") is extending to February 1, 1988, the comment period on its proposed rules regarding the corporate governance of Federal associations.

DATE: Comments must be received on or before February 1, 1988.

ADDRESS: Send comments to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Ulrich, Staff Attorney, Corporate and Securities Division, (202-377-7049); Carol Johnson, Staff Attorney, Regulations and Legislation Division, (202-377-6357); V. Gerard Comizio, Director, Corporate and Securities Division, (202-377-6411); Peggy W. Spohn, Deputy Director, Office of Community Investment, (202-377-2684); Edward J. Taubert, Associate Director, Policy Division, Office of Regulatory Policy, Oversight and Supervision, (202-778-2511); Patricia D. Neidecker, Paralegal, Corporate and Securities Division, (202-377-6410); or Julie L. Williams, Deputy General Counsel for Securities and Corporate Structure, Office of General Counsel, (202-377-6459), at the above address.

SUPPLEMENTARY INFORMATION: On June 22, 1987 the Board proposed Parts III and IV of a four-part proposal to revise its regulations regarding the corporate governance of Federal associations in order to update and clarify these regulations, 52 FR 25870 (July 9, 1987). The proposal was published with a 60-day comment period that expired September 8, 1987.

The Board notes extensive interest by the thrift industry in many aspects of this broad proposal and believes that, because of the magnitude of the proposed revisions and their impact on the operations of Federal associations, it will serve the public interest to extend the comment period for an additional time. The comment period will now expire on February 1, 1988. As specified in the original proposal of Corporate Governance Parts III and IV, comments on Parts I [50 FR 38832 (Sept. 25, 1985)] and II [50 FR 52482 (Dec. 24, 1985)] also may be submitted during this period.

Comments already submitted in response to the proposal need not be resubmitted during the extension of the comment period. The Board will consider all comments submitted in reaching a final decision; it encourages all interested parties to submit their comments on all aspects of the proposed rules.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-25451 Filed 11-2-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[LR-62-87]

Low-Income Housing Credit for Federally-Assisted Buildings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the low-income housing credit for certain Federally-assisted buildings under section 42 of the Internal Revenue Code of 1986, as enacted by the Tax Reform Act of 1986 (Pub. L. 99-514). The text of those temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered or mailed by January 4, 1988. In general, the regulations are proposed to be effective for buildings placed in service by a taxpayer after December 31, 1986.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-62-87), 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert Beatson of the Legislation and Regulations Divisions, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3829, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend 26 CFR Parts 1 and 602. The temporary regulations add new § 1.42-2T to Part 1 of Title 26 of the Code of Federal Regulations. The final regulations, which this document proposes to be based on those temporary regulations, would amend 26 CFR Parts 1 and 602 and would add new § 1.42-2 to Part 1 of Title 26 of the Code of Federal Regulations. For the text of the temporary regulations, see FR Doc. 87-25444 (T.D. 8162) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations explains the additions to the Income Tax Regulations.

The proposed regulations provided needed guidance regarding the provisions of section 42(d)(6), as enacted by section 252 of the Tax Reform Act of 1986. Section 42(d)(6) provides rules for the low-income housing credit allowable for certain Federally-assisted buildings acquired during the 10-year period described in section 42(d)(2)(B)(ii).

Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as

defined in Executive Order 12291 and that a regulatory impact analysis therefore 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 herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, this proposed regulation does not constitute a regulation subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

The principal author of these proposed regulations is Robert Beatson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulations both on matters of substance and style.

Comments and Requests for a Public Hearing

Before adoption of these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. Comments are encouraged both with respect to the matters addressed in these proposed regulations and any other issues arising under section 42 with respect to which guidance is needed. 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.** The collection of information requirements contained herein have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on the requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, DC 20503. The Internal Revenue Service requests persons submitting comments to OMB to also send copies of the comments to the Service.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-25445 Filed 10-30-87; 9:56 am]

BILLING CODE 4830-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 60, 61, 62, 65, 70, and 72

National Flood Insurance Program

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the National flood Insurance Program (NFIP) regulations dealing with: Flood plain management standards; criteria for the identification of coastal high hazard areas, more commonly referred to as V zones, and delineated as Zone V, VO, VI-30 or VE on NFIP maps; criteria under which communities may permit flood plain and floodway developments which could increase base flood elevations; requirements for maintenance of altered watercourses; procedures for map correction; reimbursement procedures for the review of *proposed* projects to determine if they would qualify for NFIP map revisions upon their completion; and changes in the Standard Flood Insurance Policy (SFIP) terms and provisions.

DATE: Comments must be received on or before January 4, 1988.

ADDRESSES: Send comments to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472; telephone number (202) 646-3422.

SUPPLEMENTARY INFORMATION: These proposed amendments are the result of a continuing reappraisal of the National Flood Insurance Program (NFIP) to achieve greater administrative and fiscal effectiveness in the operation of the NFIP and to encourage sound flood plain management so that reductions in loss of life and to property can be realized.

Coastal High Hazard Area and Erosion Considerations for Sand Dunes

Flood Insurance Rate Maps (FIRM's) have been published by the Federal Emergency Management Agency (FEMA) depicting coastal high hazard areas (Zones V, VO, VE and V1-30) for approximately 700 communities along the Atlantic and Pacific Oceans and the Gulf of Mexico. These FIRM's were developed in recognition of flood hazards associated with storm surges from hurricanes and other coastal storm events. In addition, flooding caused by tsunamis (seismic sea waves) have been considered, where appropriate, for Pacific Coast communities. For communities along the Atlantic and Gulf of Mexico Coasts, base flood elevations, where appropriate, include an adjustment to reflect the increase in water level associated with waves as they pass through areas inundated by storm surges. Areas of significant wave action are designated as coastal high hazard areas (V-Zones).

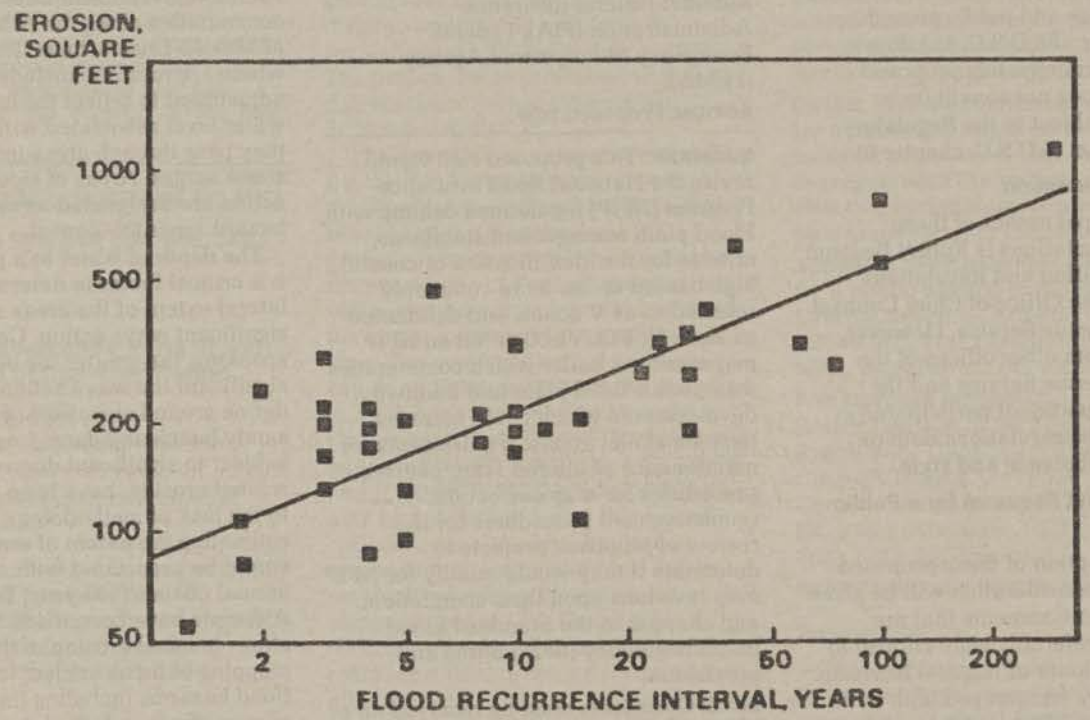
The depth of water at a partcular site is a critical factor in determining the lateral extent of the areas subject to significant wave action. Generally speaking, the greater the depth, the more significant the wave action. Efforts to define ground elevations, particularly in sandy beach and dune areas which are subject to significant degrees of storm-related erosion, have been hindered due to the lack of methodology for estimating the extent of erosion which would be associated with a one percent annual chance (100-year) flood event. Attempts have been made to account for storm-induced erosion in the present mapping of areas subject to coastal flood hazards, including the application of simplified analytical models and use of engineering judgment. However, there are many areas where dune erosion has not been considered or has been clearly underestimated.

In these instances, the inappropriate crediting of sand dunes has resulted in the unrealistic delineation of coastal flood hazard zones that terminate at the seaward face of the dune for many barrier islands and other open coastal areas. Consequently, it is estimated that the extent of coastal high hazard areas may be understimated in approximately 250 communities along the open coast that are subject to this phenomenon.

In the recent past, FEMA has received numerous comments, from state and local governments, criticizing the mapping of V-Zone in such areas. FEMA responded to these comments by conducting an investigation to evaluate the extent of dune erosion in many historical flood events. It was concluded that the primary frontal dune would, in most cases, be completely eroded during 100-year storm surge conditions. For example, following Hurricane Hazel (1954) the U.S. Weather Bureau (now the National Weather Service) reported that between the South Carolina-North Carolina state line and Cape Fear "grass covered dunes some 10 to 20 feet high

. . . simply disappeared." Hurricane Hazel produced an average storm surge in that section of the coast comparable to the 100-year surge elevation. Once dunes are destroyed, storm surge and waves are free to move inland causing extreme hazards where development typically occurs.

The investigation of sand dunes led to the development of an empirical relationship between the quantity of sand that would be removed from a frontal dune and the recurrence interval of the local storm tide as is shown in Figure 1.



MEDIAN CROSS-SECTIONAL EROSION ABOVE FLOOD ELEVATION VERSUS FLOOD RECURRENCE INTERVAL BASED ON 38 CASES OF DUNE RETREAT DURING VARIOUS COASTAL STORMS.

Figure 1.

This relationship established that primary frontal sand dunes with a cross-sectional area of 540 square feet or less above the 100-year storm tide stillwater level and seaward of the dune crest would be swept away during a 100-year storm surge event.

The investigation also determined that there are some instances where the quantity of sand in the frontal dune is great enough to preclude total destruction of the dune (i.e., cross-sectional areas greater than 540 square feet). Under these conditions, the remaining dune would act as a barrier, preventing the inland propagation of wave action. However, the dunes themselves are not free of coastal high hazards. Wave runup on the dune face and overtopping of the dune crest is a factor that would cause a serious hazard to exist on the entire dune. Wave runup is a component of wave action that is the result of wave breaking on a sloping surface, such as a dune, and literally running up and over the surface. This phenomenon is different from that analyzed in the current V-Zone mapping where wave crest elevations have been determined at the point of breaking. What happens after breaking has generally not been considered, with the exception of areas of steeply sloping beaches such as are found in northern New England and the Pacific Coast where wave runup can be a very significant factor. However, the wave runup and overtopping phenomena do occur to some degree in almost all coastal areas with sand because of their relatively steep slopes.

Under current coastal mapping procedures, there are many instances where frontal dunes have been designated as A, B, or C Zones because errosion potential and wave runup have not been considered. Structures built on dunes using standards permissible in A, B, and C Zones are subject to total destruction by undermining and failure of the foundation system by these phenomena.

It is therefore, prudent to classify all primary frontal dunes as V-Zones. This would insure that adequate insurance rates apply and that appropriate construction standards are imposed, should building on primary frontal dunes be permitted by state or local

ordinances. In addition, NFIP regulations at § 60.3(e)(7), prohibition and alteration of sand dunes in V-Zones which would increase potential flood damage, would be made more effective in protecting frontal sand dunes.

The proposed rule revises the definition of "coastal high hazard area" to include primary frontal sand dunes along barrier islands and other similarly exponsed open coasts. Additionally, a definition is proposed for "primary frontal sand dune" to provide greater clarification of the revised definition for "coastal high hazard area." Also, a new section is proposed at Part 65 which identifies a cross-sectional area of 540 square feet as the basic criterion to be used in evaluating whether a primary frontal dune will act as an effective barrier during base flood storm surge events.

The 540 square foot criterion will be applied in designating coastal flood hazard zones as new flood insurance studies and restudies are performed. Thus, adoption of this criterion will not be followed by wholesale and immediate change to the FIRM's that have already been published for coastal communities.

Requirements for Maintenance of Altered Watercourses

One important aspect of flood hazard management, particularly in rapidly developing areas, is adequate maintenance of altered or relocated watercourses, specifically of modified channels, which were built to reduce flood hazards. This maintenance consists of a comprehensive program of periodic inspections, routine channel clearing and dredging, and other related functions. Inadequate maintenance could result in more significant flood hazards than depicted on the NFIP maps, therefore, FEMA must have assurance that communities participating in the NFIP will assume ultimate responsibility for the maintenance of any altered watercourses intended for flood hazard mitigation that are reflected on NFIP maps. These assurances should specify all maintenance activities, the frequency of their performance, and the community officials responsible for their performance.

Currently, as a condition of participation in the NFIP, communities must adopt ordinances which contain the provision of § 60.3(b)(7). This provision requires that the community "assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained". In the past, FEMA has found that communities have not always known or understood their responsibilities under the NFIP to maintain such watercourses. In addition, communities do not always follow through on their maintenance responsibilities; often communities have not committed adequate funds or are not fully aware of the necessary maintenance procedures. This has resulted in situations such as severe overgrowth or sediment deposition in channelized streams, causing reduced conveyance and increased flood hazards. In other cases, inadequate maintenance has resulted in erosion and scour problems within altered watercourses, thereby increasing potential floodwater velocities and downstream flood damage. For these reasons, it is imperative that appropriate assurances of maintenance of altered watercourses be provided prior to FEMA depicting the accompanying flood hazard mitigation effects of NFIP maps. Threfore, the proposed rule would change the NFIP criteria regarding revision of base flood elevation determinations in § 65.6 to enable FEMA to obtain specific documentation that the provisions of 60.3(b)(7) will be met prior to FEMA's revising NFIP maps to reflect the flood hazard mitigation effects of specific flood control projects.

Flood Plain Management Criteria for Regulatory Floodways

Current NFIP criteria at § 60.3(d)(3) require communities to prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway, that would result in any increase in flood levels within the community during the occurrence of the base flood elevation. These criteria as written contain no provision for requiring that a community base its decisions to allow encroachments in an adopted regulatory floodway only after hydrologic and hydraulic analyses have been performed in accordance with standard engineering practice that demonstrate the proposed encroachment does not increase base flood elevations by more than the amount specified in § 60.3. These analyses are required by § 65.7 when a community is seeking to have its adopted regulatory floodway revised and they are required in order for a community to be considered fully compliant by FEMA with the intent of § 60.3(d)(3). Accordingly, the proposed rule amends § 60.3(d)(3) to add clarity to the criteria specified therein and to ensure consistency with § 65.7 by incorporating the requirement that these analyses be preformed before a community can permit encroachments to occur in its adopted regulatory floodway.

Revision of Flood Insurance Rate Maps to Reflect Base Flood Elevation (BFE) Increases Exceeding NFIP Standards

Current NFIP criteria at § 60.3(c)(10) require communities, which have no regulatory floodway established, to prohibit encroachments within the floodplain which would cumulatively result in a Base Flood Elevation (BFE) increase greater than one foot. When a regulatory floodway has been established, NFIP criteria at § 60.3(d)(3) require communities to prohibit encroachments within the floodway which would result in any increase in the BFE. No mechanism is provided in the current NFIP regulations to allow for exceptions to these provisions and corresponding revisions of community flood maps. Yet, there are circumstances under which encroachments in the flood plain and floodway that exceed these limits can result in reduced flood hazards or have a net public benefit. For example, the construction of dams or levees may increase BFE's in some locations, and yet, in other areas, reduce the overall flood hazard. Additionally, many communities are now requiring developers to mitigate the increased runoff expected from development by providing stormwater detention facilities. Although such facilities may prevent increased flood hazards to downstream development, they must be placed in the floodway and usually result in BFE rises greater than one foot, thereby conflicting with the provisions of § 60.3(c)(10) and (d)(3).

In other instances, projects may be constructed which, although lacking direct flood hazard reduction benefits, offer benefits in excess of the costs associated with their resulting BFE increase. Examples of such cases include increasing the height of existing dams to provide hydroelectric power, and the construction of bridges. The cost of bridge construction to completely span floodways without having supports such as piers or columns that encroach on the floodway can often be economically prohibitive, yet, in some instances, the construction of structures that do not completely span the floodway might provide significant net public benefits where no existing development would be impacted by the BFE increase resulting from the project. Often, agencies proposing to construct such facilities are willing to purchase or relocate potentially impacted structures and purchase flooding easements to mitigate the impacts of increased BFE's.

These examples serve to establish the need for a mechanism within the NFIP regulations to allow for exceptions to the limitations on BFE increases contained in § 60.3 (c)(10) and (d)(3). At the same time, the protection of the conveyance capacity of a watercourse is vital to ensuring proper flood plain management and avoiding exacerbation of flood hazards. Likewise, protection of the interests of property owners that might be affected by BFE increases continues to remain a paramount concern to FEMA. Unless carefully managed, BFE increases could also result in increased exposure of the National Flood Insurance Fund (NFIF) to losses because of increased risks to existing insured or insurable structures which are "grandfathered" at risk premium rates based on their flood risk at date of construction. Therefore, the proposed rule contains provisions that, while allowing BFE increases in certain situations, are intended to prevent or compensate for the adverse impacts on property owners and the NFIF and to assure that regulatory floodways and BFE's are not revised without proper notification of all affected property owners.

The provisions of the proposed rule would be incorporated into Part 65 and would also modify § 60.3. Cases involving BFE increases and/or floodway revisions would be processed under map revision procedures established at Parts 65 and 72 and would require all scientific and technical information specified in those Parts be provided to FEMA in support of the request. The proposed rule also requires that the requester of an exception from the NFIP floodway standards, currently established at § 60.3 (c)(10) and (d)(3), show evidence that a BFE increase is justified, that all engineering alternatives have been considered and determined to be unsuitable, that community approval has been obtained, that no structures are impacted, and that any property owners adversely impacted are properly notified.

Procedure for Map Correction

The present regulations at §§ 70.3 and 70.4 are inconsistent regarding the data an applicant is required to submit and the data which is reviewed by the Federal Insurance Administrator (the Administrator) in connection with applications for map corrections.

According to § 70.3, the applicant submits "* * * the elevation of the lowest floor (including basement) of the structure or structures located on the property in question * * *" However, in § 70.4, the Administrator notifies the applicant "* * * that either the ground elevations of an entire legally defined parcel of land or the elevation of the lowest adjacent grade to a structure have been compared with the elevation of the base flood * * *" In essence, the applicant is required to submit the elevation of the losest floor (including basement) which is not used by the Administrator in making his determination, but is not asked to provide the elevation of the lowest adjacent grade which is used by the Administrator in making his determination.

During rulemaking in 1986, §§ 70.3 and 70.4 were amended by a final rule that was published (51 FR 30317) on August 25, 1986, and became effective on October 1, 1986. Through an administrative oversight, § 70.3(b) was not properly amended to be compatible with the amendment made to § 70.4. The proposed rule will eliminate the need for an owner or lessee of real property (applicant) to provide the elevation of the lowest floor (including basement) of the structure in question and will instead specify that the applicant provides the elevation of the lowest adjacent grade to the structure in question. This change will eliminate the inconsistency between the previously mentioned paragraphs and will correct § 70.3(b) to read as it was intended to read when it was previously amended.

Procedures and Fees for Obtaining Conditional Approval of Map Changes

FEMA is obligated by Parts 65 and 70 of the NFIP regulations to revise Flood Insurance Studies and maps as a result of appeals by communities and individuals. Many of these requests come about as a result of structural flood control projects. FEMA's review of and response to appeals based on in-place projects is totally funded out of appropriated monies. However, FEMA is often requested to provide the service of reviewing plans for proposed projects to determine if they would qualify for map revisions upon their completion. Conditional Letters of Map Amendment (CLOMAs) and Conditional Letters of Map Revision (CLOMRs) have been used to provide FEMA's determinations to individuals, developers, and communities as to whether their projects would be accepted for map revision upon completion. Furthermore, CLOMAs and CLOMRs are often needed by developers to obtain construction loans and building permits and attract prospective buyers.

To reduce expenses to the general taxpayer, a procedure for charging the beneficiaries of these services was published under Part 72 on September 4, 1985, as final rulemaking which was implemented on January 1, 1986. This reimbursement procedure shifted the cost from the general taxpayer to those who benefit from FEMA's review and ultimate acceptance of the project.

Section 72.5 of these procedures specifies that Federal, State, and local governments may be exempt from fees for projects they sponsor if the requester certifies that the particular project is for the public benefit and primarily intended for flood loss reduction to existing development in identified flood hazard areas, as opposed to planned flood plain development.

Many requests for proposed projects which obviously met the exemption of fees criteria have been received since these regulations were implemented, but lacked the required certification. Since the regulations are binding and do not grant FEMA discretion in deciding when fees may be waived, much time and effort are lost in preparing and exchanging correspondence to obtain the necessary certification.

The proposed rule will amend § 72.5 to grant the Federal Insurance Administrator discretion in waiving the collection of fees when he has determined, through any means, that the proposed project satisfies the exemption criteria, but the required certification has not been provided as part of the original submission by the requester. This amendment will allow the expeditious processing of requests of this nature, will improve the administrative effectiveness of the NFIP, and will reduce the administrative burden on the requester.

Standard Flood Insurance Policy

The NFIP does not allow for the purchase of duplicate policies, i.e., more than one policy for a building or the contents in a building. The proposed rule would state this in the Standard Flood Insurance Policy (SFIP), along with the corrective procedure when this is discovered.

The Dwelling Form of the SFIP provides for reimbursement of the labor of the insured for moving insured property to protect it from the imminent danger of flood; for certain other specified mitigative measures, such as sandbags, in the event of imminent danger of flooding; and for the removal of debris directly caused by flood. The proposed rule would extend reimbursement to include the labor of members of the household of the insured in all these cases.

A recent district court decision held that damage caused by the destabilization of land resulting from the

accumulation of water in subsurface land areas was covered by the SFIP. Because this was never intended by the NFIP, the SFIP would be revised by the proposed rule to specifically exclude such damage.

Antique furniture is included in a list of contents items in the SFIP for which there is a limitation of $250. The NFIP interpretation of this limitation regarding antique furniture is that it does not apply where antique furniture is replaced by furniture of equivalent functional value, but with no antique value. The SFIP would be revised by the proposed rule to reflect this by deleting antique furniture (and antique silver) from the limitation provision and adding in the insuring agreement a provision that the SFIP does not cover antique value.

The SFIP, in providing for premium refunds under certain conditions, specifies that the expense constant is to be retained by the NFIP when the policy is being cancelled because it has been determined that the insured property is not in a special flood hazard area and the insurance had been required under the mandatory purchase requirements of Pub. L. 93–234, section 102. FEMA has now decided that it would be more appropriate in this case not to retain the expense constant because in these cases the insurance had been purchased due to a mistaken application of Pub. L. 93–234, section 102.

For renewal without a lapse in coverage, the SFIP currently requires renewal premium payments to be mailed prior to the expiration date of the previous policy term and to be received within five days of that expiration date, or to be mailed by certified mail prior to that expiration date with no requirement in that case for when it must be received by the NFIP. To provide better service to the NFIP policyholder, to encourage retention of flood insurance business for the NFIP, and to facilitate the Write-Your-Own Program by making NFIP practices more compatible with private insurance industry practices, the proposed rule would provide in the SFIP for a 30-day grace period for the receipt of renewal premium payments, with continuation of the certified mail alternative.

In addition to the changes described above, the proposed rule would also make a few other changes for consistency between the Dwelling Form and the General Property Form or of an editorial nature, including incorporating the separate condominium endorsements, one for the Dwelling Form and one for the General Property Form, that became effective June 1, 1987, into those two policy forms and deleting them as endorsements separate from those two policy forms.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This proposed rule will not have a significant economic impact on a substantial number of small entities and hence, has not undergone regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this proposed rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 59, 60, 61, 62, 65, 70, and 72

Flood insurance, Flood plains, Claims.

Accordingly, it is proposed to amend 44 CFR Chapter 1, Subchapter B as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for Part 59 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 59.1 [Amended]

2. Section 59.1 is amended as follows:

a. By revising the definition of "Coastal high hazard area" to read as follows:

* * * * *

"Coastal high hazard area" means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

* * * * *

b. By adding, alphabetically, a definition of "Primary frontal dune" to read as follows:

* * * * *

"Primary frontal dune" means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

* * * * *

PART 60—CRITERIA FOR LAND MANAGEMENT AND USE

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

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 60.3 [Amended]

4. Section 60.3 is amended as follows:

a. By redesignating paragraph (c)(11) and (c)(12) as (c)(12) and (c)(13), respectively, and adding a new paragraph (c)(11) to read as follows:

* * * * *

(c) * * *

(11) Notwithstanding any other provisions of § 60.3, a community may approve certain development in Zones A1–30, AE, and AH, on the community's FIRM which increase the water surface elevation of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision, fulfills the requirements for such a revision as established under the provisions of § 65.12, and receives the approval of the Administrator.

* * * * *

b. By removing in paragraph (d)(3) the phrase "that would" and adding in its place the phrase "unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not".

c. By adding new paragraph (d)(4) to read as follows:

* * * * *

(d) * * *

(4) Notwithstanding any other provisions of § 60.3, a community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision, fulfills the requirements for such revisions as established under the provisions of § 65.12, and receives the approval of the Administrator.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

5. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.*; Reorganization Plan No. 3 of 1978; E.O. 122127.

§ 61.4 [Amended]

6. Section 61.4 is amended by removing in paragraph (c) the phrase "or from earthquakes" and adding in its place the phrase ", destabilization or movement of land resulting from the accumulation of water in subsurface land areas, earthquakes,".

§ 61.5 [Amended]

7. Section 61.5 is amended by removing in paragraph (f)(4) the words "driveways and other surfaces outside the foundation walls of the building;" and adding in their place the words "walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building;" and by adding new paragraph (j) to read as follows:

* * * * *

(j) Duplicate policies are not allowed. Property may not be insured under more than one policy issued under the National Flood Insurance Act of 1968, as amended. If a policy is issued under that Act for any property when another policy issued under that Act is in effect for the same property, the policy with the later effective date is void from its effective date, and a refund shall be made of the premium paid, less expense constant, for that policy for the entire period for which it was in effect without any lapse in coverage. For purposes of this paragraph (j), the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. When the duplicate policies are discovered by the insurer, the insurer shall by written notice give the insured an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy, by paying the pro rata premium for the increased coverage within 30 days of the written notice; provided, the resulting coverage limits shall in no event exceed the statutorily permissible limits of coverage under the Act or the insured's insurable interest, whichever is less.

Appendix A(1) of Part 61—[Amended]

8. Appendix A(1) of Part 61, Standard Flood Insurance Policy, is amended as follows:

a. The Dwelling Form—Insuring Agreement (appearing immediately before Article I) is amended by adding after the phrase "42 U.S.C. 4001, *et seq.*" and within the parentheses the phrase ", hereinafter called the Act" and by removing the clause beginning with the words "we insure" and ending with the words "property at the time of loss", and adding in its place the following: "we insure you and your legal representatives against all "Direct Physical Loss by or from Flood", as defined in Article II of this Agreement, to the insured property, to the extent of the actual cash value, not including any antique value, of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss."

b. In Article II—Definitions, the definition of "Direct Physical Loss by or from Flood" is amended by adding in the first sentence after the word "labor" and before the word "at" the words "and the labor of members of your household".

c. In Article III—Losses Not Covered, paragraph A.1 is amended by adding after "landslide," and before "gradual erosion" the follow: "destablization or movement of land resulting from the accumulation of water in subsurface land areas,".

d. In Article IV—Property Covered (Subject to "Property Not Covered" Provisions), paragraph A.1 is amended by removing the comma and the words "if your" after the words "building's common elements" and adding in their place the following: "and the common elements of any other building of your condominium association covered by insurance that is: (i) In the name of your condominium association, (ii) provided under the Act, and (iii) in an amount at least equal to the actual cash value of the building's common elements at the beginning of the current policy term or the maximum building coverage limit available under the Act, whichever is less; provided that the insurance under this policy shall be excess over any insurance in the name of your condominium assocation covering the same property covered by this policy; provided, your condominium" and by removing after the words "one family and" the word "if".

e. In Article IV—Property Covered (Subject to "Property Not Covered" Provisions), paragraph A.7 is amended by adding after the word "labor" and before the word "at" the words "and the labor of members of your household".

f. In Article IV—Property Covered (Subject to "Property Not Covered" Provisions), paragraph C is amended by removing in the first sentence the words "antique furniture" and the words "antique silver".

g. In Article IV—Property Covered (Subject to "Property Not Covered" Provisions), paragraph D is amended by adding after the word "labor" and before the word "at" the words "and the labor of members of your household".

h. In Article V—Property Not Covered, paragraph D is amended by removing the words "driveways and other surfaces, outside the foundation walls of the building" and adding in their place the words "walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building."

i. In Article VIII—General Conditions and Provisions, paragraph E is amended by removing the words ", but with retention of the expense constant" at the end of paragraph 1.b; and by removing the words "on a short-rate basis" and adding in their place the words "pro rata but with retention of the expense constant" in paragraph 1.c.

j. In Article VIII—General Conditions and Provisions, paragraph G is amended by revising the second paragraph to read as follows:

* * * * *

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the renewal premium payment is received by us at the office of the NFIP within 30 days of the expiration date of this policy, subject to Article VIII.F of this appendix. If the renewal premium payment is mailed by certified mail to the NFIP prior to the expiration date, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this policy shall terminate as of the expiration date of the last policy term for which the premium payment was timely received at the office of the NFIP, and in that event, we shall not be obligated to provide you with any cancellation, termination, policy lapse, or policy renewal notice advising you of any such cancellation, termination, policy lapse, or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the declarations form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30 days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

k. Article VIII—General Conditions and Provisions is amended by adding new paragraph T to read as follows:

* * * * *

T. *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the Act. If a policy is issued under the Act for any property when another policy issued under the Act is in effect for the same property, the policy with the later effective date is void from its effective date, and we shall make a refund to you of the premium paid, less the expense constant, for that policy for the entire period for which it was in effect without any lapse in coverage. For purposes of this paragraph T, the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect. When the duplicate policies are discovered by us, we shall by written notice give you an opportunity to add the coverage limits of the later policy to those of the earlier policy, as of the effective date of the later policy, by paying the pro rata premium for the increased coverage within 30 days of the written notice; provided, the resulting coverage limits shall in no event exceed the statutorily permissible limits of coverage under the Act or your insurable interest, whichever is less.

Appendix A(2) of Part 61—[Amended]

9. Appendix A(2) of Part 61, Standard Floor Insurance Policy is amended as follows:

a. The statement in brackets immediately following the heading "Standard Flood Insurance Policy" is amended by adding after the word "Thereof" and before the comma the phrase "(hereinafter called the Act)".

b. The paragraph immediately following the heading "General Property Form" is amended by adding after the words "actual cash value" the phrase ", not including any antique value,".

c. The following headings are amended by adding article numbers as indicated below:

Article I—Persons Insured
Article II—Definitions
Article III—Perils Excluded
Article IV—Property Covered (Subject to "Property Not Covered" Provisions)
Article V—Property Not Covered
Article VI—Deductibles
Article VII—General Conditions and Provisions

d. In newly designated Article III—Perils Excluded, paragraph D is amended by adding after "landslide," and before "gradual erosion" the following: "destabilization or movement of land resulting from the accumulation of water in subsurface land areas,".

e. In newly designated Article IV—Property Covered, paragraph B.2 is amended by removing in the last paragraph the words "antique furniture" and the words "antique silver".

f. In newly designated Article V—Property not covered, paragraph D is amended by removing the words "driveways and other surfaces outside the foundation walls of the building." And adding in their place the words "walkways, driveways, patios, and other surfaces, all of whatever kind of construction, located outside the perimeter, exterior walls of the insured building."

g. In newly designated Article VII—General Conditions and Provisions, paragraph J is amended by revising the second and third paragraphs to read as follows:

* * * * *

This policy shall not be renewed and the coverage provided by it shall not continue into any successive policy term unless the renewal premium payment is received by the National Flood Insurance Program (NFIP) at its office within 30 days of the expiration date of this policy, subject to Article VII.E of this appendix. If the renewal premium payment is mailed by certified mail to the NFIP prior to the expiration date, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal policy is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days.

In all other cases, this policy shall terminate as of the expiration date of the last policy term for which the premium payment was timely received at the office of the NFIP, and in that event, the Insurer shall not be obligated to provide the Insured with any cancellation, termination, policy lapse, or policy renewal notice advising the Insured of any such cancellation, termination, policy lapse, or policy renewal; provided, however, with respect to any mortgagee (or trustee) named in the Declaration form attached to this policy, this insurance shall continue in force only for the benefit of such mortgagee (or trustee) for 30-days after written notice to the mortgagee (or trustee) of termination of this policy, and shall then terminate.

h. In newly designated Article VII—General Conditions and Provisions, paragraph K is revised to read as follows:

* * * * *

K. *Cancellation of policy by insured.* 1. The Insured can cancel this policy at anytime but a refund of premium will be made only when:

a. The Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for cancellation (signed by the Insured) the excess of premiums paid by the Insured which apply to the unused portion of the policy's term, pro rata but with retention of the expense constant.

b. The Insured cancels because it has been determined that the insured property is not, in fact, in a special flood hazard area; and the Insured was required to purchase flood insurance coverage by a private lender or Federal agency pursuant to Pub. L. 93-234, section 102; and the lender or Federal agency no longer requires the retention by the Insured of the coverage. In this event, if no claims have paid or are pending, the premium payments will be refunded to the Insured in full, according to our applicable regulations.

c. The Insured cancels a policy having a term of three (3) years, on an anniversary date, and the reason for the cancellation is:

(i) A policy of flood insurance has been obtained or is being obtained in substitution for this policy and the Insurer has received a written concurrence in the cancellation from any mortgagee of which the Insurer has actual notice, or (ii) the Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage.

Refund of any premium under this subparagraph "c" shall be pro rata but with retention of the expense constant.

* * * * *

i. Newly designated Article VII—General Conditions and Provisions is amended by adding new paragraph X to read as follows:

* * * * *

X. *Duplicate policies not allowed.* Property may not be insured under more than one policy issued under the Act. If a policy is issued under the Act for any property when another policy issued under the Act is in effect for the same property, the policy with the later effective date is void from its effective date, and the Insurer shall make a refund to the Insured of the premium paid, less expense constant, for that policy for the entire period for which it was in effect without any lapse in coverage. For purposes of this paragraph X, the term "effective date" means the date coverge that has been in effect without any lapse was first placed in effect.

When the duplicate policies are discovered by the Insurer, the Insurer shall be written notice give the Insured an opportunity to add the coverge limits of the later policy to those of the earlier policy, as of the effective date of the later policy, by paying the pro rata premium for any increased coverage within 30 days of the written notice; provided, the resulting coverage limits shall in no event exceed the statutorily permissible limits of coverage-under the Act or the Insured's insurable interest, whichever is less.

j. The Condominium Association Endorsement is amended by adding new paragraph 8 to read as follows:

* * * * *

8. The Insurer shall not be liable for any loss or any portion of any loss for which payment is made under any insurance in the name of any condominium unit owner, i.e., any member of the condominium association.

Appendix A(3) of Part 61—[Removed]

10. Part 61 is amended by removing Appendix A(3).

Appendix A(4) of Part 61—[Removed]

11. Part 61 is amended by removing Appendix A(4).

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

12. The authority citation for Part 62 is revised to read as set forth below and the authority citations following all the sections in Part 62 are removed.

Authority: 42 U.S.C. 4001, *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

* * * * *

§ 62.5 [Amended]

13. Section 62.5 is amended by removing in the last sentence the words "on a short-rate basis." and adding in their place the words "pro rata but with retention of the expense constant."

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

12. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 65.6 [Amended]

13. Section 65.6 is amended by adding a new paragraph (a)(12) to read as follows:

* * * * *

(a) * * *

(12) If a community or other party seeks recognition from FEMA, on its FHBM or FIRM, that an altered or relocated portion of a watercourse provides protection from, or mitigates potential hazards of, the base flood, the Administrator may request specific documentation from the community certifying that, and describing how, the provisions of § 60.3(b)(7) of this subchapter will be met for the particular watercourse involved. This documentation, which may be in the form of a written statement from the Community Chief Executive Officer, an ordinance, or other legislative action, shall describe the nature of the maintenance activities to be performed, the frequency with which they will be performed, and the title of the local coummunity official who will be responsible for assuring that the maintenance activities are accomplished.

§ 65.11 [Amended]

14. Part 65 is amended by redesignating § 65.11 as § 65.13 and adding new §§ 65.11 and 65.12 to read as follows:

§ 65.11 Evaluation of sand dunes in mapping coastal flood hazard areas.

(a) *General conditions.* For purposes of the NFIP, FEMA will consider storm-induced dune erosion potential in its determination of coastal flood hazards and risk mapping efforts. The criterion to be used in the evaluation of dune erosion will apply to primary frontal dunes as defined in § 59.1, but does not apply to artifically designed and constructed dunes that are not well-established with long-standing vegetative cover, such as the placement of sand materials in a dune-like formation.

(b) *Evaluation crierion.* Primary frontal dunes will not be considered as effective barriers to base flood storm surges and associated wave action where the cross-sectional area of the primary frontal dune as measured perpendicular to the shoreline and above the 100-year stillwater flood elevation and seaward of the dune crest is equal to, or less than, 540 square feet.

(c) *Exceptions.* Exceptions to the evaluation criterion may be granted where it can be demonstrated through authoritative historical documentation that the primary frontal dunes at a specific site withstood previous base flood storm surges and associated wave action.

§ 65.12 Revision of flood insurance rate maps to reflect base flood elevations caused by proposed encroachments.

(a) When a community proposes to permit encroachments upon the flood plain when a regulatory floodway has not been adopted or to permit encroachments upon an adopted regulatory floodway which will cause base flood elevation increases in excess of those permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter, the community shall apply to the Administrator for conditional approval of such action prior to permitting the encroachments to occur and shall submit the following as part of its application:

(1) A request for conditional approval of map change and the appropriate initial fee as specified by § 72.3 of this subchapter or a request for exemption from fees as specified by § 72.5 of this subchapter, whichever is appropriate;

(2) An evaluation of alternatives which would not result in a base flood elevation increase above that permitted under paragraphs (c)(10) or (d)(3) of § 60.3 of this subchapter demonstrating why these alternatives are not feasible;

(3) Documentation of individual legal notice to all impacted property owners within and outside of the community, explaining the impact of the proposed action on their property.

(4) Concurrence of the Chief Executive Officer of any other communities impacted by the proposed action;

(5) Certification that no structures are located in areas which would be impacted by the increased base flood elevation;

(6) A request for revision of base flood elevation determination according to the provisions of § 65.6 of this part;

(7) A request for floodway revision in accordance with the provisions of § 65.7 of this part;

(b) Upon receipt of the Administrator's conditional approval of map change and prior to approving the proposed encroachments, a community shall provide evidence to the Administrator of the adoption of flood plain management ordinances incorporating the increased base flood elevations and/or revised floodway reflecting the post-project condition.

(c) Upon completion of the proposed encroachments, a community shall provide as-built certifications in accordance with the provisions of § 65.3 of this part. The Administrator will initiate a final map revision upon receipt of such certifications in accordance with Part 67 of this subchapter.

PART 70—PROCEDURE FOR MAP CORRECTION

15. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 4001, *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 70.3 [Amended]

16. Section 70.3 is amended as follows:

a. By removing the phrase "floor (including basement) of the" in paragraph (b)(2)(iv) and adding in its place the phrase "adjacent grade to a".

b. By revising paragraph (b)(4) to read as follows:

* * * * *

(b) * * *

(4) A certification by a Registered Professional Engineer or Licensed Land Surveyor that the lowest grade adjacent to the structure is above the base flood elevation.

PART 72—PROCEDURE AND FEES FOR OBTAINING CONDITIONAL APPROVAL OF MAP CHANGES

17. The authority citation for Part 72 is revised to read as follows:

Authority: 42 U.S.C. 4001, *et seq.;* Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.5 [Amended]

18. Section 72.5 is amended by adding after the word "if", the phrase "the Administrator determines or".

Dated: October 28, 1987.

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 87-25368 Filed 11-2-87; 8:45 am]

BILLING CODE 6718-01-M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 525 and 552

[GSAR Notice No 5-131]

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a proposed change to the General Services Administration Acquisition Regulation (GSAR), which would revise Part 525 to prescribe specific policy on the use and approval of non-domestic construction materials; and to provide a method for evaluating offers when non-domestic construction materials are proposed. The change would also revise Part 552 to prescribe a solicitation provision for use in contracting for construction. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

DATE: Comments are due in writing on or before December 3, 1987.

ADDRESS: Requests for a copy of the proposal and comments should be addressed to Ms. Majorie Ashby, Office of GSA Acquisition Policy and Regulations, 18th & F Streets NW., Room 4024, Washington, DC 20405, (202) 523-3822.

FOR FURTHER INFORMATION CONTACT: Ms. Ida Ustad, Office of GSA Acquisition Policy and Regulations, 18th and F Streets NW., Washington, DC 20405, (202) 556-1224.

SUPPLEMENTARY INFORMATION: The Director, Office of Management and Budget (OMB) by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this proposed rule. This proposed rule may have a significant economic impact upon a small number of small entities within the meaning of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), principally with respect to those entities proposing to use on a contractor by contractor basis foreign construction materials in construction contracts performed in the United States. Accordingly, comments that will permit a determination before issuance of the final rule are hereby solicited. The information collection requirement in the proposed rule has been submitted to OMB for approval under (44 U.S.C. 3501 *et. seq.*).

List of Subjects in 48 CFR Parts 525 and 552

Government Procurement.

Dated: October 23, 1987

Ida M. Ustad,

Director, Office of GSA Acquisition Policy and Regulations.

[FR Doc. 87-25355 Filed 11-2-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 646

South Atlantic Fishery Management Council; Snapper-Grouper Fishery of the South Atlantic; Public Hearing

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

ACTION: Notice of public hearing and request for comments.

SUMMARY: The South Atlantic Fishery Management Council will hold a public hearing and provide an opportunity for the public to comment on the possibility of designating certain artificial reefs as special management zones (SMZs).

DATES: The hearing will begin at 7:00 p.m., on Thursday, November 19, 1987. Written comments will be received until November 27, 1987.

ADDRESSES: The hearing will be held at the Holiday Inn Oceanfront, 2600 North Highway, A1A, Ft. Pierce, FL. Written comments may be sent to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Robert K. Mahood, 803-571-4366.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region provides for designating artificial reefs as SMZs within which certain highly efficient fishing gear may be restricted or prohibited. The intent is to encourage biological production and to create recreational fishing opportunities that would not otherwise exist.

This public hearing will discuss these management objectives and specifically address the possibility of establishing SMZs for certain artificial reefs off Ft. Pierce, Florida, and measures to restrict fish traps, bottom longlines, spearguns, and powerheads in these SMZs.

Dated: October 29, 1987.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 87-25422 Filed 11-2-87; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 212
Tuesday, November 3, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

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

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

Agency: International Trade Administration
Title: Anti-Friction Bearings, 232 Investigation of Producers and Importers
Form Numbers: Agency—ITA–9057 and ITA–9058; OMB—None
Type of Request: New Collection—Expedited Review Requested
Burden: 116 respondents; 997 burden hours
Needs and Uses: This information collection will be directed to primary domestic bearing manufacturers and importers of bearings and bearing components. The information will be used to determine the impact of imports of bearings and bearing components on the national security.
Affected Public: Businesses or other for-profit organizations
Frequency: One-time only
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 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 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: October 28, 1987.

J. Randall Blumenschein,

Chief, Management Support Division, Office of Management and Organization.

[FR Doc. 87–25360 Filed 11–2–; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Availability of Marine Mammal Annual Report

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

ACTION: Notice of availability of Marine Mammal Annual Report.

SUMMARY: The 1986/87 Annual Report on the administration of the Marine Mammal Protection Act is available now, on request, from the National Marine Fisheries Service.

ADDRESS: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235.

FOR FURTHER INFORMATION CONTACT: Margaret C. Lorenz (Protected Resources Division), (22) 673–5349.

SUPPLEMENTARY INFORMATION:

Background

The Marine Mammal Protection Act of 1972 assigns responsibility for marine mammals of the Order Cetacea (whales and dolphins) and the Suborder Pinnipedia (seals and sea lions), except walrus, to the Department of Commerce. This annual report reviews the progress NMFS has made to protect these animals; the permit programs for scientific research, public display, the incidental take of marine mammals in commercial fisheries and other activities; the marine mammal stranding network; international activities; legal actions; and enforcement activities. It includes a discussion on the management and research programs for cetaceans and pinnipeds that are carried out at NMFS' Regional Offices and Research Centers.

Dated: October 28, 1987.

Carmen J. Blondin,

Director, Office of Trade and Industry Service, National Marine Fisheries Service.

[FR Doc. 87–25423 Filed 11–2–87; 8:45 am]

BILLING CODE 3510-22-M

Productivity Improvement Program Review List

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability.

SUMMARY: Pursuant to Office of Management and Budget (OMB) Circular No. A–76 and Department of Commerce Administrative Order 201–41, the Department of Commerce has compiled an inventory of activities it operates which provide a product or service which could be obtained from a commercial source. The National Marine Fisheries Service of the National Oceanic and Atmospheric Administration (NOAA) is conducting an A–76 Review of the facilities maintenance functions in Seattle, Washington; Kodiak, Alaska; Auke Bay, Alaska; and Little Port Walter, Alaska. This is for the sole purpose of announcing an A–76 study which was not on the Commerce Productivity Improvement Program Review List in the June 1, 1987, **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Annie O'Donoghue, Office of A–76 Activities, Room 1800, U.S. Department of Commerce, 14th & Constitution Avenue, NW., Washington, DC 20230, (202) 377–1919.

SUPPLEMENTARY INFORMATION: This notice is issued under the authority of the Budget and Accounting Act of 1921 (31 U.S.C. 501); the Office of Federal Procurement Policy Act Amendments of 1979 (41 U.S.C. 401 et seq.); Office of Management and Budget (OMB) Circular No. A–76, Performance of Commercial Activities; and Department Administrative Order (DAO) No. 201–41, "Performance of Commercial Activities." Commercial activities are those which are operated by the agency and which provide a product or service which could be obtained from a commercial source.

William Matuszeski,

Director, Office of A–76 Activities.

Identifier	Location of activity	Name of activity	Description of activity	Approx. No. of FTEs	Review start date	Review end date
NOA-F009 C	Seattle, Wash.; Kodiak, Alaska; Auke Bay, Alaska; and Little Port Walter, Alaska.	Northwest Facilities Maintenance.	Upkeep, repair, and operation of buildings, grounds, and equipment.	15	12/01/87	04/20/89

[FR Doc. 87-25362 Filed 11-2-87; 8:45 am]
BILLING CODE 3510-08-M

Patent and Trademark Office

Interim Protection for Mask Works of Nationals, Domicilaries, and Soverieign Authorities of Finland

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Issuance of interim order.

SUMMARY: The Secretary of Commerce has delegated to the Assistant Secretary and Commissioner of Patents and Trademarks, by Amendment 2 to Department Organization Order 10-14, the authority under section 914 of title 17 of the United States Code (the copyright law) to make findings and issue orders for the interim protection of mask works.

On August 28, 1987, the Confederation of Finnish Industries with the support of the Finnish Government submitted a petition for the issuance of an interim order. Comments on the petition were requested on or before September 28, 1987, and a hearing was set for October 7, 1987. Requests to testify were received from the Semiconductor Industry Association (SIA) and the Confederation of Finnish Industries.

Following the October 7, 1987, hearing, after receiving assurances that the protection afforded under Finnish law would generally be similar to that under the SCPA, the SIA in a letter to the Commissioner supported the issuance of an interim order. SIA urged that, in view of their areas of concern, any order issued should be for one year, should the Commissioner's authority to issue such orders be extended beyond November 8, 1987. The Confederation of Finnish Industries urged that the order should issue for one year or for the remaining term of the Commissioner's authority. The Commissioner has determined that Finland has demonstrated good faith efforts and reasonable progress toward providing protection for mask works of U.S. nationals and domiciliaries, and has determined that an order should issue until November 8, 1987.

EFFECTIVE DATE: The effective date of this order shall be August 28, 1987, the date of receipt of the petition.

Termination date: This order shall terminate on November 8, 1987.

FOR FURTHER INFORMATION CONTACT: Michael K. Kirk, Assistant Commissioner for External Affairs, by telephone at (703) 557-3065, or by mail marked to his attention and addressed to Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Chapter 9 of title 17 of the United States Code establishes an entirely new form of intellectual property protection for mask works that are fixed in semiconductor chip products. Mask works are defined in 17 U.S.C. 901(a)(2) as:

> A series of related images, however, fixed or encoded
>
> (A) having or representing the predetermined, three-dimensional pattern of metallic, insulating or semiconductor material present or removed from the layers of a semiconductor chip product; and
>
> (B) in which series the relation of the images to one another is that each image has the pattern of the surface of one form of the semiconductor chip product.

Chapter 9 provides for a 10-year term of protection for original mask works, measured from the earlier of their date of registration in the U.S. Copyright Office, or their first commercial exploitation anywhere in the world. Mask works must be registered within 2 years of their first commercial exploitation to maintain this protection.

Foreign mask works are eligible for protection under basic criteria set out in 17 U.S.C. 902. Either (i), the owner of the mask works must be a national, domiciliary, or sovereign authority of a foreign nation that is a party to a treaty providing for the protection of a mask work to which the United States is also a party, or a stateless person wherever domiciled; (ii) the mask work must be first commercially exploited in the United States; or (iii) the mask work must come within the scope of a Presidential proclamation. Section 902(a)(2) provides that where:

> A foreign nation extends to masks works of owners who are nationals or domicilaries of the United States protection (A) on substantially the same basis as that on which the foreign nation extends protection to mask works of its own nationals and domiciliaries and mask works of its own nationals and domicilaries and mask works first commercially exploited in that nation, or (B) on substantially the same basis as provided under this chapter, the President may by proclamation extend protection under this chapter to mask works (i) of owners who are, on the date on which the mask works are registered under section 908, or the date on which the mask works are first commercially exploited anywhere in the world, whichever occurs first, nationals, domicilaries, or sovereign authorities of that nation, or (ii) which are first commercially exploited in the nation.

In order to encourage steps toward a regime of international comity in mask works protection, section 914(a) provides that the Secretary of Commerce may extend the privilege of obtaining interim protection under chapter 9 to nationals, domicilaries, and sovereign authorities of foreign nations if the Secretary finds;

> (1) that the foreign nation is making good faith efforts and reasonable progress toward—
>
> (A) entering into a treaty described in section 902(a)(1)(A); or
>
> (B) enacting legislation that would be in compliance with subparagraph (A) or (B) of section 902(a)(2); and
>
> (2) that the nationals, domiciliaries, and sovereign authorities of the foreign nation, and persons controlled by them, are not engaged in a misappropriation, or unauthorized distribution or commercial exploitation of mask works; and
>
> (3) that issuing the order would promote the purposes of this chapter and international comity with respect to the protection of mask works.

At the October 7 hearing Finland was represented by Mr. Jukka Liedes, Special Adviser, Ministry of Education; Ms. Satu Lahtinen, Ministry of Education; Mr. Henrik Raiha, Legal Department, Confederation of Finnish Industries; and Mr. Kauko Jamsen, Economic Counselor, Embassy of Finland. Mr. Jamsen introduced the members of the delegation and explained that in Finland the Ministry of Education was responsible for intellectual property matters such as the protection of semiconductor chips. Mr. Jamsen introduced Mr. Liedes as the head of the Finnish delegation.

Mr. Liedes explained that the preparation of chip legislation started in Finland soon after the enactment of the U.S. Semiconductor Chip Protection Act. The State Copyright Committee was entrusted with the task of preparing a draft bill in January 1986, after a

proposal by the Confederation of Finnish Industries.

The Committee published its report in April 1987 containing studies and proposed amendments concerning several aspects of information technology and copyright. One part of this report is a proposal for a *sui generis* bill on the protection of integrated circuits.

The subject matter of the protection in the proposed act is the layout design of an integrated circuit. Layout design means the abstract disposition or pattern of the elements of an integrated circuit. Thus, the protection would cover the layout design in all of the forms in which it can be expressed or fixed. The proposed protection would not be subject to any formalities. A certain level of originality would be a requirement for the protection, in the same way as in the U.S. law and the WIPO draft treaty.

Mr. Liedes explained that there is complete political certainty that the Finnish government will present to the parliament its proposal for new legislation concerning protection for layout designs of integrated circuits.

The Government of Finland in the World Intellectual Property Organization has supported a simple and flexible treaty that would allow as many countries as possible to join. From the beginning of this international preparatory work, Finland has supported the idea of a treaty that could be applied to electronic integrated circuits, but also circuits that perform similar functions. Finland is ready to accept the treaty as it stands and is ready to participate in a diplomatic conference, preferably in the framework of WIPO.

The Finland authorities do not have any knowledge of cases in which Finnish citizens or companies have engaged in misappropriation of mask works or of integrated circuits.

Mr. Raiha explained that after consultations with officials from the Ministry of Education, the Confederation of Finnish Industries feels confident that the Finnish law will provide protection equivalent to the SCPA. The Confederation has studied the purchasing and R&D practices of Finnish electronics and semiconductor companies and is convinced that no Finnish companies have been engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works.

Mr. Richards, representing the Semiconductor Industry Association (SIA) observed that the documents submitted by the Confederation of Finnish Industries raise several questions concerning the proposed Finnish law. But, if these issues are resolved satisfactorily, SIA would support the granting of an interim order to Finland.

SIA stated its opinion that Finland appears to be making good faith efforts toward enacting semiconductor chip protection legislation. SIA is not aware of any instances in which Finnish nationals have been or are engaged in the misappropriation of semiconductor designs. SIA believes that issuing a section 914 interim order to Finland would promote the purposes of the Chip Protection Act and international comity with respect to the protection of mask works if the questions raised by the Finnish proposal can be resolved.

In determining whether granting an interim order to Finland would promote the purpose of the SCPA and international comity, SIA believes the following central criteria should be met:

First, that protection should be provided for semiconductor mask works;

Second, that protection should be provided for original, as opposed to novel works;

Third, that the term of protection should be at least 10 years.

Fourth, that innocent infringement provisions should be included;

Fifth, that reverse engineering should be permitted with the limitations of the SCPA.

Mr. Richards further observed that SIA believes that these criteria generally are consistent with the position of the PTO, as reflected in the testimony of Commissioner Quigg before the Senate Judiciary Committee on February 26, 1987.

SIA sought assurances from Finnish officials on several points. SIA explained that since the scope of coverage of the proposed Finnish law is limited to intergrated circuits and not to all semiconductors the coverage may not be compatible with the SCPA.

Mr. Richards also observed that the SCPA and the European Community Directive both refer to protection for all semiconductor chip products which meet certain criteria. As currenly drafted SIA was uncertain whether the Finnish law would provide protection to discrete semiconductor devices.

SIA also observed that the proposed law would permit the reproduction of mask works for "private use, teaching and analysis of the layout-design." SIA is not entirely clear as to Finland's definition of private use, and why this exemption is necessary in addition to the exemption for teaching and analysis.

SIA also expressed concern that the act does not indicate what criteria Finland will use to determine when it will provide protection for foreign mask works.

A final point is that the draft Finnish law contains no notice provision. While SIA did not regard the absence of such a notice provision to be a serious flaw in the proposed legislation, SIA would prefer that the law address this issue. SIA stated that if actions are taken or assurances provided that its concerns with respect to the proposed Finnish law are satisfactorily clarified, the Commissioner of the Patent and Trademark Office should issue an interim order to Finland for the period through November 9, 1987, with possible subsequent extension for an additional year.

Mr. Liedes explained that the intent of the Finnish law was to to exclude any possible subject matter, and that it would protect works protected by the U.S. law. He also explained that it was the intent to provide for foreign protection by a decree issued at the time of passage of the law. Such protection would be extended on the condition of reciprocity to countries that protect Finnish works.

Ms. Lahtinen explained that the scope of private copying permitted would only be for non-commerical purposes. Commercial copying would not be covered by this provision. Mr. Liedes further explained that if the fundamental condition for protection—originality—were met, any circuit design would be protected regardless of whether it was a "discrete" or not.

Mr. Richards explained tha SIA still had some concerns with respect to discrete devices, but that the personal use question and the question of providing rights to U.S. rights holders had been clarified. The notice issue is not an issue over which the SIA would object to an interim order.

On October 8, 1987, SIA responded in writing that all of their concerns had been satisfactorily addressed and that they supported an interim order for Finland.

The record supports the conclusion that Finland is making good faith efforts and reasonable progress toward establishing a system for the protection of mask works in Finland on substantially the same basis as under the SCPA. There is no evidence of misappropriation of U.S. mask works in Finland and the support that Finland has shown for a new chip protection treaty is strong evidence of Finnish efforts to assist the development of international comity in this important area of intellectual property law. Accordingly, I have concluded that an interim order

should issue for nationals, domiciliaries, and sovereign authorities of Finland. This order shall endure until November 8, 1987, and the Effective date shall be August 28, 1987, the date of receipt of the petition.

Order Extending Interim Protection Under Chapter 9, Title 17, United States Code, to Nationals, Domiciliaries, and Sovereign Authorities of Finland

In accordance with the authority vested in me by Amendment 1 to Department Organization Order 10-14 regarding 17 U.S.C. 914, and based upon the records of this proceeding commenced on October 7, 1987, I find that: Finland is and has, since August 28, 1987, been making good faith efforts toward enacting legislation that will be in compliance with 17 U.S.C. 902(a)(2); Finnish nationals, domiciliaries, and sovereign authorities and persons controlled by them are not engaged in the misappropriation or unauthorized distribution or commercial exploitation of mask works; and, the issuance of this order will promote international comity with respect to the protection of mask works.

Accordingly, nations, domiciliaries and sovereign authorities of Finland are entitled to protection under Chapter 9 of 17 U.S.C. subject to compliance with all formalities specified therein. The effective date of this order shall be August 28, 1987, and this order shall terminate on November 8, 1987.

Donald W. Peterson,

Deputy Assistant Secretary and Deputy Commissioner of Patents and Trademarks.

Date: October 22, 1987.

[FR Doc. 87-25377 filed 11-2-87; 8:45 am]

BILLING CODE 3510-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the People's Republic of China

October 28, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on November 3, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, please call (202) 377-3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established restraint limit for wool textile products in Category 443, produced or manufactured in the People's Republic of China and exported during 1987.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 443 and 447, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Under the terms of the bilateral textile agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, the limit for Category 443 is being increased by application of swing. To account for the swing applied to Category 443, the limit for Category 447 is being reduced. The reduction in Category 447 also accounts for swing applied to Catetory 433 which was published in a separate directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 28, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986 concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on November 3, 1987, the directive of December 23, 1986 is further amended to include adjustments to the previously established restraint limits for the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12-mo. limit [1]
443	10,653 dozen.
447	68,376 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-25357 Filed 11-2-87; 8:45 am]

BILLING CODE 3510-DR-M

[1] The agreement provides, in part, that: (1) With the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; and (3) administrative arrangement or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Adjustment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

October 28, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 28, 1987. For further information contact Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the aggregate limit, group limits and certain individual limits for textiles and textile products, produced or manufactured in Macau and exported during 1987.

Background

A CITA directive dated December 23, 1986 was published in the **Federal Register** (51 FR 47045), as amended on July 6, 1987 (52 FR 47045), announcing import restraint limits for certain categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including an aggregate limit, group limits and individual limits within the aggregate for Categories 333/334/335/833/834/835, 338, 339, 340, 341, 345, 347/348/847, 445/446, 642/842 and 845/846, produced and manufactured in Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987. Under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 29, 1983 and January 9, 1984, as amended, between the Government of the United States and Macau, the aggregate limit and the limits for Groups I and II and Categories 333/334/335/833/834/835, sublimit 333/335/833/835, 338, 339, 340, 341, 345, 347/348/847, 445/446, 642/842 and 845/846 are being adjusted, variously, by application of swing, carryforward and carryforward used in 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register**.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 28, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986, as amended on July 6, 1987, which directed you to prohibit entry of certain categories of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987, in excess of designated restraint limits.

Effective on Oct. 28, 1987, the directive of December 23, 1986, as amended, is hereby further amended to adjust the limits for the following categories, according to the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of December 29, 1983 and January 9, 1984, as amended, between the Governments of the United States and Macau [1]:

Category	Adjusted 12-mo limit [1]
300–354, 359–369, 400–448, 459–469, 600–654, 659–670, 800, 810, 831–859 and 863–899, as a group.	81,737,571 square yards equivalent.
Group I	
300–354, 359–369, 600–654, 659–670, 800, 810, 831–859, 863–899, as a group.	78,780,000 square yards equivalent.
Group II	
400–448 and 459–469, as a group.	1,657,540 square yards equivalent.
333/334/335/833/834/835.	147,660 dozen of which not more than 80,250 dozen shall be in Category 333/335/833/835.
338	188,535 dozen.
339	814,406 dozen.
340	180,513 dozen.
341	122,551 dozen.
345	33,900 dozen.
347/348/847	471,737 dozen.
445/446	76,454 dozen.
642/842	56,710 dozen.
845/846	214,000 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–25358 Filed 11–2–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] The agreement provides, in part, that: (1) Within the aggregate limit specific restraint limits may be exceeded by designated percentages; (2) specific limits may be increased for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement.

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of the Marriage and Family Therapists as Independent Providers Demonstration Project.

SUMMARY: Chapter 55, Title 10 U.S.C. 1092(a) authorizes OCHAMPUS to establish demonstrations of alternative methods of encouraging the efficient and economical delivery of health and medical care services. OCHAMPUS has determined that a potential exists to enhance the efficiency of delivery of some mental health care given by a specific group of practitioners and contain DoD costs by allowing marriage and family therapists to provide mental health services as independent practitioners, not requiring the referral or supervision of a physician. This will be tested in four states in a single

CHAMPUS fiscal intermediary area and require the execution of an Agreement of Participation by those marriage and family therapists qualified to be considered independent practitioners for the purpose of this project. This notice sets forth the parameters of the demonstration.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Project Officer: LTC(P) Robert T. Moore, MSC, USA, Office of Demonstrations and Special Projects, OCHAMPUS, Washington, DC 20301–1200 [202–695–3350].

Claims Processing and Agreements of Participation: George Schobel, Vice President, Blue Cross Blue Shield of Rhode Island Inc., One Weybossett Hill, Providence, RI 02903 [401–272–8500].

SUPPLEMENTARY INFORMATION:

In Fiscal Year 1983, the requirement for physician referral and supervision of certified nurse practitioners (including certified psychiatric nurses) and for certified clinical social workers was eliminated. At the present time the only groups of mental health professionals for which CHAMPUS requires physician referral and supervision when providing psychotherapy are marriage and family therapists and pastoral counselors.

In 1986, the House Committee on Armed Services in House Report 99–718, entitled "National Defense Authorization Act for Fiscal Year 1987," page 248, dated 25 July 1986, directed that CHAMPUS conduct a demonstration project of marriage and family therapists as independent health care providers. The Committee further directed that the demonstration project be established within a geographic region administered by one of the CHAMPUS fiscal intermediaries and should include two types of marriage and family therapists in the demonstration. The first group should be state licensed or certified marital and family therapists. The second group should be providers in states which do not currently license or certify marital and family therapists. This second group should, as a minimum, meet the criteria established by nationally recognized credentialing organizations in the field of marriage and family therapy including the completion of a master's or doctoral degree in marital and family therapy from an accredited educational institution or an equivalent course of study and degree as prescribed by the Secretary. The Committee also directed that the beneficiaries not incur any out-of-pocket costs, beyond the existing cost-share required by CHAMPUS, and that, as a condition of participation in the demonstration, providers must agree in writing that they will not seek reimbursement from the beneficiary if their claim for service is denied by CHAMPUS.

The Northern Region has been selected as the region in which this demonstration will be conducted. This region contains two states, Connecticut and New Jersey, which have marriage and family therapists licensing/certifying laws. In these states, any licensed/certified marriage and family therapist who is an authorized CHAMPUS provider, meets the criteria for Clinical Membership in the American Association for Marriage and Family Therapy and agrees to participate in the demonstration project will be reimbursed as an independent provider for authorized care rendered to CHAMPUS beneficiaries.

Two other states in this region, New York and Massachusetts, are the states selected which have no existing licensing laws for marriage and family therapists. In these states, only those authorized CHAMPUS providers who meet the criteria for Clinical Membership in the American Association for Marriage and Family Therapy and agree to participate in the demonstration project will be reimbursed as independent providers for authorized care rendered to CHAMPUS beneficiaries. In order to be a CHAMPUS authorized marriage and family therapist, whether participating in the demonstration or not, the provider must comply with the existing requirements outlined in Chapter 6, C.3.d.(1) of the CHAMPUS Regulation, DoD 6010.8–R (32 CFR Part 199). This demonstration applies to only marriage and family therapists and does not include either pastoral counselors or mental health counselors unless they meet the criteria of a marriage and family therapist.

The three criteria which must be met to qualify for Clinical Membership in the American Association for Marriage and Family Therapy are the following:

1. *Education.* Completion of a master's or doctoral degree in Marriage and Family Therapy from a program accredited by the Commission on Accreditation for Marriage and Family Therapy, or completion of a master's or doctoral program from a regionally accredited educational institution which includes: 9 semester hours of human development; 9 semester hours of marital and family studies; 9 semester hours of marital and family therapy; 3 semester hours of research methodology; 3 semester hours of professional studies; and 300 hours of supervised clinical practicum, of which approximately 180 to 200 hours was in face-to-face contact with individuals, couples and families for the purpose of assessment and intervention.

2. *Clinical Experience.* Completion of two (2) years of post-graduate work experience in marriage and family therapy and supervised clinical experience following the award of the first qualifying graduate degree and the practicum prescribed for that course of study, which includes: a. Successful completion of at least 1,000 hours of face-to-face contact with couples or families for the purpose of assessment and intervention, and b. At least 200 hours of supervision of marriage and family therapy, at least 100 hours of which are individual supervision.

3. *Licensure.* Possession of a valid state license or certificate as a marriage and family therapist, or a license or certificate which allows the individual to provide psychotherapy in states that require such licensing or certification. Clincial members of the American Association of Marriage and Family Therapy are recognized as having met this requirement.

This demonstration project does not in any way alter the benefit structure of CHAMPUS. Marriage and family therapists will be reimbursed only for psychotherapy that is considered to be psychologically necessary, as determined under the CHAMPUS "Utilization Review of Mental Health Services" process (Appendix A, Volume Two, CHAMPUS Policy Manual). Claims submitted for mental health services by marriage and family therapists participating in this demonstration project are subject to the limitations on mental health disorders for which reimbursement is authorized, as specified in the regulation, and to the criteria in the "Ultilization Review of Mental Health Services," Appendix A, Volume Two, CHAMPUS Policy Manual. No reimbursement will be made for marriage and family counseling, as such, which is not a benefit under CHAMPUS.

This demonstration project does not in any way alter the current CHAMPUS regulatory provider standards, cost-sharing requirements, the allowable amount of reimbursement, nor the reimbursement methodology of CHAMPUS. The demonstration project does not change any of the requirements regarding recoupment or the coordination of benefits. Participating marriage and family therapists will continue to collect the normal deductible and cost share from each beneficiary. Participating marriage and family therapists will prepare and submit CHAMPUS Form 500 or CHAMPUS Form 501/HCFA Form 1500,

which contains the CHAMPUS certification on the reverse side of the claim form, for reimbursement of authorized services. Participating marriage and family therapists claims will automatically be processed as "participating." Should a beneficiary submit a claim for services provided by a participating provider, the Fiscal Intermediary will deny the claim with a message "Provider is to Submit Claim." Participating marriage and family therapists will not seek reimbursement from the beneficiary for any claims denied by the Fiscal Intermediary of the Northern Region for the following reasons: requested information not received; Nonavailability Statement not supplied; non-covered diagnosis; services covered by Workers Compensation; non-covered service; treatment summary not received; request for information not received; psychiatric limit exceeded; services filed after time limit; authorized services limit exceeded; approval for therapy not received; and, insufficient information received. Participating marriage and family therapists will be subject to the denial of future claims reimbursement if they seek reimbursement for claims denied by the Fiscal Intermediary for the above stated reasons. The Fiscal Intermediary is required to recoup any erroneously paid monies on subsequently received claims once this determination has been made.

Participating marriage and family therapists may, of course, seek full reimbursement from a patient for those claims denied by the Fiscal Intermediary on the basis of a DEERS ineligibility determination.

Participating marriage and family therapists are required to submit CHAMPUS Treatment Reports for all claims for crisis intervention and CHAMPUS Treatment Reports for all patients whose treatent episodes have reached the 24th session and every 24 sessions thereafter. Peer Review requirements specified in Appendix A, Volume Two, CHAMPUS Policy Manual will be applied by the Fiscal Intermediary for the Northern Region. This fiscal intermediary will establish the peer review activity for this demonstration and will include, among their consultants, authorized CHAMPUS marriage and family therapists who are also Clinical Members of the American Association of Marriage and Family Therapy to perform required Second Level Review and Third Level Peer Reviews of cases managed by the participating marriage and family therapists.

The demonstration project will, for data collection purposes, run for twelve months, beginning 1 December 1987 and ending 30 November 1988. At the end of the demonstration data collection period, those marriage and family therapists who are participating independent providers will continue to be considered independent providers for the next twelve months, until 30 November 1989. This additional period of independent provider status is required, in fairness to both the participating providers and their patients, to allow the evaluation of the demonstration to be completed and a determination made with respect to any permanent change in the CHAMPUS regulation, DoD 6010.8R (32 CFR Part 199), and the CHAMPUS statute (10 U.S.C. Chapter 55), regarding the status of this specific provider category. The results of the evaluation and approved recommendations will be reported to Congress on, or before, 15 August 1989. An interim Report to Congress will be prepared and submitted on or before 30 November 1988.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 28, 1987.

[FR Doc. 87-25406 Filed 11-2-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Maunalua Bay Navigation Improvements Study

AGENCY: U.S. Army Corps of Engineers, Honolulu District, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY:

1. The study is reevaluating the feasibility of a small boat harbor development authorized by the Rivers and Harbors Act of 27 October 1965 for Maunalua Bay, Oahu.

2. Three alternative plans are being investigated for this site. The first alternative is a mooring facility with a two lane launch ramp. The second alternative is a berthing facility for 300 boats with a two lane launch ramp and an open causeway, allowing boats to pass beneath. The third alternative plan is similar to alternative two except that it has a closed causeway with box culverts to allow water circulation. The third alternative plan has been selected for further investigation.

3. Public coordination has been extensive including a workshop held in June 1984 and a number of meetings with neighborhood boards and community associations. An informal citizens group has been formed to discuss harbor development and resolve multiple use issues. Local interest groups, private organizations, Federal, State and County agencies will again be contacted during the course of the study.

The DEIS will address the effects of the harbor on fish and wildlife resources, receational uses and other social considerations identified by local residents at the public workshops. The U.S. Fish and Wildlife Service will provide an analysis of project effects on fish and wildlife resources for inclusion in the DEIS. Consultation with the U.S. Advisory Council on Historic Preservation, State Historic Preservation Officer, State Department of Health, U.S. Environmenatl Protection Agency and National Marine Fisheries Service will be completed during the study as appropriate.

4. A scoping meeting is not planned at this time.

5. The DEIS will be made available for public review about January 1988.

6. Questions and comments regarding the proposed action and DEIS may be addressed to: Dr. James E. Maragos, Chief, Environmental Resources Section, U.S. Army Engineering District, Honolulu, Building T-1, Fort Shafter, HI 96858-5440. Telephone: 438-2263.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87-25365 Filed 11-2-87; 8:45 am]

BILLING CODE 3710-NN-M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for Heeia Kea Navigation Improvements Study

AGENCY: U.S. Army Corps of Engineers, Honolulu District, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY:

1. The study is reevaluating the feasibility of a small boat harbor development authorized by the Rivers and Harbors Act of 27 October 1965 for Heeia Kea, Oahu.

2. The authorized plan encompasses a tri-compartmentalized harbor of approximately 47 acres with a total berthing capacity of 1,600 boats. The preferred alternative is designed for a berthing capacity for 300 boats and four lanes of launch ramp. The berthing area would be protected by the construction of four off-shore islands designed to

enhance water circulation and aesthetics.

3. A public workshop was held in June 1984 to discuss the need for expansion and proposed improvements. Local interest groups, Federal, State and County agencies will again be contacted during the course of the study. A public meeting will be held after submittal of the Draft Feasibility Report and EIS.

The DEIS will address the effects of the harbor on fish and wildlife resources, recreational uses and other social considerations identified by local residents at the public workshops. The U.S. Fish and Wildlife Service will provide an analysis of project effects on fish and wildlife resources for inclusion in the DEIS. Consultation with the U.S. Advisory Council on Historic Preservation, State Historic Preservation Officer, State Department of Health, U.S. Environmental Protection Agency and National Marine Fisheries Service will be completed during the study as appropriate.

4. A scoping meeting is not planned at this time.

5. The DEIS will be made available for public review about January 1988.

6. Questions and comments regarding the proposed action and DEIS may be addressed to: Dr. James E. Maragos, Chief, Environmental Resources Section, U.S. Army Engineering District, Honolulu, Building T-1, Fort Shafter, HI 96858-5440. Telephone: 438-2263

John O. Roach, II,

Army Liasion Officer With the Federal Register.

[FR Doc. 87-25366 Filed 11-2-87; 8:45 am]

BILLING CODE 3710-NN-M

Armed Forces Institute of Pathology Scientific Advisory Board; Meeting

In order to comply with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the meeting of the Armed Forces Institute of Pathology's Scientific Advisory Board, November 19-20, 1987, at 0830 hours in the Director's Conference Room, Armed Forces Institute of Pathology, Washington, DC 20306-6000. This meeting will be open to the public.

The proposed agenda will include professional discussion of the mission of the Armed Forces Institute of Pathology relating to consultation, education and research. The Executive Secretary from whom substantive program information may be obtained is Colonel Lloyd A. Schlaeppi, Executive Officer, Armed Forces Institute of Pathology, Washington, DC 20306-6000, telephone 202-576-2900.

For the Director.

Lloyd A. Schlaeppi,

Colonel, MS, USA, Executive Officer.

[FR Doc. 87-25363 Filed 11-2-87; 8:45 am]

BILLING CODE 3710-08-M

Military Traffic Management Command; Freight Carrier Performance Program

AGENCY: Notice of procedural changes relative to the Freight Carrier Performance Program (CPP).

SUMMARY: The following changes establish procedures which the Military Traffic Management Command (MTMC) will consider when evaluating the level of performance provided by a commercial freight carrier handling Department of Defense (DOD) shipments. As part of MTMC's continuing obligation to ensure that DOD freight is tendered to responsible carriers, additional procedures have been established to define and clarify the maximum acceptable telephone response times for shipment acceptance by a carrier and the minimum standards for responding to telephone inquiries from shippers. References: Defense Traffic Management Regulation, Chapter 42, Carrier Performance Program.

DATES: These procedures will be implemented on 1 January 1988.

ADDRESSES: Comments should be addressed to: HQ, MTMC, ATTN: MT-INFF, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: Ms Patricia McCormick, Headquarters, Military Traffic Management Command, ATTN: MT-IN, 5611 Columbia Pike, Falls Church, VA 22041-5050, (202) 756-1356.

SUPPLEMENTARY INFORMATION: MTMC is authorized by DOD Directive 5160.53 to develop and maintain procedures for the movement of DOD shipments within the continental United States. MTMC is also required to ensure that DOD shipments are tendered to carriers able to meet DOD requirements at the lowest overall cost. Therefore, the following guidelines have been established to ensure responsive service by the carrier industry.

(1) Recognizing that carriers need a reasonable amount of time to determine whether they have equipment and employees available to fulfill a DOD shipper or transportation office request for service, shippers and carriers are authorized to set a mutually agreeable response time for acceptance of a shipment. However, failure to accept or decline a shipment as described in (a), (b), and (c) below will be considered by MTMC as a shipment refusal. The following standards will apply in the absence of a specific service agreement:

(a) When offered a shipment before 12 noon (shippers time), the carrier must accept or decline the shipment before the shippers close of business.

(b) When offered a shipment after 12 noon (shippers time), the carrier must accept or decline the shipment before 10 a.m. the next day.

(c) The shipper retains the right to specify a shorter response time than those in (a) and (b) above for high priority shipments. However, when given less than 2 hours notice the carrier will not be charged with a refusal.

(2) Telephone numbers on a tender of service must be answered by a carrier representative, answering service, or answering machine between the hours of 9 a.m. and 5 p.m. (local time of the number), Monday thru Friday. Further, the carrier must respond to a service inquiry within 24 hours from the initial request.

Disconnected numbers and unanswered inquiries will be considered as evidence that the carier is no longer providing service. If the phone is not answered within 3 days (one attempt per day), a notice of removal will be sent by HQMTMC to the address listed on the current tender. The carrier may file new tenders upon reestablishing contact with HQMTMC and meeting all qualification standards.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

[FR Doc. 87-25367 Filed 11-2-87; 8:45 am]

BILLING CODE 3710-08-M

Policy Statement Concerning Master-Leases

AGENCY: Military Traffic Management Command (MTMC), Department of the Army, (DOD).

ACTION: Policy clarification.

SUMMARY: The DOD must maintain high visibility over sensitive shipments and, therefore, prohibits trip-leasing of shipments which require a Transportation Protective Service (TPS). By using trip-lease equipment, DOD would lose control over the shipment and would not be assured of the driver's qualifications or the equipment's adequacy to transport the shipments. The vehicles used must be owned or leased under a valid agreement by the company transporting the shipment, and the vehicle drivers must be full-time employees or under the direct control

and responsibility of that company. This is not intented to prevent a carrier from interchanging equipment to allow for the through movement of traffic. Master-leases which do not meet the requirements of a long-term lease or that depend on other documentation and/or subleases to be complete are viewed as trip-leases.

DATE: Comments must be received on or before 1 January 1988.

ADDRESS: Comments should be addressed to: Headquarters, Military Traffic Management Command, ATTN: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia McCormick, HQMTMC 5611 Columbia Pike, Falls Church, VA 22041–5050, (202) 756–1887.

SUPPLEMENTARY INFORMATION: Master-leases which do not conform to the requirements of a long-term lease are, in fact, trip-leases and therefore, will not be used for TPS shipments. To be considered a long-term lease, the lease must be in writing, signed by the lessor and lessee, and must not contain a provision authorizing cancellation by either party on less than 30 days' notice. In addition, the lease must provide for the exclusive possession, control, and use of the equipment, and for the complete assumption of liability. The leased equipment may not be further leased or subject to any other carrier for the duration of the lease.

Transportation Officers will refuse to load shipments requiring a TPS onto equipment that is offered under a trip-lease or master-lease. Carriers offering improperly leased equipment and/or driver for a TPS shipment may be charged with a service failure for providing improper/inadequate equipment.

John O. Roach, II,

Army Liaison Officer With the Federal Register.

[FR Doc. 87–25364 Filed 11–2–87; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Mine Warfare Capabilities Task Force will meet November 12–13, 1987 from 9 a.m. to 5 p.m. each day, at Norfolk, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review current and projected U.S. and Allied Mine Warfare capabilities and potential U.S vulnerabilities in the broad context of maritime operations and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Ann Lynn Cline, Special Assistant to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22303–0268. Phone (703) 756–1205.

Date: October 28, 1987.

Jane M. Virga,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 87–25415 Filed 11–2–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact (FONSI) for the Proposed New Agreement for Peaceful Nuclear Cooperation Between the United States and Japan and an Associated Subsequent Arrangement for the Return of Recovered Plutonium From EURATOM to Japan

AGENCY: Department of Energy.

ACTION: Finding of No Significant Impact.

SUMMARY: The Department of Energy (DOE) has prepared an Environmental Assessment (EA) (DOE–EA–00336) for the proposed new Agreement for Peaceful Nuclear Cooperation Between the United States and Japan and an associated "subsequent arrangement" for the return of recovered plutonium from EURATOM to Japan.

The proposed action is to enter into the new Agreement pursuant to section 123 of the Atomic Energy Act as amended, and an associated "Subsequent Arrangement" which would implement a provision of the proposed Agreement in which the U.S. undertakes to give its approval, subject to specified conditions, to the transfer of separated plutonium from EURATOM to Japan. One of the conditions for this approval is that the recovered plutonium must be shipped by air pursuant to various measures designed to assure its security and safety. This would include shipments of plutonium via a "polar route or other route selected to avoid areas of natural disaster or civil disorder".

The environmental consequences of the proposed action are limited to those associated with air transport of plutonium oxide from Europe to Japan, and are predicted to be minor. The only radiological dose under normal conditions will be to the transport crew, including the air crew, any escort force on board, and those on the ground during refueling operations. The annual radiation dose is a small fraction of that associated with air transport of all radioactive materials in the United States.

The radiological risk from a major transport accident involving a crash of the plane followed by a fire is also very small. The annual radiological risk is estimated to range from 1.1×10^{-6} person-rem to 3.2×10^{-6} person-rem. The estimated number of adverse health effects from inhalation of plutonium as a result of such an accident ranges from 2×10^{-10} to 6×10^{-10} per year, an extremely small value compared to the normal incidence of cancer in the general population or the hazard from accidental death due to transportation.

The non-radiological impacts of the proposed action will also be negligible given the low number of air shipments per year required to implement the proposed action and the temporal nature of these impacts.

Three alternatives were also considered. The environmental consequences of each would be similar to those for the proposed action.

Based on the findings of this EA, the Department of Energy (DOE) has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore an environmental impact statement is not required.

The Environmental Assessment and Finding of No Significant Impact are being made available to the public. For further information on the proposed action or for copies of either document contact: Peter N. Brush, IE–13, Office of Nuclear Nonproliferation Policy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

For further information on the NEPA process for the proposed action contact:

Carol Borgstrom, EH–25, Office of NEPA Project Assistance, Office of the Assistant Secretary, for Environment, Safety and Health, 1000 Independence Avenue SW., Washington, DC, 20585.

SUPPLEMENTARY INFORMATION:

The Department of Energy has prepared an Environmental Assessment (EA) (DOE/EA–0336) for a proposed new Agreement for Cooperation with Japan Concerning the Peaceful Uses of Nuclear Energy Pursuant to section 123 of the Atomic Energy Act, as amended (AEA), and an associated "Subsequent Arrangement" pursuant to section 131 of the AEA. Together these actions will provide the framework for the return from EURATOM to Japan of plutonium recovered from spent fuel reprocessing for Japan in France or the United Kingdom. This Agreement has been negotiated in accordance with the mandate of section 404(a) of the Nuclear Non-Proliferation Act of 1978 (NNPA).

The proposed "Subsequent Arrangement" within the meaning of section 131 of the AEA, would be concluded under an existing agreement for peaceful nuclear cooperation with the European Atomic Energy Community (EURATOM) and will implement a provision of the proposed agreement in Japan in which the U.S undertook to give its approval, subject to specified conditions to the transfer of separated plutonium from EURATOM to Japan. One of the conditions for approval is that the recovered plutonium must be shipped by air pursuant to various measures designed to assure its security and safety. This would include shipments of plutonium via a "polar route or other routes selected to avoid areas of natural disaster or civil disorder."

This Environmental Assessment has been prepared to assess the potential environmental impacts of air shipments of plutonium over U.S. territory under the proposed new Agreement with Japan and associated subsequent arrangement with EURATOM. Where applicable it also considers the likely environmental effects of such shipments on the global commons.

This Assessment includes a discussion of the quantities of plutonium that could be shipped, the likely number of shipments that would be involved in a given period, the nature of the conditions that will have to be met before any such air shipments will be approved by the United States and the alternatives to authorizing air shipments of the subject plutonium from EURATOM back to Japan including their environmental implications.

The Alternatives to the proposed action considered include:

Taking no action on the proposed Agreement for Cooperation and associated "Subsequent Arrangement" with EURATOM;

Concluding an Agreement for Cooperation not involving advance long-term U.S. consent to the return of U.S. origin plutonium from Europe to Japan (such shipments would continue to be approved case-by-case);

The use of transportation modes or transportation criteria other than those contemplated in the new Agreement and the associated "Subsequent Arrangement";

The environmental consequences of the alternatives were analyzed and found to be similar to those for the proposed action.

The environmental consequences of the proposed action are limited to those associated with air transport of plutonium oxide from Europe to Japan. The environmental impacts are predicted to be minor. The only radiological does under normal conditions will be to the transport crew, including the air crew, any escort force on board, and those on the ground during refueling operations. The annual radiation does is estimated to range between 0.73 to 2.19 person-rem, dependent on the number of shipments (the lower value corresponds to 12 shipments per year and the upper value corresponds to a maximum of 36 shipments per year). This value is a small fraction of that associated with air transport of all radioactive materials in the United States.

The radiological risk from a major transport accident involving a crash of the plane followed by a fire is also very small. The annual radiological risk (expressed as the product of the probability of the accident occurring and the consequences of the accident expressed as the 50-year committed effective dose equivalent to 10 individuals located 500 m downwind from the crash site) is estimated to range from 1.1×10^{-6} person-rem (for 12 shipments per year), to 3.2×10^{-6} person-rem (for a maximum of 36 shipments per year). The estimated number of adverse health effects from inhalation of plutonium as a result of such an accident ranges from 2×10^{-10} per year, to 6×10^{-10}, an extremely small value compared to the normal incidence of cancer in the general population or the hazard from accidental death due to transportation.

With respect to the consequences of an accident on the global commons, these are expected to be the same or similar to those described for a flight transiting or landing in the U.S.

The non-radiological impacts of the proposed action (e.g., degradation of air quality due to the use of aviation fuel, increased noise levels, etc.) will also be negligible given the low number of air shipments per year required to implement the proposed action and the temporal nature of these impacts.

Determination

Based on the findings of this EA, the Department of Energy (DOE) has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. Therefore, an environmental impact statement is not required.

Issued in Washington, DC, September 11, 1987.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87–25459 Filed 11–2–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–36–NG]

Texarkoma Transportation Co.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Order Granting Blanket Authorization to Import Natural Gas From Canada

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an Order granting Texarkoma Transportation Company (Texarkoma) blanket authorization to import natural gas from Canada. The order issued in ERA Docket No. 87–36–NG authorizes Texarkoma to import up to 29.2 Bcf over a two-year period for sale in the domestic spot market beginning on the date of first delivery.

A copy of this order is available for inspection and copying at 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, October 27, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-25460 Filed 11-2-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

CWC Fisheries, Inc.; Existing Licensee's Intent To File an Application for New License

October 28, 1987.

Take notice that on October 8, 1987, CWC Fisheries, Inc., licensee for the Dry Spruce Bay Project No. 1432 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Dry Spruce Bay Project No. 1432 will expire on October 26, 1988. The project is located on an unnamed creek which is a tributary to Dry Spruce Bay in the Kodiak Recording District, Kodiak Island, Alaska, and has a total capacity of 75 kW.

The principal project works currently licensed for Project No. 1432 are: (1) Two diversion ditches; (2) two ponds; (3) two earthfill dams; (4) a 12-inch, 6,722-foot-long pipeline; (5) a powerhouse containing one generating unit; and (6) appurtenant facilities.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE, Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25431 Filed 11-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 8998-001]

Donald K. Lee; Surrender of Exemption

October 28, 1987.

Take notice that Donald K. Lee, exemptee for the proposed Bluff Springs Hydroelectric Project No. 8998 has requested that his exemption be terminated. The exemption was issued on September 17, 1985. The project would have been located at Bluff Springs, in Tehama County, California. No construction has commenced at this project.

The exemptee filed the request on August 31, 1987, and the exemption for Project No. 8998 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25433 Filed 11-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 4490-005]

Richvale Irrigation District, et al.; Surrender of Small Conduit Exemption

October 28, 1987.

Take notice that Richvale Irrigation District, Sutter Extension Water District, Butte Water District and Biggs-West Gridley Water District, exemptees for the proposed Sutter-Butte Power Project No. 4490, have requested that their exemption be terminated. The exemption was issued on July 6, 1984. The project would have been located on the Sutter-Butte Canal in Butte County, California. No construction has commenced at this project.

The exemptees filed the request on September 28, 1987, and the exemption for Project No. 4490 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the exemption shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25434 Filed 11-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI86-371-002 and CI86-392-002]

Producer-Suppliers of Southern Natural Gas Co.; Petition to Further Amend Order Permitting and Approving Limited-Term Blanket Abandonment and Issuing Limited-Term Blanket Certificate With Pre-Granted Abandonment

October 28, 1987.

Take notice that no October 1, 1987, Southern Natural Gas Company ("Southern"), P.O. Box 2563, Birmingham, Alabama 35202, filed in this proceeding a Petition pursuant to Rule 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure (18 CFR 385.207), requesting the Commission to further modify its Order Permitting and Approving Limited-Term Blanket Abandonment and Issuing Limited-Term Blanket Certificate With Pre-Granted Abandonment (Order), which the Commission issued in this proceeding on September 29, 1986, and amended by Order dated March 31, 1987. In its Petition, Southern requested that the Commission authorize a three-year extension of the limited-term abandonment and sales authorization ("LTA") granted to Southern's producer-suppliers, which is currently due to expire on December 31, 1987.

The Order authorized Southern's limited-term abandonment program (LTA program), which granted to producer-suppliers making sales to Southern for resale in interstate commerce pursuant to certificates of public convenience and necessity issued pursuant to section 7(c) of the Natural Gas Act (NGA Producer-Suppliers), *inter alia:* (i) authorization pursuant to section 7(b) of the NGA to abandon sales to Southern for a term extending up to December 31, 1987; (ii) blanket certificates of public convenience and necessity pursuant to section 7(c) of the NGA authorizing the sale for resale in interstate commerce of the natural gas authorized to be abandoned; and (iii) pre-granted abandonment under section 7(b) of the NGA of any sales for resale made under the requested blanket certificate. The forgoing authorizations applied to gas having a maximum lawful price or a weighted average cost to Southern equal to or greater than the maximum lawful price under section 109 of the Natural Gas Policy Act (NGPA) that Southern and its NGA Producer-Suppliers mutually agree to release from the applicable gas purchase contract.

By Order Approving, Amending, and Extending Limited-Term Abandonment and Blanket Sales Certificates with Pre-Granted Abandonment issued March 31, 1987, in Docket Nos. CI86-371-001 and CI86-392-001, the Commission amended the Order to eliminate the requirement that the gas to which the blanket abandonment and certificate authorizations apply must have a maximum lawful price or a weighted average cost to Southern equal to or greater than the maximum lawful price under Section 109 of the NGPA, and thereby expand Southern's LTA program to include all NGPA categories of gas that Southern and its NGA Producer-Suppliers mutually agree to release.

Southern states in its Petition that its reasons for requesting the Commission's grant to LTA authority in its original application in this proceeding—*i.e.*, substantially reduced takes from the NGA Producer-Suppliers due to sharply reduced pipeline sales, resulting in shut-in gas, severe supply-demand imbalances, and mounting take-or-pay exposure—have not changed. Indeed, the imbalance between the supply and demand for Southern's system gas supplies has continued to worsen as a result of expanded gas-to-gas competition in Southern's market area. Southern states that it anticipates a continuation of reduced sales levels during the next few years which, absent release of Southern's gas supplies subject to the jurisdiction of the Commission under the NGA, could render Southern unable to take the minimum volumes from its producer-suppliers necessary to protect against drainage and potential well or reservoir damage, and to take casinghead gas produced in association with oil. Utilizing the LTA program, however, Southern states that its producers have been able to find alternate markets for their gas, with Southern providing transportation service and receiving take-or-pay credits or being relieved of take-or-pay obligations.

Southern submits that the extension of term requested in its Petition is required by the public convenience and necessity for the reasons stated in its Petition and is consistent with the Commission's recent orders in *ANR Pipeline Co.*, 38 FERC Par. 61,046 (1987), wherein the Commission granted LTA authority for varying terms up to three years as requested by each pipeline.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 12, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-25432 Filed 11-2-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of September 11 Through September 18, 1987

During the Week of September 11 through September 18, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

October 27, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of September 11 through September 18, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Sep. 11, 1987	Amoco II/Montana, Helena, MT	RM251-82	Request for Modification/Rescission in the Amoco II Second Stage Refund Proceeding. If granted: The August 13, 1987 Decision and Order issued to the State of Montana (Case No. RQ251-82) would re-scinded, and the State's plan for use of its share of the Amoco II second stage refund monies would be approved.
Sep. 14, 1987	Merit Petroleum, Inc. et al., Washington, DC.	KRD-0530, KRH-0530	Motion for Discovery and Request for Evidentiary Hearing. If granted: Discovery would be granted and an Evidentiary Hearing would be convened in connection with the Statement of Objections submitted in response to the Proposed Remedial Order (Case No. KRO-0530) issued to Merit Petroleum, Thomas H. Battle and Anton E. Meduna.
Sep. 15, 1987	Charter/OKC Corp./Louisiana, Baton Rouge, LA.	RM23-83, RM13-84	Request for Modification/Rescission in the Second Stage Refund Proceeding. If granted: The June 25, 1987 Decision and Order issued to the State of Louisiana (Case Nos. RQ23-359 and RQ13-375) would be modified, and the State's plan for use of its share of the Charter and OKC Corp. Second stage refund monies would be approved.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of September 11 through September 18, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Sep. 16, 1987	J.D. Streett & Co., Inc., Washington, DC	KRZ-0067	Interlocutory. If granted: The Office of Hearings and Appeals would certify the August 14, 1987 Decision and Order (Case No. KRX-0040) issued to J.D. Streett & Co. as an administrative order appealable to the Federal Energy Regulatory Commission.
Sep. 16, 1987	Petrolane/Lomita/International Drilling & Energy Corporation, Midland, TX.	RR208-1	Request for Modification/Rescission of a Refund Proceeding. If granted: The August 19, 1987 Decision and Order issued to International Drilling & Energy Corporation (Case No. RF208-22) would be modified regarding the firm's Application for Refund in the Petrolane Lomita refund proceeding.
Sep. 16, 1987	Southern Pacific Transportation, Washington, DC.	RR271-5	Request for Modification/Rescission in the Rail & Water Transporters. If granted: The September 3, 1987 determination (Case No. RF271-57) would be modified regarding the firm's Application for Refund submitted in the Rail & Water Transporters refund proceeding.
Sep. 17, 1987	Kasiglyk, Inc., Kasiglyk, AK	KEE-0153	Exception to the Reporting Requirements. If ganted: Kasiglyk, Inc. would no longer be required to file certain EIA reporting forms.

REFUND APPLICATIONS RECEIVED

[Week of September 11 to September 18, 1987]

Date received	Name of refund proceeding/Name of refund application	Case No.
9/11/87 thru 9/18/87	Crude Oil Refund Applications Received	RF272-5998 thru RF272-6470
9/11/87 thru 9/18/87	Gulf Oil II Refund Applications Received	RF300-1 thru RF300-252
9/16/87	W.S. Carpenter & Sons, Inc	RF299-1
9/15/87	Rising Sun Truck Stop	RF250-2734
9/16/87	Friendly Service Oil Company	RF225-10907
9/16/87	Friendly Service Oil Company	RF225-10908
9/08/87	Don & Cal's Service Station, Inc	RF225-10909
9/18/87	Felicia Oil Co, Inc	RF225-10910
9/17/87	James W. Kelley	RF250-2735
9/17/87	Banich Marathon	RF250-2736
9/18/87	Cyril Johnson Mills	RF299-2
9/17/87	Sunshine Biscuits, Inc	RF299-3
9/15/87	The Converse Company, Inc	RF299-4
9/16/87	Perry's Oil Service, Inc	RF299-5
9/22/87	Atlantic Wire Company	RF299-6
9/21/87	E.G. Bradford & Sons, Inc	RF299-7
9/21/87	Hope Valley Dyeing Corporation	RF299-8
9/21/87	Fuller Company	RF299-9
9/18/87	Mercury Aircraft, Inc	RF299-10
9/23/87	Hardy Gas Co., Inc	RF299-11
9/23/87	Cimarron Valley, Inc	RF253-29
9/23/87	Honeggers & Co., Inc	RF270-2487
9/28/87	Motzner Oil Company	RF265-2555

[FR Doc. 87-25455 Filed 11-2-87; 8:45 am]

BILLING CODE 6450-01-M

Cases Filed During the Week of September 18 Through September 25, 1987

During the Week of September 18 through September 25, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 27, 1987.

List of Cases Received by the Office of Hearings and Appeals

[Week of September 18 through September 25, 1987]

Date	Name and locaton of applicant	Case No.	Type of submission
May 11, 1987	T.E. Reserve Corporation, Houston, TX	KRD-0400	Motion for Discovery. If granted: T.E. Reserve Corporation would be permitted to obtain discovery in connection with the February 28, 1986 Proposed Remedial Order (Case No. KRO-0400) issued to T.E. Reserve Corporation and James G. Allision, Jr.
Sep. 18, 1987	Economic Regulatory Administration, Washington, DC.	KRD-0029	Motion for Discovery. If granted: The Economic Regulatory Administration would be permitted to obtain discovery in connection with the Proposed Remedial Order (Case No. HRO-0285) issued to Cities Service Oil & Gas Corporation.
Sep. 18, 1987	Kaibab Industries, Phoenix, AZ	RR270-18	Request for Modification/Rescission in the Stripper Well Litigation Proceeding. If granted: The August 25, 1987 Decision and Order issued to Kaibab Industries (Case No. RF270-18) would be modified regarding the firm's application as a surface transporter is the stripper well litigation proceeding.
Sep. 21, 1987	Government Accountability Project, Appleton, WI.	KFA-0123	Appeal of an Information Request Denial. If granted: The August 5, 1987 Freedom of Information Request Denial issued by the Office of Nuclear Energy would be rescinded and the Government Accountability Project would receive access to documents requested.
Sep. 22, 1987	Economic Regulatory Administration, Washington, DC.	KRD-0461	Motion for Discovery. If granted: The Economic Regulatory Administration would be permitted to obtain discovery in connection with the Proposed Remedial Order (Case No. KRO-0460) issued to Murphy Oil Corp.
Sep. 24, 1987	Amoco/Idaho, Boise, ID	RM21-85	Request for Modification/Rescission in the Amoco Second Stage Refund Proceeding. If granted: The June 19, 1987 Decision and Order issued to the State of Idaho (Case No. RQ21-370) would be modified, and the state's plan for use of its share of the Amoco second stage refund monies would be approved.
Sep. 25, 1987	Glen Milner, Seattle, WA	KFA-0124	Appeal of an Information Request Denial. If granted: The September 4, 1987 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Glen Milner would receive access to records on organizations and individuals opposing the Trident system.
Sep. 25, 1987	Harvin Petroleum Company, Sumter, SC	KEE-0154	Exception to the Reporting Requirements. If granted: Harvin Petroleum Company would no longer be required to file form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report".

Refund Applications Received

[Week of September 18 to September 25, 1987]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
9/18/87 thru 9/25/87	Curde Oil Refund Applications Received	RF272-6471 thru RF272-6925
9/18/87 thru 9/25/87	Gulf Oil II Refund Applications Received	RF300-253 thru RF300-625
9/24/87	Hy-Grade Oil Company	RF299-12
9/25/87	Pelliccia Bottle Gas	RF299-13
9/25/87	Beacon Manufacturing Co.	RF299-14
9/25/87	Jackson County Ready Mix	RF299-15
9/25/87	Harrell Petroleum Company	RF225-10912
9/25/87	Harrell Petroleum Company	RF225-10911
9/17/87	Johnson Oil Company	RF265-2556
9/28/87	Brandt Transportation	RF270-2488
9/28/87	Greyhound Lines, Inc.	RF270-2489
9/21/87	Bars Mills Market	RF300-253
9/21/87	Blue Ridge Trucking Company	RF300-254
9/21/87	Beals Variety Store	RF300-255
9/21/87	Cleveland County	RF300-256
9/21/87	T.J. Barlett Company	RF300-257
9/29/87	Jack Davidson	RF250-2737
9/29/87	E-Z Mart Stores, Inc.	RF263-36
9/29/87	Robert L. Tigrett	RF253-30
9/29/87	E-Z Mart Stores, Inc.	RF253-31
9/29/87	Howmet Aluminim Corporation	RF299-16

REFUND APPLICATIONS RECEIVED—Continued

[Week of September 18 to September 25, 1987]

Date received	Name of refund proceeding/Name of refund applicant	Case No.
5/7/87	Edward W. Bryan	RF265-2557
9/29/87	Jack's Auto Parts	RF301-1
9/30/87	Keysone Fuel Oil, Atemos	RF255-10913

[FR Doc. 87-25456 Filed 11-2 87; 8:45 am]

BILLING CODE 6540-01-M

Issuance of Proposed Decision and Order During the Period of September 28 Through October 9, 1987

During the period of September 28 through October 9, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 27, 1987.

Wholesale Petroleum Agency, Owensboro, Kentucky, KEE-0150, Reporting Reqm'ts.

Wholesale Petroleum filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In its Application the firm argued that exception relief was warranted on the grounds that it is in the process of installing a new computer system and, until the system is functioning, the Form would require an excessive amount of time to fill out. In addition, the firm stated that it has only seven employees and that they are overburdened with a double workload since Wholesale Petroleum recently expanded its sales operations. In considering the request, the DOE found that the firm would not suffer an inordinate burden by fulfilling its reporting obligation. On October 9, 1987, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

[FR Doc. 87-25453 Filed 11-2-87; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders During the Week of September 21 Through September 25, 1987

During the week of September 21 through September 25, 1987, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 27, 1987.

Deaton Oil Company, Murfreesboro, Arkansas, KEE-0152, Crude Oil.

Deaton Oil Company filed an Application for Exception from the provisions of EIA Form 782B. The exception request, if granted, would permit Deaton Oil Company to be excused from filing EIA Form 782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report". On September 22, 1987, the Department of Energy issued a Proposed Decision and Order which determined that exception request be granted.

[FR Doc. 87-25458 Filed 11-2-87; 8:45 am]

BILLING CODE 6450-01-M

Objection To Proposed Remedial Order Field During the Period of July 20, Through October 2, 1987

During the period of July 20 through October 2, 1987, the notice of objecton to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

October 27, 1987.

Texaco Inc., White Plains, New York, KRO–0550, Crude Oil.

On October 2, 1987, Texaco Inc., 200 Westchester Avenue, White Plains, New York 10650, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration issued to the firm on September 9, 1987. In the PRO, the ERA found that during the period September 1973 through December 1976, Texaco overstated its increased shrinkage cost due to the incorrect use of incremental pricing, the improper inclusion of cycling plants in the shrinkage calculation, and shrinkage cost overreporting, in violation of pricing provisions set forth in 10 CFR Part 212, Subparts E and K. The PRO requires that Texaco peform price recalculations and refund any overcharges found to exist.

[FR Doc. 87–25457 Filed 11–2–87; 8:45 am]

BILLING CODE 6450–01–M

Objection To Proposed Remedial Order Filed During the Week of October 5 Through October 9, 1987

During the week of October 5 through October 9, 1987, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial order described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

October 27, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

Texaco Inc., White Plains, New York, KRO–0560, Crude Oil.

On October 2, 1987, Texaco Inc., (Texaco) 2000 Westchester Avenue, White Plains, New York 10650, filed a Notice of Objection to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on May 12, 1987. In the PRO, the ERA found that during the period June 1980 to January 1981, Texaco violated 10 CFR 212.183(b), 210.62(c) and 205.202 by receiving consideration, in the form of discounts on its purchase of entitlements-exempt crude oil, in excess of its maximum lawful selling price. According to the PRO the violation resulted in $32,452,636.27 of overcharges, plus interest accrued through March 31, 1987 of $40,517,776.000

[FR Doc. 87–25461 Filed 11–2–87; 8:45 am]

BILLING CODE 6450–01–M

Western Area Power Administration

Record of Decision to Construct the Conrad-Shelby 230-KV Transmission Line Project, Montana

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of decision to construct the Conrad-Shelby 230-kV Transmission Line Project, Montana.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), has made the decision to construct the Conrad-Shelby 230-kilovolt (kV) Transmission Line within the environmentally preferred alternative corridor identified in the draft and final environmental impact statement (EIS). The transmission line will be constructed with single-pole structures made of concrete, steel, or a combination of these materials. One new substation will be constructed as part of the project. Western will proceed with land acquisition, construction, and subsequent operation and maintenance of the proposed facilities. The availability of the draft and final EIS for the project was announced in the **Federal Register** by the Environmental Protection Agency on November 14, 1986, and July 17, 1987, respectively.

Western has adopted the mitigation measures listed in the EIS. In addition, any site-specific mitigation requirements identified during construction will be addressed by Western and coordinated with appropriate, Federal, State, and local agencies.

FOR FURTHER INFORMATION CONTACT: Mr. James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box EGY, Billings, MT 59101, (406) 657–6532.

SUPPLEMENTARY INFORMATION: The electrical needs of the Cut Bank-Shelby area in north central Montana are presently served by a high-voltage transmission loop beginning at the Rainbow Substation near Great Falls and running northwest to Conrad and Cut Bank, east to Havre, and back to Rainbow. The loop consists of 115-kV and 161-kV transmission lines. A portion of the loop receives support from a 230-kV transmission line between Great Falls and Conrad, Montana. Subtransmission services in the Cut Bank-Shelby area is supported by a 69-kV system. Power simulation studies and operational experience have both demonstrated an urgent need for improvements to the transmission system due to low voltages, overloaded facilities, and loss of load conditions which presently occur with an outage of the Conrad-Cut Bank (Valier) 115-kV Transmission Line, Havre-Rudyard 115-kV Transmission Line, or Havre 161/115-kV transformer.

The proposed action would: (1) Provide improved service to area loads; (2) improve system reliability; (3) contribute to energy conservation; and (4) provide flexibility for future system expansion.

Planning for the proposed project began in the summer of 1985. In September 1985, Western conducted scoping meetings with Federal, State, and county agencies, and the general public. The public scoping meetings

were held in Shelby and Conrad, Montana. The Primary concerns identified were: (1) The need for the project; (2) impacts to agricultural land use and how they would be mitigated; (3) right-of-way (ROW) acquisition procedures and the extent to which individual landowners would be informed and involved in decision making; (4) design, construction and routing alternatives, including underground construction, double-circuiting, paralleling existing transmission lines or other linear developments, and construction of a line of sufficient capacity to preclude additional transmission line construction in the near future; (5) cultural resources; (6) threatened and endangered species; and (7) the environmental studies which would be conducted and the methodology for selecting a preferred corridor.

Following the scoping meetings, Western evaluatd the resources within the study area. The factors considered in this phase of the siting study included: (1) Land use patterns, especially agricultural and residential; (2) vegetation and habitat; (3) wildlife and fisheries resources; (4) floodplains/wetlands; (5) visual resources; (6) geology and soils; (7) hydrology; (8) socioeconomics; (9) archeological and historical sites; (10) areas of religious significance to Native Americans; and (11) paleontological resources. Areas of opportunity for locating a transmission line and those of avoidance or exclusion were identified resulting in the development of several alternative routing corridors. Western then conducted a series of planning workshops to present the alternative corridors and solicit input from landowners and other interested groups and individuals. The planning workshops were held in Shelby and Conrad in December 1985. The alternative corridors were further refined in response to public comments. An environmentally preferred corridor was then identified through an impact assessment process.

Western presented the environmentally preferred corridor during a second series of public planning workshops in April 1986.

The draft EIS was issued in November 1986. Public hearings on the draft EIS were conducted in Shelby and Conrad in December 1986. One oral comment and 14 written comments were received during the 45-day draft EIS public review period. The final EIS was issued in July 1987.

Description of Alternatives and Basis of Decision

1. No Action—Western would construct no transmission facilities between Conrad and Shelby. The no-action alternative would result in low voltage, overload, and loss of load on the Great Falls-Cut Bank-Havre 115–kv transmission loop, increasingly frequent and severe service interruptions and overloaded lines and poor voltage regulation on the area 69–kV subtransmission system. It was considered an unacceptable alternative.

2. Energy Conservation—Western continually encourages its customers to exercise energy conservation through its power marketing contracts. Energy conservation measures could not be implemented which would sufficiently reduce existing area loads to a point where the problem would become and remain nonexistent.

3. Alternative Generation Sources—Two large generating facilities are being considered for construction by a local utility in the post-2000 timeframe and several low-head hydroelectric sites have been identified at existing diversion dams on the Sun River. Development of these generating sources would supply more power to satisfy future load growth in the area. However, additional generation is not the solution to the problem of a deficient transmission system.

4. Alternative Transmission Systems and Technologies—Western evaluated the possibility of fulfilling the needs discussed earlier by means of other existing or planned transmission/distribution systems, or by means of alternative technologies, such as direct current (DC) versus alternating current (AC) and overhead versus underground construction.

There are no existing transmission facilities in the area which could be used to alleviate the problem. Other area utilities have indicated they have no future plans to construct new transmission facilities since their existing facilities are adequate to meet their own load/resource obligations.

In comparison to an AC transmission system, a DC system is not economical except for transferring large blocks of power over long distances (i.e., 300 or more miles). In addition, the environmental consequences of a DC transmission line would be similar to those of an AC line.

Construction of an underground 230-kV transmission line between Shelby and Conrad would be technically possible; however, costs would be about 8 to 10 times greater than overhead construction. The environmental impacts and maintenance problems associated with an underground system would likely be greater than an overhead line.

5. Design Alternatives—Western considered various voltage levels, structure types, and conductors.

a. Voltage Level—Two voltage levels were studied: 115- and 230-kV. Both of these voltage levels presently exist in the transmission system in the project area. Based upon an analysis of system performance which compared voltage regulation, outage performance, and loss efficiency, the 230-kV alternative was superior under both system intact and outage conditions. The 230-kV alternative would result in about one-half of the system losses of the 115-kV alternative and also provide four times more transfer capacity to serve the area's electrical loads in the future.

b. Structure Types—Single-pole construction using either concrete, steel, or a combination of those materials, steel lattice, and wood pole H-frame structures were the alternatives considered by Western. Western selected the single-pole structure type because agriculture conflicts would be less than for steel lattice structures or wood pole H-frame structures.

c. Conductors—Three conductor sizes were considered for the project: 795 kcmil, 954 kcmil, and 1272 kcmil ACSR. Also, specular (normal) and nonspecular (dulled finish) conductors were evaluated. Economics and performance in terms of line losses and electromagnetic interference resulted in the selection of 954 kcmil conductor. In order to lessen the visual impacts of the line, Western will use nonspecular conductors.

6. Routing Alternatives—Six alternative routing corridors for the 230-kV line and two short interconnecting 115-kV lines were evaluated. These ranged from 32.1 miles to 39.8 miles in length and were composed of a total of 35 corridor links, each 2,000 and 6,000 feet wide. The corridors were compared and ranked by an interdisciplinary environmental study team resulting in the identification of the environmentally preferred alternative corridor. The environmentally preferred corridor was identified as Western's preference in the draft and final EIS.

Mitigation

All practicable means to avoid or minimize environmental harm from Western's preferred alternative were identified in the draft and final EIS. Western will incorporate these measures in the proposed project. Special environmental requirements for

sensitive or fragile areas will be included in the project construction specifications including requirements for ROW clearing and site preparation, location and erection of structures relative to sensitive areas, conductor stringing, timing of construction, and the protection of archeological and historical resources. Western will consider any additional reasonable site-specific mitigation measures identified during consultation with other Federal and State agencies.

Western project inspectors will be fully familiarized with the project mitigation measures and ensure their implementation during construction. When crossings of Federal and State lands are involved, Western will ensure that agency representatives are notified to perform any necessary monitoring functions. The mitigating measures which have been adopted are generally self-executing through Western's standard construction specifications and procedures.

Integration With Other Requirements

Intergovernmental Cooperation—Under requirements of the Intergovernmental Coordination Act, Western notified the Montana State Clearinghouse of the proposed project by sending it copies of the draft and final EIS. Western coordinated project planning with other Federal and State agencies. The Montana Department of Natural Resources and Conservation (DNRC) was closely involved in the project in an advisory and review capacity. Representatives from DNRC attended project EIS scoping meetings, planning workshops, and public hearings; reviewed the draft and final EIS; and provided coordination with other State agencies. In addition, DNRC conducted an independent evaluation of the potential impacts of the proposed transmission line and substation facilities and prepared a report for the Montana Board of Natural Resources and Conservation (Board). The Board adopted Western's draft and final EIS as that of the State's.

Western coordinated with the Senate Historic Preservation Officer, Montana Department of Fish Wildlife and Parks, U.S. Fish and Wildlife Service (FWS), and local planning boards and commissions. It also incorporated any reasonable suggestions and concerns of affected landowners into project planning wherever feasible. Endangered Species—The FWS recommended that Western use aviation ball markers or some other effective means to increase the visibility of the overhead ground wires to reduce impacts to bald eagles and peregrine falcons where the transmission line crosses the Marias River. Western has agreed to install aviation ball markers on this crossing. The FWS has determined that the project would not threaten the further existence of any listed threatened or endangered species.

Floodplains/Wetlands—In response to Executive Order 11988, Floodplain Management (May 24, 1977), DOE's *Compliance with Floodplain/Wetlands Environmental Review Requirements* (10 CFR Part 1022), Western evaluated the potential effects of the project on floodplain/wetlands. Western located the preferred route to avoid floodplains and wetlands wherever possible. All wetlands can be avoided; however, the 100-year floodplains of the Marias and Dry Fork of the Marias River could not be avoided by the preferred route or the alternatives. To the extent possible, Western will avoid locating transmission structures, access roads, and other facilities in floodplains. Western will design structures and access roads according to State and local floodplain protection standards and implement erosion control measures including reseeding and the use of selective biodegradable soil-Stabilizing agents to minimize erosion impacts.

Copies of this record of decision will be sent to the Montana State Clearinghouse, appropriate Federal and State agencies, and to other agencies, organizations, and individuals commenting on the draft or final EIS.

Issued at Golden, Colorado, September 18, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87-25454 Filed 11-2-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3285-7]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICRs are available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Solid Waste and Emergency Response

Title: Hazardous Waste Industry Studies (EPA ICR No. 0818).

Abstract: For more effective regulation of hazardous wastes under RCRA, EPA proposes to collect information on industrial process residuals, their quantities, characteristics, and management. Data will be gathered primarily through industry questionnaires and supplemented with a selected number of site visits.

Respondents: Owners and Operators of Hazardous Waste Generating Industries.

Estimated Annual Burden: 36,280.

Frequency of Collection: On Occasion.

Title: Spill Prevention Control and Countermeasure Plan and Review. (EPA ICR No. 0328).

Abstract: Statute and regulation requires and/or operators of establishments storing oil in excess of certain quantities to prepare and implement plans to prevent oil spills and, in case of a spill, to mitigate damage, and to submit plan to EPA after a spill event.

Respondents: Owners and Operators of Establishments Storing Oil.

Estimated Annual Burden: 560,000.

Frequency of Collection: Recordkeeping—After respondent has oil spill.

Comments on the abstract on this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory Systems Division, 401 M Street, SW, Washington, DC 20460

and

Marcus Peacock, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW, Washington, DC 20503.

Date: October 27, 1987.

Daniel J. Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 87-25387 Filed 11-2-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-32864]

Sale and Use of Aftermarket Catalytic Converters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revision of interim enforcement policy.

SUMMARY: This Notice announces a revision of EPA's interim enforcement policy guidelines for the sale and use of replacement catalytic converters ("converters") for motor vehicles. After December 31, 1987, EPA will no longer exercise its discretion not to prosecute automotive service and repair facilities and fleet operators and other parties named in section 203(a)(3) of the Clean Air Act who install or otherwise sell any aftermarket catalytic converter which is not as effective as the new original equipment manufacturer (OEM) converter originally on the vehicle or which has not met the criteria of the interim aftermarket converter policy (and is properly so labeled). The installation of a non-complying catalytic converter by a named party will be considered a violation of the Clean Air Act, 203(a)(3), and the violator may be prosecuted accordingly. Any person who causes such violations will also be considered liable under the Clean Air Act.

FOR FURTHER INFORMATION CONTACT: Nancy Pirt or Steve Albrink (202) 382–2640, Field Operations and Support Division (EN–397F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. 20460.

SUPPLEMENTARY INFORMATION: On August 5, 1986, the U.S. Environmental Protection Agency (EPA) published an interim enforcement policy entitled "Sale and Use of Aftermarket Catalytic Converters." This interim policy set out specific requirements, criteria, and test procedures for the manufacture and sale of new and used aftermarket catalytic converters and specified installation requirements for fleet operators, dealers and automotive service and repair facilities. This interim policy was based on a detailed, proposed enforcement policy, also published on August 5, 1986. (EPA has not yet decided whether to make that policy final and permanent. Thus, it should be remembered that this interim policy is temporary and potentially subject to change in the future.) Under the interim policy, any manufacturer or installer of an aftermarket converter who voluntarily complied with the conditions of the proposed policy would not be prosecuted for violating section 203(a) of the Act.

In letters dated October 28, 1986—which were widely distributed in the aftermarket industry—EPA stated that it would exercise its enforcement discretion by not prosecuting persons who manufactured, bought or installed aftermarket converters that were neither as effective as OEM converters nor met the conditions of the interm policy, as long as the converters were manufactured prior to December 18, 1986 and designed to perform the same function with respect to emission control as the OEM converters.

The purpose of allowing manufacturers or remanufacturers until December 18, 1986 to bring their converters into compliance was to provide for the orderly cessation of the manufacture, distribution and sale of the converters which did not conform to the interim guidelines. In addition to using up existing inventories of materials and other supplies, it assured there would not be a shortage of aftermarket converters during the transition period. It also gave companies time to develop, test, and begin gearing up to produce converters which met EPA's interim policy requirements.

Even though the Agency effectively allowed converter manufacturers until December 18, 1986 to start producing converters which met the August 1986 policy requirements, there is some uncertainty among installers, manufacturers and remanufacturers as to how long the installation of noncomplying (i.e., pre-December 1986) converters would be allowed under EPA's interim policy. Because of this uncertainty and the difficulties of enforcing a "stop-manufacture" date, a "stop-installation" date for the installation of noncomplying converters has become necessary to the success of this program. A number of manufacturers have indicated that they are marketing converters which meet EPA's interim policy's criteria and that there are plenty of these converters available to satisfy the demand. The EPA is therefore satisfied that a stop-installation date is appropriate at this time. The effort to enhance air quality will benefit while installers will be more certain of their potential liability and consumers are protected from being misled. Establishing a stop-installation date at this time will provide the enforcement mechanisn necessary to make this an effective and fair program.

Establishing a stop-installation date for noncomplying converters would also be consistent with that many State governments either have done or are considering. Establishing national requirements would keep all the less-effective, noncomplying converters in inventory from being redistributed to areas which do not have such requirements.

Finally, most manufacturers and remanufacturers who seem to be making an effort to comply with the interim policy have informed the Agency that either they have long ago exhausted their inventory of old-type converters or that they soon will have exhausted it, so a stop-installation date will have little impact on their businesses. In fact, many have requested that EPA establish such a date, as has the Exhaust System Professional Association, which represents a large number of exhaust repair shops throughout the country. The EPA is therefore satisfied that a stop-installation date is appropriate at this time.

Therefore, EPA is hereby announcing an addition to the interim aftermarket converter enforcement policy which will apply to installers of aftermarket catalytic converters.

After December 31, 1987, EPA will no longer exercise its discretion not to prosecute automotive service and repair facilities and fleet operators and other parties named in section 203(a)(3) of the Clean Air Act who install or otherwise sell any aftermarket catalytic converter which is not as effective as the new OEM converter originally on the vehicle or which has not met the criteria of the interim aftermarket converter policy (and is properly so labeled). The installation of a noncomplying catalytic converter by a named party will be considered a violation of the Clean Air Act, 203(a)(3), and the violator may be prosecuted accordingly. Any person who causes such violations will also be considered liable under the Clean Air Act.

Dated: October 28, 1987.

Don R. Clay,

Acting Assistant Administrator.

[FR Doc. 87–25388 Filed 11–2–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3286–2]

Science Advisory Board Research Strategies Subcommittee Risk Reduction Group; Open Meeting

Under Pub. L. 92–463, notice is hereby given that a meeting of the risk Reduction Group of the Science Advisory Board's Research Strategies Subcommittee will meet Tuesday, November 24, 1987 from 9:00 a.m. to 5:00 p.m. in South Conference Center, Room #6, Ground Floor, near the Washington Information Center, Waterside Mall, U.S. Environmental Protection Agency's

headquarters building at 401 M Street SW., Washington, DC.

The purpose of the meeting is to review the first draft of the Risk Reduction Group's strategy on environmental risk reduction.

The meeting is open to the public. Any member of the public wishing to attend, make brief oral comments, or submit written comments to the Group should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Science Advisory Board, by the close of business on Friday, November 20, 1987. The telephone number is (202) 382–2552

Terry F. Yosie,

Director, Science Advisory Board.

Date: October 28, 1987.

[FR Doc. 87–25389 Filed 11–2–87; 8:45 am]

BILLING CODE 6560–50–M

[FPL–3286–1]

Science Advisory Board Research Strategy Subcommittee Sources, Transport and Fate Group; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Sources, Transport and Fate Subgroup of the Science Advisory Board's Research Strategies Subcommittee will meet from 9:00 a.m. to 4:00 p.m. on December 8th at the Hyatt Regency Hotel, International Parkway (inside the Dallas Fort Worth Airport), in the Conference Room. The purpose of the Research Strategies Subcommittee is to advise the Administrator of the Environmental Protection Agency on the development of research strategies needed to enhance the Agency's ability to acquire scientific and technical information to support regulatory decision making, and to identify emerging environmental issues. The Sources, Transport and Fate Subgroup will evaluate environmental contaminants from both a media-specific and a multi-media basis.

The meeting is open to the public. Any member of the public wishing to attend or submit written comments should notify Dr. Terry F. Yosie, Director, Science Advisory Board, at 202–382–4126 or Joanna Foellmer by December 4, 1987.

Date: October 28, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–25391 Filed 11–2–87; 8:45 am]

BILLING CODE 6560–50–N

[OPP–60011; FRL–3286–8]

Chlordane and Heptachlor Termiticides; Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Order.

SUMMARY: On October 1, 1987, EPA issued an Order accepting the voluntary cancellation of certain chlordane and heptachlor termiticide registrations held by Velsicol Chemical Corporation, and limiting the use of existing stocks of Velsicol's chlordane and heptachlor termiticide products outside the company's control on August 11, 1987. Under the terms of the Order, such stocks may be sold, distributed or used according to their current labels until November 30, 1987. From December 1, 1987 until April 15, 1988, such stocks may only be sold, distributed or used in accordance with the Directions for Use accompanying the Order. No sale, distribution or use of such stocks will be permitted after April 15, 1988.

FOR FURTHER INFORMATION CONTACT:

By mail: George LaRocca, Registration Division (TS–767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 204, Crystal Mail Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 557–2400.

SUPPLEMENTARY INFORMATION: On August 11, 1987, EPA and Velsicol Chemical Corporation (Velsicol) entered into an agreement affecting Velsicol's registrations of chlordane and heptachlor termiticide products (except for a registration involving underground cable treatments). Under the terms of the agreement, certain uses of Velsicol's termiticide products were deleted from the label and the remainder of the registrations were converted into conditional registrations. Under the terms of the conditional registrations, no further sale or distribution by Velsicol of its affected chlordane and heptachlor termiticide products was allowed unless and until Velsicol satisfied air monitoring requirements specified in the conditional registrations. The August 11th agreement did not affect existing stocks of Velsicol's termiticide products outside of Velsicol's control on or before that date (which EPA estimated at the time to be a volume equal to approximately 2 months average use, or about 110,000 gallons).

Portions of the August 11th agreement were challenged by a number of environmental groups in a federal court action.

The court in that action expressed concern that EPA might have underestimated the amount of existing stocks or that use of the existing stocks might continue indefinitely. While EPA continues to believe that its estimate was an accurate one, EPA and Velsicol agreed to supplement the August 11th agreement in order to alleviate the court's concerns.

Under the terms of the Supplement, ratified on October 1, 1987, Velsicol's chlordane and heptachlor termiticide registrations were split into product registrations containing the deleted uses and product registrations containing the retained uses. Those registrations containing the deleted uses were voluntarily canceled. EPA issued an Order on October 1, 1987, accepting the voluntary cancellation and placing a two-tiered cap on the use of existing stocks of Velsicol's chlordane and heptachlor termiticide products outside of Velsicol's control on August 11, 1987. These stocks may be sold, distributed and used in any manner consistent with their labeling until November 30, 1987. From December 1, 1987 until April 15, 1988, these stocks may be sold, distributed and used only in accordance with the specific directions for use attached to the October 1st Order. No use of existing stocks will be permitted after April 15, 1988.

The text of the October 1st Order and the attached Directions for Use are set forth below:

In the Matter of: The Voluntary Cancellation of Certain Pesticide Product Registrations Held by the Velsicol Chemical Corporation.

Order Accepting Voluntary Cancellation and Authorizing Use of Existing Stocks With Limitations

As explained more fully below, this order accepts the voluntary cancellation of the registrations of certain pesticide products registered by the Velsicol Chemical Corporation ("Velsicol") and imposes limitations on the continued sale, distribution, and use of existing stocks of such products. This Order is issued pursuant to the authority in section 6(a)(1) of the Federal Insecticide, Fungicide and Rodenticide Act.

On August 11, 1987, Velsicol and EPA entered into an agreement affecting Velsicol's registrations of chlordane and heptachlor products. The agreement is memorialized in a Memorandum of Understanding and accompanying Conditions of Registration and Monitoring Protocol. Under the terms of the August 11 agreement, Velsicol classified the following uses of its end-

use termiticide products as "deleted uses":

a. Post-construction application of material from within a structure frequented by humans ("structure");

b. Post-construction application of material from outside a structure to inside or underneath a structure;

c. The use of pressure rodding for post-construction application of material to a basement-type or crawl-space type structure;

d. Pre- or post-construction treatment of the area underneath crawl-space and post and pier type structures;

e. Treatment of voids and spaces in masonry or block walls or areas behind veneers;

f. Applications by non-certified applicators;

g. Soil-injection pressure rodding at pressures greater than 25 psi.

The agreement further classified the following uses of end-use termiticide products as "retained uses":

a. Application to the outside perimeter of any structure by trenching, or drilling through sidewalks, patios, or other unenclosed slabs, and applying material to the soil without pressure (*e.g.*, flow or gravity feed);

b. Applications by the excavation technique to the exterior of any structure (*i.e.*, by removing soil next to the foundation, placing on a tarp, treating with termiticide, and placing back in trench after soil dries);

c. Pre-construction low-pressure (maximum 25 psi) vertical rodding (with the application rod equipped with a pressure control device to prevent higher pressures) of the perimeter outside any structure;

d. Post-construction low-pressure (maximum 25 psi) vertical rodding (with the application rod equipped with a pressure control device to prevent higher pressures) outside slab and post and pier type structures;

e. Post-construction coarse spray surface treatment (maximum 50 psi) and low-pressure (maximum 25 psi) vertical rodding (with the application rod equipped with a pressure control device to prevent higher pressures) under the slab of slab type structures.

The agreement classified one use, the protection of underground cables, as an "unaffected use".

In addition to this classification of the uses of Velsicol's termiticide products, the agreement included, *inter alia*, the following provisions:

- The retained uses were converted to restricted uses as provided for in sections 3(d) and 4 of FIFRA;
- The registrations of the retained uses were amended to conditional registrations, with no sale or distribution by Velsicol allowed until certain conditions set forth in the Conditions of Registration are met.
- No further sale or distribution by Velsicol of end-use products labeled for deleted uses was allowed.
- Velsicol amended the label of its manufacturing-use products to provide that such products could not be used to manufacture any end-use product (other than Velsicol products) for sale and distribution in the United States that is labeled for use as a subterranean termiticide.

The agreement became effective immediately on August 11, 1987. In return for the conditions accepted by Velsicol, EPA agreed, *inter alia*, that it would take no action against existing stocks of Velsicol's products then in the hands of applicators and distributors. EPA estimated that a volume equal to approximately two-months average use of chlordane and heptachlor termiticides (or approximately 110,000 gallons) was in the hands of applicators and distributors as of August 11th.

Portions of the agreement between Velsicol and EPA have been challenged in a federal court action brought by a number of environmental groups (*NCAMP* v. *EPA*, Civil Action No. 87–1089–LFO, D.D.C.). The court in that action has expressed concerns that EPA may have substantially underestimated the amount of existing stocks as of August 11th or that some individuals may have large stockpiles of chlordane products. While EPA continues to believe that its earlier estimate of existing stock was an accurate one, EPA contacted Velsicol (as well as the plaintiffs in the federal litigation) to discuss possible amendments to the August 11 agreement in order to resolve the court's concern. Velsicol agreed to amend the agreement, and on October 1, 1987, Velsicol and EAP ratified a Supplement to the Memorandum of Understanding (a copy of which is attached hereto).

Under the terms of this Supplement, Velsicol's chloradane termiticide registrations have been split into product registrations containing the deleted uses and product registrations containing the retained uses. Velsicol and EPA have agreed to the voluntary cancellation of certain product registrations, including those containing the deleted uses (but not those containing the retained uses), and have further agreed to the placement of a two-tiered cap on the use of existing stocks of Velsicol's products outside of its control before August 11. These existing stocks may be sold, distributed, and used in any manner consistent with their labeling until November 30, 1987. From December 1, 1987 until April 15, 1988, these stocks may be sold, distributed, and used only in accordance with the conditions of use prescribed in Appendix A of this Order. No use will be permitted after April 15, 1988.

EPA believes the terms of this Supplement will allow for an orderly and efficient phase-out of chloridane use. The Supplement provides sufficient time for the use of the volume of existing stocks estimated by EPA to exist in August of 1987, but will prevent unlimited use of such stocks if EPA was substantially incorrect in its estimate or if individuals possess large stockpiles. EPA favors a two-tiered approach because it encourages the use of application methods that are believed to pose less potential for misapplication and are believed less likely to result in indoor exposure than the uses that will be discontinued after November 30, 1987.

EPA finds that implementation of this Supplement is consistent with the purposes of FIFRA and will not have unreasonable adverse effects on the environment. EPA has previously determined that the agreement entered into on August 11, 1987, which contained no limitations on the use of existing stocks, was consistent with the purposes of the Act. The limitations contained in this Order will not permit any greater use of stocks than that which the Agency has already found to be acceptable.

The Agency considers the dates set forth herein, which were the product of an agreement between Velsicol and EPA, to be appropriate for several reasons. First, the Agency believes the dates chosen satisfy the concerns that the Agency may have substantially underestimated the amount of stocks in the possession of applicators and distributors as of August 11, 1987 or that individuals may have large stockpiles, by establishing a cap on use that would prevent the use of significantly larger quantities than the amount estimated to exist by EPA. Second, these dates allow for an orderly transition away from the deleted uses (with such uses not being permitted after November 30, 1987), and eventually from all other uses (after April 15, 1988). In particular, they provide EPA, Velsicol, and the National Pest Control Association with an adequate opportunity to notify applicators and state enforcement agencies of the terms of this Order; the dates will not encourage a hurried use of existing stocks which could lead to misapplication and greater indoor exposures; and they will allow for the certification of applicators (use of the

existing stocks will be a restricted use as set forth in FIFRA sections 3(d) and 4 after November 30, 1987). Finally, the dates reflect information provided to EPA that, even though there may well have been only 110,000 gallons of existing stocks in the hands of applicators and distributors on August 11, 1987, the rate of chlordane use has decreased since that date, and will of necessity decrease even further after November 30, 1987 when certain uses will no longer be permitted.

Based on all the foregoing, pursuant to FIFRA section 6(a)(1):

1. The following registrations of Velsicol's End Use Products are hereby cancelled:

A. The End Use Product described in Section II.A.2 of the attached Supplement (that product currently assigned EPA Registration Number 876–233 bearing all uses of Gold Crest Termide other than the retained uses).

B. The End Use Product described in Section II.B.2 of the attached Supplement (that product currently assigned EPA Registration Number 876–63 bearing all uses of Gold Crest C–100 other than the retained uses).

C. The End Use Product described in Section II.C.2 of the attached Supplement (that product currently assigned EPA Registration Number 876–104 bearing all uses of Chlordane 8EC Termite other than the retained uses).

D. Gold Crest C–50 (EPA Reg. No. 876–86).

E. Gold Crest H–60 (EPA Reg. No. 876–85).

F. California SLN for crawlspace perimeter spray (Termide) (CA–810012).

G. California SLN for crawlspace perimeter spray (C–100) (CA–810011).

H. Hawaii SLN for crawlspace perimeter spray (C–100) (HI–850003).

2. The sale, distribution, and use of existing stocks of any products in the possession of persons other than Velsicol on or after August 11, 1987 bearing Registration Numbers 876–63, 876–85, 876–86, 876–104, 876–233, CA–810011, CA–810012, or HI–850003 is subject to the following conditions:

A. Such products may be sold, distributed, and used in any manner consistent with their labeling until November 30, 1987.

B. Such products may be sold, distributed, and used from December 1, 1987 until April 15, 1988 only in accordance with the provisions contained in Appendix 1 to this Order.

C. Such products may not be sold, distributed, or used after April 15, 1988.

D. Any such products that have not been used on or before April 15, 1988 must be disposed of in accordance with applicable federal, state and local laws.

It is so ordered this 1st day of October, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Appendix I—Voluntarily Cancelled Subterranean Termite Control Products Directions for Use Between December 1, 1987, and April 15, 1988

Restricted use Pesticide

For Retail Sale to and use Only by Certified Applicators or Persons Under Their Direct Supervision

It is a violation of Federal law to use this product in a manner inconsistent with these Directions. This product may not be used against any pests not named in these Directions. Apply only to establish subsurface termite control barriers specified in these Directions.

Contamination of public and private water supplies must be avoided by following these precautions: Use anti-backflow equipment or procedures to prevent siphonage of pesticide back into water supplies. Do not treat soil beneath structures that contain cisterns or wells. Do not treat soil that is water saturated or frozen. Consult state and local specifications for recommended distances of treatment areas from wells, and refer to Federal Housing Administration Specifications on new construction for further guidance.

Preconstruction Subterranean Termite Treatment

Effective preconstruction subterranean termite control requires the establishment of an unbroken vertical and/or horizontal chemical barrier between wood in the structure and the potential or existing termite colonies in the soil. To meet FHA termite proofing requirements, follow the latest edition of the Housing and Urban Development (HUD) Minimum Property Standards.

Dilution Instructions for Gold Crest Termide

Use a .75% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of Gold Crest Termide in 99 gallons of water to produce a 0.75% water emulsion. Use a 0.75–1.5% water emulsion for *Coptotermes* spp. where necessary. Mix 1–2 gallons of Gold Crest Termide in 99 gallons of water to produce a 0.75–1.5% water emulsion.

Dilution Instructions for Gold Crest C100 and Chlordane 8EC/Termite

Use a 1% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of product in 95 gallons of water to produce a 1% water emulsion. Use a 1–2% water emulsion for *Coptotermes* spp. where necessary. Mix 1–2 gallons of product in 95 gallons of water to produce a 1–2% water emulsion.

Dilution Instructions for Gold Crest H–60

Use a .5% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of product in 59 gallons of water to produce a .5% water emulsion. Use a 1% water emulsion for *Coptotermes* spp. where necessary. Mix 2 gallons of product in 59 gallons of water to produce a 1% water emulsion.

Dilution Instructions for Gold Crest C–50

Use a 1% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of product in 47 gallons of water to produce a 1% water emulsion. Use a 2% water emulsion for *Coptotermes* spp. where necessary. Mix 2 gallons of product in 47 gallons of water to produce a 2% water emulsion.

Do not apply to soil beneath structures which will contain subslab or intra-slab air ducts. Do not apply to any area intended as a plenum air space. Check with builder or contractor or determine if the design of the structure includes these ducts or a plenum.

Do not apply to any area inside the foundation wall which will not be covered by a concrete slab (e.g., bath traps, inside surfaces of concrete or block walls above the level of the slab). Cover these areas during application with polyethylene or similar material. Do not treat into or through hollow masonry voids.

Slab Construction

Horizontal Barriers

Before footings are poured, horizontal barriers may be established in footing trenches. Treatment of the footings through hollow masonry voids is prohibited. Then, after interior grading is completed and prior to the pouring of concrete slabs, horizontal barriers may be established on soil which will be covered by concrete floor, entrance platforms, and in other critical areas which will be covered by concrete slabs.

In the case of a single-pour, monolithic slab which does not have a separate foundation or footing, an overall horizontal barrier would be created before the concrete is poured.

To produce a horizontal barrier, apply the emulsion at the rate of 1 gallon per 10 square feet to fill dirt. If fill is washed gravel or other coarse material, apply at 1½ gallons per 10 square feet.

—It is important that the emulsion reaches the soil.
—Applications shall be made with pressures less than 50 p.s.i. at the nozzle using a coarse spray nozzle when establishing horizontal barriers.
—If concrete slabs cannot be poured over soil the same day it has been treated, a water-proof cover, such as polyethylene sheeting, should be placed over the soil to prevent erosion. This is not necessary if foundation walls have been installed around the treated soil.

Vertical Barriers

After the foundation walls have been poured or built but before slabs are poured, vertical barriers may be established in soil which will be under the perimeters of floating or supported slabs, around utilities which will penetrate the slab, and in other critical areas which will be covered by concrete. After the final exterior grading is completed, vertical barriers may be created in back-filled soil against foundation walls or against the outside of monolithic slab. To produce a vertical barrier, apply the emulsion at the rate of 4 gallons per linear feet per foot of depth from grade to the top of the footing. For monolithic slabs, apply to the bottom of the concrete.

—Low pressure rodding and/or trenching applications should not be made below the top of the footing except when the footing is exposed at or above grade. Special care should be taken to avoid soil washout around the footing.
—When rodding, use only low pressure (less than 25 p.s.i. at the nozzle). It is important that emulsion reaches the footing. Rod holes should be spaced to provide a continuous barrier.
—Trenches need not be wider than 6 inches.
—Emulsion should be mixed with the soil as it is being replaced in the trench. Cover treated soil with approximately 2 inches of untreated soil.

Crawl Space Foundations

For crawl space foundations, vertical barriers may be established in the soil on the outside perimeter of the foundation using a rate of 4 gallons of emulsion per 10 linear feet per foot of depth from grade to the top of the footing. Application may be made by low pressure rodding and/or trenching to the footing. If the footing is exposed at or above grade, application should be made with special care to avoid wash-out around the footing.

—Do not treat the footing through hollow masonry voids.
—Rod holes should be spaced to provide a continuous chemical barrier.
—When rodding the outside perimeter, use low pressure (less than 25 p.s.i. at the nozzle).
—Trenches need not be wider than 6 inches nor below the footing. The emulsion should be mixed with the soil as it is being replaced in the trench. Cover the treated soil with approximately 2 inches of untreated soil.
—A complete termite barrier may require treatment with another EPA-registered product to the inside perimeter of the foundations and to other interior critical areas.

Basement Foundations

Horizontal Barriers

After exterior grading is completed and prior to the pouring of concrete slabs, horizontal barriers may be established on soil which will be covered by concrete entrance platforms, and in other exterior critical areas which will be covered by concrete slabs. To produce a horizontal barrier, apply the emulsion at the rate of 1 gallon per 10 square feet to fill dirt. If fill is washed gravel or other coarse material, apply at 1½ gallons per 10 square feet.

—It is important that the emulsion reaches the soil.
—Applications shall be made (with pressures less than 50 p.s.i. at the nozzle) using a course spray nozzle when establishing horizontal barriers.
—If concrete slabs cannot be poured over soil the same day it has been treated, a water-proof cover, such as polyethylene sheeting, should be placed over the soil to prevent erosion.
—Do not apply to any area inside the foundation wall.

Vertical Barriers

After the final exterior grading is completed, vertical barriers may be created in back-filled soil against foundation walls. To produce a vertical barrier, apply the emulsion by low pressure rodding or trenching at the rate of 4 gallons per linear feet per foot of depth from grade to the top of the footing.

—Low pressure rodding and/or trenching applications should not be made below the top of the footing except when the footing is exposed at or above grade. Special care should be taken to avoid soil washout around the footing.
—When rodding, use low pressure (less than 25 p.s.i. at the nozzle). It is important that emulson reaches the footing. Rod holes should be spaced to provide a continuous barrier.
—Trenches need not be wider than 6 inches.
—Emulsion should be mixed with the soil as it is being replaced in the trench. Cover treated soil with approximately 2 inches of untreated soil.

Postconstruction Treatments

Dilution Instruction for Gold Crest Termide

Use a .75% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of Gold Crest Termide in 99 gallons of water to produce at 0.75% water emulsion. Use a 0.75–1.5% water emulsion for *Coptotermes* spp. where necessary. Mix 1–2 gallons of Gold Crest Termide in 99 gallons of water to produce a 0.75–1.5% water emulsion.

Dilution Instructions for Gold Crest C100 and Chlordane 8EC/Termite

Use a 1% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of product in 95 gallons of water to produce a 1% water emulsion. Use a 1–2% water emulsion for *Coptotermes* spp. where necessary. Mix 1–2 gallons of product in 95 gallons to produce a 1–2% emulsion.

Dilution Instruction for Gold Crest H–60

Use a .5% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of product in 59 gallons of water to prodcue a .5% water emulsion. Use a 1% water emulsion for *Coptotermes* spp. where necessary. Mix 2 gallons of product in 59 gallons of water to produce a 1% water emulsion.

Dilution Instruction for Gold Crest C–50

Use a 1% water emulsion for subterranean termites other than *Coptotermes* spp. Mix 1 gallon of product in 47 gallons of water to produce a 1% water emulsion. Use a 2% water emulsion for *Coptotermes* spp. where necessary. Mix 2 gallons of product in 47 gallons of water to produce a 2% water emulsion.

Do not apply this produce into hollow masonry voids.

Do not apply this product to soil beneath the interior of the structure. Do not apply to the soil beneath a plenum air space.

Do not apply emulsion until location of pipes, water and sewer lines and electrical conduits are known and identified.

Slab Construction

Vertical barriers may be established along the outside of the foundation by low pressure rodding and/or trenching at the rate of 4 gallons of emulsion per 10 linear feet. Low pressure rodding should not extend beyond the tops of the footings.

—When rodding, use only low pressure (less than 25 p.s.i. at the nozzle).
—Drill holes in outside slabs (patios, sidewalks, etc.) about 12 to 36 inches apart to provide a continuous chemical barrier.
—For shallow foundations, 1 foot or less, dig a narrow trench approximately six inches wide along the outside of the foundation walls. Do not trench below the bottom of the foundation. The emulsion should be applied to the trench and the soil at 4 gallons per 10 linear feet as the soil is replaced in the trench. Cover the treated soil with approximately 2 inches of untreated soil.
—For foundations deeper than 1 foot apply 4 gallons per 10 linear feet per foot of depth.

Basement and Crawl Space Foundations

For basement foundations, outside perimeter barriers may be applied only by trenching or the excavation technique below at a rate of 4 gallons of emulsion per 10 linear feet per foot of depth to be treated. Where exterior slabs are adjacent to the foundation wall, drill through the slab along the outside of the wall at a spacing that provides application of a continuous barrier and apply the emulsion just under the slab. After drilling, emulsion may be applied. Apply only at the lowest pressure that will start the flow of emulsion from an unobstructed rod. Apply up to 4 gallons of emulsion per 10 linear feet.

A complete termite barrier may require application of another EPA-registered product under interior slabs, through hollow masonry voids to the footing, and to other interior critical areas.

Excavation Technique

If treatment is to be made in difficult situations such as near wells or cisterns, along faulty foundation walls, and around pipes and utility lines which lead downward from the structure, application must be made in the following manner to avoid intrusion of termiticide into water supplies or the interior of the structure.

—Trench and remove the soil to be treated only heavy plastic sheeting or similar liner.
—Treat the soil at the rate of 4 gallons of emulsion per 10 linear feet per foot of depth of the trench. Mix the emulsion thoroughly into the soil taking care to prevent liquid from running off the liner.
—After the treated soil has dried adequately, replace the soil in the trench and cover with approximately 2 inches of untreated soil.

Retreatment Restrictions

Retreatment for subterranean termites should only be made when there is evidence of reinfestation subsequent to the initial treatment, or there has been disruption of the chemical barrier in the soil due to construction, excavation, landscaping, etc. Retreatment should be made as a spot application to these areas.

Retreatments may be made to critical areas in accordance with the application techniques described above. This application should be made as a spot treatment to these areas. Do not annually retreat entire premises.

Copies of the August 11, 1987, agreement and the October 1, 1987, supplementary agreement between EPA and Velsicol, can be obtained from the person listed under **FOR MORE INFORMATION CONTACT:**

Dated: October 23, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-25383 Filed 11-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180747; FRL-3286-5]

California Department of Food and Agriculture; Receipt of Application for Emergency Exemption To Use Hydrogen Cyanamide; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a request for an emergency exemption from the California Department of Food and Agriculture (hereafter referred to as the "Applicant") to use the active ingredient hydrogen cyanamide ("Dormex") to promote uniform bud break in 18,800 acres of table grapes grown in the Coachella Valley in Riverside County, California. Dormex contains an unregistered active ingredient and, therefore, in acordance with 40 CFR 166.24, EPA is soliciting comment before making the decision whether or not to grant the exemption.

DATE: Comments must be received on or before November 18, 1987.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180747," should be submitted by mail to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

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

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

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any provisions of FIFRA if he determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption to permit the use of an unregistered plant regulator, hydrogen cyanamide (CAS 420-04-2), manufactured as Dormex, by SKW Trostberg Aktiengesellschaft, to promote uniform bud-break in table grapes grown in the Coachella Valley in Riverside County, California. Information in accordance with 40 CFR Part 166 was submitted as part of this request.

Approximately 18,800 acres of table grapes, *Vitis* spp., are grown in the Coachella Valley. The Applicant indicates that California growers of early market table grapes are facing economic losses due to increasing competition from foreign imports, particularly from Mexico. The Applicant

states that table grapes grown in the Coachella Valley may not experience adequate winter chilling to promote uniform bud-break and fruit ripening in the spring. As a result, cane growth can be delayed and uneven, causing the harvest to be late and allowing foreign competition to dominate the market. Currently there are no registered materials to promote uniform bud-break in grapes.

Dormex will be applied by ground at a maximum rate of 4 gallons (16 pounds active ingredient) per acre. Application will be made once in dormancy after pruning sometime between December 1 and February 15, 1988 to approximately 18,800 acres of table grapes in Riverside County.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Program Management and Support Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Food and Agriculture.

Dated: October 27, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-25386 Filed 11-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3285-8]

Office of Municipal Pollution Control's Indian Workgroup; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under ongoing activities to implement Pub. L. 100-4, the Water Quality Act of 1987 (WQA), section 518, EPA's Office of Municipal Pollution Control (OMPC), in cooperation with the Indian Health Service, is currently assessing the need for sewage treatment works to serve Indian Tribes and obstacles which keep these needs from being met. OMPC is also proposing a process for administering funds reserved under section 518(c) for federal grants to fund the planning and construction of sewage treatment works to serve Indian Tribes as defined in this Act.

A workgroup that includes members of various Indian Tribes, EPA and Indian Health Service staff will convene a meeting November 20, 1987, 8:30 a.m., at the Fiesta Inn, 2100 South Priest Drive, Tempe, Arizona 85282 to discuss the Indian Needs Survey, the proposed process for providing grants to construct wastewater treatment systems, and a draft Report to Congress on these efforts.

Note: Pending passage of the 1988 Federal Budget and related circumstances, this meeting may be rescheduled for a later date. Please contact Chris Powers, Planning and Analysis Division, Office of Municipal Pollution Control, Room 1117ET, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 or call 202-382-3770 before attending this meeting.

Date: October 27, 1987.

Rebecca W. Hanmer,

Acting Assistant Administrator for Water.

[FR Doc. 87-25392 Filed 1-2-87; 8:45 am]

BILLING CODE 6560-50-M

Federal Home Loan Bank Board

[No. 87-1118]

Approval of Application for Unlisted Trading Privileges; Midwest Stock Exchange

Date: October 27, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: On July 30, 1987, the Midwest Stock Exchange filed with the Federal Home Loan Bank ("Board") an application (Application"), pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 [17 CFR 240.12f-1] thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:

Northeast Savings, F.A.
Hartford, Connecticut (FHLBB No. 3231)
Common Stock, $.01 Par Value

Notice of the Application and opportunity for hearing was published in the **Federal Register** on August 19, 1987, and interested persons were invited to submit written data, views and arguments within 15 days. See Board Resolution No. 87-877, dated August 13, 1987 (52 FR 31086, August 19, 1987). The Board received no comments with respect to the Application. Notice is hereby given that the Office of General Counsel of the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in these securities on October 14, 1987.

SUPPLEMENTARY INFORMATION: The Board finds that the approval of the Application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Securities and Exchange Commission ("Commission") pursuant to section 6 of the Act, the Midwest Stock Exchange is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. Transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act [17 CFR 240.11Aa3-1] The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the Midwest Stock Exchange are executed at prices which are reasonably related to those occurring in other markets. Further, the approval of the Application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system. Finally, the Board received no comments indicating that the granting of the Application would not be consistent with the maintenance of fiar and orderly markets and the protection of investors.

Accordingly, pursuant to section 12 (f)(1)(B) of the Act, the Office of General Counsel for the Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the Application for unlisted trading privileges in the above named securities on October 14, 1987.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-25452 Filed 11-2-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the

Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in §§ 560.7 and/or 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200053

Title: The Port Authority of New York and New Jersey Terminal Agreement.
Parties: The Port Authority of New York and New Jersey Sea-Land Service, Inc.
Synopsis: The proposed agreement provides that Sea-Land lease and operate the Elizabeth-Port Authority Marine Terminal. It provides Sea-Land the right to berth vessels at the terminal berthing area and provides for specified additional rental payments for cargoes loaded onto or discharged from certain of these vessels.
Filing Party: William J. Coffey, Secretary and Counsel, Sea-Land Service, Inc., P.O. Box 800, Iselin, NJ 08830.

By Order of the Federal Maritime Commisssion.

Dated: October 28, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–25344 Filed 11–2–87; 8:45 am]

BILLING CODE 6730–01–M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200052

Title: Port of Tampa Terminal Lease Agreement
Parties: Tampa Port Authority Bay Terminal and Stevedoring Co.
Synopsis: The proposed agreement authorizes the Tampa Port Authority to lease approximately 57,600 sq. ft. of remote paved open storage area and approximately 36,000 sq. ft. of dockside unpaved open storage area, for a period of 364 days with right of occupancy commencing on May 15, 1987 and extending through May 13, 1988 to Bay Terminal and Stevedoring Co.

By Order of the Federal Maritime Commission.

Dated: October 28, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–25345 Filed 11–2–87; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following consumer exchange meeting:

Kansas City District Office, chaired by James A. Adamson, District Director. The topic to be discussed is health claims on food labels.

DATE: Tuesday, November 17, 1987, 1 p.m.

ADDRESS: Conference Room, 601 East 12th St., Rm. 545A, Kansas City, MO 64106.

FOR FURTHER INFORMATION CONTACT: Julia F. Hewgley, Consumer Affairs Officer, Food and Drug Administration, 1009 Cherry St., Kansas City, MO 64106, 816–374–3817.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: October 28, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–25425 Filed 11–2–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[IOA–015–N]

Task Force on Technology-Dependent Children; Meeting

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), this notice announces a meeting of the Task Force on Technology-Dependent Children.

DATE: The meeting will be held on December 3, 1987 from 9:00 a.m. to 5:00 p.m., E.S.T., and on December 4, 1987 from 9:00 a.m. to 2:00 p.m., E.S.T. The meeting will be open to the public.

ADDRESS: The meeting will be held in the Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Bill Pickens, Executive Director, Task Force on Technology-Dependent Children, Department of Health and Human Services, Room 4414 HHS North Building, 330 Independence Avenue SW., Washington, DC 20201, (202) 245–0070.

SUPPLEMENTARY INFORMATION:

Purpose

The Task Force on Technology-Dependent Children, established under section 9520 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272), investigates alternatives to institutional care for technology-dependent children. Technology-dependent children are those with chronic conditions requiring continuing use of medical technology.

The Task Force must report to the Secretary of Health and Human Services, the Administrator of the Health Care Financing Administration (HCFA), and to Congress concerning alternatives to institutional care for technology-dependent children. The Task Force must develop recommendations designed to—

(1) Identify barriers that prevent the provision of appropriate care in a home

or community setting to meet the special needs of technology-dependent children; and

(2) Recommend changes in the provision and financing of health care in private and public health care programs (including appropriate joint public-private initiatives) so as to provide home and community-based alternatives to the institutionalization of technology-dependent children.

The Task Force will address fully the two specified goals before it takes up any other questions. To the extent that time and resources permit, the Task Force may develop recommendations that would address additional concerns regarding technology-dependent children. The Task Force recommendations are intended to be used only at the option of the Department of Health and Human Services and the Congress.

Agenda

The Task Force will conduct a business meeting to evaluate and review testimony, data, and information that has been received to date. It will consider barriers, recommendations, and possible solutions for technology-dependent children.

The public is invited to present testimony to the Task Force. We request those wishing to testify to contact the Task Force by November 23, 1987.

Agenda items are subject to change as priorities dictate.

(Sec. 10(a) (2) of Pub. L. 92–463, as amended (5 U.S.C. App. I, Sec. 1–15) and Sec. 9520 of Pub. L. 99–272 (42 U.S.C. 1396a note); 45 CFR Part 11)

Dated: October 28, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

[FR Doc. 87–25381 Filed 11–2–87; 8:45 am]

BILLING CODE 4120–01–M

Office of Human Development Services

President's Committee on Mental Retardation; Meeting

Agency Holding the Meeting: President's Committee on Mental Retardation.

Time and Date: Executive Committee, Sunday, November 15, 1987, 1:00 P.M.–5:00 P.M., Full Committee, November 16–17, 1987, 9:00 A.M.–5:00 P.M., November 16, 1987, 9:00 A.M.–5:00 P.M., November 17, 1987.

Place: Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

Status: Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All locations are barrier free.

Matters to be Considered: Reports by members of the Executive Committee of the President's Committee on Mental Retardation (PCMR) will be given. The Committee plans to discuss critical issues concerning prevention, family and community services, full citizenship, public awareness and other issues relevant to the PCMR's goals.

The PCMR: (1) Acts in an advisory capacity to the President and the Secretary of the Department of Health and Human Services on matters relating to programs and services for persons who are mentally retarded; and (2) is responsible for evaluating the adequacy of current practices in programs for the retarded, and reviewing legislative proposals that affect the mentally retarded.

Contact Person for More Information: Jim F. Young, 330 Independence Avenue SW., Room 4725—North Building, Washington, DC 20201, (202) 245–7634.

Dated: October 27, 1987.

Jim F. Young,

Acting Executive Director, PCMR

[FR Doc. 87–25435 Filed 11–2–87; 8:45 am]

BILLING CODE 4130–01–M

Social Security Administration

Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) covers the Social Security Administration (SSA). Notice is given that Chapter S3B, sections S3B.10 and S3B.20, is amended to abolish the Division of Retirement and Survivors Studies, to establish the Program Management and Studies Staff and to correct a previous error.

The changes are as follows:

Section S3B.10 *The Office of Retirement and Survivors Insurance*—(Organization):

Delete: G. The Division of Retirement and Survivors Studies (S3B5).

Add: D. The Program Management and Studies Staff ( ). Current Subsections D. through F. should be relettered as Subsections E. through G.

Section S3B.20 *The Office of Retirement and Survivors Insurance*—(Functions):

Delete: G. The Division of Retirement and Survivors Studies (S3B5) in its entirety.

Add:

D. The Program Management and Studies Staff ( ).

1. Plans and conducts research, studies and projects of interdivisional priorities which impact on the Retirement and Survivors Insurance (RSI) program.

2. Plans and develops data collection instruments, and provides statistical expertise.

3. Provides leadership in intra-office assignments and initiatives and is responsible for resolving controversial issues that deal with the RSI program policies.

4. Coordinates and directs, for the RSI program, assignments and projects that result from the claims modernization and the systems modernization plans.

5. Develops programs for RSI to support management information and operational policy needs.

Current Subsections D. through F. should be relettered as Subsections E. through G.

New Subsection E. The Division of Coverage should be amended to insert the word "program" in the fourth line after the word "Insurance."

Dated: October 21, 1987.

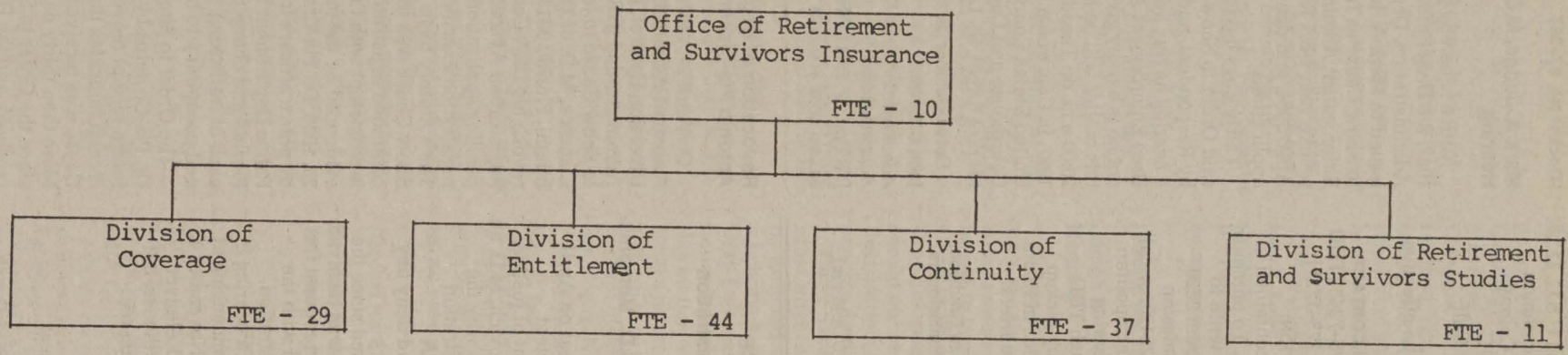
Nelson J. Sabatini,

Deputy Commissioner for Management.

BILLING CODE 4190–11–M

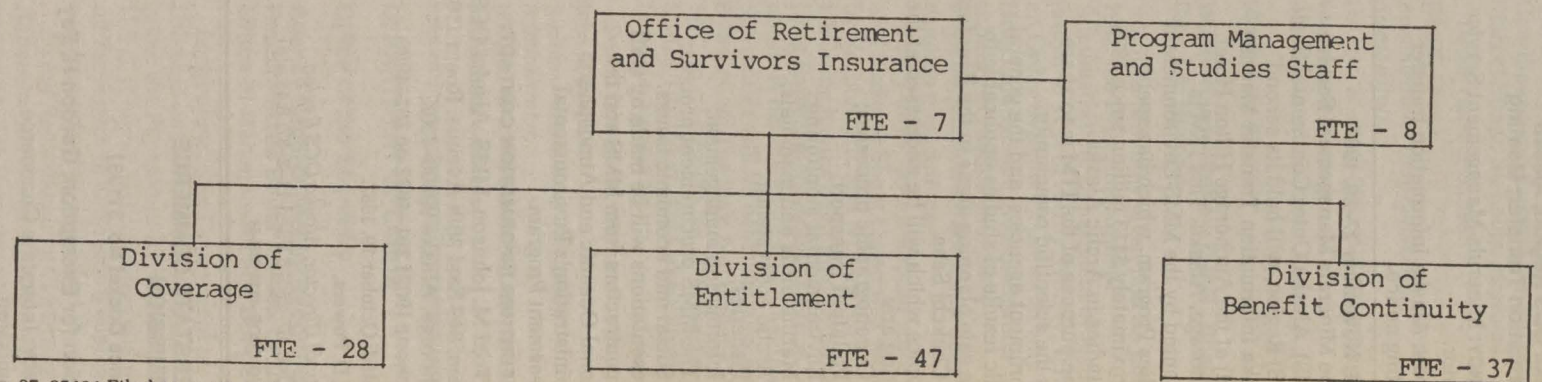
Current Organization

Department of Health and Human Services
Social Security Administration
Office of Retirement and Survivors Insurance



Proposed Organization

Department of Health and Human Services
Social Security Administration
Office of Retirement and Survivors Insurance



[FR Doc. 87-25424 Filed 11-2-87; 8:45 am]
BILLING CODE 4190-11-C

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Alaska OCS Region; Alaska Information Transfer; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Alaska information transfer meeting notice.

DATE: November 17–20, 1987.

The Minerals Management Service (MMS), Alaska Outer Continental Shelf (OCS) Region, will hold its second Alaska Information Transfer Meeting (ITM) at the Anchorage Hilton Hotel, Anchorage, Alaska. This ITM is presented by the MMS Environmental Studies Program, which has spent approximately $113 million since 1975 on studies in Arctic Alaska.

The purpose of the ITM is to share with the scientific community, government agencies, and the general public results of studies applicable to lease sale planning areas in the Beaufort and Chukchi Seas.

Topics which will be addressed at the meeting are:

- Oceanographic processes;
- Pollutant transport;
- Environmental monitoring;
- Marine birds and mammals;
- Arctic ecosystems;
- Fisheries;
- Information management;
- The MMS procurement process;
- Social and economic issues.

Presentations will be made by staff and contractors from MMS and the National Oceanic and Atmospheric Administration's Environmental Assessment Program.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson, MMS, Alsaka OCS Region, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508–4302, telephone (907) 261–4632 or 261–4080.

Dated: October 19, 1987.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 87–25378 Filed 11–2–87; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31133]

Petition for Exemption; Gordon H. Fay

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 11322 Gordon H. Fay acting as a common officer and director of Bay Colony Railroad Corporation, NRUC Corporation, and Seminole Gulf Railway, Inc.

DATE: This exemption will be effective on November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245 [TDD for hearing impaired: (202) 275–1721].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357/4359 (DC Metropolitan area). Assistance for the hearing impaired is available through TDD services (202) 275–1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Decided: October 26, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–25419 Filed 11–2–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 87–50]

John Richard Janovich, M.D., Memphis, TN; Hearing

Notice is hereby given that on April 23, 1987, the Drug Enforcement Administration, Department of Justice, issued to John Richard Janovich, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Registration, AJ5457331, and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, November 4, 1987, in Courtroom A–702, Kefauver Federal Building, U.S. Courthouse, 801 Broadway, Nashville, Tennessee.

Dated October 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87–25410 Filed 11–2–87; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 87–56]

Mark A. Judge, M.D., Joplin, MO; Hearing

Notice is hereby given that on June 23, 1987, the Drug Enforcement Administration, Department of Justice, issued to Mark A. Judge, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Registration, AJ8475964, and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, November 17, 1987, in Courtroom No. 2, Room 502, United States Court of Appeals, U.S. Courthouse and Custom House, 1114 Market Street, St. Louis, Missouri.

Dated October 29, 1987

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87–25411 Filed 11–2–87; 8:45 am]

BILLING CODE 4410–09–M

Revocation of Registration; Jose Antonio Pla-Cisneros, M.D.

On April 21, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Jose Antonio Pla-Cisneros, M.D. of 1154 SW. 8th Street, Miami, Florida 33130, proposing to revoke his DEA Certificate of Registration AP9085918 and to deny his pending application for renewal of said registration executed on March 1, 1987. The statutory basis for the Order to Show Cause was that Dr. Pla-Cisneros' continued registration would be inconsistent with the public interest as evidenced by the fact that on November 25, 1986, Dr. Pla-Cisneros was arrested by police officers from the Metro Dade Police Department in Dade County, Florida and charged with one count each of trafficking, possession, delivery, and conspiracy to traffic cocaine.

The Order to Show Cause was sent to Dr. Pla-Cisneros by registered mail, return receipt requested. The return-receipt indicates that the Order to Show Cause was received on April 24, 1987. More than thirty days have elapsed since the Order to Show Cause was received, and the Drug Enforcement Administration has received no

response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Dr. Pla-Cisneros is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based upon the investigative file. 21 CFR 1301.57.

The Administrator finds that on November 21, 1984, an anonymous caller informed a DEA Agent that an individual was laundering drug money through a Miami bar. According to state records, the bar was owned by an investment corporation. Dr. Pla-Cisneros was listed as one of the corporate officers.

On November 25, 1986, Dr. Pla-Cisneros and four individuals were arrested and charged with one count each of trafficking, possession, delivery, and conspiracy to traffic cocaine. Cocaine is a Schedule II narcotic controlled substance. At the time of the arrest, a search was conducted of the car occupied by Dr. Pla-Cisneros and the four other individuals. The search uncovered three kilograms of cocaine. One kilogram was seized from Dr. Pla-Cisneros and another individual. A second kilogram was found in a box located on the front floorboard of the car. The third kilogram was seized from an individual who had taped the cocaine to the small of his back.

Based upon the foregoing, the Administrator finds that sufficient evidence exists to conclude that Dr. Pla-Cisneros was in possession of, and intended to distribute a large quantity of cocaine. Further, there is absolutely no information to suggest that Dr. Pla-Cisneros possessed the cocaine for any legitimate medical purpose. Dr. Pla-Cisneros' unlawful activities demonstrate his total disregard for the Federal controlled substance laws under which he is registered.

A physician, because of his training and experience, must be aware of the awful devastation and health consequences associated with cocaine abuse. By participating in the unlawful distribution of this drug, Dr. Pla-Cisneros abandoned the trust which society placed in him as a physician as well as his responsibility, as a registrant, to safeguard the public against the illegal distribution of dangerous drugs. Therefore, the Administrator concludes that Dr. Pla-Cisneros can no longer be entrusted with the DEA Certificate of Registration.

Having considered the foregoing facts, the Administrator concludes that Dr. Pla-Cisneros' DEA Certificate of Regulation should be revoked. Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 21 CFR 0.100(b), hereby orders that DEA Certificate of Registration AP9085918, previously issued to Jose Antonio Pla-Cisneros, M.D., be, and it hereby is, revoked. The Administrtor further orders that any pending applications for renewal of said registration be, and they hereby are, denied.

This order is effective immediately.

Dated: October 28, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-25343 Filed 11-2-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-53]

James B. Rivers, D.M.D., Knoxville, TN; Hearing

Notice is hereby given that on May 6, 1987, the Drug Enforcement Administration, Department of Justice, issued to James B. Rivers, D.M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Registration, BR0321896, and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Tuesday, November 3, 1987, in Courtroom A-702, Kefauver Federal Building, U.S. Courthouse, 801 Broadway, Nashville, Tennessee.

Dated: October 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-25412 Filed 11-2-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-61]

Richard N. Shatz, M.D., Creve Coeur, MO; Hearing

Notice is hereby given that on June 23, 1987, the Drug Enforcement Administration, Department of Justice, issued to Richard N. Shatz, M.D. an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 10:00 a.m. on Wednesday, November 18, 1987, in Courtroom No. 2, Room 502, United States Court of Appeals, U.S. Courthouse and Custom House, 1114 Market Street, St. Louis, Missouri.

Dated: October 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 87-25413 Filed 11-2-87; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 87-57]

Wyeth Hardy Worley, D.D.S., Bossier City, LA; Hearing

Notice is hereby given that on June 24, 1987, the Drug Enforcement Administration, Department of Justice, issued to Wyeth Hardy Worley, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Registration, AW3378660, and deny any pending applications.

Thirty days having elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held commencing at 9:30 a.m. on Tuesday, November 17, 1987, in Courtroom No. 211, United States Tax Court, 423 Canal Street, New Orleans, Louisiana.

Dated: October 29, 1987.

John C. Lawn,

Administrator, Drug Enforcement Administrator.

[FR Doc. 87-25414 Filed 11-2-87; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of

Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry man contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements.

The number of forms in the request for approval, if applicable.

An abstract describing the need and uses of the information collection.

Comments and Questions. Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New Collection

Bureau of Labor Statistics.

CPI User Survey.

BLS 1400A, BLS 1400B, BLS 1400C.

One Response.

Individuals or households; State and Local governments; Businesses or other for-profit; Federal agencies or employees; Non-Profit institutions; Farms; Small businesses or organizations. 2,450 responses; 654 hours; 1 form.

This is a survey of the users of the Consumer Price Index.

The survey will allow BLS to develop a user profile, determine how CPI data are actually being applied, obtain opinions on how well BLS does in distributing and presenting index information, and elicit suggestions for program improvements.

Extension

Mine Safety and Health Administration.

Escape and Evaluation Plan.

1219-0046.

Semi-annually.

Businesses or other for profit; small businesses or organizations.

430 respondents; 10,320 hours.

Regulation requires development of a specific escape and evacuation plan for each underground metal and nonmetal mine.

It additionally requires revisions as mining progresses, availability to inspectors, and conspicuous posting for the benefit of affected miners. Plans are required to be reviewed every six months.

Mine Safety and Health Administration.

Fire Protection—Escape and Evacuation Plan.

1219-0051.

On occasion.

Businesses or other for profit; small businesses or organizations.

321 respondents; 1,234 hours.

Requires coal mine operators to establish and keep current a specific escape and evacuation plan to be followed in the event of a fire. The plan is used to instruct employees in the proper method of exiting work areas.

Mine Safety and Health Administration.

Ground Control Plan.

1219-0026.

On occasion.

Businesses and other for profit; small businesses or organizations.

410 respondents; 16,400 hours.

Requires operators of surface coal mines to establish and follow a ground control plan for the safe control of high-walls, pits and spoil banks which is consistent with prudent engineering design and will insure safe working conditions.

Signed at Washington, DC, this 29th day of October, 1987.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 87-25462, Filed 11-2-87; 8:45 am]

BILLING CODE 4510-43-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Allied Bendix Aerospace, et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 13, 1987.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 13, 1987.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 26th day of October 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/worker/firm	Location	Date received	Date of petition	Petition No.	Articles produced
Allied Bendix Aerospace (USWA)	Utica, NY	10/26/87	10/13/87	20, 201	Aircraft accessories.
Columbia Northwest Corp. (United Cement Wkers)	Bellingham, WA	10/26/87	9/28/87	20, 202	Clinker.
Columbia Northwest Corp. Seattle Terminal (United Cement Wkers)	Seattle, WA	10/26/87	9/28/87	20, 203	Clinker.
Columbia Northwest Corp. Pasco Terminal (United Cement Wkers)	Pasco, WA	10/26/87	9/28/87	20, 204	Clinker.
Columbia Northwest Corp. Portland Terminal (United Cement Wkers)	Portland, OR	10/26/87	9/28/87	20, 205	Clinker.
Columbia Northwest Corp. Kendall Quarry (United Cement Wkers)	Sumas, WA	10/26/87	9/28/87	20, 206	Clinker.
Columbia Northwest Corp. Anchorage Terminal (United Cement Wkers)	Anchorage, AK	10/26/87	9/28/87	20, 207	Clinker.
Double A. Products (IAM)	Manchester, MI	10/26/87	10/16/87	20, 208	Pumps.
Ethyl Corporation (Company)	Sayreville, NJ	10/26/87	10/6/87	20, 209	Chemicals.
General Electric Co. (IUE)	Newcomerstown, OH	10/26/87	10/5/87	20, 210	Coils.
H&H PLastic Co., Inc. (URW)	Paramount, CA	10/26/87	10/14/87	20, 211	Toys.
Murray-Ohio Corp. (Workers)	Lawrenceburg, TN	10/26/87	10/15/87	20, 212	Bicycles.
National Aluminum Corp. (UER&MWA)	Murrysville, PA	10/26/87	10/1/87	20, 213	Aluminum.
Nibco of Colorado, Incorp. (Workers)	LaJunta, CO	10/26/87	10/13/87	20, 214	Copper.
Phoenix Steel Corp. (USWA)	Phoenixville, PA	10/26/87	10/13/87	20, 215	Steel.
Producto Machine Co. (Company)	Bridgeport, CT	10/26/87	10/14/87	20, 216	Machines.
River Cement Co. (Boilermakers)	Festus, MO	10/26/87	10/13/87	20, 217	Cement.
River Cement Co. (Boilermakers)	St. Louis, MO	10/26/87	10/13/87	20, 218	Cement.
Tioga Foundry Corp. (Company)	Owego, NY	10/26/87	10/16/87	20, 219	Castings.

[FR Doc. 87-25463 Filed 11-2-87; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; CPT Corp. et al.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period October 19, 1987–October 23, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–20,003; CPT Corp., Chanhassen, MN

TA–W–20,092; Harris Metals, Inc., Racine, WI

TA–W–20,047; General Electric Co., Warren, OH

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–20,064; Specialty Metal Products, Edmond, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,053; General Motors Corp., Truck & Bus Div., St. Louis, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,086; White Consolidated Industries, Parts Distribution Center, Columbus, OH

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,068; Building Technologies, Nicholasville, KY

U.S. imports of metal buildings are negligible.

TA–W–20,061; Kaiser Steel Corp., Stockton, CA

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,038; Allen Bradley Co., Milwaukee, WI

U.S. imports of industrial controls declined absolutely and relative to domestic shipment in 1986 compared to 1985.

TA–W–20,080; Otis Engineering Corp., Lindsay, OK

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,039; Allied Leather Corp., Penacook, NH

U.S. imports of tanned and finished cattlehides decreased absolutely and relative to domestic production in 1986 compared to 1985 and absolutely in January–June 1987 compared to the same period in 1986.

TA–W–20,096; Westview Health Care Center, Racine, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–20,104; Lynda Lee Fashions, Inc., Rutland, VT

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,071; Cumberland Steel Co., Cumberland, MD

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–20,040; Allied Leather Corp., Boscawen, NH

U.S. imports of tanned cattlehide splits decreased absolutely and relative to domestic production in 1986 compare to 1985 and in January–June 1987 period compared to the same period in 1986.

Affirmative Determinations

TA–W–20,045; Eastland Woolen Mill, Inc., Corinna, ME

A certification was issued covering all workers of the firm separated on or after July 1, 1987.

TA–W–20,063; Mosbasher Energy Co., Houston, TX

A certification was issued covering all workers of the firm separated on or after August 15, 1986.

TA–W–20,076; Malouf Manufacturing Co., Whitesboro, TX

A certification was issued covering all workers of the firm separated on or after Augsut 13, 1986 and before March 28, 1987.

TA–W–20,050; General Motors Corp., BOC Clark St., Detroit, MI

A certification was issued covering all workers of the firm separated on or after August 17, 1986.

TA–W–20,051; General Motors Corp., BOC Fleetwood, Detroit, MI

A certification was issued covering all workers of the firm separated on or after August 17, 1986.

TA–W–20,075; L. Farber Co., Worcester, MA

A certification was issued covering all workers of the firm separated on or after Augsut 21, 1986.

TA–W–20,008; General Electric Co., Lynn, MA

A certification was issued covering all workers of Lynn Turbine Division separated on or after July 28, 1986.

I hereby certify that the aforementioned determinations were issued during the period October 19, 1987–October 23, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Dated: October 27, 1987.

[FR Doc. 87–25464 Filed 11–2–87; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–19,998]

Dismissal of Application for Reconsideration; Phoenix Abrasive & Manufacturing, Jamaica, NY

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Phoenix Abrasive & Manufacturing, Jamaica, New York. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–19,998; Phoenix Abrasive & Manufacturing, Jamaica, New York (October 27, 1987.)

Signed at Washington, DC, this 28th day of October 1987.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 87–25465 Filed 11–2–87; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

[Docket NO. M–87–210–C]

BethEnergy Mines Inc.; Petition of Application of Mandatory Safety Standard

BethEnergy Mines Inc., 7012 MacCorkle Avenue SE., Charleston, West Virginia 25304 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its mine No. 131 (I.D. No. 46–01268) located in Boone County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concern the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air from belt haulage entries to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system. A low-level carbon monoxide (CO) detection system will be installed in all belt entries used as intake aircourses and at each belt drive and tailpiece. The monitoring devices will be capable of giving warning of a fire for four hours should the power fail; a visual altert signal will be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal will sound at 15 ppm above ambient air. All persons will be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal will be activated at an attended surface location where there is two-way communication. The CO system will be capable of identifying any activated sensor and for monitoring electrical continuity to detect any malfunctions.

4. The CO system will be visually examined at least once each coal-producing shift and tested for functional operation weekly to insure the monitoring system is functioning properly. The monitoring system will be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO monitoring system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor will continue to operate and qualified persons will patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. In further support of this request, petitioner states that the resultant use of belt line entries as intake aircourses will be an increase in the overall intake capacity of the mine by minimizing intake pressure losses, and provide more positive ventilation overall in both developing faces and across projected job areas. The accumulation of mine gases will be reduced, the control of dust in face areas will be enhanced and possible neutral zones along belt haulage entries will be eliminated.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 3, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: October 23, 1987.

[FR Doc. 87–25466 Filed 11–2–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–214–C]

Quarto Mining Co., Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1003–(2)(f) (requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; pro-movement requirements; certified and qualified

persons) to its Powhatan No. 4 Mine (I.D. No. 33–01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a minimum vertical clearance of 12 inches be maintained between the farthest projection of the unit of equipment which is being moved and the energized trolley wires or trolley feeder wires at all times during the movement or transportation of such equipment.

2. Petitioner states that the mine is requesting relief only for movement of longwall shields. The longwall shields, when collapsed and loaded onto equipment dollies for moving are lower than the normal rolling stock, i.e., mine cars. Twelve inches of radial clearance is provided from all trolley wires for shields on dollies. All fire resistant fluid that can be removed from the shields without disassembly is removed prior to transporting them.

3. As an alternate method, petitioner states that prior to moving a shield which has been loaded on a dolly past energized trolley wires, the following procedures will apply:

(a) When the shields are fully collapsed and loaded for movement on the equipment dolly, measurements will be taken to verify that they are lower than rolling stock;

(b) The top and wire side of each shield will be covered with fire resistant material;

(c) The shields and dollies will be examined by a certified person to ensure that coal dust, float dust, loose coal, oil, grease, and other combustible materials have been cleared up and not permitted to accumulate on either unit;

(d) The shield will be effectively grounded to the dolly;

(e) A qualified person will examine the trolley wires, trolley feeder wires, and associated automatic circuit interrupting devices for the entire route to ensure proper short circuit protection exists;

(f) A mine car will be transported over the entire route to physically assure all crossings and clearances;

(g) All shields will be securely anchored to the equipment dolly to prevent shifting and/or separation from the dolly.

(h) Any shield which does not meet the requirements of paragraph 3(a) above will be moved in full compliance with the standard; and

(i) All personnel involved with the move will be reinstructed as to the new procedure.

4. Petitioner states that the proposed alternate will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 3, 1987. Copies of the petition are available for inspection at that address.

Dated: October 23, 1987.

Patricia W. Silvey,

Acting Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–25467 Filed 11–2–87; 8:45 am]

BILLING CODE 4510–43–M

[Docket No. M–87–206–C]

Sandy Fork Mining Company, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Sandy Fork Mining Company, Inc., P.O. Box 68, Beverly, Kentucky 40913 has filed a petition to modify the application of 30 CFR 75.1605(k) (berms or guards) to its No. 10 Mine (I.D. No. 15–12397) located in Leslie County, Kentucky, and its No. 8 Mine (I.D. No. 15–15519) located in Bell County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that berms or guards be provided on the outer banks of elevated roadways.

2. Petitioner states that application of the standard would result in a diminution of safety to the miners affected because more than half of the haulage roads are county and state roads which do not have berms or guards and are more hazardous than the petitioner's roads. Berms would prevent the removal of snow and ice from the roadways, causing the road surface to deteriorate.

3. As an alternate method, petitioner states that—

(a) All equipment operators will be trained in the use of haulage equipment and the safety of vehicles on haulage roads;

(b) All haulage vehicles will have original manufacturers brakes, engine or Jacob brakes, and an emergency (parking) braking system;

(c) Roadway surfaces will be kept free of debris, excessive water, snow, and ice, and maintained as free as practicable of small ditches (washboard effects);

(d) Warning signs will be posted designating curves, steep grades, where trucks should shift to a lower gear, and where roadways are reduced to one-lane traffic. Stop signs will be posted where one road intersects another, giving main haulage traffic the right-of-way, and signs will be posted designating passing points;

(e) A traffic system will be put into use for these roads requiring that loaded trucks have the right of way on the highwall side of roads regardless of their direction of travel; and

(f) Adequate supplies of crushed stone or other suitable material will be stored at strategic locations along the haulage roads for use when road surfaces become slippery.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 3, 1987. Copies of the petition are available for inspection at that address.

Dated: October 23, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87–25468 Filed 11–2–87; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted by December 3, 1987.

ADDRESSES: Send comments to Miss Elaina Norden, Office of Management and Budget, New Executive Office Building, 726 Jackson Place NW., Room 3002, Washington, DC 20503; (202–395–7316). In addition, copies of such comments may be sent to Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401).

FOR FURTHER INFORMATION CONTACT: Mr. Murray Welsh, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202–682–5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of the revisions of two currently approved collections. The entries are issued by the Endowment and contain the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Music Presenters and Festivals Application Guidelines FY 1989.
Frequency of Collection: One-time.
Respondents: State or local governments, non-profit institutions.
Use: Guideline instructions and applications elicit relevant information from state or local arts agencies and nonprofit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.
Estimated Number of Respondents: 384.
Estimated Hours for Respondents to Provide Information: 15,552

Title: Design Arts Application Guidelines FY 1989.
Frequency of Collection: One-time.
Respondents: Individuals, state or local governments, non-profit institutions.
Use: Guideline instructions and applications elicit relevant information from individual artists, state or local arts agencies, and non-profit organizations that apply for funding under specific Program categories. This information is necessary for the accurate, fair and thorough consideration of competing proposals in the peer review process.
Estimated Number of Respondents: 831.
Estimated Hours of Respondents to Provide Information: 28,472.

Murray R. Welsh,
Director, Administrative Services Division, National Endowment for the Arts.

[FR Doc. 87–25429 Filed 11–2–87; 8:45 am]
BILLING CODE 7537–01–M

Museum Advisory Panel; 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 Museum Advisory Panel (Care of Collection Section) to the National Council on the Arts will be held on November 18–20, 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.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. 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 subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

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.
October 27, 1987.

[FR Doc. 87–25353 Filed 11–2–87; 8:45 am]
BILLING CODE 7537–01–M

Inter-Arts Advisory Panel; 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 (Challenge III Section) to the National Council on the Arts will be held on November 20, 1987, from 9:00 a.m.–5:30 p.m. in room M–14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. 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 subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

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.
October 27, 1987.

[FR Doc. 87–25354 Filed 11–2–87; 8:45 am]
BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Decay Heat Removal Systems; Meeting

The ACRS Subcommittee on Decay Heat Removal Systems will hold a meeting on November 17, 1987, Room 1046, 1717 H Street NW., Washington, DC.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Tuesday, November 17, 1987—1:00 p.m. Until the Conclusion of Business.*

The Subcommittee will discuss: (1) The decision by Toledo Edison not to install a dedicated blowdown system at Davis Besse; (2) implications of secondary side water level control in B&W OTSGs vis-a-vis operator actions in accident situations; and (3) implications of the Diablo Canyon loss of shutdown cooling event vis-a-vis lack of steam generator water box vents.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the

ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: October 29, 1987.

Gary R. Quittschreiber,

Chief, Project Review Branch #2.

[FR Doc. 87-25436 Filed 11-2-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Thermal Hydraulic Phenomena; Meeting

The ACRS Subcommittee on Thermal Hydraulic Phenomena will hold a meeting on November 18 and 19, 1987, Room 1046, 1717 H Street, NW., Washington, DC.

Most of the meeting will be open to public attendance. A portion of the meeting may be closed to permit discussion of material that would not otherwise be available to the Subcommittee regarding the FY 1989 budget and future spending projections.

The agenda for the subject meeting shall be as follows:

Wednesday, November 18, 1987—8:30 a.m. Until the Conclusion of Business.

Thursday, November 19, 1987—8:30 a.m. Until the Conclusion of Business.

The Subcommittee will review key elements of NRC RES's 5-Year Thermal Hydraulic Research Program for input to an ACRS report on thermal hydraulic research. The Subcommittee will also discuss the status of NRC's action on the issue of a potentially unanalyzed LB LOCA scenario.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehnert (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: October 29, 1987.

Gary R. Quittschreiber,

Chief, Project Review Branch #2.

[FR Doc. 87-25437 Filed 11-2-87; 8:45 am]

BILLING CODE 7590-01-M

Proposed Availability of Fiscal Year 1988 Funds for Financial Assistance To Enhance Technology Transfer and Dissemination of Nuclear Energy Process and Safety Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice.

SUMMARY: The Nuclear Regulatory Commission (NRC), Office of Nuclear Regulatory Research announces proposed availability of FY 1988 funds for grants to support professional meetings, symposia, conferences, national and international commissions and publications for the expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research necessary to provide a technology base to assess that safety of nuclear power (hereinafter called project). NRC has increased its emphasis on providing grants to a broader range of research projects. Funding of grants to universities will be limited to a total of approximately $1,000,000.00.

Projects will be funded through grants.

EFFECTIVE DATE: November 1, 1987 through September 30, 1988. Grant applications submitted earlier in the fiscal year have a greater likelihood of receiving FY 88 funding because of the ceiling on the total amount of grants to educational institutions.

ADDRESS: Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contract, Office of Administration and Resources Management, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: The cognizant NRC grant official is Mr. Ronald Thompson, telephone (301) 492-4322.

SUPPLEMENTARY INFORMATION: .

Background

On November 6, 1986, the Nuclear Regulatory Commission (NRC) published in the **Federal Register** (51 FR 40362) a notice that announced the proposed availability of FY 87 funds for financial assistance to enhance techology transfer and dissemination of the nuclear energy process and safety information. The NRC is revising that notice to emphasize its desire to receive grant proposals from education institutions in a variety of program areas during FY 88.

A. Scope and Purpose of this Announcement

Pursuant to sections 31.a. and 141.b. of the Atomic Energy Act of 1954, as amended, the NRC's Office of Nuclear Regulatory Research proposes to support educational institutions, nonprofit institutions, state and local governments, and professional societies through providing funds for expansion, exchange and transfer of knowledge, ideas and concepts directed toward the research program. The program includes, but is not limited to, support of professional meetings, symposia, conferences, national and international commissions, and publications. The primary purpose of this will be to stimulate research to provide a technological base for the safety assessment of systems and subsystems technologies used in nuclear power applications. The results of this program

will be to increase public understanding relating to nuclear safety, to pool the funds of theoretical and practical knowledge and technical information, and ultimately to enhance the protection of the public health and safety.

NRC specifically encourages educational institutions to submit proposals in the following areas:

• Development of advanced computational methods for solving dynamic problems in nuclear reactor coolant systems under accident conditions;

• Severe accident evaluation including, high temperature chemistry of severe accident reactor radionuclides; advanced thermal hydraulic modeling of fluids including combustible gases and molten core materials in reactor primary systems during severe accidents;

• Advanced demographic models or statistical methods to predict population density and distribution around future power reactor sites;

• High temperature material interactions during severe accidents (e.g., core-concrete, core debris/vessel components);

• Steam explosions in reactors during severe accidents;

• Human factors evaluation including, criteria and guidelines to determine the risk reduction from application of human factors requirements on Nuclear Power Plant operations and maintenance;

• Methods for the nuclear industy to use the growing pool of human performance data;

• Development of methodology for Risk and Reliability Analysis of closed loop control systems including advanced digital based control systems;

• Nuclear Power Plant Aging and Residual Lifetime Evaluation, including:

—methods to analyze and understand aging effects, improved examination and testing methods for determining condition of structures, and components, and methods to assess residual lifetime of structures and components;

• Mechanical and Structural Engineering including:

—methods for assuring component structural reliability, realistic methods to define the probabilities of radioactive release due to earthquakes;

• Materials Engineering including:

—methods for assuring integrity of the primary system, i.e., pressure vessels, piping, steam generator tubing;

• Chemical Engineering including:

—methods to establish and validate decommissioning criteria, and effects of water chemistry on the primary system integrity;

• Waste Management including:

—methods for evaluating salt, basalt, and tuff sites for high-level waste disposal;

• Radiation Protection:

—design concepts to increase the safety of industrial radiography devices;

—improved instrumentation or techniques for measuring radiation dose and dose rates, especially from small radioactive particles;

—methods for contamination prevention, measurement and control;

—improved radiological air sampling methology;

• Radiation Health Effects:

—investigation of the types, sensitivity and linearity of various biological effects of radiation that could be used as biological dosimeters;

—metabolism of radionuclides and their compounds relative to calculation of internal dose;

—investigation of placental transfer of, and fetal doses from radionuclides incorporated by the pregnant worker;

—investigation of the efficacy of radio protective agents;

• Develop Methodology for implementation of a nonprescriptive regulatory process at NRC, considering such factors as:

—What would be the most effective framework?

—Pros/cons and practice aspects of its implementation.

—What would have to be changed in NRC's current process and legislation to implement such a change?

• Develop a method for prioritizing NRC research programs, considering such factors as:

—Potential risk reduction resulting from the research.

—Cost of the research.

—Uncertainty reduction resulting from the research.

B. Eligible Applicants

Educational institutions, nonprofit entities, State and local governments and professional societies are eligible to apply for a grant under this announcement.

C. Factors Generally Indicating Support Through Grants

The NRC's benefit from the results of grants should be no greater than for other interested parties, i.e., the public must be the primary beneficiary of the work performed. For example, surveys, studies, or research which provide specific information or data necessary for the NRC to exercise its regulatory or research mission responsibilities should be obtained by procurement contracts.

a. The primary purpose is to aid or support the development of knowledge or understanding of the subject of phenomena under study.

b. The exact course of the work and its outcome are not defined precisely and specific points in time for achievement of significant results may not be specified.

c. NRC desires that the nature of the proposed investigation be such that the recipient will bear prime responsibility for the conduct of the research and exercise judgment and original thought toward attaining the scientific goals within broad parameters of the proposed research areas and the resources provided.

d. Meaningful technical reports (as distinguished from Semi-Annual Status Reports) can be prepared only as new findings are made, rather than on a predetermined time schedule.

e. Simplicity and economy in execution and administration are mutually desirable.

D. Research Proposals

A research proposal should describe: (i) The objectives and scientific significance of the proposed research project or conference; (ii) the methodology to be proposed or discussed, and its suitability; (iii) the qualifications of the participants and the proposing organization; and (iv) the level of financial support required to perform the proposed effort.

Proposals should be as brief and concise as is consistent with communication to the reviewers. Neither unduly elaborate applications nor voluminous supporting documentation is desired.

State and local governments shall submit proposals utilizing the standard forms specified in Office of Management and Budget (OMB) Circular A–102, Attachment M. Nonprofit organizations, universities, and professional societies shall submit proposals utilizing the standard forms stipulated on OMB Circular A–110, Attachment M.

The format used for project proposals should give a clear presentation of the proposed project and its relation to the specific objectives contained in this notice. Each proposal should follow the format outlined below unless the NRC specifically authorizes exception.

1. *Cover Page.* The Cover Page should be typed according to the following format (submit separate cover pages if the proposal is multi-institutional):

Title of Proposal—To describe the research or conference;
Name of Principal Investigators for research or participants for conferences;
Total Cost of Proposal;
Period of Proposal;
Organization or Institution and Department;
Required Signatures:
Principal Participants:

Name:_____
Date:_____
Address:_____
Telephone No.:_____

Required Organization Approval:

Name:_____
Date:_____
Address:_____
Telephone No.:_____

Organization Financial Officer:

Name:_____
Date:_____
Address:_____
Telephone No.:_____

2. *Project Description.* Each proposal shall provide, in ten pages or less, a complete and accurate description of the proposed project. This section should provide the basic information to be used in evaluating the proposal to determine its priority for funding.

Applicants must identify other proposed sources of financial support for a particular project.

The information provided in this section must be brief and specific. Detailed background information may be included as supporting documentation to the proposal.

The following format shall be used for the project description:

(a) Project Goals and Objectives

The project's objectives must be clearly and unambiguously stated.

The proposal should justify the project including the problems it intends to clarify and the development it may stimulate.

(b) Project Outline:

The proposal should show the research plan or conference agenda, including a list of principal areas or topics to be addressed.

(c) Project Benefits:

The proposal should indicate the direct and indirect benefits that the project seeks to achieve and to whom these benefits will accrue.

(d) Project Management:

The proposal should describe the physical facilities required for the conduct of the project. Further, the proposal should include brief biographical sketches of individuals responsible for planning the project.

(e) Project Costs:

Nonprofit organizations shall adhere to the cost principles set forth in OMB Circular A–122; Educational Institutions shall adhere to the cost principles set forth in OMB Circular A–21; and state and local governments shall adhere to the cost principles set forth in OMB Circular A–87.

The proposal must provide a detailed schedule of project costs, identifying in particular:

(1) Salaries—in proportion to the time or effort directly related to the project;

(2) Equipment (rental only);

(3) Travel and Per Diem/Subsistence in relation to the project;

(4) Publication Costs;

(5) Other Direct Costs (specify)—e.g., supplies or registration fees;

Note—Dues to organizations, federations or societies, exclusive of registration fees, are not allowed as a charge.

(6) Indirect Costs (attach negotiated agreement/cost allocation plan); and

(7) Supporting Documentation. The supporting documentation should contain any additional information that will strengthen the proposal.

E. Proposal Submission and Deadline

This notice is valid for Federal Government Fiscal Year 1988 (October 1, 1987 to September 30, 1988). Potential grantees are advised, however, that due to the limited funding available for NRC grants, proposals received after May 1, 1988 may not be considered for funding in Fiscal Year 1988.

F. Funds

For Fiscal Year 1988, the U.S. Nuclear Regulatory Commission, Office of Nuclear Regulatory Research anticipates making a total of approximately $1,000,000.00 available for funding the project(s) mentioned herein.

The NRC anticipates that approximately 15 to 25 projects will be funded.

G. Evaluation Process

All proposals received as a result of this announcement will be evaluated by an NRC review panel.

H. Evaluation Criteria

The award of NRC grants is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

—Evaluation of proposals for professional meetings, conferences, symposia, etc. will employ the following criteria:

1. Potential usefulness of the proposed project for the advancement of scientific knowledge;

2. Clarity of statement of objectives, methods, and anticipated results;

3. Range of issues covered by the meeting agenda;

4. Qualifications and experience of project speakers; and

5. Reasonableness of estimated cost in relation to anticipated results.

—Evaluation of proposals for research will employ the following criteria:

1. Technical adequacy of the investigators and their institutional base;

2. Adequacy of the research design;

3. Scientific significance of proposal;

4. Utility or relevance; and

5. Reasonableness of estimated cost in relation to the work to be performed and anticipated results.

I. Disposition of Proposals

Notification of award will be made by the Grants Officer and organizations whose proposals are unsuccessful will be so advised.

J. Proposal Instructions and Forms

Questions concerning the preceding information, copies of application forms, and applicable regulations shall be obtained from or submitted to:

U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, AR–2223, Office of Administration and Resources Management, Washington, DC 20555.

The address for hand-carried applications is: U.S. Nuclear Regulatory Commission, ATTN: Grants Officer, Division of Contracts, Office of Administration and Resources Management, Room 2223, 4550 Montgomery Avenue, Bethesda, MD 20814.

Nothing in this solicitation should be construed as committing the NRC to dividing available funds among all qualified applicants.

Dated at Washington, DC, this 27th day of October 1987.

For the U.S. Nuclear Regulatory Commission.

Ronald D. Thompson,

Chief, Contract Negotiations Branch No. 2, Division of Contracts, Office of Administration and Resources Management.

[FR Doc. 87–25441 Filed 11–2–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–352–OLA (TS Iodine); ASLBP No. 87–550–03–OLA]

Philadelphia Electric Co., Limerick Generating Station, Unit 1; Reconstitution of Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for Philadelphia Electric Company (Limerick Generating Station, Unit 1), Docket No. 50–352–OLA, is

hereby reconstituted by appointing Administrative Judge George A. Ferguson in place of Administrative Judge Peter A. Morris, who retired.

As reconstituted, the Board is comprised of the following Administrative Judges:

Sheldon J. Wolfe, Chairman

Dr. Richard F. Cole

Dr. George A. Ferguson

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge George A. Ferguson, 1939 Shepherd Street NW., Washington, DC 20011.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

Issued at Bethesda, Maryland, this 28th day of October 1987.

[FR Doc. 87-25438 Filed 11-2-87; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25056; File No. SR-Amex-87-26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by the American Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on October 13, 1987, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("Amex" or "Exchange") proposes to expand its automatic execution system ("AUTO-EX") to all equity options and to continue on a permanent basis the use of AUTO-EX in competitively traded options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basic for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

AUTO-EX is an automated execution system that enables member firms to route public customer market and marketable limit orders in options for automatic execution at the best bid or offer at the time the order is entered. If the best bid or offer is on the specialist's book, the incoming order is routed to the specialist's post where it is executed against the book order, thus assuring public customers' orders on the book retain priority over orders in the crowd. If the best bid or offer is not on the specialist's book, the contra side of the AUTO-EX trade is assigned on a rotation basis to either one of the Amex Registered Option Trades who have signed on the system or to the specialist.

The Commission recently approved the Exchange's proposal to increase the number of contracts that can be executed through AUTO-EX from 10 to 20 (see SR-AMEX-87-21; Release No. 34-24899).

Since its initial implementation in December 1985, AUTO-EX has been extended (i) to full-time use in selected series of Major Market Index (XMI) options, (ii) to use during periods of extremely high order flow in stock options and (iii) to use in selected competitively traded stock options.[1] Overall, member firms have been supportive of these various applications of AUTO-EX and the Member Firm Floor Advisory Committee, representing the major wire houses, has urged the Exchange to make AUTO-EX more generally available for stock options.

The Exchange initially plans to extend AUTO-EX to a select group of equity options in order to determine how to best implement AUTO-EX on a floor-wide basis. The Exchange, however, seeks the right to expend the use of AUTO-EX to any additional equity options it designates.

In July 1987, the Exchange received approval, on a 90-day pilot basis, to use the AUTO-EX system, on a case-by-case basis, to accommodate competitive trading situations. Application of the Exchange's AUTO-EX system to such competitive situations has permitted the Exchange to provide member firms and their customers with efficient execution of dually traded stock options. A competitive trading situation is one where another options exchange can trade the same option as is traded on the AMEX.

The Exchange believes the eventual expansion of the AUTO-EX system to all options and the continuation of the use of AUTO-EX system in competitive trading situations is necessary for it to remain competitive with other marketplaces and to attract sufficient order flow to enable the maintenance of viable markets.

Therefore, the proposed rule change is consistent with section 6(b)(5) of the 1934 Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee of the AMEX Board of Governors comprised of members and representatives of member firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

With respect to the continuation of the use of the AUTO-EX system in competitive trading situations, the Commission has determined that it is appropriate to grant partial accelerated approval, extending such for an

[1] See SEC Release No. 34-23544; dated August 27, 1986; approving SR-AMEX-86-16 to use AUTO-EX on a permanent basis in XMI options; SEC Release 34-24228, dated March 18, 1987, approving SR-AMEX-87-4 to use AUTO-EX during emergency situations and SEC Release No. 34-24714, dated July 17, 1987, approving SR-AMEX-87-19 to use AUTO-EX in competitively traded options on a 90-day pilot basis.

additional 120 days. The Commission had previously approved, on a 90-day pilot basis, the use of the AUTO-EX system to accommodate competitive trading situations.

As noted in the Commission's previous 90 day approval of the use of the Auto-Ex for competitively traded options, the Commission believes that the operation of Auto-Ex in these options will not negatively affect public customer limit orders since these orders will not be bypassed by the operation of Auto-Ex. The Commission notes that these options will receive the customary limit order protection afforded public customer orders placed on the book.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in that the Exchange previously has demonstrated the operational efficiencies of Auto-Ex for an extended period. Approval of this portion of the proposed rule change will enable Amex to continue the use of Auto-Ex for competitively traded options while the Commission considers approval of the use of Auto-Ex for all equity options.

The date of effectiveness and timing for Commission action, with respect to the expansion of the AUTO-EX system to all equity options, shall be within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 Commisson 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-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 24, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 23, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-25902 Filed 11-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25063; File No. SR-CBOE 87-46]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on October 5, 1987, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

Trading Halt Policy Options on Individual Equity Securities Chicago Board Options Exchange, Inc.

Trading halts are, by definition, unusual market conditions. Accordingly, all of the precise circumstances of a trading halt cannot be anticipated. Judgment of all the circumstances at the time a trading halt is under consideration is critical. Except as provided below, to assure consistent application of the Exchange's trading halt policy, the concurrence of two floor officials and a senior Exchange staff official is required. Bearing in mind the need to exercise discretion in response to particular circumstances as they occur, the following are guidelines for trading halts at the Exchange under varying circumstances:

1. *No last sale and/or quotation dissemination either by the Exchange or by OPRA.* At the outset, a time-critical review by two floor officials and a senior Exchange staff official will be made of the circumstances causing the failure of dissemination. If it is believed by this group that the dissemination will resume in less than 15 minutes, trading will continue and a message will be given to the news wire services announcing the dissemination difficulty. If it is believed by this group that the dissemination problem will extend beyond 15 minutes, ordinarily a halt will be imposed on all trading in affected securities; trading will resume 15 minutes after notification to the news wire services.

2. *Primary market halts trading in one or more stocks for regulatory reasons.* Trading in the individual stock option overlying a stock which has been halted for regulatory reasons will halt immediately upon the notification thereof by the primary market. Trading will resume upon notification that the underlying security trading has resumed in the primary market. These decisions may be made by two concurring floor officials.

3. *Primary market non-regulatory trading halt in one or more individual equity securities.* Upon notification by the primary market of a non-regulatory trading halt of an individual equity security in the primary market, trading in the individual stock option overlying the security so halted will be halted as well. In the event that trading activity elsewhere is sufficient, as measured by transaction and share volume, to support trading in the overlying option, trading will be resumed prior to resumption of trading of the underlying security in the primary market 15 minutes after notification to the wire services. Trading will also be resumed immediately upon resumption of trading in the underlying security on the primary market. These decisions may be made with the concurrence of two floor officials.

4. *The primary market halts trading floor-wide.* If the primary market halts trading floor-wide, the Exchange will halt trading in all individual equity options and will assess the viability of markets in the underlying securities elsewhere, as measured by transactions and by share volume. In the event that it is determined by two floor officials, with the concurrence of a senior staff official, that sufficient markets will support trading other than at the primary exchange, the Exchange will resume trading upon one hour notification to the news wire services.

5. *Primary market is open but is unable to disseminate last sale or quotation information.* The Exchange's options trading will remain open for trading unless, in the opinion of two floor officials, the absence of disseminated information will imped

the ability of market-makers to maintain fair and orderly markets in the options. The concurrence of a senior Exchange staff official is required if more than one option class is affected.

6. *Over-the-counter quote dissemination halt.* Trading in options of overlying over-the-counter securities affected by such a quote dissemination halt will be halted upon first notification of the dissemination halt. Resumption of trading will commence if, in the opinion of two floor officials there is sufficient trading activity, as measured by transactions and share volume, and information available to resume trading. Trading will resume 15 minutes after notification to the news wire services. The concurrence of a senior Exchange staff official is required if more than one option class is affected.

7. *Expiration Friday trading in individual equity options.* In the event that any of the foregoing should occur on expiration Friday, it is the preference of the Exchange to allow trading to continue on that date. This will be a primary consideration in the assessments to be made by the floor officials and the senior Exchange staff official.

8. *Dissemination of news after the close of trading in the primary market.* In the event of disseminated news which causes the Exchange to believe that trading in options should be halted to allow market participants an opportunity to consider the effect of the news on pricing of trades, the Exchange will halt trading. Two floor officials and a senior Exchange official will then decide whether and, if so, when to recommence trading. This may occur after the primary market of the underlying security has closed for the day, in which event, the decision may be not to resume trading until the next trading day or to have a closing rotation after appropriate notification to the public.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change.

The purpose of the proposed rule change is to provide members with a circular on the Exchange's existing trading halt policy for options on individual equity securities. The authority for trading halts is derived from Exchange Rule 6.3.

The Commission staff urged the exchanges to develop a uniform trading halt policy. This policy reflects an effort by this Exchange to develop such a uniform policy. To that end, the Exchange solicited the views of representatives of member firms and the American, New York, Pacific and Philadelphia Stock Exchanges, and met with the Exchange's Floor Procedure Committee and the American Stock Exchange's Options Committee.

The policy generally reflects the view that so long as viable trading in the underlying security exists, options market participants should not be disabled from trading options. The policy also builds in the step of taking responsible steps to notify market participants of dissemination or other technical difficulties.

The policy notes that the Exchange has an overriding preference to allow market participants to trade options on the last trading day prior to expiration, since this is the last opportunity to trade out of a position prior to expiration.

The policy provides for imposing a trading halt upon the dissemination of news after the close of trading in the primary market.

Finally, it should be noted that any trading halt policy, including this one, must be responsive to particular circumstances which may arise in any possible trading halt situation. Thus, the policy can only provide guidance and must allow for the exercise of judgment and discretion in each instance.

The Exchange believes that the proposed rule in consistent with the provisions of the Securities Exchange Act of 1934, the rules and regulations promulgated thereunder, and in particular section 6(b)(5) in that the rule increases market efficiency and enhances rule compliance.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The policy was the subject of comments by the Floor Procedure Committee, and representatives of member firms and other exchanges. The Exchange believes that the policy reflects a reasonable consensus of the views expressed by these commentators.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by November 24, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 26, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-75903 Filed 11-2-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-8963]

Issuer Delisting; Notice of Application to Withdraw from Listing and Registration; The Home Insurance Company

October 28, 1987.

The Home Insurance Company ("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 the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex"). The Company's $2.95 Cumulative Preferred Stock, Series A, Par Value $1.00, is also listed and actively traded on the New York Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration inlcude the following: In making the decision to withdraw its Preferred Stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Preferred Stock on the NYSE and the Amex. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its Preferred Stock.

Any interested person may, on or before November 19, 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, it 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. 87-25405 Filed 11-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25065; File No. SR-NASD-87-40]

Self-Regulatory Organizations; Proposed Rule Change by the National Association of Securities Dealers, Inc.,

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 October 7, 1987, the National Association of Securities Dealers, Inc. 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 rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule change

The National Association of Securities Dealers, Inc. ("NASD") hereby files, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b-4 thereunder, for Commission authorization to initiate a joint Pilot Program with the Stock Exchange of Singapore ("SES"). The Pilot Program is scheduled to be fully operational on December 1, 1987 [1] and continue for a two-year term. The first phase of the pilot program encompasses the collection and dissemination of final trading information on 35 NASDAQ stocks after the close of trading in each market center. Because of the thirteen hour time difference (twelve hours during Eastern Daylight Time), there is no overlap in the trading hours of the SES and NASD markets. For this reason, the end-of-day information to be exchanged under the Pilot Program will mainly assist in establishing opening prices the following day. The Pilot Program's operation will not include automated order routing and execution capabilities.[2] The terms of substance of the proposed Pilot Program are set forth below.

Scope of the Pilot Program

This proposed relates to the SES's initiative to develop a new Foreign Equities Market patterned after the competing dealer model of the NASDAQ system. This new market will share the architecture and facilities of the SESDAQ system.[3] The Pilot Program contemplates that 35 NASDAQ securities will be eligible for quotation in the SES Foreign Equities Market by certain Singapore dealers. Only these securities will be subject to the two-way transmission of closing market information specified under the Pilot Program. Hence, the intent is to develop a Singapore dealer market in these securities while the NASDAQ market is closed. The activity in the SES Foreign Equities Market for these 35 issues will be reflected in the closing market data transmitted to the NASD, which data will be accessible to all NASDAQ Level ⅔ subscribers. Because of the thirteen hour time difference between Singapore and Eastern Standard Time in the U.S., the receipt of closing SES (NASDAQ) data on the 35 Pilot securities will mainly benefit NASDAQ (SES) market makers who would be preparing to establish their opening markets in those securities. Hence, the Pilot linkage consists of two daily transmissions of static information, one by each market, after the close of the respective SES and NASDAQ market in the subject securities. These transmissions will be effected via international electronic mail with an equal split of the costs between the NASD and SES.

Although the proposed linkage has been designated a Pilot Program, it is anticipated that both the extent and use of the shared information and access to the facilities operated by the other party may be explanded upon further written agreement of the NASD and SES.[4] One fact of this undertaking will be to explore the potential for trading linkages and the concurrent development of suitable inter-market regulatory programs. Of course, the latter would occur under the auspices of the Monetary Authority of Singapore (MAS) and the Commission. In the interim, the NASD and SES have entered into an agreement to share regulatory information as needed. This is believed

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[1] On or about November 16, 1987, the NASD will begin to test its capacity to transmit Pilot Program information to the SES. It is anticipated that the corresponding SES information will not be available until December 1, 1987, the effective date of regulations establishing certain reporting requirements for Singapore dealers. Hence, the latter date was chosen to initiate the instant Pilot Program.

[2] It is likely that such capabilities will be developed at a later phase of the Pilot Program. Any changes in the Pilot Program would have to be filed as proposed rule changes under section 19(b) of the Act.

[3] SES facilities also support the "Main Board," a floor-based stock exchange providing a market for about 317 listed companies. Currently, 24 full members are active in the "Main Board" of the SES. The SESDAQ system was designed to provide a separate dealer market for newly privatized or less seasoned companies that were not yet eligible for listing on the Main Board. It should be noted, however, that the SES Foreign Equities Market is distinct from the SESDAQ Market, though accessible through SESDAQ terminals.

[4] Any future modifications of the Pilot Program must be submitted to the Commission for its review pursuant to section 19(b) of the Act.

appropriate given the nature and very limited scope of the proposed Pilot Program.

Description of Information

At the commencement of the Pilot Program, the interchange of information will be limited exclusively to the 35 NASDAQ securities chosen for the Pilot. As to each of these securities, the following data elements will be communicated after the close of the NASDAQ and SES markets, respectively:

(i) The closing quotes of each market maker;

(ii) The closing inside market;

(iii) The last reported sale (for NASDAQ/NMS issues); and

(iv) Cumulative volume for that day.

During the Pilot Program, all last sale reports and quotations will be expressed in U.S. dollars. The information received from the SES will be accessible to all NASDAQ Level ⅔ subscribers. NASD information transmitted via the linkage will be accessible to full and associate members of the SES; this universe currently numbers about 36 firms. Of this number, 12 are SES market makers. When the Pilot Program begins, it is projected that there will be about five Singapore dealers making markets in each of the designated NASDAQ issues.

Provision of the Information

The new Foreign Equities Market in Singapore will be supported by computer facilities of the SES and operate under a separate set of rules promulgated by a subcommittee of the SES Board. Market information in Pilot securities will be communicated through the linkage in the following manner. Because of the 13 hour difference between NASDAQ System time and Singapore time, the information interchange will consist of two one-way transmissions in each direction daily. At the end of the NASDAQ day, 6:00 p.m. local time in the U.S., a transmission of the NASD's information would originate in the NASDAQ system for receipt in Singapore at 7:00 a.m. local time the next day. This information would be available to Singapore dealers for establishing their opening market in the designated securities. Similarly, at the end of the trading day in Singapore, SES information in the designated securities would be collected and disseminated to the NASD at 5:00 p.m. Singapore time for receipt in the U.S. at 4:00 a.m. local time. Although the SES information would be accessible to all NASDAQ Level ⅔ subscribers, its principal value would lie with NASDAQ market makers in setting their opening prices in NASDAQ issues designated for inclusion in this linkage. A commercial electronic mail service will be used to convey the NASD/SES information described in the preceding section.

Usage and Fees

The SES will receive and disseminate NASD information through SESDAQ terminals, approximately 45 of which are in operation in Singapore, that now are utilized by 24 Main Board firms and 12 SESDAQ dealer firms. In addition, there are approximately 1,000 existing Main Board member terminals that will become eligible to receive this information or a subset thereof, during the course of the Pilot. The SES is now in the process of planning the replacement of its current Main Board terminal network with SESDAQ compatible equipment that will permit the display of NASD information. Pending that conversion, the SES has indicated its intention to provide the existing Main Board member terminal population with the capability to display a portion of the NASD information, *i.e.*, the inside quotations and last sale of the day for the Pilot securities, if system capacity limitations allow. NASD information shall be provided to the SES for display over its network under the same terms and conditions utilized by the SES to protect and preserve the integrity of its own information.

The NASD will receive and disseminate SES information through all terminals receiving either NASDAQ Level ⅔ Service or the new replacement NASDAQ Workstation Service. SES information shall be provided to the NASD for display over these terminals under the same terms and conditions utilized by the NASD to protect and preserve the integrity of its own information.

The cost of transfer of information, accomplished through two separate transmissions of information at the close of the NASD or SES trading day by means of international electornic mail, as applicable, shall be shared equally by the parties. The NASD's total telecommunication cost of transfer is currently estimated to be less than $5,000 per year. The cost of processing the information supplied to the SES by the NASD is believed to be *de minimis*, and is subsumed within that portion of processing currently performed to provide news wire services with end of day quotations, last sale information and cumulative volume in NASDAQ securities, which is currently being provided without charge to news organizations. To the extent that individual market makers' closing quoations will also be provided on approximately 35 securities, this information represents an extremely small portion of the processing utilized to provide continuously update market maker quotations throughout the trading day in a total of over 5,600 NASDAQ securities, in connection with the NASDAQ Level ⅔ and NQDS Services. Moreover, it does not appear that allocation of a specific cost to the closing market makers quotations in these thirty-five securities is practicably or economically feasible. In view of the extremely limited number of securities and the derivation of these few quotations from existing information, the cost involved in the processing of this information is believed to be *de minimis*. Accordingly, on the basis of the apparent minimal cost of providing the SES with this information and in view of the like kind SES information that will be provided to the NASD, the NASD believes that there is no compelling need to require a separate fee arrangement between the parties or between a party and the subscribers of the other party. However, nothing shall preclude future modification to this fee arrangement, upon written agreement of the parties, in the event additional information, services or costs arising under the Pilot Program would make such modification appropriate.[5]

Cooperative Regulatory Undertaking

The Pilot Program to be implemented provides for the exchange of certain information that is believed to represent a definitive first step toward greater cooperation between the SES and NASD in the evolving international securities markets and in particular between a U.S. and Far East market. The SES and NASD fully expect this Pilot Program to result in significant cooperation and coordination in the areas of information disclosure, quotation and trading halts or suspensions and resumptions, and the surveillance and investigation of trading in securities of mutual market concern.

With the initiation of the Pilot Program, each party contemplates the prioritization of, coordination with, and communication of relevant information to, the other with respect to quotation and trading halts and/or suspensions and the resumption of trading in each market. Similarly, it is contemplated that the parties will cooperate in sharing regulatory information as needed by either the SES or NASD for purposes of their surveillance and investigative responsibilities with respect to the

[5] Changes in the terms of operation of the Pilot Program would be subject to the Commission's review pursuant to section 19(b) of the Act.

securities included within the Pilot Program.

In furtherance of these cooperative regulatory efforts, the NASD and the SES contemplate the exploration of joint regulatory initiatives which may include the development of uniform standards applicable to international transactions in NASD or SES securities and appropriate procedures to assure compliance with such standards by the respective members of the NASD and SES. An indication of the willingness of the SES to pursue effective and enhanced regulation is the consideration which they are now giving to implementation of trade reporting requirements in the Pilot Program securities directly comparable to those in effect in this country.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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 purpose of the Pilot Program is twofold. The Pilot Program will provide market participants in both the United States and Singapore with access to static information on selected securities traded in discrete dealer markets in both countries. The Pilot Program will also serve as a foundation for evaluation of the technical ramifications and regulatory implications of international securities transactions, information dissemination and clearance and settlement in the evolving international marketplace.

The statutory basis for undertaking the Pilot Program is found in section 11A(a)(1)(B) and (C), 15A(b)(6), and 17(A)(1)(B) and (C) of the Act. Subsections (B) and (C) of section 11A(a)(1) set forth the Congressional goals of achieving more efficient and effective market operations, the availability of information with respect to quotations for securities and the execution of investor orders in the best market through new data processing and communications techniques. Section 15A(b)(6) requires that the rules of the Association be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market * * *" Finally, section 17A(a)(1) sets forth the Congressional goal of linking all clearance and settlement facilities and reducing costs involved in the clearance and settlement process through new data processing and communications techniques. The NASD believes that the Pilot Program will further these ends by providing the cooperative regulatory environment and operating experience needed for potential achievement of these goals in the evolving international marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed Pilot Program will provide for the sharing of static market data on a limited group of NASDAQ securities, between the NASD and the SES on a nonexclusive basis. The NASD believes that neither the structure nor operation of the Pilot Program will impose any burden on competition. If successful, the proposed linkage may significantly improve the competitive dynamics of the international markets for these securities. To the extent that any burden on competition may be perceived, it is believed that the benefits to be derived from the cooperative regulatory undertakings contemplated and operational experience to be gained will outweigh any theoretical burden upon competition and materially advance the purposes articulated under the foregoing sections of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-87-40 and should be submitted by November 24, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: October 28, 1987.

[FR Doc. 87-25404 Filed 11-2-87; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2293]

Declaration of Disaster Loan Area; New York

Allegany County and the adjacent County of Steuben in the State of New York constitute a disaster loan area because of damage from severe weather resulting in flooding which occurred on September 12, 1987. Applications for loans for physical damage may be filed until the close of business on December 22, 1987, and for economic injury until the close of business on July 25, 1988, at the address listed below: Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fair Lawn, New Jersey 07410, or other locally announced locations.

The interest rates are:

	Percent
Homeowners With Credit Available Elsewhere	8.000

	Percent
Homeowners Without Credit Available Elsewhere	4.000
Businesses With Credit Available Elsewhere	8.000
Businesses Without Credit Available Elsewhere	4.000
Businesses (EIDL) Without Credit Available Elsewhere	4.000
Other (Non-Profit Organizations Including Charitable And Religious Organizations)	9.000

The number assigned to this disaster is 229306 for physical damage and for economic injury the number is 656700.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Date: October 23, 1987.

Donald A. Clarey,

Acting Administrator.

[FR Doc. 87-25408 Filed 11-2-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program; Salt Lake City International Airport, Salt Lake City, UT

AGENCY: Federal Aviation Administration.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its finding on the noise compatibility program submitted by the Salt Lake City Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96-52 (1980). On June 18, 1987, the FAA determined that the noise exposure maps submitted by the Airport authority under Part 150 were in compliance with applicable requirements. On September 13, 1987, the Administrator approved the Salt Lake City International Airport noise compatibility program. Most of the program elements were approved.

EFFECTIVE DATE: The effective date of the FAA's approval of the Salt Lake City International Airport noise compatibility program is September 13, 1987.

FOR FURTHER INFORMATION CONTACT: Dennis G. Ossenkop, Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM-611, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. Documents reflecting this FAA action may be obtained from the same individual.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Salt Lake City International Airport, effective September 13, 1987.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatable land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such a program to be developed in consultation with interested and affected parties including the state, local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulation (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are resonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commence, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability or unacceptability of that land use under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA.

Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Denver, Colorado.

The Airport Authority submitted to the FAA the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted at Salt Lake City International Airport. The Salt Lake City International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on June 18, 1987. Notice of this determination was published in the **Federal Register** on June 29, 1987.

The Salt Lake City International Airport noise compatibility program contains a proposed noise compatibility program comprised actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on June 18, 1987, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 20 proposed actions for noise mitigation on and off the airport and for review and monitoring of the program. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall

program, therefore, was approved by the Administrator effective September 13, 1987.

Outright approval was granted for 13 specific program elements. No action was taken on program elements A.3, A.6, and A.7 as they relate to flight procedures which require additional information and analysis. Program elements A.5.b and A.5.c were disapproved because they do not contribute to reducing noise over existing incompatible land uses or to preventing the introduction of additional incompatible land uses. Program element C.3.a was disapproved because it will create additional workload demands on air traffic control tower personnel. Program element C.3.b was disapproved because it may not be possible to positively commit to use of radar displays during a given month.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on September 13, 1987. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Salt Lake City International Airport.

Issued in Seattle, Washington on September 25, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-25352 Filed 11-2-87; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-87-29]

Petition for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: November 23, 1987.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ———, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on October 27, 1987.

Denise D. Hall,

Manager, Program Management Staff.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
18114	Flying Tiger Line, Inc.	14 CFR 121.547 and 121.583	To allow petitioner to carry a reporter, photographer, or journalist aboard its B-747 and DC-8 aircraft without complying with the passenger-carrying provisions of 14 CFR Part 121.
24836	United Airlines	14 CFR 121.371(a) and 121.378	To extend Exemption No. 4615A, which expires February 19, 1988, and which allows petitioner to contract with Hong Kong Aircraft Engineering Co. for maintenance, preventive maintenance, and alterations on petitioner-operated L-1011-385-3 aircraft and the engines and components of such aircraft subject to certain conditions and limitations.
25295	Ramwood, Inc.	14 CFR 135.143(b)	To allow petitioner to operate single-engine aircraft with inoperable optional instruments and equipment without a Minimum Equipment List.

[FR Doc. 87-25351 Filed 11-2-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 160-406 MHz Emergency Locator Transmitters (ELT); Meeting

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 for the 6th meeting of the RTCA Special Committee 160 on 406 MHz Emergency Locator Transmitters (ELT) to be held on November 23-25, 1987, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC, commencing at 9:30 a.m.

The Agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the fifth meeting; (3) Review and discuss EUROCAE Working Group 29 Activities; (4) Report on potential problems of frequency interference in 406 MHz Band; (5) Review of task assignments from last meeting; (6) Review the third Draft of the MOPS; (7) New task assignments; (8) Other business; and (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 23, 1987.

John E. Turner,

Designated Officer.

[FR Doc. 87-25348 Filed 11-2-87; 8:45 am]

BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Executive Committee Meeting With International Associates

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 RTCA Executive Committee to be held on November 16, 1987, in the Grand Hyatt Washington, Constitution Ballroom E, 1000 H Street, NW., Washington, DC, 20001 commencing at 2:00 p.m.

The Agenda for this meeting is as follows: (1) Chairman's Remarks and Introductions; (2) Approval of the Minutes of Meeting held September 18, 1987; (3) Executive Director's report; (4) Special Committee activities report for September–October 1987; (5) Consideration of proposals to establish special committees; (6) Report on EUROCAE working group activities and forward planning; (7) Comments and reports by international associates present; (8) Other business; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682–0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 22, 1987.

Herbert P. Goldstein,

Designated Officer.

[FR Doc. 87–25349 Filed 11–2–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: October 28, 1987.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0015
Form Number: 706
Type of Revision: Resubmission
Title: United States Estate (and Generation-Skipping Transfer) Tax Return
Description: Form 706 is used by executors to report and compute the Federal Estate Tax imposed by Internal Revenue Code section 2001, the Federal GST tax imposed by Internal Revenue Code section 2601 and the additional Estate Tax imposed by Code section 4981A. IRS uses the information to enforce these taxes and to verify that the tax has been properly computed
Respondents: Individuals or households, Businesses or other for-profit
Estimated Burden: 2,336,784 hours

OMB Number: 1545–0118
Form Number: 1099–PATR
Type of Review: Resubmission
Title: Statement for Recipients (Patrons) of Taxable Distributions Received from Cooperatives
Description: Form 1099–PATR is used to report patronage dividends paid by co-ops (Internal Revenue Code section 6044). The information is used by IRS to verify reporting compliance on the part of the recipient
Respondents: Businesses or other for-profit
Estimated Burden: 775,981 hours

OMB Number: 1545–1017
Form Number: 33
Type of Review: Resubmission
Title: Affidavit of Individual Surety on Bond
Description: Form 33 is required under Regulations 301.7101–1(b)(3)(v) to provide information on the adequacy of security of individual surety given when posting a bond. This form is attached to Form 928, Gasoline Bond.
Respondents: Individuals or households
Estimated Burden: 27 hours

Clearance Officer: Garrick Shear, (202) 535–4297, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87–25372 Filed 11–2–87; 8:45 am]

BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 28, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0001
Form Number: 7509
Type of Review: Reinstatement
Title: Air Cargo Manifest
Description: The CF 7509 is the source of information that provides for the accountability, integrity, and security of goods in air commerce that are imported into the United States
Respondents: Businesses or other for-profit
Estimated Burden: 86,468 hours
Clearance Officer: B.J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 87–25373 Filed 11–2–87; 8:45 am]

BILLING CODE 4810–25–M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The department or staff office issuing the form, (2) the title of the form, (3) the agency form number, if applicable, (4) a description of the need and its use, (5) how often the form must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of

responses, (8) an estimate of the total number of hours needed to fill out the form, and (9) an indication of whether section 3504(h) of Pub. L. 96–511 applies.

ADDRESSES: Copies of the forms and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: October 15, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management, and Statistics.

Extension

1. Office of Small and Disadvantaged Business Utilization
2. VAAR 819.70—Veteran-Owned and Operated Small Business Concerns
3. Exceptions to SF 18 and SF 129
4. This information is used to ensure that efforts are being made to identify veteran-owned businesses and to monitor the acquisition accomplished through veteran-owned firms
5. On occasion
6. Businesses or other for-profit; and Small businesses or organizations
7. 3,298,500 responses
8. 13,744 hours
9. Not applicable.

[FR Doc. 87–25428 Filed 11–2–87; 8:45 am]

BILLING CODE 8320–01–M

Advisory Committee on Readjustment Problems of Vietnam Veterans; Meeting

The Veterans Administration give notice under Pub. L. 92–463 that a meeting of the Adivsory Committee on the Readjustment Problems of Vietnam Veterans will be held November 19 and 20, 1987. The purpose of the meeting is to enable the committee to have first hand experience of VA health care services for Vietnam era veterans through review of treatment units, and dissussions with VA mental health professionals and veteran patients. This meeting will be a field meeting conducted at the St. Petersburg Vet Center and Bay Pines VA Medical Center. The St. Petersburg Vet Center is located at 235 31st St. North, St. Petersburg, Florida, and the Bay Pines VA Medical Center is located at 1000 Bay Pines Boulevard, Bay Pines, Florida. The meeting on November 19 will begin at 8 a.m. and conclude at 4:30 p.m. The day's agenda will consist of direct observations of several VA treatment units and facilities to include the Stress Recovery Unit, Alcohol Dependence Treatment Unit, Mental Hygiene Clinic, and the St. Petersburg Vet Center. The meeting on November 20, will begin at 8 a.m. and conclude at 12 noon. The second day's agenda will consist of a stationary meeting at the Bay Pines VAMC in conference with several VA officials regarding overall mental health services for Vietnam era veterans. Participating VA officials include the Medical Center Director, the Chief of Staff, the Chiefs of Psychiatry, Psychology, and Social Work Services, and the Chief of Personnel Services.

The meeting will be closed from 8 a.m. to 4:30 p.m. on Thursday, November 19, in accordance with provisons cited in 5 U.S.C. 552b(c)(6). during this portion of the meeting, the committee will be engaging in discussions with VA mental health professionals and veteran patients regarding services for Vietnam era veterans. These discussions will disclose information of a personal nature for veteran patients which would constitute a clearly unwarranted invasion of personal privacy. The meeting on November 20 will be located at Bay Pines VAMC Marr Conference Room, and will be open to the public to the seating capacity of the room.

Anyone having questions concerning the meetings may contact Arthur S. Blank, Jr., M.S., Direcor, Readjustment Counseling Service, Veterans Administration Cental Office, (phone number 202–233–3317/3303).

Dated: October 26, 1987.

By director of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87–25347 Filed 11–2–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 212
Tuesday, November 3, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

October 29, 1987.

TIME AND DATE: 10:00 a.m., Thursday, November 5, 1987.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *U.S. Steel Mining Co., Inc.*, Docket No. WEVA 86-371. (Issues include whether the Administrative Law Judge erred in concluding that a central repair shop of the operator was subject to the requirements of 30 CFR 77.1713.)

2. *Ronald Tolbert* v. *Chaney Creek Coal Corp.*, Docket No. KENT 86-123-D. (Issues include consideration of complainant's motion to reopen the proceedings.)

Any person who attends this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 87-25489 Filed 10-30-87; 11:37 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 9, 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. Federal Reserve Bank and Branch director appointments. (This item was originally announced for a closed meeting on October 14, 1987.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at 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: October 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-25540 Filed 10-30-87; 3:29 pm]

BILLING CODE 6210-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 2, 9, 16, and 23, 1987.

PLACE: Commissioner's Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of November 2

Tuesday, November 3

10: a.m.
Briefing on the Status of High Level Waste Issues (Public Meeting)

Wednesday, November 4

2:30 p.m.
Briefing on Integrated Safety Assessment Program (ISAP) (Public Meeting)

Thursday, November 5

11:00 a.m.
Affirmation/Discussion and vote (Public Meeting)
a. Commission Review of ALAB-832 (Shoreham)

1:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Week of November 9—Tentative

Monday, November 9

9:30 a.m.
Briefing on North Anna Steam Generator Tube Rupture Event (Public Meeting)

Thursday, November 12

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 16—Tentative

Thursday, November 19

2:00 p.m.
Briefing on EEO Program (Public Meeting)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting (if needed)

Week of November 23—Tentative

Wednesday, November 25

10:00 a.m.
Briefing on New Westinghouse Standardized Plants (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Discussion/ Possible Vote on Full Power Operating License for Palo Verde-3 (Public Meeting) scheduled for October 28, *postponed.*

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: Andrew Bates, (202) 634-1410.

Andrew L. Bates,

Office of the Secretary.

October 29, 1987.

[FR Doc. 87-25560 Filed 10-30-87; 4:03 pm]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 2, 1987:

A closed meeting will be held on Tuesday, November 3, 1987, at 1:00 p.m. An open meeting will be held on Thursday, November 5, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel for the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Peters, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 3, 1987, at 1:00 p.m., will be:

Regulatory matter regarding financial institution.

Institution of administrative proceeding of an enforcement nature.

Institution of injunctive action.

Formal orders of investigation.

Legislative matter relating to enforcement program.

The subject matter of the open meeting scheduled for Thursday, November 5, 1987, at 10:00 a.m., will be:

1. Consideration of whether to propose for public comment amendments to Rule 204–2, the recordkeeping rule under the Investment Advisers Act of 1940. The proposed amendments would require advisers to retain, for Commission inspection, all advertisements and supporting records for performance information in advertisements. These advertisements and supporting records would be required to be kept for five years from the end of the fiscal year in which the advertisement as last published. For further information, please contact Dorothy M. Donohue, at (202) 272–7317.

2. Consideration of whether to adopt amendments to Rule 174 under the Securities Act of 1933. The amendments would reduce the 40 or 90 day period during which dealers must deliver prospectuses in aftermarket securities transactions following public offerings. The Commission also will consider adopting conforming amendments to Item 502(e) of Regulation S–K and Rule 15c2–8 under the Exchange Act of 1934. For further information, please contact Larisa Dobriansky at (202) 272–2589.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Judith Axe at (202) 272–2092.

Jonathan G. Katz,

Secretary.

October 29, 1987.

[FR Doc. 87–25524 Filed 10–30–87; 1:23 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 212
Tuesday, November 3, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-940-07-4212-13; A-22539]

Realty Action; Arizona

Correction

In notice document 87-22596 beginning on page 36842 in the issue of Thursday, October 1, 1987, make the following corrections:

1. On page 36842, in the second column, the land description for T. 25 N., R. 21 W., Sec. 1 * * * should read:

"Sec. 1, lot 1, except S½S½SE¼NE¼NE¼, lots 2, 3, 4, N½NE¼NW¼SE¼NE¼, W½NW¼SE¼NE¼, E½SE¼NE¼SE¼NE¼, NE¼SE¼SE¼NE¼, S½NW¼SE¼SE¼NE¼, S½S½SE¼NE¼, N½N½SW¼NE¼, N½SW¼NE¼SW¼NE¼, SE¼NE¼SW¼NE¼, S½S½SW¼NE¼, N½S½NW¼SW¼NE¼, W½SW¼NW¼, W½E½SW¼NW¼, E½SE¼SW¼NW¼, N½NE¼NE¼SW¼NW¼, S½SE¼NE¼SW¼NW¼, N½N½SE¼NW¼, N½SW¼NE¼SE¼NW¼, SE¼NE¼SE¼NW¼, NW¼SW¼SE¼NW¼, S½NE¼SW¼SE¼NW¼, S½S½SE¼NW¼, SW¼, S½SE¼;"

2. On the same page, in the third column, the land description for T. 30 N., R. 16 W., Sec 11 * * * should read:

"Sec. 11, SW¼NW¼NE¼, SW¼SE¼NW¼NE¼, SW¼NE¼, NW¼SW¼SE¼NE¼, S½SW¼SE¼NE¼, W½, NW¼NE¼SE¼, S½NE¼SE¼, NW¼SE¼, S½SE¼, NW¼NE¼NE¼SE¼, S½NE¼NE¼SE¼;".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-25]

Proposed Revision of Control Zone: Oklahoma City Wiley Post Airport, and Oklahoma City Will Rogers World Airport, OK

Correction

In proposed rule document 87-24115 beginning on page 38786 in the issue of Monday, October 19, 1987, make the following correction:

§71.171 [Corrected]

On page 38787, in the first column, in the last paragraph, in the last line, the longitude should read, "97°35'18" W.".

BILLING CODE 1505-01-D

federal register

Tuesday
November 3, 1987

Part II

Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations; Filtration and Disinfection; Turbidity, Giardia Lamblia, Viruses, Legionella, and Heterotrophic Bacteria; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3229-9(a)]

National Primary Drinking Water Regulations; Filtration and Disinfection; Turbidity, Giardia Lamblia, Viruses, Legionella, and Heterotrophic Bacteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule, issued under the Safe Drinking Water Act, as amended in 1986, consists of: (1) Maximum contaminant level goals for *Giardia lamblia* viruses, and *Legionella;* and (2) national primary drinking water regulations for public water systems using surface water sources that include (a) criteria under which filtration (including coagulation and sedimentation as appropriate) would be required and procedures by which the State would determine which systems must install filtration, and (b) disinfection requirements for public water systems using surface water sources. The filtration and disinfection requirements are proposed as treatment technique regulations to protect against the potential adverse health effects of exposure to *Giardia lamblia,* viruses, *Legionella,* and heterotrophic bacteria, as well as many other pathogenic organisms that are removed by these treatment techniques. This notice also proposes certain limits on turbidity as criteria for: (1) Determining whether a public drinking water system is required to filter; and (2) determining whether filtration, if required, is adequate.

DATES: There will be two public hearings held. The first will be held in Washington, DC on November 23–24 from 9:00 a.m.—4:30 p.m. The second public hearing will be held in Denver, Colorado on Monday and Tuesday, December 2–3 from 9:00 a.m.—4:30 p.m. A block of 45 rooms have been set aside for attendees to the Denver hearing. To reserve one of these rooms, the hotel must be contacted [(303) 893–3333] at least two weeks prior to the event. Inform the hotel that you are attending the EPA public hearing.

Written comments must be submitted on or before January 4, 1988.

ADDRESSES: Send written comments on this proposed rule to Surface Water Treatment Requirements Rule, Comment Clerk, Criteria and Standards Division, Office of Drinking Water (WH–550), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review at the EPA, Drinking Water Docket, Room EB49, 401 M Street, SW., Washington, DC 20460. For access to the docket materials, call 382–3027 between 9 a.m. and 3:30 p.m. Supporting documents cited in the reference section of the proposed rule will be available for inspection at the Drinking Water Supply Branches in EPA's Regional Offices, listed below.

I. JFK Federal Bldg., Room 2203, Boston, MA 02203, Phone: (617)565–3610, Jerome Healey
II. 26 Federal Plaza, Room 824, New York, NY 10278, Phone: (212)264–1800, Walter Andrews
III. 841 Chestnut Street, Philadelphia, PA 19107, Phone: (215)597–9873, Jon Capacasa
IV. 345 Courtland Street, Atlanta, GA 30365, Phone: (404)347–1913, William Patton
V. 230 S. Dearborn Street, Chicago, IL 60604, Phone: (312)353–2650, Joseph Harrison
VI. 1445 Ross Avenue, Dallas, TX 75202, Phone: (214) 655–7155, Thomas Love
VII. 726 Minnesota Avenue, Kansas City, KS 66101, Phone: (913)236–2815, Gerald R. Foree
VIII. One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202–2413, Phone: (303)293–1424, Marc Alston
IX. 215 Fremont Street, San Francisco, CA 94105, Phone: (415)974–8073, William Thurston
X. 1200 Sixth Avenue, Seattle, WA 98101, Phone: (206)442–1225, Richard Thiel

The public hearing in Washington, DC will be held at the GSA Regional Office Building, 7th and D Street SW. (D street side), Washington, DC 20407. The building is located across the street from the L'Enfant metro stop. The second hearing will take place at the Hotel Radisson, 16th and Court, Denver, Colorado. If you plan to attend either public hearing, contact Marlene Regelski, EPA (WH–550D), 401 M Street SW., Washington, DC 20460, telephone (202)382–3639, at least two weeks before the meeting.

Copies of the Draft Guidance Manual for Compliance with the Surface Water Treatment Requirements for Public Water Systems ("Guidance Manual"), Regulatory Impact Analysis: Benefits and Costs of Proposed Surface Water Treatment Requirements and Total Coliform Rule, and Health Advisory for *Legionella,* are available upon request from the Safe Drinking Water Hotline. The Hotline number is 1–800–426–4791 or (202) 382–5533. Copies of the Draft Cost and Technology Document for the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources, and draft health criteria documents for *Giardia lamblia* viruses, *Legionella,* and turbidity are available for a fee from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161. The toll-free number is 800/336–4700; the local number is 703/487–4650.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426–4791, or (202) 382–5533 in the Washington, DC metropolitan area, or Stig Regli, Environmental Engineer, Science and Technology Branch, Criteria and Standards Division, Office of Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 382–7379.

SUPPLEMENTARY INFORMATION:

Preamble

I. Legal Authority

EPA is proposing this regulation and conforming changes under the authority of sections 1401, 1412, 1413, 1414, 1415, 1416, 1445, and 1450 of the Safe Drinking Water Act, as amended. 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300j–4, and 300j–9.

II. Background

A. Statutory Requirements

The 1986 amendments to the Safe Drinking Water Act ("SDWA" or the "Act"), Pub. L. 99–339, require EPA to promulgate, by December 19, 1987, a national primary drinking water regulation (NPDWR) specifying criteria under which "filtration" (defined in section 1412(b)(7)(C)(i) as including pretreatment measures such as coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems supplied by surface water sources. In establishing these criteria, EPA must consider source water quality, protection afforded by watershed management, treatment techniques such as disinfection practice and length of water storage, and other factors relevant to protection of health.

In lieu of provisions for obtaining a variance from the filtration requirements under section 1415 of the Act, EPA must instead specify procedures which the State is to use to determine which public systems must use filtration based on the criteria that EPA establishes in this regulation. (*Note:* Throughout this preamble, we use the term "State" to mean a State with primary enforcement responsibility for public water systems or "primacy," and to mean EPA in the case of a State that has not obtained primacy.) States may require the public water system to provide studies or other information to assist in this determination. The procedures for determining whether filtration will be required must provide notice and opportunity for public hearing.

The 1986 amendments to the SDWA require that within 18 months from the time that EPA promulgates the NPDWR specifying the criteria and procedures regarding filtration, a State with primary enforcement responsibility for public water systems must adopt any regulations necessary to implement the requirements of this NPDWR. Within 12 months of adoption of such regulations, the State must make determinations regarding filtration for all public water systems within its jurisdiction. If the State determines that filtration by a public water system is required, the State must prescribe a schedule for that system that requires compliance within 18 months of the date that it makes the determination.

The 1986 amendments to the Safe Drinking Water Act also require EPA, by June 1989, to: (1) Promulgate a NPDWR requiring disinfection as a treatment technique for all public water systems and a rule specifying criteria by which variances to this requirement may be granted; and (2) publish maximum contaminant level goals and promulgate NPDWRs for 83 contaminants listed in the Advance Notices of Proposed Rulemaking at 47 FR 9352 (March 4, 1982) and 48 FR 45502 (October 5, 1983). This list of contaminants includes turbidity and five microbiological contaminants: *Giardia lamblia* ("*Giardia*"), viruses, *Legionella*, Heterotrophic Plate Count bacteria ("heterotrophic bacteria" or "HPC"), and coliforms.

The Safe Drinking Water Act defines a NPDWR as a regulation which specifies either: (a) A maximum contaminant level (MCL); or (b) a treatment technique requirement if the Administrator determines it is not economically or technologically feasible to measure the level of a contaminant. A NPDWR also specifies criteria and procedures including quality control and testing procedures to assure compliance with MCLs and to assure proper operation and maintenance of the system. A NPDWR that requires the use

of a treatment technique must identify those treatment techniques which, in EPA's judgment, would prevent known or anticipated adverse effects on the health of persons to the extent feasible.

B. Regulatory Framework

This proposed rule would satisfy the following statutory requirements:

(1) The requirement that EPA promulgate a NPDWR specifying criteria under which filtration (including coagulation and sedimentation, as appropriate) is required as a treatment technique for public water systems using surface water sources, including procedures by which the State would determine which systems must install filtration.

(2) EPA will promulgate a NPDWR requiring disinfection as a treatment technique. This proposal addresses public water systems using surface water sources; EPA intends to promulgate additional regulations specifying disinfection requirements for systems using ground-water sources at a later date.

(3) The requirement that EPA regulate *Giardia lamblia*, viruses, *Legionella*, heterotrophic plate count bacteria (HPC), and turbidity. (EPA is proposing an MCLG and MCL for total coliforms elsewhere in today's **Federal Register**.) *Giardia lamblia* cysts pose significant risks to health in systems using surface waters (as defined in the proposed rule), but usually not in systems using ground water, because these protozoan cysts are removed from water by natural filtration processes in the course of the water's passage through the ground. Turbidity is an indicator for the effectiveness of treatment processes to control pathogens in systems using surface water. Therefore, EPA believes that promulgation of this regulation, which only applies to public water systems using surface water sources, fulfills the SDWA requirement to regulate *Giardia lamblia and* turbidity. In other words, additional NPDWRs to regulate *Giardia* and turbidity in ground water are unnecessary. This rule also provides significant protection from viruses, *Legionella*, and HPC in surface water and thereby complies with the SDWA requirement to regulate these contaminants in surface water systems. EPA may determine that it is necessary to promulgate NPDWRs to control the levels of viruses, *Legionella*, and HPC in drinking water derived from groundwater sources. If so, these regulations will be included in a future regulation which addresses disinfection requirements for groundwater sources. EPA's rationale for regulation of each of these contaminants is described in more detail below.

Giardia and viruses. On November 13, 1985, EPA proposed recommended maximum contaminant levels or "RMCLs," renamed maximum contaminant level goals or "MCLGs" in the 1986 SDWA amendments, of zero for both *Giardia* and viruses (50 FR 46951). After EPA published this proposal, the Act was amended to require that EPA propose a MCLG at the same time it proposes a NPDWR for a contaminant, unless EPA had already published a MCLG for the contaminant prior to June 19, 1986, the date of the amendments. Since a MCLG has not yet been published for these contaminants, EPA is reproposing MCLGs of zero for *Giardia* and viruses in this notice, along with the proposed NPDWRs for these two contaminants. (*Note:* "Enteric viruses," which means viruses of or relating to the intestines, are regulated rather than the more general generic category "viruses," because these are the only type of virus which has been implicated in waterborne disease and for which treatment removal efficiency data exist.) The basis for the proposed MCLGs as set out in the November 1985 notice remains the same. All the comments submitted on these proposed MCLGs in the November 1985 notice are included in the record for today's notice and need not be resubmitted. Any additional comments are welcome.

The NPDWRs for filtration and disinfection that EPA is proposing today would fulfill EPA's obligation to promulgate NPDWRs for *Giardia* and viruses. As noted above, the SDWA authorizes EPA to promulgate a NPDWR that requires the use of a treatment technique in lieu of establishing a MCL for a contaminant if it is not economically or technologically feasible to measure the level of that contaminant in drinking water. EPA believes that it is not economically or technologically feasible to measure the level of *Giardia* or enteric viruses in drinking water because (1) the only analytical methods which are available require levels of expertise that utility personnel generally do not have; (2) analysis by independent laboratories is generally very expensive; (3) validation procedures have not yet been established; (4) systems would have to monitor inordinately large and frequent samples of water to ensure that the occurrence of *Giardia* or enteric viruses is not of health risk significance (i.e., failure to detect *Giardia* in one or a few samples provides no assurance that *Giardia* do not occur at significant levels in the water supply); and (5) it is not possible to assure that these contaminants will be detected before they actually cause or contribute to increased risk to health, thus monitoring does not provide adequate advance notice as a means of assuring the safety of drinking water at the consumer's tap.

Turbidity. In the November 1985 **Federal Register** notice, EPA proposed a MCLG for turbidity of 0.1 NTU (Nephelometric Turbidity Units). Turbidity is a measure of light scatter or absorption caused by suspended or colloidal matter, and is used as an indicator of treatment effectiveness, specifically for clarification and filtration processes. No direct correlation exists between turbidity levels in water and health effects associated with the consumption of that water. High turbidity levels are, however, of concern because high levels may reduce the efficiency of disinfection and interfere with total coliform analyses performed by the membrane filter procedure. Turbidity is only an imprecise indicator of treatment effectiveness. As an example, very low turbidity levels, when resulting from a substantial percent removal of turbidity, are a good indicator of effective *Giardia* cyst removal by rapid granular filtration (e.g., conventional treatment or direct filtration). In contrast, for other filtration technologies, such as slow sand filtration, turbidity is not a meaningful indicator for pathogen removal. Likewise, different turbidity levels may or may not interfere with disinfection, depending upon the fraction of the solids consisting of inorganic particulate matter. Numerous commenters on the proposed MCLG for turbidity stated that since EPA cannot specify a turbidity level at which there will be no adverse health risks, and since the turbidity level is not always an accurate indicator of pathogen removal, it is inappropriate to specify any MCLG. EPA agrees. Accordingly, this notice withdraws the proposed MCLG for turbidity. EPA, however, does believe that it is appropriate to regulate turbidity to ensure treatment effectiveness. Accordingly, this notice proposes various turbidity levels, tailored to specific treatment techniques, to ensure that adequate treatment takes place.

HPC. As explained in the November 1985 **Federal Register** proposal, the HPC procedure, which measures heterotrophic bacteria, counts both bacterial pathogens and innocuous bacteria; there is no way to know whether the bacteria counted are pathogens or innocuous, or what the proportion of each is. 50 FR 46955. Therefore, EPA believes it is impossible to specify a scientifically rational

MCLG. Specifically, EPA cannot set any particular HPC level (other than at zero) at which no adverse health effects occur, since the test measures both pathogenic and innocuous bacteria; drinking water with any given HPC level might contain numerous, few, or no pathogens. EPA believes a MCLG of zero is inappropriate since the Act would then require EPA to promulgate a MCL as close to zero as feasible; the health benefits of meeting a level near zero versus some higher level (e.g., 500 per 100 ml) are unquantifiable and probably negligible, if any. Also, excessive amounts of disinfectant would be needed to achieve such a level and thus could result in excessive disinfection byproducts in the finished water. Based on these considerations, EPA is not proposing a MCLG for HPC.

However, EPA recognizes that HPC is a good operational tool for measuring microbial breakthrough, evaluating modifications of the water treatment process, and detecting loss of water main integrity. However, EPA does not believe it is appropriate to include HPC as a treatment performance criterion in the proposed rule since small systems (which includes most public water systems) would not have in-house analytical capability to conduct the measurement, and they would need to send the samples to a private laboratory. Unless the analysis is conducted rapidly, HPC may multiply, and the measurement may be misrepresentative. The recommended maximum elapsed time between collection and examination of samples is eight hours. If analysis cannot begin within eight hours, samples must be maintained at temperatures below 4 °C, with the maximum elapsed time between collection and analysis not to exceed 30 hours. EPA believes these conditions would be difficult to meet routinely and would impose a considerable burden, especially on small systems.

EPA believes that a water treatment plant in compliance with the filtration and disinfection criteria in the proposed rule would effectively control HPC. Well-operated water treatment plants, with well-maintained distribution systems, which the proposed rule would require, typically maintain low HPC densities (i.e., well below 500 per ml.) (McCabe *et al.*, 1970; Geldreich *et al.*, 1972).

EPA is including HPC monitoring, on a nonroutine basis, and HPC limits in the NPDWR for total coliforms, proposed elsewhere in today's **Federal Register**. The requirements would entail sampling the distribution system for HPC whenever there is evidence that high levels of these organisms are interfering with the total coliform analysis. In such cases, if the HPC measurement exceeds 500/ml, the sample would be considered coliform-positive and be counted in the determination of whether the system is in compliance with the coliform MCLs. EPA believes that the proposed filtration and disinfection requirements in this notice, which would remove heterotrophic bacteria from drinking water and limit growth in the distribution system, coupled with the proposed total coliform rule, would fulfill the SDWA requirements to regulate HPC.

Legionella. Legionellae are bacteria that have been identified as the cause of legionellosis. The Centers for Disease Control has estimated that 50,000–100,000 cases of this disease occur annually within the United States and are caused primarily by one of the 23 currently recognized species of the genus *Legionella* (Foy *et al.*, 1979). The number of cases attributable directly to drinking water is unknown. Most people who have developed Legionnaires' disease, the pneumonia form of legionellosis, were patients that were immunosuppressed or were individuals who appeared to be more susceptible because of an underlying illness, heavy smoking, alcoholism, or old age, (i.e., "compromised individuals"). In contrast, while some apparently healthy individuals have developed Legionnaires' disease, outbreaks involving healthy people have been limited mostly to the milder non-pneumonia form of the disease called Pontiac Fever. Both individual and outbreaks of legionellosis have occurred when aerosols containing virulent legionellae are inhaled by susceptible individuals. Foodborne outbreaks or secondary spread have not been reported.

Legionellae are abundant in ambient surface water, but some data suggest they are less prevalent or absent in ground water. In a number of outbreaks of Legionnaires' disease that have occurred in the United States, aerosols of water documented to contain the specific type of *Legionellae* that was recovered from the patient have been identified as the vehicle for transmission. These bacteria may proliferate in water systems when factors not yet fully determined allow. These factors probably include inadequate disinfectant residuals, warm temperatures, and availability of nutrients, including those nutrients produced by non-*Legionella* bacteria (USEPA, 1985a). Contamination may also occur from unsanitary opening of pipelines.

The infectious dose for humans, especially compromised individuals, is not known. Virulence apparently varies with the *Legionella* strain. Most outbreaks in hospitals have been attributed to *Legionella pneumophila*, serotype 1.

As noted earlier, the Safe Drinking Water Act requires EPA to set a MCLG "* * * at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." EPA proposes that the MCLG for *Legionellae* in finished water be zero since only a few *Legionella* organisms (perhaps a single organism) may pass through the treatment and distribution system and enter into an air conditioning system or plumbing system, proliferate under certain conditions, and possibly cause disease if a person, especially a compromised individual, is exposed via aerosols.

Although methods exist for the recovery and enumeration of *Legionellae*, it is not technically or economically feasible to monitor for these organisms. Most of the problems that make it economically and technically infeasible to measure *Giardia* and viruses in drinking water also apply to *Legionella*. Specifically, *Legionella* can only be detected by methodology that requires expert knowledge and experience to conduct. Both the techniques and the acquisition and utilization of expertise are expensive. Furthermore, while experts agree that *Legionellae* can be effectively isolated from water, currently only estimates of the numbers of *Legionellae* can be made (Feely, 1984).

EPA is proposing a treatment technique rather than an MCL for *Legionella* to significantly reduce the transport of legionellae from source water into the distribution system and reduce the potential for colonization. In particular, EPA believes that the proposed filtration and disinfection requirements in this notice would remove and/or inactivate *Legionella* which might occur in source waters, thereby reducing chances that *Legionella* will be transported through the system and reducing the possibility that growth might occur in the distribution system or in hot water systems within homes and institutions. The Agency recognizes that, regardless of the treatment provided, some *Legionella* may enter plumbing and air conditioning systems and subsequently multiply. EPA believes that these concerns are best addressed through

guidance. EPA is including such guidance in the Guidance Manual for Compliance with the Surface Water Treatment Requirements for Public Water Systems (Guidance Manual). In addition, EPA has prepared a health advisory for the control of *Legionella* in plumbing systems (USEPA, 1987a), which is available for comment, upon request. EPA believes that the treatment requirements proposed in today's notice, complemented by the implementation of institutional control measures, as recommended in guidance, are the best available means at this time to control *Legionella*. EPA is also investigating whether disinfectant residuals of various types or management practices such as hot water system temperature or periodic shock disinfection may reduce the potential for colonization of distribution systems.

C. Etiology of Waterborne Disease

From 1971 through 1985 there were 106 reported outbreaks of waterborne disease involving over 34,436 individuals attributed to microbiological contaminants resulting from deficiencies in treatment by public water systems using surface water sources (Table I–1).

TABLE I–1—ETIOLOGY OF WATERBORNE DISEASE OUTBREAKS FROM USE OF PUBLIC WATER SYSTEMS WITH SURFACE WATER SOURCES, 1971–1985 [1]

Water Supply Deficiency/Illness	Outbreaks (Number)	Cases of Illness
A. No treatment:		
1. Gastroenteritis, undefined	7	945
2. Giardiasis	6	245
3. Shigellosis	2	278
Total	15	1,458
B. Inadequate Disinfection (systems with no filtration [2]):		
1. Giardiasis	36	12,420
2. Gastroenteritis, undefined	10	5,247
3. Campylobacteriosis	2	3,022
4. Gastroenteritis, viral	1	190
5. Salmonellosis	1	34
Total	50	20,913
C. Interrupted Disinfection (systems with no filtration):		
1. Gastroenteritis, undefined	15	2,048
2. Shigellosis	1	50
3. Giardiasis	1	17
Total	17	2,115
D. Interrupted Disinfection (systems with filtration):		
1. Giardiasis	2	67
2. Gastroenteritis, viral	1	25
3. Hepatitis A	1	6
Total	4	98
E. Ineffective Filtration/Pretreatment (systems with filtration and disinfection):[3]		
1. Giardiasis	15	7,440
2. Gastroenteritis, undefined	4	651
3. Gastroenteritis, viral	1	1,761
Total	20	9,852
Grand Total	106	34,436

[1] Excluding outbreaks in surface water systems caused by chemical feed, distribution, storage, or miscellaneous other deficiencies.
[2] Includes two outbreaks (42 cases) of Giardiasis where filtration facilities were bypassed. Inadequate disinfection means either an absence of disinfectant residual or insufficient disinfection to prevent the outbreak.
[3] Operational problem with filtration or pretreatment (coagulation, flocculation, sedimentation) identified.
Note.—Craun, 5/87.

Table I–2 characterizes differences in rates of waterborne disease outbreaks and illnesses as a function of the level of treatment provided in community water systems (40 CFR § 141.2 defines "community water system" (CWS) as a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents). The data indicate that in general, systems using multiple barriers of treatment (i.e., at least filtration and disinfection) are significantly more effective in preventing waterborne disease than systems using disinfection alone. This is especially noteworthy in that systems which use filtration and disinfection tend to have significantly higher levels of fecal contamination in their source water than those which practice disinfection only or have no treatment in place.

TABLE I-2.—WATERBORNE DISEASE OUTBREAK AND DISEASE RATES ATTRIBUTED TO SOURCE CONTAMINATION AND TREATMENT INADEQUACIES IN COMMUNITY SYSTEMS USING SURFACE WATER SOURCES [1] 1971–1985

Type of community water system	Waterborne disease outbreaks per 1,000 water systems	Waterborne illnesses per million-person years
Untreated	32.5	370.9
Disinfected only	40.5	66.3
Filtered and disinfected water	5.0	4.7

[1] Craun, G., 5/87.

Table I–3 indicates the current filtration practice of community water systems in the United States by system size. These numbers are based on a survey conducted by the Association of State Drinking Water Administrators (ASDWA, 1986). According to the survey, 87 percent of the 1,346 systems which do not filter do practice disinfection. The ASDWA survey also indicated that 1,536 of 3,424 non-community water systems (defined in 40 CFR 141.2 as all public water systems that are not community water systems) which used surface water sources do not filter. Most of these systems serve populations of less than 1,000 people and are believed to practice disinfection.

TABLE I-3.—NUMBER OF COMMUNITY WATER SYSTEMS (PLANTS) HAVING FILTERED VERSUS UNFILTERED SURFACE WATER SUPPLIES BY SIZE CATEGORY AND ESTIMATED POPULATION SERVED

	Community Water System Size Categories												
	25 to 100	101 to 500	501 to 1,000	1,001 to 3,300	3,301 to 10,000	10,001 to 25,000	25,001 to 50,000	50,001 to 75,000	75,001 to 100,000	100,001 to 500,000	500,001 to 1,000,000	1,000,000 plus	Total
Number or plants of systems:													
Filtered	523	474	537	814	996	504	303	144	98	166	40	12	4,611
Unfiltered	310	305	217	226	160	65	25	13	10	9	3	3	1,346
Total [1]	833	779	754	1,040	1,156	569	328	157	108	175	43	15	5,957
Estimated population served (millions):													
Filtered	0.08	0.51	1.11	3.87	9.22	11.66	15.02	9.55	9.25	34.78	19.97	18.54	133.56
Unfiltered	0.02	0.08	0.17	0.45	0.97	0.98	0.88	0.76	0.85	1.98	2.41	11.55	21.10
Total [1]	0.09	0.57	1.28	4.33	10.20	12.64	15.91	10.31	10.09	36.77	22.38	30.09	154.66

[1] Totals may not add due to rounding.

The reported disease incidence indicated in Tables I–1 and I–2 probably substantially underestimates the actual occurrence of outbreaks of waterborne disease. Many outbreaks, perhaps the great majority, are not reported to the U.S. Centers for Disease Control (Centers for Disease Control, 1985) which keeps records on the incidence of reportable diseases. This is because only a few types of waterborne diseases are required to be reported and also because disease outbreaks are often not recognized in a community or, if recognized, are not traced to the drinking water source. For example, in Colorado, an EPA-funded effort to improve the outbreak reporting system indicated that only about one-quarter of the actual outbreaks were being recognized and reported (Centers for Disease Control, 1984). Other data indicate that actual disease occurrence versus that reported when an outbreak has been identified may be underestimated by a factor of 25 (Hauschild, A.F. and Bryan, F.L., 1980). EPA believes these data support the need for better control of microbiological contaminants in drinking water, and support the use of treatment requirements, specifically filtration and disinfection requirements. EPA believes that if all surface water systems were to comply with the requirements of this proposed rule, most incidences of waterborne disease associated with these systems would be eliminated.

III. General Basis for Criteria of Proposed Rule

The proposed rule is based upon the following general principles:

(1) The public's best assurance for obtaining drinking water of consistently good quality is reliance upon a properly designed and operated public water system.

(2) Water to be used for human consumption should be obtained from the best available source.

(3) All surface water supplies are at risk from pathogen contamination.

(4) All public water systems should practice adequate disinfection and detectable residuals of the disinfectant should be measurable in all parts of the distribution system. Although many ground water supplies are free from pathogen contamination, disinfection will provide valuable additional protection from potential pathogen contamination of finished water.

(5) The level of treatment in public water systems provided should at least be commensurate with the potential for pathogen contamination in the source water. Multiple barriers of treatment, including filtration, are desirable to provide a consistently high quality water supply.

(6) To minimize the introduction of unnecessary contaminants during treatment, public water systems should employ processes which will reduce the concentration of precursor chemicals prior to the introduction of disinfectant chemicals.

(7) Public water systems should employ strong oxidants, including

ozone, chlorine, and chlorine dioxide, with adequate contact time for pathogen inactivation before the water enters the distribution system. Chloramines are appropriate for maintaining a residual in the distribution system when the use of stronger oxidants are not feasible. Ozone, because of its potency in destroying microorganisms and its rapid dissipation, is particularly encouraged for use in clarification processes and as a disinfectant. Other high energy disinfection processes such as use of ultraviolet light also show significant promise.

(8) Public water systems should adjust pH levels to optimize clarification and disinfection processes within the treatment plant and corrosion control within the distribution system.

(9) Adequate monitoring, tailored to the particular circumstances, should be practiced in all public water systems. This should include monitoring of microbiological parameters; physical factors affecting water quality such as turbidity, pH, and temperature; and disinfectant residuals. Systems should conduct raw water monitoring to determine that an adequate level of treatment is provided.

(10) Properly operated public water systems should have no detectable concentrations of pathogens in the finished water.

(11) The public has a right to be informed of the quality of the water that is being provided by its public water system and the public should be included in the decision processes.

The rationale for specific requirements of the proposed rule appear in Section V of this preamble.

IV. Description of Proposed Rule

A. General Requirements

1. Applicability

This rule would apply to all public water systems (both community and non-community) which use surface water sources. EPA believes that all surface waters are at risk, at least to some degree, from contamination by *Giardia lamblia*, viruses, and pathogenic bacteria and that public water systems using such source waters should provide minimum levels of treatment to ensure protection from illness caused by these contaminants. This is consistent with EPA's mandate in section 1412(b)(7)(A) of the Act, which specifies that treatment techniques are to "prevent known or anticipated adverse effects on the health of persons to the extent feasible."

This proposed rule defines "surface water" as all water open to the atmosphere and subject to surface runoff (e.g., rivers, lakes, streams, reservoirs, impoundments), and all springs, infiltration galleries, wells, or other collectors that are directly influenced by surface water. "Directly influenced by surface water" means the source is subject to pathogen contamination from surface waters. This determination is to be made on a case-by-case basis based on whether there are significant and relatively rapid shifts in water quality characteristics such as turbidity, temperature, conductivity, or pH (all of which may also change in ground water but at a much slower rate) which closely correlate to climatological or surface water conditions; and/or the presence of insects or other macro-organisms, algae, or large-diameter pathogens such as *Giardia lamblia*. Procedures that may be used for evaluating the significance of these factors appear in the draft Guidance Manual.

The State would be responsible for determining whether a system uses surface water and, therefore, would be subject to the requirements of this rule. For systems which use mixed source water supplies (i.e., ground and surface waters), this rule would apply to the water originating from the surface water source. Wells and springs, which may be defined as surface water systems under this rule, may be defined as ground water sources under other EPA guidances and regulations.

2. Treatment Requirements

Under this proposal, all community and non-community public water systems using any surface water source would be required to treat their surface water source(s) so as to achieve at least 99.9 percent removal and/or inactivation of *Giardia* cysts, and at least 99.99 percent removal and/or inactivation of enteric viruses. A system would be presumed to be in compliance with this requirement if it complied with the treatment technique requirements specified in this rule. At a minimum, the treatment required for any surface water would include disinfection. In addition, unless the system met certain source water quality criteria and certain site-specific criteria, the required treatment would also include filtration.

Specifically, systems with very clean and protected source waters that met the source water quality criteria (including low total coliform or fecal coliform levels and low turbidity levels as specified in the rule) and certain site-specific criteria, including an effective watershed control program, would only be required to use disinfection to achieve 99.9 percent and 99.99 percent inactivation of *Giardia* cysts and enteric viruses, respectively. If such systems were able to continually meet certain disinfectant residual concentration ("C", in mg/1) and disinfectant contact time ("T", in minutes) requirements, (i.e., "CT" value, which is "C" multiplied by "T") (depending upon pH and water temperature) as specified in the rule, the system would be assumed to be in compliance with the above inactivation requirements for *Giardia* and enteric viruses without monitoring for these organisms.

At the discretion of the State, public water systems with no potential sources of human enteric viruses within the watershed would not be subject to the requirement for 99.99 percent inactivation of enteric viruses to avoid filtration. This provision would only benefit systems successfully using chloramination for primary disinfection since other disinfectants (e.g., chlorine, ozone, chlorine dioxide), which achieve 99.9 percent inactivation of *Giardia* cysts also achieve much greater than 99.99 percent inactivation of enteric viruses. The State should carefully evaluate those systems using chloramination as primary disinfectant to assure that they are providing adequate pathogen control with adequate margins of safety for the stress conditions that might be encountered. Potential sources of human enteric viruses include sewage discharges; septic tank discharges; recreational activities including swimming, boating, camping, fishing, hiking, and hunting; and any other human usage or habitation which may result in human waste disposal within the watershed.

Systems required to filter could use a variety of treatment technologies to meet the minimum 99.9 and 99.99 percent performance levels. A system that meets certain turbidity removal and disinfection performance criteria, and complies with design and operating criteria specified by the State, would be considered to be in compliance with these performance requirements.

Conventional treatment (which includes coagulation, flocculation, sedimentation, rapid granular filtration, and disinfection) has been demonstrated to achieve at least 99.9 percent removal and/or inactivation of *Giardia* cysts and 99.99 percent removal and/or inactivation of enteric viruses under appropriate design and operating conditions (USEPA, 1987c). EPA considers conventional treatment to be the best technology for most source waters in the United States because of the multiple barriers of protection that it provides.

Direct filtration (which includes coagulation), slow sand filtration, and diatomaceous earth filtration, each with disinfection, also have been demonstrated to achieve at least 99.9 percent removal and/or inactivation of *Giardia* cysts and 99.99 percent removal of enteric viruses under appropriate design and operating conditions (USEPA, 1987c). This rule would allow their use under certain source water quality conditions as determined by the State.

Under the proposed rule, a public water system could use filtration technologies other than those specified above if it first demonstrated through pilot plant challenge studies, using *Giardia* cysts and viruses or equivalent indicators, that the alternate filtration technology, in combination with disinfection, can achieve at least 99.9 percent and 99.99 percent removal and/or inactivation of *Giardia* cysts and enteric viruses, respectively. In addition, the State could approve a technology demonstrated to be effective at one site for use at another site if the source water quality conditions at the two sites were similar.

In determining the appropriate filtration technology to be used, source-water quality, site-specific factors, and economic constraints would need to be considered. In general, the level of treatment provided should be commensurate with the potential for pathogen contamination in the source water. Table IV–I provides source-water quality guidelines for selecting the technology(ies) to be used. Site-specific factors such as available land and location of the treatment plant relative to the water source and economic constraints would also influence the selection of the technology. Pilot plant studies are recommended to help determine the most appropriate filtration technology and the optimum design conditions. Guidelines for determining the appropriate technology and design conditions appear in the draft Guidance Manual.

TABLE IV–1.—GENERALIZED CAPABILITY OF FILTRATION SYSTEMS TO ACCOMMODATE RAW WATER QUALITY CONDITIONS [1]

Treatment Technology	General Constraints (indicated values could occasionally be exceeded)		Color (CU) [2]
	Total Coliforms (#/100 ml)	Turbidity (NTU)	
Conventional Treatment	<20,000	No restrictions	75
(with no predisinfection)	<5,000	No restrictions	75
Direct Filtration	<500	<7–14	<40
Slow Sand Filtration	<800	<10	<5
Diatomaceous Earth Filtration	<50	<5	<5

[1] Adopted from Guidance Manual (USEPA, 1987b).
[2] Colorimetric units.

3. Operator Personnel Requirements

Under the proposal, all systems must be operated by personnel that meet the qualifications specified by the State. The criteria for determining if an operator is qualified would depend upon the type and size of the system. EPA encourages States which do not yet have operator license certification programs in effect to develop such programs. In any case, the State would be responsible for establishing criteria for evaluating operator personnel for their knowledge and competence in operating a water treatment system.

B. Specific Criteria

This section explains in greater detail the general treatment requirements described above. The rationale for these criteria appears in Section V of this preamble.

1. Criteria for Determining If Filtration Would Be Required

Under the proposed rule, a public water system would be required to use filtration unless it met the following criteria as described below:

Source Water Quality Criteria

- Source water total coliform or fecal coliform limits.
- Source water turbidity limits.

Site-specific Criteria

- Disinfection requirements.
- Watershed control program requirements.
- Sanitary survey requirements.
- No waterborne disease outbreaks.
- Compliance with the total coliform long-term maximum contaminant level (MCL).
- Compliance with the MCL level for total trihalomethanes (TTHMs).

These criteria are described in detail below.

a. Source Water Quality Criteria

(i) *Coliform limits.* To avoid filtration, a system would be required to meet one of the following criteria: (1) The fecal coliform concentration in water prior to disinfection is less than 20/100 ml, in 90 percent of the samples; or (2) the total coliform concentration in water prior to disinfection is less than 100/100 ml, in 90 percent of the samples. If monitoring were conducted for both parameters, the system could exceed the total coliform limit but not the fecal coliform limit. Public water systems would be required to collect samples in such a way as to adequately represent water quality fluctuations, taking into account the characteristics of the watershed. Minimum sampling frequencies for different system sizes would be as follows:

Population served	Samples/week
<500	1
501–3,300	2
3,301–10,000	3
10,000–25,000	4
>25,000	5

This sampling must include one measurement on every day during which the turbidity exceeds 1 NTU. However, this sample counts toward the total number that must be taken each week.

Guidelines for determining when higher frequency sampling might be warranted appear in the Guidance Manual. The coliform limits would be an ongoing requirement; at the end of each month, the system would evaluate the data collected for the preceding six months and determine if this source

water quality condition was still being met. If the criterion had not been met, the system would be required to filter.

(ii) *Turbidity limits.* To avoid filtration, a system would be required on an ongoing basis to demonstrate that the turbidity of the water prior to disinfection does not exceed 5 NTU, based on the collection of grab samples at least every four hours. Continuous turbidity monitoring could be substituted for grab sample monitoring if this measurement was validated for accuracy with grab sample measurements on a regular basis, with a protocol approved by the State. If the public water system used continuous monitoring, the system would use turbidity values taken every four hours to determine whether it met the turbidity raw water limit. A system would be allowed to exceed the 5 NTU limit (although it would be in violation of a treatment technique requirement), no more than two periods during twelve consecutive months or five periods during 120 consecutive months, provided that (a) the system informed, as soon as possible but in no case later than 72 hours, its customers and the State, to boil their water before consumption until it is determined that the water is safe, and (b) the State determined that the exceedance occurred because of unusual or unpredictable circumstances. A "period" would be defined as the number of consecutive days in which at least one turbidity measurement each day exceeded 5 NTU.

b. Site-Specific Criteria

(i) *Disinfection requirements.* To avoid filtration, the proposed rule would require that a system practice disinfection and have redundant disinfection capability including an auxiliary power supply, with automatic start up (and alarm), to ensure that continuous disinfection is provided. The system would have to demonstrate on an ongoing basis that the disinfectant residual of at least 0.2 mg/l is maintained in the water entering the distribution system. The system would also be required to demonstrate by monitoring that it is achieving disinfection operational conditions which inactivate 99.9 percent of *Giardia* cysts and 99.99 percent of enteric viruses at all times. To make this determination, the system would monitor (and report) the disinfectant(s) used, disinfectant residual(s), disinfectant contact time(s), pH, and water temperature, and apply these data to determine if it met the CT value in the rule. A system would be considered in compliance with the inactivation requirements if it met (or exceeded) the "CT" value [disinfectant concentration (mg/l) × disinfectant contact time (minutes)] specified in the rule. This determination would be required each day that the system is delivering water to its customers. The CT values necessary to achieve 99.9 percent inactivation of *Giardia* cysts by various disinfectants and under various conditions are specified in the rule. An example of some of these values appears in Table IV–2. These values, which are based on laboratory studies, include safety factors. The basis for these values is discussed in Section V of this preamble and in greater detail elsewhere (Regli, 1987; USEPAb, 1987). Since *Giardia* cysts are much more resistant to free chlorine, ozone, and chlorine dioxide than are enteric viruses, it can be assumed that if a system achieves 99.9 percent inactivation of *Giardia* cysts using these disinfectants, it will achieve much greater than a 99.99 percent inactivation of enteric viruses. Therefore, minimum CT values to achieve 99.99 percent inactivation of enteric viruses are not presented in this preamble, although values are available in the draft Guidance Manual.

TABLE IV–2.—CT VALUES FOR ACHIEVING 99.9 PERCENT INACTIVATION OF GIARDIA LAMBLIA

	pH	Temperature			
		0.5 °C	5 °C	10 °C	15 °C
Free Chlorine [1]	6	170	120	90	60
	7	260	190	130	100
	8	380	270	190	140
	9	520	370	260	190
Ozone	6–9	4.5	3	2.5	2
Chlorine Dioxide	6–9	81	54	40	27
Chloramines	6–9	3,800	2,200	1,850	1,500

[1] CT values will vary depending on concentration of free chlorine. Values indicated are for 2.0 mg/l free chlorine. CT values for different free chlorine concentrations are specified in tables in the proposed rule.

The CT values given for chloramines in Table IV–2 (and in the proposed rule) were determined under laboratory conditions in which no free chlorine was present, i.e., the chloramines were preformed. Systems would probably not be able to achieve these CT values. Under field conditions, chloramination as a treatment process involves the addition of free chlorine and ammonia either concurrently, or sequentially, the order of addition and timing between adding each component being determined by the needs of the utility. Regardless of the process used, chloramination, as conducted in the field, is more effective than using preformed chloramines (Hoff, 1986). The relative effectiveness will be influenced by the order of addition, the chlorine to ammonia ratio, water pH, and temperature.

The proposed rule allows utilities using chloramines, to demonstrate, through the use of a State approved protocol for on-site disinfection challenge studies, if lower CT values than those indicated in the rule would achieve the required inactivations of *Giardia* and enteric viruses. In addition, since enteric viruses may be significantly more resistant to chloramine residuals than are *Giardia* cysts, systems using chloramination for primary disinfection would also need to conduct on-site studies, to demonstrate that they are achieving 99.99 percent inactivation of enteric viruses (unless the watershed has no potential sources of human enteric viruses) as well as 99.9 percent inactivation of *Giardia* cysts. Such studies require a high level of expertise, and it may be necessary for utilities using chloramination to hire specialized independent (commercial) laboratories or university researchers to make such determinations.

For the purpose of calculating CT values, disinfection contact time is the time it takes the water to move between the point of disinfectant application and a point before or at the first customer during peak hourly flow; residual disinfectant concentration is the concentration of the disinfectant before or at the first customer after which contact time is measured. Contact time in pipelines must be calculated based on "plug flow" (i.e., where all water moves homogeneously in time between two points) by dividing the internal volume of the pipeline by the peak hourly flow rate through that pipeline. Contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

If disinfectants are applied at more than one point, the percent inactivation of each disinfectant sequence prior to the first customer would be considered as part of the determination of the total percent inactivation. In making this determination, the disinfectant residual of each disinfection sequence and corresponding contact time would be measured before subsequent disinfection application point(s) to determine the percent inactivation for each sequence, and the total percent inactivation achieved. For example, if the first disinfection sequence achieved 99 percent inactivation and the second disinfection sequence achieved 90 percent inactivation, the total percent inactivation would be 99.9 percent, determined as follows:

$$99+\frac{90(100-99)}{100}=99.9$$

The proposed rule includes formulas for calculating CT values necessary to achieve 90, 95, 99, and 99.5 percent inactivation of *Giardia lamblia* cysts, based on the CT values specified in the rule which achieve 99.9 percent inactivation.

Guidance for determining percent inactivation of *Giardia* cysts and enteric viruses for different situations is given in the draft Guidance Manual.

Under the proposed rule, systems would also be required on an ongoing basis to demonstrate that disinfectant residuals in the distribution system are not less than 0.2 mg/l in more than five percent of the samples in a month, for two consecutive months. The rule would require the public water system to monitor the disinfectant residual at the same frequency and locations as total coliform measurements taken pursuant to the coliform MCL regulation proposed elsewhere in today's **Federal Register.**

(ii) *Watershed control.* To avoid filtration, the proposed rule would require a system to maintain an effective watershed control program, determined to the satisfaction of the State, to minimize the potential for contamination by *Giardia* cysts and enteric viruses in the source water. The scope and specificity of the watershed control program would increase as the size of the watershed and the volume of water supplied by the system increased. The watershed control program would include: (1) Characterization of the watershed hydrology and land ownership; (2) identification of watershed characteristics and activities which may have an adverse impact on the water quality; and (3) programs to monitor and control the occurrence of activities which may be detrimental to water quality. The public water system would be required to demonstrate through ownership or written agreements with landowners in the watershed, or a combination of both, that it is able to control all human activities which may have an adverse impact on water quality. Guidance for developing and maintaining an effective watershed control program appears in the draft Guidance Manual.

(iii) *Sanitary survey.* To avoid filtration under the proposed rule, the system must have an on-site sanitary survey conducted each year by an agent approved by the State, or by the State. The survey results must indicate to the State's satisfaction that the system is providing a safe water supply to the community. Disinfection and any other treatment processes, sanitary survey, and the watershed control program are interrelated preventive strategies. The watershed control program is mainly concerned with the water source. The sanitary survey is a comprehensive evaluation of the watershed control program, the treatment in place, and the distribution of water. The purpose of the survey is to identify all microbiological health hazards and assess their present and future importance. The survey would include a review of all activities within the watershed over the entire previous year which could have an effect on the raw water source and finished water quality. The survey would identify potential sources of contamination of the water supply such as sewage discharges, septic tank fields, and sanitary landfills and their impact upon the source water quality of the system. The person making the survey would need to have an education in basic sanitary sciences and competence in the epidemiology of waterborne disease and have experience in evaluating water systems for sanitary defects. Under the proposed rule, the survey report, summarizing all findings, including maps and sketches where appropriate, should be submitted to the State on a yearly basis. Specific criteria for the sanitary survey appear in the draft Guidance Manual. The State would judge the adequacy of the survey and whether the system is satisfactorily meeting the criteria.

(iv) *Disease outbreaks.* To avoid filtration, the proposed rule would require that a system in its current configuration not have had an identified waterborne disease outbreak. "Waterborne disease outbreak" is defined as the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system, deficient in treatment, as determined by the appropriate health agency or State.

(v) *Compliance with the long-term total coliform maximum contaminant level (MCL).* Under the proposed rule, to avoid filtration, a system must comply with the "long-term MCL" for total coliforms, proposed elsewhere in today's **Federal Register.** The coliform rule would require systems which do not filter to collect an additional sample near the first customer each day that the turbidity level exceeds 1 NTU and to analyze the sample for the presence of total coliforms. The results would be included in the determination of whether the system is in compliance with the long-term MCL for total coliforms. The system would meet this requirement for avoiding filtration if no more than five percent of the coliform measurements in the distribution system were positive for any twelve previous months, or 60 previous samples, whichever number of samples was greater.

(vi) *Compliance with the maximum contaminant level for total trihalomethanes.* Under the proposed rule, to avoid filtration, a system must demonstrate that it is in compliance with the total trihalomethane regulation (40 CFR 141.12 and 141.30). At present, this requirement only applies to systems serving over 10,000 people. When new regulations for disinfection by-products

are promulgated, EPA intends to also impose those limits on smaller systems. At that time, these smaller systems would be required to comply with these requirements in order to avoid filtration.

2. Criteria for Determining if Treatment is Adequate for Filtered Systems

a. Design and Operating Conditions

Under the proposed rule, the State would specify design and operating criteria for filtration and disinfection for each system under its jurisdiction that would ensure overall removal and/or inactivation of at least 99.9 percent of *Giardia* cysts and at least 99.99 percent of enteric viruses. Each system would be required to meet the design and operating criteria specified by the State. The draft Guidance Manual recommends design and operating criteria for different treatment technologies and source water qualities.

b. Disinfection Requirements

The proposed rule would require each system to continuously monitor the disinfectant residual of the water after filtration but before it enters the distribution system, and measure and record the disinfectant residual in the distribution system taps at the same frequency and locations as required for total coliform measurements (see the regulation for total coliforms, proposed elsewhere in today's **Federal Register**). A disinfectant residual of at least 0.2 mg/l would need to be maintained at all times in the water entering the distribution system, and disinfectant residuals could not be allowed to be less than 0.2 mg/l at any location in the system in more than five percent of the samples in a month, for any two consecutive months, on an ongoing basis.

c. Turbidity Monitoring Requirements

Under the proposed rule, systems which used conventional treatment, direct filtration, or diatomaceous earth filtration would be required to monitor the turbidity of the representative filtered water by grab sample every four hours (or shorter regular time interval), when water is being delivered to the distribution system.

A public water system could substitute continuous turbidity monitoring for grab sampling if it validated this measurement for accuracy with grab sample measurements on a regular basis, as specified by the State. If a system used continuous monitoring, it would be required to use the turbidity value for every four hours (or some shorter regular time interval) to determine compliance with the turbidity performance criterion.

For systems using slow sand filtration and technologies other than conventional treatment, direct filtration, or diatomaceous earth filtration (such as cartridge filtration), the State could reduce the sampling frequency for turbidity to one sample per day if it determined that the prescribed frequency was not necessary to indicate effective filtration performance.

d. Turbidity Performance Criteria

(i) *Conventional treatment or direct filtration.* For systems using conventional treatment or direct filtration, the proposed rule requires that filtered water turbidity be less than or equal to 0.5 NTU in 95 percent of the measurements taken every month. If the State determined that on-site studies demonstrate effective removal and/or inactivation of *Giardia lamblia* cysts, or effective removal of *Giardia lamblia* cyst-sized particles, at other filtered water turbidity levels, then the State could specify these levels as the appropriate performance criteria instead. This provision would allow the State to take disinfection performance into account in determining the overall performance by the system. For example, the State could allow less stringent turbidity performance criteria for systems using ozonation at CT values that achieve 99.9 percent inactivation of *Giardia* cysts (and therefore much greater than 99.99 percent inactivation of viruses). However, the proposed rule would require that, in all cases, the maximum filtered water turbidity level must be less than or equal to 1 NTU in 95 percent of the measurements taken each month and at no time could exceed 5 NTU.

All systems would be expected to optimize their treatment so as to achieve the lowest turbidities feasible at all times. This would promote optimal removal of *Giardia* cysts and other pathogens, and optimum conditions for disinfection.

(ii) *Slow sand filtration.* For systems using slow sand filtration, the proposed rule would require that the filtered water turbidity be less than or equal to 1 NTU in 95 percent of the measurements taken each month and at no time exceed 5 NTU. However, the State could allow a turbidity value greater than 1 NTU, but below 5 NTU, in 95 percent of the measurements if the filter effluent at the plant prior to disinfection met the long-term MCL for total coliforms for one year (see § 141.63(b) of the proposed coliform rule, proposed elsewhere in today's **Federal Register**).

(iii) *Diatomaceous earth filtration.* For systems using diatomaceous earth filtration, the filtered water turbidity would have to be less than or equal to 1 NTU in 95 percent of the measurements taken each month and at no time exceed 5 NTU.

(iv) *Other filtration technologies.* For systems using other filtration technologies, the performance criteria would be the same as for conventional treatment and direct filtration. The State could allow a turbidity value greater than 0.5 NTU in 95 percent of the measurements, at no time exceeding 5 NTU, if the system were able to demonstrate effective performance at such levels to the State. Guidance for making such demonstrations is provided in the draft Guidance Manual.

C. Monitoring and Reporting Requirements

Monitoring and reporting requirements for all public water systems which use surface water sources to document compliance with the various filtration and disinfection requirements in § 141.71, 141.72, and 141.73 are proposed in §§ 141.74 and 141.75. Separate requirements are specified for systems which use filtration and systems which do not use filtration.

1. Systems Not Using Filtration

Systems which do not use filtration because they meet the requirements of § 141.71 would be required to report to the State on a monthly basis. The report would include a summary of the results of source water monitoring for total or fecal coliforms and turbidity, in order to demonstrate compliance with § 141.71(a)(1). The summary of fecal or total coliform sampling would include the number of samples collected, the values obtained for each measurement, the number of samples which exceeded the performance criteria of 20/100 ml or 100/100 ml, respectively, the cumulative total of samples collected since the beginning of the running six-month compliance period, and the percent of these which are below the respective criteria. Information pertaining to turbidity measurements would include the values obtained for each measurement, the value and specific date when any turbidity measurement exceeded 5 NTU, and when the system informed its customers to boil their water.

Systems that do not use filtration would report disinfection conditions monthly to demonstate that: (1) It was continuously meeting the 99.9 percent *Giardia* cyst and 99.99 percent enteric

virus inactivation performance criteria; (2) there was a disinfectant residual of at least 0.2 mg/l at all times in the water supplied to the distribution system; and (3) there is a disinfectant residual of 0.2 mg/l or more in at least 95 percent of the samples analyzed in the distribution system in one month, or if this limit was exceeded, that it was not exceeded the previous month as well. The system must also report information monthly that demonstrates the effectiveness of the disinfection process. The report would include a summary of the daily measures of disinfected water temperature and pH; the disinfectant contact time and disinfectant residual of each disinfection sequence prior to the first customer during peak hourly flow conditions; the minimum CT value(s) for each day necessary for achieving 99.9 percent *Giardia* cyst inactivation and 99.99 percent enteric virus inactivation, as calculated from the rule; and the actual CT values (disinfectant concentration in mg/l times the minimum contact time in minutes) prior to the first customer for each day. The system would also be required to report the date of each instance when the actual CT is less than the minimum CT necessary for 99.9 percent *Giardia* cyst or 99.99 percent enteric virus inactivation (specified in the rule), and the date of each instance that there is less than 0.2 mg/l disinfectant residual in water supplied to the distribution system. To determine compliance with the distribution system disinfectant residual requirements, the public water system would report on a monthly basis the values measured and the total number and percent of disinfectant residual measurements less than 0.2 mg/L.

Other reporting requirements for systems which do not use filtration include:

- An annual report of the watershed control program which summarizes the system's watershed related activities, any problems identified during the year, and potential areas of concern for the future.
- An annual report summarizing the results of the system's sanitary survey unless the survey is conducted by the State, in which case the State would provide a copy of its report to the public water system.
- A report to the State within 48 hours following attribution of the occurrence of any waterborne disease outbreak attributed to the system by a public health agency or State.
- A copy of any public notice issued during the month pursuant to § 141.32.

2. Systems With Filtration

Public water systems which use filtration would report on a monthly basis to the State information regarding filtered water turbidity, disinfectant residual concentration in the water entering the distribution system, maintenance of disinfectant residuals in the distribution system, and public notification.

Turbidity reporting requirements would vary depending upon the filtration technology used. Systems using conventional and direct filtration would report monthly the total number of turbidity measurements, the date and values of any measurements which exceed 0.5 NTU, and the percent of turbidity measurements which are less than 0.5 NTU. The reporting requirements for systems using slow sand filtration would be the same as those for conventional and direct filtration except that the system would report turbidity values which exceed one NTU rather than 0.5 NTU. In addition, if the filtered water turbidity level was not less than one NTU in at least 95 percent of the measurements taken in a month, the system would also report the results of sampling to demonstrate that the filter effluent prior to disinfection meets the long-term MCL for total coliforms for the previous year (§ 141.63(b), see the coliform rule proposed elsewhere in today's **Federal Register**). The reporting requirements for systems using diatomaceous earth filtration are the same as those for conventional and direct filtration except that the system would report the date and values of turbidity measurements which exceed 1 NTU and the percent of measurements which exceeded 1 NTU that month. If the State allows other filtration technologies, those systems must meet the reporting requirements for conventional and direct filtration, except that the State may specify that other turbidity values be reported to allow determination of compliance with different performance criteria.

To verify compliance with the disinfection requirements of § 141.72(b), each system using filtration must report monthly the date and duration of each instance the disinfectant residual is less than 0.2 mg/L in the water supplied to the distribution system. To determine whether adequate disinfectant residuals are being maintained in the distribution system, the system would also report monthly the total number and values of disinfectant residua1 measurements in the distribution system. These measurements would be taken no less frequently than samples for total coliforms required pursuant to § 141.21 of the coliform rule (proposed elsewhere in today's **Federal Register**). In addition, the system would report the values measured, and the total number and percent of values which are less than 0.2 mg/L.

Each month the system would also provide a copy of any public notice issued during the month pursuant to § 142.32.

D. Compliance

Within 18 months following the promulgation of this rule, States are required by the SDWA to promulgate their own criteria for determining which systems must filter, which are at least as stringent as those required by EPA. Within 12 months following promulgation of its criteria, each State must determine which systems will be required to filter. Procedures for State implementation of both the filtration and disinfection requirements appear in Section VI below. If a State fails to comply with this schedule for adopting the criteria and applying them to determine who must filter, systems would be required to comply with the "objective" or self-implementing criteria (i.e., the requirements that are clear on the face of the rule and do not require State judgment), within 30 months of the promulgation of this rule or install filtration within 48 months. As soon as the State adopts the criteria, the system would have to comply with all the requirements.

The proposed rule has self-implementing requirements which pertain to both unfiltered and filtered water systems. These are listed in § 141.76(a)(1)(2)(4)(5)(6) and 141.76(b)(1)(2)(4)(5)(6), respectively; they would go into effect for each public water system within 48 months following the promulgation of this rule (unless the State has imposed more stringent requirements). The subjective criteria (such as those pertaining to watershed control and design and operating conditions), listed in § 141.76 (a)(3) and (b)(3), would go into effect following the establishment of these criteria by the State. Systems which are not in compliance with the objective criteria for avoiding filtration 30 months after promulgation would be required to install filtration and meet the objective performance criteria (listed in § 141.76) for the filtration technology they choose within 48 months after promulgation.

Any system failing to meet the criteria listed in § 141.76 (a)(1)(2) or (b)(1)(2), within 48 months following promulgation of this rule, would be in violation of a treatment technique requirement. Any system failing to meet

the subjective criteria, listed in § 141.76 (a)(3) or (b)(3), following the determination made by the State, would also be in violation of a treatment technique requirement. Any system failing to meet the criteria pertaining to analytical, monitoring, and reporting requirements, listed in § 141.76(a)(4)(5)(6) or § 141.76(b)(4)(5)(6) would be in violation of a testing procedure requirement, monitoring requirement, or reporting requirement.

The 48-month time limit is based on the 1986 SDWA amendments which require: (1) States to adopt criteria for determining which systems must filter within 18 months following EPA's promulgation of such criteria; (2) States to determine which systems must filter within 12 months following such adoption of criteria; and (3) systems to install filtration within 18 months of the determination that filtration is required.

Figure IV–1 illustrates how it would be determined whether a system is in compliance with the rule. Strategies for implementing the requirements of this rule for different systems, based on current treatment in place and on water quality, are described below.

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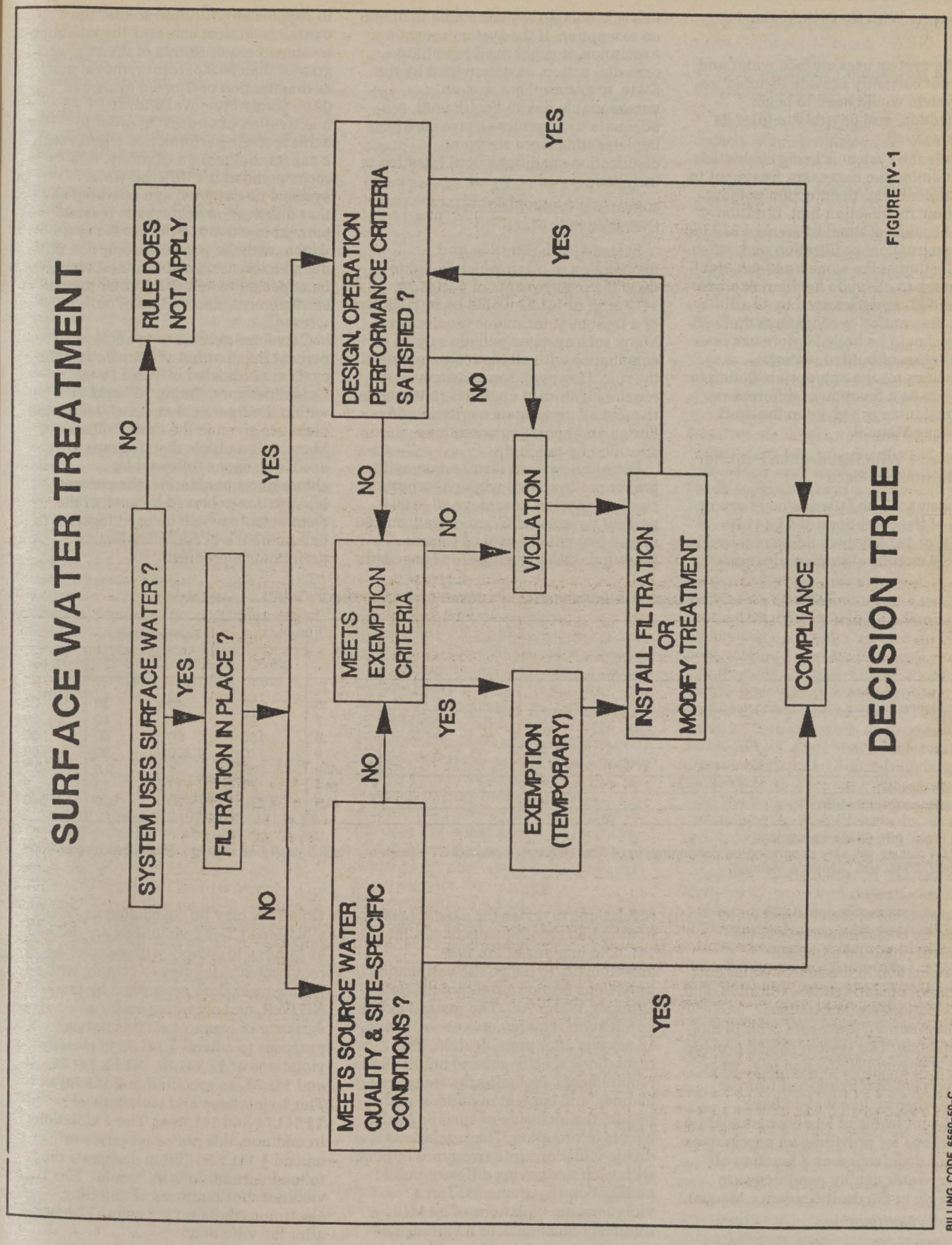

FIGURE IV-1

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1. Systems With No Disinfection in Place

If the system uses surface water and does not currently provide disinfection, the system would need to begin disinfection, and possibly to filter its water as well.

While the system is being evaluated to determine the necessary treatment to be installed (e.g., disinfection without filtration; disinfection first, filtration later because of time differences needed for construction; or filtration and disinfection at the same time), interim measures to alleviate health risk might be needed, as determined by the State (such as a notice to consumers that water should be boiled before use or distribution of bottled water). Guidelines for the appropriate action to be taken as a function of different circumstances are given in the draft Guidance Manual.

2. Systems With Disinfection But With No Filtration in Place

Systems which failed to meet one or more of the conditions of §§ 141.70, 141.71, or 141.72(a) would be required to filter 48 months after promulgation of this rule unless they were able to obtain an exemption. If the system sought an exemption, it might need to initiate remedial action, as determined by the State, to ensure there was no unreasonable risk to health until adequate treatment was provided (e.g., implementing more stringent disinfection conditions until filtration is installed).

3. Systems With Filtration and Disinfection in Place

Systems with filtration and disinfection in place which failed to meet the requirements of §§ 141.70, 141.72(b), or 141.73 would be in violation of a treatment technique requirement. Many such systems will already be in compliance with all the requirements of the rule. However, some systems will require significant upgrades in treatment to meet all performance criteria and design and operating conditions specified by the State.

Filtration without disinfection, with proper pretreatment where appropriate, can be expected to achieve 99 to 99.9 percent removal of *Giardia* cysts and 90 to 99.9 percent removal of viruses (Logsdon, 1987). Disinfection is needed to supplement filtration so that the overall treatment achieves the minimum treatment requirements of the rule, i.e., greater than 99.9 percent removal and/or inactivation of *Giardia* cysts and 99.99 percent removal and/or inactivation of viruses. In order to achieve these performance criteria with a substantial margin of safety, it is recommended that filtered water systems be designed and operated so that disinfection achieves at least 90 percent inactivation of *Giardia* cysts which, with the possible exception of disinfection using chloramines, would be expected to achieve greater than a 99.99 percent inactivation of enteric viruses.

CT values necessary to achieve 90 percent inactivation of *Giardia lamblia* cysts are indicated in Table IV-3. Guidelines for defining "C" and "T" within the treatment chain of a filtration plant are given in the draft Guidance Manual. If multiple disinfectants are used, e.g., ozone followed by chloramines or chlorine, the percent inactivation achieved by each of the disinfectants would be used together to determine the overall disinfection performance provided.

TABLE IV-3.—CT VALUES FOR ACHIEVING 90 PERCENT INACTIVATION OF GIARDIA LAMBLIA [1]

	pH	Temperature			
		0.5 °C	5 °C	10 °C	15 °C
Free chlorine [2]	6	60	40	30	20
	7	90	60	40	30
	8	130	90	60	50
	9	170	120	90	60
Ozone	6-9	1.5	1	0.8	0.7
Chlorine dioxide	6-9	27	17	13	9
Chloramines (preformed)	6-9	1,270	730	620	500

[1] From draft Guidance Manual.
[2] CT values will vary depending on concentration of free chlorine. Indicated CT values are for 2.0 mg/l free chlorine. (For other free chlorine concentrations, see Guidance Manual).

Disinfection of the clarified water should be commensurate with the degree of potential pathogen contamination in the source water and the extent of clarification, filtration, and preoxidation (e.g., ozonation, prechlorination) processes prior to this disinfection. The system should provide more stringent disinfection (e.g., 99 or 99.9 percent inactivation of *Giardia* cysts) when source waters have significant levels of fecal contamination. Guidelines for providing an appropriate level of disinfection as a function of source water quality conditions are available in the draft Guidance Manual.

E. Public Notification

EPA has recently promulgated final regulations to revise the existing public notification requirements in 40 CFR 141.32 to implement the 1986 amendments to the public notification provisions section 1414(c) of the Safe Drinking Water Act. The revised public notification requirements are effective 18 months after promulgation. The regulations specify general notification requirements, including the frequency, manner, and content of notices, and require the inclusion of specific health effects information. The regulations divide violations into two types of tiers, with each tier having different public notification requirements. Tier 1 violations are violations of an MCL, a treatment technique, or a variance or exemption schedule. (Some Tier 1 violations may be designated as "acute" violations.) Tier 2 violations are defined as failures to comply with monitoring requirements, failures to comply with a testing procedure prescribed by the NPDWR, and operating under a variance or exemption. This notice proposes to amend § 141.32 to classify violations of §§ 141.70, 141.71, 141.72, and 141.73 (as specified in § 141.76) as Tier 1 violations and violations of §§ 141.74 and 141.75 as Tier 2 violations. In addition, this notice proposes to amend § 141.32(a)(iii) to designate the following conditions as "acute" Tier 1 violations for purposes of requiring electronic media notice within 72 hours after the violation:

1. When the turbidity of the water

prior to disinfection of an unfiltered supply, or the turbidity of filtered water, exceeds 5 NTU at any time; or

2. There is a failure to maintain a disinfectant residual of at least 0.2 mg/l in the water being delivered to the distribution system.

All of the requirements of the § 141.32 General Public Notification Requirements, including the manner and frequency of notification, would apply to this proposed regulation. The final public notification regulation requires all public notices to include specific health effects information. The mandatory information for certain contaminants was contained in the public notification rule; for others it is to be promulgated when the MCL is promulgated. In accord with this, the proposed mandatory language to be included in public notifications for violations of filtration and disinfection requirements is specified below:

Microbiological contaminants in water that has been treated improperly may be a problem for people who drink that water because these contaminants can cause various types of illness such as hepatitis, giardiasis, and gastroenteritis. These illnesses can cause different symptoms, including diarrhea, jaundice, abdominal cramps, nausea, headaches, weight loss, and fatigue. To reduce any potential risk of microbial contamination of drinking water, there are requirements for treating drinking water, such as filtering and disinfecting the water, which remove or destroy microbiological contaminants at water treatment facilities.

F. Variances

Section 1415 allows variances from national primary drinking water regulations under certain conditions. However, section 1412(b)(7)(C)(ii) of the Safe Drinking Water Act states that, in lieu of the variance provisions of section 1415, the EPA is to specify criteria by which States will determine which public water systems will be required to filter. This notice proposes such filtration requirement criteria. Therefore, the proposed rule would not permit variances. As for the disinfection requirements in this proposal, due to the acute and high risk associated with poor disinfection of surface waters, EPA is proposing that no variances be allowed. The rationale for not allowing variances to the disinfection requirements is discussed in Section V of this notice.

G. Exemptions

Section 1416 of the Safe Drinking Water Act allows a State to exempt any public water system within its jurisdiction from any treatment technique requirement imposed by a national primary drinking water regulation upon a finding that:

1. Due to compelling factors (which may include economic factors), the public water system is unable to comply with the treatment technique requirement;

2. The public water system was in operation on the effective date of the treatment technique requirement, or for a system that was not in operation by that date, only if no reasonable alternative source of drinking water is available to the new system; and

3. The granting of the exemption will not result in an unreasonable risk to health.

If a State grants a public water system an exemption, the State must prescribe, at the time the exemption is granted, a schedule for:

1. Compliance (including increments of progress) by the public water system with each treatment technique requirement with respect to which the exemption was granted; and

2. Implementation by the system of such control measures as the State may require for each treatment technique requirement, during the period the exemption is in effect.

Before prescribing a schedule, the State must provide notice and opportunity for a public hearing on the exemption. The schedule prescribed must require compliance by the public water system with the treatment technique requirement as expeditiously as practicable, but in no case later than one year after the exemption is issued (except that if the system meets certain requirements, the final date for compliance may be extended for a period not to exceed three years from the date the exemption is granted). For systems serving less than 500 service connections and which need financial assistance for the necessary improvements, the State may renew the exemption for one or more additional two-year periods, if the above conditions were satisfied. EPA is proposing that no exemptions be allowed from the requirement of providing disinfection for surface water systems, but that exemptions be allowed for the degree of disinfection required and for meeting the filtration requirements. For example, under certain conditions, it might be appropriate for an unfiltered system to receive an exemption if it achieved a 99 percent removal and/or inactivation of *Giardia* but not the required 99.9 percent removal and/or inactivation of enteric viruses. Guidance for determining conditions under which an exemption might be appropriate is discussed in the draft Guidance Manual.

V. Basis for Major Components of Proposed Rule

The rationale for each of the major criteria of the proposed rule are presented below.

A. Definition of Surface Water and Coverage

The purpose of the proposed definition of "surface waters" is to subject to the requirements of the rule all systems which may be subject to surface water contamination by *Giardia lamblia*. *Giardia lamblia* are orders of magnitude larger than viruses and are thus much more readily removed by natural filtration processes in the ground. However, *Giardia lamblia* are much more resistant than viruses and bacteria to disinfection, and either require filtration and disinfection together or very stringent disinfection for adequate removal and/or inactivation. When disinfection requirements for groundwater supplies are proposed at a later date, they will address the concern for viral contamination in such supplies.

Drinking water supplies originating from infiltration galleries, springs, and wells have been found to be contaminated by *Giardia* cysts (Hoffbuhr *et al.*, 1986; Hibler *et al.*, 1987). In addition, waterborne giardiasis outbreaks have occurred in systems using springs and wells as their source water (Craun, *et al.* 1986). These data indicate that not all water from beneath the surface of the ground is adequately filtered by passage through the ground or protected from surface water so as to prevent contamination by *Giardia lamblia*. Since a major purpose of this proposed rule is to control *Giardia lamblia*, the proposed definition of "surface water" includes springs, infiltration galleries, wells, and other collectors which are directly influenced by surface water. "Direct influence" would be determined on a case-by-case basis by the State. Direct influence of surface water may be indicated by rapid shifts in water quality indicators such as turbidity or conductivity, the presence of diatoms, plant debris, rotifers, insect parts, larvae, *Coccidia*, or *Giardia* cysts in the source water. This broad definition of "surface water" would give the State the authority to require a system with a source from beneath the surface, which may be subject to surface water contamination, to demonstrate that the source water is not subject to direct influence from surface water in

order to avoid coverage by this rule. A sanitary survey, hydrogeological survey, and/or monitoring to determine whether there are fluctuations in water quality indicators of surface water influence present such as diatoms, plant debris, rotifers, *Coccidia*, insect parts, larvae, or *Giardia* cysts may be needed in order to make an appropriate determination. Recommended procedures for making these determinations appear in the draft Guidance Manual.

B. Requirement That All Surface Water Systems Must Disinfect (No Variances or Exemptions Allowed)

The proposed rule requires disinfection for all systems with surface water sources, with no variances or exemptions allowed, because all surface water sources have a significant probability of being subject to contamination from pathogenic bacteria, viruses, and *Giardia lamblia*. Currently available water quality indicators (e.g., total coliforms, turbidity) are not adequate by themselves for demonstrating that surface water is not at risk from contamination of pathogenic organisms.

A properly maintained and operated disinfection system is essential for controlling waterborne disease. As indicated in Table I–1, most disease outbreaks occur in systems with inadequate or interrupted disinfection. Clarification and filtration processes by themselves do not provide adequate removal of pathogenic bacteria and viruses. Disinfection must supplement these processes to provide the most effective treatment barrier for these organisms and to provide additional protection from *Giardia* cysts.

At the April 1985, Baltimore Workshop on Filtration, Disinfection and Microbial Monitoring, which EPA and the American Water Works Association sponsored, participants representing utilities, state regulatory programs, and the scientific community recommended that disinfection be required, with no variances allowed, for all systems using surface water sources (Regli, S.; Berger, P., eds., 1987).

C. 99.9 Percent Removal and/or Inactivation of Giardia Cysts

Tables V–1 and V–2 characterize the occurrence of *Giardia* cysts in raw and finished public drinking water supplies as a function of source water type and treatment in place. The data are based on analyses by the Department of Pathology, Colorado State University on samples submitted from municipalities throughout the United States (Hibler, 1987).

TABLE V–1.—DETECTIONS OF GIARDIA CYSTS IN SOURCE WATERS OF PUBLIC DRINKING WATER SUPPLIES IN THE U.S.[1]

Classification	Samples	No. sites	No. positive samples	No. positive sites	Percent	
					Positive of samples	Positive of sites
Creeks	444	75	181	38	41	51
Rivers	449	74	163	38	36	51
Lakes	829	49	138	19	17	39
Springs [2]	84	6	16	2	19	33
Wells [2]	63	40	2	2	3	5

[1] Ref. (Hibler, 1987).
[2] Samples represent finished water. Most water from springs and wells is unfiltered and may or may not be disinfected before consumption.

TABLE V–2.—DETECTIONS OF GIARDIA CYSTS IN FINISHED DRINKING WATER SUPPLIES OF THE U.S.[1]

Classification	Samples	No. sites	No. positive samples	No. positive sites	Percent	
					Positive of samples	Positive of sites
Unfiltered, chlorinated	1,214	94	80	16	6.6	17
Direct filtration [2]	615	92	148	17	24.0	18.5
Conventional treatment	357	86	12	5	3.4	5.8
Slow sand and diatomaceous earth filtration	18	3	0	0	0	0
Commercial filters and/or pressure filters	33	12	4	2	12.1	16.7
Cartridge filters	51	13	11	7	21.6	53.8
Infiltration galleries	37	16	7	5	18.9	31.3
Filter type unknown	83	24	15	6	18.0	25.0

[1] Based on data collected from 1979–1986, Hibler, 1987.
[2] May or may not include coagulation or disinfection. Number of systems applying coagulant and/or polymer, or whether disinfection was interrupted, could not be determined.

The data in Tables V–1 and V–2 underestimate the occurrence of positive cysts in the samples that were analyzed because:

1. Percent recoveries of cysts were less than 100 percent, estimated to range from about 10 percent (in waters with high organic turbidity) to about 85 percent (in waters with low inorganic turbidity), and

2. Many of the finished water samples contained a chlorine residual so that, with the lag time in shipping and processing, cysts that may have been present were either killed or compromised and therefore not detected.

In most of the systems using conventional treatment in which cysts were detected in the raw water, no cysts were detected in the finished water. However, the data indicate that even when filtration technologies (e.g., direct filtration or conventional treatment) are in place, *Giardia* cysts may not be effectively removed if chemical pretreatment (e.g., coagulation) is absent or maintenance and operation are improper or inadequate. This conclusion is further supported by epidemiological

data (previously presented in Table I–1) which indicate that about one-third of all reported cases of waterborne giardiasis occurred in systems which filter their water but which were improperly maintained or operated. These data indicate that it is not enough to require that some type of filtration be installed where appropriate, but that it is necessary to specify requirements for filtration which will ensure adequate performance. All surface waters are susceptible to *Giardia* cyst contamination from animal or human sources. Even in protected watersheds, where restrictions on access may significantly reduce the probability of contamination, a large measure of uncertainty will always exist that warrants a minimum level of protection.

EPA is proposing treatment requirements which achieve at least 99.9 percent removal and/or inactivation of *Giardia* cysts. All waterborne giardiasis outbreaks have occurred in systems with no treatment in place or with faulty water treatment plant design or operation. On the other hand, no properly operated water treatment plant using conventional treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration with disinfection has been implicated in a waterborne giardiasis outbreak. Laboratory and pilot-scale studies indicate that these technologies, under appropriate design and operating conditions, remove and/or inactivate at least 99.9 percent of *Giardia* cysts (U.S. EPA, 1987c) (Amirthirajah, 1986). In addition, at the April 1985 Baltimore Workshop on Filtration, Disinfection and Microbial Monitoring, participants recommended that if systems were allowed not to filter, they should be required to achieve a 99.9 percent inactivation of *Giardia* cysts by disinfection (as well as other requirements).

Although some systems might not actually need a 99.9 percent removal and/or inactivation of *Giardia* cysts to provide adequately safe water to their customers, EPA believes it is not feasible for a system to demonstrate with assurance that lower removals and/or inactivations would be adequately protective of public health. A methodology has been suggested which would allow a public water system to demonstrate that it is providing finished water below a designated risk level (e.g., less than one infection per 10,000 people per year), based on intensive monitoring of *Giardia* cyst occurrence in the raw water and an estimate of percent inactivation achieved by disinfection (Regli *et al.*, 1986; Borup, 1986). It is not feasible at this time, however, to base a maximum contaminant level on such an analysis since:

(a) There is no "standard" method for counting *Giardia* cysts.

(b) Available methods have not been validated by a number of laboratories using different waters.

(c) Validation procedures need to be established.

(d) The precision, efficiency and sensitivity have not been adequately determined for any one analytical method.

(e) Percent recovery of *Giardia* cysts by available analytical methods is not predictable.

(f) Laboratory certification procedures are not available.

(g) Practical methods for assessing cyst viability have not been developed.

(h) Sampling frequencies needed to demonstrate low levels of risk appear to be economically prohibitive for most systems.

Therefore, EPA believes it appropriate to require that all systems using surface water achieve a minimum removal and/or inactivation of 99.9 percent *Giardia* cysts. A minimum performance level is specified in the proposed rule (rather than minimum design and operating conditions) to allow for a variety of technological solutions. Guidance for evaluating *Giardia* removal and/or inactivation by filtration and disinfection processes, with appropriate safety factors, is provided in the Guidance Manual.

D. 99.99 Percent Removal and/or Inactivation of Enteric Viruses

In 1971–1985, 36 percent of reported waterborne illnesses in systems using surface waters were diagnosed as acute gastrointestinal disease of unknown pathogen etiology. EPA believes that many of these illnesses are caused by viruses. The Committee on Viruses of the American Water Works Association has expressed concern about viral transmission by drinking water because:

1. Human enteric viruses can survive for extended periods in the aquatic environment and these viruses have been readily isolated from wastewater and polluted surface water used as source water for treatment plants.

2. Laboratory data have shown most enteric viruses to be more resistant than indicator bacteria to inactivation by disinfectants used for water.

3. Infectivity tests have shown that, under experimental conditions, human infections could be caused by a one-cell culture dose of poliovirus.

4. There is a consistently high endemic level of hepatitis A in the United States and investigations have shown contaminated water to be a source of hepatitis A outbreaks.

5. Sporadic outbreaks of non-bacterial gastroenteritis suspected of being waterborne in origin occur rather frequently, and an endemic level of gastroenteritis occurs in the United States; waterborne viruses may be responsible.

6. Increased water demand is making direct recycling of wastewater almost a reality for some water systems, and conventional water treatment is not designed to produce potable water from wastewater. (AWWA Committee Report, 1979)

Enteric virus removal by clarification and filtration processes, without disinfection, can be expected to range from 90 to 99.7 percent for conventional treatment, 90 to 99 percent for direct filtration (with coagulation-flocculation), zero to greater than 99 percent for diatomaceous earth filtration (depending on whether pretreatment is used), and from 90 to greater than 99.9 percent by slow sand filtration (Engelbrecht, 1983; Logsdon, 1987).

The effectiveness of enteric virus inactivation by disinfection depends upon the type of disinfectant, disinfectant residual, disinfectant contact time, pH, and temperature, and may be affected by the ionic environment and clumping (Hoff, 1986). The AWWA Committee on Viruses in Drinking Water has recommended that following conventional treatment, a free chlorine residual of 1.0 mg/l be maintained for at least 30 minutes at a water pH not to exceed 8.0, to provide reasonable assurance of a virologically safe water (AWWA Committee Report, 1979). The Committee further recommended that reductions in contact time or increases in pH should be compensated for by appropriate increases in free chlorine residual.

The recommended minimal disinfection conditions by AWWA can be expected to achieve greater than a 99.9 percent inactivation for most enteric viruses for which data exists (Liu et al., 1971; Hoff, 1986; U.S. EPA, 1987c).

Well-operated systems with filtration and disinfection can be expected to achieve at least a 99.99 percent removal and/or inactivation of enteric viruses. No waterborne disease has ever been implicated in a well-operated water treatment plant using filtration and disinfection. EPA believes that at least a 99.99 percent removal and/or inactivation of enteric viruses by

treatment for surface water systems is necessary to ensure an adequate margin of safety.

A minimum performance level is specified in the proposed rule (rather than minimum design and operating conditions) to allow for a variety of technological solutions. Guidance for evaluating enteric virus removal and/or inactivation by filtration and disinfection processes, with appropriate safety factors, is provided in the Guidance Manual.

E. Criteria for Determining if Filtration is Required

1. Source Water Quality Requirements

a. *Coliforms.* Historically, standards for raw water used as sources for public drinking water, where disinfection is the only treatment provided, have ranged from 50 to 100 total coliforms per 100 ml based on a monthly arithmetic average (McKee, J.E., Wolf, H.W., 1963). Standards in this range have been issued by the U.S. Public Health Service (PHS), New England Interstate Water Pollution Control Commission, Interstate Commission on the Potomac River Basin, Pollution Control Council, and numerous State health departments. These standards were based on extensive U.S. PHS studies conducted earlier in the century.

In 1969, the U.S. PHS issued the "Manual for Evaluating Public Drinking Water Supplies," Public Health Service Publication 1820, also known as the "Green Book," in which it recommended that for systems whose only treatment was disinfection, the raw water should not exceed fecal coliform (FC) counts of 20 per 100 ml, and total coliform (TC) counts of 100 per 100 ml, as determined by a monthly arithmetic mean (U.S. EPA, 1971). However, the total coliform count could exceed 100 per 100 ml if the fecal coliform count did not exceed the recommended limit. The fecal coliform number was given precedence over the total coliform number because it only measures coliforms excreted from humans and warm blooded animals, whereas total coliforms includes coliforms from plants or soils which may not have health risk significance.

As noted earlier, EPA is proposing that to avoid filtration a system would be required to show that the fecal coliform concentration in its source water is less than 20 per 100 ml in 90 percent of the samples taken during the previous six months, calculated every month, with minimum sampling frequencies as follows:

System size	Samples/ week
<501	1
501-3,300	2
3,301-10,000	3
10,001-25,000	4
>25,000	5

In addition, systems would be required to collect at least one coliform sample during any day in which a turbidity measurement in the raw water exceeded 1 NTU (these samples would count towards the weekly minimum).

Systems would be allowed to monitor for total coliforms in lieu of fecal coliforms. In such cases, the system must show that the total coliform concentration is less than 100 per 100 ml in 90 percent of the samples the previous six months period, calculated every month. If both fecal coliform and total coliform measurements are made, the system would only be required to meet the fecal coliform limit to avoid filtration. These criteria are based on the following considerations:

(1) A limit that must be met a certain percentage of the time, rather than an average limit, reflects more accurately the probabilities of occurrence of water quality periods in which the system may be significantly stressed (in contrast to averages, which tend to mask periodic excursions).

(2) The prescribed sampling frequency allows smaller systems to collect fewer samples because in such systems probabilities of adverse effects are less. In addition, monitoring by small systems is significantly more expensive than for large systems because the analysis generally cannot be conducted in-house. The requirement that the public water system collect an additional sample each day that raw water turbidities exceed 1 NTU would ensure that sampling is conducted when water quality is likely to most severely stress disinfection treatment. The monitoring frequencies prescribed for small systems are consistent with those required for the distribution system under the total coliform MCL regulation proposed elsewhere in today's Federal Register. Therefore, sample collection and analysis easily could be conducted at the same time to fulfill the requirements of both rules. It should be noted that this regulation would not require more than five samples per week for large systems (as opposed to the more frequent monitoring required throughout the distribution system in the proposed total coliform MCL regulation) since EPA believes that source water quality, as opposed to distribution system water quality, is adequately measured by taking samples at one representative point through which all the water to be treated passes.

(3) The proposed limit is applied over every consecutive six months rather than just one month because (1) the minimum number of source water samples required for small systems (e.g., three samples or less per week for systems serving less than 10,000 people) would not provide enough samples for reasonable application of the criterion on a monthly basis, and (2) the evaluation of data for six months, rather than just one month, provides better overall representation of the water quality and more data on which to determine whether a system must filter or not. The proposed limit is applied over six months rather than a longer interval (e.g., one year) because the amendments to the SDWA require States to determine which systems must filter within one year following the adoption of these criteria; using six months of data still leaves the State time to make its determination.

(4) The more stringent historical standard, i.e., 50 total coliforms per 100 ml versus 100 total coliforms per 100 ml (or alternatively ten fecal coliforms per 100 ml, assuming a 5:1 total coliform to fecal coliform ratio), was used as the mean value concentration for determining an upper allowable limit.

The upper allowable limit set for the historical standards are based on the 90% confidence limits of the most probable number (MPN) estimates for the 5 tube, 3 decimal dilution test. The upper 90 percent confidence limit for the MPN technique was selected because the variation around an MPN mean estimate is constant over the entire range of values for any set number of tubes and it is greater than the variation encountered with membrane filter techniques. It has been shown graphically that the upper 90 percent confidence interval value for a 3 decimal dilution, 5 portion MPN estimate for a mean value of 10 fecal coliforms is 20 (Velz, 1951). For a test using 3 portions, the upper 90% limit is 25. Since the application of both methods is acceptable, and considering the close proximity of 20 and 25, the value 20 was selected as the upper allowable limit. Applying the same analysis for total coliforms results in an upper limit of approximately 100 per 100 ml.

(5) EPA is proposing to allow a system to demonstrate they are meeting a total coliform limit, in lieu of the fecal coliform limit, because many public water systems already have a large data base of total coliform data from which

to determine whether they would be required to filter. The total coliform 90th percentile limit of 100 per 100 ml would be allowed as a surrogate for the fecal coliform limit because FC:TC ratios in waters relatively remote from fecal discharge tend to be much lower than 1:5 and thus, for such waters, the total coliform limit provides a much more conservative limit than the fecal coliform limit. The Ohio River Valley Water Sanitation Commission (ORSANCO, 1971) compared levels of fecal coliform and total coliform in over 1,000 samples from different locations on the Ohio River. The ORSANCO study found an overall FC:TC ratio of 14:100 (varying from 4:1,000 to 45:100), averaging approximately 1:5 near discharge points of wastewater treatment plants and less than this further away from such discharge points.

EPA is currently collecting raw water quality data from a large number of public water systems that disinfect, but do not filter their water, which it will use to evaluate the proposed raw water limits. Data gathered to date are shown in Table V-3. These data suggest that an arithmetic mean upper limit may be more appropriate than a percentile occurrence upper limit because the two systems with the highest arithmetic mean (i.e., utilities "F" and "J") were the only systems which experienced noncompliance with the current total coliform MCL for distribution system monitoring. These systems (along with utility "K") also experienced the highest annual mean and 90th percentile turbidity occurrence levels.

TABLE V-3—OCCURRENCE OF TOTAL COLIFORMS AND TURBIDITY LEVELS FOR ONE YEAR IN SOURCE WATERS OF SYSTEMS PRACTICING DISINFECTION ONLY

Utility	Total Coliforms per 100 ml			Turbidity (NTU)		
	Mean	90th [1]	No. Samples [2]	Mean	90th	No. Samples
A	30	54	279 (D)			
B	8	16	508 (W)	0.99		107 (M)
C	56	184	51 (W)	0.41	0.56	51 (W)
D	6	18	401 (D)	0.33	0.43	404 (D)
E	11	24	1,393 (D)	0.25	0.32	1,411 (D)
F*	93	117	168 (D)	2.56	6.50	80 (D)
G	41	129	41 (M)	1.37	1.60	44 (M)
H	28	55	42 (M)	1.04	1.40	46 (M)
I	6	11	43 (M)	1.53	2.10	45 (M)
J*	64	80	363 (D)	1.62	2.40	365 (D)
K	35	57	60 (M)	1.66	2.64	60 (M)
L	.5	5.2	60 (M)	0.50	0.81	60 (M)

* Noncompliance with total coliform MCL by distribution system monitoring.
[1] 90th=90 percent of all values less than that value (90th percentile).
[2] D=daily samples, W=weekly samples, M=monthly averages.

b. *Turbidity.* The proposed raw water turbidity requirement for systems which do not filter is related to the existing turbidity MCL, which has been in effect since 1977. Under the existing MCL, a system is in violation if the turbidity of the water, at a representative entry point to the distribution system exceeds 1 NTU, as determined by a monthly average (based on at least one sample per day), or if the average turbidity for two consecutive days exceeds 5 NTU. Under the existing MCL the monthly average limit of 1 NTU may be exceeded up to 5 NTU if the system demonstrates to the State that the higher turbidity does not (1) interfere with disinfection; (2) prevent maintenance of a disinfectant residual throughout the distribution system; or (3) interfere with microbiological determinations.

Under the proposed rule, a system would be required to filter if the turbidity of the raw water, just prior to disinfection, exceeds 5 NTU at any time unless the following conditions were met: (a) turbidity levels did not exceed 5 NTU in more than two periods in twelve consecutive months, or more than five periods in 120 consecutive months (where "period" is one or more consecutive days when at least one turbidity measurement each day exceeds 5 NTU); (b) the system informs its customers that they must boil the water before consumption during the period the turbidity exceeds 5 NTU; and (c) the State determines that the exceedance is unusual and unpredictable. Measurements for making this determination would be required at least every four hours. EPA has not proposed an average monthly limit of 1 NTU in accordance with the conditions of the existing turbidity MCL because:

a. The proposed rule would require systems to filter if they fail to comply with the proposed long-term MCL for total coliforms proposed elsewhere in today's **Federal Register**. Under the proposed total coliform MCL, systems would be required to monitor throughout the distribution system. If there is evidence of interference with the coliform analysis, repeat samples would be required, for determining both the presence or absence of coliforms and the number of heterotrophic bacteria present. If the heterotrophic bacteria level exceeds 500 colonies/ml, the system would be required to report that repeat sample as coliform-positive, even in the absence of detectable coliforms. In addition, for surface water systems which do not filter, the proposed rule would require them to sample for coliforms near the first customer each day the turbidity exceeds one NTU. These measurements would be counted in determining whether the system is in compliance with the total coliform MCL.

Analysis of recent occurrence data that public water systems have submitted to EPA indicates that several systems which use disinfection as the only treatment, and which have had average turbidity levels exceeding 1.5 NTU in their source water, have been out of compliance with the existing total coliform MCL (Table V-3). Meeting the proposed coliform MCL, which is more stringent than the existing MCL, would serve as an indicator that there is no significant interference of disinfection by turbidity.

b. Under the proposed rule systems would be required to filter unless they met the following disinfection conditions:

(i) Maintenance of CT values, determined each day, that theoretically achieve 99.9 percent inactivation of *Giardia* cysts and 99.99 percent inactivation of enteric viruses, with some margin of safety.

(ii) Maintenance of a disinfectant residual both at the point of entry into the distribution system and throughout the distribution system.

EPA believes that the proposed raw water quality upper limit of 5 NTU (with more frequent monitoring than the current rule for turbidity), in conjunction with the other requirements of this rule, would provide a greater margin of safety than the requirements of the existing turbidity MCL for ensuring that raw water quality will not significantly interfere with disinfection of *Giardia* cysts, bacteria, and enteric viruses. Since significant fluctuations in turbidity levels can occur during a 24-hour period, this proposed rule would require more frequent monitoring than does the current NPDWR for turbidity to ensure a more representative measurement of turbidity occurrence. Increases in turbidity occurrence levels from less than 1 NTU to greater than 5–10 NTUs have been shown to correlate with decreases in disinfection effectiveness in unfiltered source waters (Le Chevalier, *et al.*, 1981). In addition, high turbidity waters may be unaesthetic in appearance and cause consumers to avoid use of the public water supply and possibly choose less safe sources. Exceedances to the 5 NTU limit are allowed for a limited number of unusual and unpredictable circumstances such as avalanche, hurricane, or ten-year flood. EPA believes that the boiled water notice required to be issued at such times would prevent exposure to acute risks.

The proposed turbidity limit for systems which do not filter (i.e., only practice disinfection) is less stringent than the turbidity limits proposed for systems which filter because:

(a) EPA believes the requirements that systems which do not filter meet the raw water fecal coliform and total coliform limits, and maintain a watershed control program to restrict human activities, ensure very high probabilities of minimal (if any) occurrence of human viruses in the source water. Although watershed control will not eliminate animal activity, no viruses excreted by animals have yet been shown to be pathogenic to humans.

(b) *Giardia lamblia* cysts are relatively large organisms compared to bacteria and viruses, so interference with their removal and/or inactivation by turbidity levels below the specified limits is very unlikely. And, as noted earlier, achieving 99.9 percent inactivation of *Giardia* cysts will achieve much greater than 99.99 percent inactivation of enteric viruses and heterotrophic bacteria, if chlorine, ozone, or chlorine dioxide are used for disinfection (Hoff, 1986). As discussed previously, if a system used chloramination it would probably not be feasible for it to achieve the CT values specified in the proposed rule for the required inactivation of *Giardia* and enteric viruses. The draft Guidance Manual provides a methodology by which systems using chloramination could conduct pilot studies of their disinfection process to demonstrate, on-site, whether it is achieving 99.9 percent and 99.99 percent removal and/or inactivation of *Giardia* cysts and enteric viruses, respectively.

2. Disinfection Requirements

To avoid filtration the proposed rule would require systems which do not filter to: (1) provide disinfection which achieves at least 99.9 percent inactivation of *Giardia lamblia* cysts and 99.99 percent inactivation of enteric viruses based on application of CT values; (2) provide treatment with redundant back-up components for disinfection in case of system failure; (3) maintain a disinfectant residual of at least 0.2 mg/l at all times in the water entering the distribution system; and (4) maintain a disinfectant residual in the distribution system of no less than 0.2 mg/l in more than 5 percent of the measurements in a month, for two consecutive months. The basis for these requirements is discussed as follows:

(a) Application of CT Values for Determining 99.9 Percent Inactivation

The rationale for the minimum levels of inactivation has already been discussed. The rule sets out CT tables which specify the percent inactivation based on the contact time and residual disinfectant concentration. In addition, the rule specifies how "contact time" and "residual disinfection concentration" are to be determined. EPA believes this specification is necessary in the rule because many systems have traditionally determined CT values based on the disinfectant residual "C" (mg/l), measured at the point of application and contact time "T" (minutes) measured during average flow rate conditions, assuming no short circuiting of the water through the treatment plant (such as within storage tanks or mixing basins). However, CT measurements determined in this manner would overestimate the actual percent removal and/or inactivation. The proposed rule specifies that "C" be measured near the first customer or before a subsequent point of disinfectant application (e.g., chlorination or chloramination after ozone). Water prior to this point of measurement could be assumed to have a higher disinfectant concentration than near the first customer because of oxidant demand in the water. The measured "C", as specified in the proposed rule, will thus reflect a substantially lower disinfectant concentration than would actually be present during disinfection, since some of the disinfectant would have been reduced over time. The proposed rule also specifies that contact time be based on peak hour flow rate conditions and that systems use tracer studies to determine actual contact time in mixing basins and storage reservoirs. The determined contact time "T" will thus reflect a minimum value. The product of (C) x (T) will reflect a substantially lower CT value than would actually be in effect and thus result in the determination of a substantially conservative estimate of percent inactivation from the CT tables in the rule.

The basis for the CT values in the proposed rule are discussed elsewhere (Regli, 1987; USEPA, 1987b). CT values for free chlorine are based on animal infectivity data (Hibler *et al.*, 1987) and application of a regression model to this data (Clark *et al.*, 1987). As a safety factor, the CT values in the proposed rule to achieve 99.9 percent inactivation are defined as the CT values that were needed to achieve 99.99 percent inactivation under experimental conditions. If this safety factor were not applied, the CT values in Table IV–2 would be about 25 percent lower.

The CT values for ozone are based on disinfection studies using *in vitro* excystation of *Giardia lamblia* (Wickramanayake, G.B., *et al.*, 1985). The CT values for chlorine dioxide are based on disinfection studies using *in vitro* excystation of *Giardia muris* (Leahy, J.G., 1985). As a safety factor, the highest CT values obtained for ozone and chlorine dioxide in these studies were multiplied by 3 to obtain the CT values indicated in Table IV–1. A much larger safety factor was applied to the ozone and chlorine dioxide data than to the chlorine data because:

1. Less data were available for ozone and chlorine dioxide than for chlorine.

2. Data available for ozone and chlorine dioxide, because of the limitations of the excystation procedure, only reflected up to or slightly more than 99 percent inactivation. Data for chlorine reflected inactivation of 99.99

percent removal and/or inactivation with ozone and chlorine dioxide, versus the direct determination of CT values for achieving 99.99 percent removal and/or inactivation using chlorine, involved greater uncertainty.

3. The CT values for ozone and chlorine dioxide to achieve 99.9 percent inactivation are feasible to achieve.

4. Use of ozone and chlorine dioxide is likely to occur within the plant rather than in the distribution system (versus chlorine and chloramines which are the likely disinfectants for use in the distribution system). Contact time measurements within the plant will involve greater uncertainty than measurement of contact time in pipelines.

The CT values for chloramines are based on disinfection studies using preformed chloramines and *in vitro* excystation of *Giardia muris* (Rubin, 1987). No safety factor was applied to these data since chloramination, conducted in the field, is more effective than using preformed chloramines. Also, *Giardia muris* appears to be more resistant than *Giardia lamblia* to chloramines (Rubin, 1987).

For systems with sequential disinfection sequences, the rule provides multiplication factors for determining CT values to achieve 90, 95, 99, and 99.5 percent inactivation of *Giardia lamblia*, based on application to the CT values specified in the rule which achieve 99.9 percent inactivation. The multiplication factors were derived based on first order disinfection kinetics, discussed elsewhere (Regli, 1987; Clark *et al.*, 1987).

(b) Redundant system components

The requirement of redundant disinfection system components to be in place, such as additional chemical feed units, is to provide an additional margin of safety in case of mechanical failure since only one treatment barrier, disinfection, exists between the raw water and the consumer.

(c) Maintenance of 0.2 mg/L disinfectant residual entering the distribution system

This requirement is to ensure continuous disinfection. Disinfection is the only treatment barrier preventing exposure from potential pathogenic organisms in the source water. Since the rule only requires CT determinations, once during the day, i.e., during peak hourly flow conditions, a provision was considered necessary to ensure continuous disinfection at all times. A minimum disinfectant residual of 0.2 mg/l is specified to assure confidence in the measurement, and for consistency with the disinfectant residual requirements for the distribution system.

(d) Distribution system residuals

The requirement for all systems that disinfectant residuals in the distribution system (measured as total chlorine, free chlorine, combined chlorine, or chlorine dioxide) be at least 0.2 mg/l in at least 95 percent of the samples each month, for two consecutive months, would:

(i) Ensure that the distribution system is properly maintained and identify and limit contamination from outside the distribution system when it might occur;

(ii) Limit growth of heterotrophic bacteria and *Legionella* within the distribution system;

(iii) Provide a quantifiable minimum target which, if exceeded, would trigger remedial action. EPA believes that an absolute criterion, i.e., requiring systems to maintain a disinfectant residual at all times throughout the distribution system, and/or imposing a higher concentration of disinfectant residual, while an appropriate goal, would be unrealistic to achieve and enforce. EPA believes the proposed standard is attainable and would be feasible to enforce. Systems which exceeded the criterion for one month would be given the opportunity to take remedial action so as to meet the limit in the following month.

The AWWA Committee on Water Quality in Transmission and Distribution Systems has recommended that a total chlorine residual of 0.2–0.3 mg/l be maintained in the far reaches of the distribution system (Victoreen, 1974). EPA believes this limit is also appropriate for chlorine dioxide because it is a more effective disinfectant than chlorine or chloramines. A lower limit is not appropriate for chlorine dioxide because such measurements could not be determined with confidence due to limitations with the analytical methodology.

Disinfectant residuals higher than 0.2 mg/l, for any disinfectant, are not required because of concern for disinfection by-products. The National Academy of Sciences (NAS) has recently published Volume 7 of the Drinking Water and Health series. This volume discusses the health effects of many drinking water disinfectants and disinfection by-products. The disinfectants (chlorine, chlorine dioxide, and chloramines) have been tested in several animal models. The health effects associated with these disinfectants include depressed thyroid function and altered hemological parameters related to oxidative stress. Chlorinated water has been associated with increased bladder, rectal, and colon cancers. The NAS has recommended a Suggested-No-Adverse-Response-Level (SNARL) of 0.2 mg/l for chlorine dioxide and 0.5 mg/l for chloramine. The SNARL represents a level of exposure which is not expected to pose a health hazard over a lifetime. The NAS has incorporated a 20 percent relative source contribution from drinking water. However, exposure to these disinfectants from sources other than drinking water is expected to be minimal. Therefore, assuming that near 100 percent of exposure comes from drinking water, the resulting SNARLs might be estimated as up to 1 mg/l for total chlorine dioxide and its by-products and up to 2.5 mg/l for chloramine. The NAS has not recommended a SNARL for chlorine.

The EPA is presently evaluating the health effects of drinking water disinfectants and disinfection by-products for development of MCLGs and MCLs. Promulgation of MCLGs and MCLs is expected by January 1991. EPA does not expect the minimum disinfectant residual requirements for the distribution system proposed in this rule to conflict with future regulations to control disinfection by-products.

F. Criteria for Determining if Treatment is Adequate for Filtered Systems

1. Design and Operating Criteria (State Determination)

Historically, States have been responsible for establishing design and operating criteria for public drinking water plants. States have worked through organizations such as the Water Supply Committee of the Great Lakes Upper Mississippi River Board of State Sanitary Engineers and the AWWA to establish appropriate design and operating criteria. Rather than including design and operating requirements in this rule, EPA believes it is more appropriate for States to continue to take the responsibility for establishing design and operating criteria since they are most familiar with the systems they regulate, local conditions, etc. Therefore, this proposed regulation describes treatment processes that may be used to meet minimum performance criteria. States would be responsible for setting design and operating conditions for these (or other) treatment processes to assure that these performance criteria would be met. This preamble and regulation, and the draft Guidance Manual, provide information on appropriate design and operating criteria for assuring compliance with the performance criteria.

2. Turbidity Performance Requirements

The proposed turbidity performance criteria for systems that filter are more stringent than those of the existing MCL. EPA has concluded that the existing MCL turbidity criteria are not adequate performance criteria for filtered systems because:

a. High turbidity levels can frequently occur in finished water (e.g., during storm events, at the end of filter runs, and following backwash cycles), during which passage of pathogens are most likely to occur; yet the system could still be in compliance with the current MCL. Continuous effective filtration, demonstrated by continuous effective turbidity removal, is essential for continuous effective pathogen control.

b. Systems using conventional treatment and direct filtration can easily meet the current MCL while not optimizing pretreatment (e.g., coagulation and flocculation processes). For these technologies, effective pretreatment is essential for effective virus removal (Robeck, *et al.*, 1962), and *Giardia* cyst removal (DeWalle, *et al.*, 1984; Logsdon, *et al.*, 1985; Al-Ani, *et al.*, 1986). *Giardia* cysts have frequently been detected in finished waters of systems using rapid granular filtration (direct filtration and conventional treatment) which have inadequate pretreatment (Hibler, 1987a).

Good correlations between turbidity removal and *Giardia* cyst removal have been demonstrated in pilot plant studies (Logsdon, *et al.*, 1981; Al-Ani, *et al.*, 1986). Although finished water turbidity goals of 0.1 NTU have long been advocated within the drinking water industry, many systems have not taken the initiative to optimize turbidity removal, despite the fact that such treatment improvements have relatively low associated costs (U.S. EPA, 1987c).

The purpose of the performance criterion for conventional treatment and direct filtration is to ensure that public water systems optimize pretreatment to ensure effective *Giardia* cyst removal. EPA believes the proposed performance criterion of less than or equal to 0.5 NTU 95 percent of the time is the lowest turbidity level which is generally achievable by these technologies. The National Drinking Water Advisory Council supports these criteria as being achievable (National Drinking Water Advisory Council, 1986). The Agency recognizes that the proposed performance criterion may not be adequate for a system whose source waters have a turbidity of less than 1 NTU (Al-Ani, *et al.*, 1986; Hendricks, 1986). Therefore, in such cases, the State should set more stringent turbidity performance criteria as appropriate. Guidance for setting such criteria appears in the draft Guidance Manual. The proposed rule would require turbidity measurements to be made at least every four hours that the system is in operation and that no more than five percent of the measurements in one month exceed 0.5 NTU. The purpose of this requirement is to ensure the practice of continuous effective filtration.

For removal of *Giardia* cysts, the turbidity of the filtered water in systems using diatomaceous earth and slow sand filtration has been shown to be relatively less important, as long as the mechanical integrity of the filter is preserved. Since no relationship between turbidity removal and *Giardia* cyst removal has been demonstrated for diatomaceous earth and slow sand filtration systems, the proposed turbidity performance criteria are higher than for conventional treatment or direct filtration.

When diatomaceous earth filtration is practiced, the relationship between the turbidity and microbiological quality depends on the nature of the turbidity-causing particles and the microorganisms of concern. If the diatomaceous earth is not treated with a polymer or with salts of aluminum or iron, the removal mechanism is straining; raw water coagulation is generally not practiced in diatomaceous earth filtration. Turbidity removal increases as finer grades of diatomaceous earth are used, but *Giardia* cyst removal has been shown to be very effective for all grades tested (Lange, *et al.*, AWWA, 1986). If turbidity-causing particles are very small, they can penetrate the filter even when cysts are removed.

Studies of slow sand filtration have shown that this process is very effective for *Giardia* cyst removal. Pilot plant studies (Bellamy, *et al.*, JAWWA, 1985) have demonstrated that cyst reductions were almost always greater than 99.9 percent, even though turbidity removal generally was only from 6 to 8 NTU (raw) to 3 to 5 NTU (filtered). The existing MCL of 1 NTU was seldom, if ever, met in water treated by the slow sand filtration. The turbidity-causing particles appeared to be fine clay. Other slow sand filter research (Cleasby, *et al.*, JAWWA, 1984) indicates that slow sand filters can effectively remove both turbidity and microorganisms. Turbidity removal effectiveness appeared to be influenced by the quantity of nutrients in the water; waters that are low in nutrients may not be as treatable with respect to turbidity removal.

The upper turbidity limit of less than or equal to 1 NTU in 95 percent of the turbidity measurements for all the filtration technologies is to ensure a high probability that there is no significant interference with disinfection. Slow sand filters can substantially reduce concentrations of viruses, bacteria, and protozoan cysts in water, and tend to attain the microbiological water quality achieved by disinfection. If substantial reductions of microorganisms are attained by slow sand filters, disinfection need not be as stringent. Therefore, under the proposed rule, water treated by slow sand filters could have turbidity above one NTU (up to five NTU), at the State's discretion, if the system demonstrates that the filter effluent, prior to disinfection, meets the proposed long-term MCL for total coliforms for one year.

3. Disinfection Requirements

Filtered systems would be required to (1) maintain a disinfectant residual of at least 0.2 mg/l at all times in the water entering the distribution system and (2) maintain a disinfectant residual in the distribution system of no less than 0.2 mg/l in more than 5 percent of the measurements in a month, for two consecutive months. For the most part, the rationale for these criteria has already been discussed under the disinfection requirements for unfiltered systems. For filtered systems, disinfection is the principal treatment barrier for bacteria and viruses, and a supplemental treatment barrier for *Giardia lamblia*. The continuous disinfection requirement is thus also considered essential for filtered systems.

VI. State Implementation of the Surface Water Treatment Requirements

A. General

Section 1413 of the Safe Drinking Water Act (SDWA) establishes requirements a State must meet to have primary enforcement responsibility (primacy) for public water systems. These include: (1) Adopting drinking water regulations no less stringent than the national primary drinking water regulations (NPDWRs) in effect under sections 1412(a) and 1412(b); (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making such reports with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed at all by the State) under conditions no less stringent than allowed by sections 1415 and 1416; and (5) adopting and

being able to implement an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR Part 142 sets out requirements for States to obtain primacy for the public water system supervision (PWSS) program, as authorized under section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976; since then, the basic requirements have remained relatively unchanged. Since 1976, however, much has happened in the PWSS program. With the exception of Wyoming and Indiana, all eligible States have received PWSS primacy. In addition, the SDWA amendments of 1986 made sweeping changes in the program. For example, the amendments mandate that EPA promulgate regulations for many additional drinking water contaminants; require EPA to develop primary drinking water regulations specifying criteria under which filtration is required as a treatment technique for public water systems supplied by surface water sources; direct the Agency to be much more active in enforcing the national primary drinking water regulations; establish a ban on the use of lead pipe, solder, and flux in public water systems and plumbing systems providing water for human consumption; and authorize Indian tribes to obtain primacy for public water systems in their jurisdictions.

With these extensive changes in the program and the law, portions of the implementation regulations at 40 CFR Part 142 have become outdated. In response, the Agency has formed a primacy workgroup to develop and evaluate options to address the major primacy issues associated with implementing the 1986 amendments. The Agency is planning to propose revisions to 40 CFR Part 142, Subpart B which will take into account the program's evolution since it began in 1974, as well as the new legislative mandates. These revisions will be published for comment in the **Federal Register** later this fall. The Agency is today proposing, and is soliciting comments only on those changes to Part 142 needed to implement the surface water treatment requirements.

B. Statutory requirements

The SDWA specifies that a State has primary enforcement responsibility for public water systems when the EPA determines, pursuant to regulations promulgated under section 1413(b), that the State meets certain conditions. One condition is that the State must demonstrate that it has adopted drinking water regulations that are no less stringent than the national primary drinking water regulations in effect under sections 1412(a) and 1412(b) of the Act, including maximum contaminant levels and treatment techniques. These NPDWRs appear in 40 CFR Part 141. In the case of the filtration requirements in today's proposed changes to Part 141, the Act actually establishes deadlines for: (1) EPA to promulgate the regulations specifying criteria under which filtration is required; (2) States with primacy to adopt any necessary statutes or regulations to implement those filtration regulations; and (3) public water systems to achieve compliance.

EPA is today proposing the changes to 40 CFR Part 142 needed to implement the filtration and disinfection requirements proposed today. Other changes to Part 142 will be proposed later this fall as explained earlier.

C. State Program Revisions

One of the deficiencies in the existing program implementation regulations at 40 CFR Part 142, which EPA plans to correct in its proposal later this fall, is that the regulations do not require States with primacy to revise their programs following EPA promulgation of new or revised NPDWRs, nor do they specify a procedure for doing so. EPA is preparing to propose regulations which will require States to revise their programs following the promulgation of new or revised NPDWRs to maintain primary enforcement responsibility. Under the SDWA, EPA has had a strong and continuing policy of approving only those State programs that had adopted the full EPA program, e.g., all NPDWRs; States could not obtain partial or conditional primacy. EPA intends to continue this "full primacy" policy as it implements the 1986 SDWA amendments by requiring States to revise their programs to adopt all new or revised NPDWRs to maintain primary enforcement responsibility. (If partial primacy were allowed, the result would be confusion for the regulated community as the State would be implementing part of the program and EPA the other—the public water system would be confused as to which regulation it was subject.) Therefore, EPA is planning to require State program revisions and will propose a procedure to review and approve these. The procedure EPA is planning to propose will be similar to that in Part 142 for obtaining initial primacy. It will require States to meet the basic requirements for primary enforcement responsibility for each new or revised NPDWR and any requirements specific to an NPDWR which EPA has established. It is anticipated that such additional regulation-specific requirements would be necessary only in those situations where the NPDWR provides flexibility to the State on how to accomplish a particular requirement. If these regulation-specific requirements are needed, EPA will promulgate them at the same time it promulgates the NPDWR. Today's proposal at 40 CFR 142.16(a) specifies the additional requirements that a State would be required to include in a program revision application to adopt the surface water treatment requirements proposed today in 40 CFR Part 141. EPA solicits comments solely on these requirements. Comments on the broader changes to Part 142 will be solicited later this year when those changes are proposed. EPA is also proposing the changes to the reporting and recordkeeping requirements needed to implement the surface water treatment requirements also proposed today. EPA also solicits comments on these. EPA's proposed changes to Part 142 are explained below.

D. State Reporting and Recordkeeping Requirements

Changes to the existing recordkeeping requirements to implement the filtration criteria and filtration and disinfection provisions proposed in this notice would require States to:

(1) Record which systems using surface water sources are required to provide filtration and which systems are not in the inventory of public water systems which they are already required to maintain;

(2) Retain the results of microbiological contaminant analysis of source water samples in the same manner as other microbiological contaminant analytical results.

(3) Retain records of disinfectant residual measurements and other parameters necessary to document disinfection effectiveness for at least one year. These records would include either the analytical results necessary for the State to determine daily disinfection efficiency using the CT tables in proposed 40 CFR 141.72 or the daily disinfection efficiency achieved as determined by the State or the public water system using the same tables. Analytical results necessary to determine disinfection efficiency include water temperature, disinfectant residual, and disinfectant contact time.

(4) States would retain records for not less than 10 years of any determination under 40 CFR 141.71 that a public water system supplied by surface water sources was or was not required to provide filtration treatment.

Proposed changes to the current reporting requirements to implement the filtration and disinfection requirements include the requirement for each State to identify quarterly all public water systems (including their PWSS identification numbers) supplied by surface water sources for which the State made a determination during that quarter that the system was not required to provide filtration treatment.

E. Specific Primacy Requirements for States to Adopt 40 CFR 141 Subpart H—Filtration and Disinfection

The implementation aspects of the proposed regulations at 40 CFR Part 141, Subpart H Filtration and Disinfection are somewhat different when compared to the implementation of other NPDWRs. The proposed filtration and disinfection requirements in many cases allow the primacy State broad discretion with regard to how the objectives of the regulations are to be achieved. For instance, the rule requires public water systems to comply with design and operating requirements specified by the State. In such cases, State regulations would be required to augment the national regulations to establish enforceable requirements (in the form of State regulations or permit requirements). This will inform each public water system precisely to what requirements it is subject.

To ensure that the State program includes all the elements necessary for a complete enforcement program, this notice proposes that to obtain approval of a program revision for filtration and disinfection, the State's application would be required to include the following:

(1) A requirement that a public water system using surface water sources be under the control of a qualified operator.

(2) Procedures for identifying public water systems supplied by surface water sources as defined in proposed 40 CFR 141.2. This definition of surface water includes impoundments, springs, infiltration galleries, wells, or other collectors which are directly influenced by water open to the atmosphere. Systems supplied by such surface water sources may not be visibly identifiable and the State would be required to establish procedures to identify and make filtration decisions regarding these systems.

(3) A description of the protocol or procedures to be used by the State to determine whether a public water system supplied by surface water sources must provide filtration treatment. The procedures would address both the timing and methods to be used by the State to inform and consider comments from the public with respect to each decision as specified in section 1412(b)(7).

(4) Requirements for watershed control programs for public water systems supplied by surface water sources that do not provide filtration treatment.

(5) Sanitary survey requirements for public water systems supplied by surface water sources that do not provide filtration treatment. If the State allows the system or third parties to conduct the sanitary survey, the State must establish qualification requirements for the parties conducting the sanitary survey, and procedures to ensure that parties proposing to conduct the sanitary survey meet those requirements.

(6) Requirements for public water systems supplied by surface water sources that provide filtration treatment. These regulations would be required to include:

(a) Allowable filtration technologies and corresponding source water quality requirements;

(b) Performance criteria or a procedure for establishing enforceable performance criteria on a system-by-system basis (such as a permit system); and

(c) Enforceable design and operating requirements or a procedure to establish design and operating requirements on a system-by-system basis (such as a permit system).

(7) Enforceable disinfection system design and operating requirements for public water systems supplied by surface water sources that do not provide filtration treatment.

(8) Enforceable disinfection system design and operating requirements for public water systems supplied by surface water sources that provide filtration treatment.

F. EPA Oversight of State Decisions Regarding Filtration Requirements

As noted earlier, section 1412(b)(7)(C)(ii) of the Act requires EPA to specify in lieu of the variance requirements of section 1415, procedures by which States determine which public water systems must adopt filtration under criteria EPA promulgates pursuant to section 1412(b)(7)(C)(i). EPA intends to periodically review States' decisions whether or not public water systems supplied by surface water sources are required to provide filtration using a procedure similar to that currently required by section 1415(a)(1)(F) of the Act for EPA oversight of variances and exemptions issued by States. EPA considers this to be the appropriate procedure for review of filtration decisions since (1) the Act links filtration determinations and decisions on variances by requiring EPA to specify "in lieu of the variance requirements of section 1415" procedures by which States determine which public water systems must adopt filtration and (2) the decisions are similar in nature. Essential elements of the proposed procedure which appears at 40 CFR Part 142, Subpart I include: (1) Reporting by States of filtration decisions; (2) periodic review preceded by Federal Register notice, of State decisions by EPA; (3) notice to the State if the Administrator finds the State has abused its discretion; (4) opportunity for the State to take corrective action; (5) public hearing conducted by a hearing officer to review testimony; (6) a final decision by the Administrator that upholds or rescinds the finding that the State has abused its discretion.

In the event the Administrator finds that the State has abused its discretion, (s)he would revoke decisions with regard to filtration made by the State and/or revoke a compliance schedule approved by the State. Use of this procedure would not preclude the Administrator from using other means to encourage the State to exercise its discretion properly. Such measures may include grant conditions or initiation of primacy revocation procedures.

VII. Estimated Cost Impacts of Proposed Rule

The following analysis is derived from a more detailed analysis provided elsewhere (USEPA, 1987d).

A. Total Cost of the Proposed Rule

These proposed filtration and disinfection requirements would have cost impacts on four groups of public water systems using surface water sources:

1. Estimated 1,346 community water systems that are currently unfiltered.

2. Estimated 1,536 non-community water systems currently unfiltered.

3. Estimated 4,611 community water systems currently filtered.

4. Estimated 2,308 non-community water systems currently filtered.

There are, therefore, an estimated 2,882 total water systems that are currently unfiltered and an estimated 6,919 that are currently filtered which would be affected. Non-community systems include systems serving transient and non-transient populations.

These figures do not include systems which purchase water from such systems, or systems traditionally defined as ground-water systems which might be defined as "surface water"

systems under the proposed rule (e.g., systems using springs or infiltration galleries). EPA believes that the systems in the latter category are generally very small systems and that many of these systems could make structural changes so as to avoid being defined as a "surface water." It is assumed that these costs would not, therefore, significantly affect total national costs.

All 2,882 unfiltered surface water systems would incur some costs under this rule. However, systems that meet the specified requirements would not have to filter, thus reducing the cost impact on some of those systems.

Of the estimated 6,919 filtered surface water systems, EPA estimates that about 5,128 will incur costs in upgrading their systems to comply with the new requirements. Of the 5,128 systems, EPA estimates that 1,409 are in violation of the present turbidity MCL. The increment of cost required for these 1,409 systems to comply with the present standard was thus not included in the total cost of complying with the proposed rule. EPA did include, however, the estimated costs for these systems to reduce turbidity levels from the present standard to the lower levels in the proposed rule.

The total projected cost of the proposed filtration and disinfection requirements is indicated in Table VII–1.

TABLE VII–1.—PROJECTED COST OF THE PROPOSED FILTRATION AND DISINFECTION REQUIREMENTS

	Capital cost ($ Millions)	Annualized cost ($ Millions/Yr)
Currently unfiltered systems	$1,613	$216
Currently filtered systems	333	[1] 95
State implementation		28
Totals	1,946	339

[1] In addition to costs reported in the above table, the surface water treatment requirements will impose additional monitoring requirements on filtered systems for measuring turbidity and disinfectant residuals. These requirements might add as much as $16 million per year, depending upon the extent of such monitoring already in effect.

EPA also performed a highest cost analysis in which it assumed that all surface water systems currently not filtering would be required to filter. On this basis, EPA estimated the total capital cost to unfiltered systems to be $2.4 billion and the total annualized cost to be $308 million. The provisions in the proposed rule for allowing systems to avoid filtration if they meet certain requirements would reduce required capital outlays by $0.8 billion and annualized costs by $93 million over these worst case estimates.

B. Concepts of Cost Analysis

EPA has developed capital, operating, and annualized costs for individual filtration and disinfection technologies (USEPA, 1987c). The annualizing procedure used in that document is intended to reflect the actual financing cost that a typical water system might face in capital markets (i.e., it is an estimate of the "market cost"). System level costs for installing filtration, presented in Figure VII–1, are "market costs" and represent an esimate of the actual costs likely to be faced by water systems and consumers.

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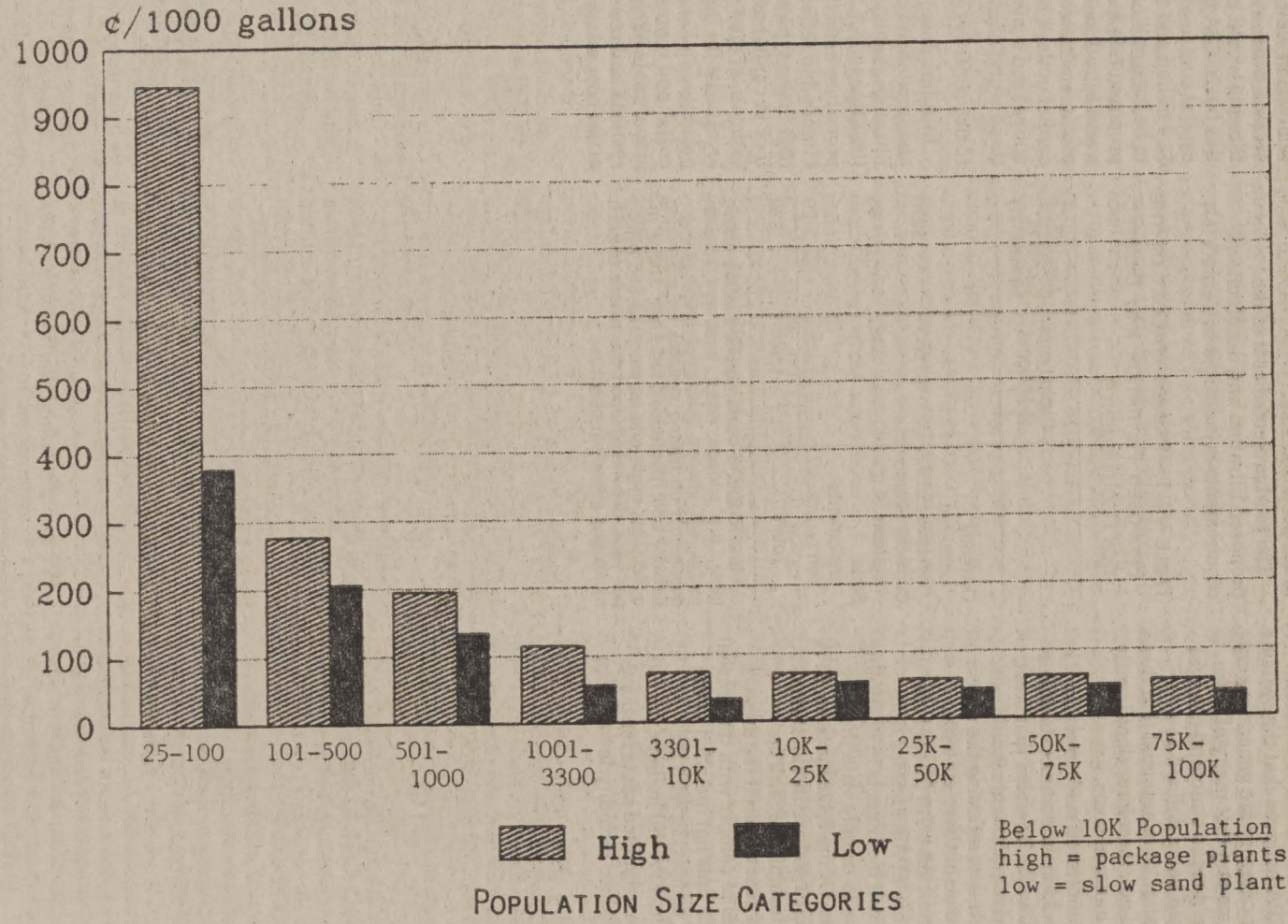
FIGURE VII-1

Cost of Installing Filtration in Systems Serving < 100,000



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The above total annual cost estimate of $339 million (see Table VII–1), however, is intended to represent the total "social" cost to the nation for purposes of making benefit/cost comparisons. It is computed using a different discount rate. The discount rate used to assess "market" cost is ten percent. This is made up of three components: (1) A risk premium (reflecting the market's assessment of the risk of default); (2) an inflation premium (reflecting the market's expectations about the economy); and, (3) the true carrying cost of capital (the time value of money). The first two components are financial concepts while the third is both a financial and an economic concept. The "social" discount rate consists only of the third of these three components because the benefits to which costs are being compared are a risk-free, inflation-free economic concept. Three percent was selected for use in these analyses.

C. Costs of Compliance for Currently Unfiltered Surface Water Systems

EPA has estimated the costs of installing filtration at the system level for various sizes of public water systems. The basis for these cost estimates is discussed elsewhere (USEPA, 1987c).

EPA based its estimates of the number of community and non-community water systems that are currently unfiltered on a survey conducted by the Association of State Drinking Water Administrators (ASDWA, 1986). EPA estimates the total national cost of compliance for the 2,882 currently unfiltered systems using a straightforward procedure of forecasting likely compliance choices. Estimated compliance choices of 2,867 of these unfiltered systems, each of which serves fewer than 100,000 people, appear in Table VII–2.

TABLE VII–2.—ESTIMATED COMPLIANCE CHOICES FOR UNFILTERED SYSTEMS

Number of systems	Projected action
457	Meet requirements for avoiding filtration.
899	Switch to an alternate water source (ground or purchased).
221	Install a package treatment plant.
58	Install conventional treatment.
89	Install direct filtration.
115	Install diatomaceous earth filtration.
990	Install slow sand filtration.
38	Install ultrafiltration.

EPA based the forecasts of compliance choices largely on the comparative costs of the different options. The Agency predicts that slow sand filtration, switching to an alternate source, and package treatment plants would be popular solutions due to the relatively low costs of these technologies versus other technologies and the preponderance of small water systems among those affected; over 90 percent of currently unfiltered water systems serve fewer than 10,000 people.

In addition to considering the 2,867 unfiltered systems which each serve fewer than 100,000 people, it is important to note that a large proportion of total costs is attributable to a small group of fifteen unfiltered systems which each serve more than 100,000 people. These fifteen systems account for approximately 42 percent of the total costs in the worst case scenario. However, these fifteen systems also account for approximately 16 million of the estimated 21.4 million people exposed to unfiltered surface water (75 percent).

The degree of savings attributable to those systems serving more than 100,000 people, which could meet the criteria for avoiding filtration, was estimated based on the mix of compliance choices forecast for the category of systems serving 50,000–100,000 people.

The cost estimates do not include real estate costs because they are very site-specific. EPA does not know the extent to which unfiltered systems own real estate upon which the system could build a filtration plant. As a result, it is impossible for EPA to estimate what real estate costs should be included in this rule. In larger systems, real estate costs are likely to be greater, but many large unfiltered systems own considerable real estate in the form of protected watersheds. It is questionable whether use of such real estate to construct a filtration plant would significantly diminish the amount to which the affected acreage contributes to the watershed protection program. It is possible to build the plant in a way which produces negligible changes in the run-off characteristics of a site. If there is no loss of watershed protection value, then there may be no significant opportunity cost. In small system size categories, real estate costs may be a much smaller proportion of total cost.

Figure VII–1 illustrates the system level costs of complying with the filtration requirement for system size categories serving fewer than 100,000 persons. The costs shown represent the approximate high and low extremes of the cost of installing filtration. No costs for disinfection were added since these systems were assumed to already have adequate disinfection in place if filtration were installed. For systems serving less than 10,000 people, EPA used slow sand filtration as the basis for the low cost estimate and package treatment as the basis for the high cost estimate. For systems serving between 10,000 and 100,000 people, EPA used direct filtration to represent the low cost case and conventional treatment for the high estimate. System level costs for installing filtration in the 15 large city systems, i.e., the systems which serve more than 100,000 persons and not indicated in Figure VII–1, were based on the actual types and sizes of filter plants that might be built in those cities. These ranged from $0.15 to $0.55 per thousand gallons of water produced.

D. Costs of Compliance for Currently Filtered Surface Water Systems

EPA estimated the total national cost of the turbidity performance requirements with a methodology which utilized survey data from a random sample of over 500 water systems, stratified by system size. The survey data provide a profile of the type of filtration technologies currently in place and their turbidity performance. A summary of the survey data is presented elsewhere (ADSWA, 1986).

Currently, the average monthly turbidity being achieved in the water industry is estimated to be 0.7 NTU. The proposed turbidity performance requirement (less than 0.5 NTU, 95 percent of the time) for systems using rapid granular media filtration, i.e., direct filtration or conventional treatment (systems using diatomaceous earth or slow sand do not have to meet this requirement), is believed to be equivalent to a monthly average of about 0.3 NTU. From the survey data, EPA estimated that approximately 5,128 systems are achieving monthly averages above 0.3 NTU. Of these, 1,409 are estimated to be in violation of the current turbidity requirement which calls for a monthly average of 1.0 NTU.

EPA further subdivided the systems which would not be in compliance with the proposed turbidity performance requirements by size and type of filtration process currently in place. A forecast of the likely compliance choices of systems in each subcategory was developed. The compliance choices evaluated include various combinations of the following:

- Hiring a consulting engineer to do diagnostic analysis;
- Improving operation and maintenance practices;

- Adding rapid mix;
- Adding pH adjustment capability;
- Replacing filter media;
- Adding polymer;
- Adding alum or $FeCl_3$;
- Adding flocculation or contact chambers.

The system-level cost of each of the above compliance options is estimated elsewhere (USEPA, 1987d). Average system-level costs, which include combinations of these options, are shown in Table VII-3. The total national capital cost predicted by the forecast of compliance choices is $333 million. The total annualized cost is $95 million.

TABLE VII-3.—COSTS OF UPGRADING TO MEET TURBIDITY PERFORMANCE REQUIREMENTS

System size (by population served)	Costs (¢/1,000 gallons)
25-100	78
101-500	32
501-1,000	27
1,001-3,300	15
3,301-10,000	7
10,001-25,000	3
25,001-50,000	2
>50,000	<2

These national cost estimates for the turbidity requirements may be on the high side. The turbidity performance profile which underlies the analysis is based on survey results which embody a certain amount of statistical error. The foremost concern is that the survey solicited data on monthly average turbidity. Under the present turbidity requirement, it is conceivable there are many water systems that are monitoring well enough to document they are below a 1.0 NTU monthly average, but not well enough to document lower levels with precision. Measurement in the 0.3 NTU range would require greater care. Thus, some of the systems believed to be above a monthly average of 0.3 NTU may require no more than better monitoring to achieve compliance.

Total costs for filtered systems to upgrade disinfection practice to meet the disinfection requirements of the proposed rule were not considered significant relative to the total costs for upgrading filtration practice. EPA believes that most filtered water systems would already meet the proposed disinfection requirements, since many States already have disinfection standards in place that are similar to those in the proposed rule. For example, the Committee of the Great Lakes-Upper Mississippi River Board of State Sanitary Engineers (1982), as part of its "Ten State Standards", maintains the following disinfection requirements for surface water systems:

1. Due consideration shall be given to the contact time of the chlorine in water with relation to pH, ammonia, taste-producing substances, temperature, bacterial quality, trihalomethane formation potential and other pertinent factors. Chlorine should be applied at a point which will provide adequate contact time. All basins used for disinfection must be designed to minimize short circuiting.

2. At plants treating surface water, provisions should be made for applying chlorine to the raw water, applied water, filtered water, and water entering the distribution system. The contact time as required in (4) must be provided after filtration unless otherwise approved by the reviewing authority.

3. As a minimum, at plants treating groundwater, provisions should be made for applying chlorine to the detention basin inlet and water entering the distribution system.

4. Free residual chlorination is the preferred practice, 30 minutes contact time must be provided for groundwaters and two hours for surface waters. In those instances where combined residual chlorination is approved by the reviewing authority, two hours' contact time for ground water and three hours contact time for surface water must be provided.

5. Minimum free chlorine residual at distant points in a water distribution system should be 0.2 to 0.5 milligrams per liter. Combined chlorine residuals, if appropriate, should be 1.0 to 2.0 milligrams per liter at distant points in the distribution system. Higher residuals may be required depending on pH, temperature and other characteristics of the water.

Although the above standards were developed by ten States (Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, and Wisconsin) and the Province of Ontario, Canada, they have been adopted by many other States in the United States.

E. Regulatory Impact Analysis

1. Overview

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This proposed action constitutes a "major" regulatory action because it will have a major financial or adverse impact on the regulated community of over $100 million per year. Therefore, EPA prepared an Economic Impact Analysis during regulation development and submitted it to the Office of Management and Budget for review.

EPA evaluated the benefits and net benefits of the proposed filtration and disinfection requirements as required by Executive Order 12291. Benefits were calculated in terms of cases of disease avoided and social costs avoided. First, benefits were calculated based on system size. Then, net benefits were derived by subtracting the costs of compliance with the proposed rule from the benefits achieved by compliance. Monetized estimates of benefits and net benefits are probably low because not all of the benefits could be quantified. Finally, national benefits estimates were developed from national records on cases of disease and outbreaks of disease available from the Centers for Disease Control.

On the national level, EPA estimates that between 212,000 and 470,000 cases of disease from contaminated water per year could be avoided directly by implementation of the proposed rule. Most of these projected cases avoided are not detected. Additional cases associated with problems in the distribution systems of water supplies such as cross-connections, contamination of water mains due to plumbing, and contamination of stored water would also be prevented. Indirect benefits of the proposal include removal of contaminants and precursors of contaminants beyond those the rule is designed to control. For example, inorganic chemicals like lead, cadmium and arsenic; synthetic organic chemicals like chlordane, heptachlor and polychlorinated biphenyls (PCBs); and precursors to trihalomethanes and other disinfection by-products would be removed more efficiently. This removal results from the reduction in turbidity associated with well-operated filtration units. Substantial benefits that cannot be stated in terms of money are expected; avoidance of pain, suffering and anxiety were not included in the analysis. Finally, the peace of mind increased confidence in the quality of drinking water provides is an important, yet intangible benefit which would result from the proposed rule.

Recent litigation highlights the significance of some of the categories of benefit which were omitted from the analysis. Fifteen individual and six class action lawsuits concerning a single outbreak in Luzerne County, Pennsylvania in 1983 are outstanding, with additional claims still expected to be filed. The plaintiffs in these suits generally allege that they became ill as a

result of ingesting water supplied by the Pennsylvania Gas and Water company that contained *Giardia* cysts; and/or they suffered mental anguish as a result of *Giardia* cysts in the water; and/or they incurred economic losses in their businesses due to a decline in customers, a decrease in the value of their property, or the expense and inconvenience of boiling water or obtaining other water. The plaintiffs seek damages, including more than $20,000 in compensatory damages and $20,000 in punitive damages for each class member. Some of the class action suits allege that the class exceeds 100,000 people. In total, the water company may be subject to more than $2 billion in damages if the plaintiffs prevail in court. Both the costs of litigation and the possible awards to plaintiffs suggest that the costs avoided by compliance with the proposed rule substantially outweigh the costs the rule would impose.

The rest of this section describes how the EPA estimated the benefits and net benefits of the proposed rule. First, the method EPA used to estimate the benefits that would have accrued, had the proposed rule been in place in Luzerne County, Pennsylvania is described. Then, the case study analysis is expanded to provide estimates of benefits for nine categories of water systems. The categories are based on system size (the number of people served by the water system). In addition, a series of less detailed but similar case studies was developed to assess the effects of the proposal on the fifteen largest water systems currently without filtration. Local economic and demographic data were used, to the extent feasible, in these cases. Finally, aggregate national benefits were developed. More detailed discussions of the benefits are available in the Regulatory Impact Analysis.

2. Case Study—Luzerne County, Pennsylvania

To develop a framework for estimating the economic losses from an outbreak of waterborne giardiasis, EPA conducted a case study of an outbreak of giardiasis which struck Luzerne County, Pennsylvania in the fall of 1983 and continued through the summer of 1984. Four major categories of cost were assessed: costs to individuals, costs to businesses, costs to government agencies, and costs to water utilties. Losses to individuals included in the analysis are: direct medical costs, costs associated with lost work time and productivity, lost leisure time, and the costs of avoidance of additional infection and disease (purchasing bottled water or boiling tap water before consumption). In all, EPA estimated that the losses from the single outbreak ranged from $23.3 million to $55.5 million for the two scenarios studied. (Harrington, 1985)

These estimates are likely to be low due to the many factors not included. Intangible costs of pain and suffering were excluded, as were losses of highly valued leisure time such as lost vacation plans.

3. Extension of the Case-Study Method to Other Systems

Although the costs incurred in Luzerne County are not directly applicable to those incurred in other places, EPA extended the analytical method to estimate what comparable costs might be in situations other than the initial case study. In this analysis, only two categories of costs avoided were assessed: costs to individuals and costs to businesses. The remaining two categories are too event-specific to include in a general analysis. EPA found that the estimates of benefits of avoiding cases of illness depend critically on five key assumptions. These include: the endemic rate of illness, probability of outbreak, severity of outbreak, and the timing and nature of steps taken by potentially exposed persons to avert exposure and illness. Table VII–4 shows the value of damages avoided, cost of filtration, and net benefits of this rule.

TABLE VII–4.—NET BENEFITS OF INSTALLING FILTRATION ASSUMING p (OUTBREAK) = 1/50 YEARS

	Outbreak damages ($Millions)		Annual expected value of outbreak ($Mil/yr)		Annual endemic damages ($Mil/yr)		Total annual damages ($Mil/yr)		Annual cost of filtration ($Mil/yr)	Net benefits ($Mil/yr)	
	High	Low	High	Low	High	Low	High	Low		High	Low
Large water systems:											
Average of 15 large systems	526.70	249.53	12.17	4.97	8.25	6.05	20.43	11.01	11.06	10.67	−0.05
Smaller Population Categories:											
75,001 to 100,000	49.18	19.35	0.98	0.39	1.23	0.91	2.21	1.30	1.85	0.368	−0.551
50,001 to 75,000	34.71	13.49	0.69	0.27	0.88	0.65	1.57	0.92	1.34	0.237	−0.417
25,001 to 50,000	21.74	9.80	0.43	0.20	0.52	0.38	0.95	0.58	0.74	0.220	−0.155
10,001 to 25,000	9.72	4.41	0.19	0.09	0.24	0.18	0.43	0.26	0.25	0.178	−0.010
3,301 to 10,000	3.28	1.49	0.07	0.03	0.08	0.06	0.15	0.09	0.10	0.051	−0.006
1,001 to 3,300	1.23	0.63	0.02	0.01	0.03	0.02	0.05	0.03	0.05	0.003	−0.015
501 to 1,000	0.40	0.22	0.01	0.00	0.01	0.01	0.02	0.01	0.04	0.017	−0.024
101 to 500	0.14	0.08	0.00	0.00	0.00	0.00	0.01	0.00	0.02	0.012	−0.014
25 to 100	0.03	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.01	0.008	−0.008

4. National Benefits

EPA's best estimate of the number of cases of illness avoided per year as a result of implementation of the proposed rule is a range of approximately 212,000 to 470,000. This estimate is derived from the numbers of reported outbreaks and illness presented in Table I–1 (adjusted by an underreporting factor of 4) and assumptions regarding endemic disease occurrence. Annual endemic waterborne disease was assumed to range from 0.25 to 0.5 percent for systems serving more than 100,00 and from 0.5 to 1.0 percent for systems serving less than 100,000. Annual endemic waterborne disease was assumed to be half these rates for filtered systems, for the two respective size categories, which exceed the proposed turbidity performance criteria.

It is recognized that many systems will probably fall below or above these estimated endemic disease rates. Taken as an aggregate national analysis, however, the above estimates are believed to be reasonable.

It is inappropriate and invalid to calculate an estimate of cost per case avoided using these estimates and the national estimates of cost discussed earlier, because the benefits accrue disproportionately for large and small systems. This difference occurs due to the large variation in the number and variety of opportunities for exposure of consumers of water. For example, a large community will have many more hotels, bars, restaurants and other publicly accessible water sources than a small community.

F. Executive Order and Statutory Requirements

1. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This proposed action constitutes a "major" regulatory action because it will have a major financial or adverse impact on the regulated community of over $100 million per year. Therefore, EPA prepared a Regulatory Impact Analysis during regulation development and submitted it to the Office of Management and Budget for review.

2. Regulatory Flexibility Act

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects.

The Small Business Administration defines a "small water utility" as one which serves fewer than 50,000 people. There are about 200,000 public water systems using surface and ground water supplies which for the purposes of this analysis are considered small systems and about 8,000 of those (less than 4%) will be affected by the requirements of this rule.

In developing this regulation, EPA allows flexibility for small systems by providing less expensive treatment techniques (e.g., slow sand filtration and innovative technologies) and flexible performance evaluation criteria (e.g., distribution system disinfection monitoring requirements sensitive to system size). These considerations reflect EPA's best efforts to minimize the effects upon small systems and thereby comply with this Act.

3. 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. 0270–(SW) and a copy may be obtained from Eric Strassler, Information Policy Branch; EPA; 401 M St., SW. (PM–223); Washington, DC or by calling (202) 382–2709. Submit comments on the information collection requirements to EPA and: Timothy Hunt, Office of Information and Regulatory Affairs; OMB; 726 Jackson Place, NW.; Washington, D.C. 20503. The final rule will respond to any OMB or public comments on the information collection requirements.

VIII. Request for Public Comments

EPA solicits comments on the conceptual approach to this regulation, and each of the proposed rules: § 141.70 (General requirements and definitions), § 141.71 (Criteria under which filtration is required), § 141.72 (Disinfection), § 141.73 (Filtration), § 141.74 (Monitoring and analytical requirements), § 141.75 (Reporting, public notification and recordkeeping), § 141.76 (Violations), and the contents of the Guidance Manual, as specified below. EPA also solicits comments on the implementation rule: § 142.14 (Records kept by States, § 142.15 (Reports by States), § 142.16(a) (Special primacy requirements for States to adopt filtration and disinfection), as specified below.

A. Conceptual Approach, General Requirements and Definitions

Is the proposed MCLG of zero for *Giardia*, enteric viruses, and *Legionella* reasonable? Is the basis for not proposing MCLGs for HPC and turbidity reasonable? Is the basis for proposing treatment requirements, rather than MCLs, for *Giardia lamblia*, enteric viruses, *Legionella*, heterotrophic plate count, bacteria and turbidity reasonable? If not, what would be the rationale for an MCL regulation(s)? Would the proposed treatment requirements provide reasonable margins of safety from *Giardia lamblia*, viruses, *Legionella*, and heterotrophic plate count bacteria?

Is the approach of basing treatment requirements on minimum removal and/or inactivation of 99.9 percent *Giardia lamblia* and 99.99 percent enteric viruses reasonable? Are these appropriate minimum levels of treatment performance? Should other organisms or parameters be targeted? For example, would it be appropriate to require finished waters of water treatment plants and waters within the distribution system to be below some concentration level of heterotrophic plate count bacteria? If so, what would be the rationale for setting such a limit and what monitoring would be appropriate to demonstrate that such a limit was being met?

Is the definition of "surface water" appropriate? Should such a definition, or only part of the proposed definition, be included? Are the methodologies provided satisfactory in the draft Guidance Manual for making the determination of whether a source water is a "surface water"? What other methodologies are available for distinguishing whether a water should be classified as a "surface water" (i.e., subject to potential contamination of *Giardia* cysts from surface water)?

Are the proposed definitions appropriate? If not, what alternative definitions are recommended and on what basis?

B. Criteria for Determining if Filtration is Required

(1) General

What role should States have in making the determination of which systems should be required to filter? Do the proposed criteria allow appropriate discretion to the State for making these determinations? Are the criteria too specific or not specific enough? Under what conditions, if any, should systems be allowed to exceed a specific criteria to avoid filtration if they can remedy the situation?

(2) Source Water Quality Conditions

Are the proposed fecal coliform and total coliform limits appropriate? Is the basis for allowing demonstration of meeting the total coliform limit in lieu of the fecal coliform limit reasonable? Are the minimum sampling requirements adequate? Is the proposed turbidity limit of five NTU with the conditions for allowed exceedance, and the monitoring requirements for this determination, appropriate? Do the conditions for being allowed an exceedance provide adequate flexibility, i.e., no more than two periods of exceedance per year or five periods per ten years and that each period must be unusual and unpredictable, as determined by the State? Is a two day average of NTU a more appropriate limit? On what basis?

Is it appropriate to retain a monthly average turbidity limit? If so, to what extent should a system be allowed to exceed a monthly limit, and under what conditions? For example, what methodology would be appropriate for demonstrating that turbidity does not interfere with disinfection?

Currently some unfiltered systems blend their surface water with ground water during high turbidity events. The proposed rule does not prevent a system from such blending (prior to disinfection), during these times, to enable the system to achieve compliance with the source water quality criteria. The Guidance Manual does not generally recommend this practice, because of the concern for possible pathogen association with particulate matter. The Guidance Manual recommends that if such practice were to be allowed, the surface water fraction of the water should not contain total coliforms, or fecal coliforms, above 100/100 ml or 20/100 ml, respectively, and that the turbidity should essentially consist of inorganic particulate matter. Should the rule allow blending at all? On what basis? Should conditions under which blending could be allowed be defined in the rule, or left to Guidance?

Under the proposed rule, systems which have no potential for human virus occurrence within the watershed may be exempt from the requirement to achieve 99.99 percent inactivation of enteric viruses. Is the allowance of such an exclusion to the requirement appropriate? The allowance is based on the assumption that viruses excreted from animals are not infectious in humans. Is data available to support or contradict this assumption?

(3) Site-Specific Conditions

Are the watershed control and sanitary survey requirements for systems that wish to avoid filtration appropriate? Should watershed protection as defined in the rule include more specific requirements? Are the procedures in the draft Guidance Manual for evaluating whether these requirements are met adequate or appropriate? Should some of these provisions be included in the rule? Is the definition of waterborne disease outbreak appropriate? Is it appropriate to require compliance with the proposed total coliform MCL for distribution system measurements to avoid filtration? Is it appropriate to require compliance with the THM MCL to avoid filtration? Should the THM requirement be extended to systems serving less than 10,000 people which are currently not required to meet the THM MCL?

C. Disinfection Requirements

Are the proposed disinfection requirements for unfiltered systems appropriate? For calculating CT values, are the definitions of disinfectant residual concentration (C, mg/l) and contact time (T, minutes) appropriately defined? Is it appropriate to estimate inactivation rates based on CT values? Is the basis for the CT values in the rule appropriate? Are the safety factors for applying laboratory data to field conditions appropriate? Since ozone dissipates so rapidly should "C" and "T" be defined differently for this disinfectant? If so, how, and on what basis? Are the violations to the disinfection requirements appropriate for determining that a system should filter?

Are the proposed disinfection requirements for filtered water systems appropriate? Should CT values for filtered water systems be specified in the rule? What should form the basis for such CT values, e.g., achieving a minimum of 90 percent inactivation of *Giardia lamblia*, such as those given in Table III–3 in this preamble?

Are the proposed disinfection requirements for the distribution system appropriate? If not, how should they be changed and on what basis? Should different residual concentrations be specified for different oxidants? Should systems be allowed to exceed the required limits under certain conditions?

An alternative to the proposed requirement might be to allow systems to either maintain (a) a disinfectant residual of at least 0.2 mg/1 in at least 95 percent of the measurements, not to be exceeded for any two consecutive months, or (b) HPC measurements of less than 500 per ml, using the standard pour plate method, in at least 95 percent of the measurements, not to be exceeded for any two consecutive months. This alternative would allow systems which could not maintain residuals in parts of the distribution system to show that heterotrophic bacterial populations were still being maintained below reasonable levels and thereby satisfy the main purpose of the distribution system residual requirement.

EPA solicits comments on the appropriateness of such an alternative requirement. In such a case, which method(s) should be specified for measuring HPC? What numeric and associated percentile limits would be appropriate? On what basis?

Are the proposed analytical and monitoring requirements appropriate? Should some methods be excluded or included? Should different oxidant residual limits be required for different disinfectants? Should these conditions be specified or left to States to determine?

D. Criteria for Determining if Filtration is Adequate

Should States be given more discretion for determining when filtration is inadequate? Are the proposed turbidity monitoring and performance requirements appropriate for determining whether filtration is adequate? Should monitoring and performance requirements be specified in the rule for each filter within the system? If so, how should such requirements differ (if at all) from those of the representative water of the system? How should results from continuous turbidity measurements be validated? Should such a procedure be specified in the rule? Are the proposed methodologies in the Guidance Manual for demonstrating effective *Giardia* cyst and virus removal and/or inactivation appropriate? Should there be exceptions to the minimum 3-log inactivation requirement for *Giardia* cysts in water supply systems that use unfiltered water, and if so, under what conditions should those exceptions be made?

E. Reporting Requirements

Are the proposed reporting requirements for filtered and unfiltered systems appropriate? Should the reporting requirements be more general, with the specific requirements left for State agencies to determine? Is the frequency of routine reporting and violation reporting appropriate? What is gained by requiring the reporting of all monitoring results on a monthly versus a quarterly basis? Should reporting of violations be required more frequently if significant? Under what conditions would more frequent reporting requirements be appropriate?

F. Violations and Public Notification

Has EPA appropriately defined violations of the proposed filtration and disinfection treatment requirements, and are these definitions compatible with the general public notification requirement for treatment technique violations proposed on April 6, 1987 (52 FR 10972)? Should some other time frame be used for acute violations, such as 48 hours, as opposed to 7 days, as in the proposed revisions to the public notification requirements. Also, should EPA specify when the content of the notice proposed in this preamble, includes other information, such as notice to boil the water. NOTE: In this notice, EPA is not seeking comments on the general public notification

requirements proposed in April 1987. Commenters should limit comments to the application of those requirements to the filtration and disinfection requirements of this rule.

G. Costs and Benefits of the Proposed Rule

Does the Regulatory Impact Assessment (RIA) adequately evaluate the cost of the proposed rule? Are the cost and technology assumptions used for the different sizes of public water supply systems reasonable? How might system and national cost estimates be improved?

In the RIA analysis, several major assumptions were made because of limited data. These include: (a) Most filtered water systems will be able to meet the proposed disinfection requirements, and if not, the costs to make the necessary upgrade to meet these requirements on a national basis would not be significant relative to the costs for upgrading filtration to meet the proposed turbidity limits; and (b) in regard to the proposed definition of "surface water," most systems, currently defined as ground water, will not be reclassified as surface water systems. Although some springs and infiltration galleries, now defined as groundwater systems, are expected to be reclassified as surface water systems, most of these systems are expected to be small and would therefore not have a significant impact on the total national costs. Are these assumptions reasonable? If not, what data are available to quantify these cost impacts?

Does the RIA adequately evaluate the benefits of the proposed rule? Are there additional data on outbreak rates and/or endemic rates of waterborne disease that could be used to provide a better estimate of the potential benefits of the rule? Is the range of benefits estimated for the rule reasonable? Is the range too wide or too narrow? Basis? How could the benefits analysis be improved?

H. State Implementation

Are the proposed changes to the State recordkeeping and reporting requirements to implement the filtration rule reasonable?

1. *EPA's oversight of State filtration decisions.* Is the procedure proposed for the EPA's review of State filtration decisions reasonable? Are there alternative procedures available for EPA to ensure that States apply the filtration criteria consistently and in accordance with the requirements of the national primary drinking water regulation?

2. *Specific requirements to adopt the filtration regulations.* Are the proposed additions to the implementation regulations at 40 CFR 142.16 to specify the requirements necessary for State programs implementing the filtration and disinfection requirements of this notice appropriate? Are there other requirements that should be included?

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List of Subjects in 40 CFR Parts 141 and 142

Chemicals, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply, Administrative practice and procedure.

Dated: October 17, 1987.

Lee M. Thomas,

Administrator.

For the reasons set forth in the preamble, Title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

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

Authority: 42 U.S.C. 300g–1, 300g–3, 300g–6, 300j–4, and 300j–9.

2. In § 141.2 the following new definitions are added and arranged alphabetically to read as follows:

§ 141.2 Definitions.

* * * * *

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended material are destabilized and agglomerated in nonfilterable flocs which settle.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation and filtration.

* * * * *

"CT" is the product of "residual disinfectant concentration" (C) determined prior to the first customer, and "disinfectant contact time" (T), i.e., "C" x "T". If the public water system applies disinfectants at more than one point prior to the first customer, it must determine the CT of each disinfectant sequence prior to the first customer to determine the total percent inactivation achieved by disinfection prior to the first customer. In determining the total percent activation, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before subsequent disinfection application point(s).

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (1) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (2) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water, in order to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation.

* * * * *

"Disinfectant contact time" is the time in minutes that it takes for water to move from the point of disinfectant application to the point where residual disinfectant concentration is measured. Contact time in pipelines must be calculated based on "plug flow" by dividing the internal volume of the pipeline by the flow rate through that pipeline. Contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration. Guidance for making the above determinations appears in the "Guidance Manual for Compliance with the Surface Water Treatment Requirements for Public Water Systems" (U.S. EPA, Office of Drinking Water, Criteria and Standards Division, December, 1987).

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

* * * * *

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable or nonfilterable particles through gentle stirring by hydraulic or mechanical means.

* * * * *

"Point of disinfectant application" is where the water being disinfected is no longer subject to surface runoff.

"Residual disinfectant concentration" means the concentration of disinfectant measured in mg/l in a representative sample of water.

* * * * *

"Sedimentation" means a process for removal by gravity or separation of solids before filtration.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

* * * * *

"Surface water" means all water (1) open to the atmosphere and subject to surface runoff, or (2) which is directly influenced by surface water, as defined in (1), which may include springs, infiltration galleries, or wells. Whether there is direct influence by surface water must be determined on a case-by-case basis. Direct influence may be indicated by: (i) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH (which may also change in ground water but at a much slower rate) which closely correlate to climatologic or surface water conditions, or (ii) the presence of insects or other macroorganisms, algae, organic debris, or large-diameter pathogens such as *Giardia lamblia.*

* * * * *

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate health agency or State.

3. Section 141.32 is amended by adding paragraphs (a)(1)(iii)(C), (a)(1)(iii)(D), and (e)(10) to read as follows:

§ 141.32 Public notification.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(C) When the turbidity of the water prior to the point of disinfection of an unfiltered supply, or the turbidity of filtered water, exceeds 5 NTU at any time;

(D) A failure to maintain a disinfectant residual of at least 0.2 mg/l in the water being delivered to the distribution system.

* * * * *

(e) * * *

(10) *Microbiological contaminants.* The United States Environmental Protection Agency (EPA) sets drinking water treatment technique requirements for microbiological contaminants (such as viruses, bacteria, and some other microorganisms) which are of health concern. To reduce any potential risk of microbiological contamination of drinking waters, drinking water treatment facilities are required to treat drinking water, such as by filtering or disinfecting, which removes or destroys microbiological contaminants. Violation of the required treatment technique indicates that the water has been treated improperly and may expose people who drink that water to contaminants which can cause various types of illness, such as hepatitis, giardiasis, and gastroenteritis. These illnesses can cause different symptoms, including diarrhea, abdominal cramps, nausea, jaundice, headaches, fatigue, and weight loss.

* * * * *

4. A new Subpart H is added to read as follows:

Subpart H—Filtration and Disinfection

Subpart H—Filtration and Disinfection

§ 141.70 General requirements

(a) The requirements of this Subpart H constitute national primary drinking water regulations. These regulations establish criteria under which filtration is required as a treatment technique for public water systems supplied by surface water sources. In addition, these regulations establish treatment techniques in lieu of maximum contaminant levels for the following contaminants: *Giardia lamblia*, viruses, heterotrophic plate count bacteria, *Legionellae*, and turbidity. Each public water system with a surface water source must provide treatment of that surface water for these contaminants. "Treatment" consists of installing and properly operating those water treatment processes that reliably ensure that:

(1) At least 99.9 percent removal and/or inactivation of Giardia lamblia cysts is achieved between the raw water no longer subject to runoff and prior to delivery to the first customer; and

(2) At least 99.99 percent removal and/or inactivation of enteric viruses is achieved between the raw water no longer subject to runoff and prior to delivery to the first customer.

(b) A public water system using surface water sources is considered to be in compliance with the requirements of paragraphs (a)(1) and (2) of this section by either'

(1) Meeting the requirements of both §§ 141.71 and 141.72(a) of this part; or

(2) Meeting the requirements of §§ 141.72(b) and 141.73 of this part.

(c) All water treatment systems must be operated by qualified personnel who meet the requirements specified by the State.

(d) Public water systems using surface water sources must also meet the monitoring, analytical and reporting requirements specified in §§ 141.74 and 141.75 of this part.

§ 141.71 Criteria under which filtration is required.

The following criteria shall be used by the State to determine whether filtration is required in a public water system that utilizes surface water as a source. A public water system that uses surface water as a source, which does not meet all of the conditions of § 141.71 (a) and (b) of this section, must provide filtration treatment as specified in § 141.73 of this part and disinfection treatment as specified in § 141.72(b) of this part. A public water system that uses surface water as a source which meets all of the conditions of paragraphs (a) and (b) of this section is not required to provide filtration treatment but is required to provide disinfection treatment as specified in § 141.72(a) of this part.

(a) *Source water quality conditions.* (1) Either the fecal coliform concentration must be equal to or less than 20/100 ml, or the total coliform concentration must be equal to or less than 100/100 ml, in the source water immediately prior to disinfection in not less than 90 percent of the measurements made each month, for the six previous months on an ongoing basis. If the system measures both fecal and total coliforms, then only the fecal coliform criterion in the previous sentence applies.

(2) The turbidity level may not exceed 5 NTU for more than two periods in any consecutive twelve months, or five periods in any consecutive 120 months. A "period" is one or more consecutive days when at least one turbidity measurement each day exceeds 5 NTU. When the turbidity exceeds 5 NTU, it is in violation of a treatment technique requirement and the system must inform its consumers and the State, as soon as possible but in no case later than 72 hours, that it is necessary to boil the water before consumption, until it is determined that the water is safe.

(3) The turbidity level cannot exceed 5 NTU unless the State determines that the exceedence was unusual and unpredictable.

(b) *Site-specific conditions.* (1) The public water system must demonstrate that it is providing disinfection in compliance with the requirements of § 141.72(a) of this part.

(2) The public water system must maintain a watershed control program which minimizes the potential for contamination by *Giardia lamblia* cysts and enteric viruses in the source water and is satisfactory to the State. The watershed control program must:

(i) Characterize the watershed hydrology and land ownership;

(ii) Identify watershed characteristics and activities which may have an adverse effect on source water quality; and

(iii) Monitor and control the occurrence of activities which may have an adverse effect on source water quality. The public water system must control all human activities which may have an adverse impact on the biological quality of the waters through ownership and written agreements with landowners within the watershed. Guidelines for maintaining such a program and demonstrating compliance with this requirement appear in the "Guidance Manual for Compliance With the Surface Water Treatment Requirements" for Public Water Systems (U.S. EPA, Office of Drinking Water, Criteria and Standards Division, September, 1987).

(3) The public water system must have an on-site sanitary survey performed each year, by the State or a party approved by the State, and the survey results must indicate to the State's satisfaction that the disinfection treatment process and the watershed control program are adequately designed and maintained. Criteria for the sanitary survey appear in the "Guidance Manual for Compliance With the Surface Water Treatment Requirements" for Public Water Systems (U.S. EPA, Office of Drinking Water, Criteria and Standards Division, September, 1987).

(4) The public water system in its current configuration must not have been identified as a source of a waterborne disease outbreak as defined in § 141.2 of this part.

(5) The public water system must be in continuous compliance with the long-term maximum contaminant level (MCL) requirements for total coliforms in § 141.63(b) of this part.

(6) The public water system must be in continuous compliance with the requirements for trihalomethanes in §§ 141.12 and 141.30 of this part.

§ 141.72 Disinfection.

All public water systems which use any surface water sources must provide disinfection treatment of that surface water prior to distributing it to consumers. Systems which meet the requirements of § 141.71 (a) and (b) of this part, and which elect not to provide filtration that meets the requirements of § 141.73 of this part, must provide disinfection treatment as specified by paragraph (a) of this section. Systems which provide filtration as specified by § 141.73 of this part must provide disinfection as specified in paragraph (b) of this section.

(a) *Disinfection requirements for public water systems that do not provide filtration.* (1) The disinfection process must achieve at least a 99.9 percent inactivation of *Giardia lamblia* cysts and a 99.99 percent inactivation of enteric viruses. This must be demonstrated by calculating the CT values from the public water system's treatment parameters, as specified in § 141.74(b)(3) of this part, and comparing these values with the minimum CT values specified in Tables 1.1—1.6, 2.1, and 3.1 in the Appendix to this Subpart. Systems using chloramines may demonstrate, through the use of a State-approved protocol for on-site disinfection challenge studies, that lower CT values than those indicated in Table 3.1 are needed to achieve the required percent inactivation. Guidance is available for conducting such studies in the "Guidance Manual for Compliance With the Surface Water Treatment Requirements for Public Water Systems" (U.S. EPA, Office of Drinking Water, Criteria and Standards Division, September, 1987). The 99.99 percent inactivation requirement for enteric viruses does not apply if the system has no potential sources of human enteric viruses within the watershed, as determined by the State. Potential sources of human enteric viruses include sewage discharges, septic tank discharges, swimming, boating, camping, fishing, hiking, hunting or any other human usage or habitation which may result in human waste disposal within the watershed.

(2) The disinfection system must have redundant components, including an auxiliary power supply with automatic start-up and alarm to ensure that disinfectant application is maintained continuously while water is being delivered to the distribution system.

(3) The public water system must comply with all design and operating requirements specified by the State.

(4) The public water system must demonstrate by continuous monitoring, and recording, as specified in § 141.74 (a)(4), (b)(4) and (b)(5) of this part, that it is continuously maintaining a disinfectant residual of at least 0.2 mg/l in the water delivered to the distribution system.

(5) The residual disinfectant concentrations of samples from the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, pursuant to the monitoring requirements of § 141.74 (a)(4), (b)(4) and (b)(5) of this part, cannot be less than 0.2 mg/l in more than 5 percent or more of the samples, each month, for any two consecutive months.

(b) *Disinfection requirements for public water systems which provide filtration in accordance with § 141.73.* (1) The public water system must comply with all design and operating requirements specified by the State.

(2) The public water system must demonstrate by continuous monitoring, and recording, as specified in § 141.74 (a)(4), (b)(4) and (b)(5) of this part, that a disinfectant residual of at least 0.2 mg/l is continuously maintained in the water delivered to the distribution system.

(3) The residual disinfectant concentrations of samples from the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide pursuant to the monitoring requirements of § 141.74 (a)(4), (b)(4) and (b)(5) of this part, cannot be less than 0.2 mg/l in more than 5 percent or more of the samples, each month, for any two consecutive months.

§ 141.73 Filtration

Public water systems which use surface water sources and do not meet all the requirements of §§ 141.71 (a) and (b) and § 141.72(a) of this part must provide treatment consisting of both disinfection, as specified in § 141.72(b) of this part, and filtration treatment which complies with the requirements of paragraphs (a), (b), (c) or (d), and (e) of this section.

(a) *Conventional filtration treatment or direct filtration.* (1) The turbidity level of representative samples of the system's filtered water must be less than or equal to 0.5 NTU in at least 95 percent of the measurements taken each month, measured pursuant to the monitoring requirements of § 141.74(c) of this part, except as provided in paragraph (a)(2) of this section.

(2) If the State determines that on-site studies demonstrate effective removal and/or inactivation of *Giardia lamblia* cysts, or effective removal of *Giardia lamblia* cyst-sized particles at higher turbidity levels than specified in paragraph (a)(1) of this section, the State may specify these levels as the appropriate performance standard instead. In such cases, the filtered water turbidity level allowed by the State must be equal to or less than 1 NTU in 95 percent of the samples taken each month measured pursuant to the monitoring requirements of § 141.74(c) of this part.

(3) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured pursuant to the monitoring requirements of § 141.74(c) of this part.

(b) *Slow sand filtration.* (1) The turbidity level of representative samples of the system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month. The State may allow the system to meet a higher turbidity level if:

(i) The turbidity level never exceeds 5 NTU; and

(ii) The filter effluent prior to disinfection meets the long-term MCL for total coliforms in § 141.63(b) of this part for one year.

(2) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU, measured pursuant to the monitoring requirements of § 141.74(c) of this part.

(c) *Diatomaceous earth filtration.* (1) The turbidity level of the representative samples of the system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month, measured pursuant to the monitoring requirements of § 141.74(c) of this part.

(2) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU.

(d) *Other filtration technologies.* (1) A public water system may use filtration technology not listed in paragraphs (a) thru (c) of this section if it demonstrates to the State, using pilot plant studies conducted on-site or at another site with similar source water conditions, that the filtration technology (including disinfection) consistently achieves 99.9 percent removal and/or inactivation of *Giardia lamblia* cysts and 99.99 percent removal and/or inactivation of enteric viruses. The system must meet the requirements of § 141.73(b) of this part.

(e) *Design and operating requirements.* (1) The public water system must comply with all design and operating conditions specified by the State.

(2) The turbidity level of representative samples of filtered water must at no time exceed 5 NTU.

§ 141.74 Monitoring and analytical requirements.

(a) *Analytical requirements.* Only the analytical method(s) specified in this paragraph, or otherwise approved by EPA, may be used to demonstrate compliance with the requirements of §§ 141.71, 141.72, and 141.73 of this part. In addition, each analysis must be performed by a laboratory approved by the State and results must be reported in the units specified by the analytical method used.

(1) Fecal coliform concentration—Methods 908 C, D (MPN Procedure) or 909 C (Membrane Filter Procedure) as set forth in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th edition.

(2) Total coliform concentration—Methods 908 A, B, D (MPN Procedure) or 909 A, B (Membrane Filter Procedure) as set forth in *Standard Method for the Examination of Water and Wastewater*, American Public Health Association, 16th edition.

(3) Turbidity—Method 214 A (Nephelometric Method) as set forth in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th edition.

(4) Disinfectant residuals—Disinfectant residuals for free chlorine and combined chlorine must be measured by Method 408C (Amperometric Titration Method), Method 408D (DPD Ferrous Titrimetric Method), Method 408E (DPD Colorometric Method), or Method 408F (Leuco Crystal Violet Method) as set forth in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th edition. Disinfectant residuals for free chlorine and combined chlorine may also be measured by using DPD colorimetric test kits if approved by the State. Disinfectant residuals for ozone may be measured at the water treatment plant by the Indigo Method (Bader, H., Hoigne, J., "Determination of Ozone in Water by the Indigo Method; A Submitted Standard Method;" Ozone Science and Engineering, Vol. 4, pp. 169–176, Pergamon Press Ltd., 1982). This method is described in the "Guidance Manual for Compliance With the Surface Water Treatment Requirements for Public Water Systems" (U.S. EPA, Office of Drinking Water, Criteria and Standards Division, September, 1987). (Note: This method will be published in the 17th edition of *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association; the Idiometric Method in the 16th edition may not be used.) Disinfectant residuals for chlorine dioxide must be measured by Method 410B (Amperometric Method) or Method 410C (DPD Method) as set forth in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th edition.

(5) Temperature—Method 212 as set forth in *Standard Methods for the Examination of Water and Wastewater*,

American Public Health Association, 16th edition.

(6) pH—Method 423 as set forth in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th edition.

(b) *Monitoring requirements for systems that wish to demonstrate that they meet the criteria of § 141.71 of this part for avoiding filtration.* (1) Fecal coliform or total coliform density determinations as required by § 141.71 (a)(1), (a)(2), (a)(3), and (a)(4) of this part must be performed on samples of the source water immediately prior to the first point of disinfectant application. The system must sample for fecal or total coliforms at the following minimum frequency:

System size (persons served)	Samples/week
<500	1
501-3,300	2
3,301-10,000	3
10,001-25,000	4
>25,000	5

Also, one fecal or total coliform density determination must be made every day during which the turbidity of the source water exceeds 1 NTU (these samples count towards the weekly minimum).

(2) The system must measure turbidity of a representative grab sample of the source water. The sample must be collected immediately prior to the first point of disinfectant application, at least once every four hours of system operation to determine compliance with the maximum turbidity level specified in § 141.71 (a)(2) and (a)(3) of this part. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the State.

(3) The CT value for each day of the month must be determined based on the following:

(i) The temperature of the disinfected water must be measured at least once per day.

(ii) The pH of the disinfected water must be measured at least once per day if chlorine is the disinfectant.

(iii) The disinfectant contact time, as defined in § 141.2, must be determined for each disinfection sequence prior to the first customer at least once per day, during peak hourly flow.

(iv) The disinfectant concentration of the water prior to the first customer, including the disinfection for which contact time is determined, must be measured each day, during peak hourly flow, and be used to calculate the CT value. If the system uses more than one disinfection sequence prior to the first customer, the disinfectant residual of each such disinfection sequence imnediately prior to the next point of disinfectant application, must be measured during peak hourly flow. The CT value of each sequence and subsequent percent inactivation for that sequence must be calculated to determine if the system is in compliance with § 142.72(a) of this part. In making this determination, the following formula must be used.

$$G_{tn} = G_{tn-1} + G_n \frac{(100 - G_{tn-1})}{100}$$

where:

n = number of points of disinfection application

G_{tn} = total percent inactivation achieved by "n" dzsinfectants

G_{tn-1} = percent inactivation for the disinfection sequence(s) prior to the nth disinfection sequence

G_n = percent inactivation achieved through the nth disinfectant sequence

CT values necessary to achieve less than 99.9 percent inactivation of *Giardia lamblia*, as indicated in Tables 1.1–1.6, 2.1, and 3.1 in the Appendix to this subpart, must be determined as follows:

$CT_{90} = .33 \times CT_{99.9}$
$CT_{95} = .43 \times CT_{99.9}$
$CT_{99} = .67 \times CT_{99.9}$
$CT_{99.5} = .77 \times CT_{99.9}$

where CT_z = the CT value needed to achieve "z" percent inactivation.

Guidance for making the above determination is contained in the "Guidance Manual for Compliance With the Surface Water Treatment Requirements for Public Water Systems" (U.S. EPA, Office of Drinking Water, Criteria and Standards Division, September, 1987).

(4) The disinfectant residual concentration of the water being supplied to the distribution system must be monitored continuously, and the lowest value must be recorded each day.

(5) The disinfectant concentration must be measured at representative points in the distribution system no less frequently than the frequency required for total coliform sampling in § 141.24 of this part.

(c) *Monitoring requirements for systems using filtration treatment as specified by § 141.73 of this part.* (1) The public water system must determine the turbidity level of representative samples of the system's filtered water at least once every four hours that the system is in operation, except as provided in paragraph (c)(2) of this section.

(2) A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a protocol approved by the State. For systems using slow sand filtration and filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the State may reduce sampling frequency to once per day.

(3) The system must comply with the disinfection monitoring requirements of paragraph (b)(4) and (b)(5) of this section.

§ 141.75 Reporting, public notices, and recordkeeping requirements.

(a) Public water system supplied by surface water sources that meet the requirements of §§ 141.71 and 141.72(a) of this part and do not use filtration treatment as specified by § 141.73 of this part must report the following information to the State:

(1) Source water quality information to be reported to the State within 10 days of the end of each month the system is in operation for any period of time:

(i) The number of cumulative months for which results are reported.

(ii) The number of total or fecal coliform samples analyzed during the month.

(iii) The number of samples during the month that had less than 20/100 ml fecal coliforms or less than 100/100 ml total coliforms.

(iv) The cumulative number of fecal or total coliform samples analyzed in the previous six months.

(v) The cumulative number of samples with less than 20/100 ml fecal coliforms or less than 100/100 ml total coliforms during the previous six months.

(vi) The percentage of samples with less than 20/100 ml fecal coliforms or less than 100/100 ml total coliforms for the previous six months.

(vii) The maximum turbidity level that occurred during the month and the date of each measurement which exceeded 5 NTU.

(viii) The dates and cumulative number of periods during which the turbidity exceeded 5 NTU in the previous 12 months.

(ix) The dates and cumulative number of periods during which the turbidity exceeded 5 NTU in the previous 120 months, beginning [insert 138 months after publication of final rule].

(x) The dates during which the customers of the public water system

were notified to boil the water being consumed.

(2) Disinfection information to be reported to the State within 10 days of the end of each month that the system is in operation:

(i) The date and duration of each instance when the disinfectant residual in water supplied to the distribution system is less than 0.2 mg/1.

(ii) The disinfectant concentrations (in mg/1) used each day for calculating the CT value, as required in § 141.74(b)(3). When multiple disinfectants are used, the public water system must report the residual concentration used each day for calculating the CT value of each disinfectant sequence prior to the first customer.

(iii) The disinfectant contact time in minutes, during peak hourly flow, for each disinfectant that is applied for each day.

(iv) The daily measurement of pH of disinfected water following each point of disinfection with chlorine for each day.

(v) The daily measurement of water temperature following each point of disinfection.

(vi) The daily CT values for each disinfectant sequence used prior to the first customer.

(vii) The daily determination of the CT value(s) necessary for the system to achieve a 99.9 percent *Giardia* cyst and 99.99 percent enteric virus inactivation using the above information and tables.

(viii) The date of each instance when the daily CT(s) is less than that required to achieve a 99.9 percent *Giardia* cyst and 99.99 percent virus inactivation.

(ix) The total number of disinfectant residual concentration measurements taken in the distribution system in conjunction with total coliform monitoring pursuant to § 141.70 of this part.

(x) The number of disinfectant residual concentration measurements in the distribution system which are less than 0.2 mg/l.

(xi) The percent of disinfectant residuals in the distribution system which are less than 0.2 mg/l.

(3) Within ten days of the end of each Federal fiscal year, each system must provide to the State a report which summarizes its compliance with all watershed control program requirements as specified under § 141.71(b)(2).

(4) Each system must provide to the State an annual report of the yearly sanitary survey unless the sanitary survey is conducted by the State.

(5) Each system, within 48 hours of the discovery that a waterborne disease outbreak potentially attributable to that water system has been identified, must report that occurrence to the State.

(b) Each public water system supplied by a surface source and which uses filtration as specified by § 141.73 of this part must report the following information to the State:

(1) Turbidity performance measurements specified by § 141.74(c) of this part must be reported within 10 days of the end of each month the system operates for any period of time. Measurements that must be reported include:

(i) The total number of turbidity measurements taken during the month.

(ii) The number of turbidity measurements taken during the month which are less than or equal to the turbidity limits specified for each filtration technology in § 141.73 of this part.

(iii) The percent of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity requirements in § 141.73 of this part.

(iv) The date and value of any turbidity measurements taken during the month which exceed 5 NTU.

(v) If the turbidity level of the filter effluent from a slow sand filter is greater than 1 NTU in at least 95 percent of the measurements taken that month, the public water system must also report within 10 days of the end of the month to the State the dates and results of total coliform sampling of the filter effluent prior to disinfection conducted in the same manner and frequency as required in § 141.63(b) of this part.

(2) Disinfection monitoring requirements specified by § 141.74(c) of this part must be reported within 10 days of the end of each month the system operates for any period of time. Measurements that must be reported include:

(i) The value of the lowest measurement of disinfectant concentration in mg/L in water supplied to the distribution system for each day.

(ii) The date of each instance during the month when there is less than 0.2 mg/l disinfectant residual in water supplied to the distribution system.

(iii) The total number of samples and values of disinfectant residual for each sample measured in the distribution system in conjunction with coliform monitoring during the month.

(iv) The number of disinfectant residual measurements in the distribution system during the month which are greater than or equal to 0.2 mg/l.

(v) The percent of disinfectant residual measurements in the distribution system which are greater than or equal to 0.2 mg/l.

(c) Each system, within 48 hours of the discovery that a waterborne disease outbreak potentially attributable to that water system has been identified, must report that occurrence to the State.

(d) All systems must comply with the recordkeeping requirements of the National Primary Drinking Water Regulations.

§ 141.76 Violations.

(a) A public water system using surface water sources that does not provide filtration treatment, and

(1) Fails to meet the requirements of § 141.71(a)(2), § 141.71(b)(4) or § 141.72(a)(4), following [*insert date 48 months after publication of final rule*], is in violation of a treatment requirement which poses an acute risk to human health; or

(2) Fails to meet any of the following requirements: § 141.71 (a)(1), (b)(1); § 141.72 (a)(1), (a)(2), (a)(5) following [*insert date 48 months after publication of final rule*], is in violation of a treatment requirement, or

(3) Fails to meet any of the following requirements: § 141.70(c); § 141.71 (a)(3), (b)(2), (b)(3); § 141.72(a)(3); following this determination by the State, is in violation of a treatment requirement, or

(4) Fails to meet any of the requirements of § 141.74(a)(1)–(6) following [*insert date 48 months after publication of final rule*] is in violation of a testing procedure requirement.

(5) Fails to meet any of the requirements of § 141.74 (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5) [*insert date 48 months after publication of final rule*], is in violation of a monitoring requirement, or

(6) Fails to meet any of the requirements of § 141.75(a) [*insert date 48 months after publication of final rule*], is in violation of a reporting requirement, or

(b) A public water system using surface water sources that provides filtration treatment, and

(1) Fails to meet any of the following applicable requirements: § 141.72(b)(2), § 141.73(a)(3), § 141.73(b)(2), § 141.73(c)(2) or § 141.73(d)(2) following [*insert date 48 months after publication of final rule*], is in violation of a treatment requirement which poses an acute risk to human health, or

(2) Fails to meet any of the following applicable requirements: § 141.72 (b)(1), (b)(3), § 141.73 (a)(1), (a)(2), (b)(1), (c)(1), or (d)(1) following [*insert date 48 months after publication of final rule*], is in violation of a treatment requirement, or

(3) Fails to meet any of the following requirements: § 141.70(c); § 141.72(b)(1); § 141.73(e)(1); following this determination by the State, is in violation of a treatment requirement, or

(4) Fails to meet any of the requirements of § 141.74 (a)(3) or (a)(4) following [*insert date 48 months after publication of final rule*] is in violation of a testing procedure requirement.

(5) Fails to meet any of the following requirements: § 141.74(c) of this part, following [*insert date 48 months after publication of final rule*], is in violation of a monitoring requirement.

(6) Fails to meet any of the requirements of § 141.75(a) [*insert date 48 months after publication of final rule*], is in violation of a reporting requirement.

(c) A public water system in violation of any of the requirements of this subpart must comply with the public notification drinking water regulations (see § 141.32).

Appendix to Subpart H—Tables

TABLE 1.1.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 0.5 °C*

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
≤0.4	129	160	196	238	284	335	392
0.6	138	172	211	255	305	360	421
0.8	145	181	222	268	321	379	443
1.0	151	188	231	279	333	394	461
1.2	156	194	238	288	344	407	476
1.4	160	200	245	296	354	418	489
1.6	164	205	251	303	362	428	501
1.8	168	209	256	310	370	437	511
2.0	171	213	261	315	377	445	521
2.2	174	216	265	321	383	453	530
2.4	176	220	269	326	389	460	538
2.6	179	223	273	330	395	466	546
2.8	181	226	277	335	400	472	553
3.0	183	228	280	339	405	478	559

*These CT values achieve greater than a 99.99 percent inactivation of enteric viruses.

TABLE 1.2.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 5.0 °C*

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
≤0.4	92	114	140	169	202	239	280
0.6	98	123	150	182	217	257	300
0.8	104	129	158	191	229	270	316
1.0	108	134	165	199	238	281	329
1.2	111	139	170	206	245	290	339
1.4	114	142	175	211	252	298	349
1.6	117	146	179	216	258	305	357
1.8	119	149	183	221	264	311	365
2.0	122	152	186	225	269	317	371
2.2	124	154	189	229	273	323	378
2.4	126	157	192	232	277	328	383
2.6	127	159	195	235	281	332	389
2.8	129	161	197	239	285	337	394
3.0	131	163	200	242	288	341	399

*These CT values achieve greater than a 99.99 percent inactivation of enteric viruses.

TABLE 1.3.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 10 °C *

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
≤0.4	69	86	105	127	152	179	210
0.6	74	92	113	136	163	193	225
0.8	78	97	119	144	171	203	237
1.0	81	101	123	149	178	211	247
1.2	83	104	128	154	184	218	255
1.4	86	107	131	158	189	224	262
1.6	88	109	134	162	194	229	268
1.8	90	112	137	166	198	234	273
2.0	91	114	140	169	201	238	279

TABLE 1.3.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 10 °C *—Continued

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
2.2	93	116	142	172	205	242	283
2.4	94	117	144	174	208	246	288
2.6	96	119	146	177	211	249	292
2.8	97	121	148	179	214	253	296
3.0	98	122	150	181	216	256	299

*These CT values achieve greater than a 99.99 percent inactivation of enteric viruses.

TABLE 1.4.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 15 °C *

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
≤0.4	46	57	70	85	101	120	140
0.6	49	61	75	91	109	128	150
0.8	52	65	79	96	114	135	158
1.0	54	67	82	100	119	140	164
1.2	56	69	85	103	123	145	170
1.4	57	71	87	106	126	149	174
1.6	59	73	89	108	129	153	179
1.8	60	74	91	110	132	156	182
2.0	61	76	93	112	134	159	186
2.2	62	77	95	114	137	161	189
2.4	63	78	96	116	139	164	192
2.6	64	79	97	118	141	166	194
2.8	65	80	99	119	142	168	197
3.0	65	81	100	121	144	170	199

*These CT values achieve greater than a 99.99 percent inactivation of enteric viruses.

TABLE 1.5.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 20 °C *

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
≤0.4	34	43	53	64	76	90	105
0.6	37	46	56	68	82	96	113
0.8	39	48	59	72	86	101	119
1.0	40	50	62	75	89	105	123
1.2	42	52	64	77	92	109	127
1.4	43	53	66	79	95	112	131
1.6	44	55	67	81	97	114	134
1.8	45	56	68	83	99	117	137
2.0	46	57	70	84	101	119	139
2.2	46	58	71	86	102	121	142
2.4	47	59	72	87	104	123	144
2.6	48	60	73	88	106	125	146
2.8	48	60	74	90	107	126	148
3.0	49	61	75	91	108	128	150

* These CT values achieve greater than a 99.99 percent inactivation of enteric viruses.

TABLE 1.6.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 25 °C *

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
≤0.4	23	29	35	42	51	60	70
0.6	25	31	38	46	54	64	75
0.8	26	32	40	48	57	68	79
1.0	27	34	41	50	59	70	82
1.2	28	35	43	51	61	73	85
1.4	29	36	44	53	63	75	87
1.6	29	36	45	54	65	76	89

TABLE 1.6.—CT VALUES FOR 99.9 PERCENT INACTIVATION OF GIARDIA CYSTS BY FREE CHLORINE AT 25 °C *—Continued

Free residual (mg/l)	pH						
	6.0	6.5	7.0	7.5	8.0	8.5	9.0
1.8	30	37	46	55	66	78	91
2.0	30	38	47	56	67	79	93
2.2	31	39	47	57	68	81	94
2.4	31	39	48	58	69	82	96
2.6	32	40	49	59	70	83	97
2.8	32	40	49	60	71	84	99
3.0	33	41	50	60	72	85	100

* These CT values achieve greater than a 99.99 percent inactivation of enteric viruses.

TABLE 2.1.—CT VALUES FOR 99.9 PERCENT GIARDIA CYST INACTIVATION [1]

	Temperature					
	0.5 °C	5 °C	10 °C	15 °C	20 °C	25 °C
Chlorine Dioxide	81	54	40	27	21	14
Ozone	4.5	3	2.5	2	1.5	1

[1] These values are for pH values of 6 to 9. These CT values achieve greater than 99.99 percent inactivation of enteric viruses.

TABLE 3.1.—CT VALUES FOR CHLORAMINES [1]

Inactivation	Temperature					
	0.5 °C	5 °C	10 °C	15 °C	20 °C	25 °C
99.9% of *Giardia* cysts	3,800	2,200	1,850	1,500	1,100	750
99.99% of enteric viruses	>5,000	>5,000	>5,000	>5,000	.....	.....

[1] These values are for pH values of 6 to 9.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.14 is amended by revising paragraph (a)(1)(iii) and (a)(4) introductory text and by adding paragraphs (a)(5) and (d)(4), to read as follows:

§ 142.14 Records kept by States.

(a) * * *

(1) * * *

(iii) The analytical results, set forth in a form which makes possible comparison with the limits specified in §§ 141.14, 141.71, 141.72, and 141.73 of this chapter.

* * * * *

(4) Records of analyses for other than total coliforms, turbidity, disinfectant residual, and other parameters that determine disinfection effectiveness, shall be retained for not less than 40 years and shall include at least the following information:

* * * * *

(5) Records of disinfectant residual measurements and other paramenters necessary to document disinfection effectiveness in accordance with § 141.72 of this chapter shall be retained for not less than one year. Such records shall include the date, sampling location, and results of each sample analysis.

* * * * *

(d) * * *

(4) Records of any determination under § 141.71 of this chapter that a public water system supplied by a surface water source is or is not required to provide filtration treatment.

3. Section 142.15 is amended by adding paragraph (b)(3) and by revising paragraph (c), to read as follows:

§ 142.15 Reports by States.

* * * * *

(b) * * *

(3) A list, including the PWS identification number, of each public water system supplied by a surface water source which the State, during the reporting period has determined in accordance with § 141.71 of this chapter is not required to provide filtration treatment.

(c) Prompt notification of the granting of any variance or exemption or determination that a water system using a surface water source is not required to provide filtration. For variances or exemptions, the notice shall include a statement of the reasons for the granting of the variance or exemption, including support for the need for the variance or exemption and for the finding that the granting of the variance or exemption will not result in an unreasonable risk to health. A single notification may be used to report two or more similar variances or exemptions. For a determination that a public water system using a surface water source is not required to provide filtration, the notice shall include a statement describing the system's compliance with each requirement of the State's regulations that implement § 141.71 of this chapter.

* * * * *

4. Section 142.17 is added as follows:

§ 142.17 Special Primacy Requirements for States to Adopt Certain National Primary Drinking Water Regulations.

(a) Special Primacy Requirements for States to Adopt 40 CFR Part 141, Subpart H, Filtration and Disinfection.

(1) General. An application for approval of a State program revision that adopts 40 CFR Part 141, Subpart H, Filtration and Disinfection, must contain:

(i) The text of the State's statute or regulations that requires public water systems supplied by surface water sources to provide at least 99.9 percent and 99.99 percent removal or inactivation of *Giardia lamblia* cysts and enteric viruses, respectively.

(ii) The text of the State's statute or regulations that requires public water systems using surface water sources to be under the control of a qualified operator.

(2) Criteria under which filtration is required as a treatment technique. An application for approval of a State program revision that adopts the criteria under which filtration is required as a treatment technique in § 141.71 of this chapter must contain the following information:

(i) A description of the techniques or protocol to be used by the State to identify all surface water sources as defined in § 141.2.

(ii) A description of the protocol to be used by the State to determine whether a public water system supplied by a surface water source must provide filtration, including procedures and timing to be used to inform the public and review comments from them with respect to each such decision.

(iii) The text of the State's statute or regulations that specifies when a public water system supplied by a surface water source must use filtration treatment as specified in § 141.71 of this chapter. The statute or regulations may require filtration as a minimum treatment by all systems using surface water sources. If the statute or regulations establish criteria specifying when a public water system supplied by a surface water source need not use filtration, then its provisions must be no less stringent than those of § 141.71 which include:

(A) The source water quality conditions listed in § 141.71(a) including:

(*1*) The coliform requirements of § 141.71(a)(1) of this chapter.

(*2*) The turbidity requirements of § 141.71(a)(2) of this chapter.

(B) The site-specific conditions in § 141.71(b) of this chapter including:

(*1*) The requirements for disinfection specified in § 141.72(a) of this chapter.

(*2*) The requirement in § 141.71(b)(2) of this chapter for a watershed control program which minimizes the potential for contamination by *Giardia lamblia* cysts and enteric viruses in the source water. The State must require by statute or regulation that the public water system identify the activities and controls it will use to protect the sanitary quality of the source water and to own or have written agreements with watershed landowners that control activities which may adversely affect the sanitary quality of the water. In addition, the State's statutes or regulations must require systems to characterize watershed hydrology and land ownership; identify watershed characteristics and activities which may have an adverse effect on water quality; and monitor and control the occurrence of activities which may have an adverse effect on source water quality.

(*3*) The requirement for an annual sanitary survey in § 141.71(b)(3). If the State allows another party to conduct the sanitary survey, the State must specify the necessary qualifications of the party in its statutes or regulations and must require that party to furnish a report to the State containing the results of the survey. In addition, the State must have a procedure in its statutes or regulations (e.g., a permit or certification system) for determining that the party proposing to conduct the sanitary survey meets the qualifications adopted by the State.

(*4*) The requirement of § 141.71(b)(4) of this chapter that the system in its current design, or operational configuration has not been identified as the source of a waterborne disease outbreak.

(*5*) The requirement of § 141.63 of this chapter which establishes maximum contaminant levels for total coliforms and § 141.21 of this part which establishes sampling and analytical requirements for total coliforms.

(*6*) The requirement for compliance with § 141.12(c) of this chapter which establishes a maximum contaminant level for total trihalomethanes and the requirements of § 141.30 of this chapter which establishes the monitoring requirements for total trihalomethanes.

(3) Filtration. An application for approval of a State program that adopts the filtration requirements of § 141.73 of this chapter must contain the text of the State statutes or regulations specifying requirements for public water systems using filtration. At a minimum, these requirements must specify:

(i) Allowable filtration technologies. The State may permit the use of the following filtration technologies as defined in § 141.2 of this chapter: conventional filtration treatment, direct filtration, slow sand filtration, and diatomaceous earth filtration. In addition, the State may permit the use of any other filtration technology if the State's approved application contains a protocol for on-site pilot plant studies to demonstrate consistent achievement of not less than 99.9 percent reduction of *Giardia lamblia* cysts and not less than 99.99 percent reduction of enteric viruses.

(ii) For each filtration treatment technology allowed, the State must specify:

(A) The range of source water quality for which the use of filtration technology is appropriate or a procedure for determining appropriate filtration technologies for source waters of various qualities;

(B) Performance criteria or a mechanism for establishing enforceable performance criteria on a system-by-system basis (i.e., a permit system);

(C) Monitoring requirements of § 141.74 of this chapter or a mechanism for establishing enforceable monitoring requirements on a system-by-system basis;

(D) Enforceable reporting requirements, including routine reports, reports of violations, and potential violations (e.g., when a condition occurs that is likely to result in a violation at the end of the time period over which compliance is determined) and the public notification requirements of the national primary drinking water regulations; and

(E) Enforceable design and operating criteria, including the requirement for a qualified operator. The State in its statute or regulations must specify enforceable design and operating criteria or a procedure for establishing design and operating conditions on a system-by-system basis (e.g., a permit system). In addition, the State must have a procedure for determining that both the design and operating criteria and the criteria for qualifying the operator have been met (e.g., construction inspection system for design and operating criteria, a certification or testing reciprocity program for operators).

(4) Disinfection. An application for approval of a State program revision that adopts the disinfection requirements of § 141.72 of this chapter must contain the text of the State statute or regulations specifying requirements for public water systems using disinfection treatment.

(i) For public water systems supplied by surface water sources that do not provide filtration treatment, these must include:

(A) *Giardia lamblia* cyst reduction efficiency of not less than 99.9 percent as required by § 141.72(a)(1) of this chapter;

(B) Enteric virus reduction efficiency of not less than 99.99 percent as required by § 141.72(a)(1) of this chapter;

(C) State design and operating requirements as required by § 141.72(a)(3) of this chapter;

(D) The requirement of § 141.72(a)(4) of this chapter that each system continuously provide and demonstrate by continuous monitoring that there is a disinfectant residual in the water delivered to the distribution system;

(E) The requirement of § 141.72(a)(5) of this chapter that each system maintain and demonstrate that it maintains a disinfectant residual in the distribution system;

(F) The requirement of § 141.72(a)(2) of this chapter specifying redundant disinfection capability and automatic auxilary power supplies;

(G) The requirement that determination of *Giardia* cyst and enteric virus reduction efficiency be made by calculating the CT values from the public water system treatment parameters as specified in § 141.74(b)(2) of this chapter and comparing these values with the minimum CT values specified in Tables 1.1–1.6, 2.1, and 3.1 in the Appendix to Subpart H of Part 141.

(ii) For public water systems supplied by surface water sources that provide filtration, the application must include:

(A) The text of the State statute or regulations requiring that public water systems using filtration ensure the presence of a disinfectant residual in the water provided to the distribution system as required by § 141.72(b)(2).

(B) The text of the State statute or regulations requiring that public water systems using surface water sources which provide filtration maintain a disinfectant residual of not less than 0.2 mg/l in the distribution system in no more than 5 percent of the samples examined each month as required by § 141.72(b)(3) of this chapter. The statute or regulations must require samples to be taken at least as frequently, and in the same locations, as required by the national primary drinking water regulations for total coliforms in § 141.21 of this chapter.

(C) Enforceable disinfection system design and operating requirements as required by § 141.72(b)(1) of this chapter.

5. Subpart I is added to read as follows:

Subpart I—Administrator's Review of State Decisions That Implement Criteria Under Which Filtration Is Required

Subpart I—Administrator's Review of State Decisions That Implement Criteria Under Which Filtration Is Required

§ 142.80 Review procedures.

(a) Not later than two years following the effective date of the national primary drinking water regulations that establish criteria under which filtration is required as a treatment technique (§ 141.70 of this chapter), the Administrator shall initiate a comprehensive review of the decisions made by States with primary enforcement responsibility to determine, in accordance with § 141.71 of this chapter, if public water systems using surface water sources must provide filtration treatment. The Administrator shall complete this review within one year of its initiation and shall schedule subsequent reviews as he/she deems necessary.

(b) EPA shall publish notice of a proposed review in the **Federal Register.** Such notice must:

(1) Provide information regarding the location of data and other information pertaining to the review to be conducted and other information including new scientific matter bearing on the application of filtration criteria; and

(2) Advise the public of the opportunity to submit comments.

(c) Upon completion of any such review, the Administrator shall notify each State affected by the results of the review and shall make the results available to the public.

§ 142.81 Notice to the State.

(a) If the Administrator finds through periodic review or other information available to him that a State has abused its discretion in applying the filtration criteria under § 141.71 of this chapter in determining that a system does not have to provide filtration treatment or that the State has failed to prescribe compliance schedules for those systems which must provide filtration in accordance with section 1412(b)(7)(C)(ii) of the Act, he/she shall notify the State of these findings. Such notice shall:

(1) Identify each public water system for which the Administrator finds the State has abused its discretion;

(2) Specify the reasons for the finding;

(3) As appropriate, propose that the criteria of § 141.71 of this chapter be applied properly to determine the need for a public water system to provide filtration treatment or propose a revised schedule for compliance by the public water system with the filtration treatment requirements.

(b) The Administrator shall also notify the State that a public hearing is to be held on the provisions of the notice required by paragraph (a) of this section. Such notice shall specify the time and location of the hearing. If, upon notification of a finding by the Administrator that the State has abused its discretion under § 141.71 of this chapter, the State takes corrective action satisfactory to the Administrator, the Administrator may rescind the notice to the State of a public hearing.

(c) The Administrator shall publish notice of the public hearing in the **Federal Register** and in a newspaper of general circulation in the involved State, including a summary of the findings made pursuant to paragraph (a) of this section, a statement of the time and location for the hearing, and the address and telephone number of an office at which interested persons may obtain further information concerning the hearing.

(d) Hearings convened pursuant to paragraphs (b) and (c) of this section shall be conducted before a hearing officer to be designated by the Administrator. The hearing shall be conducted by the hearing officer in an informal, orderly, and expeditious manner. The hearing officer shall have the authority to call witnesses, receive oral and written testimony, and take such other action as may be necessary to ensure the fair and efficient conduct of the hearing. Following the conclusion of the hearing, the hearing officer may make a recommendation to the Administrator based on the testimony presented at the hearing and shall forward any such recommendation and the record of the hearing to the Administrator.

(e) Within 180 days after the date notice is given pursuant to paragraph (b) of this section, the Administrator shall:

(1) Rescind the finding for which the notice was given and promptly notify the State of such recision: or

(2) Uphold the finding for which the notice was given. In this event, the Administrator shall revoke the State's decision that filtration was not required or revoke the compliance schedule approved by the State, and promulgate, as appropriate, with any appropriate modifications, a revised filtration decision or compliance schedule and promptly notify the State of such action.

(f) Revocation of a State's filtration decision or compliance schedule and/or promulgation of a revised filtration decision or compliance schedule shall take effect 90 days after the State is notified under paragraph (e)(2) of this section.

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Tuesday
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Part III

Environmental Protection Agency

40 CFR Parts 141 and 142

Drinking Water; National Primary Drinking Water Regulation; Total Coliforms; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[WH-FRL-3229-9(b)]

Drinking Water; National Primary Drinking Water Regulations; Total Coliforms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice under the Safe Drinking Water Act (42 U.S.C. 300f *et seq.*) proposes to amend the maximum contaminant levels for total coliform bacteria. The rule also proposes monitoring requirements and analytical methodology. In addition, the proposal includes a limit for heterotrophic bacteria. The rule would apply to all public water systems.

EPA proposed a non-enforceable health goal ("recommended maximum contaminant level," now termed "maximum contaminant level goal," under the Safe Drinking Water Act, as amended on June 19, 1986) of zero for total coliforms on November 13, 1985 (50 FR 46902). This notice reproposes this MCLG at zero (comments submitted on the November 13, 1985, proposal need not be resubmitted).

DATES: Written comments should be submitted on or before January 4, 1988. The effective date of the final rule will be 18 months after the date of publication as a final rule.

There will be two public hearings held. The first will take place in Washington, DC, on November 23–24 from 9:00 a.m.–4:30 p.m. The second hearing in Denver, CO is scheduled for December 2–3 from 9:00 a.m.–4:30 p.m. If you plan to attend either public hearing, contact Marlene Regelski, EPA (WH–550D), 401 M Street, SW., Washington, DC 20460, telephone (202) 382–3639, at least two weeks before the meeting.

ADDRESSES: Send written comments on this proposed rule to Coliforms Comment Clerk, Criteria and Standards Division, Office of Drinking Water (WH–550D), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. A copy of the comments and supporting documents will be available for review during normal business hours at EPA, Room 49ET, 401 M Street SW., Washington, DC 20460. Supporting documents cited in this notice are available for inspection at the Drinking Water Supply Branches in EPA's Regional Offices listed with the Supplementary Information. In addition, criteria documents for total coliforms and heterotrophic bacteria are available from the National Technical Information Center, 5285 Port Royal Road, Springfield, VA 22161.

The first public hearing will be held in Washington, DC, at the GSA Regional Office Auditorium in the GSA Building, 7th and D Streets. SW. (enter on D street side), Washington, DC 20407. The building is located across the street from the L'Enfant Plaza metro stop.

The second public hearing will be held in Denver, Colorado, at the Hotel Radisson, 16th and Court, Denver, Colorado. A block of 45 rooms have been set aside for attendees. To reserve one of these rooms, the hotel must be contacted [(303) 893-3333] at least two weeks before the event. Inform the hotel that you are attending the EPA public hearing.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, telephone (800) 426-4791, or (202) 382-5533 in the Washington, DC metropolitan area, or Paul S. Berger, Ph.D., Microbiologist, Office of Drinking Water (WH–550), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone (202) 382-3039.

SUPPLEMENTARY INFORMATION:

EPA Regional Offices

I. Jerome Healey, JFK Federal Bldg., Room 203, Boston, MA 02203, (617) 223–6486

II. Walter Andrews, 26 Federal Plaza, Room 824, New York, NY 10278, (212) 264–1800

III. Jon Capacasa, 841 Chestnut Street, Philadelphia, PA 19107, (215) 597–9873

IV. William Patton or Michael Leonard, 345 Courtland Street, Atlanta, GA 30365, (404) 347–2913

V. Joseph Harrison, 230 S. Dearborn Street, Chicago, IL 60604, (312) 353–2650

VI. Thomas Love, 1445 Ross Avenue, Dallas, TX 75202, (214) 655–7155

VII. Gerald Foree, 726 Minnesota Ave., Kansas City, KS 66101, (913) 236–2815

VIII. Marc Alston, One Denver Place, 999 18th Street, Suite 1300, Denver, CO 80202–2413, (303) 293–1424

IX. William Thurston, 215 Fremont Street, San Francisco, CA 94105, (415) 974–0763

X. Richard Thiel, 1200 Sixth Avenue, Seattle, WA 98101, (206) 442–1225

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I. Statutory Requirements

The Safe Drinking Water Act ("SDWA" or "the Act"), as amended in 1986 (Pub. L. No. 99–339, 100 Stat. 642), requires EPA to publish "maximum contaminant level goals" (MCLGs) for contaminants which in the judgment of the Administrator may have any adverse effect on the health of persons and which are known or anticipated to occur in public water systems. Section 1412(b)(3)(A). MCLGs are to be set at a level at which, in the Administrator's judgment, "no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety." Section 1412(b)(4).

At the same time EPA publishes an MCLG, which is a non-enforceable health goal, it also must promulgate a National Primary Drinking Water Regulation (NPDWR) which includes either (a) a maximum contaminant level (MCL) or (b) a treatment technique. A treatment technique may be set only if it is not "economically or technologically feasible" to ascertain the level of a contaminant. Sections 1412 (a)(3) and (b)(7)(A). An MCL must be set as close to the MCLG as feasible. Section 1412(b)(4). Under the Act, "feasible" means "feasible with the use of the best technology, treatment techniques and other means which the Administrator finds, after examination for efficacy under field conditions and not solely under laboratory conditions, are available (taking cost into

consideration)." Section 1412(b)(5). The legislative history indicates that EPA is to base MCLs on treatment technology affordable by the largest public water systems. 132 Con . Rec. S6287 (daily ed., May 21, 1986). Each National Primary Drinking Water Regulation which establishes an MCL must list the best available technology, treatment techniques, and other means which are feasible for meeting the MCL (BAT). Section 1412(b)(6).

National primary drinking water regulations under the Act also are to include monitoring requirements, specifically, "criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels * * *." Section 1401(2)(D). Section 1445 also authorizes EPA to promulgate monitoring requirements: "Every person who is a supplier of water, who is * * * subject to a primary drinking water regulation prescribed under Section 1412 * * * shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under [the Safe Drinking Water Act], in determining whether such person has acted or is acting in compliance with [the Safe Drinking Water Act], * * * in evaluating the health risks of unregulated contaminants, or in advising the public of such risks."

Section 1414(c) requires each owner or operator of a public water system to give notice to persons served by it of (1) any failure to comply with a maximum contaminant level, treatment technique, or testing procedure required by a national primary drinking water regulation; (2) any failure to comply with any monitoring required pursuant to Section 1445 of the Act; (3) the existence of a variance or exemption; or (4) any failure to comply with the requirements of any schedule prescribed pursuant to a variance or exemption.

Under the 1986 amendments to the SDWA, EPA must promulgate NPDWRs for 83 contaminants in three phases, by June 19, 1989. A group of related bacteria known as total coliforms is one of the 83 contaminants which EPA must regulate. Heterotrophic bacteria (as a group) is another contaminant specified among the 83. Heterotrophic bacteria, defined as those bacteria which require complex organic compounds of nitrogen and carbon for growth, interfere with the measurement of coliforms. This proposal covers these two contaminants.

II. Regulatory History

As required by the SDWA of 1974, on December 24, 1975, EPA published National Interim Primary Drinking Water Regulations (NIPDWRs) which established regulations for ten inorganic chemicals; six pesticides; and two microbiological indicator contaminants, total coliforms and turbidity. EPA based the requirements for total coliforms, including the MCLs and monitoring frequency, on the U.S. Public Health Service drinking water regulations of 1962. This NIPDWR, which is still in effect (40 CFR 141.14 and 141.21), applies to both community water systems (systems which serve year-round residents) and non-community water systems (all other public systems). Currently there are approximately 60,000 community water systems and 160,000 non-community water systems. The NIPDWR includes two coliform MCLs: a "single-sample" MCL and a "monthly average" MCL. Both MCLs are based on the number of coliform bacteria detected in the sample. The single-sample MCL and the monthly average MCL vary according to the analytical method used (membrane filter vs. multiple-tube fermentation technique) and the sample volume (50 ml or 500 ml for the multiple-tube fermentation technique and 100 ml for the membrane filter technique). The single-sample MCL also varies according to the number of samples collected each month. If the coliform density exceeds a specific level (which depends on the analytical method used) (see Table I), at least two consecutive daily check samples must be collected from the same sampling point and examined for coliforms. The current regulations also specify the required minimum monitoring frequency, which varies according to the population served by the system.

Despite existing drinking water regulations, waterborne disease outbreaks have continued to occur, especially in cases where inadequate treatment exists or coliform and/or turbidity standards are not being met. Between 1971–1985, there were 447 reported outbreaks of waterborne disease affecting more than 105,000 people (see Table II). While a number of bacteria, viruses, and protozoa have been implicated in these outbreaks, in about half the outbreaks, the etiological agent was not identified.

TABLE I—INTERIM REGULATIONS (PROMULGATED 12/24/75): TOTAL COLIFORMS [1]

Parameter	MCL
1. Total Coliforms:	
a. Membrane filter technique:	
Monthly average MCL	1/100 ml.
3Single-sample MCLs:.	
<20 samples/month	4/100 ml once/mo.
>0 samples/month	4/100 ml in 5 pct of samples.
b. Multiple-tube fermentation procedure (10-ml portions):	
Monthly average MCL	10 pct of tubes positive.
Single-sample MCLs:	
<20 samples/month	3 or more tubes positive in one sample/mo.
>20 samples/month	3 or more tubes positive in 5 pct of samples/mo.
c. Multiple-tube fermentation procedure (100-ml portions):	
Monthly average MCL	60 pct of tubes positive.
Single-sample MCLs:	
<5 samples/month	5 tubes positive in one sample/mo.
>5 samples/month	5 tubes positive in 20 pct of samples/mo.

[1] From 40 CFR 141.14.

TABLE II—WATER SUPPLY DEFICIENCIES RESPONSIBLE FOR WATERBORNE OUTBREAKS, 1971–85 [1]

Source of deficiency	Outbreaks	Reported illnesses
Surface Water Source:		
No Treatment	31	1,647
Disinfection Only, or Inadequate Disinfection	67	23,028
Disinfection With Other Treatment (but no Filtration)	5	969
Filtration and Disinfection	20	9,852
Totals	123	35,496

TABLE II—WATER SUPPLY DEFICIENCIES RESPONSIBLE FOR WATERBORNE OUTBREAKS, 1971–85 [1]—Continued

Source of deficiency	Outbreaks	Reported illnesses
Groundwater Source:		
No Treatment	154	11,266
Inadequate Disinfection	90	40,893
Disinfection With Other Treatment	1	22
Totals	245	52,181
Distribution System:		
Cross-connection	44	8,124
Contamination of Mains/Plumbing	14	3,413
Contamination of Storage	11	6,244
Corrosive Water	10	147
Totals	79	17,928
Grand Total (Reported):		
Outbreaks		447
Illnesses		105,605

[1] Reference: Craun, personal communications, May 1987.

EPA's current drinking water regulations do not address heterotrophic bacteria. EPA indicated in its November 13, 1985, notice that it was considering some type of limit (though not an MCL) on the level of these bacteria as part of the revised coliform regulations. (50 FR 46902; November 13, 1985.) EPA's rationale for regulating heterotrophic bacteria was presented in the Criteria Document for Heterotrophic Bacteria (USEPA, 1984b) and is discussed in Section III, below. Subsequently, the SDWA amendments were enacted which include "Standard Plate Count" (SPC) as one of the 83 contaminants EPA must regulate by 1989. The SPC procedure measures the level of heterotrophic bacteria. Recently the designation "SPC" has been changed to "HPC" (APHA 1985). This notice, which uses the HPC designation, proposes to regulate HPC as well as total coliforms.

III. Background

A. Summary

• *Maximum contaminant level goal for total coliforms*—zero

• *Maximum contaminant levels for total coliforms.*

—based on the presence or absence of total coliforms in sample, rather than estimate of coliform density

—monthly MCL

—if system analyzes fewer than 40 samples/month, no more than one sample/month can be coliform-positive

—if system analyzes at least 40 samples/month, no more than five percent of samples can be coliform-positive

—long-term MCL

—if system analyzes fewer than 60 samples/year, no more than five percent of the most recent 60 samples can be coliform-positive

—if system analyzes at least 60 samples/year, no more than five percent of all samples in the most recent 12-month period can be coliform-positive.

• *Monitoring frequency for total coliforms.*

—for systems serving 3,300 persons or fewer:

—basic requirement is five samples/month

—reduced monitoring to a minimum of one sample/ month for any system serving 25–500 persons and three samples/month for any system serving 501–3,300 persons, if the system:

(a) filters and disinfects surface water and disinfects ground water in compliance with 40 CFR Part 141, Subpart H; and

(b) is subject to a sanitary survey at the frequency specified in Table 1 of the proposed regulation and the results are satisfactory to the State.

—reduced monitoring to a minimum of one sample/ month for any system serving 25–300 persons and three samples/month for any system serving 301–500 persons, if the system uses undisinfected ground water and:

(a) demonstrates to the State that coliform data for previous three years meets long-term MCL; and

(b) is subject to a sanitary survey at the frequency specified in Table 1 of the proposed regulations and the results are satisfactory to the State.

—for systems serving more than 3,300 persons:

—basic requirement is based on population served (see Table 2 of the proposed regulation)

—for systems which use surface water, in total or in part, but do not filter in compliance with 40 CFR Part 141, Subpart H, regardless of population served:

—one coliform sample each day the turbidity level exceeds one NTU.

• *Response to a coliform-positive sample.*

—if total coliforms, but not fecal coliforms, are detected in any sample, system must collect a set of five repeat samples from the same location as the original sample, except some may be from the next service connection; the five samples must be taken on the same day.

—if total coliforms, but not fecal coliforms, are detected in any repeat sample, the system must collect and analyze another set of five repeat samples from the same location unless an MCL has been violated and the system has notified the State; the five samples must be taken on the same day.

• *Fecal coliforms.*

—if any original or repeat sample is total coliform-positive, system must analyze total coliform-positive culture medium to determine if fecal coliforms are present; if present, system is in violation of monthly MCL for total coliforms and must notify the State within 48 hours.

• *Heterotrophic bacteria (HPC).*

—proposed regulation based on HPC interference with total coliform analysis

—if coliform sample produces a turbid culture in the absence of gas production using the multiple-tube fermentation technique, produces a turbid culture in the absence of an acid reaction using the presence-absence (P–A) test, or produces confluent growth or a colony number that is "too numerous to count" using the membrane filter technique, the system may either count the sample as coliform-positive or declare the sample invalid and collect and analyze another water sample. Second sample is analyzed for both total coliforms and HPC. If HPC is greater than 500 colonies/ml, then sample is considered coliform-positive, even if total coliform analysis is negative.

• *Variances and exemptions*—none allowed.

B. Proposed Maximum Contaminant Level Goal

Total coliforms have been used by public health officials and professionals for decades as the primary means to assess the microbiological quality of drinking water. This group of closely-related organisms is used to evaluate the effectiveness of treatment, to determine the integrity of the distribution system, and to signal the possible presence of fecal contamination. Total coliforms, which include the fecal coliforms, are usually not pathogenic in themselves. However, their presence in drinking water indicates the potential presence of fecal pathogens, as shown by their frequent association with waterborne disease outbreaks. For example, Craun (1978)

examined outbreaks between 1971–1975, and found that in the majority of cases where sufficient coliform data were available, coliforms were present. Other publications which demonstrate an association of coliforms with outbreaks are indicated in the total coliform criteria document (USEPA, 1984a). Shortcomings for use of coliform bacteria as a water quality monitor include the following: (1) Given their ubiquitous nature, coliforms are often present in the absence of fecal contamination and fecal pathogens; and (2) the absence of coliforms may not assure the absence of *Giardia* and other protozoa, enteric viruses, and bacterial pathogens. Despite these limitations, total coliforms are still the single most useful indicator of microbiological drinking water quality (USEPA, 1985).

EPA proposed an RMCL, renamed MCLG by the 1986 amendments to the Act, for total coliforms (as well as for each of a number of other contaminants) in the **Federal Register** of November 13, 1985 (50 FR 46902). The proposed RMCL for total coliforms was zero. Since then, the 1986 amendments streamlined the rulemaking process. Under the amended statute, EPA must propose both the MCLG and the MCL for a contaminant simultaneously, and it then must publish the MCLG and promulgate the MCL simultaneously. Section 1412(a)(3). To bring the rulemaking for total coliforms in line with the amended process in this notice, EPA is reproposing the RMCL as a proposed MCLG at the same level, i.e., zero, on the same basis set out in the November 1985 notice and in the Criteria Document for Total Coliforms (USEPA, 1984a). EPA invites public comment on the MCLG. However, comments submitted during the public comment period on the November 1985 notice need not be resubmitted; EPA will fully consider them together with any additional comments received in response to this notice.

C. Proposed Maximum Contaminant Levels

The coliform MCLs in the interim (current) regulations, as indicated previously, include density limits for single samples and the monthly average (see Table I). EPA is proposing to change this approach by basing the MCLs simply on the presence or absence of coliforms in a sample rather than density. The proposal includes a monthly MCL and a long-term MCL. To comply with the monthly MCL, if a system analyzes fewer than 40 samples/month, no more than one sample/month could be coliform-positive; if forty or more samples/month are collected, no more than five percent of the samples could be coliform-positive. To comply with the long-term MCL, no more than five percent of 60 consecutive samples could be coliform-positive for systems analyzing fewer than 60 samples/year, and no more than five percent of the total number of samples analyzed in the most recent 12-month period could be coliform-positive for systems analyzing at least 60 samples/year. This section provides the rationale for these proposed requirements.

1. Presence-Absence Concept

EPA has decided to propose coliform MCLs based on their presence or absence rather than on an estimation of coliform density because data in the literature (see USEPA, 1984a) do not demonstrate a quantitative relationship between coliform densities and either pathogen density or the potential for a waterborne disease outbreak. This presence-absence concept (not to be confused with the presence-absence analytical test described later) has several advantages: (1) Unlike the uncertainties associated with estimates of coliform density of a sample, it is easy to determine the presence or absence of coliforms; (2) the sample transit time is less critical, because any decrease in coliform density between sample collection and analysis will seldom result in complete die-out of all coliforms in that sample; and (3) this change eliminates the data truncation implicit in the analytical methodology as a calculation difficulty, e.g., the 5-tube multiple fermentation tube procedure is not sufficiently sensitive to allow estimation of densities less than 2.2 or greater than 16 coliforms/100 ml. The monthly average MCL in the current regulation has been criticized because the variability of coliform counts greatly reduces the precision of the estimates of the average density, i.e., there is a large standard deviation. The presence/absence concept, which EPA is proposing, eliminates this problem.

EPA also recognizes some shortcomings associated with the presence-absence concept. High coliform levels may, on occasion, signal the occurrence of high pathogen densities. In addition, the current regulations have been in use for decades and State officials and public water system operators are familiar with them; a change in the approach will require adjustment. Nevertheless, EPA believes that the advantages of the presence-absence concept outweigh the disadvantages.

The presence-absence concept was recommended to EPA by a workshop held on December 2–4, 1981, sponsored by the EPA's Office of Drinking Water, in conjunction with the American Society for Microbiology, to assess the microbiology and turbidity standards for drinking water (the "1981 Workshop"). Participants included a member of the Safe Drinking Water Committee of the National Academy of Sciences; leading university scientists; public health experts; professional microbiologists; engineers; water supply personnel; and Federal, State and local public officals, including members of EPA's Office of Research and Development and Office of Drinking Water. All worked together to evaluate existing information and to suggest revisions for the national drinking water regulations based on these evaluations. EPA has published the workshop proceedings (USEPA, 1983). A second workshop, held in Baltimore, Maryland, on April 23–25, 1985, addressed filtration, disinfection, and various aspects of regulating coliforms, including MCLs (the "1985 Workshop"). EPA published these proceedings as well (USEPA, 1987).

2. Monthly and Long-term MCLs

Based on the recommendations of the 1981 workshop, EPA is proposing two types of total coliform MCLs for all community and non-community public water systems: A monthly MCL and a long-term MCL. The monthly MCL would warn of an acute health risk, while the long-term MCL would characterize the consistency of the quality of the drinking water over a 12-month period or longer.

In order to select an appropriate long-term MCL based on the presence-absence concept, EPA examined the relationship between the percentage of drinking water which is contaminated (i.e., level of contamination) and the percentage of samples from that drinking water which are coliform-positive. The statistical approach used to describe this relationship is presented in Appendix A to this preamble.

The practical limitations of a long-term MCL include uncertainty as to whether samples are really collected randomly and whether water quality in a small system is stable over the time needed to collect a representative number of samples. EPA is proposing to base the long-term MCL on at least 60 samples, because this value is sufficiently large for the statistical calculations to be valid, yet small enough to be collected in a reasonably short period of time without undue burden to individual public water systems. In addition, 60 samples/year is the smallest value which both allows an equal number of samples/month (i.e., five samples) and results in a whole

number (i.e., three) for compliance when using the proposed long-term MCL of no more than five percent coliform-positive samples.

For systems collecting 60 samples/year or less, the proposed long-term MCL specifies that no more than five percent of the most recent 60 samples could be coliform-positive. The 60 samples would include any repeat samples collected after a coliform-positive sample is found. EPA based this value of five percent on the statistical analysis in Appendix A to this preamble which indicates that if 60 samples are collected and 95 percent are negative for coliforms, then there is a 95 percent confidence level that the fraction of water with coliforms present is less than ten percent (Pipes, 1983). EPA believes that this level of quality, at this level of confidence, represents reasonably safe water. This definition is consistent with the 1981 workshop recommendations (Pipes, 1983) and was tentatively supported by the American Water Works Association, Organisms in Water Committee (AWWA, 1987). For systems collecting more than 60 samples/year, the proposed long-term MCL specifies that no more than five percent of the total number of samples collected during the most recent 12 months could be coliform-positive. This would provide a more precise estimate of the frequency-of-occurrence than is indicated in Appendix A to this preamble, in Table I. If any system violates the long-term MCL, it would remain in non-compliance until coliforms are detected in no more than five percent of the most recent 20 or more samples.

Depending on the monitoring frequency, it could take five years or longer for some smaller systems to reach the 60-sample level. Therefore, EPA is proposing that a system that has not collected 60 samples by the effective date of the long-term MCL would be in compliance with the long-term MCL if no more than five percent of those samples which have been collected are coliform-positive. Thus, no more than one positive sample in the most recent 39 or fewer samples, or no more than two positive samples in the most recent 40–59 samples would be permitted. EPA would expect systems to maintain adequate records on total coliform sample results before the effective date of this regulation, so that they can begin long-term MCL compliance determinations for coliforms by the effective date.

In addition to the long-term MCL, which is primarily intended to ensure the reliability of a system over time and water quality throughout the distribution system, EPA believes that the public should also be protected against acute contamination, as indicated by several coliform-positive samples closely spaced in time. Consequently, the Agency is proposing a monthly MCL which would limit the percentage of coliform-positive samples to five percent for a single month. The proposed five percent monthly limit for the presence of coliforms represents EPA's best scientific judgment on what constitutes a protective and practical monthly standard. This limit is consistent with the MCL in the current coliform rule when 20 or more samples are examined (40 CFR 141.14) and is also consistent with the proposed long-term MCL for total coliforms.

For systems which collect less than 20 samples/month, however, this five percent limit would be exceeded by a single coliform-positive sample, e.g., if one coliform-positive sample in 19 total samples is greater that five percent. For systems which collect between 21–39 samples/month, the five percent limit would be exceeded by only two coliform positive samples. EPA believes that an infrequent single coliform-positive sample does not necessarily represent a health risk, and therefore proposes to allow one coliform-positive sample/month for systems collecting less than 40 samples/month without being considered in violation of the monthly MCL. For a small system, however, this proposed monthly MCL would allow a sizable percentage of the samples to be coliform-positive (e.g., if a system collects five samples/month, as many as 20 percent of the water samples could contain coliforms month after month without violating the monthly MCL). However, a system could not repeatedly have more than five percent of coliform-positive samples because such a system would be in violation of the long-term MCL. In this way, the monthly MCL and long-term MCL together ensure that systems with an acute problem (as evidenced by several coliform-positive samples closely spaced in time) as well as systems with some "chronic" problem (as evidenced by regular coliform-positive samples over at least a year) are both identified. Yet the monthly and long-term MCLs are not so stringent that a single, infrequent coliform-positive sample (which alone is inadequate to confirm a health threat in the water supply) results in non-compliance.

This proposal would apply to both community and non-community public water systems, as does the current coliform regulation. Any water consumed by the public should be safe, regardless of the size of the population served, the number of days the system is operating, and whether consumers are transients or full-time residents (since coliforms can cause acute illness, protection of transient users is as important as protecting non-transient users).

To compare the relative stringency between the proposed rule and the current monthly average rule, EPA examined compliance data provided by three States. The number of long-term MCL violations under the proposed rule would have been two to three times as great as under the current monthly average rule (USEPA, 1987b). Part of this increase is due to the assumption that systems now collecting less than five samples/month would collect five samples/month under the proposed rule, and that the greater monitoring frequency will detect contaminants more promptly than is the case under the current regulations. The proposed rule, however, would allow States to reduce the minimum monitoring frequency below five samples/month for small systems under certain conditions, as discussed below. This reduced monitoring would result in fewer MCL violations within a given time, thereby decreasing the stringency of the proposed rule.

EPA seeks public comment on the proposed MCLs, particularly whether the ten percent limit on the fraction of drinking water containing coliforms (see Appendix A to the preamble, Table I) is reasonable. The Agency also requests public comment on whether the proposed monthly MCL should be eliminated for systems collecting 40 or more samples/month, given that the monthly and long-term MCLs are identical at these monitoring frequencies.

Coliform contamination is indicative of a situation needing immediate correction. Such corrections could include flushing of mains, increased disinfection, or improvements in filtration process control. This is a situation that warrants quick action to determine the cause of the problem in order to severely limit human exposure to the pathogenic microbes for which total coliforms serve as an indicator.

D. Monitoring Frequency

1. Basis: Population Served vs. Other Alternatives

The interim regulations require public water systems to monitor coliforms at a frequency which varies according to the number of people served by that system.

EPA proposes to retain this approach, for the reasons explained below.

In many countries, sampling frequency is based on the size of the population served (World Health Organization, 1984; Council of the European Communities, 1975). This approach recognizes that, as the population served increases, so does the size and complexity of the system and the potential for distribution network contamination by cross-connections and back-siphonage (Craun, 1978). Relating the sampling frequency to the size of the population also reflects the fact that the larger the population served, the greater the number of persons at risk when water treatment is defective. The participants in the 1981 and 1985 workshops recommended that EPA continue using the size of the population served as the basis for monitoring frequency.

EPA considered several alternatives as a basis for establishing monitoring requirements. EPA first considered basing the monitoring frequency on the number of service connections (excluding fire hydrants). The inherent weakness of this approach, however, is that the large populations of multiple-family residences, such as apartment buildings, hospitals, and rest homes, or large workplace sites such as high-rise office buildings and factories, are not reflected in the number of service connections.

EPA also considered total length of the distribution pipe network as a basis for setting sampling frequency. This approach assumes that increased length of pipe network reflects increased risk of contamination from residential and commercial service connections and by ground disturbance in the area of construction projects. However, the total-length-of-pipe approach can be misleading where local topography makes long distribution lines necessary to reach small clusters of homes.

In addition, EPA considered basing sampling frequency on the volume of water provided. The advantage of this approach is that the public water system knows, with some accuracy, the water demand of different zones of the distribution system. The major weakness is that a significant portion of water demand may relate to industrial use and lawn watering, rather than to drinking water consumption.

After examining these options, EPA has decided to retain population served as the basis of monitoring frequency for both community and non-community water systems. EPA believes that the overriding consideration is the number of people who are at risk if there is fecal contamination of the system, regardless of the number of service connections, length of pipe, or volume of water used. EPA invites public comment on this issue.

2. Number of Samples Collected/Month

The present EPA regulations for total coliforms specify the minimum number of samples a public water system must collect and analyze each month. The smaller the system, the less monitoring required (i.e., systems serving populations of 1,000 or fewer are only required to analyze one sample per month, or one sample per quarter if it meets the conditions in 40 CFR 141.21(b)). EPA is proposing minor modifications to the current requirements to simplify and streamline the current categories of monitoring frequency. In addition, EPA is proposing to establish a generally-applicable minimum monitoring frequency for public water systems serving 3,300 persons or fewer of five samples/month (although, as discussed later, fewer samples would be permitted under certain circumstances). This section provides the rationale for these proposed changes.

EPA based the monitoring frequencies required in the current regulations upon the 1962 U.S. Public Health Service Drinking Water Standards, which in turn, were based on a study of the sampling frequencies used in New York State. The purpose of that study was to determine the minimal acceptable sampling frequencies for various cities which did not experience any detectable waterborne outbreaks. Unfortunately, the results of that study were never published. The resulting values appear to have been based on what was financially and technically attainable. The values have proved to be practicable and not burdensome during the 25 years they have been in use and systems are familiar with them, so EPA is proposing to retain them with minor modifications to simplify and streamline the requirements.

EPA sought to develop a systematic basis for establishing the minimum monitoring frequency for small systems by funding a study to examine the distribution of coliforms in the distribution system of these systems. The study included extensive statistical analyses on coliforms in samples from small water distribution systems in Pennsylvania and New Jersey (Pipes and Christian, 1982; Christian and Pipes, 1983). These data demonstrate that coliforms in a contaminated water system are very unevenly dispersed; small areas within the system may have high coliform densities while large volumes may lack coliforms entirely. This heterogeneous distribution is best described by the negative binomial or truncated lognormal distribution, rather than by a normal or Poisson distribution. If the lognormal distribution is used to describe the coliform data, the geometric standard deviation of the counts (usually between 10 and 100) is much greater than the geometric mean (for most systems, between 10^{-1} and 10^{-4}). The calculations in this study demonstrate that even when the arithmetic mean coliform density is greater than 1 per 100 ml, the probability that a single 100-ml sample will have no coliforms present is very high. It follows, therefore, that most samples even in a contaminated system will be coliform-free; thus, a larger number of samples is necessary to detect contamination.

An expert panel at the 1981 workshop examined the data described above and recommended that the minimum sampling frequency be five samples/month for small systems. As previously stated, this value is based on the calculation that, if 60 or more samples per year are collected and 95 percent or more are negative, there is 95 percent confidence that the fraction of water with coliforms present is less than 10 percent. The expert panel recommended this level, at which at least 90 percent of the water is coliform-free, be accepted as a "protection reliability standard." As a comparison, if a system only collects one sample/month, or 12 samples/year, and one of those 12 samples is coliform-positive, there is a 95 percent certainty only that less than 34 percent of the water is contaminated (Pipes, 1983). This affords markedly less assurance of safety than the panel's recommendation.

EPA has decided to accept the panel's recommendation and propose to require that water systems serving 3,300 or fewer persons collect and analyze a minimum of five samples/month. The Agency believes that, in the absence of other assurances of protection, fewer than five samples/month cannot adequately represent the microbiological quality of water, and that a few negative coliform samples/month may give a false sense of safety. As discussed later, under this proposal, systems would be allowed to monitor less often than five samples/month, based upon the results of a sanitary survey and other considerations.

Public water systems serving less than 3,300 people traditionally have had more difficulty complying with regulatory requirements. This is due to two factors: (1) They generally have a part-time, uncertified plant operator; and (2) their

revenues and capital assets are often inadequate (USEPA, 1982). EPA expects this will be true for the proposed total coliform MCL, as well. These small systems are unlikely to be able to afford the trained laboratory and operating staff available to the large metropolitan systems. Typically, many of these small systems are untreated. Therefore, if a small system violates the proposed coliform MCL, it would have the most difficulty in coming back into compliance.

EPA is proposing that the minimum monitoring frequency specified in Tables 1 and 2 of the proposed regulation apply to non-community water systems as well as community water systems. The size of the population served by some non-community water systems may vary dramatically according to the season; therefore, EPA is further proposing a requirement that such systems be allowed to adjust their sampling frequency monthly, based on a reasonable estimate of the total population being served during the month. The number of samples would be determined using Tables 1 and 2 of the proposed regulation and the corresponding monthly population estimate. EPA believes it is important to protect transient populations from exposure to pathogens, since, unlike the usual case for chemical contamination of water, a single exposure to pathogenic microorganisms has a much greater risk of causing illness.

One reason EPA is proposing the presence-absence concept is to reduce the burden on small systems. An advantage of this concept is that it is sufficiently simple to allow field inoculation and analysis. A system operator could either send the water sample to a certified laboratory or conduct the analysis on-site by adding a 100-ml sample to a bottle containing commercially pre-sterilized medium (Clark P–A test medium or lauryl tryptose broth), and incubating the sample. This latter option would allow a small system to avoid the expense of using a certified laboratory, thereby reducing monitoring costs per sample and consequently making the higher required monitoring frequency (i.e., five samples/month) more economical. To use the on-site incubation approach would require that the system be allowed to determine the presence of coliforms based only on the results of this "presumptive" test, rather than on a subsequent test to confirm the presence of coliforms. In addition, practical field inoculation and analysis techniques to distinguish fecal coliforms from total coliforms or determine the number of heterotrophic bacteria present in a sample are not yet available. (The importance of both are described later in this document.) On-site analysis may have a significantly greater potential for unreliable results and abuse than those performed in a certified laboratory. EPA believes that a training program for operators who wish to perform on-site analyses would be necessary to ensure dependable results. Although EPA is not proposing in this notice to allow on-site analysis in a non-certified laboratory, the Agency requests comment on whether this approach is appropriate, and if so, what laboratory certification criteria are needed.

For populations greater than 3,300, there are several approaches for determining the appropriate number of monthly samples based on the number of persons served. The monitoring frequency in the current regulations has been used for decades, and panels at the 1981 and 1985 workshops, described above, supported retaining it. EPA believes, however, that it makes sense to reduce the number of population categories from the current 84. In the United States, there are 3,322 public water systems serving more than 10,000 persons and 299 systems serving more than 100,000 persons. Under the current regulations, the number of public water systems serving communities with populations above 10,000 persons and 100,000 persons, per system size category, averages 60 and 7, respectively. Therefore, EPA is considering some simpler approaches to deriving population categories.

One such approach involves the use of the formula 5+P/1,000, where P=population served. For example, if a system serves a community of 50,000 people, this formula would require minimum monthly monitoring frequency to be 5+50,000/1,000 or 55 samples/month. Another proposal suggests the minimum monthly sampling frequencies shown below in Table III for populations of 9,000 and below, and an increase of 5 samples for every 6,000 above the 9,000 level.

TABLE III.—EXAMPLE OF A PROPOSED MONTHLY SAMPLING APPROACH

Persons served	Samples/month
25–3,300	5
3,301–5,000	10
5,001–9,000	15
9,001–15,000	20
15,001–21,000, etc.	25

Table IV compares the monitoring frequency required under each of the approaches described above for systems serving eight population categories. This table shows that the monitoring frequencies are similar between 10,000 and 100,000 persons, but then diverge substantially for higher populations. EPA does not believe there is a need to increase the monitoring frequency for systems serving more than 100,000 persons substantially above that required in the current regulations.

TABLE IV.—MONTHLY SAMPLING FREQUENCIES: DIFFERENT APPROACHES

Population served	Interim regs	5+P/1000	5 samples/6000 persons	EPA proposed frequency
5,000	6	10	10	6
10,000	11	15	20	10
50,000	55	55	55	50
100,000	100	105	95	100
200,000	140	205	175	120
500,000	210	505	425	200
1,000,000	300	1,005	845	300
4,000,000	480	4,005	3,345	480

EPA proposes to simplify and streamline the current monitoring frequency by decreasing the number of population size categories for communities with populations above 10,000 (as shown in Table V). By

including more communities in each category, and thereby reducing the total number of population categories from 84 to 43, this proposal simplifies the requirements for sampling frequency. Yet this change would not substantially change the minimum number of samples required for a particular population size, when compared to that required in the current regulations. EPA requests public comment on this proposed change and any alternative approaches.

TABLE V.—PROPOSED MINIMUM MONTHLY SAMPLING FREQUENCY

Population served	Samples/month
25–3,300	5.
3,301–5,800	6.
5,801–6,700	7.
6,701–7,600	8.
7,601–8,500	9.
8,501–10,000	10.
10,001–100,000	5 sample increase/5,000 pop. increase.
100,001–400,000	30 sample increase/100,000 pop. increase.
400,001–1,000,000	20 sample increase/100,000 pop. increase.
1,000,001–2,000,000	20 sample increase/200,000 pop. increase.
2,000,001–4,000,000	20 sample increase/500,000 pop. increase.
>4,000,000	500 samples/month.

EPA has considered the appropriate timing for collecting multiple samples; i.e., should sample collection be evenly spaced throughout a month, or is a clustered collection pattern justified? The latter would be less expensive because collecting several samples over a few hours is more efficient than collecting each of those samples on different days. However, an evenly-spaced sample collection might provide earlier warning of a rapid deterioration in water quality. Two EPA-funded studies (Jacobs et al., 1986; Caldwell and Seidler, in press) suggest that for systems using ground water, five samples collected on the same day from different points in the distribution system as a cluster provide data that are not statistically different from those five single samples taken at "regular" time intervals. Thus, EPA proposes to allow collection of up to five samples per day (at different points) for systems using ground water exclusively. The data, however, indicate that surface water quality variability may be too great to allow systems using surface water to exercise this option (Symons et al., 1981); thus, EPA proposes to restrict cluster sampling to ground water systems.

3. Sanitary Survey Requirements

The current regulation allows some small community public water systems to reduce their monitoring frequency on the basis of sanitary survey results as well as compliance with certain other requirements. Specifically, 40 CFR 141.21(b) states:

> Based on a history of no coliform bacterial contamination and on a sanitary survey by the State showing the water system to be supplied solely by a protected ground water source and free of sanitary defects, a community water system serving 25 to 1,000 persons, with written permission from the State, may reduce this sampling frequency except that in no case shall it be reduced to less than one per quarter.

Likewise, 40 CFR 141.21(c) also allows the State to adjust the monitoring frequency for non-community water systems on the basis of sanitary survey results. EPA proposes to expand the role of on-site sanitary surveys by allowing a State to reduce the monitoring frequency below five samples/month for (1) systems serving 3,300 persons or fewer which filter and disinfect their surface water (as specified in the surface water treatment requirements, proposed elsewhere in today's Federal Register) or disinfect their ground water; and (2) systems serving 500 persons or fewer which use ground water exclusively and do not practice disinfection. EPA is further proposing that the State, or an agent acceptable to the State, conduct these sanitary surveys and that the State determine whether the results are satisfactory. This provision would be analogous to 40 CFR 141.40(g)(8)(iv), promulgated on July 8, 1987 (National Primary Drinking Water Regulations for Volatile Organic Chemicals) which says, "Vulnerability of each public water system shall be determined by the State based on an assessment of the following factors * * *." EPA is proposing that States must similarly determine the vulnerability of systems to coliform contamination as a condition of reduced monitoring. This section provides the rationale for using sanitary surveys to reduce monitoring frequency.

Sanitary surveys would function as a "second line of defense" to alert public water systems and States of possible health risks which might not be apparent from routine coliform sampling because of an uneven distribution of coliforms in the distribution system, variability in surface water quality, the length of time between sample collections, the length of time between sample collection and receipt of analytical results, and lack of data on water quality in parts of the distribution system not included in recent sampling sites. This is especially critical for populations served by unfiltered surface water and, to a somewhat lesser extent, undisinfected ground water.

EPA believes that systems which properly filter and disinfect surface water generally provide water which poses less microbial risk to health than those without such treatment, as explained in the preamble to the surface water treatment requirements proposed elsewhere in today's Federal Register. Similarly, EPA believes that systems using ground water which disinfect generally provide safer water than those which do not. EPA is also aware that five samples/month may impose an economic burden to small systems. Thus EPA is proposing to allow the State to reduce the monitoring frequency for a small system, i.e., systems serving fewer than 3,300 persons, if sanitary surveys are performed at a frequency specified by EPA (see Table 1 in the proposed regulation) and the State determines that the results are satisfactory. This option would be restricted to systems serving 3,300 or fewer persons which filter and disinfect their surface water in compliance with the surface water treatment requirements (proposed elsewhere in today's Federal Register) or disinfect their ground water. Under this option, the proposed frequency of

sanitary surveys necessary to qualify for reduced monitoring would vary, depending on the number of persons served (i.e., 25–500 persons vs. 501–3,300 persons) and whether the system uses surface water or ground water.

Because EPA realizes that very small systems may not be able to afford to collect five samples/month, the Agency is further proposing that States be given the discretion to allow systems which serve 25 to 500 persons and do not disinfect their ground water to reduce their monitoring frequency from five samples/month to three samples/month for systems that serve between 301 to 500 persons and to one sample/month for systems that serve between 25 to 300 persons, provided certain conditions are satisfied. First, the State or an agent approved by the State must conduct a sanitary survey every three years and this sanitary survey must demonstrate to the State's satisfaction that the monitoring frequency can be safely reduced. Second, the system must demonstrate that no more than five percent of its last 20 or more consecutive samples were coliform-positive. These 20 or more samples must be collected within the previous three years, which corresponds to the time between required sanitary surveys; this three-year period may have begun before promulgation of this rule. EPA is requiring repetition of the survey periodically, as well as periodic reviews of recent coliform monitoring, because source water may deteriorate over time, and information and sample results that are not sufficiently recent may not be representative of current drinking water quality.

EPA is also considering an alternative approach which would also be based in part on satisfactory sanitary survey results. This approach would allow systems which use ground water (whether disinfected or not disinfected) and which serve 500 persons or fewer to use the lower monitoring frequency specified in Table 1 of the proposed regulation as a base (i.e., one/month for systems which disinfect, one/month for systems serving 25–300 persons which do not disinfect, and three/month for systems serving 301–500 persons which do not disinfect). The State, or an agent approved by the State, would have to conduct a sanitary survey at the frequency specified in Table 1 of the proposed regulation. The results of the sanitary survey, together with a history of previous compliance with coliform MCLs and monitoring requirements and occurrence of any waterborne disease outbreak would be used by the State to determine the need for more frequent monitoring (up to five samples/month) on a case-by-case basis. In the absence of a periodic sanitary survey with satisfactory results, the system would be required to collect five samples/month. Assuming most small systems would qualify for a monitoring frequency below the proposed five samples/month, using the criteria set forth in the proposal (as opposed to the alternative just described), this alternative approach would impose less of an administrative implementation burden on States than the proposed provisions by substantially reducing the personnel resources and paperwork needed; States would need to notify only a minority of small systems to change (i.e., increase) their monitoring frequency. It is important to note that this alternative approach would place the responsibility on the State to demonstrate that a water system needs to monitor more frequently, rather than requiring the water system to show the State that a lower monitoring frequency would not pose a health risk. Also, EPA believes it would be more difficult to ensure that small systems actually had a periodic sanitary survey conducted under the alternative than under the proposal. EPA requests public comment on whether this alternative approach is more appropriate than the proposed approach.

EPA believes that the proposed sanitary survey frequencies are roughly correlated with the relative potential health risk; i.e., they are based on the fact that there is a greater potential for contamination of surface water than ground water and that systems which serve larger populations, if contaminated, would put more persons at risk than systems which serve smaller populations.

Guidance for conducting a sanitary survey is provided in the EPA's draft *Guidance Manual for Compliance with the Surface Water Treatment Rule for Public Water Systems ("Guidance Manual")* (USEPA, in press).

4. Requirements for Additional Coliform Monitoring in Conjunction With Surface Water Treatment Requirements

EPA is proposing to require additional coliform monitoring near the first service connection for systems which use surface water and do not practice filtration. This proposal would require that these systems collect one coliform sample near the first service connection on each day that a turbidity measurement exceeds one NTU. This is to insure that the high turbidity level does not interfere with disinfection. Monitoring is required near the first service connections because at these sites the disinfectant contact time is less there than anywhere else within the distribution system. The system would collect the sample within 24 hours after the turbidity level of 1 NTU had been exceeded. EPA is proposing to define "near the first service connection" as the 20 percent of service connections nearest the water supply treatment facility, as measured by the water transport time within the distribution system. The Agency believes that restricting monitoring to the single service connection with the shortest contact time is unnecessarily stringent. EPA is proposing the 20 percent value so that all systems, including those with few service connections, have some flexibility in choosing the connections they sample.

The provision is included in this proposal, rather than in the surface water treatment requirements (40 CFR Part 141, Subpart H—Filtration and Disinfection), proposed elsewhere in today's **Federal Register**, to avoid confusion which might result in having coliform monitoring requirements in two different regulations. This coliform monitoring would be included as part of the monitoring specified in Tables 1 and 2 of the proposed regulation. Sample results from this coliform monitoring would be included in all MCL compliance calculations, and a coliform-positive sample would be treated in the same manner as a routine compliance sample that is coliform-positive.

E. Sampling Sites

The current regulation states that "* * * samples shall be taken at points which are representative of the conditions within the distribution system" (40 CFR 141.21(a)). This suggests, but does not specify, sampling throughout the water distribution system.

An EPA-funded study demonstrated that differences in the frequency of coliform occurrences could be substantial among the different sections of a single distribution system isolated by the direction of water flow (Pipes and Christian, 1982). The study also found that this variability did not increase with distance from the water source, i.e., no significant differences were found between peripheral and non-peripheral sampling locations in the distribution systems examined. This study suggests that all parts of the system should be sampled eventually.

Based on this study, EPA proposes to refine the present regulation by specifying that the number of sites sampled during a 12-month period be either at least three times the number of

monthly samples required by Tables 1 and 2 of the proposed regulation or the total number of service connections, whichever is fewer, so that the same sampling sites are not used every month. For example, a system which must collect 20 samples/month would be required to sample from at least 60 sites during a 12-month period. EPA intends that sampling sites be varied over a year in a regular manner, so that the use of different sites is not confined to a short period of time, e.g., one or two months. In addition, new sampling sites would be selected every year. The intention is that all isolated sections of the distribution system be sampled periodically. The sampling program should be designed so that there is no place in the distribution system where microbiological contamination could persist indefinitely with little chance of detection.

EPA is proposing the factor of three as opposed to other values on the basis of the Agency's best judgment on what is reasonable for a system. The Agency requests public comment on whether a factor of three is appropriate or whether another factor is more appropriate to insure coverage of all isolated sections of the distribution system over time.

F. Check/Repeat Samples

Current EPA regulations require that when a public water system finds more than four coliforms/100 ml in a sample using the membrane filter technique or when it finds coliforms in three or more 10-ml portions using the multiple-tube fermentation technique, the system must collect daily check samples until the results from at least two consecutive samples are negative. If any check sample confirms the presence of coliforms, the public water system must notify the State within 48 hours. EPA is proposing to require a set of five repeat samples for every positive coliform sample, in place of this requirement. The rationale for this requirement is discussed below.

Based upon the study mentioned previously which indicates that the distribution of coliform densities in a water system has a large variance (Pipes and Christian, 1982), it is clear that the term "check sample" is a misnomer. Even if a check sample is taken from the same sampling point, the results obtained will not necessarily be representative of the conditions when the original sample was collected. Pipes and Christian (1982) found that, even when the arithmetic mean coliform density is greater than 1/100 ml, the probability that a 100-ml sample will have no coliforms present is high. For example, it is possible for a number of samples to be collected at the same time in a contaminated section of a distribution system and to obtain coliform-negative results in all samples except one which may have many coliforms. With this uneven distribution pattern, it is clear that one or even two additional samples are of dubious reliability, except perhaps when a system is grossly polluted. In other words, EPA believes that two negative check samples of 100 ml are not adequate to invalidate a positive original sample.

Based on this study, EPA believes it is appropriate to accept the original positive sample as a valid finding and use it in compliance calculations. Coliform-positive repeat samples would indicate a serious continuing problem. Negative repeat samples would give some assurance that the contamination is not extensive or has been eliminated. Moreover, given the random nature of the occasional positive result as described above, a repeat sample should have as much weight as an original sample in MCL calculations. EPA considers the term "repeat sample" more appropriate than "check sample," and therefore will use this term in this regulation.

As noted above, a relatively large number of samples is necessary to evaluate the significance of a coliform-positive occurrence. Therefore, EPA is proposing to require all water systems to collect five repeat samples for each coliform-positive sample. As explained previously, this proposed rule would allow a water system serving 3,300 persons or fewer to monitor less than five samples/month if it can demonstrate by a periodic sanitary survey and proper treatment (see Table 1 of the proposed regulation) that the water system is properly designed, protected and operated to be reliably producing safe water. The finding of a positive sample in a system that had qualified for less frequent monitoring would seriously undermine this conclusion. Therefore, EPA believes that water systems which serve 3,300 persons or fewer should collect, for each coliform-positive sample, the minimum number of samples required per month, i.e., five, for systems which cannot qualify for the lower monitoring frequency option. EPA believes that five repeat samples are necessary for systems allowed to collect less than five samples/month, since the assumption that these systems are at low risk may no longer be valid.

EPA also believes a set of five repeat samples is appropriate because it would allow the system to determine quickly whether a serious contamination problem exists and whether an MCL has been exceeded. Moreover, five negative repeat samples provide confidence to a small system that a much smaller percentage of its samples are coliform-positive (e.g., only 10 percent positive vs. 20 percent positive).

For systems which serve more than 3,300 persons, EPA believes that five repeat samples for every coliform-positive sample are necessary to determine quickly the extent of local contamination. EPA believes that five additional samples, if they are all negative, would reasonably demonstrate that the prior positive occurrence is no longer indicative of a health risk to consumers at that location.

A fewer number of repeat samples than five is less expensive and more consistent with the traditional number of repeat samples required (i.e., two); but, given the heterogeneous distribution of coliforms in the distribution system, a fewer number, if negative, would provide significantly less confidence that the water is uncontaminated.

EPA is also proposing that systems not be required to collect repeat coliform samples when fecal coliforms are detected in any total coliform-positive sample. As indicated above, the primary reason for conducting repeat sampling is to allow the system to assess whether the degree of contamination jeopardizes the safety of the water. If it does, the system must report a violation of the total coliform MCL(s). In the case of a fecal coliform-positive sample, however, that determination has already been established, i.e., the water is unsafe for human consumption; and, as discussed later, when a system detects fecal coliforms in any total coliform-positive culture, the system would report a violation of the monthly MCL for total coliforms and warn the public immediately via electronic media of an acute health risk.

EPA is proposing that a public water system collect a set of five repeat samples for every total coliform-positive original sample or repeat sample within 24 hours of being notified that the total coliform-positive sample is fecal coliform-negative, and that the system collect this set of five at the same service connection as the coliform-positive sample (except that some of the repeat samples may be taken at the next service connection above or below). All five repeat samples would be collected during the same day. The Agency is further proposing that sets of five repeat samples be collected at the same or nearby service connection as the

coliform-positive sample, until either a set of five is coliform-negative or an MCL has been exceeded and the system notifies the State. The proposed rule specifies that original samples and repeat samples will be treated the same in determining MCL compliance. Repeat samples would be included in the total number of monthly samples required by Tables 1 and 2 of the proposed regulation. For example, a system required to collect seven samples/month could use the five repeat samples as part of the seven required samples; likewise, a system required to collect 200 samples/month could also use the five repeat samples as part of the total.

EPA invites comment on the number of repeat samples a system should collect in response to a coliform-positive sample, their location and how they should be used to determine compliance.

G. Analytical Methodology for Total Coliforms

Analytical methodology for total coliform monitoring has existed for decades. The current EPA regulations (40 CFR 141.21(a)) specify the use of either the multiple-tube fermentation technique (MTF) or the membrane filter (MF) technique, as described in the 14th edition of *Standard Methods for the Examination of Water and Wastewater* ("*Standard Methods*") (APHA, 1976) and *Microbiological Methods for Monitoring the Environment: Water and Wastes* (USEPA, 1978). The volume of sample currently required for analysis is 100 ml for the MF test and 50 ml for the 5-tube MTF test.

EPA is proposing that analysis for coliforms under this regulation be conducted using either the MF test, 10-tube MTF test, or the Presence-Absence (P–A) Coliform Test. The protocols for each of these tests is described in Methods 908, 908A and 908B (pp. 872–878); 908E (pp. 882–886); and 909, 909A and 909B (pp. 886–896), in the 16th edition of *Standard Methods* (APHA, 1985).

EPA is specifying use of the protocols in *Standard Methods* because it is a highly respected and widely used reference which has been peer-reviewed throughout the scientific community. The MF method is also described in EPA's *Microbiological Methods for Monitoring the Environment, Water and Wastes* (USEPA, 1978).

EPA is not proposing to allow the continued use of the five-tube MTF test, however, because the test uses only a 50-ml sample volume (see discussion on standard volume, below). EPA has funded an evaluation of the P–A Coliform Test and has determined that it is at least as efficient in recovering coliforms as are the methods currently in use (Jacobs et al., 1986). In this study, the MF, MTF, and P–A tests were compared. Of the 1,483 water samples collected, 23 percent contained coliforms by at least one of the three methods. The MTF technique detected 82 percent, the P–A test detected 88 percent, and the MF test detected 64 percent of these positives. Other studies indicate that coliform recovery efficiencies are similar for the MTF and MF with respect to the number of positive and negative results (Hsu and Williams, 1982; Pipes et al., 1986).

As noted earlier, regardless of the analytical methods used, determination of coliform density would not be required for determining compliance with the MCLs; only the presence or absence of coliforms in the samples would be reported. This proposed regulation, however, would not preclude a system from either enumerating or characterizing coliforms or other organisms.

The use of the presence-absence concept requires EPA to propose that a standard volume be analyzed, regardless of the methodology employed. EPA is proposing that this volume be 100 ml, i.e., that the presence or absence of coliforms in a sample will be based on a 100-ml sample. The Agency believes this volume is appropriate because it is sufficiently small for easy handling and shipping and is already being employed in the widely used MF test. EPA requests comments on whether 100 ml is the appropriate volume for all total coliform analyses, including the MTF technique. EPA also solicits comment on the suitability of the proposed analytical techniques, and whether other techniques should be allowed.

H. Fecal Coliforms

Many strains of coliform bacteria are indigenous in aquatic environments. Some total coliforms, however, are fecal in origin (fecal coliforms); their presence in drinking water is strong evidence of recent sewage contamination. The presence of fecal coliforms in drinking water indicates that an urgent public health problem exists, since fecal pathogens often co-exist with fecal coliforms. There are no standards for fecal coliforms in the current regulations. In this notice, EPA is proposing to define the presence of any fecal coliform as a violation of the monthly total coliform MCL.

Because its presence in drinking water would represent an acute health risk, EPA is Proposing to require public water systems to analyze each total coliform-positive sample (whether it is an original or repeat sample) to determine if it contains fecal coliforms. If fecal coliforms are detected, the system would be in violation of the monthly coliform MCL and would be required to notify the State within 48 hours. Only the presence or absence of fecal coliforms would be reported; a determination of fecal coliform density would not be required.

EPA is proposing that the public water system determine whether a coliform-positive sample contains fecal coliforms by transferring the total coliform-positive culture to EC medium. The preparation of EC Medium is described in *Standard Methods for the Examination of Water and Wastewater*, Method 908C, p. 879, para. 1 (APHA, 1985).

EPA requests comment on whether fecal coliform analysis should be conducted on coliform-positive repeat samples only rather than on all total coliform-positive samples, or whether a fecal coliform analysis should only be required for systems in violation of either the monthly or long-term MCL for total coliforms. EPA also requests comment on whether it would be appropriate to require an analysis for the presence of *Escherichia coli* or enterococci rather than fecal coliforms; EPA recently revised its ambient water quality criteria on the basis that several bathing beach studies found that densities of *E. coli* and enterococci were more closely related to gastroenteritis in swimmers than were the densities of other candidate indicators of water quality, including fecal coliforms (51 FR 8012, March 7, 1986).

I. Heterotrophic Bacteria

As noted earlier, heterotrophic bacteria are a broad class of organisms which use organic nutrients for growth. This group includes many innocuous bacteria as well as virtually all of the bacterial pathogens and those bacteria which infect when the host's defenses are weakened (opportunistic pathogens). The population density of these bacteria in water is often measured by the Standard Plate Count (SPC) procedure, as described in *Standard Methods* (APHA, 1976). The 16th edition of this book changes the term "SPC" to "Heterotrophic Plate Count" or "HPC" (APHA, 1985). The 1986 amendments to the Safe Drinking Water Act included this group of organisms as one of 83 contaminants the Agency must regulate.

EPA proposes to specify a limit on HPC of 500 bacteria/ml. If this value is exceeded, the sample would be considered coliform-positive. However, EPA is proposing to require monitoring

for these organisms only when there is evidence, as described below, that high levels of heterotrophic bacteria are interfering with the total coliform analysis. The rationale for this proposal is explained below. EPA believes that this proposed requirement, along with the surface water treatment requirements proposed elsewhere in today's Federal Register, which would reduce heterotrophic bacteria numbers in drinking water and limit growth in the distribution system, together would fulfill the Congressionally-mandated requirement to regulate heterotrophic bacteria. (See the preamble to the proposed surface water treatment requirements for a more detailed explanation of EPA's rationale.)

As explained in the November 13, 1985, Federal Register proposal (50 FR 46955), the HPC procedure imprecisely counts both some bacterial pathogens and many innocuous bacteria. Therefore, EPA believes it is impossible to specify a scientifically rational MCLG. Specifically, EPA cannot set any particular HPC level (other than at zero) at which no adverse health effects occur, since the test measures both pathogenic and innocuous bacteria; drinking water with any given HPC level might contain numerous, few, or no pathogens. EPA believes an MCLG of zero is inappropriate because the SDWA would then require EPA to promulgate an MCL as close to zero as is feasible. The health benefit of meeting a level near zero versus some higher level (e.g., 500 colonies/ml) is probably negligible, if any. In addition, excessive amounts of disinfection would be needed to achieve these removals, which could result in excessive concentrations of disinfection byproducts in the finished water which may have adverse health effects. Therefore, EPA believes it is inappropriate to set an MCLG for HPC.

A problem associated with heterotrophic bacteria contamination is that higher densities of such bacteria may interfere with total coliform analysis. There are ample data which demonstrate such interference (summarized in USEPA, 1984b). Bacterial densities greater than 500 colonies/ml (and perhaps as low as 100 colonies/ml) can suppress coliform growth with the membrane filter and/or multiple tube fermentation procedures (summarized in USEPA, 1984b). There is also strong evidence that drinking water samples containing high densities of heterotrophic bacteria resulting from growth during sample transit may reduce the chances of detecting coliforms. Since the presence of coliforms in drinking water indicates the possible concurrent presence of pathogens, the masking of coliforms by high levels of heterotrophic bacteria can prevent the detection of a health threat.

Therefore, to safeguard public health, EPA proposes to require that public water systems monitor for heterotrophic bacteria in drinking water supplies in conjunction with coliform monitoring. Under this proposal, when the heterotrophic bacteria limit has been exceeded, it would be counted as a coliform-positive sample. EPA believes that this approach is sensible because it will limit heterotrophic bacteria densities in drinking water while addressing directly a specific problem associated with high levels of these bacteria, i.e., interference with total coliform analysis.

Although there is some evidence that heterotrophic bacteria may interfere with total coliform analysis at levels as low as 100 colonies/ml, EPA is proposing the limit of 500 colonies/ml rather than a lower level for the following reasons: (1) The Agency believes that interference is less likely to occur at lower HPC levels; and (2) the higher limit reduces the cost burden to public water systems, since 89 percent of all community systems meet this limit (McCabe *et al.*, 1970).

EPA considered several options for monitoring heterotrophic bacteria. One approach is to require a system to collect a specified number of samples per month and analyze for these organisms. Another approach, which was recommended by a panel at the 1985 workshop, is to require monitoring of the distribution system only when a coliform analysis shows evidence of coliform interference, i.e., there is confluent growth or the colonies are "too numerous to count" when using the membrane filter technique, or there are turbid, gas-negative tubes when using the multiple tube fermentation technique. EPA is adopting the panel's recommendation that the distribution system be monitored when growth conditions interfere with coliform evaluation, because the Agency believes that routine monitoring may be economically impractical for many systems and that there would be little incremental benefit beyond total coliform monitoring alone.

EPA recognizes that if large numbers of heterotrophic bacteria pass into, or proliferate in, a water distribution system, they can cause deterioration in water quality, either directly (e.g., slime deposits, taste and odor problems) or indirectly (e.g., through accelerated pipe deterioration). Therefore, although not proposed as a requirement, EPA encourages public water systems to perform supplemental monitoring to ensure that HPC levels are not excessive in their particular system, especially if the system exhibits one or more of these problems.

EPA is proposing that the elapsed time between collection and processing of the water sample for heterotrophic bacteria be limited to eight hours (30 hours if the water temperature is maintained below 4 °C, but above 0 °C). These limits are recommended by *Standard Methods* (APHA, 1985), because data indicate that levels of heterotrophic bacteria, as measured by the HPC method, may change substantially in samples maintained at ambient temperatures beyond eight hours (McDaniels et al., 1985; Geldreich et al., 1972).

EPA is also proposing to approve the use of the Pour Plate Method (907A) described on pp. 864–866 in the 16th edition of *Standard Methods* (APHA, 1985) for enumeration of heterotrophic bacteria. EPA is proposing the Pour Plate Method because most of the data on interference by heterotrophic bacteria with the total coliform analysis are based on the use of this method, with an incubation time of 48 hours and an incubation temperature of 35–37 °C. As noted previously, EPA is citing methods in *Standard Methods*, because this publication has international standing and is updated frequently by a diverse group of experts in the field.

For the purposes of this regulation, then, whenever any sample exhibits confluent growth or contains colonies too numerous to count, or yields a turbid liquid medium without gas production, this would be presumptive evidence that heterotrophic bacteria are interfering with the total coliform analysis. The public water supply would have the option to (1) declare the sample coliform-positive and include it in its calculations for determining compliance with the coliform MCLs; or (2) consider the sample an invalid coliform determination, and collect another sample and analyze it both for the presence or absence of coliforms and the number of heterotrophic bacteria present. A sample with a heterotrophic bacteria level in excess of 500 colonies/ml is indeterminate with respect to coliform content. For regulatory purposes, the system would be required to report this second sample as coliform-positive if it contained greater than 500 colonies/ml, even in the absence of detectable coliforms. Option 1 above would be appropriate for those systems unable to meet the eight-hour sample

transit time limit for analysis of heterotrophic bacteria. If the sample is declared coliform-positive, or if it contains greater than 500 colonies/ml, then the system would be required to collect five repeat samples.

EPA requests public comment on whether it is appropriate to regulate heterotrophic bacteria on the basis that it may interfere with the total coliform analysis, and if not, whether there is a more appropriate basis for regulating heterotrophic bacteria. The Agency also invites comment on whether the proposed approach for controlling such interference is appropriate or whether there is a more suitable approach, e.g., require routine monitoring of heterotrophic bacteria at the tap and limit the density of these organisms to 500 colonies/ml in 95 percent of these routine samples, or require a disinfectant residual in the distribution system. EPA solicits comment on whether the proposed HPC limit of 500 colonies/ml is reasonable for curbing HPC interference with coliform analysis, and whether the HPC limit should vary, depending on the particular analytical procedure used for coliform detection. The Agency also requests comment on whether it is practical for small rural systems to meet the requirement that unrefrigerated samples reach a laboratory within eight hours of collection.

J. Determination of Compliance

This section briefly summarizes the actions required by a public water system to conform to the provisions of this proposed rule.

EPA is proposing that all public water systems meet two total coliform MCLs: A monthly MCL and a long-term MCL. The monthly MCL for systems collecting less than 40 samples/month (equal to the number of original and samples plus any repeat samples) would be no more than one positive coliform sample/month. The monthly MCL for systems collecting 40 or more samples/month would be no more than five percent positive.

The long-term MCL for a system analyzing at least 60 or more samples/year would limit the number of positive samples to no more than five percent of the annual total of samples collected. For systems analyzing fewer than 60 samples/year, no more than five percent of the most recent 60 samples could be positive for coliforms.

If total coliforms, but no fecal coliforms, were detected in a sample, the public water system would be required to collect a set of five repeat samples from the same service connection, except that some could be collected at the next service connection. If all repeat samples were negative, no further action would be required. If any repeat sample was coliform-positive, another set of five repeat samples would be required unless an MCL has been exceeded. The original sample and all repeat samples would be included in both the monthly and long-term MCL compliance calculations.

If any original or repeat sample is coliform-positive, the laboratory would be required to determine whether the total coliforms in the sample(s) include fecal coliforms. If fecal coliforms were to be detected, the system would be in violation of the monthly total coliform MCL.

If there was evidence that high levels of heterotrophic bacteria may be interfering with the total coliform analysis, as described previously, the system could either (1) count the sample as coliform-positive and collect five repeat samples; or (2) consider the sample invalid and collect another sample from the same location and instruct the laboratory to analyze it for both total coliforms and HPC. If the second total coliform analysis was positive, then five repeat samples would be necessary. If coliforms were not detected in the second sample, but the HPC level was greater than 500 colonies/ml, samples must be collected and analyzed in the same manner as before. This process would be repeated until the system obtains either one set of five negative results or the monthly MCL has been exceeded and the system notifies the State. The results of both the positive original and the sample would be considered coliform-positive and five repeat samples would be collected and analyzed as before. Data from all total coliform samples, except for the invalid original sample, would be used in both the monthly and long-term MCL calculations.

EPA is also proposing that the size of the population served be retained as the basis of monitoring frequency; that the minimum monitoring frequency for systems serving 3,300 persons or fewer be five samples/month, except that fewer samples would be permitted if (1) the system filters and disinfects its surface water, as required by the surface water treatment requirements proposed elsewhere in today's **Federal Register**, and disinfects its ground water: and (2) the State, or an agent of the State, conducts a sanitary survey at the frequency specified in Table 1 of the proposed regulation and determines that the results are satisfactory. In addition, a State may permit a system which serves 25 to 500 persons and uses undisinfected ground water to reduce its monitoring frequency if (1) the State, or agent of the State, conducts a sanitary survey every three years and the State determines that the results are satisfactory; and (2) the system can demonstrate that no more than five percent of its last 20 or more consecutive samples collected within the past three years contained coliforms, regardless of whether or not these analyses were performed before promulgation of this rule.

IV. Variances and Exemptions

EPA is proposing that variances and exemptions from these coliform and heterotrophic bacteria regulations not be available. Under the Safe Drinking Water Act, a State may grant a variance to a public water system "which, because of characteristics of the raw water sources which are reasonably available to the systems, cannot meet the requirements respecting the maximum contaminant levels * * *." Section 1415(a)(1)(A). Before a State may grant a variance, it must determine that the variance will not result in an unreasonable risk to health. Section 1415(a)(1)(A). Under the Act, a State may grant an exemption to a public water system if "due to compelling factors (which may include economic factors), the public water system is unable to comply with such contaminant level * * * and the granting of the exemption will not result in an unreasonable risk to health." Section 1416(a).

The current regulations permit the granting of variances and exemptions from the total coliform standard. EPA, however, is not aware of any States that are granting them. The Agency believes this is appropriate because coliforms are the primary indicator of the microbiological quality of water. To the extent a variance or exemption would permit the continued presence of coliforms, the potential presence of pathogens would remain. Therefore, EPA believes States would be unable to make the determination that no unreasonable risk to health would result from the variance or exemption. In addition, it is important to recognize that the proposed coliform rule already provides flexibility by allowing coliforms to be present in some, i.e., five percent, of the samples taken. Accordingly, EPA is proposing not to allow variances or exemptions from either the monthly or long-term coliform MCL.

Nevertheless, EPA recognizes that some communities have a persistent problem with coliforms in the distribution system, even after they

increase the disinfectant dose, flush the system with disinfectant, and perform other suitable control measures. This persistence may be due to protection against the action of the disinfectant conferred by slimes, encrustations, tubercles, and sediments associated with the piping, or to the continued penetration of the treatment barrier by coliforms, perhaps aided by their ability to encapsulate or by their adsorption to organic colloidal particles in the water. In the few cases of coliform persistence reported in the scientific literature, no fecal coliforms were detected and no waterborne disease outbreak was reported. There is a body of thought, at least in some of these published cases, that inadequate treatment of the source water was responsible for the persistent coliform contamination. If EPA were to allow variances in this narrow circumstance, it would restrict them to those systems which employ the best available treatment technology (BAT), as required by the Act. The Agency requests public comment on whether variances should be granted, and if so, what the conditions of variance should be.

V. Best Available Technology (BAT) for Total Coliforms

Section 1412(b)(6) of the Safe Drinking Water Act states that each national primary drinking water regulation which established an MCL shall list the technology, treatment techniques, and other means which the Administrator finds to be feasible for meeting the MCL.

Pursuant to this section of the Act, the coliform MCLs can be achieved using the following technologies, treatment techniques, and other means:

- Protection of wells from contamination by coliforms by appropriate placement and construction;
- Maintenance of a disinfectant residual of at least 0.2 mg/l throughout the distribution system;
- Proper maintenance of the distribution system including appropriate pipe replacement and repair procedures, main flushing programs, proper operation and maintenance of storage tanks and reservoirs, and continual maintenance of positive water pressure in all parts of the distribution system; and
- Filtration and disinfection of surface water, as defined in 40 CFR Part 141, Subpart H (proposed elsewhere in today's **Federal Register**); or
- Disinfection of ground water using strong oxidants such as chlorine, chlorine dioxide, and ozone.

There is a very long history to the success of these methods for achieving the coliform MCLs. The technologies for removal of microbial contamination are discussed extensively in *Technologies and Costs for the Treatment of Microbial Contaminants in Potable Water Supplies* (USEPA, in press). Filtration, disinfection, and maintenance of the distribution system are also discussed in the draft *Guidance Manual* (USEPA, in press). This regulation would not require the use of the above techniques; however, systems would be free to meet the requirements of this regulation using the technologies of their choice (if treatment is necessary). However, Section 1412 of the Safe Drinking Water Act requires that regulations requiring disinfection of all drinking water supplies be issued by June 19, 1989. Disinfection of ground waters is primarily designed to inactivate viruses which have been demonstrated to travel great distances through soils and aquifers. While EPA recognizes that many systems are designed to provide natural barriers to this kind of contamination which afford marginal safety without disinfection, EPA will be proposing disinfection treatment technique requirements at a later date. However, it is important to recognize the relationship between appropriate treatment for a given raw water and the safety of water at the tap. Residual disinfection is also an appropriate means to control regrowth and recontamination by bacteria in the distribution system.

VI. Waterborne Disease Outbreaks

EPA is concerned about deficiencies in the way that waterborne disease outbreaks are being recognized and reported. The outbreak surveillance and reporting system is generally passive; the great majority of outbreaks and cases are not being reported, at least to the Federal level. About 9,000 cases per year of waterborne illness were recorded by the Centers for Disease Control (CDC) between 1975–1984 (CDC, 1985). One EPA-funded study in Colorado found that only about one-quarter of the waterborne disease outbreaks were being recognized and reported (CDC, 1985). Another study concluded that the ratio of the estimated ill to the initially reported ill for food- and waterborne outbreaks is 25:1 (Hauschild and Bryan, 1980). In addition, EPA understands that in some States, a lack of communications between agencies responsible for public health and water supply is creating an obstacle to reliable waterborne disease outbreak recognition and reporting. The Agency needs more accurate data to determine how effective the drinking water regulations are and to determine what revisions or additional regulations and guidelines are needed. Such information would also help EPA to determine research priorities.

EPA is examining several options to improve surveillance and reporting. One option is to require that States in conjunction with the Centers for Disease Control (CDC) provide more active surveillance and reporting as a condition for receiving annual drinking water grant funds. Another alternative is to develop additional guidance based on recently developed guidelines on how to search for waterborne disease outbreaks (Bryan, 1986; Ericksen and Dufour, 1986; Lippy, 1986). EPA is also planning a workshop on improved surveillance and capabilities at the State and local level for improved detection reporting.

EPA is also considering the development of a regulation requiring States to search for and investigate all incidents of waterborne disease outbreaks and report them periodically, either to EPA or CDC. The statutory basis for such a regulation would be sections 1413(a)(3) and 1445(a) of the Act. Section 1413(a)(3) states that a State with primacy "will keep such records and make such reports with respect to its activities * * * as the Administrator may require by regulation." Section 1445(a) further states that "Every person who is a * * * grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations * * * in evaluating the health risks of unregulated contaminants, or in advising the public of such risks."

EPA has been working closely with CDC to obtain, review, and tabulate data on outbreaks, and expects to continue this activity, regardless of which option(s) is selected. The Agency requests public comment on these options and on any other alternatives which might contribute to improving waterborne disease outbreak surveillance and reporting.

VII. Chlorine Substitution Policy

The current coliform requirements at 40 CFR 141.21(h) state that "a supplier of water of a community or non-community system may, with the approval of the State and based upon a sanitary survey, substitute the use of chlorine residual monitoring for not more than 75 percent of the [coliform] samples required to be taken * * * *provided*, that the supplier of water takes chlorine residual samples at points which are representative of the

condition within the distribution system at the frequency of at least four for each substituted microbiological sample. There shall be at least daily determinations of chlorine residual." The regulations also require that a minimum of 0.2 mg/l of free chlorine residual be maintained throughout the distribution system.

The rationale for the substitution provision is that it is easier for the water plant operator to run the simpler test for measuring chlorine residual than the more complicated coliform analysis, and allows an almost immediate adjustment of the operation if the chlorine residual is too low.

The basic premise of the chlorine substitution rule, however, holds that the presence of free chlorine in water at the time of sampling is equivalent to the absence of coliforms, and thus that the water is free from pathogens. EPA is not aware of any States that allow public water systems to use the chlorine substitution provisions. EPA has decided not to incorporate the chlorine substitution rule in these proposed regulations, but it has not made a final decision; the Agency will consider incorporating this concept in the upcoming ground water disinfection rule which EPA must promulgate under section 1412(b)(8). In a sense, however, the chlorine substitution policy is incorporated in the proposed coliform rule, since it would allow the States to reduce coliform monitoring for small ground water systems which disinfect their water (see Table 1 of the proposed regulations). EPA requests comment on whether a separate chlorine substitution provision is appropriate.

VIII. Reporting, Public Notification, and Record Maintenance

Requirements for reporting, public notification, and record maintenance are found in proposed 40 CFR 141.31, 141.32, 141.33, respectively.

EPA is proposing to require a water system to report to the State within 48 hours of its discovery a violation of the monthly coliform MCL or coliform monitoring requirement, e.g., failure to monitor. The Agency is further proposing to require the system to report a violation of the long-term coliform MCL to the State within seven days following the end of the month in which the violation occurred. If the system detects fecal coliforms in any sample, EPA is proposing to require the system to report this violation, which is considered a violation of the monthly coliform MCL, to the State within 48 hours of its discovery. EPA believes these relatively short time limits reflect the urgency of the situation and can be met by public water systems.

EPA has amended the public notification requirements in order to incorporate new statutory requirements imposed by section 1414(c) of the Safe Drinking Water Act. The revised public notification regulations require that notices of violation of the MCL for a specific contaminant must include specified language on the adverse health effects of that contaminant. In this notice, EPA is proposing the following language for public notices for violation of either the monthly or long-term coliform MCLs:

> The U.S. Environmental Protection Agency (EPA) sets drinking water standards. To reduce the risk of a water supply being contaminated with disease-causing organisms, EPA has set an enforceable drinking water standard for coliforms. Coliform bacteria are common in the environment and are generally not harmful themselves. Their presence in drinking water, however, indicates that there is a problem at the water treatment plant or in the pipes which distribute the water, and that the water may be contaminated with organisms that can cause disease. Disease symptoms may include headaches, fatigue, diarrhea, cramps, nausea, and jaundice.

The presence of fecal coliforms in treated water is cause for grave concern and is an acute risk to human health because when fecal coliforms are detected, it is likely that human pathogens are present. These human pathogens can cause a disease outbreak among the public served by the affected water system. For this reason, EPA believes that more urgent public notice language is needed when fecal coliforms are detected, compared to that for total coliforms, even though the detection of fecal coliforms constitutes a violation of the monthly MCL for total coliforms. Therefore, EPA is proposing the following language for public notices when fecal coliforms are detected. Systems would use this language rather than the language used for other types of total coliform MCL violations.

> The United States Environmental Protection Agency (EPA) sets drinking water standards. EPA has determined that fecal coliforms are an acute health risk and has established an enforceable requirement that no drinking water samples contain fecal coliforms. The presence of fecal coliforms in treated drinking water is serious because they are usually associated with sewage or animal wastes. Drinking water contaminated with fecal coliforms may place the consumer at high risk for acute diseases like hepatitis, typhoid fever, and dysentery. Acute diseases are marked by a rapid onset of symptoms a few days to a few weeks after consuming contaminated water. The purpose of this notice is to notify the affected public quickly so that they can take appropriate action to protect themselves. Protective action includes boiling the water or using alternate sources of water.
>
> Local and State health authorities are the best source for detailed information on the necessity and proper procedures for boiling drinking water. You will receive notice when the water is safe for drinking.

Because of the acute nature of risk of exposure to water contaminated with fecal coliforms, EPA is proposing to require immediate public notice via the electronic media as specified in 40 CFR 141.32. The form and content of the notice will be specified by that rule. The reason for this immediate notice is to permit a rapid response to avoid outbreaks of disease associated with fecal coliform contamination. The public water system should take immediate measures to correct the situation, including improvements in disinfection and other treatment practices, or any other means immediately available. The State or health officials should be contacted about the necessity for boiling water or seeking alternate sources. This latter action is an important part of the electronic media notice. This will allow the affected public to understand the situation and take appropriate action.

EPA requests comment on whether this language adequately explains the potential health effects of total coliforms and fecal coliforms in drinking water and whether the presence of fecal coliforms should be considered an acute health risk requiring systems to notify the public immediately via the electronic media.

IX. Costs and Benefits of Complying With Coliform Monitoring Requirements

Proposed revisions to the coliform regulations will require more frequent monitoring by small systems than is currently required and, at the same time, change the definition of a "positive" sample. Initially, the result will be a larger number of systems that report coliform violations. Two types of costs will result: (1) Increased monitoring costs; and, (2) remedial action costs to correct the circumstances that cause violations.

Only the monitoring costs are counted in this analysis. Given the nature of coliform contamination, it is likely that the same number of systems would eventually be identified as needing remedial action costs under either the existing or the proposed monitoring regulations. Thus the total costs of remedial actions would be the same except for the loss of time value on some of the funds expended.

Assuming the use of a commercial laboratory for analysis, EPA has

quantified the increment of additional monitoring cost. EPA assumed $15 per sample for analytical and mailing costs for total coliform samples.

For surface water systems, EPA assumed that all affected systems would collect the number of samples specified in the proposal. This is a highest cost assumption, since the proposal gives the State flexibility to reduce the monitoring (e.g., substituting sanitary surveys and other requirements for some monitoring). Costs to ground water systems are evaluated under two assumptions: (1) No exercise of State flexibility (worst case); and (2) maximum exercise of State flexibility—a lowest cost case. A lowest cost case was not estimated for surface water systems because it is not expected that States will reduce monitoring for those systems, even if allowed to under the rule.

Based on these assumptions, the total national cost of the additional monitoring is estimated to be $163 million per year in the highest cost case and $72 million per year in the lowest cost case.

In the highest cost case, $122 million of the total cost would be borne by non-community water systems while $41 million would be borne by community water systems. In the lowest cost case, $47 million of the total cost would be borne by non-community water systems while $25 million would be borne by community water systems.

In the highest cost case, $154 million of total cost would be borne by groundwater systems while $9 million would be borne by surface water systems. In the lowest cost case, $63 million of the total cost would be borne by groundwater systems while the cost to surface water systems would remain the same at $9 million.

In the highest cost case analysis, the proposed regulations would require 11 million additional coliform samples per year. In the lowest cost case, an approximately 3.4 million coliform samples per year would be required of these same systems. Most of these would be required of non-community water systems which would be required to switch from quarterly to monthly sampling. Some 200,000 community water systems and non-community water systems serving a total of 48 million people are affected by these requirements.

The additional monitoring for small systems is designed to ensure that the drinking water meets the standard. While the national costs for the additional samples are rather large, the cost per system is relatively small. The annual cost ranges from $19.00 per household in the smallest size category to less than $1.00 per household in categories exceeding 1,000 people. If the benefits are viewed as the avoidance of waterborne disease, the net benefits at a system level are overwhelmingly positive in all system size categories. Moreover, the benefits expected from this rule are particularly substantial for systems using water sources which are most prone to contamination. Of the total number of outbreaks of waterborne disease, nearly two-thirds occurred in systems using ground water which did not have adequate protection or treatment even though such systems serve only one-third of the U.S. population. Therefore, control of coliform contamination in ground water supplies is especially important as it could potentially eliminate over half of the outbreaks of waterborne disease in the United States. Furthermore, the proposed rule would result in a more rapid identification of a treatment or distribution system deficiency than the current coliform rule, and thereby allow earlier correction; this should result in fewer waterborne disease outbreaks and waterborne illness. Additionally, these benefits would be achieved at a low cost to the water supplier.

This proposal addresses partially the statutory requirement mandating disinfection of all water supplies because many water supply systems will have to disinfect their water to meet the proposed coliform regulations. Compliance with the coliform regulations may become a criterion for obtaining a variance from the disinfection treatment technique requirement. If so, this revised coliform rule would provide the basis, both for relief for small systems with economic difficulties in complying with requirements for disinfection and for protection of the public's health.

The Agency specifically requests comments on the following cost and benefit questions. Are the cost and benefits in the Regulatory Impact Assessment reasonable? How might they be improved? Is it appropriate to only include the costs associated with increased monitoring and not include the remedial action costs which are attributed to the existing coliform regulation or to the forthcoming disinfection regulation covering groundwater systems?

X. State Implementation of Coliform Requirements

A. General

Section 1413 of the Safe Drinking Water Act (SDWA) establishes requirements a State must meet to obtain primary enforcement responsibility (primacy) for public water systems. These include: (1) Adopting drinking water regulations no less stringent than the national primary drinking water regulations (NPDWRs) in effect under sections 1412(a) and 1412(b); (2) adopting and implementing adequate procedures for enforcement; (3) keeping records and making such reports with respect to its activities as EPA may require by regulation; (4) issuing variances and exemptions (if allowed at all by the State) in a manner and under conditions no less stringent than allowed by sections 1415 and 1416 of the SDWA; and (5) adopting and being able to implement an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR Part 142 sets out requirements for States to obtain primacy for the public water system supervision (PWSS) program, as authorized under section 1413 of the SDWA. EPA first promulgated these regulations on January 20, 1976. Since then, the basic regulatory requirements have remained relatively unchanged; however, much has happened in the program. All States, with the exception of Indiana and Wyoming, have applied for and obtained primary enforcement responsibility. In addition, the 1986 amendments to the SDWA made major changes in the program. For example, EPA must promulgate regulations for many additional contaminants and establish a ban on the use of lead pipe, solder, and flux in public water systems and plumbing systems providing water for human consumption.

With both substantial program and statutory changes, portions of the existing Part 142 regulations have become outdated. In response to this, the Agency is developing and evaluating options for addressing the primacy issues associated with implementing the 1986 amendments. This workgroup will be proposing revisions to Part 142 to take into account the program's evolution as well as the new legislative mandates.

One of the deficiencies in the existing Part 142 regulations is that they do not require States with primacy to revise their programs following EPA promulgation of new or revised NPDWRs nor do they provide a procedure for doing so. Thus, EPA intends to propose regulations requiring States to revise their programs following the promulgation of new NPDWRs. The procedure EPA is planning to propose for State program revisions will be similar to the procedure in Part 142 for obtaining initial primacy. The procedure

will also allow EPA to establish requirements specific to a NPDWR at the time it promulgates the NPDWR. It is anticipated that such additional regulation-specific requirements would be necessary only in those situations where the NPDWR provides flexibility to the State on how to achieve the objective of the regulation.

In today's notice, EPA is proposing the changes to Part 142 needed to implement the revisions to the Part 141 coliform regulations also proposed today. The proposed changes are in two areas: (1) revision of State recordkeeping and reporting requirements; and (2) specific requirements States must meet to obtain approval of program revisions to adopt the coliform regulations. They are explained below. EPA solicits comments only on the changes to Part 142 needed to implement the coliform rule; the general changes to Part 142 will be proposed in the near future.

B. State Reporting and Recordkeeping Requirements

EPA is proposing only one change to the existing State recordkeeping requirements to implement the coliform regulation proposed elsewhere in this notice. Under this proposal, States would be required to retain records of any determination that a public water system serving 3,300 or fewer persons may monitor for total coliforms fewer than five times per month. The records would also have to specify the required monitoring frequency for each system which qualifies for these reduced requirements.

EPA is also proposing one change to the existing State reporting requirements to implement the coliform regulation. This proposed change would require States to report to EPA the number of public water systems serving 3,300 or fewer persons which the State has authorized during that reporting period to monitor for total coliforms fewer than five times per month.

C. Specific Primacy Requirements for States to Adopt the Coliform Rule

The procedure which EPA plans to propose for revising State programs following EPA promulgation of new or revised NPDWRs would allow EPA the opportunity to establish requirements specific to a NPDWR at the same time a NPDWR is promulgated (as explained previously and in the surface water treatment requirements proposed elsewhere in today's **Federal Register**). These additional requirements are necessary where the NPDWR provides the State discretion in how to achieve the objective of the regulation. In these instances, State regulations are necessary to augment the national regulations to establish enforceable requirements and to inform the public water systems of the requirements to which they are subject.

Since the NPDWR proposed today for total coliforms provides the State discretion to reduce a system's monitoring requirements, the State would be required to explain how it will implement these provisions (if it chooses to exercise this flexibility). Specifically, to obtain approval of a State's program revision which adopts the coliform rule, the State's application would be required to include the following:

(1) Procedures and/or criteria the State will use in evaluating reports of sanitary surveys to determine whether a public water system serving 3,300 or fewer persons may decrease its required minimum monitoring frequency below that specified in 40 CFR 141.21. These procedures must also specify how a State will determine the reduced monitoring requirements.

(2) If the State allows another party to conduct sanitary surveys in the State, the State must specify in statutes or regulations the qualifications required of a party who conducts sanitary surveys in the State and a procedure for determining whether a party meets those qualifications.

XI. Other Statutory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This proposed action does not constitute a "major" regulatory action because it will not have a major financial or adverse impact on the regulated community. However, EPA did prepare a Regulatory Impact Analysis, which was summarized above; this analysis was submitted to the Office of Management and Budget for review.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires EPA to explicitly consider the effect of proposed regulations on small entities. If there is a significant effect on a substantial number of small systems, means should be sought to minimize the effects.

The Small Business Administration defines a small water utility as one which serves fewer than 50,000 people. Under this definition, this rule would affect about 200,000 small systems.

In developing this regulation, EPA allows flexibility for small systems by allowing a State to reduce the monitoring frequency below five samples/month for (1) systems serving 3,300 persons or fewer which filter and disinfect their surface water or disinfect their ground water; and (2) systems serving 500 persons or fewer which use ground water exclusively and do not practice disinfection, if the State or an agent approved by the State conducts a periodic sanitary survey and the State determines that the results are satisfactory. These considerations reflect EPA's best efforts to minimize the effects upon small systems and thereby comply with this Act.

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. 0270–TC) and a copy may be obtained from Eric Strassler, Information Policy Branch, EPA, 401 M Street SW. (PM–223), Washington, DC, or by calling (202) 382–2709. Submit comments on the information collection requirements to EPA and: Timothy Hunt, Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements.

D. Science Advisory Board

This proposed rule has been submitted to the EPA Science Advisory Board as required by Section 1412(e) of the Safe Drinking Water Act.

List of Subjects in 40 CFR Parts 141 and 142

Administrative practice and procedure, Chemicals, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: October 17, 1987.

Lee M. Thomas,

Administrator.

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Appendix A—Statistical Approach Used in Development of Coliform Rule

Using the binomial distribution, if n samples are collected, and p samples have coliforms present, then the ratio, $r=p/n$ can be used to estimate the actual fraction of the water which is contaminated, ρ. If a sufficient number of samples is examined, the estimate r should be very close to the actual fraction contaminated; if few samples are examined, r may differ from ρ by a considerable amount.

The ratio, r, is assumed to have a binomial distribution with a mean of ρ and a variance of $\rho(1-\rho)/n$. When n is greater than 30, the binomial distribution can be approximated by the normal distribution, and the upper point of a one-sided confidence interval is:

$$L_u = r + t\sqrt{r(1-r)/n},$$

where t = student t (one-tailed) and L_u is the proportion of water containing coliforms. If the confidence interval selected is 95 percent, then $t=1.645$ when the number of samples is very large, but will increase somewhat when there are fewer samples. These t values can be found in statistical tables indicating the percentile of student t distributions. At a 95 percent confidence interval (one-sided), when $n=60$, then

$$L_u = r + 1.671\sqrt{r(1-r)/n}$$

Using this formula, EPA calculated the maximum percentage of water with coliforms (at a 95 percent confidence level)(L_u) for several positive sample values in 60 total samples. EPA also calculated $100-L_u$; this represents the percentage of water which is free of coliforms (Table I). For example, if 2 of 60 samples are positive for coliforms, then there is 95 percent confidence that less than 7.2 percent of the water passing through the distribution system is contaminated, i.e., contains coliforms.

TABLE I.—RELATIONSHIP OF THE NUMBER OF POSITIVES IN SIXTY SAMPLES TO 95 PERCENT CONFIDENCE LEVELS FOR COLIFORM PRESENCE OR ABSENCE

Samples positive	Percent positive	L_u(percent)	$100-L_u$(percent)
2	3.3	7.2	92.8
3	5.0	9.7	90.3
4	6.7	12.1	87.9
5	8.3	14.3	85.7

TABLE I.—RELATIONSHIP OF THE NUMBER OF POSITIVES IN SIXTY SAMPLES TO 95 PERCENT CONFIDENCE LEVELS FOR COLIFORM PRESENCE OR ABSENCE—Continued

Samples positive	Percent positive	L_u(percent)	100 − L_u(percent)
6	10.0	16.5	83.5
7	11.7	18.6	81.4
8	13.3	20.6	79.4

The basic assumptions underlying this presence-absence (frequency-of-occurrence) approach follow:

1. The occurrence of coliform densities of one or more per 100 ml is sporadic and unpredictable.

2. If all the water passing through a distribution system in a defined period of time were collected and examined, some of the 100-ml samples would have one or more coliform bacteria present and some would have no coliforms present. The actual fraction of 100-ml samples with one or more coliforms present is represented as ρ. Since the system cannot examine all of the 100-ml samples of water from a distribution system, it can never know the exact value of ρ; however, it can be estimated.

3. If n samples of water, each 100 ml, are collected and examined and p of the n samples have coliform bacteria present, then p/n, or "r", is an estimate of the frequency-of-occurrence of coliform bacteria at densities of one or more per 100 ml. The parameter r is a fraction between zero and one and has a binomial distribution with mean ρ and variance $\rho(1-\rho)/n$.

4. If n is greater than 30, the binomial distribution of r can be approximated by a normal distribution.

5. The larger the value of n, the smaller the variance of r and, thus, the more precise the estimate of frequency-of-occurrence.

6. The samples used to determine $r=p/n$ are collected randomly over the area of the distribution system and randomly in time.

7. A single confidence interval for r can be used to represent the coliform occurrences over the period of time allowed for evaluation of microbiological water quality.

For the reasons set forth in the preamble, Title 40, Chapter I of the Code of Federal Regulations, is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

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

Authority: 42 U.S.C. 300g–1, 300g–3, 300g–6, 300j–4, and 300j–9.

2. In § 141.2, the following new definitions are added and arranged alphabetically to read as follows:

§ 141.2 [Amended]

* * * * *

"Coliform-positive sample" means a drinking water sample of 100 ml in which at least one coliform bacterium is detected by an EPA-approved analytical method.

"Confluent growth" means continuous bacterial growth covering the entire filtration area of a membrane filter or a portion thereof, in which bacterial colonies are not discrete.

* * * * *

"Near first service connection" means the 20 percent of all service connections nearest the water supply treatment facility, as measured by the water transport time within the distribution system.

* * * * *

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

* * * * *

§ 141.14 [Removed]

3. Section 141.14 is removed.

4. Section 141.21 is revised to read as follows:

§ 141.21 Microbiological contaminant sampling and analytical requirements.

(a) *Routine sampling.* (1) Public water systems must collect coliform samples at sites which are representative of the conditions of the distribution system. The number of such sites sampled during a 12-month period must be either at least three times the number of monthly samples required by Tables 1 and 2 or the total number of service connections, whichever is fewer. For example, a system which must collect 20 samples/month would be required to sample from at least 60 sites during a 12-month period.

(2) Public water systems serving 3,300 or fewer persons must collect at least five samples/month. The State may specify a lower monitoring frequency, but no lower than that specified in Table 1, if:

(i) The system provides filtration for surface water sources in accordance with 40 CFR Part 141, Subpart H, of this Part and disinfection for ground water sources; and

(ii) The State, or an agent approved by the State, conducts a sanitary survey at the frequency specified in Table 1 and the State determines that the results are satisfactory.

(3) States have the discretion to allow systems which do not disinfect their ground water to reduce their monitoring frequency from five samples/month to three samples/month for systems that serve between 301 to 500 persons and to one sample/month for systems that serve between 25 to 300 persons, provided that the following conditions are satisfied:

(i) The State, or an agent approved by the State, conducts a sanitary survey every three years and this sanitary survey demonstrates to the State's satisfaction that the monitoring frequency can be safely reduced; and

(ii) The system demonstrates every three years that no more than five percent of its last 20 or more consecutive samples contained coliforms. These 20 or more samples must have been collected within the previous three years.

(4) Public water systems serving over 3,300 persons must collect samples, at a minimum, at the frequency prescribed in Table 2.

(5) Public water systems that do not provide water year-round need only collect samples each month that the system provides water to the public. They must monitor as specified in Tables 1 and 2, using the estimated population, including transients, served during that month.

(6) The public water system must collect water for detection of coliforms at regular time intervals throughout the month, except that a system which uses ground water exclusively and which serves 3,300 persons or fewer, may collect up to five samples from different parts of the distribution system on a single day.

(7) Special purpose samples, such as those taken to determine whether disinfection practices have been

sufficient following pipe placement, replacement, or repair, shall not be used to determine compliance. Repeat samples are not considered special purpose samples.

(8) Data from all original samples and repeat samples must be included in calculations to determine MCL compliance. All coliform-positive samples must be used in determining compliance with the monthly MCL and the long-term MCL, unless the laboratory establishes that improper sample analysis caused the positive result.

(9) Public water systems which use surface water in part or in total, but which do not practice filtration and disinfection in accordance with 40 CFR Part 141, Subpart H, must collect a sample near the first service connection each day during which the turbidity level exceeds 1 NTU, and analyze it for the presence of total coliforms. Sample results must be included in all MCL compliance calculations. Whenever a sample is coliform-positive, the system must conduct repeat monitoring, as specified in paragraph (c) of this section.

(b) *Analytical methodology.* (1) Public water systems must conduct total coliform analyses in accordance with the analytical methods set forth in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th Edition, Method 908, 908A, and 908B—pp. 872–878 (Multiple-Tube Fermentation Technique), except that 10 fermentation tubes shall be used; Method 908E—pp. 882–886 (Presence-Absence Coliform Test); Method 909, 909A, and 909B—pp. 886–896 (Membrane Filter Technique); or *Microbiological Methods for Monitoring the Environment, Water and Wastes*, U.S. EPA, Environmental Monitoring and Support Laboratory, Cincinnati, Ohio 45268 (EPA–600/8–78–017, December 1978, available from ORD Publications, CERI, U.S. EPA, Cincinnati, Ohio 45268), Part III, Section B 21—2.6, pp. 108–112 (Membrane Filter Methods); Part III, Section B 4.1—4.6.4, pp. 114–118 (Most Probable Number Method), except that 10 fermentation tubes shall be used.

(2) The public water system is required to report the presence or absence of total coliforms in a sample; a determination of coliform density is not required for determining compliance with the MCLs.

(3) The standard sample volume required for analysis, regardless of method, is 100 ml.

(c) *Repeat sampling.* Within 24 hours of being notified that a sample is total coliform-positive, but fecal coliform-negative, a public water system must collect and analyze five repeat samples. The set of five repeat samples must all be collected from the same sampling point as the original sample, except that some may be collected at the next service connection above or below. All five samples must be collected on the same day. If any repeat sample is total coliform-positive, but fecal coliform-negative, the public water system must collect and analyze an additional set of five repeat samples within 24 hours of being notified. The system must repeat this process until either coliforms are not detected in one set of five repeat samples or the system determines that the monthly coliform MCL has been exceeded and notifies the State.

(d) *Fecal coliform requirements.* (1) If any original or repeat sample is positive for total coliforms, the public water system must determine whether the detected coliform(s) is a fecal coliform (see Appendix A for analytical procedure). If it is, the system is out of compliance with the monthly MCL for total coliforms and must:

(i) Report the monthly MCL violation to the State within 48 hours of detection of fecal coliforms; and

(ii) Notify the public in accordance with § 141.32 of this part. For the purposes of § 141.32(a)(1)(iii) of this part, a fecal coliform-positive sample is defined as an acute risk to human health.

(e) *Response to Violation.* (1) A public water system which has exceeded the monthly MCl for total coliforms, or has failed to comply with the coliform monitoring requirements, must:

(i) Report any violation of the monthly MCL for total coliforms or monitoring requirement to the State within 48 hours of its discovery; and

(ii) Notify the public in accordance with § 141.32 of this part.

(2) A public water system which has exceeded the long-term MCL for total coliforms must:

(i) Report the violation to the State within seven days following the end of the month in which the violation occurred.

(ii) Notify the public in accordance with § 141.32 of this part.

(3) The location at which the coliform-positive sample was taken shall not be eliminated from future sampling without approval of the State.

(f) *Heterotrophic bacteria requirements.* To monitor the interference caused by heterotrophic bacteria in analyzing for total coliforms, the following requirements apply:

(1) Any coliform sample that produces a turbid culture in the absence of gas production using the multiple-tube fermentation technique or turbid growth in the absence of an acid reaction in the presence-absence coliform test must be analyzed for the presence of suppressed coliforms, using the analytical methods specified in paragraph (b)(1) of this section.

(2) When a coliform sample exhibits confluent growth or produces colonies "too numerous to count" on the membrane filter or when coliforms are not detectable in the sample described in paragraph (f)(1) of this section, the public water supply must either consider the sample coliform-positive and perform repeat sampling in accordance with paragraph (c) of this section, or declare the sample invalid and collect another sample from the same location as the original sample. The second sample must be analyzed within eight hours of sample collection (up to 30 hours if refrigerated) for both total coliforms and heterotrophic bacteria. The results of the second sample must be used for all MCL compliance determinations. If the coliform test on the second sample is negative, but the heterotrophic bacterial density exceeds 500 colonies/ml, the sample must be considered coliform-positive.

(3) Analyses for heterotrophic bacteria must be conducted in accordance with the Pour Plate Method set forth in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th Edition, Method 907A, pp. 864–866. The incubation temperature must be 35–37 °C and the incubation time must be 48 hours.

Table 1 to § 141.21—Coliform Monitoring Requirements

Ground Water

No Disinfection:

- 25–500 persons: 5 samples/month.[1]
- 501–3,300 persons: 5 samples/month.
- over 3,300 persons: monitoring frequency specified in Table 2.

With Disinfection:

- 25–500 persons: 5 samples/month *OR* a sanitary survey every 5 years and one sample/month.
- 501–3,300 persons: 5 samples/month *OR* a sanitary survey every 5 years and 3 coliform samples/month.
- over 3,300 persons: monitoring frequency specified in Table 2.

Surface Water

With Disinfection Only (No Filtration) [2,3]

[1] State may permit systems serving 25–300 persons to reduce monitoring to 1 sample/month and systems serving 301–500 persons to reduce monitoring to 3 samples/month if (1) sanitary survey results every 3 years are satisfactory, and (2) system has record of compliance with the coliform MCLs and monitoring requirements.

[2] In compliance with 40 CFR Part 141, Subpart H.

Continued

- 25–500 persons: 5 samples/month.
- 501–3,300 persons: 5 samples/month.
- over 3,300 persons: monitoring frequency specified in Table 2.

With Filtration and Disinfection [2]

- 25–500 persons: 5 samples/month *OR* a sanitary survey every 5 years and one sample/month.
- 501–3,300 persons: 5 samples/month *OR* a sanitary survey every 3 years and 3 samples/month.
- over 3,300 persons: monitoring frequency specified in Table 2.

TABLE 2 TO § 141.21—COLIFORM MONITORING FREQUENCY BY POPULATION SERVED

Population served	Samples/ month	Population served	Samples/ month
25 to 3,300	[1] 5	85,001 to 90,000	90
3,301 to 5,800	6	90,001 to 95,000	95
5,801 to 6,700	7	95,001 to 100,000	100
6,701 to 7,600	8	100,001 to 200,000	130
7,601 to 8,500	9	200,001 to 300,000	160
8,501 to 10,000	10	300,001 to 400,000	180
10,001 to 15,000	15	400,001 to 500,000	200
15,001 to 20,000	20	500,001 to 600,000	220
20,001 to 25,000	25	600,001 to 700,000	240
25,001 to 30,000	30	700,001 to 800,000	260
30,001 to 35,000	35	800,001 to 900,000	280
35,001 to 40,000	40	900,001 to 1,000,000	300
40,001 to 45,000	45	1,000,001 to 1,200,000	320
45,001 to 50,000	50	1,200,001 to 1,400,000	340
50,001 to 55,000	55	1,400,001 to 1,600,000	360
55,001 to 60,000	60	1,600,001 to 1,800,000	380
60,001 to 65,000	65	1,800,001 to 2,000,000	400
65,001 to 70,000	70	2,000,001 to 2,500,000	420
70,001 to 75,000	75	2,500,001 to 3,000,000	440
75,001 to 80,000	80	3,000,001 to 3,500,000	460
80,001 to 85,000	85	3,500,001 to 4,000,000	480
		over 4,000,000	500

[1] Unless reduced by the State as provided in 40 CFR 141.21(a).

Appendix A to § 141.21(d).—Procedure for Transferring a Total Coliform-Positive Culture to Fecal Coliform EC Medium

Public water systems shall conduct fecal coliform analysis in accordance with the following procedure. For the multiple-tube fermentation technique and presence-absence (P–A) coliform test cited in 40 CFR 141.2(b), shake the coliform-positive presumptive tube or P–A bottle vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile and EC broth to determine the presence of total and fecal coliforms, respectively. For the membrane filter procedure, cited in 40 CFR 141.21(b), remove the membrane containing the total coliform colonies from the substrate with a sterile forceps and carefully curl and insert the membrane into a tube of EC Medium broth. Gently shake the inoculated EC tubes to insure adequate mixing and incubate in a waterbath at 44.5 ±0.2 °C for 24 ±2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC Medium is described in *Standard Methods for the Examination of Water and Wastewater*, American Public Health Association, 16th Edition, Method 908C—p. 879, para. 1. Only the presence or absence of fecal coliforms must be reported; a determination of fecal coliform density is not required.

5. Section 141.32 is amended by adding paragraphs (a)(1)(iii)(E) and (e)(11) and (12) to read as follows:

§ 141.32 Public notification.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

(E) The presence of fecal coliforms in the water distribution system.

* * * * *

(e) * * *

(11) *Total coliforms* (to be used when there is a violation of § 141.63(b), but not § 141.21(d)). The U.S. Environmental Protection Agency (EPA) sets drinking water standards. To reduce the risk of a water supply being contaminated with disease-causing organisms, EPA has set an enforceable drinking water standard for coliforms. Coliform bacteria are common in the environment and are generally not harmful themselves. Their presence in drinking water, however, indicates that there is a problem at the water treatment plant or in the pipes which distribute the water, and that the water may be contaminated with organisms that can cause disease. These diseases may cause various symptoms, including headaches, fatigue, diarrhea, cramps, nausea, and jaundice.

(12) *Fecal coliforms* (to be used when there is a violation of § 141.21(d)). The United States Environmental Protection Agency (EPA) sets drinking water standards. EPA has determined that fecal coliforms are an acute health risk and has established an enforceable requirement that no drinking water samples contain fecal coliforms. The presence of fecal coliforms in treated drinking water is a serious concern because they are usually associated with the presence of sewage or animal wastes. Drinking water contaminated with fecal coliforms may place the consumer at high risk for acute diseases like hepatitis, typhoid fever, and dysentery. Acute diseases are marked by a rapid onset of symptoms a few days to a few weeks after consuming contaminated water. The purpose of this notice is to notify the affected public quickly so that they can take appropriate action to protect themselves. Protective action includes boiling the water or using alternate sources of water. Local and State health authorities are the best source for detailed information on the necessity

[3] System must collect at least 1 coliform sample near the first customer on each day that a turbidity measurement, as required in 40 CFR Part 141.74, exceeds 1 NTU.

and proper procedures for boiling drinking water. You will receive notice when the water is safe for drinking.

6. Section 141.52 is added to read as follows:

§ 141.52 Maximum contaminant level goal for microbiological contaminants.

MCLGs for the following contaminants are as indicated:

Contaminants	MCLG
(1) Total coliforms	0

7. Section 141.63 is added to read as follows:

§ 141.63 Maximum contaminant levels for microbiological contaminants.

(a) The effective date of § 141.63(b) is 18 months from the date of publication of the final rule.

(b) *Total coliforms.* The maximum contaminant levels (MCLs) for total coliforms are based on the presence or absence of coliform bacteria, which is determined as follows:

(1) *Monthly MCL.* (i) For public water systems that analyze 39 or fewer samples/month for coliforms, the occurrence of less than two coliform-positive samples/month constitutes compliance with the monthly MCL.

(ii) For public water systems that analyze 40 or more samples/month for coliforms, the occurrence of five percent or less coliform-positive samples/month constitutes compliance with the monthly MCL.

(2) *Long-term MCL.* (i) For systems that analyze fewer than 60 samples/year for coliforms, the occurrence of five percent or less coliform-positive samples in the most recent 60 samples constitutes compliance with the long-term MCL. Compliance with the MCL must be calculated within seven days of the end of each month in which sampling has occurred.

(ii) For systems which have not collected 60 samples by the effective date of the long-term MCL, no more than one coliform-positive sample in the most recent 39 or fewer samples, or two coliform-positive samples in the most recent 40–59 samples constitutes compliance with the long-term MCL.

(iii) For systems that analyze at least 60 samples/year for coliforms, the occurrence of five percent or less coliform-positive samples constitutes compliance with the long-term MCL. The determination of compliance must be based on the most recent 12 months in which sampling has occurred and shall be calculated within seven days of the end of each month that sampling occurs.

(iv) Public water systems which have violated the long-term MCL remain in noncompliance until coliforms are not detected in five percent or less of the most recent 20 or more samples.

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for Part 142 continues to read as follows:

Authority: 42 U.S.C. 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, and 300j–9.

2. Section 142.14 is amended by adding a new paragraph (d)(5) to read as follows:

§ 142.14 Records kept by States.

* * * * *

(d) * * *

(5) Records of any determination under § 141.21(a) of this title that a public water system serving 3,300 or fewer persons may monitor for total coliforms fewer than five times per month and the substitute monitoring requirements.

3. Section 142.15 is amended by adding a new paragraph (b)(4) to read as follows:

§ 142.15 Reports by States.

* * * * *

(b) * * *

(4) A summary report showing the number of public water systems serving 3,300 or fewer persons which the State has authorized under § 141.21(a) of this title during the reporting period to monitor for total coliforms fewer than five times per month, including the substitute monitoring requirements.

* * * * *

4. Section 142.16 is amended by adding a new paragraph (b) to read as follows:

§ 142.16 Special primary requirements.

* * * * *

(b) *Total coliforms.* In addition to the general requirements for a program revision application, a program revision application submitted for the Administrator's approval which adopts the requirements of the national primary drinking water regulation for total coliforms must contain:

(1) The procedure and/or the criteria the State will use in evaluating the results of sanitary surveys to determine that a public water system serving 3,300 or fewer persons may decrease its monitoring requirements from the minimum specified in § 141.21(a) and the method for determining substitute monitoring requirements;

(2) The text of the State statutes or regulations which specify:

(i) The qualifications required of a party (other than the State) who conducts sanitary surveys in the State;

(ii) The procedure for determining that the party proposing to conduct the sanitary survey meets those qualifications.

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Part IV

Department of Transportation

Urban Mass Transportation Administration

Charter Service Questions and Answers; Notice

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

Charter Service Questions and Answers

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice.

SUMMARY: This notice publishes questions and answers regarding the Urban Mass Transportation Administration's revised charter service regulation, 49 CFR Part 604. Since publication of the final rule on April 13, 1987, UMTA has received numerous questions regarding the application of the regulation. The following frequently asked questions regarding the application of the regulation and UMTA's response to them are published today to provide guidance to recipients of UMTA assistance, private charter operators, and other interested parties. This notice does not amend or in any way affect the regulation. The charter service regulation remains in effect, as published on April 13, 1987.

DATE: The charter service regulation, 49 CFR Part 604, went into effect on May 13, 1987 (52 FR 11916, April 13, 1987).

FOR FURTHER INFORMATION CONTACT: Rita Daguillard, Office of the Chief Counsel, Room 9316, UMTA, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1936.

SUPPLEMENTARY INFORMATION: UMTA's revised charter service regulation, 49 CFR Part 604, went into effect on May 13, 1987. The principle behind the regulation is that federally funded equipment and facilities should not be used to compete unfairly with private charter operators. The regulation implements sections 3(f) and 12(c)(6) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. app. 1602(f) and 1608(c)(6)). The regulation prohibits recipients of UMTA assistance from providing any charter service using UMTA funded equipment or facilities if there is at least one private operator willing and able to provide the charter service. The regulation is subject to five limited exceptions, which are set out at 49 CFR 604.9.

Since publication of the final rule on April 13, 1987, UMTA has received numerous questions regarding the application of the regulation. This notice contains frequently asked questions regarding the application of the regulation and its exceptions and UMTA's response to the questions. They are being published in the **Federal Register** to provide guidance to recipients of UMTA assistance, private charter operators, and other interested parties. This notice does not amend or in any way affect the regulation. The charter service regulation remains in effect, as published at 52 FR 11916, April 13, 1987.

Applicability

1. *Question:* To what types of charter operations do UMTA's revised regulations apply?

Answer: The preamble to the regulations, at page 11918, states that they apply only to charter service performed by operators using UMTA funded facilities and equipment. If a recipient sets up a separate company that has only locally funded equipment and facilities and operates these with only local funds, or the recipient is able to maintain separate accounts for its charter operators to show that the charter service is truly a separate division that receives no benefits from the mass transportation division, then the charter rule would not apply.

A subsidiary question is that of the applicability of the rule to any entity, public or private, that receives UMTA assistance through an UMTA recipient. In answering this question, it is necessary to look at the language of the rule's enabling legislation, specifically section 3(f) of the UMT Act, which states that its restrictions apply to the recipient "or any operator of mass transportation equipment" for the recipient. It is UMTA's opinion that this language provides little room for discretion and requires that all entities, public or private, that operate for a recipient must be covered by the rule to the extent that the entity provides charter service using UMTA funded facilities or equipment. Consequently, all operators, whether public or private, under contract or receiving assistance through the recipient, are subject to the charter rule but only to the extent that the operator uses UMTA funded equipment or facilities to provide charter service. In short, the rule treats all operators for a recipient as a recipient to the extent that they stand in the recipient's shoes.

Procedures for Determining if There Are Any Private Willing and Able Operators

2. *Question:* What is the process by which private operators are determined to be "willing and able" under the regulations?

Answer: The procedure for determining if there are "willing and able" private operators is described in 49 CFR 604.11. If a recipient transit agency was not providing charter service on May 13, 1987, the effective date of the new rule, it must publish a notice at least 60 days before it will begin charter service. If a recipient was providing charter service on the effective date of the rule and desires to continue doing so, it must have completed its public notification process not more than 90 days thereafter, or by August 11, 1987.

To start the process, the recipient must publish the notice in a newspaper within its geographic service area. A copy of the notice must be sent to all private charter operators within the service area and to any private operator that requests it, as well as to the American Bus Association (ABA) and the United Bus Owners of America (UBOA). The distribution to UBOA and the ABA ensures that the notice will be delivered to the largest possible number of private operators. The notice must describe the charter service desired to be performed and must give private operators at least 30 days to submit evidence indicating that they are "willing and able" to perform the service. The notice must not require anything beyond: (1) A statement that the private operator has the desire to provide the service described and the physical capability to do so, and (2) submission of documents showing that it possesses the requisite legal authority. The recipient may cease its review of the evidence submitted by private operators once it has been foreclosed from providing the proposed service, i.e., once it has been determined that there is at least one private operator willing and able to provide the service. The transit agency must notify private operators of its "willing and able" determination within 60 days of the deadline for their submission of evidence.

3. *Question:* Section 604.11(c) specifies that a grantee's notice of the charter service to be provided must be limited to a description of the days, times of day, geographic area, and categories of revenue vehicle for service. This description may not provide a private operator with sufficient information upon which to base a decision whether or not the private operator is truly willing to provide the service. For a variety of reasons, a private operator may be unwilling or unable to service certain types of clientele. May the content of the notice be expanded in such cases to allow the inclusion of information which would be helpful to the private operator in deciding whether to respond?

Answer: It is UMTA's intention to allow grantees some flexibility in the way that charter services are described. However, a notice must not be worded

in a way that would discourage a response from any person who meets the minimum criteria for a willing and able operator. Regardless of how the grantee describes its own service, the grantee must make it clear in the notice that private operators are not required to respond in similar detail. Instead, private operators are required to show only that they have the requisite legal authority and the desire to perform the service plus at least one bus or van. To facilitate a better exchange of information than is possible through the formal notice process, grantees are encouraged to engage private operators in a dialogue through other means as well, such as other written communications, conferences or informal meetings. Grantees may also provide in their notices a telephone number which private operators may call to obtain further information. Through coooperation, it should be possible to ensure that critical consumer needs for charter service will be met.

4. *Question:* When grantees publish their descriptions of the charter services they wish to provide, can their services be described in terms of trip purposes or certain groups (e.g., Boy Scouts to the ball game)?

Answer: Though the regulations neither specifically permit nor prohibit these descriptions, UMTA encourages their use, since certain trips are of the type that private enterprise traditionally declines to provide. To the extent that such descriptions allow private operators to decide whether they desire to perform a certain trip, they are useful to the "willing and able" determination process.

5. *Question:* How does a private charter operator demonstrate that it is "willing"?

Answer: In response to the charter notice published by the transit agency, the operator need only express in writing its desire to perform charter service generally in the service area specified by the transit agency. The preamble to the new regulation explains that a private charter operator is considered "willing" even if it refuses to provide charter service to some customers in the affected area.

6. *Question:* How does a private charter operator demonstrate that it is "able"?

Answer: The charter operator must show two things—that it has the physical capability of providing the categories of revenue vehicles specified in the notice and that it has the required legal authority to operate charter service in the area where it desires to provide such service.

In order to prove that it is "able" to provide the service, the charter operator does *not* have to demonstrate that it has any particular capacity level; in other words, a charter operator is as willing and able if it has one bus as it would be if it had one hundred buses. Also, there are only two categories of revenue vehicle that the transit agency can designate in its notice—buses and vans. Under the UMTA regulations, a bus is a bus whether it is an intercity bus, a transit bus, a school bus, or a trolley bus. A private operator does not have to demonstrate that it has any particular type of bus in order to be considered "able." Finally, the "willing and able" concept is not intended to include any duration limitations; in other words, the fact that a private operator may be required by state regulation to charge for a minimum five hour trip does not mean that it is not "able" to provide for charter of lesser duration.

7. *Question:* Can brokers be considered "willing and able" private operators?

Answer: No. The preamble to the regulations, at page 11922, specifically states that UMTA has decided not to include brokers in the definition of "willing and able." This is because brokers, who have no equipment of their own, must rely on other parties to provide service. Such an arrangement could result in uncertainty for the customer, since there would never be a guarantee that the broker could provide the necessary equipment. For this reason, UMTA requires that an operator must have at least one bus or van to be determined "willing and able."

8. *Question:* Can the public authority be held responsible if a "willing and able" private operator is involved in a serious accident and lawsuits are the result?

Answer: When a public authority determines that a private operator is "willing and able," it is merely attesting that the private operator has the requisite type of vehicle and the legal authority necessary for performing charter service. In making its determination, the public authority is not acting as a guarantor of the safety or quality of the private operator's service. Consequently, the transit authority cannot be held responsible for any accident or injury caused by the private operator when performing charters.

9. *Question:* Can grantees go through the publication process and the determination of whether there is a "willing and able" private operator, more than once a year?

Answer: While the regulations state that the publication process should be an annual one, there are circumstances which would justify more frequent publication. These include cases, such as a suspension of legal authority, in which the private operator is unable to provide service. Grantees who find themselves faced with such situations should repeat the publication process as outlined in § 604.11 of the regulation.

10. *Question:* What if a private operator retracts its statement that it is willing and able to provide charter service less than a year after the determination is made. Must a recipient repeat the public participation process before resuming charter service?

Answer: If a private operator retracts its willingness to provide charter service less than a year after it was determined willing and able, and no other private operators in the service area have been determined "willing and able," a recipient may resume charter service without re-publishing a notice *for the rest of that year only.* At the end of this period, if the recipient wishes to continue providing charter service, it must repeat the public participation process to determine if there are any other willing and able operators in the area.

In determining whether there are any other willing and able private operators in their service area, recipients should go back to review all of the responses to their charter notices. If, for instance, a recipient received several responses to its notice but ceased the review process after determining that one operator was willing and able, it should, before resuming charter service, complete the process to ensure that there are no other willing and able operators.

11. *Question:* May a recipient operate a particular charter trip if all the "willing and able" operators in its service area agree to allow it to do so?

Answer: An UMTA recipient may operate charter trips, even though it has determined that there are "willing and able" private operators in its service area, when there is an agreement to this effect between the recipient and the private operators. The recipient's annual public charter notice must, however, have provided for this type of agreement. If it did not, the grantee must, before undertaking the charter trip in question, amend its charter notice to specifically refer to such agreement. UMTA believes that arrangements of this type are in keeping with the spirit of cooperation between recipients and the private sector that the regulations seek to foster.

12. *Question:* What if a recipient determines that there is no "willing and able" operator despite clear evidence to the contrary?

Answer: Under 49 CFR 604.13, a recipient has no discretion in making its "willing and able" determination. If a private operator submits documentary evidence that it has the desire to provide service and the ability to supply vehicles, as well as the necessary legal authority, it must automatically be determined "willing and able." Moreover, a recipient may look behind the evidence submitted by a private charter operator only if the recipient has reasonable cause to believe that some or all of it has been falsified. The remedy when a recipient unjustifiably fails to make the "willing and able" determination is a complaint to the UMTA Chief Counsel, who will direct the parties to attempt to resolve the dispute informally, and failing that, will rule on the complaint in approximately 90 days.

13. *Question:* Must a recipient publish a notice of intention to provide charter service even when it is aware of at least one willing and able private operator within its geographic area?

Answer: It is UMTA's position that a recipient need not publish a notice of its willingness to provide charter service if the recipient is aware of at least one willing and able private provider within its geographic area. Such a recipient, however, may not provide any charter service if it fails to complete the public participation process, except that the recipient may engage in leasing to a private charter operator as provided in the exception at 49 CFR 604.9(b)(2). A recipient that has not conducted a public participation process is not precluded, solely on those grounds, from qualifying for a special events exception as described at 49 CFR 604.9(b)(4). It should be noted, however, that a recipient seeking a hardship exemption under 49 CFR 604.9(b)(3) must provide written notice to all private charter operators it has determined "willing and able," and allow them 30 days to submit written comments on the exemption request. UMTA will not grant a hardship exception until this process is completed.

14. *Question:* Does a recipient's failure to complete the public participation process constitute sufficient grounds to warrant scrutiny of the recipient's charter activities to a greater degree than might otherwise be required?

Answer: UMTA does not believe that a recipient's failure to carry out a public participation process necessarily warrants greater scrutiny of the recipient's charter activities than the charter activities of a recipient that has completed the public participation process. This is especially true since the only charter activities that a recipient which has not completed the notification process would be allowed to perform are leasing to a private operator which lacks capacity or accessible equipment, or service under a special events exception. Thus, if a recipient is in conformity with the regulations, its charter activities will necessarily be limited. If, however, private associations or operators have reason to believe that any UMTA recipient, whether or not it has completed the public participation process, is engaging in impermissible charter operations, they may monitor such operations and report on them to UMTA, which will investigate and, if need be, take enforcement action.

15. *Question:* What is UMTA's position with regard to recipients that refuse to follow the public notification process of the regulations because, "we are certain that the type of charter work we do would be of no interest to any private carrier.

Answer: Until a recipient actually engages in charter service in violation of the regulations, there are no grounds for complaint. However, such recipients may not engage in charter service without completing a public participation process, except for leasing their vehicles to a private provider or providing authorized service for special events after obtaining an UMTA waiver in accordance with § 604.9(b)(4) of the regulations.

16. *Question:* May a recipient hold a public hearing in connection with its public participation process for determining whether there is a willing and able private provider?

Answer: UMTA has no objection to a recipient's decision to hold a public hearing in connection with determining whether there is a willing and able private provider. The hearing, however, must be in addition to and not a substitute for the public notice requirements of section 604.11. Moreover, in order to demonstrate that the hearing was conducted in a fair and equitable manner, the recipient is advised to make a copy of the hearing transcript available to any party that requests it. UMTA believes that the recipient's willingness to consider a private provider's oral assertion that the private provider is willing and able to perform charter service, offers an additional means for determining whether the latter is willing and able. However, § 604(c)(5) of the regulations requires that in addition to a statement of willingness, the private operator must demonstrate that it has the required physical capability and the legal authority to perform charter service. For this reason, it is important that grantees which conduct such hearings complete their review of written submissions from private operators as provided in the regulations.

17. *Questions:* What if a transit agency simply fails to conduct, or complete, a "willing and able" determination process and continues to provide charter service?

Answer: 49 CFR 604.17 provides that the UMTA Chief Counsel has the authority to order remedies for such violations, including withholding of subsidies. Where there has been a "continuing pattern of violation," the Chief Counsel may bar the recipient from any further Federal transportation aid.

18. *Question:* When a private operator has been determined to be "willing and able" to provide service, but is actually unwilling or unable to provide a particular charter trip, may an UMTA grantee fill the void and provide the service?

Answer: The grantee may not provide the service unless an exception applies, e.g., the grantee provides service or vehicles through a contract or lease with a private operator who lacks vehicle capacity or accessibility, the grantee provides service with locally funded facilities which have been entirely separated from UMTA-funded ones, the grantee is given a special events exception, etc.

19. *Question:* Are grantees required to give a member of the public the name of a "willing and able" provider if the public calls the granteee for charter services?

Answer: UMTA does not require granteees to give members of the public who request it the name of a "willing and able" private provider. The intention of the regulation is not to create a list of private operators, but rather to determine if there is a at least one willing and able to provide charter service. UMTA recognizes, however, that this information may be beneficial to the public, and encourages grantees to provide it. Grantees who have a roster of several private providers may use their discretion in determining which names to give to a member of the public who calls. They may give out all, some, or only one of the names on their list of "willing and able" operators. However, UMTA will view any attempt on the part of the recipient to establish an exclusive subcontracting or brokering relationship with or steer customers toward one particular operator, as a contravention of the regulations, and will in such cases take appropriate action.

Exceptions to the Regulations

20. *Question:* Are there any exceptions under the regulations which permit a recipient to provide charter service with UMTA funded equipment and facilities?

Answer: Yes, 49 CFR 604.9 sets out five limited exceptions to the basic prohibition in the rule. These exceptions, and their limits, are described below.

Exception #1: A recipient may provide charter service to the extent that there are no "willing and able" private operators. This can occur only after the process described above has been completed.

Exception #2: A recipient may enter into a contract to provide charter equipment to a private operator when the operator needs equipment in excess of its capacity.

Service provided by the recipient under this exception must be under contract to a private charter operator, who is responsible for the direction and control of the recipient's equipment while the service is being provided. Also, while the regulation does not prevent the recipient from turning over the charter service that is previously provided directly to one or more private operators, the systematic steering of customers toward one particular operator is against the spirit and intent of the regulation. UMTA would encourage recipients to channel their previous charter business to private operators in a fair and equitable manner.

Another situation discouraged by UMTA is that in which a private operator subrecipient contracts out its charter business to an affiliate that is not entirely separate or independent. This is because the regulations apply to subrecipients of UMTA funds which use UMTA-funded equipment or facilities, just as it does to recipients. The rule does not apply, however, to subrecipients not using UMTA-funded equipment or facilities, or to independent companies operated by subrecipients. In order to ensure that its charter operations are not affected by the prohibition of the rule, a subrecipient should set up an entirely distinct company to handle its charter operations, or at the very least keep separate accounts for its charter business.

Exception #3: This exception allows recipients to contract with private operators to provide "equipment accessible to elderly and handicapped persons" when the private operator does not have such equipment. Again, the contract would never be between the recipient and the customer, but always between the recipient and the private operator. Exception #3 is similar to Exception #2, and the same limitations apply to both.

Exception #4: A recipient in a non-urbanized area (i.e., an area with a population of less than 50,000) may petition UMTA to provide charter service directly when charter service provided by willing and able charter operators would create a hardship on the customer because the private operators "are located too far from the origin of the charter service" or where the private operators must, by State regulation, impose minimum durations longer than the desired trip length. Before any such exception is granted, the recipient must petition the UMTA Chief Counsel to grant such an exception, and give notice of its request for an exception to any private operator it has determined "willing and able." The private operators then have 30 days to submit written comments to the recipient on the request. The question of what is "too far" from the charter point of origin will be decided by the Chief Counsel on a case-by-case basis.

With regard to the minimum duration exception, the important point is that this only applies when minimum duration charges are required by State regulation; however, the exception does not apply if the minimum durations "are the result of an industry practice." Thus, there should be few cases where this exception would apply. Moreover, the exception only applies for charters up to the minimum duration required by State law or regulation.

Exception #5: Recipients may petition the UMTA Administrator for an exception to provide charter service directly for "special events" when the private operators do not have the capacity to provide all necessary service. UMTA has not defined "special events," but intends that it cover only events of an extraordinary and singular nature, such as the Pope's visit or the Pan American Games. Regularly scheduled yearly or periodic events, such as an Independence Day fireworkers display or ham operators' convention, would not qualify for the exception. Any exception granted by the Administrator under this exemption is only good for the particular special event specified.

21. *Question:* Special events are sometimes planned with less than ninety days advance notice. Will UMTA consider requests for special events exceptions on less than a ninety-day schedule?

Answer: The regulations reflect the congressional directive that certain events of a singular nature be given special consideration. They do not provide for a waiver of the requirement that a petition for a special events exception be submitted at least 90 days prior to the event. However, those events mentioned in the Report of the Senate Committee on Appropriations, i.e., the Pan American Games or visits by foreign dignitaries, were so obvious in nature and occurred so close to the effective date of the Rule that they would not require a ninety-day advance notice. (See, Senate Report 99–423, to accompany H.R. 5205, the Department of Transportation and Related Agencies Appropriations Bill, 1987, 99th Cong. 2d Sess., Aug. 19, 1986, p. 66). UMTA will continue to work with grantees to ensure that adequate charter service is provided for truly special events.

22. *Question:* If a grantee intends to petition UMTA for an exemption to provide service in a non-urbanized area (section 604.9(b)(3) of the regulation), must the grantee also have complied with the general public notice requirements (section 604.11)?

Answer: Yes, compliance with § 604.11 is a first step for *any* grantee wanting to provide charter service under the hardship exception of § 604.9(b)(3). The provisions of § 604.11 are designed to enable a grantee to determine whether any private operator is willing and able to provide the desired charter service. If no willing and able operator exists, then the UMTA grantee may provide the service as long as it does not interfere with mass transportation, and the grantee does not need to request a hardship exception. Therefore, the initial inquiry into the availability of willing and able operators is required.

23. *Question:* Must a grantee comply with the public notice requirements of § 604.11 before seeking a special events exemption under § 604.9(b)(4)?

Answer: No, compliance with § 604.11 is not a prerequisite to obtaining a special events exemption under § 604.9(b)(4). However, UMTA would expect a recipient applying for a special events exception to have at least contacted private operators in their service area to determine to what extent these operators are unable to provide the service in question.

Charter Service

24. *Question:* When a recipient falls within one of the exceptions described above, may it provide any charter service it chooses as long as it is covered by the exception?

Answer: No, charter services provided under one of the exceptions must be "incidental" charter service.

"Incidental" is described as charter service which does not "interfere with or detract from" providing mass transportation service or does not "shorten the mass transportation life of the equipment or facilities" being used.

UMTA has given the following examples of what charter service would not be considered "incidential": service performed during peak hours; service which does not meet its fully allocated cost; service being used to count toward meeting the useful life of any facilities or equipment; and service provided in equipment that is in excess of an UMTA-approved spare ratio. It is important to note that these are examples only, and UMTA will decide what is "incidental" on a case-by-case basis.

25. *Question:* If the customer insists on a particular type of equipment that the willing and able to private operator does not have, for example, a trolley lookalike, articulated or double-decker bus, may the grantee provide the service?

Answer: The regulation recognizes only two categories of vehicles, i.e., buses or vans. Trolleys, artics, double-deckers and other types of specifically modified equipment are placed in one of these categories and are subject to the same rules as all other equipment. Therefore, the grantee would be able to provide the service only if one of the regulatory exceptions applies.

26. *Question:* When a grantee is providing charter service with locally funded buses or vans, may the equipment be stored and maintained in UMTA-funded facilities?

Answer: In a recent opinion involving charter operations by the Manchester (NH) Transit Authority, the Chief Counsel stated that under the new charter regulations, if there is a willing and able private provider, a transit authority may *not* allow its separate charter entity to use, on an incidental basis, the UMTA-funded garage in connection with its charter operations, even if the separate charter service were to pay the transit authority rent and fees for such incidental use. This prohibition is based on the language in 49 CFR 604.9(a), which explicitly states: "To the extent that there is one * * * private operator, *the recipient is prohibited from providing charter service with UMTA-funded equipment* or *facilities* * * *" (Emphasis supplied). It should be noted that the term "facilities" in the context of the charter regulations applies to offices and other administrative locales. This rule, however, applies only to the use of facilities by public transit authorities and their charter entities. Thus, if a grantee has excess space in its UMTA-funded garage, it may lease that space to a private operator on an incidental basis.

Moreover, any maintenance expenses incurred by a grantee's separate charter entity must be paid for exclusively out of local funds. Thus, any expense for items such as depreciation, utilities, labor, etc., incurred by the entity in providing charter service must be accounted for separately and not charged to any UMTA grant. To avoid accounting difficulties and possible violations of UMTA regulations, grantees should consider contracting for the maintenance of the locally funded vehicles rather than doing the work in-house.

27. *Question:* Do the following types of service fall within the definition of "charter service" for the purposes of the regulation:

a. Service that is provided for free but otherwise meets the criteria in the definition of charter?

Answer: Cost is irrelevant in determining whether service is mass transportation or charter service. Thus, service which meets the criteria set by UMTA, i.e., service controlled by the user, not designed to benefit the public at large, and which is provided under a single contract, will be charter regardless of the fact that it is provided for free.

As a general rule, free charter service would be "non-incidential" since it does not recover its fully allocated cost, and could not be performed by an UMTA recipient, even under one of the exceptions to the charter regulations. However, UMTA will consider certain types of free charter service to be "incidental." An example of this would be free service to an economically disadvantaged group when there is no private operator willing and able to perform the service. Since UMTA is concerned about the diversion of mass transit revenues and the reduction in mass transportation life resulting from service provided below cost, it will, when presented with a complaint, consider such service "incidental" charter only in a very limited number of cases.

b. Service that is exclusively for the elderly and handicapped but otherwise meets the definition of charter?

Answer: Exclusive service for the elderly and handicapped, even when provided on a demand responsive basis, is "mass transportation" under the definitions in the UMT Act and is not considered to be charter. It should be noted that to qualify as "exclusive," the service in question must be open to all elderly or handicapped in a particular geographic service area and not restricted to a particular group of elderly or handicapped persons.

c. Service to regularly scheduled but relatively infrequent events (sporting events, annual festivals) that is open door, with the routes and schedules set by the grantee and with fares collected from individuals, whether or not the individual fares are subsidized by a donor?

Answer: No. Such service does not meet the charter criteria of being under a single contract, for a fixed charge, exclusive use, or with an itinerary controlled by a party other than the grantee. However, such services would appear to be excellent candidates for privatization since they may very well be self-supporting without the need for public subsidies. In accordance with UMTA's private enterprise policy, grantees should examine the interest and capability of the private sector in providing the service.

d. Service within a university complex according to routes and schedules requested by the university?

Answer: If the service is for the exclusive use of students and the university sets fares and schedules, the service would be charter. However, such service operated by a recipient which sets fares and schedules and is open door, though it serves mainly university students, would be mass transportation.

e. An UMTA recipient proposes to provide the following "group demand" service using federally funded buses. Certain groups, e.g., the handicapped or employees of a common workplace, would contract with the transit authority for the service. Each individual would pay his or her own fare at the recipient's basic rate. The buses would pick up the riders at designated stops and remain in service on whatever routes require them. None of the trips would be devoted to members of a particular group, and anyone else would be free to board the buses. Can this be regarded as "charter service" under the new regulations?

Answer: The service described above would probably be "mass transportation" as defined on page 11920 of the preamble. First, the service is under the control of the recipient, who is responsible for setting the route, rate, schedule, and deciding the equipment to be used. Second, it is open to the public and is not closed door. Anyone wishing to ride the service is free to do so. Moreover, to the extent that the trip is for the benefit of clients of a human service agency and is open door, it would, in accordance with the example provided on page 11920 of the preamble

to the regulations, be "mass transportation."

28. *Question*: How should grantees calculate "mass transit useful life" less "charter life" of vehicles?

Answer: Any reasonable method of calculation is sufficient (e.g., average hours per week, month, or year subtracted from total hours; average miles per week, etc., subtracted from total miles). The calculation does not necessarily have to be done for each particular bus, and averages can be applied to an entire fleet. For instance, a grantee that provides 3 days of charter service per year per bus, would subtract 36 days from the 12-year useful life of each individual bus. Where, however, a transit authority reserves a particular bus or fleet of buses for charter service, it should keep manifests which record the charter life of the vehicles in question. This calculation applies to all buses a grantee is currently using, whether purchased before or after the effective date of the new charter regulations.

29. *Question*: How should grantees calculate "mass transit useful life" less "charter life" of facilities?

Answer: The "useful life" concept applies only to buses and not to facilities. However, in cases where grantees lease facility space to private bus companies, such leases must be "incidental" to mass transit use. In the case of facility space, this means that in no instance should charter buses have priority over mass transportation buses.

30. *Question*: Does the charter regulation prohibit peak hour charter?

Answer: Peak hour charter is cited on page 11926 of the preamble as one instance of non-incidental use. It is, however, cited as an example only, and the language of the preamble cannot be interpreted as a prohibition. In a complaint citing peak hour use by an UMTA recipient or subrecipient, UMTA would review the facts and make a case-by-case determination.

31. *Question*: Are monthly, quarterly, or yearly trips organized by social service groups for their clients, to be considered "charters" or "mass transportation"?

Answer: Such trips would generally be considered charters. However, in the preamble to the new regulations, at page 11920, UMTA has indicated that periodic trips organized by a social service agency can be considered "mass transportation" if they are "open door" and the recipient can put on any rider in addition to the agency's clients. There are many cases which fall in between these two categories, and, in a complaint on the subject, UMTA will examine each case individually. It should be noted, however, that UMTA would consider the insitutition or substantial modification of such service of this sort as an opportunity for the public authority to solicit the participation of the private sector.

32. *Question*: When a private operator requests buses from a grantee to run a given charter service, what is a grantee's responsibility to assure the circumstances fit the limited exceptions set forth in § 604.9(b)(2)?

Answer: The above-cited regulation allows grantees to contract with private operators only when and to the extent that the private operator lacks equipment that is accessible to the elderly and handicapped or lacks capacity. UMTA will allow its grantees to use their reasonable, good faith judgment as to whether the requirements of the regulations have been met, and, in the absence of apparent fraud or falsified statement, will not require them to look behind a request for the use of their buses by a private operator.

33. *Question:* Many small transit systems are departments of city or local government rather than separate authorities or commissions. As such, they are occasionally requested by another city department to make a bus available for some use, typically to take members of the city council and staff on a tour of that department's facilities or projects, or some other trip in connection with the department's operations. Would these movements be considered "charters" within the definition of the rule?

Answer: Yes. The trips described above share most of the characteristics of "charter service" provided on page 11919 of the preamble. Specifically, the service is: (1) By bus; (2) to a defined group of people; (3) there are no single contracts between the recipient and individual riders; (4) the patrons have the exclusive use of the bus; (5) the riders have the sole authority to set the destination. Since the regulations do not include an exception for a particular category of customers, such as state entities, a transit authority that wishes to provide service of this type would be obliged to comply with the requirements of the charter regulations.

34. *Question:* May a recipient provide charter service if it is under court order to do so? Suppose, for instance, that a court issues an order requiring a recipient to provide charter service to transport a jury to view a scene in connection with a court case.

Answer: UMTA's charter regulations prohibit a recipient from providing such service using UMTA-funded facilities or equipment if there is at least one willing and able private operator in its geographic area. If there is one such willing and able private provider, the recipient may perform charter service only if it qualifies for an exception to the regulation and operates the service on an incidental basis. In this case, the recipient might be able to supplement the capacity of a private operator, under the exception set out in 49 CFR 604.9(b)(2).

If the recipient is in a non-urbanized area, there is a possibility that there might be no willing and able private operator, in which case the recipient would be authorized to provide incidental charter service directly to the customer. In addition, a recipient in a non-urbanized area might be eligible for a hardship exception under the terms of 49 CFR 604.9(b)(3). Unless the recipient meets one of the exceptions, it cannot provide charter service without jeopardizing its Federal transit assistance. UMTA presumes that a court would not intentionally issue an order whose implementation might necessarily cause an entity to violate Federal regulations. For this reason, UMTA would urge a court seeking to impose upon a recipient an order to provide charter service, to secure service from a private operator if a private operator has been determined willing and able.

Charter Agreement

35. *Question:* Are Metropolitan Planning Organizations (MPO's) that pass funds through to transit authorities and other city entities which operate transit services, required to submit a charter agreement to UMTA?

Answer: 49 CFR 604.3 provides that the charter regulations apply only to certain specified applicants and recipients of Federal transportation assistance. MPO's which perform no transit services and simply serve as a conduit for Federal funds, would not be required to submit the charter agreement described in section 604.7 of the regulations. However, MPO's which contract directly with a private operator to run mass transit service, would be subject to the requirement.

36. *Question:* Do transit authorities need to file a charter agreement if they do not intend to provide charter service and only intend to lease buses to private operators when private operators lack capacity or accessible vehicles?

Answer: Under § 604.7 of the charter regulations, all applicants for UMTA assistance, with the exception of section 16(b)(2) grantees, must file a charter agreement, whether or not they intend to provide charter service.

Definitions

37. *Question:* What is the meaning of the term "geographic charter service area" which appears in § 604.11(b)(1) of the regulations?

Answer: The term "geographic charter service area" used in § 604.11(b)(1), which deals with the publication of charter notices, refers to the geographic area in which the recipient desires to provide charter service. The preamble, at page 11927, explains that if the geographic area is large enough, the notice may have to be published in more than one newspaper in order to cover the entire area.

38. *Question:* What is the meaning of the term "too far" which appears in § 604.9(b)(3)(ii)?

Answer: Section 604.9(b)(3) describes the exception that recipients in non-urbanized area may apply for when State imposed minimum durations or the private operators' distance from the origin of charter service would result in a hardship to the customer. In the latter case, the recipient may apply for an exception when it believes that the private operator is located at too great a distance from the origin of service to provide reliable and affordable service to the customer. UMTA has no fixed guidelines for determining what is "too far," but will examine the information or materials provided by a recipient before deciding to grant or deny the exception.

39. *Question:* How does UMTA define "sightseeing"?

Answer: The preamble to the charter regulation states that UMTA applies to "sightseeing service" the Interstate Commerce Commission's definition of "special service." In keeping with this definition, "sightseeing service" is held to be service offered and arranged by the recipient, and contracted individually with each patron, and not with patrons as a group. This is in contrast to "charter service," which is considered the one-time provision of service, of which the rider, and not the recipient, has control. In order to distinguish between the two types of service, the preamble offers the following example: If a customer comes to the recipient and contracts for the exclusive use of the vehicle, the service would probably be charter service. On the other hand, if the recipient offers individual contracts to anyone to ride to a destination that the recipient has selected, the service would probably be sightseeing service. 52 FR 11920 and 11921, April 13, 1987. Sightseeing service is not subject to the restrictions placed on charter service by the new regulations, and may be provided by a recipient if it is incidental to the provision of mass transportation.

However, recipients should not attempt to convert charter service into sightseeing as a way of circumventing the regulations. UMTA would be suspicious or concerned about incidents in which recipients operate service which, though it conforms to the above criteria, is without pre-arranged schedules and is specifically designed to accommodate the desires of a particular group. Likewise, UMTA would not consider the fact that an operator charges individual fares or a group rate based on the number of passengers as sufficient to make the service sightseeing when none of the other characteristics of sightseeing are present. In such cases, UMTA would consider the service to be charter and not sightseeing.

Subcontracting With Private Operators

40. *Question:* Section 604.9(b) of the regulations allows a recipient to subcontract with a private operator which lacks capacity or accessible vehicles. Must a recipient subcontract every time a private operator requests that it do so?

Answer: No. UMTA has allowed recipients complete discretion in deciding if and with whom they wish to subcontract. The preamble states that ". . . the regulation does not require that the recipient contract with the private operator. The recipient may refuse to provide any equipment or services to the private charter operators," 52 FR 11924, April 13, 1987.

41. *Question:* Does a transit agency have to follow the notification requirements of § 604.11 every time a private operator wants it to subcontract equipment to be used for charter service?

Answer: No. The notice requirements of § 604.11 only affect recipients that wish to provide charter service. If a recipient has no desire to provide direct charter service, but only subcontracts equipment at the request of a private operator, it is not required to file a charter notice.

42. *Question:* How would UMTA's subcontracting requirements apply to the following case: A private operator contracts to take a charter group from State A to State B and tour in that State, a considerable distance away. A substantial number of the passengers wish to fly instead of making the entire trip by charter bus. When the operator gets to State B, may he go directly to the transit authority in State B to lease the buses he needs to accommodate the passengers who flew?

Answer: If, when the operator gets to State B, all his buses remaining in State A are in use, he has a capacity problem and may subcontract with the transit authority under the exception in § 604.9(b)(2)(i). If his buses in State A are not in use, he may subcontract with the transit authority only after making a reasonable and diligent effort to lease extra buses from private providers in State B. UMTA has established no guidelines as to what constitutes a reasonable and diligent effort, but will rely on the private providers good faith. However, it would be desirable, if he has planned his trip with sufficient lead time, that the private provider contact the ABA or UBOA for the names of private providers from whom he could lease the extra buses needed once he has reached his destination.

Special Categories of Vehicles and Users

43. *Question:* The charter regulation at 49 CFR 604.5(d) differentiates buses from vans. Is there any difference in the way the regulation applies to each category of vehicle?

Answer: While the regulation recognizes buses and vans as separate categories of vehicles, it applies equally to each mode. As is explained in the preamble at page 11920, the service which section 12(c)(6) of the UMT Act distinguishes from mass transportation is merely charter service, not charter bus service. Since the regulation seeks to ensure that UMTA-funded equipment and facilities are used for mass transportation, either vehicle mode, to the extent that it provides mass transportation, may be included within its purview.

Nonetheless, when UMTA published its revised charter service regulation on April 13, 1987, it issued a request for comments on the appropriateness of including vans. See the preamble to the regulation at 52 FR 11920, April 13, 1987. The 45-day period which UMTA had provided for comments ended on May 28, 1987. UMTA is now evaluating the comments that have been received to determine whether it should continue to include vans in the scope of the regulation. However, unless and until UMTA decides that the regulation will affect only buses and not vans, it will apply in the same manner to each category of vehicle.

44. *Question:* Is there a special exception in the charter regulation for charitable or non-profit groups?

Answer: UMTA's charter service regulation does not contain a special exception for charitable or non-profit groups. The drafters of the regulation, however, were aware of the concerns of

such groups. As stated in the preamble to the regulation at 52 FR 11924, April 13, 1987, it is UMTA's opinion that private charter operators will be able to adapt their service to the needs of various categories of customers, if necessary by tailoring prices to meet the buyer's limitations. For this reason, UMTA believes that there is little reason to include any exceptions for the non-profit customer.

However, given the concerns expressed about the charter regulation by certain non-profit groups and the congressional guidance set forth in the House Report language accompanying the FY 1988 Department of Transportation and Related Agencies Appropriations Bill (H.R. 2890), UMTA is in the process of re-evaluating its position. UMTA is in fact preparing to issue a notice of proposed rulemaking which will address this issue and, if it concludes that an exception for charitable or non-profit groups is necessary, will propose a change in the regulations by the end of the present calendar year.

45. *Question:* Is there a special exception in the charter regulations for emergency situations?

Answer: UMTA will allow recipients to perform otherwise prohibited charter service in the case of a serious emergency, in which time is of the essence in transporting victims or rescue workers. The types of emergency situations contemplated under this exception are man-made or natural disasters, such as fire, chemical spills, floods or hurricanes. The need to transport persons to meet social obligations or protocol type demands, would not be considered an emergency.

46. *Question:* UMTA funds have, in many instances, purchased trolley vehicles for use by public transit authorities. In some cases, these are the only trolley vehicles for use in a particular geographic service area. What should be the position of a private operator, who is pleased with the present UMTA charter regulations, but which is faced with inquiries for charter use of trolley vehicles that can be obtained only from the public authority?

Answer: While UMTA has no authority to direct the activities of private operators, UMTA suggests that if a private operator does receive many requests for the use of trolley vehicles, then the operator might consider acquiring an appropriate number of vehicles, either by lease or purchase. However, UMTA does not consider it essential to the public interest to take measures to assure the availability of UMTA-funded buses to meet public demand for a particular type of vehicle.

47. *Question:* Is there a way in which private operators may approach agencies that have trolleys to arrange to lease or purchase those trolley vehicles?

Answer: UMTA's charter service regulations provide an exception at 49 CFR 604.9(b)(2) that would permit a recipient to lease its vehicles on an incidental basis to a private operator. If the trolley buses or other vehicles in question are accessible to elderly and handicapped passengers, a recipient may honor a private operator's request for the use of its accessible vehicles provided the recipient is capable of meeting its primary mass transportation obligations. 49 CFR 604.9 (b)(2)(ii). However, if the trolley buses in question or other vehicles are not accessible, then the recipient may not honor the private operator's request to use non-accessible vehicles unless the private operator has exhausted its own capacity to provide service in its own vehicles. 49 CFR 604.9(b)(2)(i). Within these restrictions, a private operator is free to pursue the possibility of leasing an UMTA recipient's trolley buses.

In addition, UMTA requires its recipients to dispose of UMTA-funded equipment and facilities when such equipment and facilities are no longer needed for mass transportation. Therefore, it would be entirely appropriate for a private operator to express an interest to an UMTA recipient in acquiring the recipient's trolley buses if the recipient finds it no longer needs trolley buses to fulfill its mass transportation obligations.

Alfred A. DelliBovi,

Deputy Administrator.

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Tuesday
November 3, 1987

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 815, 816 and 817

Performance Standards for Roads at Surface and Underground Mining Operations and Coal Exploration Operations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 780, 784, 815, 816 and 817

Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Reclamation and Operation Plan; Performance Standards; Roads

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

ACTION: Proposed rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior (DOI) proposes to amend its rules governing roads at surface and underground mining operations and coal exploration operations. The provisions for roads are being proposed to replace rules that previously were suspended. This proposed rule defines a road, establishes a road classification system, and sets forth performance standards that permit regulatory authorities to approve designs tailored to local needs. Also, revised requirements for the reclamation and operation plan are being proposed to reflect changes in the performance standards for roads.

DATES:

Written comments

OSMRE will accept written comments on the proposed rule until 5 p.m. Eastern Time on January 12, 1988.

Public hearings

Upon request, OSMRE will hold public hearings on the proposed rule in Washington, DC; Denver, Colorado; and Knoxville, Tennessee at 9:30 a.m. local time on January 5, 1988. Upon request, OSMRE also will hold public hearings in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, and Washington at times and on dates to be announced prior to the hearings. OSMRE will accept requests for public hearings until 5:00 p.m. eastern time on December 22, 1987.

Individuals wishing to attend but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

ADDRESSES:

Written Comments

Hand-deliver to the Office of the Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L Street NW., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240.

Public Hearings

Department of the Interior Auditorium, 18th and C Street NW., Washington, DC; Brooks Towers, 2d Floor Conference Room, 1020 15th Street, Denver, Colorado; and the Hyatt House, 500 Hill Avenue SE., Knoxville, Tennessee. The addresses for any hearing scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, or Washington will be announced prior to the hearing.

Requests for Public Hearings

Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT"** by the time specified under **"DATES."**

FOR FURTHER INFORMATION CONTACT: Robert A. Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC. 20240; Telephone: 202–343–1502.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments

Written comments submitted on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where practicable, commenters should submit five copies of their comments (see **"ADDRESSES"**). Comments received after the close of the comment period or delivered to addresses other than those listed above (see "DATES") may not be considered or included in the Administrative Record for the final rule.

Public hearings

OSMRE will hold public hearings on the proposed rule on request only. The time, dates, and addresses scheduled for the hearings at three locations are specified previously in this notice (see **"DATES"** and **"ADDRESSES"**). The time, dates, and addresses for the hearings at the remaining locations have not yet been scheduled, but will be announced in the **Federal Register** at least 7 days prior to any hearings held at these locations.

Any person interested in participating at a hearing at a particular location should inform Mr. Wiles (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing of the desired hearing locations by 5:00 p.m. Eastern Time on December 15, 1987. If no one has contacted Mr. Wiles to express an interest in participating in a hearing at a given location by that date, the hearing will not be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record.

If a hearing is held, it will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSMRE requests that persons who testify at a hearing give the transcriber a written copy of their testimony. To assist OSMRE in preparing appropriate questions for clarification of issues, OSMRE also requests that persons who plan to testify submit to OSMRE at the address previously specified for the submission of written comments (see **"ADDRESSES"**) an advance copy of their testimony.

II. Background

Environmental protection performance standards governing roads used for access into an across the mine site during surface coal mining and reclamation operations are set forth in sections 515(b)(17) and (18) of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1265(b)(17) and (18). Section 516(b)(10) of the Act imposes these same requirements on underground mines with such modifications as are necessary to accommodate the distinct differences between surface and underground mining.

The permanent regulatory program promulgated on March 13, 1979, contained provisioins pertaining to road construction, maintenance and postmining conditions. The rule at 30 CFR 701.5 defined roads for surface mining operations and established a 3-tier road classification system (44 FR 15320, (1979)). Specific provisions for each classification were established at 30 CFR 816.150 through 30 CFR 816.176 (44 FR 15416–15421 (1979)). At the same time, similar requirements for underground mines were established at 30 CFR 817.150 through 817.176 (44 FR 15442–15447 (1979)).

The permanent program rules were challenged in a suit filed before the U.S. District Court for the District of Columbia. As a result, the court remanded the rules to OSMRE for

further consideration because the Secretary had not given adequate notice that he was considering a classification system. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144, slip op. at 32–36 (D.D.C. May 16, 1980). As a result of the court decision, OSMRE suspended its permanent program rules for roads (45 FR 51547 (1980)).

The permanent program rule suspended in 1980 was followed by a new rule published May 16, 1983 (48 FR 22110), which gave regulatory authorities greater flexibility as to the details of road design. Upon issuance, the revised permanent program rule for roads was once again challenged in the U.S. District Court for the District of Columbia. In response to the challenge, the court remanded section 816.150(a) to OSMRE. *In re: Permanent Surface Mining Regulation Litigation II (Round II)*, No. 79–1144, slip op. at 24–28 (D.D.C. Oct. 1, 1984). The court held that OSMRE, in promulgating the classification system in 30 CFR 816.150(a), violated the Administrative Procedure Act (APA), 5 U.S.C. 553, by not providing adequate notice and opportunity to comment. Slip op. at 28.

Subsequently, in an amended order filed December 10, 1984, the court remanded all of the rules governing roads which were dependent upon the road classification system. OSMRE then suspended those rules as well as the definition of *road* at § 701.5 (50 FR 7278 (1985)). The definition was suspended to give OSMRE an opportunity to reconsider all the provisions in the rules affecting the performance standards for roads.

This proposed rule would replace the suspended rules. In many cases OSMRE believes, based on a reconsideration of the issues involved, the legislative history of the Act, and the administrative record of these rules, that the language promulgated in 1983 is the most effective means of meeting the requirements of the Act. For these cases, identified below, OSMRE is proposing repromulgating the provisions of the 1983 rule. OSMRE is interested in receiving comments on these provisions, as well as the new provisions proposed below.

Section 516(b)(10) of the Act requires OSMRE to consider the differences between surface and underground mining when promulgating rules governing the surface impacts of underground mining. OSMRE has not identified any differences between roads for surface and underground mines that necessitate different provisions. Therefore, the proposed provisions for surface mining (Part 816) and for underground mining (Part 817) are identical. Except for the section heading designation, in which both surface and underground rules are cited, the following discussion references only the surface rules. Comments are requested on any differences OSMRE may have overlooked.

The proposed rule defines the term *road* and addresses the design, construction, use and maintenance of roads used in surface coal mining operations and in coal exploration operations. The preamble for the 1983 rules (48 FR 22110–22121 (1983)) should be consulted for additional information on the provisions that are being reproposed.

Revisions also are proposed in the permit application requirements for roads at surface and underground mining operations to reflect the changes proposed in the performance standards. The revisions proposed for surface mining (Part 780) and for underground mining (Part 784) are identical. Except for the section heading designation, in which both surface and underground rules are cited, the following discussion references only the surface rules. Comments are requested on any differences OSMRE may have overlooked.

III. Discussion of Proposed Rule

A. Section 701.5 Definitions: Road.

The proposed definition of *road* is similar to the 1983 rule, but is revised to describe more specifically what portions of the affected area would be subject to the performance standards for roads. The proposed rule would define *road* to mean a surface right-of-way for purposes of travel by land vehicles, including mining equipment, used in surface coal mining and reclamation operations or coal exploration. The term *road* would encompass the entire area and structures within a surface right-of-way that is constructed, used, reconstructed, improved or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles leading to transfer, processing or storage areas. The term would specifically exclude pioneer roads, temporary routes used for constructing access or haul roads, ramps and routes of travel within the immediate mining area (discussed below) and within excess spoil or coal mine waste disposal areas. For additional information on the definition of *road* see the preamble for the final rule published May 16, 1983 (48 FR 22110 *et seq.*).

Pioneer roads were excluded from the definition of roads in the 1979 rule and in the 1983 rule. The Secretary's exclusion of pioneer roads from the definition of a road in 1983 was challenged on the basis that pioneer roads are constructed to gain access to mining operations. OSMRE has reviewed the issue and believes that pioneer roads provide preliminary access for the construction of permanent access and haul roads or equipment roads and not for mining purposes. Once a pioneer road fulfills its limited purpose, it is either replaced by a primary or ancillary road or reclaimed. However, pioneer roads or construction roads are "surface coal mining operations" subject to the other performance standards of the regulations.

The proposed road definition would also be revised by changing the 1983 rule language "immediate mining-pit area" to "immediate mining area." The word "pit" refers to the area where coal is being removed from the seam. OSMRE believes that there are other areas in the vicinity of the pit that should not be subject to the performance standards for roads because they are subject to frequent surface changes. These include areas where topsoil and overburden are being moved and areas undergoing active reclamation. OSMRE intends the term "immediate mining area" to refer to such areas of frequent surface change.

Many areas in a mining operation contain routes of travel that are moved every few days as the mining advances during coal removal, and as the operator works in coal waste disposal and spoil areas. These routes have a short life and would not be included in the definition of road or subject to the road performance standards, but would be subject to the other performance standards of the regulations that apply to all surface coal mining operations.

Temporary routes within spoil or coal mine waste disposal areas would be excluded from the definition of road according to an agreement by the Secretary in *Round II* (slip op. at footnote 14). The industry plantiffs had contended and OSMRE agreed that it was not reasonable to require roads within coal spoil and refuse disposal areas to be surfaced with nonacid- or nontoxic-forming substances, since these areas often contain acid- and toxic-forming materials. In addition, all of the surface drainage from these areas is controlled by siltation structures and treatment facilities, where necessary, to mitigate any potential adverse environmental affects effectively.

Finally, the phrase "within the affected area," which appeared in the 1983 rule would be deleted from the proposed definition because all road activities are in the permitted area and thus the phrase is superfluous.

B. Sections 780.37/784.24 Road Systems.

Proposed § 780.37 contains new permit application requirements which would specify the plans and drawings an operator is required to submit on each road within the proposed permit area. The section also discusses certification of primary roads and the establishment of standard design plans by the regulatory authority.

This section has not been revised since 1979 and the proposed revision would provide consistency with the performance standards of 30 CFR Chapter 7, Subchapter K, promulgated in 1983. They would apply to all roads, as defined by § 701.5, used for surface coal mining and reclamation operations. Since the provisions proposed in § 780.37 would apply only to roads, OSMRE is proposing to move the provisions in the existing rule that apply to conveyors and rail systems to a new § 780.38 discussed below. To reflect this change, OSMRE is proposing to change the title of § 780.37 from "Transportation facilities" to "Road systems."

Sections 780.37 (a)/784.24(a) Plans and drawings.

Proposed § 780.37(a) would require that the permit application include plans and drawings for each road to be constructed, used or maintained within the proposed permit area. OSMRE believes the information in the plans and drawings would enable the regulatory authority to assess the impacts resulting from any road that would be constructed or used as part of the surface mining operation and determine whether the operation and reclamation plan would be effective in mitigating as much of the cumulative impacts on the environment as possible, consistent with the purpose of the Act.

Proposed paragraph (a)(1), which is the same as the 1979 rule, requires the applicant to submit a map, and, as appropriate, cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings, and drainage structures. OSMRE expects that the amount of detail submitted by the applicant under this paragraph would be appropriate to the classification of the road and to the extent of the projected impact from the specific feature. For example, for an ancillary road, less detail would be required than for a primary road, where the drawings and specifications would be quite extensive. See § 816.150(a) for the proposed definitions of *ancillary road* and *primary road.*

Sections 780.37(a)(2), (a)(3), (a)(5) and (a)(6) are new and would require permit applicants to submit additional design information on each road. Proposed paragraph (a)(2) would require drawings and specifications of each proposed road that would be located in the channel of an intermittent or perennial stream to give the regulatory authority the information necessary to approve the road, as required by the performance standard in proposed § 816.150(d)(1).

Proposed paragraph (a)(3) would require that the drawings and specifications for each proposed stream ford that would be used as a temporary route provide the regulatory authority with sufficient information to review the stream ford and decide whether to approve it, as required by the performance standard in proposed § 816.151(c)(2).

Proposed paragraph (a)(4) would reinstate the language of § 780.37(c) of the permit requirements as adopted in 1979. This paragraph would require a description of measures that the applicant would take to obtain the approval of the regulatory authority for alteration or relocation of a natural drainageway, as required by the performance standard in proposed § 816.151(d)(5).

Proposed paragraph (a)(5) would require drawings and specifications for each low-water crossing, to enable the regulatory authority to maximize the protection of the stream in accordance with the performance standard in proposed § 816.151(d)(6). A low-water crossing resembles a bridge in that water flows under the structure at normal stream level, but high water goes over the structure and makes it impassable during storm or flood events. See the following preamble discussion for § 816.151(d)(6) for additional information on low-water crossings.

Proposed paragraph (a)(6) would require information on the applicant's plans to remove and reclaim each road, and the schedule to be followed for road reclamation, to ensure consistency with the performance standards. This information would not be required for a road that is proposed to be retained for use under an approved postmining land use.

Two provisions previously in the rule at § 780.37(a) are not being proposed for repromulgation. These permitting provisions were promulgated in 1979; however, the corresponding performance standards were removed from 30 CFR Part 816 in 1983. One provision is the requirement for a report of appropriate geotechnical analysis for alternative specifications for cuts on steep slopes. The other is the requirement for a description of measures to be taken to protect the inlet end of a ditch relief culvert if a rock headwall is not used. These provisions are not being reproposed because there are no equivalent performance standards.

Sections 780.37(b)/784.24(b) Primary road certification.

OSMRE is proposing to move the provision on design certification for primary roads from the performance standards at § 816.151(a), where they were in the 1983 rule, to the permit requirements at § 780.37(b), since design certification is not, strictly speaking, a performance standard, but a requirement of the permit approval process. The proposed provision would require that the plans and drawings for each primary road be prepared by or under the direction of a qualified registered professional engineer experienced in the design and construction of roads. It would also require that the engineer certify that the design meets the performance standards of 30 CFR Chapter VII, current, prudent engineering practices, and any design criteria established by the regulatory authority. The phrase "current, prudent engineering practices" includes those practices well-established by engineering principles and widely recognized by experts with experience in the subject.

The proposed rule also would allow design and certification by a qualified registered professional land surveyor experienced in the design and construction of roads in any State which authorizes land surveyors to certify the design of primary roads. This provision is based on the November 4, 1983, amendment to the Act which authorizes land surveyors to prepare and certify cross sections, maps and plans (Sec. 115, Pub. L. 98–146, 97 Stat. 938 (1983)). The amendment provides that "(n)ot withstanding section 507(b)(14) of the Surface Mining and Reclamation Act of 1977 (Pub. L. 95–87), cross sections, maps or plans of land to be affected by an application for surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans."

Before a land surveyor could certify the design of a primary road under this rule, State law also would have to grant corresponding authority.

Sections 780.37(c)/784.24(c) Standard design plans.

Proposed § 780.37(c) is a new section that would allow the regulatory authority to establish engineering design standards for primary roads through the State program approval process, in lieu of the engineering tests that otherwise would be performed to establish compliance with the minimum static safety factor of 1.3 for all primary road embankments. Suitable engineering design standards would be those that are accepted in the engineering community as the basis for constructing stable roads, and are known to assure proper performance through testing and past practice. OSMRE believes that this provision would enable the regulatory authority and the operator to save time and effort during the design and review of road plans, and also would ensure protection of the environment through the application of standards that have proven effective for the conditions prevalent in each State.

C. Sections 780.38/784.30 Support facilities.

Previously, § 780.37 generally required that each permit application contain a detailed description of each road, conveyor or rail system to be constructed, used or maintained within the permit area. Some of the requirements in the section applied only to roads; others applied to roads as well as to conveyors and rail systems. As discussed previously, this proposed rule would limit § 780.37 exclusively to requirements for roads. The requirements for conveyors and rail systems would be moved to proposed § 780.38 for clarity. In addition, the coverage of new § 780.38 would be expanded to include not only conveyors and rail systems, but also other transportation facilities and support facilities in general.

This rule also would expand new § 780.38 to cover support facilities in general. Although existing 30 CFR Part 780 contains a number of requirements applicable to support facilities, the existing rules do not contain a general requirement that a permit application include plans and drawings for support facilities that would be sufficient to demonstrate compliance with § 816.181. To remedy this deficiency, proposed § 780.38 would apply to all support facilities in addition to the conveyors and rail systems covered by previous § 780.37.

Proposed § 780.38 would include the specific permit application requirements for all support facilities covered by § 816.181 of the performance standards. A permit application would have to contain a description, plans and drawings showing the details of each facility. The plans and drawings would include a map, appropriate cross sections, design drawings, and specifications sufficient to demonstrate compliance with § 816.181. Other more general permit application requirements applicable to support facilities elsewhere at 30 CFR 780.14(b)(1) would remain unchanged.

D. Section 815.15(b) Road standards for coal exploration.

Proposed § 815.15(b) would require all roads or other transportation facilities used for coal exploration to comply with the applicable provisions of 30 CFR 816.150, 816.180 and 816.181. The changes from the 1983 rule are explained below.

Section 815.15(b), as published on September 8, 1983 (48 FR 40636), required all roads or other transportation facilities used for coal exploration to comply with the applicable provisions of 30 CFR 816.150 (roads—general), 816.151 (primary roads), 816.180 (utility installations), and 816.181 (support facilities). Thus, the performance standards in the existing rule for §§ 816.150 and 816.151, as discussed below, for the use, construction, reconstruction, maintenance and reclamation of roads used for surface coal mining activities applied to roads used for coal exploration. OSMRE proposes that because the amount of coal or spoil transported during coal exploration operations is small, it is not necessary for roads used for coal exploration to meet the standards of § 816.151 for primary roads. OSMRE believes that § 816.150 provides sufficient protection for the environment during coal exploration, and thus, is proposing to delete from § 815.15(b) the reference to §§ 816.150(a) and 816.151.

Under section 512(a) of the Act, 30 CFR 815.15 applies only to "coal exploration activities which substantially disturb tbe natural land surface." Thus, a road must comply with the applicable provisions of 30 CFR 816.150 only to the extent that the coal exploration activities substantially disturb the land where the road is located. OSMRE has defined the term "substantially disturb" in 30 CFR 701.5.

OSMRE believes that routine maintenance of an existing road used for coal exploration is not a substantial disturbance requiring the road to be reclaimed in accordance with the performance standards of section 515 of the Act. To use an existing road that is in poor condition due to lack of maintenance, a coal exploration operator may need to blade the road surface, replace some culverts or do other minor routine maintenance. Such routine maintenance of an existing road would not be considered substantial disturbance of the natural land surface that would require reclamation of the road.

E. Sections 816.150/817.150 Roads: General.

Proposed § 816.150 would apply to all roads as defined by 30 CFR 701.5. It would include a road classification system, performance standards, design and construction limits, provision for design criteria and provisions on road location, maintenance and reclamation. The proposed rule is similar to the 1983 rule, and the preamble for that rule (48 FR 22110–22121 (1983)) provides additional information on its provisions.

Sections 816.150(a)/817.150(a) Road classification system.

Proposed § 816.150(a) would classify all mine roads as either primary or ancillary. The classification is identical to that in the rule that was remanded by the District Court in *Round II* (slip op. at 28), and suspended by OSMRE on February 21, 1985 (50 FR 7276). OSMRE believes that a two-tiered system is needed so that roads can be regulated based on their potential for causing environmental damage. OSMRE is especially interested in receiving comments on whether it is reasonable to make this distinction, as well as on what specific requirements that apply to primary roads would not need to be applied to ancillary roads.

Primary and ancillary roads are distinguished in the rule on the basis of purpose and frequency of use. Primary roads would be those used for transporting coal or spoil; frequently used for access or for other purposes for periods in excess of six months; or to be retained as part of the approved postmining land use. Vehicles using primary roads would frequently be large and carry heavy loads. Primary roads have the greatest potential for adverse environmental impacts.

Roads used to transport coal or spoil, regardless of the frequency or length of use, and any other road which is frequently used for a period in excess of six months would be considered primary roads. This six month period sets a reasonable limit between short- and long-term usage.

Ancillary roads would be all roads not designated as primary. Vehicles using such roads are likely to be small and would generally not be used for carrying heavy loads. OSMRE has not identified specific types of roads in the rule as ancillary because it would not be possible to make an all-inclusive list. Examples of ancillary roads are those which provide access to locations for hydrologic sampling, equipment maintenance, monitoring or other similar uses.

Additional discussion of the basis for the distinction between primary and ancillary roads can be found in the preamble to the 1983 rule, at 48 FR 22116.

Sections 816.150(b)/817.150(b) Performance Standards.

Proposed § 816.150(b) would establish performance standards that operators must meet when locating, designing, constructing, reconstructing, using, maintaining and reclaiming roads associated with surface coal mining operations as defined by 30 CFR 701.5. The proposed performance standard in paragraph (b)(1) would require vegetating or otherwise stabilizing all exposed surfaces in accordance with current prudent engineering practices to control or prevent erosion, siltation, and the air pollution attendant to erosion.

The proposed standards in paragraphs (b)(2) through (b)(7) would require an operator to control or prevent damage to fish, wildlife or their habitat and related environmental values; control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area; neither cause nor contribute, directly or indirectly, to the violation of State or Federal water quality standards applicable to receiving waters; refrain from seriously altering the normal flow of water in streambeds or drainage channels; prevent or control damage to public or private property; and prohibit the use of acidic or toxic substances in road surfacing.

The proposal is identical to the 1983 rule except for the following changes:

(1) The provision in paragraph (b)(1) on controlling air pollution attendant to erosion would specify that measures such as watering, or chemical or other dust suppressants be considered to control road dust caused by wind or movement of equipment. To a certain degree, § 816.150(b)(1) would duplicate 30 CFR 816.95, which applies to all surface coal mining activities and requires that all exposed surface areas be protected and stabilized to effectively control air pollution attendant to erosion.

In response to concerns raised by the Environmental Protection Agency, OSMRE wishes to clarify that air pollution attendant to erosion includes, among other things, road dust, as well as dust occurring on other exposed surfaces. OSMRE's performance standards require surface stabilization measures to control the occurrence of such dust. To ensure that operators intend to implement such measures, OSMRE's permitting rules at 30 CFR 780.15 and 784.26 require each permit application to include a plan enumerating the surface stabilization measures the operator will employ to control dust. As with all portions of the permit application, the dust control plan is subject to public scrutiny and comment, and, if inadequate, to revision.

(2) Requirements formerly in § 815.150(b)(5) to minimize the diminution to or degradation of the quality or quantity of surface- and ground-water systems would not be included in the proposed rule because proposed paragraphs (b)(3), (b)(4) and (b)(5), as well as existing provisions in §§ 816.41 through 816.45 would protect the quality and quantity of water systems adequately.

(3) In proposed paragraph (b)(5), which specifies that roads must refrain from seriously altering the normal flow of water in stream beds or drainage channels, the term "significantly" from paragraph (b)(6) of the 1983 rule would be changed to "seriously" to reflect the wording of the Act.

(4) In proposed § 816.150(b)(6), which generally requires mining roads to be located, designed, constructed, reconstructed, used, maintained and reclaimed to prevent or control damage to public or private property, OSMRE is proposing to specify certain public properties for which special consideration is warranted. This provision is based on Sec. 515(b)(17) of the Act.

The proposal would require the prevention or mitigation of adverse effects from roads to lands within the boundaries of the units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Acts of Congress. These areas are the same areas covered by the mining prohibitions of section 522(e)(1) of the Act. However, the proposed performance standard would not be subject to the exemption in section 522(e) for "valid existing rights", because this is a performance standard on permitted activities rather than a prohibition against permitting such activities. The rule would also apply to mining roads outside the boundaries of section 522(e)(1) areas.

(5) The reference to the 1.3 safety factor for all embankments in paragraph (b)(9) of the 1983 rule would be moved from § 816.150 to § 816.151 so that it would apply only to primary roads. OSMRE believes that the safety factor requirement is more appropriate for the larger embankments on primary roads that have the potential for greater adverse environmental impacts. OSMRE does not believe that this requirement is necessary for ancillary roads, which have little potential for causing adverse environmental impacts. OSMRE is especially interested in receiving comments on the necessity of imposing this factor on ancillary roads.

Sections 816.150(c)/817.150(c) Design and construction limits and establishment of design criteria.

Proposed paragraph (c) would require that roads be designed and constructed or reconstructed to meet certain criteria in order to ensure environmental protection appropriate for their planned duration and use. These criteria include limits for grade, width, surface materials, surface drainage control, culvert placement and culvert size, that would be in accordance with current, prudent engineering practices, and any other necessary design criteria established by the regulatory authority. (See 1983 preamble for a discussion on establishing design and construction limits for roads (48 FR 22119)).

The provisions of proposed paragraph (c) would be the same as the 1983 rule, except that the provision from the 1983 rule governing road safety is not included in the proposed rule because safety considerations for users of roads associated with surface and underground mining are the responsibility of the Mine Safety and Health Administration, and have been addressed in that agency's rules at 30 CFR 77.1600 *et seq.* The environmental protection requirements of this paragraph derive from sections 515(b)(17) and (18) of SMCRA, which establish performance standards to ensure that the construction, maintenance and postmining conditions of access roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property. Road safety is not addressed by these provisions of SMCRA, and therefore OSMRE believes it is not appropriate to include

requirements pertaining to safety in this rule.

Sections 816.150(d)/817.150(d) Location.

Proposed § 816.150(d) includes location performance standards identical to those in the 1983 rule. They would prohibit the placement of any part of a road in the channel of an intermittent or perennial stream unless the regulatory authority specifically approves such an action, and would require that roads be located to minimize downstream sedimentation and flooding.

Sections 816.150(e)/817.150(e) Maintenance.

Proposed paragraph (e) is similar to § 816.150(e) in the 1983 rule, and would govern the general maintenance responsibilities of the operator. Under this proposal, a road must be maintained to meet the performance standards and any additional design criteria established by the regulatory authority. Also, the proposed rule would provide that in the event of damage due to a catastrophic event a road must be repaired as soon as practicable after the damage has occurred. The requirement in the 1983 rule to maintain a road throughout its life is not included in the proposed rule because under SMCRA an operator has no responsibility for a road in the post mining use period.

Section 816.150(f)/817.150(f) Reclamation.

Proposed § 816.150(f) provides that a road which is not to be retained under an approved postmining land use must be reclaimed immediately after it no longer is needed for mining and reclamation operations. The reclamation activities that would be required by this paragraph include (1) closing the road to traffic; (2) removing all bridges and culverts unless approved as part of the postmining land use; (3) removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and the revegetation requirements of the regulation; (4) reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain; (5) protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and (6) scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with 30 CFR 816.22 and 816.111 through 816.116.

These proposed reclamation requirements are similar to those in the 1983 rule, but also include several concepts from the 1979 rule. Proposed paragraph (f)(3), from the 1979 rule, would require the removal or other disposal of road-surfacing materials that are incompatible with the reclamation requirements of the Act. The operator would be required to remove the road-surfacing materials or to bury them on the roadbed if they were incompatible with the postmining land use and the revegetation requirements of 30 CFR 816.111 through 816.116. As stated in the preamble to the 1979 rule (44 FR 15280), surfacing materials that are buried on the roadbed would have to be covered with sufficient material to meet the intent of the Act, including representing no risk to vegetation or water quality.

Proposed paragraph 816.150(f)(4) includes provisions from the 1979 rules. The requirement to reshape all cut and fill slopes in the 1983 rule would be changed by adding language from the 1979 rule that requires that cut and fill slopes be reshaped only as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain. OSMRE believes this change is reasonable because in some cases, such as grazing and wildlife areas, cut and fill slopes may not need modification to be compatible with post-mining land uses.

Proposed paragraph 816.150(f)(5) would introduce a requirement to protect natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion. OSMRE believes this requirement is necessary to prevent erosion where revegetation and mulching would not control erosion and runoff from the reclaimed road right-of-way, such as may occur on very steep slopes, in situations where the road grade is not eliminated.

Proposed paragraph 816.150(f)(6) would require the operator to scarify or rip the roadbed prior to replacing topsoil or other substitute material before revegetating the area. Scarifying or ripping the roadbed is necessary to break up tbe compacted soil and allow for moisture percolation and root penetration. The proposed paragraph would modify the 1983 language to permit the use of topsoil substitutes or supplements when reclaiming roadbeds, thus making these provisions consistent with the topsoil provisions in 30 CFR 816.22.

E. Sections 816.151/817.151 Primary Roads.

Because primary roads have greater potential than ancillary roads to cause adverse environmental impacts, proposed § 816.151 would establish an additional set of performance standards for their design, construction and maintenance, in addition to those established for all roads in § 816.150. These proposed performance standards are similar to those in the 1983 rule, with the addition of two new requirements.

These new requirements, as explained in the following section, would allow land surveyors to certify the construction or reconstruction of roads in certain cases, and would apply the minimum static safety factor of 1.3 only to embankments of primary roads.

Sections 816.151(a)/817.151(a) Certification.

Proposed § 816.151(a) would require that primary road construction or reconstruction be certified in a report to the regulatory authority by a qualified registered professional engineer. The requirement for professional certification, which would assure that the road is properly constructed to meet the environmental protection standards of the Act, was included in the 1983 rule. Under the proposal, however, certification by a qualified registered professional land surveyor also would be allowed in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads. This provision is based on a November 4, 1983, amendment to the Act (Sec. 115, Pub. L. 98–146, 97 Stat. 938 (1983)) which provides that "(n)ot withstanding section 507(b)(14) of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87), cross sections, maps or plans of land to be affected by an application for a surface mining and reclamation permit shall be prepared by or under the direction of a qualified registered professional engineer or geologist, or qualified registered professional land surveyor in any State which authorizes land surveyors to prepare and certify such maps or plans." A registered land surveyor would have to have experience in the design and construction of roads in order to substitute for a qualified registered professional engineer. This requirement is equivalent to the experience requirement for certified engineers.

Proposed § 816.151(a) would also require the certifying professional to prepare and submit to the regulatory authority a report certifying that the primary road was constructed or reconstructed as designed and in accordance with the approved plan. This provision is unchanged from the 1983 rule.

Sections 816.151(b)/817.151(b) Safety factor.

Proposed § 816.151(b) would require that all embankments have a minimum static safety factor of 1.3. Under the proposal, this provision would be moved from § 816.150, where it was in the 1983 rule, to § 816.151, and would apply only to primary roads. This would be consistent with the concept developed in the 1979 rule where the static safety factor applied only to roads that had greater environmental effects (Class I and II roads in the 1979 classification system) due to high embankments and a high volume of traffic which results in greater degradation. (44 FR 15253 (1979)). It would also be almost identical to the factor of 1.25 used in the 1979 rule. OSMRE is especially interested in receiving comments on the adequacy of this proposed factor, and the need to apply the factor to ancillary as well as primary roads.

Rather than specify particular design criteria for road embankments, the 1.3 factor of safety would establish a performance standard that must be attained. The operator would have the flexibility to select the particular design for the road that meets this standard. In a related proposal, proposed § 780.37(c) would enable the regulatory authority to establish engineering design standards through the State program approval process in lieu of engineering tests that are performed to establish compliance with the safety factor.

Sections 816.151(c)/817.151(c) Location.

Proposed § 816.151(c)(1) would require primary roads to be located, insofar as practicable, on the most stable available surfaces to minimize erosion. Proposed paragraph (c)(2) would prohibit primary roads from using stream fords on perennial or intermittent streams unless specifically approved by the regulatory authority as temporary routes during road construction. These provisions are the same as those in the 1983 rule except for the requirement for prohibiting stream fords on perennial or intermittent streams, which is included to keep the provision consistent with proposed § 816.150(d)(1).

Sections 816.151(d)/817.151(d) Drainage Control.

Proposed § 816.151(d) would require that surface water drainage for each primary road be controlled in accordance with the approved reclamation and operation plan specified by proposed § 780.37(a). Since the design aspect of drainage control is a part of this plan, it is not necessary to include similar provisions in the drainage control provision of § 816.151(d). Generally, the provisions of proposed paragraph (d) are similar to §§ 816.151 (c)(1) through (c)(6) of the 1983 rule; any differences are discussed below.

Proposed paragraph (d)(1) would require that primary roads be constructed, reconstructed and maintained to have adequate drainage control by using structures such as, but not limited to, bridges, ditches and drains. Paragraph (d)(1) also would require that, at a minimum, drainage control systems be designed to safely pass the peak runoff from a 10-year, 6-hour or greater precipitation event. To provide flexibility to regulatory authorities to account for particular situations likely to be encountered over the life of a mine, or related to specific downstream conditions, the proposed rule would allow modification of this standard by the regulatory authority in those situations where the 10-year, 6-hour precipitation event might not be appropriate.

Proposed paragraph (d)(2) would require that drainage pipes and culverts be installed as designed and maintained in a free and operating condition, and to avoid erosion at inlets and outlets. Proposed paragraph (d)(3) would require that drainage ditches be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment. The requirement from the 1983 rule that trash racks and debris basins be installed in drainage ditches where debris may impair the functioning of drainage and sediment control structures is not included in this proposed rule. OSMRE believes this requirement represents only one of several specific methods of meeting the performance standards of § 816.151(d)(3). Since drainage ditches, pipes and culverts must function during the maintenance phase of a road, OSMRE is proposing to add a maintenance requirement to paragraphs (d)(2) and (d)(3).

Proposed paragraph (d)(4) would require that culverts be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road. As noted above, the reference to design criteria has not been reproposed in this paragraph. Proposed paragraph (d)(5) would require that natural stream channels not be altered or relocated without prior approval of the regulatory authority, except as provided by the rules on hydrologic balance in 30 CFR 816.41 through 816.43 and 816.57. Proposed paragraph (d)(6) would require that except as provided in paragraph (c)(2), stream channel crossings for perennial and intermittent streams be accomplished using bridges, culverts, low-water crossings, or other structures designed, constructed and maintained using current, prudent engineering practices.

The requirement for drainage structures at perennial and intermittent streams would be made to ensure consistency with § 816.150(d)(1) of this part. By using current, prudent engineering practices to design, construct and maintain crossings, the hydrologic and environmental balance of the stream would be protected when the crossing were in place.

Proposed paragraph (d)(6) includes language referring to perennial and intermittent streams, for consistency with the language of the performance standard in § 816.150(d). It has also been reworded for clarity. More significantly, low-water crossings would be added to the list of structures that are allowed for stream crossings. Low-water crossings pass the low or normal flow through the structure, while high-water flows over the structure, which is designed to accommodate high-water flows by using a nonerodable roadway surface such as concrete. During normal flow, traffic uses the structure as a bridge, but high flows restrict the use of the crossing. Proposed paragraph (d)(6) would specify that when the operator proposes to use a low-water crossing, the regulatory authority shall ensure that the crossing is designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow. OSMRE believes that properly constructed and maintained low-water crossings meet the requirements of the Act and provide another type of structure suitable for stream crossings.

Sections 816.151(e)/817.151(e) Surfacing.

Proposed § 816.151(e) would require that primary roads be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road. This proposal is essentially the same as paragraph (d) in the 1983 rule, but would not specify the kinds of materials which must be used for surfacing primary roads. OSMRE believes that since the regulatory authority may approve only surfacing materials which meet the requirements of this paragraph, it is not necessary to list the materials that may be used. The regulatory authority should have the

flexibility to approve any material which will satisfy these requirements.

Paragraph 816.151(e) of the 1983 rule, which listed routine maintenance responsibilities for primary roads, is not included in this proposed rule. Section 816.150(e)(1) of this proposal establishes maintenance requirements for all roads; it is not necessary to establish separate requirements for primary roads. The regulatory authority may specify additional maintenance criteria for primary roads, as necessary.

Effect in Federal Program States

The rule proposed here, if adopted, would be applicable through cross-referencing in those States with Federal programs. This includes Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any of the Federal program rules. The proposed rules also apply through cross-referencing to Indian lands under Federal programs for Indian lands as provided in 30 CFR Part 750.

IV. Procedural Matters

Federal Paperwork Reduction Act

The proposed rule contains revised information collection requirements for §§ 780.37, 780.38, 784.24 and 784.30 which have been submitted to the Office of Management and Budget (OMB) under 44 U.S.C. 3507. The information collection requirements for Part 816 have also been submitted to OMB for review, and the information collection requirements for 30 CFR Part 817 will be submitted to OMB for review by November 1, 1987.

Executive Order 12291

The DOI has examined the proposed rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The DOI also has determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the proposed rule will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

OSMRE has prepared an environmental assessment (EA) for this rule, and has made a finding that it would not significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). The EA and finding of no significant impact are on file in the administrative record for this rule in the OSMRE Administrative Record Room at 1100 L Street NW., Washington, DC.

Author

The author of this proposed rule is Robert A. Wiles, P.E., Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–1502.

List of Subjects

30 CFR Part 701

Law enforcement, Surface mining, Underground mining.

30 CFR Part 780

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 784

Reporting and recordkeeping requirements, Underground mining.

30 CFR Part 815

Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 816

Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, it is proposed to amend 30 CFR Parts 701, 780, 784, 815, 816, and 817 as set forth below.

Date: June 3, 1987.

J. Steven Griles,

Assistant Secretary—Land and Minerals Management.

PART 701—PERMANENT REGULATORY PROGRAM

1. The authority citation for Part 701 reads as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*).

2. In § 701.5, the definition of "road" is revised to read as follows:

§ 701.5 [Amended]

* * * * *

Road means a surface right-of-way for purposes of travel by land vehicles used in surface coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches and surface. The term includes access and haul roads constructed, used, reconstructed, improved or maintained for use in surface coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles leading to transfer, processing, or storage areas. The term does not include pioneer roads, temporary routes used for constructing access or haul roads, ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

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PART 780—SURFACE MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

3. The authority citation for Part 780 reads as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

4. Section 780.37 is revised to read as follows:

§ 780.37 Road systems.

(a) *Plans and drawings.* Each applicant for a surface coal mining and reclamation permit shall submit plans and drawings for each road, as defined in § 701.5 of this chapter, to be constructed, used or maintained within the proposed permit area. The plans and drawings shall—

(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream and thus requires the approval of the regulatory authority in accordance with § 816.150(d)(1) of this chapter;

(3) Contain the drawings and specifications for each proposed stream ford that is used as a temporary route and thus requires the approval of the regulatory authority in accordance with § 816.151(c)(2) of this chapter;

(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural drainageway under § 816.151(d)(5) of this chapter;

(5) Contain the drawings and specifications for each low-water crossing so the regulatory authority can maximize the protection of the stream in accordance with § 816.151(d)(b) of this chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the design of primary roads a qualified registered professional land surveyor, with experience in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the State program approval process in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 816.151(b) of this chapter.

5. Section 780.38 is added to read as follows:

§ 780.38 Support facilities.

Each applicant for a surface coal mining and reclamation permit shall submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings and specifications sufficient to demonstrate compliance with § 816.181 of this chapter for each facility.

PART 784—UNDERGROUND MINING PERMIT APPLICATIONS—MINIMUM REQUIREMENTS FOR RECLAMATION AND OPERATION PLAN

6. The authority citation for Part 784 reads as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

7. Section 784.24 is revised to read as follows:

§ 784.24 Road systems.

(a) *Plans and drawings.* Each applicant for an underground coal mining and reclamation permit shall submit plans and drawings for each road, as defined in § 701.5 of this chapter, to be constructed, used or maintained within the proposed permit area. The plans and drawings shall—

(1) Include a map, appropriate cross sections, design drawings and specifications for road widths, gradients, surfacing materials, cuts, fill embankments, culverts, bridges, drainage ditches, low-water crossings and drainage structures;

(2) Contain the drawings and specifications of each proposed road that is located in the channel of an intermittent or perennial stream and thus requires the approval of the regulatory authority in accordance with § 817.150(d)(1) of this chapter;

(3) Contain the drawings and specifications for each proposed stream ford that is used as a temporary route and thus requires the approval of the regulatory authority in accordance with § 817.151(c)(2) of this chapter;

(4) Contain a description of measures to be taken to obtain approval of the regulatory authority for alteration or relocation of a natural drainageway under § 817.151(d)(5) of this chapter;

(5) Contain the drawings and specifications for each low-water crossing so the regulatory authority can maximize the protection of the stream in accordance with § 817.151(d)(6) of this chapter; and

(6) Describe the plans to remove and reclaim each road that would not be retained under an approved postmining land use, and the schedule for this removal and reclamation.

(b) *Primary road certification.* The plans and drawings for each primary road shall be prepared by, or under the direction of, and certified by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the design of primary roads a qualified registered professional land surveyor, experienced in the design and construction of roads, as meeting the requirements of this chapter; current, prudent engineering practices; and any design criteria established by the regulatory authority.

(c) *Standard design plans.* The regulatory authority may establish engineering design standards for primary roads through the State program approval process in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 for all embankments specified in § 817.151(b) of this chapter.

8. Section 784.30 is added to read as follows:

§ 784.30 Support facilities.

Each applicant for an underground coal mining and reclamation permit shall submit a description, plans and drawings for each support facility to be constructed, used or maintained within the proposed permit area. The plans and drawings shall include a map, appropriate cross sections, design drawings and specifications sufficient to demonstrate compliance with § 817.181 of this chapter for each facility.

PART 815—PERMANENT PROGRAM PERFORMANCE STANDARDS—COAL EXPLORATION

9. The authority citation for Part 815 reads as follows:

Authority: Pub. L. 95–87, U.S.C. 1201 *et seq.*

10. Section 815.15 is amended by revising paragraph (b) to read as follows:

§ 815.15 Performance standards for coal exploration.

* * * * *

(b) All roads or other transportation facilities used for coal exploration shall comply with the applicable provisions of §§ 816.150 (b) through (f), 816.180 and 816.181 of this chapter.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

10. The authority citation for Part 816 reads as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

11. Section 816.150 is revised to read as follows:

§ 816.150 Roads: General.

(a) *Road classification system.* (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Each road shall be located, designed, constructed,

reconstructed, used, maintained and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, by measures such as vegetating, watering, using chemical or other dust suppressants or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects to lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

(7) Use nonacid- or nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, that would be in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan immediately after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with §§ 816.22 and 816.111 through 816.116 of this chapter.

12. Section 816.151 is revised to read as follows:

§ 816.151 Primary roads.

Primary roads shall meet the requirements of § 816.150 and the additional requirements of this section.

(a) *Certification.* The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads a qualified registered professional land surveyor, with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) *Safety factor.* Each primary road embankment shall have a minimum static safety factor of 1.3.

(c) *Location.* (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of construction.

(d) *Drainage control.* In accordance with the approved plan—

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour or greater precipitation event, unless otherwise specified by the regulatory authority;

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to avoid erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable §§ 816.41 through 816.43 and 816.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(e) *Surfacing.* Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

13. The authority citation for Part 817 reads as follows:

Authority: Pub. L. 95–87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*) and sec. 115, Pub. L. 98–146, 97 Stat. 938 (30 U.S.C. 1257), unless otherwise noted.

14. Section 817.150 is revised to read as follows:

§ 817.150 Roads: General.

(a) *Road classification system.* (1) Each road, as defined in § 701.5 of this

chapter, shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approved postmining land use.

(3) An ancillary road is any road not classified as a primary road.

(b) *Performance standards.* Each road shall be located, designed, constructed, reconstructed, used, maintained and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, by measures such as vegetating, watering, using chemical or other dust suppressants or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife or their habitat and related environmental values;

(3) Control of prevent additional contributions of suspended solids to stream flow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standards applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects to lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

(7) Use nonacid- or nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, culvert size, that would be in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream unless specifically approved by the regulatory authority.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority.

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan immediately after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with §§ 817.22 and 817.111 through 817.116 of this chapter.

15. Section 817.151 is revised to read as follows:

§ 817.151 Primary roads.

Primary roads shall meet the requirements of § 817.150 and the additional requirements of this section.

(a) *Certification.* The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors to certify the construction or reconstruction of primary roads a qualified registered professional land surveyor, with experience in the design and construction of roads. The report shall indicate that the primary road has been constructed or reconstructed as designed and in accordance with the approved plan.

(b) *Safety factor.* Each primary road embankment shall have a minimum static safety factor of 1.3.

(c) *Location.* (1) To minimize erosion, a primary road shall be located, insofar as is practicable, on the most stable available surface.

(2) Fords of perennial or intermittent streams by primary roads are prohibited unless they are specifically approved by the regulatory authority as temporary routes during periods of construction.

(d) *Drainage control.* In accordance with the approved plan—

(1) Each primary road shall be constructed or reconstructed, and maintained to have adequate drainage control, using structures such as, but not limited to bridges, ditches, cross drains and ditch relief drains. The drainage control system shall be designed to safely pass the peak runoff from a 10-year, 6-hour or greater precipitation event, unless otherwise specified by the regulatory authority;

(2) Drainage pipes and culverts shall be installed as designed, and maintained in a free and operating condition and to avoid erosion at inlets and outlets;

(3) Drainage ditches shall be constructed and maintained to prevent uncontrolled drainage over the road surface and embankment;

(4) Culverts shall be installed and maintained to sustain the vertical soil pressure, the passive resistance of the foundation, and the weight of vehicles using the road;

(5) Natural stream channels shall not be altered or relocated without the prior approval of the regulatory authority in accordance with applicable §§ 817.41 through 817.43 and 817.57 of this chapter; and

(6) Except as provided in paragraph (c)(2) of this section, structures for perennial or intermittent stream channel crossings shall be made using bridges, culverts, low-water crossings, or other structures designed, constructed and maintained using current, prudent engineering practices. The regulatory authority shall ensure that low-water crossings are designed, constructed and maintained to prevent erosion of the structure or streambed and additional contributions of suspended solids to streamflow.

(e) *Surfacing.* Primary roads shall be surfaced with material approved by the regulatory authority as being sufficiently durable for the anticipated volume of traffic and the weight and speed of vehicles using the road.

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S. 1417/Pub. L. 100-146
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H.R. 2782/Pub. L. 100-147
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S. 1628/Pub. L. 100-148
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